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**CA. YASHVANT MANGAL**

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**INDIRECT TAX LAWS**

*Volume – 3*

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**&**

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Ph. No. 7737976730, 7737304442

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Shop No. 3, M.G. Bhavan, Old Nagardas Road,  
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Ph. No. 022-28203894, +91 9820651516

# SECTION B : CUSTOMS LAW

## CHAPTER

# 25

## Definitions under Customs Act, 1962 And Types of Customs Duties

### 25.1 Historical Background and Constitutional Provisions

The term 'customs' derives its colour and essence from the term 'custom', which means a habitual practice or course of action that characteristically is repeated in like circumstances.

Duties on import and export of goods were levied through legislations during the British period before which, during monarchical governance, said duty was collected at the city gates at the time of goods coming in and going out. The legislations of the British period were replaced by the enactment and promulgation of the Customs Act, 1962 and the Customs Tariff Act, 1975

The power to make laws is conferred on the Parliament and the legislature of a State by Article 245 of the Constitution of India.

Further, entry 83 of the List I [Union List] of the Seventh Schedule to Article 246 of the Constitution of India grants the power to frame laws relating to customs duty.

The power to make laws relating to customs duty vests exclusively with the Parliament.

### 25.2 Section 1. Short title, extent and commencement

- (1) This Act may be called the Customs Act, 1962.
- (2) It extends to the whole of India [and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.] [as amended by Finance Act, 2018, w.e.f. 29.03.2018]

#### Analysis of Amendment:

Section 1(2) is amended to expand the scope of applicability of the Customs Act to any offence or contravention committed under Customs Act by any person outside India also.

- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint (i.e. 01.02.1963).

### 25.3 Section 2. Relevant Definitions under the Customs Act, 1962

In this Act, unless the context otherwise requires,

- (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;
- (9) "conveyance" includes a vessel, an aircraft and a vehicle;
- (11) "customs area" means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;



- ) "customs station" means any customs port, customs airport, international courier terminal, foreign post office or land customs station;
- ) "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;
- ) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- ) "export goods" means any goods which are to be taken out of India to a place outside India;

#### Analysis:

1. It means, the goods which are intended for export, brought to the port and shipping bills for export has been filed, become export goods.
  2. But, where the goods had already been exported pursuant to the order made under Section 51 of the customs Act, 1962, such goods cannot be deemed to be "export goods", rather such goods are called exported goods.
  3. **Export Goods v/s Exported goods:** There is distinction between export goods and exported goods. The former is one, which is to be taken out of India while the latter is one, which has already crossed the territorial waters of India.
- 1) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes –
- (i) any naval vessel of a foreign Government taking part in any naval exercises;
  - (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
  - (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;
- A) "goods" includes –
- (a) vessels, aircrafts and vehicles;
  - (b) stores;
  - (c) baggage;
  - (d) currency and negotiable instruments; and
  - (e) any other kind of movable property;
- ) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
- ) "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;
- 7) "India" includes the territorial waters of India;
- 1) "person-in-charge" means, –
- (a) in relation to a vessel, the master of the vessel;
  - (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
  - (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
  - (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;
- 3) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

- (34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs.

## 25.4 India

**Constitutional Definition of "India" & its maritime zones :** As per the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (for short "the Maritime Zones Act"), the maritime zones of India are as per the limits given below:-

Area of India	Limit/Extension of the area
(A) Territorial Waters	12 nautical miles from the baseline. (1 nautical mile = 1.852 kilometre)
(B) Contiguous Zone	Area beyond territorial water but upto 24 nautical miles from baseline.
(C) Continental Shelf	Stabbed and subsoil of the submarine areas beyond the territorial waters but upto 200 nautical miles from the baseline.
(D) Exclusive Economic Zone	Area beyond territorial waters but upto 200 nautical miles from baseline (i.e. sea/water and airspace over the continental shelf of India)

**India [Sec. 2(27) of Customs Act, 1962] :** "India" includes the territorial water of India.

Territorial waters of India also include any bay, gulf, harbour, creek or tidal river. The outer boundary of territorial waters is international boundary of India beyond which the high sea lies.

**Indian Customs Water [Sec. 2(28) of Customs Act, 1962] :** "Indian Customs Water" 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 Zones Act, 1976 and includes any bay, gulf, harbour, creek or tidal river; [as amended by Finance Act, 2018, w.e.f. 29.03.2018]

### Analysis of Amendment :

- Section 2(28) is amended to extend the limit of 'Indian Customs Waters' into the sea from the existing 'Contiguous zone of India' to the 'Exclusive Economic Zone (EEZ)' of India.
- Though 'India' extends to only 12 nautical miles, Indian Customs Waters extends to 200 nautical miles.

**Customs law extended to maritime zones :** The Central Government has extended the Customs Act, 1962 and the Customs Tariff Act, 1975 to-

- notified "designated areas" in the Continental Shelf and Exclusive Economic Zone of India; and
- whole of the Continental Shelf and Exclusive Economic Zone of India for the limited purpose of-
  - prospecting or extraction or production of mineral oils (including petroleum and natural gas) in the continental shelf of India or the exclusive economic zone of India, and
  - supply of any 'goods' defined in Customs Act in connection with any activities referred in (i).

Therefore, the aforesaid areas form part of "India" for the levy of customs duty.

### Implication of the aforesaid on scope of levy of customs duty:

- any good produced or manufacture within such areas and brought to the mainland of India shall not be regarded as 'imported goods' and will not be liable to customs duty;
- any goods brought from any foreign country into such areas will be treated as 'import' and, hence, liable to customs duty; and
- any goods supplied from the mainland to such areas shall not be treated as 'export' and consequently, no export benefits shall be available in respect of them.

**Significance of various maritime zones (i.e. Territorial waters, Indian Customs waters and Indian Exclusive Economic Zone) for Customs law:**



1. **12 nautical miles from base line i.e. the Territorial waters of India :** This determines taxable event. Thus, in case of importation, import of goods will commence when they enter territorial waters and exportation is completed when the goods cross the territorial waters.
2. **200 nautical miles from base line i.e. the Indian Customs Waters :** The significance is as follows-
  - (a) Any person who has landed from/about to board/is on board any vessel within Indian customs waters and who has secreted about his person, any goods liable to confiscation or any documents relating thereto may be searched [Section 100];
  - (b) Any person within Indian customs waters, who has committed an offence punishable u/s 132 or 133 or 135 or 135-A or 136, may be arrested [Section 104];
  - (c) Any vessel within Indian customs waters, which has been, is being, or is about to be, used in the smuggling of any goods or in carriage of any smuggled goods, may be stopped [Section 106];
  - (d) Any goods which are brought within the Indian customs waters for the purpose of being imported from a place outside India, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation [Section 111(d)]; and
  - (e) Any vessel which is or has been within Indian customs waters is constructed, adapted, altered or fitted in any manner for concealing goods shall be liable to confiscation [Section 115(1)(a)].
3. **200 nautical miles from base line i.e. the Indian Exclusive Economic Zone :** Economic exploitation in the sea and sea-bed can be done by India upto only 200 nautical miles from the base line.

## 25.5 Customs Tariff Act, 1975 (CTA) - Types of Customs Duties

### Section 1 : Short title, extent and commencement

- (1) This Act may be called the Customs Tariff Act, 1975.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint (i.e. 02.08.1976).

### Section 2 : Duties specified in the Schedules to be levied

The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules. The First Schedule specifies the rate of customs duty on import of goods and the Second Schedule specifies the rate of customs duty on export of goods.

### Section 3 : Levy of additional duty equal to excise duty, sales tax, local taxes and other charges

1. **Additional Customs Duty chargeable u/s 3(7) of the CTA [IGST]:**
  - (a) It is the additional duty of customs which is charged to counter balance the GST leviable on the supply of same article in India.
  - (b) It will be charged only if such supply is chargeable to GST in India. If GST is not chargeable on supply of such goods in India, then, this duty shall also be not charged.
  - (c) Import of goods is chargeable to IGST under the provisions of section 3(7) of the CTA.
  - (d) As per section 3(7) of CTA, any article which is imported into India shall, in addition, be liable to IGST at such rate, not exceeding 40% as is leviable u/s 5 of the IGST Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.
  - (e) Central Govt. has exempted all goods imported by a unit or a developer in the Special Economic Zone (SEZ) for their authorized operations, from the whole of the IGST leviable thereon u/s 3(7) of the CTA read with Sec. 5 of the IGST Act, 2017.
  - (f) **Assessable Value for computing IGST**
    - (i) **Sec. 3(8):**