



Chapter 1

INTRODUCTION & LEVY OF CUSTOM DUTY

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General Questions

Constitutional Provisions and basics of law charging Section

SNC 01.01.00

Write a brief note on the constitutional provisions governing the levy of customs duties.

Answer:- Article 265 of the Constitution provides that "No tax shall be levied or collected except by authority of law". All the enactments enacted by the Parliament should have its source in the Constitution of India.

The power for enacting the laws is conferred on the Parliament and on the legislature of a State by Article 245 of the Constitution. The said Article provides:

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the state.

No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation. Article 246 governs the subject matter of the laws made by the Parliament and by the legislature of a State. The matters are listed in the Seventh Schedule to the Constitution.

The seventh schedule is classified into three lists as follows:

1) List I 2) List II 3) List III

Further, the said Article provides that Parliament may by law formulate principles for determining when a supply becomes, import of export.

Thus, the power to levy customs duties on import/export, as well as the power to legislate the principles to determine whether a transaction qualifies as import/export, lies solely with the Union, i.e. the Parliament of India.

Sec.12- charging section

SNC 01.02.00

Write a brief note on stages of imposition of taxes and duties.

Answer :- Three stages of imposition of taxes and duties

All taxes and duties are imposed in three stages, which are levy, assessment and

collection:-

(a) **Levy** is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged.

(b) **Assessment** is the procedure of quantifying the amount of liability. The liability to pay tax or duty does not depend upon assessment.

(c) **Collection**: The final stage is where the tax or duty is actually collected. The collection of tax or duty may for administrative or other reasons be postponed to a later time.

Important definitions

SNC 01.03.00

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

1) Conveyance

2) Goods

3) Stores

4) Import

5) Importer

Answer:

1) **"Conveyance"**: [Section 2(9) of the Customs Act, 1962]. includes:-

(a) a vessel

(b) an aircraft and

(c) a vehicle

Thus, the Customs Act, 1962 covers all three modes of transport of goods i.e., transport by air, water and land.

2) **Goods**: As per section 2(22) of the Customs Act, 1962 'goods' includes-

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments;

(e) any other kind of movable property.

3) **Stores**: As per section 2(38) of the Customs Act, 1962, stores

means goods for use in a vessel or aircraft and

includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

Stores are also goods but are covered by special provisions in sections 85 to 90. The definition does not cover goods for use in a vehicle.

4) Import

The term import under section 2(23) of the Customs Act, 1962 refers to

- i) bringing into India from a place outside India.
- ii) Import of goods into India commences when the goods enter the territorial waters of India, but gets completed only when the goods become part of the mass of goods within the country.

5) As per section 2(26) of the Customs Act, 1962

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.

SNC 01.04.00

Examine the validity of the following statement [ICAI Material]

(a) A beneficial owner of imported goods is a person on whose behalf the goods are being imported.

Answer The statement is valid. Section 2(3A) defines **beneficial owner** to mean any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported

SNC 01.05.00

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

⇒ India [ICAI Material]

Answer:- “India” [Section 2(27) of the Customs Act, 1962. includes the territorial waters of India

The territorial waters of India extend to 12 nautical miles into the sea from the

appropriate base line.

Further, it includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea.

SNC 01.06.00

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

⇒ Indian territorial waters and Indian custom waters [ICAI Material]

Answer:- ⇒ Indian territorial waters and Indian custom waters

The territorial waters of India extend to 12 nautical miles into the sea from the appropriate base line. Further, it includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea. Levy of customs duty on import or export of goods based on Indian territorial water.

As defined by section 2(28) of the Customs Act, 1962 **Indian customs waters**

means the waters extending into the sea up to the limit **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.

SNC 01.07.00

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

1) Dutiable goods and imported goods

Answer:

1) Dutiable goods and imported goods

'Dutiable goods' [Section 2(14)] means any goods:-

- (a) which are chargeable to duty and
- (b) on which duty has not been paid.

In order to be dutiable, any article must first satisfy both the following conditions:-

- (i) The article should fall within the ambit of the word goods [defined under sec 2(22)].
- (ii) The article should find a mention in the Customs Tariff.

'Imported goods' [Section 2(25) of the Customs Act, 1962]

means any goods brought into India from a place outside India

but does not include goods that have been cleared for home consumption.

Once goods are cleared by Customs authorities from customs area, they are no longer 'imported goods'

SNC 01.08.00

ONGC oil rig are drilling oil beyond 12 nautical miles in the sea in the Exclusive Economic Zone of India. ONGC has brought oil through pipeline in India after extraction. Whether it would be treated as import & liable to duty? Explain.

Answer: Customs law extended to maritime zones: The Central Government has **extended the Customs Act, 1962** and the Customs Tariff Act, 1975 to – Whole of the Continental Shelf and Exclusive Economic Zone of India for the limited purpose of –

(i) prospecting for extraction or production of mineral oils (including petroleum and natural gas) in the continent shelf of India or the exclusive economic zone of India, and

(ii) Supply of any goods as defined in section 2(22) of the Customs Act

It was held that oil rigs located beyond territorial waters of country but within exclusive economic zone are **deemed to be in Indian Territory**.

Hence oil brought through pipeline in India is not treated as import & no customs Duty is payable.

SNC 01.09.00

Some custom officers received the information from a reliable source that a vessel was carrying smuggled goods. The custom officers located the said vessel in the sea when it was around 6 nautical miles away from the outer limit of territorial waters. The custom officers wish to stop the vessel there and examine and search the goods in the vessel.

You are required to examine whether the custom officers have the authority to stop the vessel and examine and search the goods in the vessel?

Answer:

In case the proper officer has reason to believe that any vessel in India/within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vessel and examine and search any goods in the vessel.

Further, section 2(28) defines the Indian customs waters as waters extending into the sea up to the limit of **exclusive economic zone under Sec 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. Indian customs waters cover both the Indian territorial waters and **exclusive economic zone** as well. Indian territorial waters extend up to 12 nautical miles from the base line whereas exclusive economic zone extend to a 200 nautical miles from the nearest point of the baseline.

Thus, in the given case, since the vessel is within the Indian custom waters, the custom officers have the authority to stop the vessel and examine and search the goods in the vessel

Import taxable event

SNC 01.10.00

What is taxable event under customs for import of goods in India?

Answer: Section 12 makes it abundantly clear that importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs.

Relevant judgments regarding the determination of taxable event

The main test for determining the taxable event is the happening of the event on which the charge is affixed.

1. Imports

(a) In case of goods cleared for home consumption

The Supreme Court observed that import of goods will commence when they cross the territorial waters, 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 barriers and bill of entry for home consumption is filed. [Garden Silk Mills Ltd. v. UOI 1999 (113) E.L.T. 358 (S.C.)]

(b) In case of goods cleared for warehousing

In case of goods cleared for warehousing, taxable event arise, when Ex- bond Bill of entry is presented. [UOI v/s Apar Ind. Ltd. 1999(122) E.L.T. 3 (S.C.)]

**Levy of Custom Duty Export
Important definitions**

SNC 01.11.00

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

1) Export

2) Export Goods

3) Exporter

Answer:

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

2. Export goods Sec. 2(19): means any goods which are to be taken out of India to a place outside India.

Export goods v. Exported goods: There is a distinction between export goods and exported goods. The former is one, which is to be taken out of India (and not taken out of India) while the latter is one, which has already crossed the territorial waters of India.

3. Exporter Sec 2(20) in relation to any goods

- ➔ 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.

Taxable event in export

SNC 01.12.00

What is the “taxable event” in the case of export of goods under customs laws export duty payable in case of applicable goods where ship travels 40 nautical miles from Indian port and the title passes to the buyer, but the ship returns to India because of engine trouble? What is the relevant date for export duty?

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

Taxable event in case of export of goods: Exportation commences when the shipping bill in respect of such goods is filed but the taxable event is completed when the goods cross the territorial water of India.

In UOI v. Rajindra Dyeing and Printing Mills Ltd 2005 (180) ELT 433. The Supreme Court, it has been **held that the export of goods is complete when the ship leaves the territorial waters of India.**

If ship sinks within territorial waters, export is not complete and duty drawback is not payable.

In CC v. Sun Exports 71 STC 149, the apex Court held that export is complete where the ship leaves the territorial waters of India and the title in the goods has passed on to the buyers; **it was further held that even if the ship returns to India because of engine trouble, duty drawback is payable.**

Combine case study Question

SNC 01.13.00

State whether the following statement is true or false.

Since the Government wants to encourage exports, there is export duty (customs duty) on very few items. (ICWA Inter June 2008)

Answer: True. Since Government actively encourages export, there is export duty on very few items. Article on which export duty is leviable are given in Second Schedule to Customs Tariff. At present, export duty is imposed on few items only.

Explain, with reference to decided case law, whether clearances from Domestic Tariff Area (DTA) to Special Economic Zone is chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962. [ICAI Material]

Answers:- In the case of Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.), it is held that the clearances of goods from DTA to Special Economic Zone are not chargeable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962 on the basis of the following observations:-

- 1) The charging section needs to be construed strictly. If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.*
- 2) SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. **Since there is no charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.***
- 3) Reading section 12(1) of the Customs Act, 1962 along with sections 2(18), 2(23) and 2(27) makes it apparent that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India.*
- 4) Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract section 12(1) [charging section for customs duty].*

