



Customs Act 1962 s 12 - Dutiable goods

(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 (51 of 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.*ⁱ

The charging section

A] As per CD Sec 12, customs duty is imposed on goods imported into or exported out of India as per the rates specified under the Customs Tariff Act, 1975 or any other law. This is the charging section which specifies levy of duties of custom on goods imported into or exported out of India. The custom duty is considered to be charged on the goods imported and not on the person importing or paying the duty. It is expected to be passed on to the buyer. Government goods shall be treated at par with non government goods for the purpose of levy of custom duty, though government goods may be exempted by notification(s) under CD Sec 25 for imports by Indian navy, specific equipment required by police, ministry of defence, coastal guards etc.

India

B] The basic condition for levy of customs duty is import/export of goods i.e. goods become liable to duty when there is import into or export from India. ‘India’ includes the territorial waters of India [CD Sec 2(27)]. It means that India is not limited to its land masses but it also includes sea along its coasts. A distance of 12 nautical miles (22.224 km) from the nearest point of the appropriate base line of India constitutes territorial waters of IndiaSection 3(2) of the Territorial Waters, Continental Shelf, Exclusive Economics Zones and other Maritime Zone Act 1976 states that the limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline.A baseline is the line from which the seaward limits of a state’s territorial sea and certain other maritime zones of jurisdiction are measured. Normally, a sea





baseline follows the low-waterline of a coastal state. Article 5 of United Nations Convention on the Law of the Sea 1982 states that except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked in large-scale charts officially recognised by the coastal State. Low-waterline is the level reached by seawater at low tide. Tides are the rise and fall of sea levels caused by the gravitational forces between the earth and the moon. Low tide is the mean sea level when it falls to its lowest.

Import

C] CD Sec 2(23) defines import as bringing into India from a place outside India. To constitute an import within the customs laws for the purpose of levy, it is necessary that goods be brought into a proper part of entry with intent to unload them; the act of importation, therefore, implies in the context of levy, bringing goods into an Indian port for the purpose of discharge; there is no importation to attract custom duty if the cargo is in transit or is intended for transshipment [Gipoint Development Limited v. Collector of Customs, Madras 1995 (80) ELT 55 (Mad)]. Importation took place only when the vessel crosses the custom barriers at the *intended* port of importation, not the *intermediate* one [Ramling Mills Pvt. Ltd. v. Asstt. Collector of Customs 1989 (22) ECR 36 (Ker)]. To give the words ‘imported into India’ their literal meaning would lead to an absurdity because a person may bring goods into India by a ship and may not clear the goods in India and may re-export it [Shewbuxrai Onkarmall v. Asstt. Collector of Customs 1981 ELT 298 = 1981 ECR 270]. Imported goods would include re-imported goods as well and therefore, the goods sent out of India and re-imported would also be liable to payment of duty in the same manner in which they would have been liable if imported for the first time in India [Tata Tea Ltd. Commissioner of Customs, Chennai 1999 (114) ELT 775 (SC) & CUS 20]. The baggage, ships stores, postal articles are as much imported goods as commercial cargo; if import is limited to commercial transactions then anybody can bring anything and say that the goods which are brought is not imported and hence not liable to duty; any goods crossing the custom barrier even if it is a dead body implies import [Indian Airlines v. Commissioner of Customs, Cochin 2005 (180) ELT 502 (Tri-Bangalore)]. The articles brought into India through personal wearing are also import. Smuggled goods, however, may not be treated as imported goods [Commissioner of Customs (Preventive), Mumbai v. M. Ambalal and Co. (2011) 2 SCC 74 Para 14]. The goods which are brought into the country for the purpose of discharging them at an Indian port cease to be imported goods after they are cleared for home consumption [Gipoint Development Limited v. Collector of Customs, Madras 1995



(80) ELT 55 (Mad)]. The ‘course’ means ‘progress from point to point’; the course of import, therefore, starts from one point and ends at another; it starts when the goods cross the customs barrier in foreign country and ends when they cross the customs barrier in the importing country [Ram Niwas Chaudhary v. Metal Scrap Trading Corporation Ltd. 1986 (23) ELT 321 (Cal)]. Import, whereas, refers to the physical arrival of goods and not the shipment thereof from the place of export [Kanhaiyalal & Co. v. Commissioner of Customs, Pune 2003 (151) ELT 674].

Export

D] CD Sec 2(18) defines export as taking out of India to a place outside India. Export connotes the actual taking out of the goods beyond the territorial limits of India [Yusuf Abdullah v. R. N. Shukla (1972) Mah L.J. 28]. A place outside India would also mean a place in High Seas [Collector of Customs v. Sun Industries 1988 (35) ELT 241 (SC)]. Mere physical removal of goods from the territorial waters of India, however, would not amount to export; the goods can be said to have been exported only when the goods are removed beyond the limits of Indian territorial waters by following the procedure prescribed; and in case any goods are removed without following the procedure then this would amount to smuggling and not export [Jain Shudh Vanaspati Limited v. S. R. Patanakar 1988 (33) ELT 77 (Bom)].

Re-importation of goods

E] If goods are imported into India after exportation there from, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof. It implies that goods manufactured or produced in India, which are exported and thereafter re-imported are treated on par with other goods, which are otherwise imported. [CD Sec 20]

Pilfered goods

F] If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage [CD Sec 13]. The term ‘pilfer’ means to steal, especially in small quantities; petty theft. Therefore, the term does not include loss of total package. Circumstances in which pilferage can be claimed are:

- a) There should be an evidence of tampering with the packages;



- b) There should be blank space for the missing articles in the package; and
- c) The missing articles should be unit articles, not part articles.

G] The pilferage of goods would normally be noticed at the time of physical verification of goods by the customs authorities. However, in some circumstances, it may so happen that the pilferage may be observed only at the time of removal of goods by the importer. In such case, the order for clearance, or as the case may be, for bonding would already have been passed. Therefore, the importer has to ask for survey either by the steamer agents or by the insurance surveyors and the report issued by them would form the basis for claiming remission. In such circumstances, the duty would already have been paid, the remission is allowed in the form of a refund.

Derelict, jetsam, flotsam and wreck goods

H] All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act. [CD Sec 21]. Derelict refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery. Jetsam refers to goods jettisoned from the vessel to save from sinking. Jettisoned goods which continue floating in the sea are called flotsam. Wreck refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.

Damaged or deteriorated goods

I] Where any imported goods had been damaged or had deteriorated at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner or his employee or agent, such goods shall be chargeable to duty at the same rate on the value ascertained, at the option of the owner, either by the proper officer or the gross sale proceeds of the goods auctioned by the proper officer with the consent of the owner [CD Sec22].

Goods lost or destroyed

J] CD Sec23 (1) provides for duty remission on imported goods that have been lost or destroyed before being cleared for home consumption. It applies even where the duty has been paid and order for home consumption has been passed but the goods have not been actually cleared and it is found that they have been lost or destroyed. Duty if paid on such goods shall be remitted by the customs authorities in the form of refund else the assessed duty on such goods needs to be cancelled by the order of remission. The remission of duty is permissible only in the case of total loss of





goods. This implies that the loss is forever and beyond recovery. Such loss may be due to natural causes like fire, flood, etc; and may happen at the warehouse too.

Goods abandoned

K] CD Sec23 (2) provides that the owner of any imported goods may, at any time before an order for clearance of goods for home consumption under CD Sec 47 or an order for permitting the deposit of goods in a warehouse under CD Sec 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon. However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force. Relinquish means to give over the possession or control of, to leave off. Sometimes, it may so happen that the importer is unwilling or unable to take delivery of the imported goods. The causes may be:

- a) The goods may not be according to the specifications;
- b) The goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer;
- c) There might have been breach of contract and, therefore, the importer may be unwilling to take delivery of the goods.

L] In all the above cases, the goods having been imported, the liability to customs duty is imposed and, therefore, the importer has to relinquish his title to the goods unconditionally and abandon them. Relinquishment is done by endorsing the document of title – Bill of Lading, Airway Bill, etc in favour of the custom authorities along with the invoice. If the importer does so, he will not be required to pay the duty amount. However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Goods denatured or mutilated in transit

M] CD Sec 24 provides that imported goods that have been denatured or mutilated in transit to be charged with duty as if they were imported in such denatured or mutilated form.

Distinction between clearance for home consumption and clearance for warehousing

N] Clearance for home consumption implies that, the custom duty on import of the goods has been discharged and the goods are cleared for utilization/home





consumption. The goods may instead of being home consumption may be deposited in a 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 importer of the goods require to execute a bond for a sum thrice the amount of duty assessed on the goods at the time of import of goods. The importer is also liable to pay interest, rent and charges for storage of goods in warehouse. In case of Apar Pvt. Ltd. v. UOI, Supreme Court held that in case of warehoused goods, the goods continue to be in customs bond, hence import takes place when goods are cleared from warehouse.

O] In case of Garden Silk Mills v. UOI Supreme court held that import of goods will commence when the goods cross the territorial limits of 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 barriers and bill of entry for home consumption is filed.

P] In case of Kiran Spinning Mills v. Collector of Customs, Supreme Court held that in case of warehoused goods the custom barriers would be crossed when the goods are sought to be taken out of customs and brought to the mass of goods in the country.

Q] To appreciate the decision in Kiran Spinning Mills and Garden Silk Mills, when goods which are otherwise liable to IGST under section 5 of IGST Act, are imported into India, IGST would be levied under Customs Tariff Act and not under IGST Act. This is enabled by a proviso to section 5 of IGST Act and a corresponding subsection for levy under section 3 of Customs Tariff Act. Hence, IGST levied under Customs Tariff Act is a tax not in the nature of GST but in the nature of a duty of customs. Another important aspect is that goods deposited and sold while being held in a bonded warehouse is made liable to IGST in the nature of duty of customs. This has been enabled by an insertion of sub-section 8A to section 3 of Customs Tariff Act. This is a remarkable amendment introduced in 2018 and gives rise to a situation where customs duty remains suspended while ‘duty equivalent IGST’ stands attracted.

