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Meaning of word “Customs”

Customs is a form of indirect tax. Standard English dictionary defines the term ‘customs’ as duties imposed on imported or less commonly exported goods. This term is usually applied to those taxes which are payable on goods or merchandise imported or exported.

Historical Background

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 have been levied from time immemorial by all the countries. In the times, when the predominant system of governance was monarchy, it was customary for a trader bringing the goods to a particular kingdom to offer certain offerings as gifts to the King for allowing him to sell his goods in that kingdom. Over a period of time, the system of governance took a paradigm shift from monarchy in favour of democracy.

Kautiliya’s Arthashastra also refers to shulka (Custom Duty) consisting of import duty and export duty to be collected at the city gates on both goods coming in and going out. Subsequently, the levy of tax on goods imported into the country was organised through legislation during the British period.

The Customs Act was passed and promulgated in India by the Parliament in the year 1962 which replaced the erstwhile Sea Customs Act, 1878. Further, the Customs Tariff Act was passed in the year 1975 to replace the Indian Tariff Act, 1934. The Custom Tariff Act was amended in the year 1985 to move in times with and to deal with the complexities resulting from the rapid development in science and technology and consequent industrial development and expansion of manufacturing and trading activities. The Customs Act, as it stands now, consolidates the entire law on the subject of import and export duties,

which were earlier contained in various enactments like the Sea Customs Act, 1878, Inland Bonded Warehouses Act, 1896 and the Land Customs Act, 1924. Thus, now the Act stands as a complete code in itself as to levy and collection of duties on import and export of goods.

Constitutional Provisions

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 states –

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any party of the territory of India, and the legislature of a State may make laws for the whole or any party of the state. No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operations.

Article 246 governs the subject matter of the laws made by the Parliament and by the legislature of states. The matters are listed in the seventh schedule to the Constitution.

The seventh schedule is classified into three lists and List I (referred as Union List) enumerates the matters in respect of which the Parliament has an exclusive right to make laws. Entry no. 83 of Union List has given the power to Central Government to levy duties of Customs including export duties.

Important Definitions under The Customs Act, which were amended Recently

Sec 2(2) "Assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to--

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
 - (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
 - (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
 - (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
 - (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
 - (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,
- and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

[Sec 2(2) substituted by Finance Act, 2018, w.e.f. 29-3-2018]

Note – Definition of “Assessment” is substituted to expand the scope and bring clarity and certainty. Assessment includes self-assessment. Further, use of expression “any assessment” instead of “any order of assessment” shows that there is no requirement of any order for the purpose of assessment under the Act.

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;] **[Inserted by Finance Act 2017, w.e.f. 31-3-2017]**

Important Definitions under The Customs Act, which were amended Recently

Sec 2(11) "customs area" means the area of a customs station [or a warehouse]* and includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities;

*** Inserted by Finance Act 2017, w.e.f. 4-5-2017**

Sec 2(13) "customs station" means any customs port, [customs airport, international courier terminal, foreign post office]^ or land customs station;

^ Substituted by Finance Act 2017, for "customs airport", w.e.f. 31-3-2017

Sec 2(16) "Entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes *** the entry made under the regulations made under section 84;

***** The words "in the case of goods imported or to be exported by post, the entry referred to in section 82 or" omitted by Finance Act 2017, w.e.f. 31-3-2017**

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

Note – Export goods means goods which are intended for export. But where the goods have already been exported pursuant to the order made under Sec 51 of the customs Act, 1962, such goods cannot be deemed to be “export goods”, rather such goods are called Exported Goods.

Important Definitions under The Customs Act, which were amended Recently

Sec 2(20) "Exporter", 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;

Sec 2(26) "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;

Substituted by Finance Act 2017, for "any owner", w.e.f. 31-3-2017

Sec 2(20A) "Foreign Post Office" means any post office appointed under clause (e) of sub-section (1) of section 7 to be a foreign post office;] **Sec 2(20A) Inserted by Finance Act 2017, w.e.f. 31-3-2017**

Sec 2(24) "[Arrival Manifest or Import Manifest]*" or "Import Report" means the manifest or report required to be delivered under section 30;

*** Substituted by Finance Act 2018, for "import manifest", w.e.f. 28-3-2018**

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 Zones Act, 1976 (80 of 1976),] and includes any bay, gulf, harbour, creek or tidal river;

^ Substituted by Finance Act 2018, for "contiguous zone of India under section 5", w.e.f. 28-3-2018

Sec 2(30B) "Passenger Name Record Information" means the records prepared by an operator of any aircraft or vessel or vehicle or his authorised agent for each journey booked by or on behalf of any passenger;

Sec 2(30B) Inserted by Finance Act 2017, w.e.f. 31-3-2017

Introduction

The Customs Act was passed and promulgated in India by the Parliament in the year 1962 which replaced the erstwhile Sea Customs Act, 1878. Further, the Customs Tariff Act was passed in the year 1975 to replace the Indian Tariff Act, 1934.

Clause (2) of Article 245 of the Constitution states that 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.**

Sec 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][**Inserted vide Finance Act, 2018, w.e.f. 28-3-2018**]

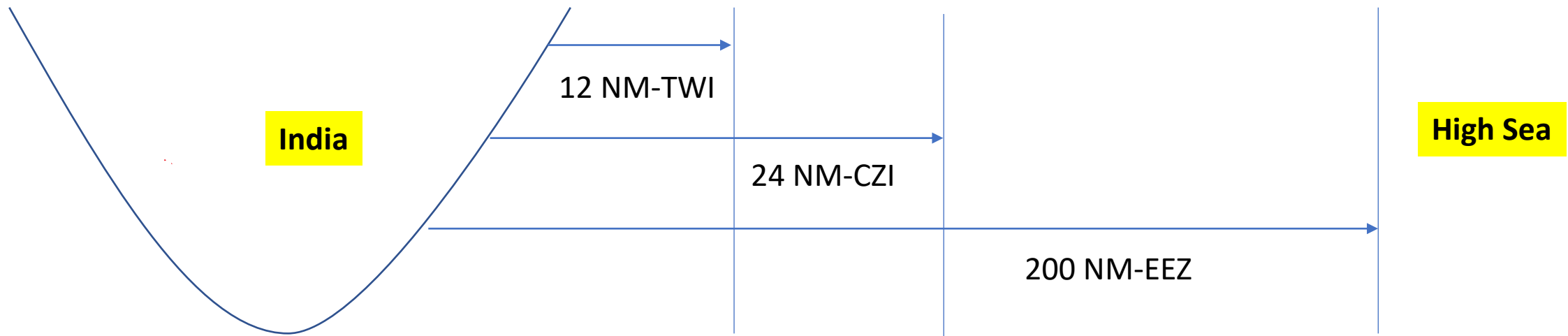
Note - The Customs Act, 1962 extends to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

(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)**

Meaning of India

As per the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (for short “the Maritime Zone Act”), the maritime zones of India are as per 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)



TWI – Territorial Waters Of India, CZI – Contiguous Zone of India, EEZ – Exclusive Economic Zone - THE TERRITORIAL WATERS, CONTINENTAL SHELF, EXCLUSIVE ECONOMIC ZONE AND OTHER MARITIME ZONES ACT, 1976

Meaning of India

Sec 2(27) of Customs Act, 1962 "INDIA" includes the territorial waters of India;

Meaning and significance of territorial waters of India

→ Territorial waters of India extend to 12 nautical miles into sea from the appropriate base line.

→ Goods are deemed to have been imported if the vessel enters the imaginary line on the sea at the 12th nautical mile i.e. if the vessel enters the territorial waters of India. Therefore, a vessel not bound to India should not enter these waters.

In other words, this determines the 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.

→ India 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.

Meaning and Significance of Indian Customs waters (Sec 2(28))

→ Indian Customs waters means the waters extending into the sea up to the limit of EEZ under section 7 of Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbour, creek or tidal river.

→ If a person has committed any offence punishable under customs law within the Indian customs waters, he may be **arrested**.

→ Also, **goods may be confiscated** and **vessel be stopped and searched** in the Indian Customs waters if the same is found to be used in the smuggling.

→ Further, prohibited goods can also be confiscated if brought within the Indian Customs waters.

Meaning of India

Illustration GER Ltd. Of Germany supplies luxurious Car worth ₹ 1 Crore to IND Ltd. Of India. Before the car reaches Indian Port but after crossing of the territorial waters of India, IND Ltd. Sells it to T1 Ltd. By way of transfer of documents of title. T1 Ltd. Clears the said car for warehousing and stores the said goods in customs bonded warehouse. T1 Ltd. Sells the said car from warehousing to T2 Ltd., and T2 Ltd., clears the said car from the custom bonded warehouse.

Ans the following with brief reasons –

- (i) Is GST leviable on Import of goods from GER Ltd. By IND Ltd.?
- (ii) Is GST leviable on supply of goods by IND Ltd. To T1 Ltd.?
- (iii) Is GST leviable on supply of goods by T1 Ltd. To T2 Ltd.?
- (iv) Is GST leviable on clearance of goods by T2 Ltd. From the Custom bonded warehouse?

(CA – Final, Jan 2021, 5 marks)

Meaning of India

Ans

- (i) GST on import of goods is levied at the time when customs duty is levied on the said goods under the Customs Act, 1962, i.e., on importation. **Importation gets completed when the goods become part of the mass of goods within the country***. Thus, GST is not leviable on import of goods from GER Ltd. by IND Ltd. since the import of goods is not complete.
- (ii) GST is not leviable on supply of goods by IND Ltd. to T1 Ltd. as supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption is treated neither as a supply of goods nor a supply of services.
- (iii) GST is not leviable on supply of goods by T1 Ltd. to T2 Ltd. since supply of warehoused goods to any person before clearance for home consumption is treated neither as a supply of goods nor a supply of services.
- (iv) Yes, GST is leviable on clearance of goods by T2 Ltd. from the customs bonded warehouse as customs duty is levied on warehoused goods at the time of clearance thereof from the warehouse and as mentioned in point (i), GST on import of goods is levied at the time when customs duty is levied thereon.

* **Garden Silk Mills Ltd. UOI 1999 AIR SCW 4150 (SC 3-member bench)**

Value of Goods Purchased on High Sea Basis

- High Sea Sales should not be understood literally, i.e. it can be through sea/air/road, etc.
- “Purchase on high sea” basis means that the imported goods are acquired by a buyer from the original importer while they are in the High Sea (Purchase takes place before goods reach customs barrier)
- The price at which the goods are acquired by the buyer from the original importer will be the value of imported goods.
- In case of more than one High Sea Sales, the last sale price (before the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse) that means actual high-sea-sale contract price paid by the last buyer would be taken as the value of such imported goods for the purpose of payment of customs duty and IGST. Further for the purpose of charging IGST, customs duty payable shall also form part of value of imported goods.
- The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-sea-sales-contract, details of service charge/commission paid, etc to establish link between the first contracted price of the goods and the last transaction.

Levy of Custom Duty

Determining Factors

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) 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.

Charging Section – Sec 12 of Custom Act, 1962

SECTION 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, 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 –

1. Duties of customs shall be levied on GOODS and not on the person importing them. However, it may be noted that this levy is subject to other sections in the Act. For instance,
 - a. Sec 13 – no duty on pilfered goods
 - b. Sec 22 – reduced duty on damaged goods
 - c. Sec 23 – remission of duty on destroyed goods
2. The goods shall be such as are imported or exported to or from India
3. The duty shall be charged at such rates as may be specified under the Customs Tariff Act, 1975
4. Government goods shall be treated at par with non-Government goods for the purpose of levy of customs duty.

Charging Section – Sec 12 of Custom Act, 1962

Note –

5. 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.
6. Earlier, a lot of problems were faced in determining the point at which the importation or exportation takes place. The root cause of the problem was the definition of “India” given by sec 2(27). Under the said section, India includes territorial waters of India. Consequently, even an innocent entry of a vessel into the territorial waters of India would result in import of goods. Further, it was almost impossible to determine when exactly the vessel crossed the territorial waters limit. But now this matter has now been decided.

7. Imports

a) In case of goods cleared for home consumption - The Honourable SC observed that

- a) Import of goods will commence when they cross the territorial waters,
- b) But continues and is completed when they become part of the mass of goods within the country;
- c) 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 vs. UOI 1999 (113) E.L.T. 358 (S.C.))

b) In case of goods cleared for warehousing – In case of warehoused goods, the custom barriers would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country.

8. Exports

- a) Commencement of export of goods is when shipping bill is filed.
- b) Export of goods is complete and taxable event begins when the goods cross the territorial waters of India.

Meaning of Assessment

In the context of the custom duty, the term assessment means quantification of the amount of duty payable. The process of assessment involves the following stages –

- (i) Determination of the quantity and total value of the consignment. (Sec 14)
- (ii) Determination of the proper tariff classification of the goods.
- (iii) Determination of the appropriate rate of duty (Sec 15) after considering the various exemptions, abatements, remissions.
- (iv) Determining whether the goods are to be cleared for home consumption or to be deposited in the warehouse.

Relevant Date for Rate of Duty and Tariff Valuation - Sec 15 & Sec 16

Relevant Date for Rate of Duty and Tariff Valuation	Imported Goods (Sec 15)	Sec 15(1)(a)	Goods entered for home consumption u/s 46 <ul style="list-style-type: none">• Vehicle/Aircraft – Date of ‘filing Bill of Entry or date of arrival of vehicle/aircraft, whichever is later• Vessel – Date of ‘filing Bill of Entry’ or date of entry inwards to vessel, whichever is later.
		Sec 15(1)(b)	Goods cleared from a warehouse u/s 68 <ul style="list-style-type: none">• The date of presentation of Ex-bond Bill of Entry for home consumption
		Sec 15(1)(c)	For any other goods <ul style="list-style-type: none">• On the date of payment of duty
	Exported Goods (Sec 16)	Sec 16(1)(a)	Goods entered for export u/s 50 <ul style="list-style-type: none">• Date of which proper officer makes an order permitting clearance & loading of the goods for exportation u/s 51 i.e. “LET Export” Order
		Sec 16(1)(b)	For any other goods <ul style="list-style-type: none">• On date of payment of duty

Relevant Date for Rate of Duty and Tariff Valuation - Sec 15 & Sec 16

These provisions shall apply whether the goods are imported by Vessel or Aircraft or Vehicle.

Provisions of Sec 15 & 16 do not apply to baggage and goods imported/exported by post.

Essar Steel Ltd. Vs UOI : No export duty leviable on goods cleared from DTA to SEZ.

In case of goods cleared from DTA to SEZ, the said goods are “deemed to be exported” for the purpose of allowing export incentive to the seller.

Sec 2(18) of the Customs Act, 1962 defines export as taking out of India to a place outside India. SEZ located in India is not a “place outside India”

Relevant Date for Rate of Duty and Tariff Valuation - Sec 15 & Sec 16

Example 1 – Bill of entry is presented on 1-1-20xx, the vessel arrives on 3-1-20xx. In this situation, relevant date for determination of the rate of import duty is 3-1-20xx because though for procedural purposes, the Bill of Entry was filed on 1-1-20xx, for the purpose of determining the rate of duty and tariff valuation of such goods, Bill of Entry will be deemed to have been filed on 3-1-20xx.

Relevant case laws –

Sec 15 has generated a lot of interest in terms of case law development.

In Bharat Surfacants Pvt. Ltd. Vs. UOI 1989 (43) ELT 189, the Supreme Court held that the rate of duty and tariff valuation would be done on the date of final entry of the ship. In this case, a ship entered Bombay and made prior entry on 4-7-81 at which time the duty was 12.5%. Since there was no space, the ship proceeded to Karachi and after that came back to Bombay on 23-7-81 and was granted final entry on 4-8-81 when the duty rate had been revised to 15.0%. The Supreme Court held that the rate applicable would be 15.0% only since the formality of entry inward could be done only on 4-8-81.

It would also be important to note that date of contract is not relevant and only the date of importation is relevant as per the decision of Hon SC in case of Rajkumar Knitting Mills Pvt. Ltd. Vs CC 1998 (98) ELT 292.

Relevant Date for Rate of Duty and Tariff Valuation - Sec 15 & Sec 16

Illustration 1 - An importer, imported consignment of goods, chargeable to duty @ 40% ad valorem. The vessel arrived on 31st May, 20xx. A bill of entry for warehousing the goods was presented on 2nd June, 20xx and the goods were duly warehoused. In the meantime, an exemption notification was issued on 15th Oct, 20xx reducing the effective customs duty to 25% ad valorem.

Thereafter, the importer filed a bill of entry for home consumption on 20th Oct, claiming 25% duty. The customs Department charged higher rate of duty @ 40% ad valorem. Give your views on the same, discussing the relevant provisions of the Customs Act, 1962.

Ans – According to sec 15(1)(b) of the Customs Act, the relevant date for determination of rate of duty and tariff value in case of goods cleared from a warehouse is the date on which a bill of entry for home consumption in respect of such goods is presented. Therefore, the relevant date for determining the duty in the given case will be 20-10-20xx (the date on which the bill of entry for home consumption is presented) and thus, the relevant rate of duty will be 25%.

Assessment of Goods (Sec 17)

Section 17 Assessment of duty

(Self Assessment)

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(Verification by proper officer)

(2) The proper officer MAY verify [the entries made under section 46 or section 50 and] the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary. **[inserted by FA, 2018, w.e.f. 28-3-2018]**

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria. **[inserted by FA, 2018, w.e.f. 28-3-2018]**

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information. **[as amended by FA, 2018, w.e.f. 28-3-2018]**

Assessment of Goods (Sec 17)

(Reassessment of duty by the proper officer if self-assessment not done correctly)

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(Speaking order for re-assessment to be passed unless the importer agrees with reassessment)

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter ~~regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act~~ and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within 15 days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

[omitted by FA, 2018, w.e.f. 28-3-2018]

~~(6) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.~~ **[omitted by FA, 2018, w.e.f. 28-3-2018]**

Assessment of Goods (Sec 17)

Note –

1. **The assessment procedures have been re-written by FA, 2011 to include self-assessment under Customs Act, 1962.**
2. The assessment procedures were further amended by Finance Act, 2018 to achieve the following objectives
 - a) Expand the scope of verification beyond self-assessment to all the entries made under section 46 or section 50 by amending sub-section (2) along with consequential changes in sub-section (3);
 - b) Insert a new proviso in sub-section (2) to provide legal backing for the risk-based selection of self-assessed Bill of Entry or Shipping Bill through appropriate selection criteria;
 - c) Extend the scope of re-assessment by omitting specific reference to “valuation, classification and exemption or concessions of duty availed consequent to any notification issued therefor under this Act” from sub-section (5).
 - d) Omit sub-section (6), in view of the new dedicated Chapter for Audit.
3. **Clarification regarding Need to issue speaking order [Instruction No. 07/2018-Customs, dated 5-4-2018]** – It has been observed that officers exercising the powers under the above mentioned sub-section are not issuing a speaking order in each and every case particularly where the importer or exporter, as the case may be, does not confirm his acceptance of the re-assessment. It may be appreciated that an importer or an exporter has an inalienable right to know the reason for loading of
 - Value, change of classification, any decision regarding entitlement to an exemption notification etc. Omission to issue speaking orders in matters of re-assessment, may not prejudicially affect the right of the importer or exporter to appeal as such, but nevertheless deprives him of knowing the grounds of such re-assessment. As the same time, any such re-assessment without the support of a speaking order could be perceived as legally questionable. Time and again, courts have frowned upon the instances of non-issuance of speaking orders under the said sub-sec.

Assessment of Goods (Sec 17)

Illustration

Ranveer Ltd. imported some goods in a vessel from Singapore. The assessable value of the imported goods is ₹ 10,00,000/-. Compute the customs duty payable from the following information :

1. Date of Bill of Entry for Home consumption = 20.7.2018 (Rate of BCD is 20%).
2. Date of Entry inwards = 10.08.2018 (Rate of BCD is 10%).
3. IGST is payable @ 12%.

Will your answer change, if the goods are imported in a vehicle ?

Answer

Customs Duty Payable by M/s Ranveer Ltd.

1 Assessable Value	₹ 10,00,000
2 Rate of BCD (Bill of Entry for Home Consumption or grant of entry inwards, whichever is later)	10%
3 Amount of BCD	₹ 1,00,000
4 Social Welfare surcharge [10% of 1,00,000]	₹ 10,000
5 Total value for charging IGST	₹ 11,10,000
6 IGST @ 12%	₹ 133,200
Total Customs Duty plus IGST Payable [3 + 4 + 6]	₹ 2,43,200

Note : Answer will not change, even if goods are imported in a vehicle.

Provisional Assessment of Duty (Sec 18)

Section 18 Provisional assessment of duty

- (1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 and **section 50**,
- (a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or
 - (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or
 - (c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
 - (d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

Note – Sec 18(1) defines the circumstances in which proper officer may direct that the duty leviable on such goods be assessed provisionally. The sub-section also starts with “without prejudice to the provisions of sec 46 and sec 50”, which implies that the bill of entry u/s 46 or shipping bill u/s 50 is required to be presented even for the purpose of provisional assessment.

Provisional Assessment of Duty (Sec 18)

(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer **shall finalise the provisional assessment within such time and in such manner, as may be prescribed.**

Note – Sub-section (1A) is inserted to empower the Board to issue regulation for providing time-limit for the importer or exporter to submit the documents and information, if required, for finalization of provisional assessments and also for the proper officer to finalise the provisional assessment.

(2) When the duty leviable on such goods is assessed finally or reassessed by the proper officer in accordance with the provisions of this Act, then –

- (a) in the case of goods cleared for home consumption or exportation, the amount paid **shall** be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, or is in excess of the duty finally assessed or re-assessed, as the case may be, the importer or the exporter of the goods **shall pay the deficiency or be entitled to a refund**, as the case may be;
- (b) in the case of warehoused goods, the proper officer **may**, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a **bond**, binding himself in a sum equal to twice the amount of the excess duty.

Provisional Assessment of Duty (Sec 18)

(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AA [**Currently, 15% p.a.**] from the 1st day of the month in which the duty is provisionally assessed till the date of payment thereof. (**Notification No. 33/2016-Cus. (NT) dated 01.03.2016**)

(4) Subject the sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within 3 months from the date of assessment, of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A [**Currently, 6% p.a.**] till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, **instead of being credited to the Fund**, be paid to the importer or the exporter, as the case may be, if such amount is relatable to

- (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75.

Customs (Finalisation of Provisional Assessment) Regulations, 2018

Notification No. 73/2018 Cus (NT) dt 14-8-2018

Regulation 1 - Short title and commencement

- (1) These regulations may be called the Customs (Finalisation of Provisional Assessment) Regulations, 2018.
- (2) They shall come into force on the date of their publication in the Official Gazette.(i.e. 14-8-2018)

Regulation 2. Definitions

- (1) In these regulations, unless the context otherwise requires—
 - (a) 'Act' means the Customs Act, 1962 (52 of 1962);
 - (b) 'Board' means the Central Board of Indirect Taxes and Customs;
 - (c) 'proper officer' means Deputy Commissioner or the Assistant Commissioner of Customs;
- (2) The words and expressions used herein and not defined in these regulations but defined in the Act shall have the same meanings respectively assigned to them in the said Act.

Regulation 3 - Application

These regulations shall apply to the provisional assessments ordered on and after the enforcement of these regulations.
(i.e. 14-8-2018)

Customs (Finalisation of Provisional Assessment) Regulations, 2018

Notification No. 73/2018 Cus (NT) dt 14-8-2018

Regulation 4 - Time-limit and manner for submission of documents or information for the purpose of finalisation of provisional assessment

- (1) Where a provisional assessment is ordered by the proper officer for the reasons that, -
- (a) the necessary documents have not been produced or information has not been furnished by the importer or the exporter; or
 - (b) the proper officer requires the importer or the exporter to produce any additional documents or information, then such information or documents shall be made available by the importer or the exporter within one month from the date of such order of provisional assessment or the date of such requisition by the proper officer, as the case may be.
- (2) The proper officer shall within 15 days from the date of such order of provisional assessment, inform the importer or the exporter, in writing, the specific details of the information to be furnished or the documents to be produced.
- (3) The proper officer may, for reasons to be recorded in writing, allow a further period not exceeding 3 months, on his own or at the request of the importer or the exporter.
- (4) The AC or JC of Customs, may further extend the time period referred for another 3 months
- (5) The Commissioner of Customs, may extend the time period further as deemed fit,

Customs (Finalisation of Provisional Assessment) Regulations, 2018

Notification No. 73/2018 Cus (NT) dt 14-8-2018

(6) The documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer **may** be **submitted in one instance**

(7) The importer or the exporter or his authorised representative or Customs Broker **shall** inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned.

(8) For the purpose of these regulations, **each B/E or Shipping Bill**, as the case may be, that has been assessed provisionally **shall** be **treated as a separate case** of provisional assessment.

Regulation 5 - Time-limit for finalisation of provisional assessment

(1) The proper officer shall finalise the provisional assessment within **2 months of receipt of:**

(a) an intimation under sub-regulation (7) of regulation 4; or

(b) a chemical or other test report, where the provisional assessment was ordered for that reason; or

(c) an enquiry or investigation or verification report, where the provisional assessment was ordered for that reason.

Provided that where the documents or information required to be furnished by the importer or the exporter or requisitioned by the proper officer are made available intermittently, the time period of 2 months shall be reckoned from the date of **last intimation referred to in clause (a) above**,:

Customs (Finalisation of Provisional Assessment) Regulations, 2018

Notification No. 73/2018 Cus (NT) dt 14-8-2018

Provided further that where the documents or information required to be furnished by the importer or exporter, as the case may be, or requisitioned by the proper officer are not made available or made partly available and no further extension of time has been allowed under sub-regulations (3), (4) or (5) of regulation 4, as the case may be, the proper officer shall proceed to finalise the provisional assessment within 2 months of the expiry of the time allowed for submission of the said documents or information.

(2) The Commissioner of Customs concerned may allow, for reasons to be recorded in writing, a further time period of 3 months in case the proper officer is not able to finalise the provisional assessment within the period of 2 months as specified in sub-regulation (1) above.

(3) This regulation shall not apply to such cases of provisional assessments, where Board has issued directions to keep that pending.

Regulation 6 - Manner of finalisation of provisional assessment. –

(1) The provisional assessment shall be finalised as per the provisions of section 18 of the Act.

Provided that if the amount so paid at the time of provisional assessment or after adjustment under clause (a) to sub-section (2) of section 18 of the Act, falls short of the duty finally assessed or re-assessed, as the case may be, and the importer or the exporter has not paid the deficiency, the shortfall shall be adjusted from the security, if any, obtained at the time of provisional assessment, under intimation to the importer or the exporter,:

Customs (Finalisation of Provisional Assessment) Regulations, 2018

Notification No. 73/2018 Cus (NT) dt 14-8-2018

(2) The Bond executed at the time of provisional assessment with security, if any, shall be cancelled after finalisation of provisional assessment and the security shall also be returned, if there are no pending dues.

(3) Where the final assessment is contrary to the provisional assessment, the proper officer shall pass a speaking order following principles of natural justice.

(4) Where the final assessment confirms the provisional assessment, the proper officer shall finalise the same after ascertaining the acceptance of such finalisation from the importer or the exporter on record and inform the importer or exporter in writing of the date of such finalisation.

(5) Where a B/E or Shipping Bill is presented electronically on the Customs Automated system and is ordered to be provisionally assessed, the proper officer shall finalise the provisional assessment on the system also consequent to the procedure prescribed in these regulations.

Regulation 7. Penalty. –

If any importer or exporter or his authorised representative or Customs Broker contravenes any provision of these regulations or abets such contravention, or fails to comply with any provision of these regulations, he shall be liable to a penalty which may extend to ₹ 50,000.

Illustration 1

Shyam Lal has imported goods from Germany and is finally re-assessed u/s 18(2) of the Customs Act, 1962 for two such consignments. Particulars are as follows:

Date of provisional assessment	12th December, 2017
Date of final re-assessment	2nd February, 2018
Duty demand for 1st consignment	₹ 1,80,000
Refund for the 2nd consignment	₹ 4,20,000
Date of refund made by the department	28th April, 2018
Date of payment of duty demanded	5th February, 2018

Determine the interest payable and receivable, if any, by Shyam Lal on the final re-assessment Of the two consignments with suitable notes thereon.

Illustration 2

Mr. X has imported some items from abroad. Since he was unable to make a self-assessment, he has sought for provisional assessment pending technical testing on 29-4-2020. The technical report was received on 05-05-2020. Discuss about the time limit available to the officer for finalizing the provisional assessment as per law and guide Mr. X as to when his provisional assessment will be finalized.

Customs (Finalisation of Provisional Assessment) Regulations, 2018

Answer to Illustration 1:

As per section 18(3) of the Customs Act, 1962, an importer is liable to pay interest at the rate of 15% p.a., on any amount payable consequent to the re-assessment order from the first day of the month in which the duty is provisionally assessed till the date of payment.

Therefore, in the given case, Shyam Lal is liable to pay following interest in respect of 1st consignment:

= Rs. 1,80,000 × 15% × 66/365 = Rs. 4,882 (rounded off)

If any amount refundable consequent to the re-assessment order is not refunded within 3 months from date of reassessment of duty, interest is payable to importer on unrefunded amount at the specified rate till the date of refund of such amount in terms of section 18(4) of the Customs Act, 1962. Since in the given case, refund has been made (28.04.2018) within 3 months from the date of re - assessment of duty (02.02.2018), interest is not payable to Shyam Lal on duty refunded in respect of 2nd consignment.

Answer to Illustration 2:

The proper officer can finalise the provisional assessment within 2 months of receipt of a chemical or other test report, where the provisional assessment is ordered for that reason. The Commissioner of Customs may allow a further time period of 3 months in case the proper officer is not able to finalise the provisional assessment within the period of 2 months. Thus, in the given case, provisional assessment will be finalized by 5-7-2020 (within 2 months of receipt of test report (5-5-2020)). However, if the proper officer is not able to finalise the provisional assessment by 5-7-2020, the commissioner may allow a further period of 3 months, i.e. till 5-10-2020 to the proper officer to finalise the provisional assessment.

Important Definitions under The Customs Act

Import [Sec 2(23)] : Import with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Imported Goods [Sec 2(25)] : 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;

Importer [Sec 2(26)] : 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**;

Who shall be treated as importer in following situations –

1. Mr A of India has purchased goods from Mr. B of USA. Mr A has issued irrevocable L/C in favour of Mr B against which goods have been dispatched to him. Mr A goes for clearance of goods by filing “B/E for H/C” with his IEC.

Ans → Mr A is the owner of goods and by filing B/E he has declared himself out to be an importer. Thus, he is importer.

2. Mr X of USA has appointed Mr Y of India as his Commission Agent in India and has sent certain goods to him which are to be sold by Mr Y in lieu of commission. Under the contract, Mr Y has to clear the goods from customs, sell off the goods and then repatriate the net sale proceeds after deducting his commission.

Ans → Mr Y is not the owner of goods (as he is simply acting as Commission Agent for Mr. X of USA) **but** by filing B/E he has declared himself out to be an importer. Thus, Mr Y is the importer.

3. Mr A of India has purchased goods from Mr B of USA. Mr A has issued irrevocable L/C in favour of Mr B against which goods have been dispatched to him. Mr A sells off the goods to Mr C of India by transfer/endorsement of Bill of Lading (B/L) in favour of Mr C. Mr C goes for clearance of goods by filing “B/E for H/C” with his IEC.

Ans → Mr C is the owner of goods and by filing B/E he has declared himself out to be an importer. Thus, Mr C is importer.

Important Definitions under The Customs Act

Export (Sec 2(18)) : Export, with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

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

Exporter [Sec 2(20)] : Exporter, 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**;

Conveyance (Sec 2(9)) : Conveyance includes vessel, an aircraft and a vehicle.

Vehicle (Sec 2(42)) : Vehicle means conveyance of any kind used on land and includes a railway vehicle.

Person-in-charge (Sec 2(31))

1. Vessel - the master of the vessel
2. Aircraft - the commander or the pilot-in-charge of the aircraft
3. Railway train - the conductor, guard or other person having the chief direction of the train
4. Any other conveyance - the driver or other person-in-charge of the conveyance

Sec 2(14) "Dutiable Goods" means any goods which are chargeable to duty and on which duty has not been paid;

Important Definitions under The Customs Act

Foreign-going Vessel or Aircraft (Sec 2(21)) : 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 (Oil Exploration) outside the TWI;
- (iii) any Vessel or Aircraft proceeding to a place outside India for any purpose whatsoever;

Aircraft/Vessel	Whether FGA/V
1. Aircraft (carrying goods/passengers) from Mumbai Airport to Dubai Airport	Yes
2. Aircraft (carrying goods/passengers) from Dubai Airport to Mumbai Airport	Yes
3. Aircraft (carrying goods/passengers) from Mumbai Airport to Dubai Airport (Flight Chart – Mumbai Airport ---- Delhi Airport ---- Dubai Airport)	Yes
4. Vessel of USA Govt --- Naval Vessel (not engaged in carrying goods/passengers) --- doing naval exercises	Yes
5. Vessel of ONGC --- engaged in oil exploration activity outside the TWI	Yes
6. Vessel not carrying any goods/passengers → Going out of India → Coming to India	Yes No
7. Vessel of Indian Govt --- Naval Vessel (not engaged in carrying goods/passenger) – doing naval exercises in TWI of India	No

Note – Under Customs also, **SUPPLY OF STORES to FGA/V is treated as Export** (Sec 88). Thus supplier is entitled to benefit of **DUTY DRAWBACK** in relation to such supply.

Important Definitions under The Customs Act

Goods (Sec 2(22)) : Goods include

- (a) Vessels, Aircraft and vehicles
- (b) Stores
- (c) Baggage
- (d) Currency and negotiable instruments
- (e) Any other kind of movable property

Note –

1. Vessel/Aircraft/Vehicle : When these can be goods?

- Jalyan Udyog (1987)(Bombay HC) – If the vessel enters the territorial waters merely as a conveyance (i.e. as carrier of the goods), then it cannot be suggested that the vessel was imported. The reason being that if the vessel enters the territorial waters for the purpose of unloading the cargo, then the import is of cargo and not of the vessel. The vessel could come within the definition of ‘goods’ but not if used as conveyance.

2. Stores (Sec 2(38)) : 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. (Note - The definition does not cover goods for use in vehicle)

3. Baggage (Sec 2(3)) : Baggage includes unaccompanied baggage but does not include motor vehicles;

- (Baggage in simple words means “Personal effects”. Since “baggage” has been included in the definition of “goods”, any passenger bringing baggage into India shall become liable to pay import duty on such baggage. But keeping in mind such difficulty, baggage upto a reasonable limit (as defined in Baggage Rules, 1998) has been exempted from payment of custom duty.

4. Currency and Negotiable Instruments – This compels the passenger to declare the cash/currency on hand also

Important Definitions under The Customs Act

Coastal Goods (Sec 2(7)) : Coastal Goods means goods, other than imported goods, transported in a VESSEL

→ from one port in India to another;

(Goods in transit or trans-shipment are imported goods till the time they are cleared for home consumption)

Prohibited Goods (Sec 2(33)) : 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 (**Wild Life Act/Environment Protection Act**)

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;

Note –

1. Prohibited Goods – Goods will be treated as “prohibited goods” under any of the following 2 situations –
 - a) The import of which is prohibited absolutely (i.e. unconditionally)
 - b) The import of which is subject to any condition (say, subject to possession of Import Licence) and that condition is not fulfilled.
2. Import/Export of “prohibited goods” will render them liable to confiscation. And criminal proceedings will be instituted against concerned importer or exporter.

Important Definitions under The Customs Act

Sec 2(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 (A warehouse in which dutiable imported goods are kept u/s 59 of Customs Act is under the lock and key of the Customs authorities. In this sense, it is an extension of customs area)

Sec 2(13) "CUSTOMS STATION" means any customs port, customs airport, international courier terminal, foreign post office or land customs station;

Sec 2(12) "CUSTOMS PORT" means any port appointed under clause (a) of section 7 to be a customs port, and
→ includes a place appointed under clause (aa) of that section to be an inland container depot

Sec 2(10) "CUSTOMS AIRPORT" means any airport appointed under clause (a) of section 7 to be a customs airport and
→ includes a place appointed under clause (aa) of that section to be an air freight station;

Sec 2(29) "LAND CUSTOMS STATION" means any place appointed under clause (b) of section 7 to be a land customs station;

Important Definitions under The Customs Act

Sec 2(16) "**Entry**" in relation to goods means an entry made in a

- bill of entry,
- shipping bill or
- bill of export and
- includes the entry made under the regulations made under section 84;

Inland Container Depot (ICD)	Container Freight Station (CFS)
1. ICD is a custom station like a port or air cargo unit for the purpose of unloading of imported goods and loading of export goods or any class of such goods	CFS is only a custom area located in the jurisdiction of a Commissioner of Customs exercising control over a specified custom port, airport, land custom station/ICD. It is an extension of a custom station set up with the main objective of decongesting the ports.
2. ICD can have an independent existence as it is a 'self contained customs station'.	CFS by itself cannot have an independent existence; it has to be linked to a customs station within the jurisdiction of the Commissioner of Customs
3. Customs manifest, bill of entry, shipping bills and other declarations are filed in an ICD. Further, assessment and all the activities related to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, etc take place in an ICD.	In CFS, only a part of the customs process, mainly the examination of goods is normally carried out and goods are stuffed into containers and de-stuffed therefrom. Aggregation/segregation of cargo also takes place at CFS.

Import Procedures

- Arrival of Vessels and Aircrafts in India (Sec 29)
- Delivery of arrival manifest or import manifest or import report (Sec 30)
- Passenger and crew arrival manifest and passenger name record information (Sec 30A)
- Imported goods not to be unloaded from vessel until entry inwards granted (Sec 31)
- Unloading of Goods from Conveyance (Sec 32-38 & 42)
- Chapter not to apply to baggage and postal articles (Sec 44);
- Restrictions on custody and removal of imported goods (Sec 45)
- Entry of goods on importation (Sec 46)
- Clearance of goods for home consumption (Sec 47)
- Procedure in case of goods not cleared, warehoused, or transhipped within 30 days after unloading (Sec 48)
- Storage of imported goods in warehouse pending clearance or removal (Sec 49)

Import Procedures

The Port Shipping Line, Airlines and Customs

- Ports are proper channel of import and export.
- In India, there are ports operated by Govt or private enterprises.
- There are customs officials at the port to facilitate the process of import or export.
- The shipping line or airline are carriers of goods across the borders.
- For Custom Clearance the port authorities, shipping line and customs work together.

Import Procedures from Importer's Point of View

- IEC- Importer Exporter Code to be taken from the office of DGFT
- Open a Bank a/c preferably a current account
- The importability of the product is to be checked.
- The paper to be filed with the customs online. (B/E and supporting documents like Commercial Invoice, Bill of Lading (Sec 46(2)), Valuation Declaration (R-11 of IVR, 2007) and Country of Origin
- The customs duty, applicable port dues and shipping line charges are paid
- The shipment is taken out of the customs.

There are six situations of imports:

1. Goods imported by Sea
2. Goods imported by Air
3. Goods imported by Land
4. Goods imported by Post
5. Goods imported by passengers as their baggage
6. Ship stores considered to be imported and charged to customs duty

Conveyance carrying Imported and Exported Goods

USA



1. Arrival of Vessel – **Sec 29**



Person-in-Charge

2. Delivery of IGM/IR – **Sec 30**

3. Delivery of P&CAM/PNR – **Sec 30A**

4. Grant of Entry Inward – **Sec 31**

5. Unloading cargo – **Sec 32,33,34***

6. Departure Permission – **Sec 42**

Custom Officer

INDIA

* Imported goods not to be unloaded unless mentioned in IGM/IR (Sec 32); Loading and Unloading of Goods at approved places only (Sec 33); Goods not to be loaded or unloaded except under the supervision of customs officer (Sec 34)

Arrival of Vessels and Aircrafts in India (Sec 29)

SECTION 29. Arrival of vessels and aircrafts in India. –

(1) The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land –

at any place other than a customs port or a customs airport, as the case may be unless permitted by the Board. **CBIC**
Not Vehicle → **SMUGGLING**

(2) The provisions of sub-section (1) shall not apply in relation to any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but

➤ the person-in-charge of any such vessel or aircraft -

- (a) shall immediately **report the arrival** of the vessel or the landing of the aircraft **to the nearest customs officer or the officer-in-charge of a police station** and shall on demand produce to him the log book belonging to the vessel or the aircraft;
- (b) shall not without the consent of any such officer **permit** any goods carried in the vessel or the aircraft to be unloaded from, OR any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft; and
- (c) shall comply with any directions given by any such officer with respect to any such goods,

AND

➤ No passenger or member of the crew shall, without the consent of any such officer, **leave the immediate vicinity** of the vessel or the aircraft :

Provided that nothing in this section shall prohibit the departure of any **crew or passengers from the vicinity** of, or the **removal of goods** from, the vessel or aircraft where the departure or removal is necessary for reasons of **health, safety** or the **preservation of life or property**.

Delivery of arrival manifest or import manifest or import report (Sec 30)

SECTION 30. Delivery of arrival manifest or import manifest or import report.-

(1) The **person-in-charge** of --

(i) a vessel; or (ii) an aircraft; or (iii) a vehicle,

carrying imported goods [or export goods] or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall,

- in the case of a vessel or an aircraft, → deliver to the proper officer an **arrival manifest or import manifest (IGM)** by presenting **ELECTRONICALLY PRIOR TO THE ARRIVAL OF THE VESSEL OR THE AIRCRAFT**, as the case may be, and
- in the case of a vehicle, → an **import report (IR)** WITHIN 12 HOURS AFTER ITS ARRIVAL in the customs station (manually),

in [such form and manner as may be prescribed] and if the [arrival manifest or import manifest] or the import report or any part thereof, is not delivered to the proper officer within the time specified in this sub-section and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this sub-section, who caused such delay, shall be liable to a **penalty not exceeding ₹ 50,000**

As amended by Finance Act, 2018, w.e.f. 28-3-2018

Provided that the **Principal Commissioner of Customs or Commissioner of Customs** may, in cases where it is not feasible to deliver arrival manifest or import manifest by presenting electronically, allow the same to be delivered in any other manner.

(2) The person delivering the arrival manifest or import manifest or import report shall at the foot thereof make and subscribe to a **declaration as to the truth of its contents.**

(3) If the proper officer is satisfied that the arrival manifest or **import manifest or import report** is in any way **incorrect or incomplete, and that there was no fraudulent intention**, he may permit it to be **amended or supplemented.**

Passenger and crew arrival manifest and passenger name record information (Sec 30A)

SECTION 30A. Passenger and crew arrival manifest and passenger name record information -

(1) The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer—

- (i) the passenger and crew arrival manifest BEFORE ARRIVAL IN THE CASE OF AN AIRCRAFT OR A VESSEL and UPON ARRIVAL IN THE CASE OF A VEHICLE; and
- (ii) the passenger name record information of arriving passengers, in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(2) Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other person referred to in sub-section (1) shall be liable to such penalty, not exceeding ₹ 50,000, as may be prescribed.

FAILURE →

Imported goods not to be unloaded from vessel until entry inwards granted (Sec 31)

Not Aircraft or vehicles

SECTION 31. Imported goods not to be unloaded from vessel until entry inwards granted

- (1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.
- (2) No order under sub-section (1) shall be given until an arrival manifest or import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.
- (3) Nothing in this section shall apply to the unloading of
→ baggage accompanying a passenger or a member of the crew, → mail bags, → animals, → perishable goods and
→ hazardous goods.

Note –

1. Grant of Entry Inwards is an acknowledgement of the fact that Customs Department is ready to supervise the unloading of the cargo, and is prepared to assess the goods to duty. It is not given if there is no berth for the ship to dock [Bharat Surfactants Pvt. Ltd. Vs Union of India, 1989 (43) ELT 189 (SC)] or if customs supervision is not possible for other reasons [SRS Engineering Industries vs Secretary, Ministry of Finance 2009 (245) ELT 143 (Del)].
2. Entry inwards date is crucial for the calculation of applicable rate of duty whenever bill of entry has been filed in advance.

Unloading of Goods from Conveyance

SECTION 32. Imported goods not to be unloaded unless mentioned in arrival manifest or import manifest or import report

SECTION 33. Unloading and loading of goods at approved places only

SECTION 34. Goods not to be unloaded or loaded except under supervision of customs officer

SECTION 35. Restrictions on goods being water-borne –

1. In certain circumstances (like size of vessel, hazardous nature of cargo etc) the vessel cannot be berthed at the port, the cargo is ferried from or to the ships anchored at mid-sea to the port in boats, otherwise known as lighters.
2. The imported goods which are neither in vessel nor at custom port are considered as Water-borne.
3. For making the goods water-borne, a boat note as prescribed needs to be issued by the proper officers.

SECTION 36. Restrictions on unloading and loading of goods on holidays, etc. - No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on

- any Sunday or
- on any holiday observed by the Customs Department or
- on any other day after the working hours,

except after giving the prescribed notice and on payment of the prescribed fees (**Merchant overtime fees**), if any:

Provided that no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

Unloading of Goods from Conveyance

SECTION 37 The **proper officer** may, at any time, **board any conveyance** carrying imported goods or export goods and may remain on such conveyance for such period as he considers necessary.

SECTION 38. Power to require production of documents and ask questions by Proper officer from Person-in-charge

SECTION 42. No conveyance to leave without written order

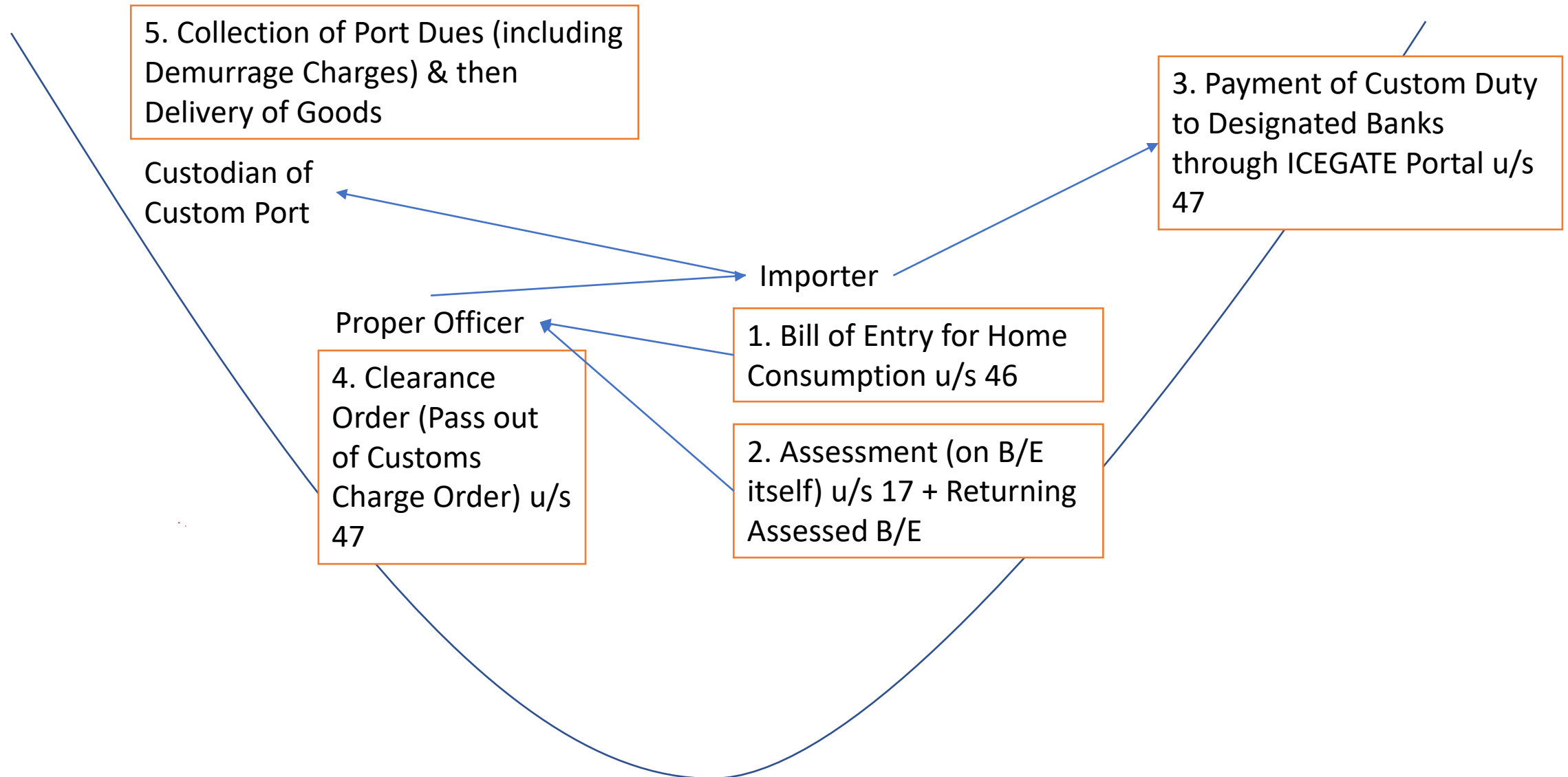
Departure Permission



Difference between clearance for Home Consumption and Clearance for Warehousing

Clearance for home consumption implies that, the customs duty on import of the goods has been discharged and the goods are therefore cleared for utilization or consumption. The 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 binding himself in a sum equal to twice the amount of duty assessed on the goods at the time of import. The importer is also liable to pay interest, rent and other charges for storage of goods in warehouse.

Procedure for Clearance of Imported Goods for Home Consumption



Chapter not to apply to baggage and postal articles (Sec 44); Restrictions on custody and removal of imported goods (Sec 45)

SECTION 44. Chapter not to apply to baggage and postal articles. –

The provisions of this Chapter (Sec 45, 46, 47, 48, 49, 50, 51) shall not apply to

- (a) baggage, and
- (b) goods imported or to be exported by post.

SECTION 45. Restrictions on custody and removal of imported goods. –

(1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person (Custodian) as may be approved by the Principal Commissioner of Customs or Commissioner of Customs until they are

- cleared for home consumption or
- are warehoused or
- are transhipped

(2) The person having custody (Custodian) of any imported goods in a customs area -

(a) shall keep a record of such goods and send a copy thereof to the proper officer;

(b) shall not permit such goods to be removed from the customs area OR otherwise dealt with, except under and in accordance with the permission in writing of the proper officer or in such manner as may be prescribed.

Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1) (Custodian), that person (Custodian) shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an arrival manifest or import manifest or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.

Restrictions on custody and removal of imported goods (Sec 45)

Illustration – M/s P Imports Ltd imported certain goods, which were unloaded in the customs area on 1-10-20xx. When order for clearance was passed by proper officer on 5-10-20xx, it was found that there was some pilferage of such goods. As the imported goods were in the custody of Port Trust, the Department demanded duty from the custodian under section 45(3) of the Customs Act, 1962, on such pilferage. The Port Trust denied such demand contending that it was not an approved custodian falling under section 45 and possession of goods by it was by virtue of powers conferred under the Major Port Trust Act, 1963. Hence, it is not liable for customs duty on pilfered goods. M/s P Imports Ltd. Has also asked the Port Trust to make good the loss of goods. Examine, whether the demands made by the Department and M/s P Imports Ltd. Are justified in law, referring to decided case law.

Ans – The facts of the case are similar to the case of Board of Trustees vs UOI (2009) 241 ELT 513 (Bom HC DB), wherein the High Court held that considering the language of section 45(3), the liability to pay duty is of the person, in whose custody the goods remain as an approved person under section 45 of the Act. Therefore, section 45(3) applies only to the private custodians who are required to be approved by Principal Commissioner/Commissioner of Customs under section 45(1). Accordingly, major ports and airports covered under Major Port Trust Act, 1963 who do not require any approval under section 45(1), are not covered by section 45(3). Thus, the Department cannot demand duty from Port Trust on the pilferage under section 45(3) of the Customs Act, 1962.

Section 45(3) of the Customs Act, 1962 holds the custodian responsible only in respect of the customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However, the Port Trust, as bailee of the goods, is liable for the value of the goods to the importer.

Entry of goods on importation (Sec 46)

SECTION 46. Entry of goods on importation. –

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make **ENTRY** thereof by presenting ELECTRONICALLY on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed : **(Form I (White) – for H/c, Form II (Yellow) – for warehousing (into bond), Form III (Green) – for ex-bond clearance for home consumption (ex-bond))**

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner: **(Manual submission of B/E is allowable in cases where electronic submission is not feasible. The form of B/E is governed by B/E (Forms Regulations, 1976))**

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof

(a) to examine the goods in the presence of an officer of customs, or

(b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

- (2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the
- bill of lading **(Bill of Landing is given by the carrier of the goods is the importer's document of title of goods. The Bill of Landing covers all the goods imported with full description)** or
 - other receipt given by the carrier to the consignor.

Entry of goods on importation (Sec 46)

(3) The importer shall present the bill of entry under sub-section (1) [**BEFORE THE END OF THE DAY (INCLUDING HOLIDAYS) PRECEDING THE DAY**] on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

(Words in brackets substituted vide The Finance Act, 2021, w.e.f. 28-3-2021, Earlier written as “BEFORE THE END OF THE NEXT DAY FOLLOWING THE DAY (excluding holidays)”]

Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:**(Proviso inserted vide The Finance Act, 2021, w.e.f. 28-3-2021)**

Provided further that a bill of entry may be presented at any time **not exceeding 30 days** PRIOR TO THE EXPECTED ARRIVAL of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is **not presented within the time so specified** and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

Analysis of the amendment – Earlier, the B/E could be submitted till a day (excluding holidays) after the arrival of aircraft/vessel/vehicle. W.e.f. 28-3-2021, B/E is to be submitted 1 day (excluding holidays) before the arrival of aircraft/vessel/vehicle. However, Board is empowered to prescribe different time limits for such filing in certain cases, but by not later than the end of the day of arrival of the vessel/aircraft/vehicle at the Customs port/station.

Entry of goods on importation (Sec 46)

Clarifications on the legislative changes in Section 46 of Customs Act, 1962 (Circular No. 08/2021-Customs, dt 29-3-2021)

Reference is invited to the amendments in Section 46 of the Customs Act, 1962 introduced through the Finance Act, 2021. These changes facilitate pre-arrival processing and assessment of Bills of Entry (BE) by mandating their advance filing thus leading to significant decrease in the Customs clearance time.

Changes in Section 46

After examining the relevant issues Board notes that the ground reality is that in case of short haul vessels/flights the importer may at times not get the Master Bill of Lading (MBL)/Master Airway Bill (MAWB) on the preceding day of the arrival of the vessel/aircraft. Further, when goods arrive by vehicle at a LCS, it is invariably the case that the import report is filed only at the time of its arrival. In these situations it would be difficult for the importer to adhere to the new requirement of Section 46, as above. Accordingly, with a view to facilitate the importers, Board has amended the Bill of Entry (Electronic Integrated Declaration) Regulations, 2018 by issue of Notification No.34/2021-Customs(N.T.), dated 29.03.2021 thereby prescribing different time-limits for filing BE in respect of goods imported by various modes of transport.

It may be noted that, the existing provision that a BE may be presented upto 30 days prior to the expected arrival of the aircraft or vessel or vehicle carrying the imported goods continues. Thus, with certain exceptions, as notified, the BE can now be filed anytime from 30 days prior to the expected arrival of the aircraft or vessel or vehicle upto the end of day preceding the day of such arrival. Similarly, changes have been carried out in the Bill of Entry (Forms) Regulations, 1976 vide Notification No.35/2021-Customs (N.T.) dated 29.03.2021 in case of manual filing of BEs.

Entry of goods on importation (Sec 46)

For clarification of the importers and trade, the changes that have been made effective vide the above stated notification dated 29.03.2021 are as follows :-

S. No.	Customs Station	Bill of Entry is Required to be Filed latest by End of the Day of Arrival of Vessel/Aircraft/Vehicle	Bill of Entry is Required to be Filed Latest by the End of Day Preceding the Day of Arrival of the Vessel/Aircraft/Vehicle
1.	Sea Port	Imports consigned from following countries viz. 1. Bangladesh 2. Maldives 3. Myanmar 4. Pakistan 5. Sri Lanka	Imports consigned from all countries other than those mentioned in column (3)
2.	Airport	All imports	None
3.	Land Custom Station (LCS)	All imports	None
4.	Inland Container Depot (ICD)	None	All imports

The importers are encouraged to file the BE well in advance and definitely by the above-mentioned timelines. In accordance with the said Section 46 read with the said Regulations, a BE that is filed after the above timelines shall attract late charges. Similarly, relevant dates for determining the late charges as clarified earlier by Circular No. 12/2017-Customs, dated 31st March, 2017 for different types of Customs Stations remains unchanged i.e., Entry Inwards for the Seaport and Date of Arrival at the Airport, ICDs/Air Freight Stations and Land Customs Stations.

Entry of goods on importation (Sec 46)

In respect of import goods arriving at seaports, consigned country (refer column 3 of the sl.no 1 of above table) refers to the country where the goods have been consigned by the exporter of the goods by way of Bill of Lading (HAWB/HBL, or MAWB/MBL, as the case may be). The same is already being mentioned as the country of consignment in the Bill of Entry. To illustrate, in respect of the goods consigned from Sri Lanka by the Sri Lanka exporter, Bill of Entry is to be filed latest by the end of the day of the arrival, whereas in respect of the goods consigned from let us say, Hong Kong, but merely transhipped through Sri Lanka, Bill of Entry is required to be filed latest by the end of day preceding the day of the arrival of the vessel.

Entry of goods on importation (Sec 46)

(4) The importer while presenting a bill of entry shall make and subscribe to a **declaration** as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall **ensure** the following, namely:—

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) If the **proper officer** is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may **permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa**.

Clearance of goods for home consumption (Sec 47)

Section 47 - Clearance of goods for home consumption

(1) Where the proper officer is satisfied that

- any goods entered for home consumption are not prohibited goods and
- the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same,
- the proper officer may make an order permitting clearance (Pass Out of Customs Charge Order) of the goods for home consumption:

Provided that such order may also be made **electronically** through the customs automated system on the basis of risk evaluation through appropriate selection criteria: **[proviso inserted by FA, 2018, so as to have a provision for clearance of goods by Customs Automated System in addition to existing clearance by the proper officer.]**

Provided further that the CG may, by notification in the Official Gazette, permit certain class of importers to make **deferred payment of said duty** or any charges in such manner as may be provided by rules.

Note - CG has permitted the following class of importers to make deferred payment of import duty –

1. Importers certified as AEO(Tier-Two) and AEO(Tier-Three) under AEO program (Authorised Economic Operator Program) to make deferred payment of said duty or any charges in such manner as may be provided by rules). This facility is also referred to as 'Clear first-Pay Later'. [Inserted vide NN 135/2016-Cus (NT), w.e.f. 2-11-2016]
2. Authorised Public Undertaking [Inserted vide NN 78/2020-Cus (NT), w.e.f. 19-8-2020]

Clearance of goods for home consumption (Sec 47)

Explanation : For the purpose of this notification :-

- (i) AEO means Authorised Economic Operator ;
- (ii) Authorised Public Undertaking means Authorised Public Undertaking, approved by the Directorate of International Customs under the Central Board of Indirect Taxes and Customs.

Extension of Deferred payment of Customs duty benefits to `Authorised Public Undertakings' [Circular No. 37/2020-Customs, dt 19-8-2020]

The facility of deferred payment of Customs import duty shall be available to Public Undertakings of Central and/or State Government which satisfy the following criterion:

- (i) Must be a Government company as defined in the Companies Act, 2013 or a statutory Corporation, a department or an autonomous body owned and/or controlled by the Central Government and/or State Government.
- (ii) Must possess a valid Importer-Exporter Code (IEC).
- (iii) Must be recommended for availing the said facility by an officer not below the rank of the Deputy Secretary to the Government of India or an officer of equivalent rank in the State Government.
- (iv) Must undertake to comply with the provisions of the Deferred Payment of Import Duty Rules, 2016.
- (v) Must adhere to legal compliance requirements as per Section 3.2 of revised AEO programme as per Circular No.33/2016-Customs, dated 22nd July 2016, as follows:
 - a) There should be no show cause notice issued to them during last 3 financial years involving fraud, forgery, outright smuggling, clandestine removal of excisable goods or cases where Service Tax/GST has been collected from customers but not deposited to the Government.

Clearance of goods for home consumption (Sec 47)

- b) There should be no case wherein prosecution has been launched or is being contemplated against the applicant or its senior management.
- c) If the ratio of disputed duty demanded or drawback demanded or sought to be denied, in all the show cause notices issued under the Customs Act, 1962 [other than those mentioned in Para 3(v) (a) and 3(v)(b)] during the last 3 financial years, to the total duty paid and drawback claimed during the said period is more than 10%, a review would be taken of the nature of cases and decision would be taken on issue or continuance of AEO status by AEO Programme Manager.

Explanation: for para 3(v)(a), 3(v)(b) and 3(v)(c) above, the cases where the show cause notices have been dropped or decided in favour of the applicant by the adjudicating or appellate authorities will not be considered.

4. The eligible Public Undertaking desiring to avail the facility of deferred payment of Customs import duty shall apply to the Principal Commissioner/Commissioner, Directorate of International Customs (DIC), CBIC in the form as per Annexure-I. After careful scrutiny of the application and satisfying himself that the applicant satisfies the eligibility conditions, the Principal Commissioner/Commissioner, DIC, CBIC shall approve the applicant as an 'Authorized Public Undertaking' eligible for availing the benefit of deferred payment of Customs import duty. The facility shall in the first instance be available for a period of 2 years, extendable for a further period not exceeding 2 years at a time. Further, at the time of granting approval, the Principal Commissioner/Commissioner, DIC, CBIC shall update the details in the Customs Automated System to enable the facility of deferred payment of duty. No further action will be required by the APU in order to avail the facility.

Clearance of goods for home consumption (Sec 47)

(2) The importer shall pay the import duty—

- a) on the date of presentation of the bill of entry in the case of self assessment; or
- b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
- c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf,
 - and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than 10% but not exceeding 36% p.a., as may be fixed by the CG, by notification in the Official Gazette. **(Currently, 15% p.a.)**

Provided that the CG may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty **electronically**: **(Some major importers have been given the green channel clearance facility. It means clearance of goods is done without routine examination of the goods. They have to make a declaration in the declaration form at the time of filing of bill of entry. The appraisement is done as per normal procedure except that there would be no physical examination of the goods.)**

Clearance of goods for home consumption (Sec 47)

Deferred Payment of Import Duty Rules, 2016 read with Circular No. 52/2016-Cus dt 15-11-2016

~~[Information about intent to avail benefit of notification – An eligible importer intending to avail the benefit of deferred payment shall intimate to the Principal Commissioner/Commissioner of Customs, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with eligibility of the importer allow him to pay the duty by due dates.]~~[Rule omitted by NN 79/2020-Customs (N.T.), w.e.f. 19-8-2020]

Note – The implication of the omission of above Rule is that henceforth the approved AEO Tier 2/3 or approved Authorised Public Undertaking shall not be required to send any intimation regarding the intent to avail the facility of deferred payment of Customs import duty to the Principal Commissioner/Commissioner, DIC and/or the Principal Commissioner having jurisdiction over the port(s) of clearance

Due dates for deferred payment of import duty –

S.No.	Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1.	1 st day to 15 th day of any month	16 th day of that month
2.	16 th day till the last day of any month other than March	1 st day of the following month
3.	16 th day till the 31 st day of March	31 st March

Electronic payment of duty – The eligible importer shall pay the duty electronically. However, the AC/DC of Customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.

Clearance of goods for home consumption (Sec 47)

Deferred payment not to apply in certain cases – If there is default in payment of duty by due date more than once in 3 consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the entry.

Authorized Economic Operator (AEO)

- AEO is a flagship programme for WCO Members as it offers an opportunity for Customs to share its responsibilities with the businesses, while at the same time rewarding them with a number of additional benefits. As of March, 2015, 168 out of 180 WCO Members have signed Letters of Intent committing to implement the SAFE Framework.
- AEO is a programme under the aegis of the World Customs Organization (WCO) SAFE Framework of Standards to secure and facilitate Global Trade. The programme aims to enhance international supply chain security and facilitate movement of legitimate goods.
- AEO encompasses various players in the International supply chain. Under this programme, an entity engaged in international trade is approved by Customs as compliant with supply chain security standards and granted AEO status & certain benefits.
- AEO is a voluntary programme. It enables Indian Customs to enhance and streamline cargo security through close cooperation with the principle stakeholders of the international supply chain viz. importers, exporters, logistics providers, custodians or terminal operators, custom brokers and warehouse operators. The Circular 33/2016 – Customs dated 22.07.2016 provides the statutory framework for the AEO programme.

Clearance of goods for home consumption (Sec 47)

- There are multiple tiers of certification in the new AEO Programme.
- For importers and exporters there are three tiers providing varying levels of benefits:
 - **AEO T1** – Verified on the basis of document submission only
 - **AEO T2** – In addition to document verification, onsite verification is also done
 - **AEO T3** – For AEO T2 holders who have enjoyed the status for 2 years only on the basis of document verification and for AEO T2 holders who has not enjoyed the status continuously or has introduced major changes in business, the applicant is subjected to physical verification
- For logistics providers, custodians or terminal operators, custom brokers and warehouse operators there is only one tier:
 - **AEO LO** - In addition to document verification, onsite verification is done

Clearance of goods for home consumption (Sec 47)

Mandatory Electronic Payment of Duty

The CG has notified the following classes of importers who have to pay custom duty electronically, namely:-

- (i) Importers registered under Authorised Economic Operator (AEO)
- (ii) Importers paying customs duty of ₹ 10,000 or more per bill of entry

The Board has set up a dedicated payment gateway called, 'ICEGATE' through which the payments are to be made. The importer need not produce any proof of payment for the clearance of goods in case of e-payment.

Note – Integrated Declaration under Indian Customs Single Window Project

- CBIC has implemented 'Indian Customs Single Window Project' to facilitate trade. Under project, the importers and exporters would electronically lodge their Customs clearance documents at a single point only with the Customs.
- The required permission, if any, from Partner Government Agencies (PGAs) such as Animal Quarantine, Plant Quarantine, Drug Controller, FSSAI, Textile Committee etc is obtained online without the importer/exporter having to separately approach these agencies.
- This is possible through a common, seamlessly integrated IT Systems utilized by all regulatory agencies, logistics service providers and the importers/exporters.
- CBIC has since developed the Integrated Declaration, under which all information required for import clearance by the concerned govt. agencies has been incorporated into the electronic format of B/E.
- Integrated Declaration is to be submitted at single entry point i.e. Customs gateway (ICEGATE)

Clearance of goods for home consumption (Sec 47)

Payment through Electronic Cash Ledger - Payment of duty, interest, penalty, etc.(Sec 51A)

This section are yet to be notified→ Currently Ineffective Section.

- (1) Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.
- (2) The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (3) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.
- (4) Notwithstanding anything contained in this section, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.

Important Note: *The CBIC has exempted the deposits pertaining to all classes of persons and all categories of goods, from the provisions of section 51A from 01.06.2022 till 29.11.2022. [NN 47/2022 – Cus (N.T.), dated 31.05.2022]*

Note – A new payment to leverage payments-automation is enabled in Customs clearance(import or exports) where CBIC has to prescribe the persons who are permitted to hold balance in Electronic Cash Ledger and the procedures for deposit, utilisation and refund of surplus balance. **These regulations are yet to be notified.**

Clearance of goods for home consumption (Sec 47)

Specified deposits exempted from provisions of Electronic Cash Ledger [NN. 19/2022 Cus (N.T.), w.e.f. 30.11.2022]

The CBIC has specified certain deposits which are exempted from provisions of payment through electronic cash ledger:

- (i) with respect to goods imported or exported in customs stations where customs automated system is not in place;
- (ii) with respect to accompanied baggage;
- (iii) other than those used for making payment of,-
 - (a) any duty of customs, including cesses and surcharges levied as duties of customs;
 - (b) IGST;
 - (c) GST Compensation Cess;
 - (d) interest, penalty, fees or any other amount payable under the said Act, or the Customs Tariff Act, 1975.

Clearance of goods for home consumption (Sec 47)

Electronic Duty Credit Ledger (Sec 51B) (Inserted by Finance Act, 2020, w.e.f. 27-3-2020)

(1) The Central Government may, by notification in the Official Gazette, specify the manner in which it shall issue duty credit,—

- (a) in lieu of remission of any duty or tax or levy, chargeable on any material used in the manufacture or processing of goods or for carrying out any operation on such goods in India that are exported; or
- (b) in lieu of such other financial benefit subject to such conditions and restrictions as may be specified therein.

(2) The duty credit issued under sub-section (1) shall be maintained in the customs automated system in the form of an electronic duty credit ledger of the person who is the recipient of such duty credit, in such manner as may be prescribed.

(3) The duty credit available in the electronic duty credit ledger may be used by the person to whom it is issued or the person to whom it is transferred, towards making payment of duties payable under this Act or under the Customs Tariff Act, 1975 in such manner and subject to such conditions and restrictions and within such time as may be prescribed.

Faceless Assessment

Introduction of Faceless Assessment

- The aim of the Government is to simplify procedures and reduce barriers to the trade. The aim has been to reduce time and cost for the EXIM community.
- In line with the momentum, CBIC has implemented next generation reforms through Turant Customs, strongly enabled by technology. Turant Customs is a mega reform for the ease of doing business.
- This flagship initiative stands on the pillars of – Faceless, Contactless and Paperless Customs. This reform will help India take a substantial leap forward towards faster and cheaper Customs clearance of imported goods.
- A key enabler in Turant Customs is Faceless Assessment. It has been rolled out in phases and covered the entire country by 31st Oct, 2020. This would enable uniform, anonymous Customs assessments and reduce interface between the Trade and Customs officers.

Journey towards Faceless Assessment

- Decades ago, goods imported into India were assessed for Customs duty at the border by jurisdictional Customs officers on the basis of physical documents.
- Subsequent introduction of computers led to automation of assessment. This was followed by a robust digital risk management system (RMS) for Custom clearance with minimal checks, while interdicting risk-prone cargo for assessment and examination.

Faceless Assessment

- In 2012, the Customs Act 1962, was amended to introduce self-assessment by importers/exporters themselves. While digitalization helped in streamlining of procedures, yet disparities in assessment prevailed due to interpretation issues. Customs officials recognized a dire need to provide uniformity and certainty in assessment practices. It was also clear that anonymity in assessment and load balancing of import documents that are required to be assessed would bring about more efficiency and help improve the speed of Customs clearance across India. This was the trigger for the conceptualization and development of Faceless Assessment.

What is Faceless Assessment?

Faceless Assessment is a major Customs Reforms where a Bill of Entry that is identified for scrutiny (non-facilitated Bill of Entry) is assigned to an assessing officer who is physically located at a Customs station, which is not the Port of Import in the Customs Automated System. It separates the assessment process from the physical location of Port of Import, using a technology platform.

Faceless Assessment (also referred to as virtual assessment or anonymized assessment) uses a technology platform to separate the Customs assessment process from the physical location of a Customs officer at the port of arrival. This measure will bolster efforts to ensure an objective, free, fair and just assessment.

From an importer's perspective, there will be no changes to the process of filing a Bill of Entry. He will continue to file his documentation including bill of entry and supporting documents on the ICEGATE portal.

Faceless Assessment

Key objectives of Faceless Assessment :

- (i) Anonymity in assessment for reduced physical interface between trade and Customs.
- (ii) Speedier Customs clearance through efficient utilization of manpower.
- (iii) Greater uniformity of assessment across locations.
- (iv) Promoting sector specific and functional specialization in assessment.

Common Portal :

The CBIC has notified the common portal accessible through URL – <https://www.icegate.gov.in> as the Common Customs Electronic Portal for facilitating registration, filing of bills of entry, shipping bills, other documents and forms prescribed under the said Act or under any other law for the time being in force or the rules or regulations made thereunder, payment of duty, other functions specified to be carried out through common portal and for data exchange with other systems within or outside India. [NN 33/2021-Customs (N.T.), dt 29-3-2021]

All India roll-out of Faceless Assessment [Instruction No. 9/2020 – Customs, dated 5-6-2020]

Notification No. 50/2020 – Customs (N.T.), dt 5-6-2020 implements Faceless Assessment. This notification enables an assessing officer i.e., the proper officer under Section 17 and 18 of the Customs Act, 1962, who is physically located in a particular jurisdiction to assess a bill of entry pertaining to imports made at a Customs Automated System. In other words, irrespective of whether the goods are imported at any Customs station/port of import, the bills of entry will be marked by the Customs Automated System to the nominated Faceless Assessment Group for assessment.

Faceless Assessment

I. Faceless Assessment Group:

A Faceless Assessment Group would consist of Appraisers/ Superintendents and Assistant Commissioners / Deputy Commissioners for verification of assessment of any bill of entry that is assigned to this group in the Customs Automated System.

II. Port Assessment Groups located at Port of Import:

Port Assessment Groups (PAGs) would be the Appraising Group currently located in each port of import for verification of the assessment and other related functions as is the normal practice. The PAGs would also handle all other functions pertaining to the bills of entry which are not marked to the Faceless Assessment Group by the Customs Automated System as well as the bills of entry that are referred by the Faceless Assessment Group to the port of import for any reason. It is clarified that the port of import is the Customs station of import of the goods where the importer has entered any bill of entry under Sec 46 or Sec 68 of Customs Act, 1962 for home consumption or warehousing.

III. Turant Suvidha Kendras located at Port of Import:

The Commissionerate having jurisdiction over port of import would set up a Turant Suvidha Kendra for facilitating Customs clearances. Turant Suvidha Kendras (TSK) would be a dedicated cell in every Customs port of import manned by Customs officers. The Turant Suvidha Kendra is basically created to facilitate the trade in completing various formalities relating to the Customs assessment locally at the port of import, as is presently done, even though the actual assessment may be done remotely or virtually by the proper officer physically located in another Customs station.

Faceless Assessment

Some of the functions to be entrusted to the Turant Suvidha Kendra are:

- (i) Accept Bond or Bank Guarantee;
- (ii) Carry out any other verifications that may be referred by the Faceless Assessment Groups;
- (iii) Defacing of documents/permits/licences, wherever required;
- (iv) Debit of documents/permits/licences, wherever required; and
- (v) Other functions determined by Commissioner to facilitate trade.

IV. Other Responsibilities of the Port of Import :

In addition, the port of import would continue to be responsible for handling the examination/inspection of goods and all other functions other than assessment. The request for waiver of fee for late filing of bill of entry, request in relation to Section 49 of the Customs Act, 1962, request for permission under Section 48 of the Customs Act, 1962 shall also be done by the designated proper officers of the port of import.

Procedure in case of goods not cleared, warehoused, or transhipped within 30 days after unloading (Sec 48)

Sec 48 - Procedure in case of goods not cleared, warehoused, or transhipped within 30 days after unloading.

If any goods brought into India from a place outside India are

- not cleared for home consumption or warehoused or transhipped within 30 days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or
 - if the title to any imported goods is relinquished,
- such goods may, after notice to the importer and with the permission of the proper officer **BE SOLD** by the person having the custody (**Custodian**) thereof :

Provided that -

- (a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;
- (b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

Procedure in case of goods not cleared, warehoused, or transhipped within 30 days after unloading (Sec 48)

Note –

CBIC has clarified vide Circular No. 49/2018-Cus dated 03-12-2018 that after the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods as per section 46 of the Customs Act, 1962 read with Un-Cleared Goods (Bill of entry) Regulations, 1972 –

- a) The PO of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.
- b) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues.

In case of sensitive goods like animals, foodstuff and hazardous goods etc and arms or ammunition, the custodian with the approval of the proper officer can sell the goods even before the expiry of the 30 days limit.

Storage of imported goods in warehouse pending clearance or removal (Sec 49)

Section 49 - Storage of imported goods in warehouse pending clearance or removal. –

Where,—

(a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the AC/DC of Customs is satisfied

- ✓ on the application of the importer
- ✓ that the goods cannot be cleared within a reasonable time;

(b) in the case of any imported dutiable goods, entered for warehousing, the AC/DC of Customs is satisfied

- ✓ on the application of the importer
 - ✓ that the goods cannot be removed for deposit in a warehouse within a reasonable time,
- the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding 30 days:


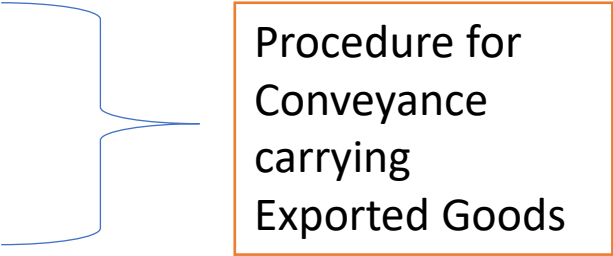
Provided that the provisions of Chapter IX (**Chapter on Warehousing**) **shall not apply** to goods permitted to be stored in a public warehouse under this section:

Note – This proviso means that such goods shall not be deemed to be warehoused goods for the purposes of the Act, and accordingly warehousing provisions shall not apply to such goods.

Provided further that the Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

Export Procedures

Export Procedures

- Entry of goods for exportation (Sec 50)
 - Clearance of goods for Exportation (Sec 51)
- 
- Procedure for Exporter
- Loading of Goods into Conveyance (Sec 33-36 & 42)
 - Export goods not to be loaded unless duly passed by proper officer (Sec 40)
 - Entry Outward (Sec 39)
 - Delivery of departure manifest or export manifest or export report (Sec 41)
- 
- Procedure for Conveyance carrying Exported Goods

Export Procedures

Section 50. Entry of goods for exportation

- (1) The exporter of any goods shall make **ENTRY** thereof by presenting electronically on the customs automated system to the proper officer
- in the case of goods to be exported in a vessel or aircraft, a **shipping bill**, and
 - in the case of goods to be exported by land, **a bill of export** in such form and manner as maybe prescribed.

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

- (2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

- (3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:—
- (a) the accuracy and completeness of the information given therein;
 - (b) the authenticity and validity of any document supporting it; and
 - (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.”

Section 51. Clearance of goods for exportation

(1) Where the proper officer is satisfied that any goods entered for export are

- not prohibited goods and the
- exporter has paid the duty, if any, assessed thereon and
- any charges payable under this Act in respect of the same,

the proper officer may make an order (**Let Export Order**) permitting clearance and loading of the goods for exportation:

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided further that the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

(2) Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below 5% and not exceeding 36% per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

Note – As per Section 44, Sec 50-51 are not applicable to (a) Baggage (b) Goods imported by post.

Export Procedures

SECTION 33. Unloading and loading of goods at approved places only

SECTION 34. Goods not to be unloaded or loaded except under supervision of customs officer

SECTION 35. Restrictions on goods being water-borne

SECTION 36. Restrictions on unloading and loading of goods on holidays, etc.

SECTION 39. Export goods not to be loaded on vessel until entry-outwards granted. - The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

Export Procedures

SECTION 40. Export goods not to be loaded unless duly passed by proper officer-

The person-in-charge of a conveyance shall not permit the loading at a customs station –

- (a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;
- (b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

SECTION 41. Delivery of departure manifest or export manifest or export report –

(1) The person-in-charge of a conveyance carrying export goods or imported goods shall, before departure of the conveyance from a customs station, deliver to the proper officer

- in the case of a vessel or aircraft, an departure manifest or export manifest or export report by presenting electronically, and
- in the case of a vehicle, an export report, in such form and manner as may be prescribed and
- in case, the person-in-charge fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge shall be liable to pay penalty not exceeding ₹ 50,000:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to deliver the departure manifest or export manifest or export report by presenting electronically, allow the same to be delivered in any other manner.

Export Procedures

(Continued) SECTION 41. Delivery of departure manifest or export manifest or export report –

(2) The person delivering the departure manifest or export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(3) If the proper officer is satisfied that the departure manifest or export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

SECTION 41A. Passenger and crew departure manifest and passenger name record information. -

(1) The person-in-charge of a conveyance that departs from India to a place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer—

(i) the passenger and crew departure manifest; and

(ii) the passenger name record information of departing passengers,

in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(2) Where the passenger and crew departure manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other person referred to in sub-section (1) shall be liable to such penalty, not exceeding ₹ 50,000, as may be prescribed.

SECTION 42. No conveyance to leave without **written order**

Departure Permission

Transit and Trans-shipment

TRANSIT	TRANS-SHIPMENT
Sec 53 & 55	Sec 54 & 55
Goods are transited in the same conveyance which brings the goods into India	Goods are trans-shipped in a conveyance other than the conveyance which brings the goods into India
No need of filing any fresh documentation for carrying goods from first port to destination port	Fresh documentation is required for carrying goods from first port to destination port.

Goods in Transit

USA Port -----	Gujarat Port -----	Mumbai Port
--- Mention in IGM/IR that goods are intended to be transited further	↓	↓
--- No separate documentation is required	NO DUTY IS PAYABLE AT THIS PORT(Sec 53)	Goods shall be entered at this port as if they have been directly imported at this port for the first time and duty shall be payable (Sec 55)
USA Port -----	Gujarat Port -----	Australia Port
--- Mention in IGM/IR that goods are intended to be transited further	↓	↓
--- No separate documentation is required	NO DUTY IS PAYABLE AT THIS PORT(Sec 53)	No import duty is payable at all

Transit and Trans-shipment

Goods in Trans-shipment

USA Port -----	Gujarat Port -----	Mumbai Port
--- Mention in IGM/IR that goods are intended to be transited further	↓ NO DUTY IS PAYABLE AT THIS PORT(Sec 54)	↓ Goods shall be entered at this port as if they have been directly imported at this port for the first time and duty shall be payable (Sec 55)
--- " <u>Bill of Trans-shipment</u> " shall be filled with the PO		
USA Port -----	Gujarat Port -----	Australia Port
--- Mention in IGM/IR that goods are intended to be transited further	↓ NO DUTY IS PAYABLE AT THIS PORT(Sec 53)	↓ No import duty is payable at all
--- " <u>Bill of Trans-shipment*</u> " shall be filled with the PO		

- * However, if the trans-shipment is intended to a Country with whom India has entered into
- An International Treaty
 - Bilateral Agreement
- then "Declaration of Trans-shipment" shall suffice

Section 56. Transport of certain classes of goods subject to prescribed conditions

- The provisions of section 53 and 54 apply only to goods imported at an Indian customs port/airport and transmitted or trans-shipped to another Indian customs port/airport. They do not cover transport by land from one Indian land custom station to another Indian land customs station.
- In the case of goods destined to foreign ports/airports/custom station, the problem had been specifically faced in the case where imported goods meant for Nepal landed at any Indian customs port/airport or land customs station. Such goods had to be transported by road or rail to Indian land customs station along the Indo Nepal Border and thereafter crossed over to the corresponding Nepalese customs station. Similarly, there was rail traffic between West and East Pakistan before the latter was liberated and named Bangladesh. The movement across the Indian territory was found to be faster and cheaper compared to movement by sea around the Indian sub-continent. Such a situation is dealt with by sec 56 of the Customs Act.
- Sec 56 specifically provides that Imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported from one part of India to another part through any foreign territory, subject to such conditions as may be prescribed for the due arrival of such goods at the place of destination.
- In the first part there is a substantial exemption from customs duty. The second part technically amounts to export and subsequent re-import.

Customs Audit (Sec 99A)

SECTION 99A. Audit.

The proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed.

Explanation.— For the purposes of this section, “AUDITEE” means a person who is subject to an audit under this section and includes

→ an importer or → exporter or → custodian approved under section 45 or → licensee of a warehouse and → any other person concerned directly or indirectly in

→ clearing, → forwarding, → stocking, → carrying, → selling or → purchasing of imported goods or export goods or dutiable goods.

Note –

In supersession of On-site Post Clearance Audit at Premises of Importer and Exporter Regulations, 2011, Government has notified Customs Audit Regulations, 2018. For this reason, a separate section 99A is introduced authorizing the proper officer to **audit of assessment that has already been conducted at the time of customs clearance**. Such audit is permitted to be carried out swiftly either at the premises of the auditee or at the office of the proper officer.

Customs Audit (Sec 99A)

Salient features of this audit procedure are as follows –

1. Auditee is to preserve records for conduct of this audit for a period of 5 years.
2. Risk based assessment will identify persons to be audited.
3. Audit will be conducted at the premises of the auditee by the authorized officers who will intimate 15 days in advance of their schedule visit.
4. Based on the findings, auditee may accept the liabilities and voluntarily discharge the duty, interest and penalty, as applicable.
5. Assistance of experts can be availed for conducting this audit such as CA, CWA or IT professionals with permission of Principal Commissioner/Commissioner of Customs.
6. Contravention of these Regulations attracts penalty of ₹ 50,000

Types of Audit

1. TBA (Transaction Based Audit) – Under TBA, transactions are audited. It may be noted that a TBA may subsequently be converted into a Premises based Audit (PBA)
2. PBA (Premises based Audit) – The new provision on Customs Audit under section 99A of the Customs Act, 1962 has extended the scope of PBA by including other entities who are concerned with imports or exports. In PBA, customs would review the import and export over a given period and check all relevant commercial records, including financial statements and contracts to verify the particulars given in a goods declaration. PBA would enable the department to bridge the communication divide and usher in a new era of partnership with trade. Further, Board may also select any criteria or Theme for the audit.

Import/Export by Post (Sec 83-84)

Goods imported or exported by post

Section 83 - Rate of duty and tariff valuation in respect of goods imported or exported by post or courier –

(1) The rate of duty and tariff value, if any, applicable to any goods imported by post or courier shall be the rate and valuation in force on the date on which the postal authorities or the courier authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon :

Provided that if such goods are imported by a vessel and the list of the goods containing the particulars was presented before the date of the arrival of the vessel, it shall be **deemed** to have been **presented on the date of such arrival**.

Note – Proviso means that if vessel carrying such goods arrives after submission of list then the date of arrival of vessel will be relevant date for rate of duty.

(2) The rate of duty and tariff value, if any, applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the courier authorities for exportation.

Section 84 - Regulations regarding goods imported or to be exported by post or courier –

The Board may make regulations providing for –

- (a) the form and manner in which an entry may be made in respect of goods imported or to be exported by post or courier;
- (b) the examination, assessment to duty, and clearance of goods imported or to be exported by post or courier;
- (c) the transit or transhipment of goods imported by post or courier, from one customs station to another or to a place outside India.

Import/Export by Post (Sec 83-84)

Procedure for Import and Export of Goods by Post

In the case of goods imported by post the **agency for the carriage of goods is the GOI**, be it through sea, air or land. The control of the Customs Department is only on goods, whether imported or exported –

(a) On which there is duty and

(b) Which are subject to prohibition or restriction under the Customs Act or any other law for the time being in force.

The customs have no concern over other goods or other mail.

Provisions under Indian Post Office Act, 1898

- **Power to deal with postal articles containing goods contraband or liable to duty (Sec 24 of the Indian Post Office Act)**
 - Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force, or anything is liable to duty, the postal authority has following rights -
 1. The post office authority has a right and duty to open and examine a postal article.
 2. The right can be exercised only if he has a reasonable suspicion that the goods contained in the postal article are – (a) liable to duty of customs, or (b) subject to a prohibition under any law in force.
 3. Before opening and examining the postal article he should issue a notice in writing to the addressee asking him to be present at an appointed time and place for the opening of the postal article.
 4. The addressee can be present either in person or by an agent; and if the addressee or his agent does not turn up at the appointed time and place, the postal authorities are entitled to open and examine the postal article in his absence.

Provisions under Indian Post Office Act, 1898

- **Delivery to customs authority (Sec 24A of the Indian Post Office Act)** – The power enabling the postal authorities to deliver such articles to the Customs authorities is enshrined in section 24A of the Indian Post Office Act. The relevant provisions read as follows –
- The CG may, by a general or special order, empower any officer of the post office, specified in such order, to deliver any postal article, received from beyond the limits of India and suspected to contain anything liable to duty, to such customs authority as may be specified in the said order and such customs authority shall deal with such article in accordance with the provisions of the Sea Customs Act (now Customs Act, 1962) or any other law for the time being in force.
- Thus, once the postal authorities have found some postal article to contain dutiable or prohibited goods, that authorities should deliver the postal article in question to the customs authority for necessary action.

Provisions relating to Stores (Sec 85-90)

Section 85 - Stores may be allowed to be warehoused without assessment to duty –

Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts without payment of import duty under this Chapter, the proper officer may permit the goods to be warehoused without the goods being assessed to duty.

Section 86 - Transit and transshipment of stores. –

- (1) Any stores imported in a vessel or aircraft may, without payment of duty, remain on board such vessel or aircraft while it is in India.
- (2) Any stores imported in a vessel or aircraft may, with the permission of the proper officer, be transferred to any vessel or aircraft as stores for consumption therein as provided in section 87 or section 90.

Note –

Stores means parts and accessories, fuel and other consumables on board the Aircraft or a vessel whether required for immediate use or not.

Provisions relating to Stores (Sec 85-90)

Section 87 - Imported stores may be consumed on board a foreign-going vessel or aircraft. –

Any imported stores on board a vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft.

Note – This covers the situation between the first Indian port/airport of arrival to the final Indian port/airport of departure to a destination outside India. In other words, no duty is leviable as long as the vessel/aircraft is a foreign going vessel/aircraft. However, if the vessel/aircraft ceases to be so and converts to a total run/local flight, duty will be chargeable on the stores on board. It follows that in case of

- (i) vessels/aircraft arriving in India and terminating their voyage at the port of arrival
- (ii) Vessels/aircraft arriving in India and subsequently converting into coastal voyage/run or domestic flight import duty would be chargeable on the unconsumed stores brought by the vessel/aircraft/conveyance at the point of its entry into India.

Section 88 - Application of section 69 and Chapter X to stores. –

This section provides that the provisions of section 69 and Chapter X (**which contains provisions for drawback of duty**) shall apply to stores (other than those to which section 90 applies). Thus, it follows that –

- i. Section 69 allows warehoused goods to be exported without payment of import duty. By virtue of section 88, this benefit as available to warehoused goods if they are taken on board any foreign going vessel or aircraft as stores.

Provisions relating to Stores (Sec 85-90)

- ii. Further, as per section 74, where duty paid imported goods are exported within 2 years then subject to certain conditions, such duty shall be repaid as drawback. By virtue of section 88, this benefit has been made available to imported stores.

In case of imported stores, which have been re-exported after the import duties for the same have been paid, the original import duty is eligible as drawback. For stores like fuel and lubricants oil taken on board any foreign going aircraft the whole of the import duty paid is eligible as drawback as against 98% eligible for other imported goods.

Section 89 - Stores to be free of export duty. –

Goods produced or manufactured in India and required as stores on any foreign-going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine, having regard to the
→ size of the vessel or aircraft, → the number of passengers and crew and → the length of the voyage or journey on which the vessel or aircraft is about to depart.

Section 90. Concessions in respect of imported stores for the Navy. –

Following are the special provisions in relation to supply of stores to Naval vessels:

- (i) Stores for the use in a ship of the Indian Navy and stores supplied free by the Govt for the use of the crew of a ship of the Indian Navy, in accordance with their conditions of service, may be supplied without payment of duty to be consumed on board the ship of Indian Navy.
- (ii) The provisions of section 69(duty-free export from a warehouse) and Chapter X (drawback) shall apply as they apply to other goods. However, they will be entitled to drawback of the whole of the duty of customs if any paid therein, instead of 98% alone otherwise applicable.

Provisions relating to Baggage (Sec 77-81)

1. **Baggage (Sec 2(3))** : Baggage includes unaccompanied baggage but does not include motor vehicles;
 - (Baggage in simple words means “Personal effects”. It covers only personal and household articles)

	Personal Effects For the purpose of IT Act	Personal Effects For the purpose of Customs Act, 1962
• Wearing Apparel	Yes	Yes
• Furniture	Yes	Yes
• Jewellery	No	Yes
• Paintings	No	Yes
• Motor Vehicle	Yes	No
• Gold/Silver Utensils	Yes	Yes

Section 77 - Declaration by owner of baggage. –

The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer. (This is known as Baggage Declaration Form)

Section 78 - Determination of rate of duty and tariff valuation in respect of baggage –

The rate of duty and tariff valuation, if any, applicable to baggage shall be the rate and valuation in force
→ **on the date on which a declaration is made in respect of such baggage under section 77.**

Provisions relating to Baggage (Sec 77-81)

Section 79 - Bona fide baggage exempted from duty –

- (1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty –
- (a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;
 - (b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir;

Provided that the value of each such article and the total value of all such articles **does not exceed such limits as may be specified in the rules.**

Note - The law thus envisages 2 categories of baggage, namely those belonging to (a) passenger and (b) members of the crew. Similarly, it envisages three classes of goods, namely (a) personal effects, which have been in use of the person for a min. period (b) household effects, which is used by the family including the person and (c) gifts and souvenirs)

Provisions relating to Baggage (Sec 77-81)

Section 79 - Bona fide baggage exempted from duty –

(2) the Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may specify –

- a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1);
- b) the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of sub-section (1);
- c) the conditions (to be fulfilled before or after clearance) subject to which any baggage may be passed free of duty.

(3) Different rules may be made under sub-section (2) for different classes of persons.

Provisions relating to Baggage (Sec 77-81)

Baggage Rules, 2016

Rule 2 – Definitions –

- (ii) “**family**” includes all persons who are residing in the same house and form part of the same domestic establishment;
- (iii) “**infant**” means a child not more than two years of age;
- (iv) “**resident**” means a person holding a valid passport issued under the Passports Act, 1967 and normally residing in India;
- (v) “**tourist**” means a person not normally resident in India, who enters India for a stay of not more than 6 months in the course of any 12 months period for legitimate non-immigrant purposes;
- (vi) “**personal effects**” means things required for satisfying daily necessities **but does not include jewellery.**

Tariff Classification : Heading No. 98.03

All dutiable articles, imported by passengers or members of crew in his baggage

Customs Duty liability on Baggage

- BCD ----- 35%
- CVD ----- 100% Exempt
- Special CVD ----- 100% Exempt
- Social Welfare Surcharge ----- 10% of BCD

Thus, effective Customs Duty on Baggage is
(35% + 10% of 35%) = 38.5%

Provisions relating to Baggage (Sec 77-81)

Baggage Rules, 2016

General duty-free baggage allowance – The general duty-free baggage allowance for different class of passengers coming from different countries is given as under –

Rule No.	Class of passenger	Origin country from which the passenger is coming	Articles allowed free of duty
Rule 3	Indian resident or Foreigner residing in India or Tourist of Indian origin, excluding an infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs and (ii) Articles upto the value of ₹ 50,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
Rule 3	Tourist of foreign origin excluding infant	Any country other than Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs and (ii) Articles upto the value of ₹ 15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger
Rule 4	Indian resident or Foreigner residing in India or Tourist, excluding an infant	Nepal, Bhutan or Myanmar	(i) Used personal effects and travel souvenirs and (ii) Articles upto the value of ₹ 15,000 (excluding articles mentioned in Annexure I), if carried on in person or in the accompanied baggage of the passenger <u>On arriving by land</u> – Only used personal effects.

Note – When a passenger is an infant, only used personal effects will be allowed duty free. The general duty-free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger. Eg., if a group of 3 persons brought 1 item of Rs. 75,000, then duty shall be payable on Rs. 25,000.

Provisions relating to Baggage (Sec 77-81)

ANNEXURE-I (See rule 3, 4 and 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of 2 litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television.

ANNEXURE II (See rule 6)

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.
4. Domestic Refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:-
 - (a) television receiver;
 - (b) sound recording or reproducing apparatus;
 - (c) video reproducing apparatus.
7. Cinematographic films of 35mm and above.
8. Gold or Silver, in any form, other than ornaments.

Provisions relating to Baggage (Sec 77-81)

ANNEXURE III (See rule 6)

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc player.
3. Music System.
4. Air-Conditioner.
5. Microwave Oven.
6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

Provisions relating to Baggage (Sec 77-81)

Baggage Rules, 2016

General duty-free baggage allowance – The general duty-free baggage allowance for different class of passengers coming from different countries is given as under –

Rule No.	Class of passenger	Origin country from which the passenger is coming	Articles allowed free of duty
Rule 5	<u>Jewellery –</u>	Any country	(i) Gentlemen - upto a weight, of 20 grams with a value cap of ₹ 50,000 (ii) Lady Passenger - upto a weight, of 40 grams with a value cap of ₹ 100,000

This exemption is available only if the passenger has stayed abroad for more than one year, before returning to India

Note – One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) as baggage is exempt from whole of the customs duty (Notification No. 11/2004 Cus. Dt 8-1-2004)

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Rule 6 - Transfer of residence –

(1) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bonafide baggage to the extent mentioned in column (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix.

Appendix

Duration of stay abroad	Articles allowed free of Duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
From 3 months to 6 months	Personal and household articles, → other than those mentioned in Annexure I or Annexure II → but including articles mentioned in Annexure III → upto an aggregate value of ₹ 60,000	Indian passenger	-
From 6 months upto 1 year	Personal and household articles, → other than those mentioned in Annexure I or Annexure II → but including articles mentioned in Annexure III, → upto an aggregate value of ₹ 100,000.	Indian passenger	-
Min stay of 1 year during the preceding 2 years	Personal and household articles, → other than those mentioned in Annexure I or Annexure II → but including articles mentioned in Annexure III → upto an aggregate value of ₹ 200,000.	The Indian passenger should not have availed this concession in the preceding 3 years.	-

Provisions relating to Baggage (Sec 77-81)

Appendix

Duration of stay abroad	Articles allowed free of Duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
Min stay of 2 years or more	Personal and house household articles, → other than those listed at Annexure I or Annexure II → but including articles mentioned in Annexure III → upto an aggregate value of ₹ 500,000	(i) Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence;	(a) For condition (i), shortfall of upto two months in stay abroad can be condoned by DC/AC of Customs if the early return is on account of :- (i) terminal leave or vacation being availed of by the passenger; or (ii) any other special circumstances for reasons to be recorded in writing.
		(ii) Total stay in India on short visit during the two preceding years should not exceed six months; and	(b) For condition (ii), the Principal Commissioner of Customs or Commissioner of Customs may condone short visits in excess of 6 months in special circumstances for reasons to be recorded in writing.
		(iii) Passenger has not availed this concession in the preceding three years.	No relaxation

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Rule 7 - Currency - The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

Rule 8 - Provisions regarding unaccompanied baggage –

(1) **These rules shall apply to unaccompanied baggage** except where they have been **specifically excluded**:

Provided that the said unaccompanied baggage had been **in the possession, abroad, of the passenger and is dispatched within 1 month of his arrival in India** or within such further period as the DC/AC of Customs may allow:

Provided further that the said unaccompanied baggage may land in India **upto 2 months before the arrival of the passenger** or within such period, not exceeding 1 year, as the DC/AC of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of 2 months due to circumstances beyond his control, such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangements in the country or countries concerned or any other reasons, which necessitated a change in the travel schedule of the passenger.

Rule 9 - Application of these rules to members of the crew –

(1) **These rules shall also apply to the members of the crew** engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

(2) **Notwithstanding anything contained in sub-rule (1), a member of crew of a vessel or an aircraft other than those referred to in sub-rule(1), shall be allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of ₹1,500.**

Provisions relating to Baggage (Sec 77-81)

Illustration 1 – Mr S, an Indian entrepreneur, went to London to explore new business opportunities on 1/4/2016. His wife also joined him in London after 3 months. The following details are submitted by them with the Customs authorities on their return to India on 15/4/2017:

(a) Used personal effects worth ₹ 80,000

(b) 2 music systems each worth ₹ 50,000

(c) Jewellery brought by Mr. Sujoy worth ₹ 48,000 (20 grams) and the jewellery brought by his wife worth ₹ 96,000(40 grams). Will they have to pay any custom duty?

Ans – (a) & (b) - There is not custom duty of used personal effects and travel souvenirs and general duty free baggage allowance is ₹ 50,000 per passenger. Thus, duty liability of Mr S and his wife is nil for the used personal effects worth ₹ 80,000 and 2 music systems each worth ₹ 50,000.

(c) As per rule 5, jewellery allowance is for passenger residing abroad for more than 1 year.

Consequently, there is no duty liability on the jewellery brought by Mr. S as he had stayed abroad for a period exceeding 1 year and weight of the jewellery brought by him is 20 grams with a value less than ₹ 50,000.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay custom duty on the entire amount of jewellery brought by her as she has already exhausted the general duty free baggage allowance of ₹ 50,000 allowed under rule 3.

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Illustration 2 – After visiting USA for a month, Mrs. And Mr. Y (Indian residents aged 40 and 45 years resp) brought to India a laptop computer valued at ₹ 80,000, used personal effects valued at ₹ 90,000 and a personal computer for ₹ 52,000. What is the customs duty payable?

Ans –There is not custom duty of used personal effects and travel souvenirs and general duty free baggage allowance is ₹ 50,000 per passenger. Thus, duty liability of Mr and Mrs. Y is nil for the used personal effects worth ₹ 90,000

Further one laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) as baggage is exempt from whole of custom duty. Thus laptop brought by them is also exempt from duty.

Duty payable on personal computer after exhausting the duty free baggage allowance will be ₹ 52,000 - ₹ 50,000 = ₹ 2,000

Effective rate of duty for baggage = 38.5% (35% - custom duty + 10% social welfare surcharge)

Therefore, total customs duty = ₹ 770

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Section 80 - Temporary detention of baggage. –

Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name.

Note - In case where the person landing in India has to go further to some other country, he may either pay ID and get duty DBK when going u/s 74. But this will involve a loss of 2% of the value of the goods. Otherwise, he may take sec 80 and leave the new goods at detention.

Section 81 - Regulations in respect of baggage. –

The Board may make regulations, -

- (a) providing for the manner of declaring the contents of any baggage;
- (b) providing for the custody, examination, assessment to duty and clearance of baggage;
- (c) providing for the transit or transshipment of baggage from one customs station to another or to a place outside India.

Goods imported or exported by post