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Levy and Exemptions from Custom Duty

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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 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.*

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

SECTION 13. Duty on pilfered goods. - *If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.*

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 –

1. 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.
2. 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.

3. Imports

- a) In case of goods cleared for home consumption** - The Honourable SC observed that import of goods will commence when they cross the territorial waters, but continues and is completed when they become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed (Garden Silk Mills 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.

4. Exports

Export of goods is complete when the goods cross the territorial waters of India.

Duty Liability in Certain Special Circumstances

Section 20 - Re-importation of goods –

*If goods are imported into India after exportation therefrom, such goods **shall** be*

→ liable to duty and

→ be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof;

Note –

- (i) Sec 20 implies that goods manufactured or produced into India which were exported earlier and thereafter re-imported are treated at par with the other goods, which are simply imported into India
- (ii) Sec 20 provides for charging of import duties on re-importation treating re-importation as “fresh importation”

However, CG has issued following exemptions in this regards –

(i) Concessional duty payable in case of re-importation of goods exported for repairs or exported under duty drawback –

S. No.	Description of goods exported	Amount of import duty payable if re-imported
1.	Goods exported under → claim for duty drawback, → refund of integrated tax paid on export goods, → bond without payment of integrated tax, etc.	Amount of incentive availed of at the time of export.

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S.No.	Description of goods exported	Amount of import duty payable if re-imported
2*.	Goods other than those falling under Sl.No. 1 exported for repaid abroad	Duty of customs Said duty, tax or cess which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. [Amended vide NN 36/2021-Customs dt 19-7-2021] It is also clarified that IGST and Compensation Cess are also leviable along with customs duty on the aforesaid value and the exemption is only from the amount of said duty, tax and cess over and above the amount so calculated. [Clarificatory explanation inserted by NN 36/2017-Customs, dated 19-7-2021][Same matter also clarified by Circular No. 16/2021-Customs, dated 19-7-2021]

Conditions to be satisfied for claiming the above two concession/exemptions:-

- (a) **Time-limit for re-importation** – The time limit for re-importation is 3 years. This is extendable to 5 years.
- (b) **Same goods** – The exported goods and the re-imported goods must be the same.
- (c) **No change in ownership** – In case of point (2*), the ownership of the goods should also not have changed.

However, these concessions would not be applicable if –

- Re-imported goods had been exported by EOU or a unit in FTP.
- Re-imported goods had been exported from a public/private warehouse.
- Re-imported goods which fall under Fourth Schedule to the Central Excise Act, 1944

(Notification No. 45/2017-Cus. Dated 30-6-2017)

Duty Liability in Certain Special Circumstances

(ii) Exemption to re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process –

S.No.	Description of goods exported	Time-limit for re-importation from the date of exportation	Other conditions to be satisfied
1.	Goods manufactured in India and re-imported for repairs or for reconditioning other than the specified goods	3 years In case of export to Nepal, such time-limit is 10 years	(a) Goods must be re-exported within 6 months (extendable till 1 year) of the date of re-importation. (b) The AC/DC of Customs is satisfied as regards identity of the goods. (c) The importer at the time of importation executes a bond.
2*.	Goods manufactured in India and re-imported for (a) Reprocessing (b) Refining (c) Re-making (d) Subject to any process similar to the processes referred to in clauses (a) to (c) above.	1 year	

Note – In 2* above, if any loss of imported goods is noticed during such operation, such loss shall be exempted from whole of the custom duties subject to the satisfaction of AC/DC of Customs.

The exemption is available even if quantity re-imported is short or low in quantity as long as nature and variety of goods is same. **(Notification No. 158/95-Cus. Dated 14-11-1995 as amended vide NN 60/2018-Cus dt 11-9-2018)**

Duty Liability in Certain Special Circumstances

Illustration 1 – A machine was originally imported from Japan at ₹ 250 lakh in July, 20xx on payment of all duties of customs. The said machine was exported (sent-back) to supplier for repairs in December, 20xx and re-imported without any re-manufacturing or re-processing in Oct next year after repairs. Since the machine was under warranty period, the repairs were carried out free of cost.

However, the fair cost of repairs carried out (including cost of material ₹ 6 lakh) would have been ₹ 9 lakh. Actual insurance and freight charges (to and fro) were ₹ 3 lakh. The rate of basic customs duty is 10% and integrated tax is 12%. Ignore GST compensation cess.

Compute the amount of customs duty payable (if any) on re-import of the machine after repairs. The ownership of the machine has not been changed during the period.

Note – The importer intends to avail exemption, if any, with regard to re-importation of goods which had been exported for repairs abroad.

Ans – As per NN 45/2017-Cus dt 30-6-2017, duty payable on re-importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such cost are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

- (a) Goods must be re-imported within 3 years, extendable by further 2 years, after their exportation.
- (b) Exported goods and the re-imported goods must be the same
- (c) Ownership of the goods should not change

Duty Liability in Certain Special Circumstances

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

Particulars	₹
Value of goods re-imported after exports [₹ 9 lakh (including cost of materials) + ₹ 3 lakh]	12,00,000
Add: Basic customs duty @ 10% (A)	1,20,000
Add: Social Welfare Surcharge @ 10% on ₹ 1,20,000 (B)	<u>12,000</u>
Value for computing integrated tax	13,32,000
Integrated tax @ 12% (₹ 13,32,000*12%) (C)	1,59,840
Customs duty and integrated tax payable [(A) + (B) + (C)]	2,91,840

Duty Liability in Certain Special Circumstances

Section 21 - Goods derelict, wreck, etc. -

All goods, derelict, jetsam, flotsam and wreck brought or coming into India, shall be dealt with as if they were imported into India, unless it be shown to the satisfaction of the proper officer that they are entitled to be admitted duty-free under this Act.

Note –

The concept of 'goods brought into India' is not confined to goods, which are intentionally brought into India, but also extends to derelict, jetsam, flotsam and wreck brought or coming into India. This implies that apart from goods which are normally imported in the course of international trade, flotsam, and jetsam, which are washed ashore and derelict and wreck brought into India out of compulsion are also treated on par with trade goods.

Meaning of the various terms –

Derelict – This refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery.

Jetsam – This refers to goods which are intentionally thrown in the sea for protecting the vessel in bad weather conditions.

Flotsam – These are the goods remaining afloat when the ship has sunk.

Wreck – This refers to cargo or vessel or any property which are cast ashore by tides after ship wreck.

Duty Liability in Certain Special Circumstances

Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 [NN. 74/2022 - Customs (N.T.), dated 09.09.2022]

In exercise of the powers conferred by section 156 of the Customs Act, 1962 (52 of 1962), and in supersession of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: –

Rule 2 : Application

These rules shall apply where –

- a. a notification provides for the observance of these rules;
- b. an importer intends to avail the benefit of any notification and such benefit is dependent upon the use of the goods imported being covered by that notification for the manufacture of any commodity or provision of output service or being put to a specified end use.

Rule 3 : Definition

In these rules, unless the context otherwise requires, -

- a. “Act” means the Customs Act, 1962 (52 of 1962);
- b. “capital goods” means goods, the value of which is capitalized in the books of account of the importer;
- c. “customs automated system” means the Indian Customs Electronic Data Interchange System;
- d. “date of import” means the date of the order made by the proper officer under section 47, permitting clearance of the goods;

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- e. *Form” means a form annexed to these rules;*
- f. *“information” means the information provided by the importer who intends to avail the benefit of a notification;*
- g. *“job work” means any treatment, process or manufacture, consistent with the notification undertaken by a person on goods belonging to the importer except gold, jewellery and articles thereof, and other precious metals or stones and the term “job worker” shall be construed accordingly;*
- h. *“jurisdictional Custom Officer” means an officer of Customs of a rank equivalent to the rank of Superintendent or Appraiser exercising jurisdiction over – a. the premises where either the goods imported shall be put to use for manufacture or for rendering output services; b. the primary address specified in the Importer Exporter Code issued by Directorate General of Foreign Trade in other cases;*
- i. *“manufacture” means the processing of raw materials or inputs by the importer in any manner that results in emergence of a new product having a distinct nature or character or use or name; and the term “manufacturer” shall be construed accordingly;*
- j. *“notification” includes any notification issued under sub-section (1) of section 25 and section 11 of the Act;*
- k. *“output service” means supply of service excluding after-sales service, utilising imported goods.*
- l. *“section” means a section of the Act.*
- m. *“specified end use” means dealing with the goods imported in a manner specified in the notification and includes supply to the intended person and the term “end use recipient” shall be construed accordingly.*

(2) Words and expressions used in these rules and not defined but defined in the Act shall have the same meanings as assigned to them in the said Act.

Duty Liability in Certain Special Circumstances

Rule 4 : Importer to give one time prior information

(1) The importer shall provide one-time prior information on the common portal, in Form IGCR-1 containing the following particulars, namely: —

- i. the name and address of the importer and his job worker, if any;*
- ii. the goods produced or process undertaken at the manufacturing facility of the importer or his job worker, if any, or both;*
- iii. the nature and description of goods imported used in the manufacture of goods at the premises of the importer or the job worker, if any;*
- iv. particulars of the notification applicable on such import;*
- v. nature of output service rendered utilising the goods imported;*
- vi. particulars of premises intended to be used in case of unit transfer;*
- vii. details of the end use recipient in cases where goods imported are supplied for specified end use; and*
- viii. the intended ports of import.*

(2) On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information:

However, such information may be updated on the common portal in case of a change in the details furnished in Form IGCR-1.

Duty Liability in Certain Special Circumstances

(3) The importer who intends to avail the benefit of a notification shall submit a continuity bond with such surety or security as deemed appropriate by the AC/DC of Customs having jurisdiction over the premises where the goods imported shall be put to use for manufacture of goods or for rendering output service or being put to use for a specified end use, with an undertaking to pay-

- a) in case of a notification that provides a duty exemption, the amount equal to the exemption benefit claimed at the time of import, along with interest @ 15% p.a. for the period from the date of import of the goods till the date of actual payment of the entire amount that he is liable to pay;*
- b) in all cases where the notification is other than one that provides an exemption benefit, the amount equal to the assessable value of the goods being imported.*

Rule 5 : Procedure to be followed

(1) The importer who intends to avail the benefit of a notification shall be required to mention the IIN and continuity bond number and details while filing the Bill of Entry.

(2) The AC/DC of Customs at the custom station of importation shall allow the benefit of the notification to the importer.

(3) Where a Bill of Entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system and the details shall be made available electronically to the jurisdictional Customs Officer.

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Rule 6 : Importer to maintain records

(1) The importer shall maintain an account so as to clearly indicate –

- i. quantity and value of goods imported;*
- ii. quantity and date of receipt of the goods imported in the relevant premises;*
- iii. quantity of such goods consumed including the quantity used domestically for manufacture, quantity exported, if any, to fulfil the intended purpose and quantity of goods sent to an end use recipient;*
- iv. quantity of goods sent for job work and the nature of job work carried out;*
- v. quantity of goods received after job work;*
- vi. quantity of goods re-exported, if any, under rule 10; and*
- vii. quantity remaining in stock, according to bills of entry,*

and shall produce the said account as and when required by the AC/DC of Customs having jurisdiction over the premises or where the goods imported shall be put to use for manufacture of goods or for rendering output service.

However, in case of non-receipt or short receipt of goods imported in the relevant premises, the importer shall intimate such non-receipt or short receipt immediately on the common portal in the Form IGCR-2.

(2) The importer shall submit a monthly statement on the common portal in the Form IGCR- 3 by the 10th day of the following month;

However, the importer may submit details of goods consumed in the Form IGCR-3A at any point of time, for immediate re-credit of the bond which shall become a part of the monthly statement of the subsequent month.

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Rule 7 : Procedure for allowing imported goods for job work

- (1) The importer shall maintain a record of the goods sent for job work during the month and mention the same in the monthly statement referred to in sub-rule (2) of Rule 6.*
- (2) The importer shall send the goods to the premises of the job worker under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.*
- (3) The maximum period for which the goods can be sent to the job worker shall be 6 months from the date of invoice or e-way bill.*
- (4) In case the importer is unable to establish that the goods sent for job work have been used as per the particulars mentioned under rule 4, the jurisdictional Customs Officer shall take necessary action against the importer under rule 11 and 12.*
- (5) The job worker shall,-*
 - i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;*
 - ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;*
 - iii. after completion of the job work send the processed goods to the importer or to another job worker as directed by the importer for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.*

Rule 8 : Procedure for allowing imported goods for unit transfer

- (1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.*

Duty Liability in Certain Special Circumstances

(2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

(3) The importer shall in relation to transfer of goods to another unit,-

- i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;*
- ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;*
- iii. after completion of the said process, send the processed goods back to the premises of the importer from where the goods were received or to a job worker for carrying out the remaining processes, if any, under the cover of an invoice or electronic way bill.*

Rule 9 : Procedure for supplying imported goods to the end use recipient

(1) The importer shall maintain a record of the goods supplied to the end use recipient during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.

(2) The importer shall send the goods under an invoice or wherever applicable, through an e-way bill, as specified in the CGST Act, 2017, mentioning the description and quantity of the goods.

(3) In case of supply for replenishment or Export against supply, the end use recipient shall,-

- i. maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during such process;*
- ii. produce the account details before the jurisdictional Customs Officer as and when required by the said officer;*
- iii. produce the relevant details to the importer for fulfilment of the benefit under the notification;*

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Rule 10 : Re-export or clearance of unutilised or defective goods

(1) The importer who has availed the benefit of a notification shall use the goods imported in accordance with the conditions mentioned in the concerned notification within the period and with respect to unutilised or defective goods, so imported, the importer shall have an option to either re-export or clear the same for home consumption, within the said period, namely –

(i) within the period specified in the notification;

(ii) within 6 months from the date of import, where the time period is not specified in the notification:

However, the said period of 6 months can be further extended by the jurisdictional Commissioner for a period not exceeding 3 months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.

(2) Any re-export of the unutilised or defective goods referred to in sub rule (1) shall be recorded by the importer in the monthly statement by providing the details of necessary export documents:

However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

(3) The importer who intends to clear unutilised or defective goods for home consumption shall have an option of voluntary payment of applicable duty along with interest on the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.

Duty Liability in Certain Special Circumstances

(4) The importer shall have an option to clear the capital goods imported, after having been used for the specified purpose, on payment of duty equal to the exemption claimed at the time of importation, along with interest @ 15% p.a. on the depreciated value allowed in straight line method as under —

- i. for every quarter in the first year @ 4%;*
- ii. for every quarter in the second year @ 3%;*
- iii. for every quarter in the third year @ 3%;*
- iv. for every quarter in the fourth and fifth year @ 2.5%;*
- v. and thereafter for every quarter @ 2%.*

Explanation. —

- (1) For the purpose of computing rate of depreciation under this rule for any part of a quarter, a full quarter shall be taken into account.*
- (2) The depreciation shall be allowed from the date when the capital goods imported have come into use for the purpose as laid down in the notification, upto the date of its clearance.*

(5) The importer shall have the option of voluntary payment of the duty along with interest, through the common portal and the particulars of such clearance and the duty payment shall be recorded by the importer in the monthly statement.

Duty Liability in Certain Special Circumstances

Rule 11 : Recovery of duty in certain case

(1) In the event of any failure on the part of the importer to comply with the conditions mentioned in sub-rule (1) of rule 10 or where the payment referred in sub-rules (3) and (4) of rule 10 is not paid or short paid, the AC/DC of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of an amount as under –

a. in case of a notification that provides a duty exemption, equal to the amount of exemption claimed at the time of importation, along with interest @ 15% p.a. for the period from the date of import of the goods till the date of actual payment of the entire amount of duty that he is liable to pay;

b. in cases where the notification is other than one that provides an exemption benefit, an amount equal to the assessable value of the goods being imported.

(2) Notwithstanding anything contained in these rules in relation to removal and processing of imported goods for jobwork, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the notification and in the event of failure to do so, the AC/DC of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for specified end use or for rendering output service shall take action in accordance with these rules.

Rule 12 : Penalty

The importer or a job worker who contravenes any of the provisions of these rules or abets such contravention shall be liable to a penalty to an extent of the amount specified u/s 158(2)(ii) (i.e. Rs. 2,00,000/-).

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Clarification regarding introduction of new rules – “Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022” [Circular No. 18/2022 - Customs, dated 10.09.2022]

1. The new rules are introduced to broaden the scope of coverage of IGCR.
2. Clarifications in respect of major changes implemented through new rules:

(i) Time period for utilisation of goods:

When time period for utilisation is specified in the notifications, the said time period will apply. If not specified, the time period of 6 months will apply.

Further, multiple representations have been received in the Board regarding the inability to utilise the goods imported for intended purpose under IGCR within the prescribed time period of 6 months. In order to facilitate trade in such situations, a provision has been introduced wherein the jurisdictional Commissioner can further extend such period of 6 months by another 3 months. However, it is clarified that such extension can be given provided the importer furnishes sufficient reasons for not conforming to the time period so prescribed, which were beyond the importer's control.

(ii) Specified End Use:

IGCRS Rule, 2022 is also expanded to include cases where the intended purpose is for putting the goods imported to specified end use and not necessarily manufacturing or for providing output services. In this regard, it is clarified that:

- a. Procedure of intimation, generation of a unique IGCR Identification Number (IIN), import of the goods, submission of bond, maintenance of records, filing of monthly statement or any other procedures remains the same. The Importer shall undertake compliance to the officer having jurisdiction over primary address specified in the Importer Exporter

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Code (IEC) issued by DGFT.

b. End use may be specified by a notification u/S 25(1) or u/S 11 of the Customs Act, 1962.

c. Where the import is undertaken for a specified end use and no differential duty is involved, the value of the bond shall be equal to the assessable value of the goods.

d. In cases where the intended purpose of import is supply of the goods to an end use recipient, the importer shall supply these goods under an invoice or where ever applicable, through an e-way bill, as mentioned in the CGST Act, 2017. The description and quantity of such goods shall be clearly mentioned by the importer.

e. The importer shall maintain a record of all such goods supplied in a month and provide the details in the monthly statement.

f. The restrictions on job work are only relating to the case where it is undertaken on the goods belonging to importer and does not apply to the end use recipient who receives the goods on the supply and deals with it as stipulated in the notification.

(iii) Other Changes:

As a trade facilitation measure, a new Form IGCR-3A has been notified for confirmation of consumption for intended purpose at the common portal at any point in time for immediate re-credit of the bond by the jurisdictional AC/DC, without waiting for the filing of monthly statement on the 10th of every month. The details filed in form IGCR-3A shall get auto populated in the monthly statement of the subsequent month, which has to be only confirmed by the importer.

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Clarification regarding submission of surety or security [Circular 48/2017 – Customs, Dated 08.12.2017, as amended by Circular No. 18/2022 – Customs, dated 10.09.2022]

1. Keeping in view the objective of the Government to further simplify the business procedures and to reduce the burden of transaction cost & compliance cost, CBIC has decided to further ease the norms for taking security/surety along with the Bond.

2. In view of the above, Bank Guarantee/cash security/surety shall be taken as per the following norms for the purpose of extending the benefit under the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules 2022:

S.No.	Category of Importer	Quantum of Bank Guarantee/Cash Security and Requirement of Surety
1.	All importer(s) who are either a department of Central Government or a State Government or a Union Territory or a Public Sector Undertaking or an autonomous institute under the said governments	Bank Guarantee/Cash Security-Not required. Further, no surety required. [excluding cases in S.N. 4]
2.	All importers who are Authorized Economic Operators	
3.	All importers who are nominated agencies for the import of gold under the India UAE CEPA	

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S.No.	Category of Importer	Quantum of Bank Guarantee/Cash Security and Requirement of Surety
4.	Designated banks nominated by RBI as well as public sector undertakings importing under NN. 56/2000 - Customs, dated 05.05.2000 or NN. 57/2000 - Customs, dated 08.05.2000	Bank Guarantee/Cash Security-Not required. Further, no surety required. Provided- a. they have not defaulted in following the procedure and conditions specified by DGFT; b. they have not defaulted in payment of duty within the specified period in cases where there was a default in export of jewellery by an exporter to whom the gold/silver/platinum had been supplied; c. they have not been involved in violations involving fraud or collusion or wilful mis- statement or suppression off acts under relevant provisions of the Customs Act, 1962, the Central Excise Act, 1944, the Finance Act, 1994, the Foreign Trade (Development & Regulation) Act, 1992, the Foreign Exchange Management Act, 1999 and the rules made thereunder during the last 3 years.
5.	All importers who are manufacturers or service providers registered under GST and have been filing prescribed GST returns without fail and whose annual turnover in the preceding year is above Rs. 1 crore	Importers shall give surety for the amount of duty foregone. However, where the importer is not able to provide the surety, a Bank Guarantee / Cash Security equivalent to not more than 5% of bond debit value* shall be furnished. [excluding cases in S.N. 4]
6.	Importers not covered under S.N. 1,2,3,4 or 5 above	Bank Guarantee/Cash Security-Not more than 25% of bond debit value*.

*Bond debit value – Duty foregone in case of concessional rate and assessable value of the goods in other cases.

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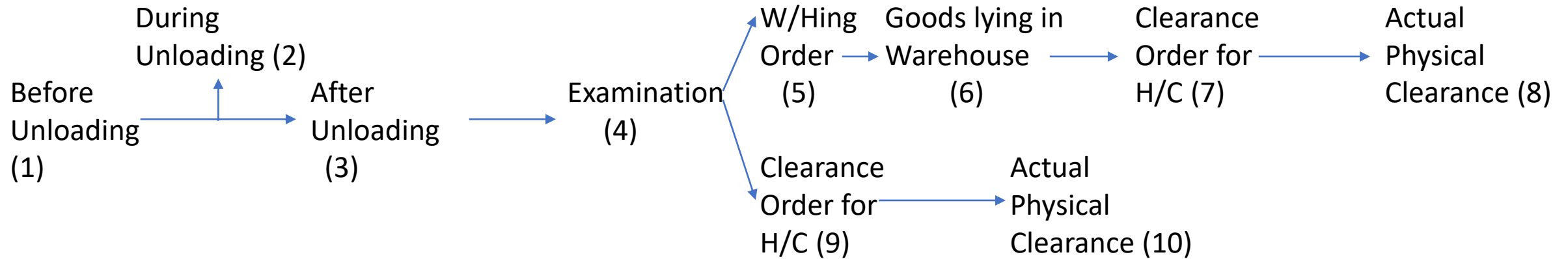
Explanation: Duty foregone would be calculated by reckoning the duty applicable if the importer were not to follow the procedure prescribed in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules 2022.

3. The upper limit of Bank Guarantee/ Cash Security to the extent of 5% and 25% respectively has been fixed unless the Deputy Commissioner or the Assistant Commissioner has reasons to demand a higher quantum of Bank guarantee/ cash security, in which case the matter shall be referred to the jurisdictional Commissioner who may order for higher quantum of Bank Guarantee or cash security, subject to limit of 100% of the total duty foregone, after recording the reasons thereof in writing.

4. In order to avail above exemption/ relaxation from furnishing Bank Guarantee/Cash security or surety, prosecution should not have been initiated or launched against the importer under, any Act administered by the CBIC or SGST Act or IGST Act or UTGST Act during the previous three financial years.

5. Where an importer so requests, the bank guarantee/ cash security may be taken consignment-wise to obviate the financial burden. Further, all bank guarantee(s) should have self-renewal clause.

Remission and Abatement of Duty



<u>Section</u>	<u>Coverage</u>	<u>Effect</u>
<u>Sec 13</u>	<u>Pilfered Goods</u> [(3) to (5)] [(3) to (9)]	<u>No Duty</u> (Importer not liable for payment of duty-but if goods are restored to him then he will become liable for payment of duty)
<u>Sec 22</u>	<u>Damaged or Deteriorated Goods</u> [(1) to (2)] [(3) to (4)] [(3) to (8)]	<u>Reduced/Abated Duty</u> Duty will be reduced proportionate to reduction in value of goods due to damage or deterioration
<u>Sec 23</u>	<u>Goods Lost/Destroyed</u> [(1) to (8)] [(1) to (10)] <u>Goods title of which is Abandoned</u> [(1) to (5)] [(1) to (9)]	<u>Remission of Duty</u> Remission application to Ac/DC – then AC/DC will pass “remission order” [if duty has already been paid, then importer shall be entitled to refund] <u>No Duty</u> However, title of such goods cannot be relinquished in relation to an offence appears to have been committed under Customs Act, 1962 or any other Act
<u>Sec 24</u>	<u>Goods Denatured/Mutilated</u>	<u>Duty on Goods in Denatured / Mutilated Form</u>

Remission and Abatement of Duty

Section 13 - Duty on pilfered goods –

If any imported goods are pilfered

→ after the unloading thereof and

→ before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

Note –

1. “Pilferage” means ‘to steal, especially in small quantities, petty theft’. Thus, sec 13 covers “petty losses” only. Major loss of goods is not covered by Sec 13. In respect of those losses, remission benefit can be claimed in terms of Sec 23(1) of Customs Act, 1962.
2. Sec 13 covers “pilferage” after unloading but prior to clearance for Warehousing/Home Consumption. In simple words, it covers “pilferage” which occurs in the custody of custodian. Sec 13 disables CG from collecting the duty on pilfered goods from the importer. On the other hand, Sec 45 enables the CG to demand duty so lost from the custodian. In other words, Customs provisions shift burden of custom duty on “pilfered goods” from the importer to custodian.

Remission and Abatement of Duty

Section 22 - Abatement of duty on damaged or deteriorated goods –

(1) *Where it is shown to the satisfaction of the AC of Customs or DC of Customs -*

(a) *that any imported goods had been damaged or had deteriorated at any time **before or during the unloading** of the goods in India; or*

(b) *that any **imported goods**, other than warehoused goods, had been damaged at any time after the unloading thereof in India but before their examination under section 17, on account of any accident not due to any wilful act, negligence or default of the importer, his employee or agent; or*

(c) *that any warehoused goods had been damaged at any time before clearance for home consumption on account of any accident not due to any wilful act, negligence or default of the owner, his employee or agent,*

such goods shall be chargeable to duty in accordance with the provisions of sub-section (2).

(2) *The duty to be charged on the goods referred to in sub-section (1) **shall bear the same proportion to the duty chargeable on the goods before the damage or deterioration which the value of the damaged or deteriorated goods bears to the value of the goods before the damage or deterioration.***

(3) *For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-*

(a) *the value of such goods may be ascertained by the proper officer, or*

(b) *such goods may be sold by the proper officer by public auction or by tender, or with the consent of the owner in any other manner, and the gross sale proceeds shall be deemed to be the value of such goods.*

Eg –If the value of goods is ₹ 10k and after damage the value is ₹2k, then duty payable on ₹ 10k should be reduced to 20%

Remission and Abatement of Duty

Section 23 - Remission of duty on lost, destroyed or abandoned goods –

(1) Without prejudice to the provisions of section 13,

→ where it is shown to the satisfaction of the AC of Customs or DC of Customs

→ that any **imported goods have been lost (otherwise than as a result of pilferage) or destroyed,**

→ at any time before clearance for home consumption,

→ the AC of Customs or DC of Customs **shall remit the duty on such goods.**

(2) The **owner of any imported goods may, at any time before**

→ an order for clearance of goods for home consumption under section 47 or

→ an order for permitting the deposit of goods in a warehouse under section 60 has been made,

relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon;

Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Note

1. Sec 23 covers “total loss of goods”. It does not cover “petty theft/petty losses” as that is covered by Sec 13. It shall be noticed that Sec 13 (covering petty losses) and Sec 23 (covering total losses) are mutually exclusive.
2. Sec 23 operates in a manner different from sec 13. As for claiming Sec 23 benefit, remission application shall be submitted to AC/DC and then obtain remission order from PO.

Remission and Abatement of Duty

Note

1. Sometimes it may so happen that the importer is unwilling or unable to take delivery of the imported goods. Some of the likely causes may be:
 - a) The goods may not be according to the specifications.
 - b) The goods may have been damaged or deteriorated during voyage and as such may not be useful to the importer.
 - c) There might have been breach of contract and therefore the importer may be unwilling to take delivery of the goods
 - d) There is substantial fall in the market price of the goods in India because of which clearance of goods is no longer a financial viable option for importer.

In all such cases, the goods having been imported, the liability to customs duty is imposed and therefore the importer has to relinquish his title to the goods unconditionally and abandon them.
2. Relinquishment is done by endorsing the document of title (Bill of lading) in favour of Commissioner of Customs (alongwith the Invoice). If the importer does so, he will not be liable for paying customs duty.

Remission and Abatement of Duty

Basis	Pilferage of goods under section 13	Loss or destruction of goods under section 23
Meaning	The word 'pilfer' means to steal, especially in small quantities; petty theft	The word 'lost' or 'destroyed' refers to total loss of goods i.e. loss is forever and beyond recovery. Abandonment of goods is possible where the importer is unwilling/unable to take the delivery of the imported goods.
Duty on goods	The importer shall not be liable to pay the duty leviable on such goods	The duty paid on such goods shall be remitted to the importer.
Subsequent restoration of goods	Where the pilfered goods are restored to the importer after pilferage, the importer become liable to duty.	In case of destruction of goods, the restoration is not possible
Warehoused goods	Provisions of section 13 are not applicable to warehoused goods.	Provisions of section 23 apply to warehoused goods also.
Onus to prove the pilferage/ destruction of loss of goods	The onus to prove the pilferage does not lie on the importer as it is obvious at the time of examination by the proper officer.	The importer has to prove the loss/ destruction to the satisfaction of the AC/DC of Customs.
Time of occurrence of pilferage or loss/destruction	The imported goods must have been pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse	The imported goods must have been lost/destroyed at any time before clearance for home consumption under section 47.

Illustration

What will be the impact on the customs duty if the goods are –

- (i) **Damaged inside the warehouse before clearance for home consumption** – When the goods are damaged inside the warehouse abatement in customs duty, on resultant loss in value, has been provided through sec 22.
- (ii) **Deteriorated inside the warehouse before clearance for home consumption** – In case of warehoused goods, only damages are covered and not deterioration, hence abatement will not be available in this case and full duty will have to be paid. However, as per first proviso to sec 68 of Customs Act, 1962, owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods. Upon such relinquishment, duty will not be payable on such goods but rent, interest, other charges and penalties would be payable.
- (iii) **Destroyed in the warehouse before clearance for Home consumption** – When the goods are destroyed in the warehouse before clearance for home consumption, customs duty will be remitted as per the provisions of sec 23.
- (iv) **Destroyed on the wharf, before clearance for home consumption** – As all the conditions of sec 23 are fulfilled, duty will be remitted in this case also.
- (v) **Destroyed after clearance from warehouse** – Remission of duty u/s 23 is possible only when destruction occurs before clearance for home consumption. In case of destruction after clearance from a warehouse, no remission of duty is possible.

Remission and Abatement of Duty

Illustration

Pace Scraps, imported during Aug 20xx, by sea, a consignment of metal scrap weighing 6,000 M.T. (metric tonnes) from USA. They filed a bill of entry for home consumption. The AC passed an order for clearance of goods and applicable duty was paid by them. Pace scraps, thereafter found, on taking delivery from the Port Trust Authorities (i.e. before the clearance for H/C), that only 5,500 M.T. of scrap were available at the docks although they had paid duty for the entire 6,000 M.T., since there was no short-landing of cargo. The short-delivery of 500 M.T. was also substantiated by the Port-Trust Authorities, who gave a “weighment certificate” to Pace Scraps.

On filing a representation to the Customs Department, Pace Scraps has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for remission of duty on the 500 M.T. not delivered by the Port-Trust. Please advise as per law.

Ans – As per the provisions of sec 23, where it is shown to the satisfaction of AC/DC that any imported goods have been lost or destroyed, otherwise than as a result of pilferage at any time before clearance for home consumption, the AC/DC shall remit the duty on such goods. Therefore, duty shall be remitted only if loss has occurred before clearance for H/C. In the given case, it is apparent from the facts that quantity of scrap received in India was 6000 metric tonnes and 500 metric tonnes thereof was lost when it was in custody of Port Authorities i.e. before clearance for H/C was made. Also, the huge loss of 500 MT of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as “Petty Theft”. Hence Pace Scraps may take shelter under sec 23 justifying his claim for remission of duty.

Remission and Abatement of Duty

Section 24 - Power to make rules for denaturing or mutilation of goods –

The CG **may** make rules for permitting **at the request of the owner**

→ the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and

→ where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.

Eg – Ethyl Alcohol which is not denatured attracts a higher rate of customs duty whereas denatured ethyl alcohol attracts lower rate of duty. Assuming undenatured ethyl alcohol is imported, certain very bitter chemicals can be added to denature the spirits as per Rules and once they are denatured, they attract the lower rate of duty.

Remission and Abatement of Duty

Section 25 - Power to grant exemption from duty –

(1) If the CG is satisfied that it is necessary in the public interest so to do, it may, **by notification in the Official Gazette**, exempt **generally either absolutely or subject to such conditions** (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon.

(2) If the CG is satisfied that it is necessary in the public interest so to do, it may, **by special order in each case**, exempt from the payment of duty, under circumstances of an exceptional nature to be stated in such order, any goods on which duty is leviable.

(2A) The CG may, if it considers it necessary or expedient so to do for the purpose of clarifying the
→ scope or applicability of any notification issued under sub-section (1) or
→ order issued under sub-section (2),

insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette, at any time within 1 year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation **shall have effect** as if it had always been the part of the first such notification or order, as the case may be.

(3) An exemption under sub-section (1) or sub-section (2) in respect of any goods **from any part of the duty of customs leviable thereon** (the duty of customs leviable thereon being hereinafter referred to as the **STATUTORY DUTY**) may be granted by providing for the levy of a duty on such goods at a rate expressed in a form or method different from the form or method in which the statutory duty is leviable and any exemption granted in relation to any goods in the manner

Remission and Abatement of Duty

provided in this sub-section shall have effect subject to the condition that the duty of customs chargeable on such goods shall in no case exceed the statutory duty.

Explanation. - "Form or method", in relation to a rate of duty of customs, means the basis, namely, valuation, weight, number, length, area, volume or other measure with reference to which the duty is leviable.]

(4) Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the CG for publication in the Official Gazette.

[(4A) Where any exemption is granted subject to any condition under sub-section (1), such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation:

Provided that in respect of any such exemption in force as on the date on which the Finance Bill, 2021 receives the assent of the President, the said period of two years shall be reckoned from the 1st day of February, 2021.][**Sub-section Inserted vide The Finance Act, 2021, w.e.f. 28-3-2021]**

(6) Notwithstanding anything contained in this Act, no duty shall be collected if the amount of duty leviable is equal to, or less than, ₹ 100.

Remission and Abatement of Duty

(7) The mineral oils (including petroleum and natural gas) extracted or produced in the continental shelf of India or exclusive economic zone of India as referred to in section 6 and section 7, respectively, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), and imported prior to the 7th day of February, 2002 shall be deemed to be and shall always be deemed to have been exempted from the whole of the duties of customs leviable on such mineral oils and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, no suit or other proceedings in respect of such mineral oils shall be maintained or continued in any court, tribunal or other authority.

(8) Notwithstanding the exemption provided under sub-section (7), no refund of duties of customs paid in respect of the mineral oils specified therein shall be made.

Note – If a person has already paid customs duty in respect of such mineral oils, then he will not be allowed refund of such duty although customs duty has been exempted. It means the benefit of exemption shall be allowed to those, who have not paid customs duty on such mineral oils.

The exemption notifications are meant for exempting the goods validly imported into India; they are not meant to exempt the smugglers. So, if any goods are smuggled into India, then such goods cannot be regarded as validly “imported goods” under exemption notification. Hence, exemption from duty on such smuggled goods shall not be available. [CC vs. M. Ambalal & Co. (2010)(SC)]

However, it must be noted that the situation would be different if the Customs Tariff Act provides for ‘NIL’ rate of duty. If that is the case, then, no duty can be charged even on the smuggled goods.

Remission and Abatement of Duty

Section 25A - Inward processing of goods -

Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are

*→ imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the **following conditions**, namely:—*

- (a) the goods shall be **re-exported after such repair**, further processing or manufacture, as the case may be, within a period of 1 year from the date on which the order for clearance of the imported goods is made;*
- (b) the imported goods are identifiable in the export goods; and*
- (c) such other conditions as may be specified in that notification.*

[Section 25A inserted by Finance Act, 2018, w.e.f. 28-3-2018]

Note – Section 25A is inserted to empower the Central Government to exempt goods imported for repair, further processing or manufacture, from payment of whole or any part of duty of customs, leviable thereon subject to certain conditions.

Section 25B - Outward processing of goods –

Notwithstanding anything contained in section 20, where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are

*→ re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the **following conditions**, namely:—*

- (a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of 1 year from the date on which the order permitting clearance for export is made;*
- (b) the exported goods are identifiable in the re-imported goods; and*
- (c) such other conditions as may be specified in that notification.*

[Section 25B inserted by Finance Act, 2018, w.e.f. 28-3-2018]

Note – Section 25B is inserted to empower Central Government to exempt goods re-imported after export for repair, further processing or manufacture from payment of whole or any part of customs, leviable thereon subject to certain conditions.

Refund of Import Duty if Goods are Found Defective or not as per specifications

(Sec 26A)

(1) Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if -

(a) the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

***Provided** that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;*

(b) the goods are identified to the satisfaction of the AC/DC of Customs as the goods which were imported;

(c) the importer does not claim drawback under any other provisions of this Act; and

(d) (i) the goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

*(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed and **within a period not exceeding 30 days** from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47*

***Provided** that the period of **30 days may**, on sufficient cause being shown, **be extended** by the Principal Commissioner of Customs or Commissioner of Customs for a period not exceeding 3 months:*

***Provided further** that nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.*

Refund of Import Duty if Goods are Found Defective or not as per specifications (Sec 26A)

(2) An application for refund of duty shall be made before the expiry of 6 months from the **relevant date** in such form and in such manner as may be prescribed.

Explanation - For the purposes of this sub-section, "**relevant date**" means,-

- a) in cases where the goods are exported out of India, the date on which the proper officer makes an order permitting clearance and loading of goods for exportation under section 51;
- b) in cases where the title to the goods is relinquished, the date of such relinquishment;
- c) in cases where the goods are destroyed or rendered commercially valueless, the date of such destruction or rendering of goods commercially valueless.

(3) **No refund** under sub-section (1) shall be allowed in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

(4) The Board may, by notification in the Official Gazette, specify any other condition subject to which the refund under sub-section (1) may be allowed.]