Chapter I

PRELIMINARY

SECTION 1. SHORT TITLE, EXTENT AND COMMENCEMENT

(1) This Act may be called the Customs Act, 1962.

(2) It extends to the whole of India [1][, fishing and fishing related activities by Indian-flagged fishing vessels beyond territorial waters of India] [2][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 [3][date] as the Central Government may, by notification in the Official Gazette, appoint.

SECTION 2. DEFINITIONS

In this Act, unless the context otherwise requires –

[4][(1) "adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Board, [5][Commissioner (Appeals)] or Appellate Tribunal;

(1A) "aircraft" has the same meaning in the Aircraft Act, 1934 (22 of 1934);

(1B) "Appellate Tribunal" means the Customs, Excise and [6][Service Tax] Appellate Tribunal constituted under section 129;]

[7][(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

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1 Inserted by Finance Act, 2026 (4 of 2026), dt. 30.3.2026, Effective date yet to be notified.

2 Inserted by the Finance Act, 2018 (13 of 2018) dated 29.03.2018, w.e.f. 29.03.2018.

3 01.02.1963, vide Notification No. GSR 155, dated 23.01.1963.

4 Substituted by Act 44 of 1980, w.e.f. 11.10.1982.

5 Substituted for "Collector (Appeals) by Act 22 of 1995.

6 Substituted for "Gold Control" by Finance Act, 2003, w.e.f. 14.05.2003.

7 Substituted by the Finance Act, 2018 (Act 13 of 2018), dated 29.03.2018, prior to substitution it read as:
"(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;"

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;]

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

[1][(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;]

(4) "bill of entry" means a bill of entry referred to in section 46;

(5) "bill of export" means a bill of export referred to in section 50;

(6) "Board" means the [2][Central Board of Indirect Taxes and Customs] constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(7) "coastal goods" means goods, other than imported goods, transported in a vessel from one port in India to another;

(7A) "Commissioner (Appeals)" means a person appointed to be a Commissioner of Customs (Appeals) under sub-section (1) of section 4;

[3][(7B) "common portal" means the Common Customs Electronic Portal referred to in section 154C;]

(8) [4][Principal Commissioner of Customs or Commissioner of Customs], except for the purposes of Chapter XV, includes an Additional Commissioner of Customs;

(9) "conveyance" includes a vessel, an aircraft and a vehicle;

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1 Inserted by the Finance Act, 2017, dt. 31.3.2017, w.e.f. 31.03.2017.

2 Substituted for "Central Board of Excise and Customs" by the Finance Act, 2018, dated 29.03.2018, w.e.f. 29.3.2018.

3 Inserted by the Finance Act, 2021, Finance Act, 2021, dated 28.03.2021.

4 Substituted for "Commissioner of Customs" by the Finance (No. 2) Act, 2014, w.e.f. 06.08.2014.

(10) "customs airport" means any airport appointed under clause (a) of section 7 to be a customs airport, [1][and includes a place appointed under clause (aa) of that section to be an air freight station];

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

(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;

(13) "customs station" means any customs port, [3][customs airport, international courier terminal, foreign post office] or land customs station;

(14) "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;

(15) "duty" means a duty of customs leviable under this Act;

(16) "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes [4][***] the entry made under the regulations made under section 84;

(17) "examination", in relation to any goods, includes measurement and weighment thereof;

(18) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

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

(20) "exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes [5][any owner, beneficial owner] or any person holding himself out to be the exporter;

[6][(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;]

(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 –

1 Inserted by the Finance Act, 2012, w.e.f. 01.04.2012.

2 Inserted by the Taxation Laws (Amendment) Act, 2017, w.e.f. 01.07.2017.

3 Substituted for "Customs Airport" by the Finance Act, 2017, w.e.f. 31.03.2017.

4 Words "in the case of goods imported or to be exported by post, the entry referred to in section 82 or" omitted by the Finance Act, 2017, w.e.f. 31.03.2017.

5 Substituted for "any owner" by the Finance Act, 2017, w.e.f. 31.03.2017.

6 Inserted by the Finance Act, 2017, w.e.f. 31.03.2017.

(i) any naval vessel of a foreign Government taking part in any naval exercises;

(ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;

(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

[1][(21A) "Fund" means the Consumer Welfare Fund established under section 12C of the Central Excises and Salt Act, 1944 (1 of 1944);]

(22) "goods" includes –

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments; and

(e) any other kind of movable property;

(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(24) "[2][arrival manifest or import manifest]" or "import report" means the manifest or report required to be delivered under section 30;

(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;

(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [3][any owner, beneficial owner] or any person holding himself out to be the importer;

(27) "India" includes the territorial waters of India;

(28) "Indian customs waters" means the waters extending into the sea up to the limit of [4][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;

1 Inserted by the Central Excises and Customs Laws (Amendment) Act 40 of 1991, w.e.f. 20.09.1991.

2 Substituted for "import manifest" by the Finance Act, 2018 (Act 13 of 2018), dated 29.03.2018, w.e.f. 29.03.2018.

3 Substituted for "any owner" by the Finance Act, 2017 (7 of 2017), dated 31.03.2017, w.e.f. 31.03.2017.

4 Substituted for "contiguous zone of India under Section 5" by the Finance Act, 2018 (Act 13 of 2018), dated 29.03.2018, w.e.f. 29.3.2018.

[1][(28A) "Indian-flagged fishing vessel" means a vessel which is used or intended to be used for the purpose of fishing in the seas and entitled to fly the flag of India;]

[2][[3][(28B) "international courier terminal" means any place appointed under clause (f) of sub-section (1) of section 7 to be an international courier terminal;]

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

(30) "market price", in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India;

[4][(30A) "National Tax Tribunal" means the National Tax Tribunal established under Section 3 of the National Tax Tribunal Act, 2005;]

[5][(30AA) "notification" means notification published in the Official Gazette and the expression "notify" with its cognate meaning and grammatical variation shall be construed accordingly;]

[6][(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;]

(31) "person-in-charge" means, —

(a) in relation to a vessel, the master of the vessel;

(b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;

(c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;

(d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;

(32) "prescribed" means prescribed by regulations made under this Act;

(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 but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by

1 Inserted by the Finance Act, 2026 (4 of 2026), dt. 30.3.2026. Effective date yet to be notified.
2 Inserted by the Finance Act, 2017 (7 of 2017) dated 31.03.2017.
3 Clause (28B) by the Finance Act, 2026 (4 of 2026), dt. 30.3.2026. Effective date yet to be notified.
4 Inserted by National Tax Tribunal Act, 2005 (49 of 2005), dt. 20.12.2005, w.e.f. 28.12.2005.
5 Inserted by the Finance Act, 2018 (Act 13 of 2018), dated 29.03.2018, w.e.f. 29.3.2018.
6 Inserted by the Finance Act, 2017 (7 of 2017), dated 31.03.2017, w.e.f. 31.3.2017.

the Board or the [1][Principal Commissioner of Customs or Commissioner of Customs] [2][under Section 5];

(35) "regulations" means the regulations made by the Board under any provision of this Act;

(36) "rules" means the rules made by the Central Government under any provision of this Act;

(37) "shipping bill" means a shipping bill referred to in section 50;

(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;

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

(40) "tariff value", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14;

(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14;

(42) "vehicle" means conveyance of any kind used on land and includes a railway vehicle;

[3][(43) "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A;]

(44) "warehoused goods" means goods deposited in a warehouse;

[4][***]

Analysis

Unless the context otherwise requires

A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein.[5] All statutory definitions must be read subject to the qualifications expressed in the definition clauses which create them, such as "unless the

1 Substituted for "Commissioner of Customs" by the Finance (No. 2) Act, 2014, w.e.f. 06.08.2014.

2 Inserted vide the Finance Act, 2022.

3 Substituted by the Finance Act, 2016, w.e.f. 14.05.2016, prior to substitution, clause (43) read as: "(43) "warehouse" means a public warehouse appointed under section 57 or a private warehouse licensed under section 58;"

4 Omitted by the Finance Act, 2016, w.e.f. 14/05/2016, prior to omission, clause (45) read as: "(45) "warehousing station" means a place declared as a warehousing station under section 9."

5 K. Balakrishna Rao v. Haji Abdulla Sait, AIR 1980 (SC) 214.

context otherwise requires", or "unless a contrary intention appears", or "if not inconsistent with the context or subject-matter."[1]

The expression "in this Act, unless the context otherwise requires" shows that wherever the defined words occur in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in the definitional clause. Ordinarily, that is so. But where the context does not permit or where the context requires otherwise, the meaning assigned to a term in the definitional clause need not be applied.[2]

In *KV Muthu v. Angamuthu Ammal*,[3] it was held that where the definition is preceded by the words "unless the context otherwise requires", the said definition set out in the Section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

In *The Vanguard Fire and General Insurance Co. Ltd v. Fraser and Ross*,[4] K.N. Wanchoo, J observed the importance of context in the following words:

> "…It is well settled that all Statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context…"

Repugnancy of the definition of any term may arise only if such definition does not agree with the subject or context of a particular provision. Any action not in conformity with the provision of the definition clause will not render the definition of a term repugnant to the subject or context of any provision of the statute containing the term.[5]

1 CET v. Darshan Surendra Parekh, AIR 1968 (SC) 1125.
2 Printers (Mysore) Ltd. v. CTO, (1994) 2 SCC 434.
3 KV Muthu v. Angamuthu Ammal, AIR 1997 (SC) 628.
4 The Vanguard Fire and General Insurance Co. Ltd v. Fraser and Ross, AIR 1960 (SC) 971.
5 State Bank of India v. YK Srivatsava, AIR 1987 (SC) 1399.

Adjudicating authority

Section 2(1) states that unless the context otherwise requires, "adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the Board, Commissioner (Appeals) or Appellate Tribunal.

Under Section 2(1), the Board, the first and the second appellate authorities have been specifically excluded from the ambit of the expression "adjudicating authority".[1]

Aircraft

Section 2(1A) states that unless the context otherwise requires, "aircraft" has the same meaning in the Aircraft Act, 1934. Section 2(1) of the Aircrafts Act, 1934, states that unless there is anything repugnant in the subject or context, "aircraft" means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's surface and includes balloons whether fixed or free, airships, kites, gliders and flying machines.

Assessment

Section 2(2) of the Act states that unless the context otherwise requires, "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;

1 CC v. Aman Exports, 2018 (362) E.L.T. 747 (Cal.).

(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.

Classification of goods under the Customs Tariff is a part of assessment. Under Section 17, the importer or exporter has to self-assess duty and the proper officer can re-assess the duty. Both the self-assessment by the importer (or, as the case may be, the exporter) and the re-assessment by the proper officer fall under the definition of assessment as per Section 2(2). If the proper officer re-assesses the duty, unless the importer accepts the re-assessment in writing, he has to give a speaking order. Thus, the importer (or exporter) and the proper officer are competent to classify the goods and assess the duty payable on them. The process of self-assessment by the importer and re-assessment by the proper officer come to an end once an order permitting the clearance of goods for home consumption is issued under Section 46. Thereafter, the goods cease to be imported goods or dutiable goods and no duty can be assessed. The only exception is when the goods are cleared for home consumption after provisional assessment in which case the assessment concludes after the assessment is finalized and an order is passed by the officer.[1]

Assessment concludes the determination of the liability of the importer to pay duty and is similar to a decree under the Civil Procedure Code, 1908. Section 2 (2) of CPC defines decree as "It means the formal expression of an adjudication which conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit." Assessment differs from decree inasmuch as the determination of what is due from the importer as duty is not made by a Court of law but the duty is determined through a quasi-judicial process by the 'proper officer' who re-assesses the duty or is self-determined by the importer. Just like a decree in Civil suits, there is a provision for appeal against assessment. It is appealable by both sides to the Commissioner (Appeals) under section 128 and also to further higher judicial fora. The Commissioner (Appeals) does not assess but either affirms, modifies or annuls the assessment order. In this process, the Commissioner (Appeals) may also decide the issue of classification of the goods. Similarly, on appeals, the Tribunal or Supreme Court either sustain or set aside the orders of the Commissioner (Appeals) and in the process they may also decide the classification.[2]

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1 Vivo Mobiles India Pvt Ltd., v. PCC, (2024) 20 Centax 393 (Tri.-Del) - Affirmed in PCC v. Padget Electronic Pvt Ltd., 2025 (394) E.L.T. 49 (S.C.)

2 Vivo Mobiles India Pvt Ltd., v. PCC, (2024) 20 Centax 393 (Tri.-Del) - Affirmed in PCC v. Padget Electronic Pvt Ltd., 2025 (394) E.L.T. 49 (S.C.)

The power to assess duty lies with the importer and the proper officer. Classification, valuation and applying an exemption notification, are all parts of the process of this assessment. Hence, the power to decide the classification lies with the importer during self- assessment, with the proper officer during re-assessment and while issuing an SCN under Section 28 and while adjudicating, with the Adjudicating Authority and with any appellate authority in the judicial hierarchy who deals with the appeals. Classification cannot be decided by anybody else for two reasons: First, they do not have the authority to assess under Section 17 nor have any appellate powers to modify the assessment. Second their orders, letters, notifications, etc. are executive actions performed at the discretion of the government and are not quasi-judicial or appealable decisions. Therefore, any HSN code indicated against any goods in any policy of MeITY or any other Ministry cannot determine the classification of the goods under the Customs Tariff.[1]

It is impossible for the importer to predict if the proper officer would re-classify the goods and if the proper officer would, after rejecting the transaction value, re-determine the value based on contemporaneous imports or through other methods or what value the officer will fix. Nothing in the law requires an importer to anticipate what classification the proper officer would find proper for the goods and classify the goods or anticipate if the proper officer would reject the transaction value and anticipate what value he would determine and assess duty accordingly. The Bill of Entry has factual elements such as the nature of the goods, quality, quantity, weight, transaction value, country of origin, etc., which all need to be correctly declared and elements which are in the nature of the opinion of the importer such as classification of the goods, exemption notifications which apply, etc. While the facts are verifiable as correct or incorrect, opinions can differ. The importer may find that the goods are classifiable under one CTH while the officer re-assessing the goods may classify them under a different CTH. If appealed against, different views can be taken at different levels of judicial hierarchy from Commissioner (Appeals) all the way up to the Supreme Court. Similar will be the case with the availability of the benefit of exemption notifications. Insofar as the value is concerned, it could be partly factual and partly based on the opinions. The transaction value of the goods, whether there was any other consideration for sale and if the buyer and seller were related are matters of fact and the importer is bound to truthfully declare these and assess duty accordingly. However, the proper officer is empowered to reject the transaction value under Rule 12 of the Customs Valuation Rules and redetermine the value of the imported

1 Vivo Mobiles India Pvt Ltd., v. PCC, (2024) 20 Centax 393 (Tri.-Del) - Affirmed in PCC v. Padget Electronic Pvt Ltd., 2025 (394) E.L.T. 49 (S.C.)

goods based on the value of the contemporaneous imports of identical goods, similar goods, etc., following Valuation Rules 4 to 9. It needs to be pointed out that the power to reject the transaction value under Rule 12 vests in the proper officer and not in the importer. The importer will also not have access to the values of contemporaneous imports of identical or similar goods by others. Therefore, the only way an importer can self-assess the duty on the imported goods is based on his own transaction value and any additional consideration which it may be paying. The importer cannot predict the mind of the proper officer and self-assess duty so as to conform to it. Insofar as the valuation is concerned, the importer is required to truthfully declare the transaction value, any additional consideration and relationship with the overseas seller. He is not required to predict if the proper officer will reject the transaction value.[1]

In *ITC Ltd v. CCE*,[2] the Supreme Court held that for the purposes of the Act, the term "assessment" includes self-assessment, provisional assessment, re-assessment and any assessment in which the duty assessed is nil. Assessment includes self-assessment, when the provision of self-assessment has been incorporated in Section 17(1), and corresponding change has been made in the definition of assessment in Section 2(2). Endorsement made on the bill of entry is an order of assessment. When there is no *lis*, speaking order is not required to be passed in "across the counter affair". The order of self-assessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/ speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4).

A gainful reference may be made to the analysis presented under Sections 17, 18 & 27 of the Act for more on this subject.

Dutiable goods

Section 2(14) states that unless the context otherwise requires, "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid. The expression "chargeable to duty and on which duty has not been paid" indicates that goods on which duty has been paid or on which no duty is leviable, and therefore no duty is payable, will not be regarded as 'dutiable goods'. It is only if payment of duty is outstanding or leviable that goods will be regarded as dutiable goods.[3]

1 Vivo Mobiles India Pvt Ltd., v. PCC, (2024) 20 Centax 393 (Tri.-Del) - Affirmed in PCC v. Padget Electronic Pvt Ltd., 2025 (394) E.L.T. 49 (S.C.)

2 ITC Ltd v. CCE, 2019 (368) E.L.T. 216 (S.C.).

3 Associated Cement Companies Ltd v. CC, 2001 (128) E.L.T. 21 (S.C.).

In *CC v. Sohom Shipping Pvt Ltd.*,[1] the Kolkata High Court held that any goods can be called "Dutiable goods" under Section 2(14) of the Customs Act only when it is chargeable to duty and on which duty has not been paid. Goods with nil rate of duty would not come under the category of dutiable goods.

Foreign-going vessel or aircraft

Section 2(21) states that unless the context otherwise requires, "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 –

(a) any naval vessel of a foreign Government taking part in any naval exercises;

(b) any vessel engaged in fishing or any other operations outside the territorial waters of India;

(c) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

The expansive definition by way of deeming fiction includes any vessel engaged in fishing or any other operations outside the territorial waters of India. By legal fiction, a vessel engaged in fishing or any other operations outside the territorial waters of India is to be treated for the purposes of this Act as a foreign going vessel. When the said conditions are satisfied, whether the said vessel for the time being is engaged in carriage of goods or passengers between a port in India and a port outside India is not of any relevance. Consequently, it was held that a rig that operated outside the territorial waters of India is a foreign going vessel.[2]

An oil rig carrying on operations outside the territorial water limited but in a designated area under the Maritime Zones Act is not a foreign going vessel as the same would be deemed to be part of Indian territory i.e., going from the territory of India to an area which is also deemed to be part of the territory of India. A vessel may be a foreign going vessel but if an oil rig is situated in the area to which the Customs Act applies or extends, the aid of Section 2(21) of the Customs Act cannot be taken to get the benefit under Sections 86 & 87 under the same Act. If a vessel is located within the territory over which the coastal state has complete control and has sovereign right to extend its fiscal laws to such an area with or without modifications and stores were consumed in the area to which the Customs Act has been extended, reference or reliance to the vessel being a foreign

1 CC v. Sohom Shipping Pvt Ltd., 2019 (370) E.L.T. 228 (Cal.).

2 CC v. Aban Loyd Chiles Offshore Ltd, 2017 (346) E.L.T. 513 (S.C.).

going vessel shall be of no consequence and the customs duty would be leviable as the goods are consumed within the territory to which the Customs Act has been extended as per the Maritime Zones Act, 1976 & UNCLOS 1982.[1]

In *CC v. Balaji Sea Foods*,[2] fishing trawlers were imported and bill of entry was filed with the department. The department demanded duty on the stores in the trawlers, treating such trawlers as mere imported goods and not as foreign going vessels. Subsequent to their clearance, the trawlers were registered as 'fishing boats' under Indian Fishing Boat Rules, 1988. Immediately after these modalities had been completed, the trawlers were destined for high seas for deep sea fishing and subsequent export of the fish catch thereof. In view of the above facts, it was held by the Tribunal that the fishing trawlers must necessarily be treated as foreign going vessels as defined under Section 2(21) of the Customs Act, 1962. The fish bait and consumables ought to be treated as ship stores for use and consumption in the subsequent fishing operations in high seas. Further, in the absence of any contention by the department that the trawlers were not used for high seas fishing operations and that they have come to Indian Customs Waters only for the purpose of completing import formalities and also registering them as fishing vessels, only to go back to high seas for deep sea fishing for export, insistence of payment of duty on the ship stores was held to be definitely not in sync with the provisions for foreign going vessels.

Section 2(21) of the Act defines a foreign going vessel or aircraft to mean 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 as including (i) any naval vessel of a foreign Government taking part in any naval exercises; (ii) any vessel engaged in fishing or any other operation outside the territorial waters of India; (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever. The definition thus is in two parts. The main definition applies to a vessel or aircraft for the time being engaged carrying goods or passengers between any port or airport in India and any port or airport outside India. The expanded definition includes vessels which are undertaking activities entirely unconnected with carriage of goods or of passengers between India and a foreign country. Each of the first two clauses of the expanded definition applies to a specific situation, and the third to any vessel or aircraft proceeding to a place outside India for any purpose whatsoever. A vessel

1 Aban Loyd Chiles Offshore Ltd v. UOI, 2008 (227) E.L.T. 24 (S.C.).

2 CC v. Balaji Sea Foods, 2017 (356) E.L.T. 282 (Tri. - Hyd.).

may be termed a foreign going vessel either because it falls within the first part of the definition or within any of the three clauses of the latter part.[1]

In *Jain Marine Services v. CC*,[2] a bill of entry was filed by the assessee for assessment of fuel and provisions consumed by a tug operated by the assessee during its run for towing a dead vessel from Vizag to Alang. The tug was sought to be treated as a foreign going vessel, which was rejected by the department and duty was levied on the stores in the tug. It was contended by the assessee that the tug was brought from Singapore for the sole purpose of towing the dead vessel from Vizag to Alang and that the tug was a foreign going vessel under Section 2(21) since it came from Singapore to Alang and touched Visakhapatnam on the way and went back. It was further contended that fact that the vessel touched Visakhapatnam on its way to Alang did not make it lose the character of foreign going vessel. The carriage of goods in the run between any port in India and outside India is no criterion at all for the purposes of a decision as to whether a vessel is foreign going vessel or not. In addition, it was submitted that the tug was never used for transportation of coastal cargo and therefore customs duty on stores cannot be sustained in law. The department contended that the vessel towed by the tug was a dead vessel and when the tug started its journey from Visakhapatnam to Alang it was not in the nature of touching the intermediate port but it was an actual journey and a coastal run. It was observed by the Tribunal that the vessel was never converted to a coastal run and the dead vessel which was towed by the tug was actually imported cargo which was cleared on payment of duty after bill of entry was filed with the department. The vessel had not been cleared for home consumption till it reached Alang. It was thus held that the vessel was never converted into a coastal run and towing of a dead imported vessel not yet cleared for home consumption on its way to Alang via Visakhapatnam did not change the character of the tug from foreign going vessel to a coastal vessel.

In *Asean Cable Ship Pvt Ltd v. CC*,[3] a Singapore flagged vessel was engaged to carry out repairs of cables located in South East Asia and Indian Ocean Area, in terms of South East Asia and Indian Ocean Cable Maintenance Agreement. The vessel was berthed at Kochi port and had an operating Zone connecting India, Pakistan, Singapore, Indonesia, Malaysia, United Arab Emirates, Sri Lanka, Myanmar, Bangladesh, Thailand, Cambodia, Vietnam, Brunei, Hong Kong, Taiwan, China, Philippines, Australia and

1 Aban Lloyd Chiles Offshore Ltd v. UOI, 2003 (156) E.L.T. 490 (Tri. - Mumbai).

2 Jain Marine Services v. CC, 2009 (240) E.L.T. 723 (Tri. - Ahmd.).

3 Asean Cableship Pvt Ltd v. CC, 2020 (374) E.L.T. 597 (Tri. - Bang.).

Guam. It was to undertake repair activities in respect of the sub-sea cables spread over an area of 105,000 km, of which 256 KM (0.25%) was within territorial waters of India. Therefore, the vessel had to move from various ports in India and also between ports outside India. During the movements it carried stores, spares, bunkers and crew and technical staff to and from Indian ports. The department contended that since the vessel was out for repair operations for a very limited durations, it could not be considered as a foreign going vessel and exemption availed for ship stores, bunkers, etc., could not be allowed to it. The dispute in this case surrounded the status of the vessel as a "foreign going vessel". While the assessee contended that the vessel qualified as a foreign going vessel in view of the inclusive clause (ii) of Section 2(21), the department contended that it was not considering the limited duration in which the vessel spent its time in international waters. The Tribunal observed that the subject vessel was engaged for cable repair and cable-laying work in its operational areas and was required to be ready to leave for repairs should an exigency arise; that it was paid both fixed charges as well as operational charges. Since the inclusive definition in clause (ii) covers any vessel engaged in fishing or any other operations outside the territorial waters of India", it was held that the subject vessel qualified as a foreign going vessel. The Tribunal further observed that although the term "engaged in" has various shades of meaning depending on the context it is used in but, ordinarily, it is intended to signify continuation occupation or employment; it involves the concept of continuity of action as well as physical participation. However, the expression does not necessarily signify active and continuous participation; it is flexible enough to denote the devotion of time, attention and labour to some activity. The Tribunal also held that the definition in Section 2(21) of the Act does not stipulate a particular time period in it; since the vessel was on a continuous engagement, the status of the vessel as a foreign-going vessel could not be decided on a piece meal basis, particularly when the contractual terms contemplate a continuous and a long drawn engagement. Further, the status of any foreign going vessel does not change for the reason that it has had one or two incursions or engagements in the territorial waters of India; the status does not change from day-to-day depending on the work the vessel attended that particular day.[1]

In *Scindia Steam Navigation Co Ltd v. CC*,[2] a vessel was intended for carrying cargo from the port of Calcutta to foreign ports but was temporarily in the dry docks for repairs. It was held that the mere fact that the goods

1 Also see: CC v. Shipping Corporation of India Ltd., 1987 (29) E.L.T. 182 (Tribunal); IOCL v. CCE, 2007 (207) E.L.T. 108 (Tri. - Bang.); IOCL v. CCE, 2008 (225) E.L.T. 250 (Tri. - Mum.); IOCL v. CCE, 2006 (205) E.L.T. 726 (Tri. - Bang.).

2 Scindia Steam Navigation Co Ltd v. CC, 1988 (36) E.L.T 581 (Cal.).

on board the vessel were unloaded so as to enter the dry docks for repairs did not mean that the vessel was not at that time engaged in the carriage of goods. The vessel was at all material times engaged in the carriage of goods between a port in India and another port abroad and qualified as a foreign-going vessel. The Kolkata High Court opined that reasonable delay and intermissions in an export operation could not take away from the vessel the character of her being a "foreign going vessel". Steps taken in proceeding to foreign ports with export cargo could not prevent the vessel from being a foreign going vessel within the meaning of the provision of Section 2(21) of the Customs Act, 1962. Necessary repairs in the dry docks was one of such steps to enable the vessel to proceed to foreign port with export cargo.

In *Turner Morrison & Co Ltd. v. ACC,*[1] the Kolkata High Court held that there are two conditions in Section 2(21). The first condition is that there must be carriage of goods or passengers between a foreign port and an Indian port. The second condition is that the vessel in question must be engaged in the carriage of such goods or passengers. There is no requirement under Section 2(21) that only one vessel must undertake the entire length of the journey from the foreign port to the Indian port for such carriage of goods or passengers. Daughter vessels which were engaged to in the carriage of goods between a port outside India and a port in India by off-loading goods off a mother-ship were held to be foreign going vessels for the purposes of the Act.

Goods

Section 2(22) states that unless the context otherwise requires, "goods" includes –

(a) vessels, aircrafts and vehicles;

(b) stores;

(c) baggage;

(d) currency and negotiable instruments; and

(e) any other kind of movable property;

In *CC v. Aban Lloyd Chiles Offshore Ltd.*,[2] the Supreme Court opined that although "goods" for the purpose of the Act includes vessels, aircrafts and vehicles, a distinction has to be recognized between a vessel or an aircraft as a mere goods and when the vessel or an aircraft comes to India as a conveyance carrying imported goods. When a vessel or an aircraft is imported into India as a goods, customs duty is payable thereon. However,

1 Turner Morrison & Co Ltd v. ACC, 1999 (110) E.L.T. 484 (Cal.).

2 CC v. Aban Lloyd Chiles Offshore Ltd, 2017 (346) E.L.T. 513 (S.C.).

when a vessel is used as a conveyance of an imported goods, the position would be different.

In *Associated Cement Companies Ltd v. CC*,[1] the Supreme Court held that:

(a) According to Section 12 of the Customs Act, duty is payable on goods imported into India. The word "goods" has been defined in Section 2(22) of the Customs Act and it includes in sub-clause (c) "baggage" and sub-clause (e) "any other kind of movable property". Therefore, any moveable article brought into India by a passenger as part of his baggage can make him liable to pay customs duty as per the Customs Tariff Act. An item which does not fall within sub-clause (a), (b), (c) or (d) of Section 2(22) will be regarded as coming under Section 2(22)(e);

(b) Even though the definition of the goods purports to be an inclusive one, in effect it is so worded that all tangible movable articles will be the goods for the purposes of the Act by residuary clause 2(22)(e). Whether movable article comes as a part of a baggage, or is imported into the country by any other manner, for the purpose of the Customs Act, the provision of Section 12 would be attracted;

(c) Any media whether in the form of books or computer disks or cassettes which contain information technology or ideas would necessarily be regarded as goods for the purposes of the Customs Act, 1962. These items are movable goods and would be covered by Section 2(22)(e) of the Customs Act;

(d) For the purposes of attracting the levy under the Act, it would be immaterial as to what are the types of goods imported or what is contained in them or recorded thereon. Whenever any goods or movables or tangible articles are imported into the country, customs duty must be paid;

(e) Although intellectual property may be intangible and payment was made for such an intangible asset, the moment the information or advice is put on a media, whether paper or diskettes or any other thing, then what is supplied becomes chattel. It is in respect of the drawings, designs, etc., which are received that payment is made to the foreign collaborators. It is these papers or diskettes, etc., containing the technological advice, which are paid for and used. The foreign collaborators part with them in lieu of money. It is, therefore, sold by them as chattel for use by the Indian importer. The drawings, designs, manuals, etc., so received are goods on which customs duty could be levied.

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1 Associated Cement Companies Ltd v. CC, 2001 (128) E.L.T. 21 (S.C.).

In *CC v. Rajinder Narula*,[1] the Bombay High Court held that since the definition of the term "goods" in Section 2(22) of the Act includes currency and negotiable instruments, seized currency could be redeemed as goods by payment of a fine in lieu of confiscation.

In *Stovekraft Pvt Ltd v. DRI*,[2] it was held that though Section 2(22)(e) of the Act specifies that the "goods" include any other kind of movable property, the said wordings will not take the words "documents" or "files" within its fold for the purpose of Section 105 read with Section 110 of the Act. The words "goods, documents or things" are used disjunctively in Sections 105 and 110 of the Act. If the documents and things are also to be included within the definition of "goods" as stated in Section 2(22)(e), then, there was no need for the Legislature to use the words "goods, documents or things" separately in Section 105 and Section 110 of the Act. All the documents and things are naturally tangible and movable. As the intention of the Legislature is to separate 'documents and things' from the 'goods' for the purpose of Sections 105 and 110 of the Act, all the three aforesaid words are separately used in the said sections.

In *Wartsila India Ltd v. CC*,[3] it was held that the definition of 'goods' under Section 2(22) of the Customs Act, 1962 is merely an inclusive definition. All goods included in the Customs Tariff are to be considered as 'goods' for customs purposes in addition to what are specifically enumerated in the said definition.

In *Digital Equipments (India) Ltd v. CC*,[4] it was held that information transmitted via E-mail could not be termed as goods since in an E-mail transfer, no media, as a movable article, is crossing the international boundaries.

A gainful reference may be made to the analysis presented under Sections 12, 14, 108, 111 & 125 for more on this subject.

Import

Section 2(23) states that "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

In *CC v. Aban Loyd Chiles Offshore Ltd.*,[5] the Supreme Court opined that the expression "import" is a wide expression, which would include cognate expressions and means bringing into India from a place outside India.

1 CC v. Rajinder Narula, 2017 (346) E.L.T. 9 (Bom.); Also see: Thomas Cook India Ltd v. CC, 1994 (71) E.L.T. 724 (Tribunal); Pramod Auto Parts Pvt Ltd., v. CC, 2016 (336) E.L.T. 358 (Tri. - Del.); In Re: Anyanwu Marteena Uchechi, 2015 (329) E.L.T. 750 (G.O.I.); CC v. Sashi Goyal, 2012 (283) E.L.T. 65 (Tri. - Del.).

2 Stovekraft Pvt Ltd v. DRI, 2007 (214) E.L.T. 179 (Kar.).

3 Wartsila India Ltd v. CC, 2005 (190) E.L.T. 100 (Tri. - Mumbai).

4 Digital Equipments (India) Ltd v. CC, 2001 (135) E.L.T. 962 (Tri. - Bang.).

5 CC v. Aban Loyd Chiles Offshore Ltd., 2017 (346) E.L.T. 513 (S.C.).

In *Tata Tea Ltd v. CC*,[1] the Supreme Court held that under Section 20 of the Customs Act, 1962 read with the definition of 'import' as given in clause (23) of Section 2 of the Act, imported goods would include re-imported goods as well and therefore the goods sent out of India and re-imported would also be liable to duty in the same manner in which they would have been liable if imported for the first time in India.

Customs duties are charged on commodities on their being imported into or exported from the country. To constitute an import within the customs laws for the purpose of levy, it is necessary that goods be brought into a proper port of entry with an intent to unload them. The act of importation therefore implies, in the context of levy, bringing goods into an Indian Port for the purpose of discharge. There is no importation to attract customs duty if the cargo is in transit or is intended for transhipment. The goods which are brought into the country for the purpose of discharging them at an Indian Port cease to be imported goods after they are cleared for home consumption. It may be that in a general sense the course of import commences at the time the vessel carrying goods intended to be discharged at an Indian Port enters the territorial waters for the purpose of proceeding to the port, but the act of import for the purpose of levy does not materialise until the goods have been brought into the port of discharge and as usual the vessel is granted entry `inwards' and the bill of entry has been presented. The levy of duty is made with reference to that particular point of time and the rates applicable are those then in force.[2]

In *Garden Silk Mills Ltd v. UOI*,[3] the Supreme Court held that the import of goods into India would commence when the same cross into the territorial waters but continues and is completed when the goods 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 the bill of entry for home consumption is filed.

A gainful reference may be made to the analysis presented under Sections 12 & 15 of the Act for more on this subject.

Imported goods

Section 2(25) states that unless the context otherwise requires, "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.

1 Tata Tea Ltd v. CC, 1999 (114) E.L.T. 775 (S.C.).
2 Gipoint Development Ltd v. CC, 1995 (80) E.L.T. 55 (Mad.).
3 Garden Silk Mills Ltd., v. UOI, 1999 (113) E.L.T. 358 (S.C.).

In *CC v. Ambalal & Co*,[1] the Supreme Court opined that the definition of imported goods under Section 2(25) of the Act must necessarily be read along with Sections 11, 111 & 112 of the Act which provide for detection of illegally imported goods and prevention of the disposal thereof, confiscation of the goods and conveyances and imposition of penalties respectively. Smuggled goods will not fall under the ambit of the term "imported goods". Since one of the primary purposes of the Act is prevention of smuggling and in light of the objects of the Act and the basic statutory framework, one of the principal functions of the Act is to curb the ills of smuggling on the economy. Therefore, it would be antithetic to consider that 'smuggled goods' could be read within the definition of 'imported goods' for the purpose of the Act.

In *Mogul Line Ltd v. AK Dutt*,[2] the Bombay High Court held that the words "any goods" in Section 2(25) must mean not the classification of goods like smuggled, shop-soiled, damaged, decayed and so forth but rather goods in their different varieties from a pin to an elephant legitimately carried by the vessel.

Importer

Section 2(26) states that unless the context otherwise requires, "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.

The definition of "importer" in Section 2(26) of the Customs Act is not really relevant to the question of title to the imported goods. It only defines the expression "importer".[3]

India

Section 2(27) states that unless the context otherwise requires, "India" includes the territorial waters of India. The word "India" for the purpose of the Act includes the land mass as well as territorial waters.[4]

A gainful reference may be made to the analysis presented under Section 12 of the Act for more on this subject.

Indian customs waters

Section 2(28) states that unless the context otherwise requires, "Indian customs waters" means the waters extending into the sea up to the limit

1 CC v. Ambalal & Co., 2010 (260) E.L.T. 487 (S.C.).
2 Mogul Line Ltd v. AK Dutt, 1999 (109) E.L.T. 64 (Bom.).
3 UOI v. Sampat Raj Dugar, 1992 (58) E.L.T. 163 (S.C.).
4 CC v. Aban Loyd Chiles Offshore Ltd., 2017 (346) E.L.T. 513 (S.C.).

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.

Section 7(1) of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 provides that the exclusive economic zone of India is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline referred to in Section 3(2) of that Act. Section 7(2) of the 1976 Act provides that notwithstanding anything contained in sub-section (1), the Central Government may, whenever it considers necessary so to do having regard to International Law and State practice, after, by notification in the Official Gazette, the limit of the exclusive economic zone. Section 7(9) provides that in the exclusive economic zone and the air space over the zone, ships and aircraft of all States shall, subject to the exercise by India of its rights within the zone, enjoy freedom of navigation and overflight.

In *Aban Lloyd Chiles Offshore Ltd v. UOI*,[1] the Supreme Court, considering the provisions of Section 2(28) as it were prior to the amendment by the Finance Act, 2018, held that "Indian Customs Waters" extends seaward up to the limit of the contiguous zone, namely a jurisdictional zone adjoining the territorial sea and encompassing the stretch of sea waters upto a distance of 12 nautical miles beyond the territorial waters, which means 24 nautical miles from the appropriate baseline. The coastal state has no sovereignty in the territorial sense of dominium over the contiguous zone but it exercises the sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources. It has jurisdiction to enforce its fiscal, revenue and penal laws by intercepting vessels engaged in suspected smuggling or other illegal activities attributable to violation of the above laws or the existing laws. Undoubtedly, the waters which extend beyond the contiguous zone are traditionally the domain of the high seas or open sea, which have, jurisdictionally speaking, the status of international waters where all States enjoy traditional high seas freedom including the freedom of navigation. The coastal States can exercise their rights of search, seizure and confiscation of vessel for violation of its customs, fiscal or penal laws in the contiguous zone but such rights cannot be exercised once the delinquent vessel enters the high seas. It has no rights of hot pursuit unless the delinquent vessel is engaged in acts of piracy. However, with the adoption of the United Nations Convention on the Law of Seas, 1982, the legal incidents of the high seas have been partially modified with the inclusion of the concept of exclusive economic

1 Aban Lloyd Chiles Offshore Ltd v. UOI, 2008 (227) E.L.T. 24 (S.C.).