

THE CUSTOMS ACT, 1962

[Act 52 of 1962, dt. 13-12-1962]

[As amended by the Finance Act, 2026 (No. 4 of 2026), dt. 30-3-2026]

An Act to consolidate and amend the law relating to customs.

Be it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:

CHAPTER I PRELIMINARY

1. Short title, extent and commencement

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

¹[(2) It extends to the whole of India ²[, fishing and fishing related activities by Indian-flagged fishing vessels beyond territorial waters of India] ³[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 ⁴[date] as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions

In this Act, unless the context otherwise requires—

⁵[(1) “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;

(1A) “aircraft” has the same meaning as 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—

- the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- 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;
- 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;

¹ Vide Notification No. 185/79-Cus., dt. 1-9-1979, Act was extended to Sikkim, w.e.f. 1-10-1979.

² Inserted by Finance Act, 2026 (No. 4 of 2026), dt. 30-3-2026.

³ Inserted by Finance Act, 2018 (13 of 2018), dt. 29-3-2018, w.e.f. 29-3-2018.

⁴ 1-2-1963, vide Noti. No. G.S.R. 155, dt. 23-1-1963. Gazette of India, Extraordinary Part II, s. 3 (1) p. 73.

⁵ Substituted by Finance Act 44 of 1980, w.e.f. 11-10-1982.

⁶ Substituted for “Gold (Control)” by Finance Act, 2003 (32 of 2003), w.e.f. 14-5-2003.

⁷ Substituted by the Finance Act, 2018 (Act 13 of 2018), dt. 29-3-2018 for the following sub-section (2):

“(2) “assessment” includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;”

- (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;

³[(7A) “Commissioner (Appeals)” means a person appointed to be a Commissioner of Customs (Appeals) under sub-section (1) of section 4;

⁴[(7B) “common portal” means the Common Customs Electronic Portal referred to in section 154C;]

(8) ⁵[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;

(10) “customs airport” means any airport appointed under clause (a) of section 7 to be a customs airport ⁶[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 ⁷[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 ⁸[and includes a place appointed under clause (aa) of that section to be an inland container depot];

(13) “customs station” means any customs port, ⁹[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;

¹ Inserted by Finance Act, 2017 (7 of 2017), dt. 31-3-2017, w.e.f. 31-3-2017.

² Substituted for “Central Board of Excise and Customs” by the Finance Act, 2018 (Act 13 of 2018), dt. 29-3-2018, w.e.f. 29-3-2018.

³ Substituted by Finance Act 22 of 1995, w.e.f. 26-5-1995.

⁴ Inserted by the Finance Act, 2021.

⁵ Substituted for “Commissioner of Customs” by the Finance (No. 2) Act, 2014, w.e.f. 6-8-2014.

⁶ Inserted by the Finance Act, 2012 (Act 23 of 2012), dt. 28-5-2012.

⁷ Inserted by Taxation Laws (Amendment) Act, 2017 (18 of 2017), dt. 5-5-2017, w.e.f. 1-7-2017 vide Noti. No. 25/2017-Customs, dt. 28-6-2017.

⁸ Inserted by Finance Act 11 of 1983, w.e.f. 13-5-1983.

⁹ Substituted for “customs airport” by the Finance Act, 2017 (7 of 2017), dt. 31-3-2017, w.e.f. 31-3-2017.

(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 ¹[xxx] 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 ²[any owner, beneficial owner] or any person holding himself out to be the exporter;

³[(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—

- (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;

⁴[(21A) “Fund” means the Consumer Welfare Fund established under section 12C of the Central Excises and Salt Act, 1944⁵ (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) “⁶[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;

¹ 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 (7 of 2017), dt. 31-3-2017, w.e.f. 31-3-2017.

² Substituted for “any owner”, *ibid.*

³ Inserted, *ibid.*

⁴ Inserted by Central Excises and Customs Laws (Amendment) Act 40 of 1991, w.e.f. 20-9-1991.

⁵ Now “Central Excise Act”.

⁶ Substituted for “import manifest” by the Finance Act, 2018 (Act 13 of 2018, dt. 29-3-2018, w.e.f. 29-3-2018.

(26) “importer”, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes ¹[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 ²[waters extending into the sea up to the limit of ³[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;

⁴[(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;]

⁵[(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;

⁷[(30A) “National Tax Tribunal” means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005;]

⁸[(30AA) “notification” means notification published in the Official Gazette and the expression “notify” with its cognate meaning and grammatical variation shall be construed accordingly;]

⁵[(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 the Board or the ⁹[Principal Commissioner of Customs or Commissioner of Customs] ¹⁰[under section 5];

¹ Substituted for “any owner” by the Finance Act, 2017 (7 of 2017), dt. 31-3-2017, w.e.f. 31-3-2017.

² Substituted by Customs, Central Excises and Salt and Central Boards of Revenue (Amendment) Act 25 of 1978, w.e.f. 1-7-1978.

³ Substituted for “contiguous zone of India under section 5” by Finance Act, 2018 (Act 13 of 2018), dt. 29-3-2018, w.e.f. 29-3-2018.

⁴ Inserted by Finance Act, 2026 (No. 4 of 2026), dt. 30-3-2026.

⁵ Inserted by the Finance Act, 2017 (7 of 2017), dt. 31-3-2017, w.e.f. 31-3-2017.

⁶ Clause (28A) renumbered as sub-clause (28B) by Finance Act, 2026 (No. 4 of 2026), dt. 30-3-2026.

⁷ Inserted by National Tax Tribunal Act, 2005 (49 of 2005), dt. 20-12-2005, w.e.f. 28-12-2005 vide SO 1826(E), dt. 28-12-2005.

⁸ Inserted by the Finance Act, 2018 (Act 13 of 2018), dt. 29-3-2018, w.e.f. 29-3-2018.

⁹ Substituted for “Commissioner of Customs” by the Finance (No. 2) Act, 2014 w.e.f. 6-8-2014.

¹⁰ Inserted by the Finance Act, 2022.

(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 ¹[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;

²[(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;

³[xxx]

COMMENTS

Section 2(1)—The order permitting the clearance of goods within the meaning of s. 47 of the Act by the proper officer must be presumed to be after due adjudication; first with regard to the fact whether or not import of the goods is prohibited by the Act or any other law for the time being in force as under s. 2(33) and the proper officer was an “adjudicating authority” within the meaning of s. 2(1) of Customs Act, 1962.—*Industrial Cables India Ltd. v. UOI* 1986 (25) ELT 33 : 1986(2) ECR 157

Section 2(8)—Where the officer of customs is conferred with any of the duties of a person in separate charge of a customs house, the officer would fall within the definition of “collector of customs”.—*AIR 1958 Bom. 367*

Section 2(9)—Vessel cannot be said to be imported where the entry of the vessel within the territorial waters is for conveyance or as a carrier of goods. Vessel satisfies the definition of “goods” but not where the use is for conveyance. When the entry of the vessel within the territorial waters is to unload cargo then the cargo is imported and not the vessel.—*Jalyan Udyog v. UOI* 1987 (32) ELT 697 : 1987(13) ECR 1149

Section 2(14)—Goods dutiable must fulfil both the conditions as are mentioned under s. 2(14), i.e., goods must be such as are chargeable to duty and on which the duty has not been paid.—*G. Ambalal v. Assistant Collector of Customs AIR 1971 Cal. 444*

Section 2(15)—Duties specified in section 2 of the Customs Act and s. 2 of the Indian Tariff Act bear no similarity. While construing the notification issued under the statute, the distinct characteristics of s. 2A of the Indian Tariff Act has to be kept in view. Where the excise duty is not leviable at a particular time under relevant provisions of Excise Act, it is not within the power of customs authorities to recover countervailing duty on those goods under s. 2A of the Tariff Act.—*Prem Cables (P) Ltd. v. Assistant Collector (Principal Appraiser) Bom 1978 WLN 481*

¹ Substituted for “sub-section (1) of section 14” by Finance Act, 2007 (22 of 2007), dt. 11-5-2007.

² Substituted by Finance Act, 2016 (28 of 2016), dt. 14-5-2016, w.e.f. 14-5-2016. Prior to substitution, clause (43) read as under:
“(43) “warehouse” means a public warehouse appointed under section 57 or private warehouse licensed under section 58”

³ Omitted by Finance Act, 2016 (28 of 2016), dt. 14-5-2016, w.e.f. 14-5-2016. Prior to omission, clause (45) read as under:
“(45) “warehousing station” means a place declared as a warehousing station under sec. 9.”

Section 2(18)—Where the goods are not exported within the meaning of s. 2(18) as they had not been taken beyond the territorial waters of India to a place outside India, the assessee cannot claim drawback of duty on said goods within the meaning of s. 75.—*Lucas T.V.S. Padi v. Assistant Collector of Customs 1980 ELT 465 (Mad)*

Where the vessel carrying imported goods enters the territorial waters of India and thereafter the vessel moves to another port it could not be said that the imported goods had lost the characteristics acquired on importation and could not be termed as “exported goods”.—*Jain Shudh Vanaspati Ltd. v. S.R. Patankar 1988 (33) ELT 77 : 1988(14) ECR 101*

Section 2(19)—In order to constitute an attempt to export goods, intention must be of taking the goods out of India and with that intention there must be an act or acts done towards the actual physical movement of the goods. Goods cannot be said to be exported where the goods are not taken out of India. For that it is necessary that attempt as well is related to the taking of goods out of India.—*Ranjit Exports v. Collector of Customs 1985 (5) ECC 150*

Where the goods are taken out from the territorial limits of India to a place which is outside India, goods would amount to “exported goods” but where the goods are merely meant to be exported and are not taken out of India such goods would only amount to “export goods”.—*1987 (30) ELT 251*

Section 2(21)—Vessels which are used as transhippers can also be treated as “ocean going vessels”. Transhippers are used mostly to carry cargo from the harbours to the high seas and *vice versa* and they often move into the open sea. Merely because they are used for carrying cargo for loading in bulk carriers, which are unable to touch the port, they cannot be excluded from the category of “ocean going vessels”.—*Union of India v. V.M. Salgaoncar & Bros. (P) Ltd. 1998 (76) ECR 218 (SC)*

Section 2(22)—As the goods are defined to include vessels, aircraft and vehicles, it must be taken that the object of the inclusive definition is to bring within the net of taxation, vessels, aircraft and vehicles which are imported into India.—*Chowgule & Co. (P) Ltd. v. Union of India AIR 1987 SC 1176*

Section 2(23)—The storing of goods in bonded warehouse is for the convenience of the importer and the date of import cannot be determined with reference to the date on which the goods were cleared from the bonded warehouse. The date of import is the date when the goods cross the barrier and enter into the territorial jurisdiction of this country.—*Century Spinning & Mfg. Co. Ltd. v. Union of India 1992 (43) ECR 315 : 1991 (51) ELT 217*

Section 2(25)—Characteristic as that of the “imported goods” given while territorial waters is crossed by the goods is not removed for the fact that the conveyance loaded with goods leaves the Indian territorial waters because it could not secure berthing accommodation.—*Jain Shudh Vanaspati v. S.R. Patankar 1988 (33) ELT 77 : 1988(14) ECR 101*

Section 2(26)—Where the bills of entry were presented by the original importers prior to the date of new notification which came into effect from 1-11-1985, though the bills of entry were not presented by the present petitioners they were presented by the original importers, that makes no difference to the determination of the rate of duty. At the time when these bills of entry were presented, the person who presented these bills of entry was the importer within the definition of s. 2(26) of the Customs Act after the presentation of the bills of entry. They are therefore entitled to have their names substituted in the bills of entry so presented as also to have the Import General Manifest amended to show them as importers. But for determining the rate of duty the relevant date is the date on which the bill of entry was presented for home consumption by the importer under s. 46 read with s. 15(1).—*Anjali Shantilal Lunkad v. Union of India 1991 (32) ECR 51 : 1991(52) ELT 203*

The definition of the term “importer” makes it clear that the owner of the goods has been placed before the person holding himself out to be importer. As such, as between the owner and the person holding himself out to be importer, it is the former who takes precedence.—*Union of India v. Sampat Raj Dugar 1991 (56) ELT 739 : 1991(35) ECR 174*

Section 2(27)—The storing of goods in bonded warehouse is for the convenience of the importer and the date of import cannot be determined with reference to the date on which the goods were cleared from the bonded warehouse. The date of import is the date when the goods cross

the barrier and enter into the territorial jurisdiction of this country.—*Century Spinning & Mfg. Co. Ltd. v. Union of India* 1992 (43) ECR 315 : 1991(51) ELT 217

Section 2(34)—The “proper officer” referred to in the various provisions of the Customs Act, who is to perform any function under the said Customs Act means the officer of customs who is assigned those functions by the Board or Collector of Customs as defined under clause (34) of s. 2 of Customs Act, but it does not include the officers of police or any other officers enumerated under s. 151. The police officers have no independent role to play in exercise of powers under the Customs Act as in ss. 45 and 46 of the FERA.—*Directorate of Enforcement v. Deepak Mahajan* 1995 (58) ECR 632 (SC)

Section 2(39)—There are various clauses, namely, clauses (a) to (p) in s. 111 which make the goods brought from a place outside India liable to confiscation and that would therefore amount to “smuggling” within the meaning of s. 2(39) read with s. 111 of the Customs Act, 1962.—1990 Cri LJ 481

Where the goods are removed without following the procedure then the act would amount to smuggling.—*Jain Shudh Vanaspati v. C.R. Patankar* 1988 (33) ELT 77 : 1988(14) ECR 101

Section 2(41)—Value as defined in s. 2(41) is not a general definition but is limited one, the scope being confined to spheres where section 14 will apply.—*Thomas Duff v. Collector of Customs* 1976 Tax LR 1567

The value of petitioner’s goods in dispute will be the price at which such goods or like goods are ordinarily sold or offered for sale for delivery at the time and place of exportation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is sole consideration for sale or offer for sale.—*Bind & Co. v. Kalayan Kumar* ILR (1976) 2 Cal 202

CHAPTER II

OFFICERS OF CUSTOMS

¹[3. Classes of Officers of Customs

There shall be the following classes of officers of customs, namely:—

- (a) Principal Chief Commissioner of Customs or Principal Chief Commissioner of Customs (Preventive) or Principal Director General of Revenue Intelligence;
- (b) Chief Commissioner of Customs or Chief Commissioner of Customs (Preventive) or Director General of Revenue Intelligence;
- (c) Principal Commissioner of Customs or Principal Commissioner of Customs (Preventive) or Principal Additional Director General of Revenue Intelligence or Principal Commissioner of Customs (Audit);
- (d) Commissioner of Customs or Commissioner of Customs (Preventive) or Additional Director General of Revenue Intelligence or Commissioner of Customs (Audit);
- (e) Principal Commissioner of Customs (Appeals);
- (f) Commissioner of Customs (Appeals);

¹ Substituted by the Finance Act, 2022. Prior to substitution, section 3 read as under:

“3. Classes of officers of customs

There shall be the following classes of officers of customs, namely:—

- (a) Principal Chief Commissioner of Customs;
- (b) Chief Commissioners of Customs;
- (c) Principal Commissioners of Customs;
- (d) Commissioners of Customs;
- (e) Commissioners of Customs (Appeals);
- (f) Joint Commissioners of Customs;
- (g) Deputy Commissioners of Customs;
- (h) Assistant Commissioners of Customs;
- (i) such other class of officers of customs as may be appointed for the purposes of this Act.”

- (g) Additional Commissioner of Customs or Additional Commissioner of Customs (Preventive) or Additional Director of Revenue Intelligence or Additional Commissioner of Customs (Audit);
- (h) Joint Commissioner of Customs or Joint Commissioner of Customs (Preventive) or Joint Director of Revenue Intelligence or Joint Commissioner of Customs (Audit);
- (i) Deputy Commissioner of Customs or Deputy Commissioner of Customs (Preventive) or Deputy Director of Revenue Intelligence or Deputy Commissioner of Customs (Audit);
- (j) Assistant Commissioner of Customs or Assistant Commissioner of Customs (Preventive) or Assistant Director of Revenue Intelligence or Assistant Commissioner of Customs (Audit);
- (k) such other class of officers of customs as may be appointed for the purposes of this Act.]

¹**4. Appointment of officers of customs**

(1) The ²[Board] may appoint such persons as it thinks fit to be officers of customs.

(2) Without prejudice to the provisions of sub-section (1), the ³[Board may authorise a ⁴[Principal Chief Commissioner of Customs or Chief Commissioner of Customs] or a ⁵[Principal Commissioner of Customs or Commissioner of Customs] or a ⁶[Joint] or ⁷[Assistant Commissioner of Customs or Deputy Commissioner of Customs] to appoint officers of customs below the rank of ⁷[Assistant Commissioner of Customs or Deputy Commissioner of Customs].]

5. Powers of officers of customs

(1) Subject to such conditions and limitations as the Board may impose, an officer of customs may exercise the powers and discharge the duties conferred or imposed on him under this Act.

⁸[(1A) Without prejudice to the provisions contained in sub-section (1), the Board may, by notification, assign such functions as it may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.]

(1B) Within their jurisdiction assigned by the Board, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, by order, assign such functions, as he may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.]

(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him.

(3) Notwithstanding anything contained in this section, ¹[a Commissioner (Appeals)] shall not exercise the powers and discharge the duties conferred or imposed on an officer of customs other than those specified in ⁹[Chapter XV, section 108 and sub-section (1D) of section 110].

⁸[(4) In specifying the conditions and limitations referred to in sub-section (1), and in assigning functions under sub-section (1A), the Board may consider any one or more of the following criteria, including, but not limited to—

¹ Substituted by Finance Act 22 of 1995, w.e.f. 26-5-1995.

² Substituted for "Central Government" by Finance Act, 2002, w.e.f. 11-5-2002.

³ Substituted for "Central Government may authorise the Board", by Finance Act, 2002, w.e.f. 11-5-2002.

⁴ Substituted for "Chief Commissioner of Customs" by Finance (No. 2) Act, 2014, w.e.f. 6-8-2014.

⁵ Substituted for "Commissioner of Customs", *ibid*.

⁶ Substituted for "Deputy Commissioner of Customs" by Act 27 of 1999, w.e.f. 11-5-1999.

⁷ Substituted for "Assistant Commissioner of Customs", *ibid*.

⁸ Inserted by the Finance Act, 2022.

⁹ Substituted for "Chapter XV and section 108" by the Finance Act, 2021.

- (a) territorial jurisdiction;
- (b) persons or class of persons;
- (c) goods or class of goods;
- (d) cases or class of cases;
- (e) computer assigned random assignment;
- (f) any other criterion as the Board may, by notification, specify.

(5) The Board may, by notification, wherever necessary or appropriate, require two or more officers of customs (whether or not of the same class) to have concurrent powers and functions to be performed under this Act.]

COMMENTS

The machinery created under the Customs Act is not one for the purpose of investigation of crime under any Central Act. It cannot be said that that is a separate machinery for the purpose of investigation of crimes bypassing the provisions of Criminal Procedure Code.—*State of Maharashtra v. Laxmichand Vorhomal* 1978 Cri LJ 845

Where the Customs Officer enters into the investigation of any offence exercising the powers conferred by ss. 104, 105, 106, 107, 108 and 110 of Customs Act, the Customs Officer does not act as an investigating officer.

6. Entrustment of functions of Board and Customs Officers on certain other officers

The Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.

CHAPTER III

¹[APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, ETC.]

7. Appointment of customs ports, airports, etc.

²[(1)] The ³[Board] may, by notification in the Official Gazette, appoint—

- (a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;
- ⁴[(aa) the places which alone shall be inland ⁵[container depots or air freight stations] for the unloading of imported goods and the loading of export goods or any class of such goods;]
- (b) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;
- (c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland waters into or out of India, or to or from any land customs station from or to any land frontier;
- (d) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India;
- ⁶[(e) the post offices which alone shall be foreign post offices for the clearance of imported goods or export goods or any class of such goods;

¹ Substituted for "APPOINTMENT OF CUSTOMS PORTS, AIRPORTS, WAREHOUSING STATIONS, ETC." by Finance Act, 2016 (28 of 2016), dt. 14-5-2016, w.e.f. 14-5-2016.

² Existing section 7 renumbered as sub-section (1) thereof by Finance Act, 2003 (32 of 2003), w.e.f. 14-5-2003.

³ Substituted for "Central Government", *ibid*.

⁴ Inserted by Finance Act, 11 of 1983, w.e.f. 13-5-1983.

⁵ Substituted for "container depots" by the Finance Act, 2012 (Act 23 of 2012), dt. 28-5-2012, w.e.f. 28-5-2012.

⁶ Inserted by the Finance Act, 2017 (7 of 2017), dt. 31-3-2017, w.e.f. 31-3-2017.

- (f) the places which alone shall be international courier terminals for the clearance of imported goods or export goods or any class of such goods.]

¹[(2) Every notification issued under this section and in force immediately before the commencement of the Finance Act, 2003 shall, on such commencement, be deemed to have been issued under the provisions of this section as amended by section 98 of the Finance Act, 2003 and shall continue to have the same force and effect after such commencement until it is amended, rescinded or superseded under the provisions of this section.]

8. Power to approve landing places and specify limits of customs area

The ²[Principal Commissioner of Customs or Commissioner of Customs] may—

- (a) approve proper places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods;
- (b) specify the limits of any customs area.

³[9. xxx]

10. Appointment of boarding stations

The ²[Principal Commissioner of Customs or Commissioner of Customs] may, by notification in the Official Gazette, appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers of customs.

CHAPTER IV

PROHIBITIONS ON IMPORTATION AND EXPORTATION OF GOODS

11. Power to prohibit importation or exportation of goods

(1) If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

(2) The purposes referred to in sub-section (1) are the following:—

- (a) the maintenance of the security of India;
- (b) the maintenance of public order and standards of decency or morality;
- (c) the prevention of smuggling;
- (d) the prevention of shortage of goods of any description;
- (e) the conservation of foreign exchange and the safeguarding of balance of payments;
- (f) the prevention of injury to the economy of the country by the uncontrolled import or export of ⁴[gold, silver or any other goods];
- (g) the prevention of surplus of any agricultural product or the product of fisheries;

¹ Inserted by Finance Act, 2003 (32 of 2003), w.e.f. 14-5-2003.

² Substituted for "Commissioner of Customs" by Finance (No. 2) Act, 2014, w.e.f. 6-8-2014.

³ Section 9 omitted by Finance Act, 2016 (28 of 2016), dt. 14-5-2016, w.e.f. 14-5-2016. Prior to omission, it read as under:

"9. Power to declare places to be warehousing stations

The Board may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed."

⁴ Substituted for "gold or silver" by Finance Act, 2020 (12 of 2020), dt. 27-3-2020, w.e.f. 27-3-2020.

- (h) the maintenance of standards for the classification, grading or marketing of goods in international trade;
- (i) the establishment of any industry;
- (j) the prevention of serious injury to domestic production of goods of any description;
- (k) the protection of human, animal or plant life or health;
- (l) the protection of national treasures of artistic, historic or archaeological value;
- (m) the conservation of exhaustible natural resources;
- (n) the protection of patents, trademarks ¹[, copyrights, designs and geographical indications];
- (o) the prevention of deceptive practices;
- (p) the carrying on of foreign trade in any goods by the State, or by a corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;
- (q) the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;
- (r) the implementation of any treaty, agreement or convention with any country;
- (s) the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;
- (t) the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;
- (u) the prevention of the contravention of any law for the time being in force; and
- (v) any other purpose conducive to the interests of the general public.

²[(3) Any prohibition or restriction or obligation relating to import or export of any goods or class of goods or clearance thereof provided in any other law for the time being in force, or any rule or regulation made or any order or notification issued thereunder, shall be executed under the provisions of that Act only if such prohibition or restriction or obligation is notified under the provisions of this Act, subject to such exceptions, modifications or adaptations as the Central Government deems fit.]

³[CHAPTER IV-A

DETECTION OF ILLEGALLY IMPORTED GOODS AND PREVENTION OF THE DISPOSAL THEREOF

11A. Definitions

In this Chapter, unless the context otherwise requires,—

- (a) “illegal import” means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;

¹ Substituted for the words “and copyrights” by the Finance Act, 2013 (Act 17 of 2013), dt. 10-5-2013, w.e.f. 10-5-2013.

² Inserted by the Finance Act, 2018 (Act 13 of 2018), dt. 29-3-2018, w.e.f. 29-3-2018.

³ Inserted by Customs (Amendment) Act 12 of 1969, w.e.f. 3-1-1969.

- (b) “intimated place” means a place intimated under sub-section (1), sub-section (2) or sub-section (3), as the case may be, of section 11C;
- (c) “notified date”, in relation to goods of any description, means the date on which the notification in relation to such goods is issued under section 11B;
- (d) “notified goods” means goods specified in the notification issued under section 11B.

11B. Power of Central Government to notify goods

If, having regard to the magnitude of the illegal import of goods of any class or description, the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of checking the illegal import, circulation or disposal of such goods, or facilitating the detection of such goods, it may, by notification in the Official Gazette, specify goods of such class or description.

11C. Persons possessing notified goods to intimate the place of storage, etc.

(1) Every person who owns, possesses or controls, on the notified date, any notified goods, shall, within seven days from that date, deliver to the proper officer a statement (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) in relation to the notified goods owned, possessed or controlled by him and the place where such goods are kept or stored.

(2) Every person who acquires, after the notified date, any notified goods, shall, before making such acquisition, deliver to the proper officer an intimation containing the particulars of the place where such goods are proposed to be kept or stored after such acquisition and shall, immediately on such acquisition, deliver to the proper officer a statement (in such form, in such manner and containing such particulars as may be specified by the rules made in this behalf) in relation to the notified goods acquired by him:

PROVIDED that a person who has delivered a statement, whether under sub-section (1) or sub-section (2), in relation to any notified goods, owned, possessed, controlled or acquired by him, shall not be required to deliver any further statement in relation to any notified goods acquired by him, after the date of delivery of the said statement, so long as the notified goods so acquired are kept or stored at the intimated place.

(3) If any person intends to shift any notified goods to any place other than the intimated place, he shall, before taking out such goods from the intimated place, deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted.

(4) No person shall, after the expiry of seven days from the notified date, keep or store any notified goods at any place other than the intimated place.

(5) Where any notified goods have been sold or transferred, such goods shall not be taken from one place to another unless they are accompanied by the voucher referred to in section 11F.

(6) No notified goods (other than those which have been sold or transferred) shall be taken from one place to another unless they are accompanied by a transport voucher (in such form and containing such particulars as may be specified by the rules made in this behalf) prepared by the persons owning, possessing or controlling such goods.

11D. Precautions to be taken by persons acquiring notified goods

No person shall acquire (except by gift or succession, from any other individual in India), after the notified date, any notified goods—

- (i) unless such goods are accompanied by,—

- (a) the voucher referred to in section 11F or the memorandum referred to in sub-section (2) of section 11G, as the case may be; or
- (b) in the case of a person who has himself imported any goods, any evidence showing clearance of such goods by the customs authorities; and
- (ii) unless he has taken, before acquiring such goods from a person other than a dealer having a fixed place of business, such reasonable steps as may be specified by rules made in this behalf, to ensure that the goods so acquired by him are not goods which have been illegally imported.

11E. Persons possessing notified goods to maintain accounts

(1) Every person who, on or after the notified date, owns, possesses, controls or acquires any notified goods shall maintain (in such form and in such manner as may be specified by rules made in this behalf) a true and complete account of such goods and shall, as often as he acquires or parts with any notified goods, made an entry in the said account in relation to such acquisition or parting with, and shall also state therein the particulars of the persons from whom such goods have been acquired or in whose favour such goods have been parted with, as the case may be, and such account shall be kept, along with the goods, at the place of storage of the notified goods to which such accounts relate:

PROVIDED that it shall not be necessary to maintain separately accounts in the form and manner specified by the rules made in this behalf in the case of a person who is already maintaining accounts which contain the particulars specified by the said rules.

(2) Every person who owns, possesses or controls any notified goods and who uses any such goods for the manufacture of any other goods, shall maintain (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) a true and complete account of the notified goods so used by him and shall keep such account at the intimated place.

11F. Sale, etc., of notified goods to be evidenced by vouchers

On and from the notified date, no person shall sell or otherwise transfer any notified goods, unless every transaction in relation to the sale or transfer of such goods is evidenced by a voucher in such form and containing such particulars as may be specified by rules made in this behalf.

11G. Sections 11C, 11E and 11F not to apply to goods in personal use

(1) Nothing in sections 11C, 11E and 11F shall apply to any notified goods which are—

- (a) in personal use of the person by whom they are owned, possessed or controlled, or
- (b) kept in the residential premises of a person for his personal use.

(2) If any person, who is in possession of any notified goods referred to in sub-section (1), sells, or otherwise transfers for a valuable consideration, any such goods, he shall issue to the purchaser or transferee, as the case may be, a memorandum containing such particulars as may be specified by the rules made in this behalf and no such goods shall be taken from one place to another unless they are accompanied by the said memorandum.

CHAPTER IV-B**PREVENTION OR DETECTION OF ILLEGAL EXPORT OF GOODS****11H. Definitions**

In this Chapter, unless the context otherwise requires,—

- (a) “illegal export” means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force;
- (b) “intimated place” means a place intimated under sub-section (1), sub-section (2) or sub-section (3), as the case may be, of section 11J;
- (c) “specified area” includes the Indian customs waters, and such inland area, not exceeding one hundred kilometres in width from any coast or other border of India, as the Central Government may, having regard to the vulnerability of that area to smuggling, by notification in the Official Gazette, specify in this behalf:

PROVIDED that where a part of any village, town or city falls within a specified area, the whole of such village, town or city shall, notwithstanding that the whole of it is not within one hundred kilometres from any coast or other border of India, be deemed to be included in such specified area;

- (d) “specified date”, in relation to specified goods, means the date on which any notification is issued under section 11-I in relation to those goods in any specified area;
- (e) “specified goods” means goods of any description specified in the notification issued under section 11-I in relation to a specified area.

11-I. Power of Central Government to specify goods

If, having regard to the magnitude of the illegal export of goods of any class or description, the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of checking the illegal export or facilitating the detection of goods which are likely to be illegally exported, it may, by notification in the Official Gazette, specify goods of such class or description.

11J. Persons possessing specified goods to intimate the place of storage, etc.

(1) Every person who owns, possesses or controls, on the specified date, any specified goods, the market price of which exceeds fifteen thousand rupees shall, within seven days from that date, deliver to the proper officer an intimation containing the particulars of the place where such goods are kept or stored within the specified area.

(2) Every person who acquires (within the specified area), after the specified date, any specified goods,—

- (i) the market price of which, or
- (ii) the market price of which together with the market price of any specified goods of the same class or description, if any, owned, possessed or controlled by him on the date of such acquisition,

exceeds fifteen thousand rupees shall, before making such acquisition, deliver to the proper officer an intimation containing the particulars of the place where such goods are proposed to be kept or stored after such acquisition:

PROVIDED that a person who has delivered an intimation, whether under sub-section (1) or sub-section (2), in relation to any specified goods, owned, possessed, controlled or acquired by him, shall not be required to deliver any further intimation so long as the specified goods are kept or stored at the intimated place.

(3) If any person intends to shift any specified goods to which sub-section (1) or sub-section (2) applies, to any place other than the intimated place, he shall, before taking out such goods from the intimated place, deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted.

(4) No person shall, after the expiry of seven days from the specified date, keep or store any specified goods to which sub-section (1) or sub-section (2) applies, at any place other than the intimated place.

11K. Transport of specified goods to be covered by vouchers

(1) No specified goods shall be transported from, into or within any specified area or loaded on any animal or conveyance in such area, unless they are accompanied by a transport voucher (in such form and containing such particulars as may be specified by rules made in this behalf) prepared by the person owning, possessing, controlling or selling such goods:

PROVIDED that no transport voucher shall be necessary for the transport, within a village, town or city, of any specified goods the market price of which, on the date of transport, does not exceed one thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), where the Central Government, after considering the nature of any specified goods, the time, mode, route and the market price of the goods intended to be transported, the purpose of the transportation and the vulnerability of the specified area with regard to the illegal export of such goods, is satisfied that it is expedient in the public interest so to do, it may—

- (i) by notification in the Official Gazette, specify goods of such class or description and of a market price exceeding such sum as that Government may notify; and different sums in relation to the specified goods of the same class or description, or different classes or descriptions, may be notified for the same specified area or for different specified areas, and
- (ii) direct that no person shall transport any goods so specified unless the transport voucher in relation to them has been countersigned by the proper officer.

11L. Persons possessing specified goods to maintain accounts

(1) Every person who, on or after the specified date, owns, possesses or controls, within a specified area, any specified goods of a market price exceeding fifteen thousand rupees, shall maintain (in such form and in such manner as may be specified by rules made in this behalf) a true and complete account of such goods and shall, as often as he acquires or parts with any specified goods, make an entry in the said account in relation to such acquisition or parting with, and shall also state therein the particulars of the person from whom such goods have been acquired or in whose favour such goods have been parted with, as the case may be, and such account shall be kept, along with the goods, at the place of storage of the specified goods to which such accounts relate:

PROVIDED that it shall not be necessary to maintain separately accounts in the form and manner specified by rules made in this behalf in the case of a person who is already maintaining accounts which contain the particulars specified by the said rules.

(2) Every person who owns, possesses or controls any specified goods to which the provisions of sub-section (1) apply, and who uses any such goods for the manufacture of any other goods, shall maintain (in such form, in such manner and containing such particulars as may be specified by rules made in this behalf) a true and complete account of the specified goods so used by him and shall keep such account at the intimated place.

(3) If at any time, on a verification made by a proper officer, it is found that any specified goods owned, possessed or controlled by a person are lesser in quantity than the stock of such goods as shown, at the time of such verification, in the account referred to in sub-section (1), read with the accounts referred to in sub-section (2), it shall be presumed, unless the contrary is proved, that such goods, to the extent that they are lesser than the stock shown in the said accounts, have been illegally exported and that the person owning, possessing or controlling such goods has been concerned with the illegal export thereof.

11M. Steps to be taken by persons selling or transferring any specified goods

Except where he receives payment by cheque drawn by the purchaser, every person who sells or otherwise transfers within any specified area, any specified goods, shall obtain, on his copy of the sale or transfer voucher, the signature and full postal address of the person to whom such a sale or transfer is made and shall also take such other reasonable steps as may be specified by rules made in this behalf to satisfy himself as to the identity of the purchaser or the transferee, as the case may be, and if after an inquiry made by a proper officer, it is found that the purchaser or the transferee, as the case may be, is not either readily traceable or is a fictitious person, it shall be presumed, unless the contrary is proved, that such goods have been illegally exported and the person who had sold or otherwise transferred such goods had been concerned in such illegal export:

PROVIDED that nothing in this section shall apply to petty sales of any specified goods if the aggregate market price obtained by such petty sales, made in the course of a day, does not exceed two thousand and five hundred rupees.

Explanation : In this section, “petty sale” means a sale at a price which does not exceed one thousand rupees.

CHAPTER IV-C

POWER TO EXEMPT FROM THE PROVISIONS OF CHAPTERS IV-A AND IV-B

11N. Power to exempt

If the Central Government 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 as may be specified in the notification, goods of any class or description from all or any of the provisions of Chapter IVA or Chapter IVB.]

COMMENTS

Exemption from customs duty means exemption only from basic customs duty. Exemption from excise duty has the effect of exempting additional duty of customs. Under s. 11N of the Customs Act, 1962, the Central Government has the power to exempt, in public interest, specified goods from levy of customs duty by issue of notifications or special orders. Power to exempt includes power to modify or withdraw the exemption. Government can at any time withdraw even a time-bound exemption if “public interest” so demands. Rules and notifications take effect from the date of their publication in the Official Gazette. If conditions of a notification have been substantially complied with and only some procedural conditions could not be fulfilled due to bona fide reasons, the benefit cannot be denied to the assessee.— *Thermax (P) Ltd. v. Collector 1992(61) ELT 352 (SC)*

Once goods are classified as complete machinery in knocked down condition and not as parts, for the purpose of exemption notification also they should not be considered anything other than machinery.— *Collector of Customs v. Moi Engineering Ltd. 1998 (97) ELT 96 (Trib)*

CHAPTER V

LEVY OF, AND EXEMPTION FROM, CUSTOMS DUTIES

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 ¹[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[(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.]

COMMENTS

It is for the taxing authorities to establish the basic facts which would bring a transaction to the assessable area.—*Khanbhai Esoofbhai v. Union of India* 1992 (60) ELT 365 : 1992 (40) ECR 572

Levy of export duty as provided under section 12 of the Customs Act or grant of exemption under s. 25 cannot be said to be in any way violative of the articles 19(1)(f)(g), 31 and 265 of the Constitution. Nor can it be held that the notification levying the export duty should be published in advance.—*Jasaraj Jethamal v. Assistant Collector of Customs* 1991(53) ELT 553 : 1991 (37) ECR 755

Under s. 12, taxable event occurs when the goods are brought into the territorial waters of India. And when the goods are brought into the territorial waters of India they fall within the expression "imported" goods as defined in s. 2(25) until they are cleared for home consumption. Imported goods as such become the subject of the levy of customs duty and the chargeability continues until they are cleared for home consumption.—*Apar (P) Ltd. v. Union of India* 1985 (22) ELT 644 : 1988 (19) ECR 514

Even if the goods are totally exempt from duty at the time they entered the territorial waters, a rate of duty could still be fastened on them under s. 12 so long they retained the character of imported goods.—*Aluminium Industries Ltd. v. Union of India* 1984 (16) ELT 183

Unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item.—*Bharat Forge & Press Industries (P) Ltd. v. Collector of Central Excise* 1990 (45) ELT 525 (SC) : 1990 (27) ECR 1 (SC)

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.

COMMENTS

When shortage due to pilferage has been noticed after passing of order for clearance of goods by the proper officer then the provisions of this section are not applicable. The submission of the importer has no force with regard to the fact that he could file the claim only after Airport Authority had certified the shortage of goods inasmuch as the shortage was noticed when the importer had gone to take delivery of the goods.—*Commr. of Cus. (Air Cargo), New Delhi v. Relaxo Rubber Ltd.* 2001 (134) ELT 797 (Tri)

¹ Substituted by Customs Tariff Act 51 of 1975, w.e.f. 2-8-1976.

² Substituted by Customs and Central Excises (Amendment) Act 30 of 1963, w.e.f. 1-10-1963.

It is settled that the onus of proving misdeclaration regarding the price mentioned in the bill of entry is on the department and this onus can be discharged only on proving of proper fact which would discredit the price mentioned in the Bill of Entry and not on the basis of mere suspicion and surmises. It is also settled law that if there is no sufficient evidence to establish the charge of undervaluation and the department is not in a position to produce sufficient evidence to show that identical or similar goods have been ordinarily sold or offered for sale or delivery at the time and place and at a price adopted by the department, the department has to accept the invoice value of the imported goods for the purpose of assessment of customs duty.—*Sushil Kumar Kayan v. Asstt. Collector of Customs 1996 (62) ECR 32*

The directions of the Collector of Customs issued in the form of a public notice whereby the Commissioner is directed to make a claim for exemption by following only a particular procedure and correspondingly restricting the powers of the exempting authority to grant or not to grant exemption on the compliance or non-compliance only of such conditions, is a fetter upon his quasi-judicial authority. They are not merely administrative directions but in effect restrict the right of exempting authority to decide on the facts of each case whether there has been or has not been pilferage of the goods as required by s. 13 of the said Act. The same principle applies to the fulfilment of conditions in section 23 of the said Act.—*Cawasji Behramji & Co. v. H.N. Saifi 1990 (49) ELT 161 : 1991 (33) ECR 391*

¹[14. Valuation of goods

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or, as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

PROVIDED that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

PROVIDED FURTHER that the rules made in this behalf may provide for,—

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section;

²[(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and

1 Substituted by Finance Act, 2007 (22 of 2007), dt. 11-5-2007, w.e.f. 10-10-2007.

2 Inserted by the Finance Act, 2022.

manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria:]

PROVIDED ALSO that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation : For the purposes of this section—

- (a) "rate of exchange" means the rate of exchange—
 - (i) determined by the Board, or
 - (ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;
- (b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999.]

COMMENTS

Stamp duty affixed on documents not being part of price of imported goods or transaction value is not includible in the assessable value of the imported goods.—*Tata Yodogawa Ltd. v. Commr. of Customs, Bhubaneswar 2001 (135) ELT 960 (Tri-Kolkata)*

Demurrage charges are not includible in the assessable value of the imported goods.—*Commr. of Customs, Chennai v. Yeses International 2001 (133) ELT 526 (SC)*

If the wharfage expenses and stock losses were incurred after the delivery of the goods and on the termination of event of importation, then the question of including such charges in the assessable value does not arise at all.—*Commr. of Customs, Chennai v. Yeses International 2001 (133) ELT 526 (SC)*

Most of the customs duties are *ad valorem*. Goods have, therefore, to be valued for purposes of assessment. Our Customs (Valuation) Rules, 1988 follow the GATT provisions whereunder the norm is the transaction value or invoice price but it is subject to the rider that the invoice value to be acceptable should be a fully commercial and genuine price. Reliance on prices in other invoices is permissible only if imports chosen for comparison are contemporaneous (ordinarily not more than six months old), are of same quality and specification and from same manufacturer and country of production and size of the comparable consignment(s) is more or less similar. But where the declared price is ridiculously low and totally unrealistic, it may even be necessary to value unbranded goods on the basis of the known price of branded goods and also the goods of one country of origin on the basis of the known price of the goods of another country of origin, but the linkage must be appreciable and proximate—*Collector v. Shibani Engg. Systems 1996(86) ELT 453 (SC)*

Where the assessable value of some machinery manufactured to specifications and not purchased off the machinery can only be determined by best judgment method, the commission given in this transaction being material for such.—*Apollo Tyres Ltd. v. Collector of Customs* 1997 (68) ECR 381 (SC)

It is not the actual price which is paid for the goods which is relevant for the purpose of determining the assessable value. The value of the goods for the purpose of charging customs duty shall be deemed to be the price at which such goods or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and the price is the sole consideration of sale or offer for sale. There is one kind of valuation for the purpose of assessment to customs duty but another for the purpose of c.i.f. value which is to be debited to the licensee. This value to be debited consists of the items, viz. the price of the goods and the commission allowed and where the commission is not apparent on the surface, it is the duty of the customs authorities to find out and add to it the said price so that the price of the goods plus the commission and the freight and insurance would constitute the c.i.f. price for the purpose of debiting to the licensee.—*Manjushree Minerals Ltd. v. Collector of Customs* 1995 (56) ECR 451

In *Union of India v. Mahindra & Mahindra Ltd.* 1995 (76) ELT 481 (SC), it was held that for the purpose of valuation, the real state of affairs is supposed to be reflected by the apparent tenor of the agreement; still the department is free to allege and prove that the apparent is not real. In that case the bargain between the assessee and the foreign collaborator is evidenced by written agreements. There is no material nor was it suggested that the dealings between the parties are not at arm's length. No evidence is available to show that the payment of royalty to the collaborator induced any extra commercial obligation for the price of CKD packs, parts and components. Ordinarily, the court should proceed on the basis that the apparent tenor of the agreements reflect the real state of affairs. It is, no doubt, open to the revenue to allege and prove that the apparent is not the real and the price for the sale of the CKD packs is not the true price, and the price was determined by reckoning or taking into consideration the lump sum payment made under the collaboration agreement in the sum of 15 million French Francs.

Though there is no general proposition that the department is to prove undervaluation of imported goods, yet in the absence of contemporaneous import of the like kind of goods at higher prices, the invoice price submitted by the importer should be taken as the basis for assessable value under s. 14—*Collector of Customs v. Nippon Bearings (P) Ltd.* 1996 (82) ELT 3 (SC)

In *Basant Industries v. Collector of Customs* 1996 (81) ELT 195 (SC), the Supreme Court observed that where the assessee-importer secured a lower price after considerable negotiations with the foreign supplier, a mere comparison of invoices of import of same goods by another importer is not conclusive to hold that the assessee was guilty of undervaluation, especially where in a third case the import was at the same rate as that of assessee, therefore, the relationship between the importer and its foreign supplier is a relevant criterion that may vary between party and party.

When the certificate of origin is found ingenuine, value is to be determined under the residuary Item—Rule 8 of Customs Valuation Rules, 1988, consistent with s. 14(1) of the Customs Act.—*Collector of Customs v. Sanjay Chandiram* 1995 (77) ELT 241 (SC). Where the correctness of invoice value is accepted by the Government, charging of duty in excess of the invoice value or rest of the consignment is beyond jurisdiction.—*Patel India (P) Ltd. v. Union of India* 1983 (13) ELT 1495 (SC). If there is a difference in weight compared to similar goods imported by some other importer, the same would result in difference of price also and the two goods cannot be treated as identical for the purpose of valuation for levying customs duty.—*Deepak Electronic (P) Ltd. v. CC* 1995 (77) ELT 48 (SC)

Where valuation of export goods where no customs duty is leviable, the customs officer has jurisdiction to determine the correct export value in terms of ss. 2(41) and 14(1) that remittance of full foreign exchange into India is no sure indication of declared export value being correct and that mis-declaration of value by exporter amounts to violation of prohibitions deemed to have been imposed under s. 11 punishable under s. 113.—*Collector v. Pankaj V. Seth* 1997 (90) ELT 31 (Cal)

Rate of duty, exchange and tariff valuation of imported goods is the rate and valuation of the goods as applicable on the date when the goods are actually removed from the warehouse.—*Prakash Cotton Mills (P) Ltd. v. B.Sen* 1979 (4) ELT 241 (SC)

Where the value of imported goods is fixed after considerable negotiations and bargaining, and also another importer also supplies identical goods at the same price, upward revision of the price on ground of undervaluation is unwarranted, simply comparing with the invoice of a third importer.—*Basant Industries v. Collector of Customs* 1996 (66) ECR 225 (SC),

Customs authorities have realised the excess export duty by making assessment on value of 'cess', purportedly under the provisions of the Customs Act. The question is whether the customs authorities had any power or jurisdiction to levy such duty. The Customs Act does not authorise levy of export duty on 'cess' and, as such, the said collection of export duty on 'cess' is without jurisdiction and authority of law. Under the provisions of s. 14 of the Customs Act, 1962, the duty of customs is chargeable on any goods by reference to their 'value'. Sec. 14 is *pari materia* with new section 4 (4) (d) (ii) of the Central Excises & Salt Act, 1944 wherein the duty of excise chargeable on any excisable goods is with reference to 'value'. Customs authority had no jurisdiction to levy any export duty on 'cess' treating the same to be a part of the assessable value within the meaning of s. 14 of the Act, when 'cess' was and/or is not a part of the assessable value, any duty realised on the basis of the said value will be clearly without authority of law and/or in excess of the jurisdiction conferred on the authority. It would not be a case of mere error of law or fact under the provisions of the Customs Act, 1962 to levy the export duty on 'cess' not authorised under the Act and the same will be beyond the scope and purview of the Customs Act, 1962 and/or the jurisdiction, authority and competence of the officers under the Act. The Customs Act is a complete code only if the customs authorities act within the scope of the provisions of the Act but if customs authorities act beyond the scope of the Act, then the order of the customs authorities cannot be treated as final.—*Bengal Ruby Mica Supplies Co. v. UOI* 1994 (54) ECR 43

In assessing the amount of fine or penalty, it is not only relevant but crucial to have regard to the value of the goods which have been imported without a proper licence. A proper determination of fines and penalties is not possible without a proper assessment of the values of the infringing items of import.—*Dynamatic Hydraulics Ltd. v. Collector of Customs* 1992(58) ELT 553 (SC)

15. Date for determination of rate of duty and tariff valuation of imported goods

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,—

- (a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;
- (b) in the case of goods cleared from a warehouse under section 68, on the date on which ¹[a bill of entry for home consumption in respect of such goods is presented under that section;]
- (c) in the case of any other goods, on the date of payment of duty:

¹ Substituted for "the goods are actually removed from the warehouse" by Finance Act, 2003 (32 of 2003), w.e.f. 14-5-2003.