

Star Rating

On the basis of Maximum marks from a chapter

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On the basis of Questions included every year from a chapter

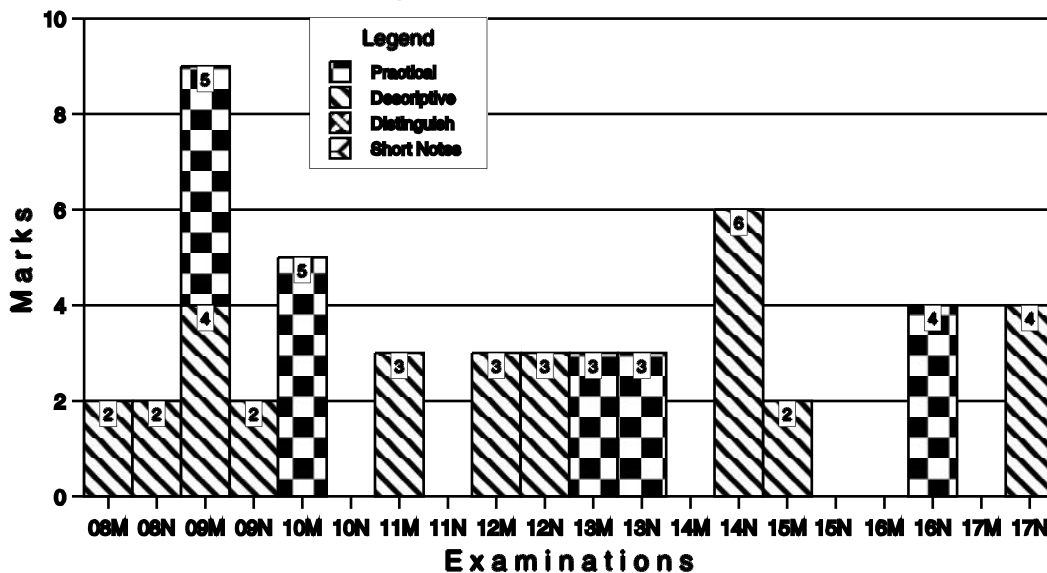
Nil

On the basis of Compulsory questions from a chapter

Nil

CHAPTER	<h1>Levy of and Exemptions from Customs Duty</h1>
1	
THIS CHAPTER COMPRISES OF	
<p>☞ Basic Concepts ☞ Constitutional provisions ☞ Overview of the Customs Law ☞ Administrative Aspects ☞ Determining factors ☞ Point and circumstances of levy ☞ Procedure, mechanism and organisation for assessment of duty ☞ Remission, abatement and exemptions.</p>	

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



DESCRIPTIVE QUESTIONS

2008 - May [6] {C} (a) Explain briefly with reference to the provisions of the Customs Act, 1962 the following:

- (i) Appointment of officers of customs (2 marks)

Answer:

As per Sec.4 of the Customs Act 1962, Customs Officers are appointed by Central Board of Excise & Customs. However, the CBEC may authorise Chief Commissioner or Commissioner or Joint or Assistant or Deputy Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner.

2008 - Nov [9] (a) Explain briefly the significance of 'Indian Customs Waters' under the Customs Act, 1962. (2 marks)

Answer:

- (i) **Meaning of Indian Custom Water (Sec. 2(28)):** It means the water extending into the sea up to the limit of contiguous zone and includes bay, gulf, harbour, creek or tidal river.
- (ii) Significance of "Indian Customs Waters" following actions can be taken by Custom Officer, which show the significance of Indian - Customs Waters:
- (a) Search of any person, who has landed from or about to board/is on board any vessel within Indian custom waters and who has secreted about his person, any goods etc. (Sec. 100)
 - (b) Arrest of the suspected persons (Sec. 104)
 - (c) Stop & Search of vessel (Sec.106)
 - (d) Confiscation of Conveyance (Sec.115).

2009 - May [9] (c) Explain briefly legal provisions relating to pilfered goods under Customs Act, 1962. (2 marks)

Answer:

Sec. 13 of Customs Act 1962 deals with the provisions of "pilfered goods". Pilfered goods means goods stolen in small quantities. Accordingly, if any imported goods has been pilfered, after its unloading but before proper

officer has made an order for clearance of goods for home consumption or deposit in a warehouse then, importer can't be called upon to pay the duty. However, if such pilfered goods has been restored to the importer, then importer will be liable to pay duty.

2009 - May [9] (e) Define Customs Area. (2 marks)

Answer:

- (i) **Definition of Customs Area [Sec. 2(11)]**
 - It means the area of a customs station and
 - Includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.
- (ii) **Power to Demarcate Customs Area:** The Commissioner of Customs demarcates and appoint custom area as per Sec. 8 of Custom Act, 1962.

2009 - Nov [9] (a) Explain briefly the expression 'person-in-charge' under the Customs Act, 1962. (2 marks)

Answer:

As per Sec. 2(31) Person-in- charge means

Nature of conveyance	Person - in- charge will be
(i) Vessel	The master of the vessel
(ii) Aircraft	The commander or pilot-in-charge of the aircraft
(iii) Train	The guard or conductor
(iv) Other conveyances	The driver or other person in charge.

2011 - May [5] (c) Explain briefly with reference to the Customs Act, 1962 the significance of 'Indian Customs Waters". (3 marks)

Answer:

Significance of Indian Customs Waters

- (i) If an officer of customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under Sec. 132 or Sec. 133 or Sec. 135 or Sec. 135A or Sec. 136, he may arrest such person informing him of the grounds for such arrest. [Sec. 104 of Customs Act].

- (ii) Where the proper officer has reasons to believe that any vessel in India or within Indian customs waters has been used in the smuggling of any goods or in the carriage of any smuggled goods, he may stop any such vehicles, animal or vessel or in case of an aircraft, compel it to land. [Sec. 106 of Customs Act].
- (iii) Any vessel which is or has been within the Indian customs waters is constructed, adapted, altered or fitted in any manner for the purpose of concealing goods shall be liable to confiscation. [Sec. 115(1)(a) of Customs Act].
- (iv) Customs Officer has the power to search any person who has landed from/about to board/is on board any vessel within Indian customs waters and who has secreted about his person, any goods liable to confiscation or any documents relating thereto. [Sec. 100(2)(a) of Customs Act].
- (v) Any goods which are brought within the Indian Customs Waters for the purpose of being imported from a place outside India, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation. [Sec. 111(d) of Customs Act].

Note: Any three points may be mentioned.

2012 - May [6] (Or) (c) Write a brief note on self assessment in customs under the Customs Act, 1962. (3 marks)

Answer:

- (i) Self-assessment of duty has been introduced in the Customs Act, 1962 vide the Finance Act, 2011 by recasting Sec. 17 of the Customs Act, 1962.
- (ii) The importer or the exporter has to self-assess the duty leviable on goods imported or exported.
- (iii) The proper officer may verify the self-assessment of such goods by examining/testing the goods, if necessary. He may also ask the importer or the exporter to furnish any document or information for ascertaining the duty.
- (iv) After verification, if it is found that the self-assessment has not been done correctly, the proper officer may re-assess the duty leviable on such goods.

- (v) If the order of the re-assessment is contrary to the self-assessment, the proper officer should pass a speaking order on the re-assessment within 15 days from the date of re-assessment.
- (vi) Where re-assessment has not been done or a speaking order has not been passed on re-assessment, the proper officer may audit the assessment of duty of the imported/export goods at his office or at the premises of the importer/ exporter.

2012 - Nov [6] (c) Mention briefly the provisions relating to remission of duty in case of volatile goods under the Customs Act. (3 marks)

Answer:

Sec. 70 of the Customs Act provides for the remission of duty in case of shortage of the volatile goods, which are warehouse. The Assistant or Deputy Commissioner of Customs is empowered to remit the duty leviable on such deficiency, if following conditions are satisfied:

- (i) The goods should be found deficient in quantity at the time of removal from the warehouse;
- (ii) The deficiency should be on account of natural loss, i.e., evaporation etc.

These provisions are applicable only to such warehouse goods as the Central Government, having regard to the volatility of the goods and the manner of their storage, may, by notification in the Official Gazette, specify.

2014 - Nov [4] (c) (ii) Mention the new nomenclature of Customs House Agent and the need for such change. (2 marks)

Answer:

- (i) **New Nomenclature:** The new nomenclature of “Custom House Agent” is “Custom Broker”. Accordingly, there is also amendment in Section 146 of the Customs Act, 1962, by the Finance Act, 2013.
- (ii) **Need:** The term “Broker” is more wider than the “Agent”, so this new nomenclature was brought. Again, the change has been done to be in line with the global practice and internationally accepted nomenclature.

2014 - Nov [5] (c) Explain briefly the following with reference to the provisions of the Customs Act, 1962:

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(1) Conveyance

(2) India

(2 × 2 = 4 marks)

Answer:

(1) Conveyance:

- **Definition:** As per Sec. 2(9) of Customs Act, 1962, conveyance is defined in an inclusive manner and includes a vessel, an aircraft and a vehicle.
- **Features:**
 - (i) It defines the type of transport or vehicle for transportation of imported goods or export goods.
 - (ii) It helps to fix the liability of controller of conveyance i.e. person - in- charge.

(2) India:

- **Definition:** As per Sec. 2(27) of Customs Act, 1962, "India" includes the territorial waters of India, i.e. upto 12 nautical miles into the sea from the baseline or land-mass.
- Symbolically, India = Landmass + 12 nautical miles into the sea. (1 nautical mile = 1.85 Km).

2015 - May [4] (d) (i) Briefly explain with reference to the provisions of the Customs Act the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle. (2 marks)

Answer :

Section 15(1) provides for determination of rate of duty and tariff valuation of imported goods. Accordingly the date for determination of rate of duty and tariff valuation of imported goods entered for home consumption under Section 46 will be:

- (i) the date of presentation of Bill of Entry; or
- (ii) the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which goods are imported, **whichever is later.**

2017 - Nov [6] (d) Answer the questions below.

(iii) Briefly discuss the conditions to be satisfied for remission of duty in case of volatile goods under the provisions of the Customs Act, 1962.

(2 marks)

- (iv) Enumerate the goods specified as volatile for the purposes of remission of duty under the provisions of Customs Act, 1962. (2 marks)

PRACTICAL QUESTIONS

2009 - May [8] ABC imported a vessel 'Waterloo' for the purpose of breaking from XYZ Ltd. of U.K. A memorandum of understanding was signed between the buyer and seller on 2.6.97 and ABC took delivery of the vessel on 4.6.97. Vessel drifted and landed in the yard of B in a damaged condition on 9.6.97. On 24.6.97, ABC filed application to concerned Assistant Commissioner for extension of time to file bill of entry, which was granted on 12.8.97. ABC paid ₹ 24 crores to XYZ Ltd. towards the purchase price of the vessel. Thereafter ABC sold the vessel to B for ₹ 12 crores and B filed bill of entry on 12.9.97. Assessing authority assessed the ship taking the value as ₹ 24 crores and ship was taken over by B after assessment order was passed. 'B' argues that assessable value should be taken as ₹ 12 crores since the vessel was damaged because of the storm which made the vessel drift during appellate proceedings. No application for abatement of duty was made before the assessing authority by ABC or B. Examine whether benefit of relief under Sec. 22 of Customs Act, 1962 to reduce the value and thereby duty can be extended to B under the above circumstances. The assessment order in respect of bill of entry was passed on 23.12.97. (5 marks)

Answer:

Supreme Court held that in order to claim the benefit of the abatement under Sec. 22, the party claiming the abatement has to satisfy the Assessing Authority that a case has been made out under Sec. 22 for abatement of duty on damaged or deteriorated goods. In the absence of any claim made under Sec. 22 in writing to the Assessing Authority, the appellant (B) could not claim the abatement under Sec. 22 and the Assessing Authority did not record rightly to its satisfaction that the appellant was entitled to the abatement of duty.

In this case, damage occurred in Indian shore. Importer sought extension of time to file bill of entry. But, thereafter remitted the purchase price and sold the vessel to B in turn filed the bill of entry and the vessel was assessed. No application was made by the buyers i.e. importer (ABC) to the

Assistant Commissioner for any abatement of duty on damaged goods.

The transaction between the importer (ABC) and the respondent (c) cannot be described as the transaction of purchase and sale during the course of international trade. Any sale of goods carried out, after the act of 'import' within the meaning of the Act is over, can only be described as a sale in the course of domestic trade and not a sale in the course of international trade. Therefore, the appellant i.e. buyer (B) who had purchased the vessel in the course of domestic trade was not entitled to seek any abatement of duty under Sec. 22 of the Customs Act, 1962 on the ground on which it claimed before the Appellate Authority.

Hence, in the light of above discussion, it can be inferred that the assessable value of the ship shall be the transaction value at which the importer (ABC) has paid at the time of importation i.e. ₹ 24 crores.

2010 - May [7] (b) M/s Marwar Industries imported finishing agents, dye-carriers, printing paste etc. to be used for manufacture of textile articles. The importer claimed exemption for Additional duty of customs (CVD) leviable under Sec. 3 of the Customs Tariff Act, 1975, on the ground that there was an exemption for excise duty in respect of said goods used in the 'same factory' for manufacture of textile articles. The Department contended that CVD is payable on the ground that the goods which were to be used must also be manufactured in the 'same factory'. You are requested to comment upon the contention of Department, with reference to a decided case law, if any. (5 marks)

Answer:

The contention of the Department is not valid in law. The Supreme Court in a similar case of CCus. v. Malwa Industries Ltd. (2009) 235 ELT 214 (SC) held that literal meaning should be avoided if it leads to absurdity. When the goods are imported, obviously, the same would not be manufactured in the same factory and therefore, it would become impossible to apply the provision of Sec. 3(1) of the Customs Tariff Act, 1975. It was observed that the object of countervailing duty (CVD) is that importer should not be placed at some more advantageous position vis-a-vis purchaser/ manufacturer of similar goods in India.

Considering the purpose of exemption, it was held that 'same factory' means imported goods should be used in factory belonging to importer where manufacturing activity takes place. Hence, the exemption will be available to imported goods also and CVD is not applicable.

2013 - May [3] (c) Sun Synthetic Fibres was an importer. It had imported one unit of the equipment which was declared as “High Speed Draw Warping Machine with 1536 ends along with essential spares”. The importer claimed that these goods are covered under an exemption notification.

Under said notification, exemption was available in respect of the High Speed Warping Machine with yarn tensioning, pneumatic suction devices and accessories. Undisputedly, the assessee had imported High Speed Warping Machine, but it had drawing unit and not the pneumatic suction device. The textile commissioner, who was well conversant with these machines, had stated that the goods imported by the assessee were covered under the exemption notification. He further stated that drawing unit was just an essential accessory to the machines imported by assessee and, therefore, was covered under said notification. The opinion so furnished is taken note of by the Tribunal while granting relief to the assessee. Revenue contended that the machine imported by the assessee was not in consonance with the exemption notification and, therefore, the benefit of exemption should not be available under the notification to the assessee. Discuss whether the contention of the Revenue is sustainable in law, with the help of decided case law, if any. (3 marks)

Answer :

No, the contention of the Revenue is not sustainable.

The facts of the given case are similar to the case of *CCus. (import). Mumbai v. Konkan Synthetic Fibers* 2012 (278) E.L.T. 37 (S.C.) wherein the Supreme Court stated that it is a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance.

The Supreme Court further elaborated that when no statutory definition is provided in respect of an item in the Customs Act or the Central Excise Act, the trade understanding, i.e., the understanding in the opinion of those who deal with the goods in question would be the safest guide. Hence, the Supreme Court, relying on the opinion of the Textile Commissioner, concluded that the imported goods were covered under the exemption notification.

2013 - Nov [4] (c) M/s. Decent Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. M/s. Decent Laminates sought an extension of the warehousing period which was granted. However, even after the expiry of extended period, it did not remove the goods from the warehouse. Subsequently, it applied for remission of duty under Sec.-23 of the Customs Act, 1962 on the ground that the imported goods had become unfit for use on account of non-availability of orders for clearance and had lost their shelf life also.

Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by M/s. Decent Laminates is valid in law?

(3 marks)

Answer:

No, the application for remission of duty filed by M/s Decent Laminates is not valid in law. The facts of the given case are similar to the case of *CCE v. Decorative Laminates (1) Pvt. Ltd. 2010 (257) E.L.T. 61(Kar.)* wherein the High Court held that the circumstances made out under Sec. 23 were not applicable in the instant case as the destruction/ loss of the goods had not occurred before the clearance for home consumption.

Remission can be granted under Sec. 23 only when the imported goods have been lost or destroyed at any time before the clearance for home consumption.

The High Court clarified that the expression "at any time before clearance for home consumption" as provided in Sec. 23 means the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not after the lapse of such period. The said expression cannot extend to a period after the lapse of the extended period merely because the goods were not cleared within the stipulated time. Instead, it would be a case of goods improperly removed from the warehouse.

2016 - Nov [5] (d) M/s Impex imported some consignment of goods on 1-6-2017. A bill of entry for warehousing of goods was presented on 5-6-2017 and the materials were duly warehoused. The goods were subject to duty @

50% advalorem. In the meanwhile on 1-7-2017 an exemption notification was issued reducing the effective customs duty @ 30%, advalorem. M/s Impex filed their bill of entry for home consumption on 1-8-2017 claiming duty @ 30% advalorem. However, customs department charged duty @ 50% advalorem being the rate on the date of clearance into the warehouse.

Explain with reference to the provisions of the Customs Act, 1962:

- (i) The rate of duty applicable for clearance for home consumption in this case.
- (ii) Whether the rate of exchange on 1-8-2017 could be adopted for purpose of conversion of foreign currency into local currency.

(4 marks)

Answer:

- (i) The rate of duty will be @ 30% i.e. rate of duty on filing of bill of entry for home consumption. [Sec. 15(1)(b) of the Customs Act, 1962]
- (ii) The rate of exchange will be the rate of the duty of filing of bill of entry for warehousing. [3rd Proviso to Sec. 14 of the Customs Act, 1962]

Topic not yet asked but equally important for examinations

SHORT NOTES

Q1. Write short note on:

- (iii) Indian customs waters.

(3 marks)

Answer:

- (i) **Meaning of Indian Custom Water (Sec. 2(28)):** It means the water extending into the sea up to the limit of contiguous zone and includes bay, gulf, harbour, creek or tidal river.
- (ii) Significance of “**Indian Customs Waters**” following actions can be taken by Custom Officer, which show the significance of Indian - Customs Waters:
 - (a) Search of any person, who has landed from or about to board/is on board any vessel within Indian custom waters and who has secreted about his person, any goods etc. [Sec. 100]

- (b) Arrest of the suspected persons (Sec. 104)
- (c) Stop & Search of vessel (Sec.106)
- (d) Confiscation of Conveyance (Sec.115).

Q2. Write short notes on of the following with reference to the Customs Act, 1962:

- (i) Goods
- (ii) Imported goods
- (iii) Dutiable goods. (3 × 2 = 6 marks)

Answer:

(i) Definition: As per Sec. 2(22), goods includes

- Vessels, aircraft and vehicles
- Stores
- Baggage
- Currency and negotiable instruments, and
- Any other kind of moveable property

Jalyan Udyog Vs. UOI (1987/Bombay): Vessels purchased by Shipping Corporation of India and brought to India for the purpose of carrying cargo for ports outside India are treated as “Imported Goods” and not mere conveyance.

(ii) As per Sec. 2(25) of Custom Act - 1962, Imported goods “means any goods brought into India from a place outside India, but doesn’t include goods, which have been cleared for home consumption.”

(iii) (i) Definition: As per Sec. 2(14) Dutiable goods means” any goods which are chargeable to duty amount on which duty has not been paid.”

(ii) Features of Dutiable goods:

- (a) It may be imported or export goods
- (b) It is not released by custom officers and currently lying in the custom area.
- (c) It also includes goods carrying ‘Nil’ duty as well as exempted goods.

DESCRIPTIVE QUESTIONS

Q1. Briefly explain with reference to the provisions of the Customs Act, 1962 any **two** of the following:

- (i) Coastal goods
- (ii) Customs Area
- (iii) Derelict, Jetsam, Flotsam and Wreck. (2×2=4 marks)

Answer:

- (i) (i) **Coastal Goods [sec. 2(7)]:** It means goods, other than imported goods, transported in a vessel from one port in India to another.
 - (ii) **Example:** Goods loaded at Visakhapatnam port for being transported at Chennai port, then such goods are referred as costal goods.
 - (iii) **Governed by:** Chapter XII, containing Sec. 91 to 99 of Customs Act, 1962, governs the coastal goods.
- (ii) (i) **Definition of Customs Area (Sec.2(ii)):**
 - It means the area of a customs station and
 - Includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.
- (ii) (ii) **Power to Demarcate Customs Area:** The Commissioner of Customs demarcates and appoint custom area as per Sec. 8 of Custom Act, 1962.
- (iii) These terms are used in Sec 21 of Customs Act, 1962 and creates a fiction of Import, consequently liable for duty:

Terms	Meaning
(i) Derelict	Any property, say cargo, abandoned in the sea without any hope of its recovery.
(ii) Jetsam	When goods are thrown from the vessel to lighten it and avoid it from sinking.
(iii) Flotsam	When goods are thrown from the vessel and such goods remained floating.
(iv) Wreck	Cargo, vessel, which are cast ashore by tides after ship-wreck.

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Q2. Explain briefly the meaning of the following with reference to the Customs Act, 1962:

- (ii) Dutiable goods and Imported goods (2 marks)

Answer:

As per Sec. 2(25) of Custom Act - 1962, Imported goods means" any goods brought into India from a place outside India, but doesn't include goods, which have been cleared for home consumption.

- (i) **Definition:** As per Sec. 2(14) Dutiable goods" means any goods which are chargeable to duty amount on which duty has not been paid.
- (ii) **Features of Dutiable goods:**
- (i) It may be imported as export goods
 - (ii) It is not released by custom officers and currently lying in the custom area.
 - (iii) It also includes goods carrying 'Nil' duty as well as exempted goods.