**UNIT – II: Customs Duty**

Customs Duty – Objectives – Levy and Collection – Classification of Goods – Types of Customs Duty – Valuation of Goods

**Introduction:**

Customs Act, 1962 just like any other tax law is primarily for the levy and collection of duties but at the same time it has the other and equally important purposes such as:

(i) Regulation of imports and exports;

(ii) Protection of domestic industry;

(iii) Prevention of smuggling;

(iv) Conservation and augmentation of foreign exchange and so on.

Section 12 of the Custom Act provides that duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 or other applicable Acts on goods imported into or exported from India.

**Objectives of customs Act 1962:**

* To safeguard domestic trade by imposing duty on imported goods.
* To discourage imports.
* To levy and collect adequate revenue resources for the economic development of India.
* To protect Indian industries in the interest of trade, commerce and economy.
* To provide for necessary powers to the Central Government to prevent smuggling activities.
* To ensure that the home markets do not become a dumping ground for foreign goods.

**Scope of the Customs Duty:**

The Customs Act 1962 was passed by parliament on 13th December 1962. The Act came into force on February 1, 1963. The Act extends to the whole of India. It is primarily treated as a Revenue Act. Its main objective is to collect duties on exports and taxes on imports under the fiscal value and tariffs. The customs consists of 17 chapters and 161 sections.

The customs act is aimed at preventing illegal imports and exports of goods which tend to cause distortions in the economy. It affords protection to home industries by means of regulating imports thereby conserving precious foreign exchange and promoting exports. The customs act 1962 contains provisions towards the following:

* Enforcing various restrictions and prohibitions in respect of import and export of goods.
* Levy, assessment and collection of import and export duties.
* Quasi-judicial adjudication proceedings.
* Appellate and revisionary authority.
* Prosecution of offenders by the various courts.

**Officers of customs:**

The following are the classes of officers of customs

* Chief Commissioners of Customs.
* Commissioners of Customs.
* Commissioners of Customs (Appeals)
* Deputy Commissioners of Customs.
* Assistant Commissioners of Customs.
* Such other class of officers of Customs as may be appointed for the purposes of this act.

**Advantages of Customs Duty**

* The goal of levying customs duty is to protect each country's economy, jobs, environment, and citizens by regulating the movement of commodities in and out of the country, particularly restricted and restrictive goods.
* Every goods has a predetermined rate of duty that is determined by several criteria, including where it was purchased, where it was manufactured, and what it is composed of. This gives a clear idea of the country’s tax with its global partners.
* In addition, anything you bring into India for the first time must be declared according to customs regulations.
* Manipulating the Customs Duty can help in promoting sustainable energy, reducing non-essential imports, encouraging domestic industry, and raising income.
* Customs duty on numerous inputs can be reduced to encourage domestic manufacture, while duty on completed products can be raised to generate additional money.

**Disadvantages of Customs Duty**

* Raising import taxes is now widely acknowledged to be effective only as an anti-dumping strategy against another country.
* The economy remains in continuous tussle due to manipulation in Customs Duty. Manufacturers in other industry segments will fight fervently for equal protection from imports as a result of a duty cut in one sector.
* Customs Duty weakens the economy's competitiveness, potentially forcing consumers to settle for inferior items.
* The protection is given by increasing the duty on imports acts as a reward for local manufacturers' persistent inefficiency, raising the cost of goods.
* Competing countries have already labeled the hike in Customs duty as a violation of World Trade Organization (WTO) rules.
* While India has used emergency powers in its Customs rules to implement these hikes, it will be tough to persuade players such as Japan, the EU, and the US of their validity.
* As a result, India's credibility as a trading partner may be harmed, making external markets less favorable to Indian products.

#### Meaning of Tariffs:

A tariff is a duty or tax imposed by the government of a country upon the traded commodity as it crosses the national boundaries. Tariff can be levied both upon exports and imports. The tariff or duties imposed upon the goods originating in the home country and scheduled for abroad are called as the export duties. Countries, interested in maximising their exports generally avoid the use of export duties. Tariffs have, therefore, become synonymous with import duties. The import duties or import tariffs are levied upon the goods originating from abroad and scheduled for the home country. Sometimes a country may also resort to what is called as a transit duty.

#### Types of Tariffs:

**1. On the basis of the criterion for imposition of tariffs**

**(a) Specific Tariff:**

Specific tariff is the fixed amount of money per physical unit or according to the weight or measurement of the commodity imported or exported. Such duties can be levied on goods like wheat, rice, fertilisers, cement, sugar, cloth etc. Specific duties are quite easy to administer, as they do not involve the evaluation of the goods.

**(b) Ad Valorem Tariff:**

‘Ad Valorem’ is the Latin word that means ‘on the value.’ When the duty is levied as a fixed percentage of the value of the traded commodity, it is called as valorem tariff. Such duties are levied on the products the value of which is disproportionately higher compared to their physical characteristics such as weight or measure­ment.

**(c) Compound Tariff:**

The compound tariff is a combination of specific and ad valorem tariff. The structure of compound tariff includes specific duty on each unit of the commodity plus a percentage of ad valorem duty. The compound tariffs not only impart a greater elasticity to revenues but also assure a more effective protection to the home industries.

**(d) Sliding Scale Tariff:**

The import duties which vary with the prices of the commodities are termed as sliding scale duties. These may either be on specific or ad valorem basis. In practice, these are generally on a specific basis

**(2) Classification on the Basis of Purpose for Which Tariff is Imposed:**

**(a) Revenue Tariff:**

The tariff, which is imposed primarily for generating more revenues for the government is called as the revenue tariff. In advanced countries, the introduction and diversification of direct taxes has reduced the importance of tariff as a source of government revenues. But in the less developed countries, there is still much reliance of the governments on this source of revenue.

**(b) Protective Tariff:**

The tariff may be imposed by the government to protect the home industries from the cut-throat competition from the foreign produced goods. The higher the tariff, greater may be the protective effect of tariff. A perfect protective tariff is likely to prohibit completely the import from abroad.

**(3) Classification on the Basis of Discrimination:**

**(a) Non-Discriminatory Tariff:**

If the uniform tariff rates are applicable to all the commodities irrespe ctive of the country of origin, these are known as non-discriminatory tariffs. It is possible that low rates of tariffs on certain commodities exist because of commercial agreements with some countries but the tariff-imposing home country extends the same low tariff rates to the commodities of all the countries.

**(b) Discriminatory Tariff:**

In case of discriminatory tariff, the varying tariff rates exist for different commodities. The products originating from favoured countries are subject to a lower tariff rate than those of other countries. The discriminatory tariffs can be double or multiple column tariffs.

**(4) Classification on the Basis of Products:**

**(a) Import Duties:**

If the home country imposes tariff upon the products of the foreign countries as they enter its territory, the tariff is known as import tariff or import duty.

**(b) Export Duties:**

If the products of the home country become subject to tax as they leave its territory to be sold in the foreign market, the tax or duty is called as export tariff or export duty.

**(5) Classification on the Basis of Retaliation:**

**(a) Retaliatory Tariffs:**

If a foreign country has imposed tariffs upon the exports from the home country and the latter imposes tariffs against the products of the former, the tariffs resorted to by the home country will be regarded as the retaliatory tariffs. The home country, while adopting this measure does not either has the object of raising revenues or protecting home industries but of acting in retaliation.

**(b) Countervailing Tariffs:**

If the foreign country has been exporting large quantities of its products in the market of the home country on the strength of export subsidies, the home country can neutralise the ‘unfair advantage’ enjoyed by foreign products through imposing duties upon them as they enter the territory of the home country. The latter has full justification for resorting to these countervailing duties in order that the unfair advantage given by exports subsidies to the foreign products is offset and the competition takes place on equal footing between the foreign and home produced goods.

**Levy and Collection of customs duty:**

The customs Act 1962 is a complete Act under which the Central board of Excise and Customs and Commissioners of Customs function for collection of duty and enforcement of other allied acts. The customs control over the movement of goods and persons across the borders of our country is exercised by restricting the points of entry and exit at or through which alone the movement of cargo and persons can take place.

Section 12 to 28 of Act deal with levy and collection of customs duties. Section 12 of the Act provides levy of duty on imports and exports. Import duty is levied on almost all items, while export duty is levied only on a few limited items.

Customs duty on import and export is being levied and collected on the basis of the customs tariff schedule which is based on harmonized commodity descriptions and coding system. When the harmonized system prescribes the rates of duties represented as percentage it implies that the duty has to be levied at the rates specified in the schedule ad valorem.

**Types of customs duty:**

**1. Basic custom duty:**

This is the duty levied under section 12 of the customs act. It is levied as a percentage of value as determined under section 14 (1) of the act. Basic duties are prescribed in the customs tariff act and the rates are of two kinds.

**(a) Standard rate:** Customs duty is charged at this rate where there is no provision for preferential rate.

**(b) Preferential rate:** This rate is applicable in respect of goods imported from any preferential area covered under the agreements made by the Union Government.

**2. Special customs duty:**

A special customs duty @5% has been introduced by the Finance Act. Special duty is payable on baggage, but is not payable on gold and silver on which concessional duty is payable when brought by a person after 6 months stay abroad.

**3. Auxiliary customs duty:**

This duty is leviable on all goods imported into the county at a specified percentage of their value which normally does not exceed 50%. However this rate is subject to increase or decrease within the above overall limit.

**4. Additional Customs duty:**

This duty is popularly known as countervailing duty. Under Section 3 (1) of the Customs Tariff Act, an additional duty on goods imported into the country is leviable. The rate of this duty is equal to the excise duty on like articles if produced or manufactured in India. If the rate of this duty is on ad valorem basis the value for this purpose will be the total of the value of imported article and the customs duty on it.

**5. Special Additional duty of customs:**

A new section 3A has been inserted in the Customs Tariff Act 1975 to impose special additional duty of customs @ 4% with a view to providing a level playing field in relation to sales tax and other local levies on Indian goods. The duty will be computed on the aggregate of Assessable value, Basic duty of customs, Special duty of customs and additional duty of customs under section 3 of the customs tariff act 1975. The newly brought in special additional duty of customs came into force immediately.

**Prohibition on importation and exportation of goods:**

The Customs Act1962 envisages enforcing various restriction and prohibitions in respect of import and export of goods. Section 11 of the Customs Act empowers the Central Government to prohibit the import or export of goods of any specified descriptions.

**Reasons for prohibiting imports/exports:**

* Maintenance of security of India.
* Maintenance of public order and standards of decency or morality.
* Prevention of smuggling.
* Prevention of shortage of goods of any descriptions.
* Conservation of foreign exchange and safeguarding of balance of payments.
* Prevention of surplus of any agricultural produce or the product of fisheries.
* Protection of human, animal or plant life or health.
* Conservation of exhaustible natural resources.
* Protection of patents, trade mark and copyrights.

**Prohibited items of imports / exports:**

**(a) Prohibited items of exports:**

* + Sandalwood oil
  + Cardamom
  + Psychotropic substances
  + Obscene books and other publications
  + Tussar / Muga Silk
  + Indian made wool
  + Chillies and vegetable oil products
  + Animal casings
  + Specified fruits
  + Mechanical lighters
  + Books containing maps / diagrams showing borders of India

**(b) Prohibited items of imports:**

* + Explosives
  + Arms and ammunition
  + Psychotropic substances
  + Narcotic drugs
  + Counterfeit coins
  + Quinine
  + Saccharine
  + Matches
  + Fictitious stamps
  + Armoured cars
  + Antiquities
  + Negative film or print of an arial photograph of any place in India

**Valuation of goods:**

Customs duty is payable as a percentage of “Value” known as “Assessable Value”. The method of valuation of goods for both import and export for the purposes of levy of customs duty on the basis of value has been defined under section 14 of the customs act.

**Key elements of determining value:**

The important ingredients of Sec 14 (1) for determining the value for the purpose of customs duty are given below:

* The price at which such (or similar) goods are ordinarily sold or offered for sale.
* The price for delivery at the time and place of importation or exportation.
* The price should be in the course of international trade.
* The buyer and seller should have no interest in the business of each other.
* The price should be the sole consideration for the sale or offer of sale.

The term ‘time and place of importation’ do not refer to precise movement of time when goods are unloaded from the ship. All expenses up to the destination port including unloading, handling charges, fright and transit insurance have to be included.

The expression ‘in the course of international trade’ refers to movement or goods from one country to another and implies not only a period of time during which the movement is in progress but also a connected relation.

**Methods of valuation of goods:**

**1. Transaction value of same goods:**

According to Rule 3 of Customs Valuation Rules 1988, the value of any imported goods shall be the transaction value. The expression ‘transaction value’ means the actual price at which such goods are actually sold. It is the primary method.

**2. Transaction value of identical goods (Rule 5)**

The transaction value cannot be determined then their value shall be the transaction value of identical goods. Identical goods have been defined in Rule 2 (c) as imported goods which are same in all respects eg. Physical characteristics, quality and reputation of the goods being valued except for any minor differences which do not affect the value of goods and which have been produced in the same country in which the goods being valued were produced and by the same person or by any other person.

**3. Transaction value of similar goods (Rule 6):**

Similar goods have been defined in Rule 2 (e) as imported goods

(a) Which, though not identical in all respects have identical characteristics and components such that have can perform same functions and in terms of quality, reputation and existence of trade mark are commercially interchangeable with the goods being valued.

(b) Which are produced in the same country as in the case of the goods to be valued.

(c)Which have been produced by the same person or by a different person.

**4. Deductive value method (Rule 7):**

If the imported goods being valued (or identical or similar goods) are sold in India in the same condition as they are imported and this is at or about the same time when valuation of the goods in question is to be done, then the value of the goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

The following deductions are made (i) the usual commission that is payable or the usual additions for profits and general expenses class or kind, (b) the usual cost of transport, insurance and (c) the customs duties and taxes payable on account of import or sale of the goods.

**5. Computed value method:**

As this method has not been incorporated in the Customs valuation Rules 1988, this method is not a permissible method of customs valuation. The GATT agreement provides for reversing the sequence of the computed value method with that of deductive value method at the option of the importer.

**6. Residual method:**

Where the customs value for assessment cannot be determined under any of the above mentioned methods of valuation, the assessable value will be determined by applying these methods as well as general principles and provisions of the Customs Act.

**Exemption from duty:**

Section 25 (1) of the Customs Act 1962 authorities the central government to exempt partially or wholly any goods subject to duty of customs in public interest. Necessary notifications are issued granting exemptions from duty. The notifications may be in respect of basic duty or auxiliary duty.

**1. Exemptions by notifications – Section 25 (1):**

* Exemption is permitted only in the public interest and must be granted by issue of a notification.
* Exemption may be absolute or conditional.
* Goods may be exempted from the whole or any part of customs duty.
* Exemption must be in respect of goods of specified description.

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

**2. Exemption by special order Section 25 (2):**

Under this section, the central government is also empowered to grant ‘ad hoc’ exemptions:

* Exemption is granted in the public interest by issue of notifications.
* Exemption is granted under circumstances of an exceptional nature and should be stated in the exemption order.

An exemption from the above sub section in respect of any goods from any part of the customs duty leviable thereon may be granted by providing for the levy of duty on such goods at a rate expressed in a form.

**3. Exemption from customs duty:**

It has just been observed that the Central Government is also empowered to grant ad hoc exemptions.

* Specified life-saving drugs or equipment for government hospitals.
* Articles of utility imported by disabled and handicapped persons.
* Equipment imported for fairs / exhibitions.
* Empty cylinders imported for re–export filled with gas.
* Imports by Indian navy, equipment required by police, Ministry of defence etc.
* Trophies, medals ad cups awarded to Indian team, specified sports goods by reputed players etc.

**4. Exemption to ONGC/ OIL:**

Specified capital goods / consumables imported by ONGC/OIL for petroleum operations have been exempted at par with imports under NELP lease agreement.

* Specified goods when imported by ONGC/OIL or their sub-contractors for use in petroleum operations under petroleum exploration licenses granted by the Government of India on nomination basis have been exempted from the whole of the customs duty.
* The exemption from CVD to X- Ray Scanners, when imported for use in anti-smuggling operations or bomb detection and disposal purposes has been removed. Hence these goods will now be exempted only from the basic duty of customs.

**Clearance of imported goods:**

Import or exports of any country are subject to control primarily for reasons of revenue and to provide protection to home made goods and also to regulate the development of economy as a whole in the right direction. The procedure for clearance of goods imported by differs in various aspects from that applicable for imports by sea and air.

**Procedure for clearance of the goods:**

* Under sec. 30 of the act control is exercised on the cargo brought by steamers by means of document known as Import Manifest filed on behalf of the Master of the Vessel.
* The import manifest is required to be filed in the custom house within 24 hours after arrival of the vessel or aircraft.
* The import manifest is required to be delivered in duplicate to the import department with details like cargo declaration, general declaration, stores list and private property list of the crew.
* On receipt of the import manifest at the import department of the customs house/ air cargo complex an import rotation number is allotted to the vessel or aircraft.
* While presenting the bill of entry the importer concerned is required to make a declaration as to the truth of the contents of the bill of entry and he is required to produce to the proper customs officer documents like the invoice, letter of credit, bill of exchange, insurance policy, import license, catalogue.
* The date on which the bill of entry is presented is significant for finalizing the rate of duty, tariff value and exchange rate.
* Thereafter after marking corrections if any by the importer in the bill of entry it is again presented to the appraising department.
* On receipt of the same the concerned appraiser classifies the goods, checks the correctness of the value declared and verifies that the goods imported are in accordance with law.
* After the appraisal made by the appraisers the bill of entry and the relevant documents are presented to the assistant commissioner who again checks ad verifies the assessment.
* After verification by the assistant commissioner the amount of duty is computed and the details sent to the “License Section” functioning in the customs house

**Clearance of export goods:**

Export means taking goods out of India to a place outside India. Export goods are also subject to restrictions under the customs act. Our government with a view to conserving foreign exchange regulates the outflow of foreign exchange on imports, restricts imports and promotes exports in order to achieve favourable balance of payments.

**Procedure for clearance of export goods:**

* According to Section 50 (1) of the act, the exporter of any goods shall make entry place by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill and in the case of goods to be exported by land, a bill of export in the prescribed form. Te exporter of any goods while presenting a shipping bill or bill of export.
* Shipping bill for (1) Export of goods under claim for duty drawback – Green colour, (2) Export dutiable goods – Yellow colour, (3) Export of duty free goods – White colour and (4) Export of duty free goods ex-bond – Pink colour.
* Particulars like name of the exporter, consignees, invoice number, description of goods, quantity has to be furnished in the bill of export or shipping bill.
* After the bill of export is examined by the appraising department the goods are subject to assessment.
* The goods required to be examined physically and the assessable value for export declared in the shipping bill.
* The bill of export along with the export cargo is presented to the proper officer-in-charge of supervision of loading of the cargo.

**Customs duty drawback:**

The term ‘drawback of duty’ is distinct from the grant of refund of duty. In other words drawback implies duty relief or repayment of duty paid in respect of any goods when they are exported out of India. Drawback is allowed on all the items that are exported. However drawback is not permitted in respect of coffee, tea, agricultural produce etc as their inputs are not subject to customs/excise duty.

**Duty drawback rates:**

The Directorate of Drawback, Ministry of Finance, New Delhi has been administering the duty drawback scheme. At the rates determined by the Directorate, drawback on exports is granted and paid. The rates are received and revised periodically taking into account variations in the prices of various inputs. Basically there are two types of drawback rates.

**1. All industry rates:**

These are fixed for a class or products manufactured for exporters. The rates are determined by considering average quantity and value of each of inputs exported/ manufactured in India.

**2. Brand rates:**

These are fixed for a product of specified description of a particular manufacturer. He may apply to the Directorate within 60 days of export. The central government can extend this period by another 30 days. It is classified into two

**(a) Special brand rates:**

In case any manufacturer / exporter finds that the all industry rate of drawback for any class of goods is less than four –fifths of the duties paid on materials or components used in the production/manufacture and packing of same goods being exported by him, he can make an application for fixation of rate of drawback within 30 days from export.

**(b) General brand rates:**

This rate is fixed for several export products. This rate is not applicable to a manufacturer who is getting the brand rate or special brand rate fixed under rule 6 or 7.