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THE CUSTOMS ACT 1962

Unit - II

INTRODUCTION

The major economic function of indirect taxation in a developing economy is to transfer real resources to the public sector which helps to raise savings and investment and influence the allocation of resources in the private sector of the economy in accordance with the social priorities.

Historical background

From time immemorial, duties on the import and export of the goods have been levied in almost all countries of the world. No wonder that these duties become so "Customery" that these came to be known as 'Customs Duties'. In India customs duties were collected by the officers specially deputed by the mughal emperors.

Customs checks and the levy of tolls on foreign trade have been in existence in India since 4 th century B.C. It was with in the British rule that customs in its modern sense was established. In 1786, a Board of Revenue was established with its headquarters at Calcutta and collection of customs duties was entrusted to this board. "TheCalcutta Customs House" was established in the late 17 th cen tury or in early 18 th century. In 1812, regulations were made for the Madras Customs Houses, around the same time two custom houses were established in Western India, one at Mahim and the second in Bombay Island under the control of the Surat Council of East India Company.

During the early period of British Rule in India, each of the three residencies, namely, Bombay, Bengal and Madras, had its own customs rules and regulations. As the rate of customs duties charged by these three presidencies varied from each other, the Customs Duties Act was passed in 1859 so as to provide uniform rates of duties for all these three provinces. Since then, a number of enactments have been made in the customs tariff structure, namely Indian Customs Act 1867, Indian Customs Act. 1870 Indian Tariff Act.1871, Indian tariff Act 1875, Sea Customs Act 1878 etc.

Customs duty in India has a close linkage with the history of textile industry . In 1894 import duty on cotton fabrics and yarn was imposed at 5%. But, during the time of First world war it was raised from 5% to 7.5%.At the end of first world war the financial requirements led to the raising of the tariff rates and Govt used it as means to protect the domestic industries. In 1921, the "Indian Fiscal Commisssion" and in 1924 the "Taxation Enquiry Committee" made a number of recommendations for adoption of suitable tariff policy. In 1931, the economic depression caused a heavy deficit in the central finance and additional taxation was imposed by the "Indian Finance Act 1931. After independence, the significance of protection tariff policy was recognised and in 1948 certain important changes in the Tariff were made. The "Taxation Enquiry Commission" which was appointed by the Govt. of India in 1953 recommended for a periodical review of tariff classification.

In 1962, on account of vast changes in the pattern of foreign trade and other developments, a bill was introduced in the lok sabha mainly to consolidate and amend the various laws pertaining

to customs. The bill was passed in the parliament and obtained the assent of the president on 13.12.1962. The Customs Act 1962, has consolidated, the provisions relating to the Sea Customs Act, Land Customs Act and Air Customs Act which existed separately.

The Act came into force on Feb 1st 1963. It extends to the whole of India. It is primarily treated as revenue Act.Its main object is to collect duties on exports and taxes on imports under the fiscal laws and tariffs. The customs Act consists of 17 chapters and 161 sections.The customs Act is aimed at preventing illegal imports and export 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 customer Act. 1962 contains the provisions regarding the following :

i. Enforcing various restrictions and prohibitions in respect of import and export of goods.

ii. Levy, assessment and collection of import and export duties.

iii. Quasi - Judicial adjudication proceeding.

iv. Appellate and Revisionery authority

v. Prosecution of offenders by the various courts.

DEFINITIONS

1. Adjudicating Authority : Sec 2(1)

"It means any authority competent to pass any order or decision under this Act, but does not include (a) the board, (b) the collector (Appeals)

2. Coastal Goods : Sec. 2(7)

"Goods other than imported goods, transferred in a vessel from one port to another in India."

3. **Customs Area : Sec. 3(11)**

It means "the areas of a custom station, and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities."

4. **Customs station 2(13)**

It consists of any customs port, customs airport or land customs station

5. BOARD :'Board' means the Central Board of Excise and Customs constituted under the Central Board of Revenue Act 1963.

6. DUTY AND DUTIABLE GOODS Sec.2(14) : The term 'duty' normally means duty of customs leviable under this Act, and 'dutiable' goods means any goods which are chargeable to duty and on which duty has not been paid.

7. ENTRY : The word 'Entry' in relation to goods means an entry made in a bill of entry, shiping bill or bill of export and included in the case of goods imported or to be exported by post.

8. EXPORT AND EXPORTED GOODS Sec. 2(19) : Exports with its gramatical variations and cognate expressions, means taking out of India to a place outside India. "Exported goods" means any goods which are to be taken out of India to a place outside India.

9. EXPORTER: Exporter in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter

10. GOODS : As per this Act, goods includes vessels, aircrafts vehicles, stones, baggage, currency negotiable instruments and any other kind of movable property.

11. IMPORT AND IMPORTED GOODS Sec. 2(25) : The word "import" with its gramatical variations and cognate expressions,

means, bringing into India from a place outside india "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.

12. IMPORTER : "Importer" in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the impoter.

13. INDIA : India includes the territorial waters of India,

14. PROHIBITED GOODS Sec. 2(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 inforce but, does not include any goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

15. PROPER OFFICER : Proper officer in relation to any function to be performed under this Act, means the officer of customs who is assigned to those functions by the board or the collector of customs.

16. SMUGGLING Sec. 2(39) : Smuggling in relation to any goods, means act or commission which will render such goods liable toconfiscation under Section 111 or Section 113 of the Act.

17. OFFICERS OF CUSTOMS : The following are the classes of officers of customs, namely,

i. Collectors of customs;

ii. Collectors of customs (Appeal) ;

iii. Deputy collectors of customs ;

iv. Assistant collectors of customs;

v. Such other class of officers of customs as may be appointed for the purpose of this Act.

OBJECTIVES OF CUSTOMS DUTIES

The following chart exhibits the objectives of customs duties.

OBJECTIVES OF CUSTOMS DUTIES

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Revenue Raising

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Rationalisation

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Taxation Pattern

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Basis of Taxation

1. Revenue Raising

Behind the levy of import duties, the predominant consideration that has been raising revenue to meet governmental expenditure. However, in some cases, import duties have been levied also to afford protection to domestic industries and in the case of silkworm, raw silk, silk waste, silk fabrics and certain dyeintermediates. At times, import duties are also levied so as to conserve foreign exchange though this object is best served by restriction or banning imports through import control measures. Revenue raising consideration is almost alien to the levy of export duties, their main purpose being to regulate export trade. This is proved by the fact that, where as import duties are accounted for Rs. 2,364.4 crores of the total tax revenue of the Central government in 1970-80 contribution of export duties was a base Rs. 92.9 crores. But, in 2000, the contribution amounts to Rs. 32,532 crores.

2. Rationalisation

Import duty structure has from time to time, been subjected to a process of rationalisation. The basic rates of duty are, by and large, uniform for particular classes of goods, such as capital goods, raw materials and consumer goods. However, due to imposition of

countervailing duties, which are equal to the excise duties levied on domestic production, the rate structure has suffered some distortions. This is because of the tax base of countervailing duties which consits of cost, insurance and freight. Price of imported goods plus the basic and auxillary duties applicable to them.

3. Taxation pattern

Apparantly, with a view to curbing consumption, imports of consumer goods are the most taxed of all. As against this duty rate on raw materials and capital goods, the imports of which are mainly for the purposes of helping production activity at the lowest. In between the semiprocessed goods which are taxed at intermediate rates. However, the contribution from import duties on consumer goods has been the lowest. This is because, the major items on the list of imported consumer goods i.e., food products is tax free whereas, imports of non-essential consumer goods are either severally restricted or altogether banned.

4. Basis of Taxation

Most of the import duties are levied on ad-valorem basis while some of them continue to be on a specific basis. Among export duties the majority consists of specific duties while a few are ad-valorem.

LEVY AND EXEMPTION OF CUSTOMS DUTIES

Sec. 12 to 28 of the Act deals with levy and collection of customs duties. Duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act 1975 or any other law for the time being in force, on goods imported into or exported from India. The Act. does not make any differences in respect of goods belonging to govt and goods not belonging to govt., That is levy of customs duties on govt goods and goods not belonging to government are treated at par. As per Sec. 14 of the Act, customs duty is chargeable on goods by reference to their value. If such price is not ascertainable, then the nearest ascertainable price will be taken into account. Sec. 17 deals with various assessment procedures. Sec. 18 permits the customs officer to do provisional assessments if he deals it necessary to make further enquiries before assessing the goods.

Sec. 19 of the Act stipulates different rates of duty. Normally, duties are levied on ad-valorem basis. Sec. 20 deals with re-importation of goods produced or manufactured in India.

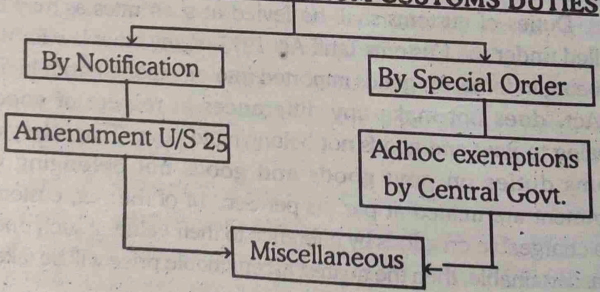
EXEMPTIONS FROM THE DUTIES

The Central govt may exempt from the payment of duties of any goods under circumstances of an exceptional nature is to be specified in the order. The provisions under section 25 are furnished hereunder :

If the Central Govt is satisfied that, it is necessary in the public interest to do so, it may by notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon (Sec. 25(1)). In Indian Express News Papers Vs. Union of India the court pointed out that, section 25 confers power on the Central Govt coupled with a duty to examine the entire issue on the basis of public interest.

The following chart shows the classes of exemption from customs duties.

CLASSES OF EXEMPTIONS FROM CUSTOMS DUTIES



Exemptions by notifications - Sec 25(1)

1. Exemption is permitted only in the public interest and must be granted by issue of a notification.
2. Exemption may be absolute or conditional.
3. Goods may be exempted from the whole or any part of customs duty 4. Exemption must be in respect of goods of specified description.

Exemption by special order - Sec. 25(2)

Under this section the Central govt is also empowered to grant 'adhoc' exemptions, namely,

1. Exemption is granted in the public interest by issue of notificatins.
2. Exemptuion is granted under circumstances of an exceptional nature and should be stated in the exemption order.

Amendment of Sec. 25

The Finance Act,1999, has amended Sec. 25 A (2) of the Customs Act to empower the Central Govt to exempt from payment of customs duty, namely,

1. Goods of strategic nature
2. Goods of secret nature
3. Goods for charitable purposes.

Exemptions from customs duty

It has been just observed that the Central govt is also empowerd to grant adhoc exemptions. Accordingly, exemptions are granted in respect of :

1. Specified life - saving drugs or equipments for govt hospitals.
2. Articles of utility imported by disabled and handicapped persons.
3. Equipment imported for fairs / exhibitions
4. Empty cylinders imported for re-export filled with gas.5.

5. Import by Indian Navy, equipment required by police, ministry of defence.

6. Import of computer software, research materials, scientific euipment by universities, research institutions and so on.

7. Trophies, medals and cups awarded to Indian team, specified sports goods by reputed players, etc.

8. Import of input (raw materials) components used for manufacturing final products exports from Free Trade Zones [FTZ]as well as by 100 % Export Oriented Units (EOU) in India.

Miscellaneous Exemptions

1. Specified Goods, when imported by ONGC or their sub-contractors for use in petroleum operations under petroleum exploration licences granted by the Govt of India on nomination basis, have been exempted from the whole of the customs duty. The concessional rate available to specified equipment imported for on-shore and off-shore oil exploration vide S.No.178 of notification No. 23/98 dated on 02.06.1998 has been withdrawn.

2. The exemption from CVD to X-rays scanners, when imported for use in antismuggling operations or bomb detection and disposal purposes has been removed. Hence these goods will be exempted from the basic duty of customs only.

TYPES OF CUSTOMS TARIFF

Customs duties may be classified as ad-valorem and specific.

Ad-valorem duty

"Ad-Valorem" means in proporation to value, that is, Ad-valorem duty is one which is levid as a percentage on the value of commodity or goods sought to be taxed, value in terms of monery alone is taken into account weight, length, measurement of the goods are completely ignored for tax purpose, for example., if it is proposed to tax certain items at 60% at-valorem, it means, tax payable will be

calculated only on the total value of goods sought to be taxed and not on its weight, length, and so on.

Specific duty

Specific duty is just the opposite to Ad-Valorem duty. Under specific duty tax is levied according to the weight length or measurement of the commodity concerned. In other words, the actual value of the imported goods are immaterial for tax purpose.

IMPORT AND EXPORT DUTIES IN INDIA

IMPORT DUTY

Extensive development of the import tariff accrued in the early and middle ninteenth centuries when revenue duties were increased and protective duties first imposed. In 1952, a permanent tariff commission was created to conduct investigations and recommend future policy on the stimulation and protection of new and excisting industrial enterprises. In 1975, the Customs Tariff Act was passed replacing the Indian Tariff Act.1934 which originally provided for the levy of import and export duties. The customs Tariff Act,1975 empowers the govt in imposing an additional duty of customs, equal to the duties of excise imposed on domestic production where ever leviable on identical indigenous products, so that, the indigenous producer is not placed at a disadvantage.

The Central Government is empowered to exempt any commodity from the import tariff in whole or in part or the fix or revise the tariff values of any commodity, by notification in the Gazette of India. After obtaining from the Central govt, the board or its delegates may exempt particular goods from import duty by special order in exceptional cases. Generally, import duties are levied on ad-valorem basis, specific duties are also levied either above or in addition to ad-valorem duties for the same goods.

EXPORT DUTIES

Export duties constitute a well known feature of the Indian fiscal system, having been levied on different commodities from time to time during the early part of British rule, export duties where levied at small ad-valorem rates on many articles of export. In 1916 an export duty was imposed on jute product.

At present, export duties in India are levied in accodance with the rate of duty prescribed under schedule I and II of the Customs Tariff Act,1975 subject to changes as may be made from time to time. As in the case of import duties, the Central government has the power to exempt goods or to reduce rates by notification. The Central government has emergency powers to levy or increase export duties by notification, subject to the approval of the parliament. In addition to the export duties levied under the Indian Tarif Act, certain 'cesses' are levied on exports of specific goods.

Recently, attempts have also been made to encourage exports through these duties. The method of import substitution i.e., heavier import duties on goods which can be produced within the country, has also been followed to discourage imports and encourage exports. Other methods which have been used to encourage exports are concessions in income-tax, railway freight, the grant of special import quotas to export industries, export control, etc.,

The following are the major objectives of imposing export duties, namely,

a. Export duties for revenue purposes
b. Export duties for anti-inflationary condition.
c. Export duties to stabilise price of essential commodities
d. Export duties to protect home industries
e. Export duties as countervailing measure
f. Export control and export duties.

POWERS TO PROHIBIT IMPORTATION AND EXPORTATION OF GOODS

The Customs Act. 1962 envisages enforcing various restrictions and prohibitions in respect of import and export of goods Sec. 11 of the Customs Act empowers the Central government to prohibit the import or export of goods of any specified description. The conditions for restrictions may be required to be fulfilled before or after clearnace. The purposes / reasons for which importation / exportation can be prohibited are listed below :

1. The maintenance of the security of India,
2. The maintenance of public order and standards of decency or morality.
3. The prevention of smuggling
4. The prevention of shortage of goods of any description
5. The conservation of foreign exchange and safeguarding of balance of payments.
6. The prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver
7. The prevention of surplus of any agricultural product or the product of fisheries
8. The maintenance of standards for the classification, grading or marketing of goods in international trade.
9. The establishment of any industry
10. The prevention of serious injury to domestic production of goods of any description.
11. The protection of national treasures of artistic, historic value archaeological value
12. The conservation of exhaustible natural resources

13 The protection of patents, trademarks and copyrights

14. The prevention of deception practices

Types of Customs Duty

Customs duties are levied almost universally on all goods imported into the country. Export duties are levied on a few goods as specified under the Second Schedule. Import duties are not levied on a few items including lifesaving drugs/equipment, fertilizers, food grains etc. Import duties are further divided into basic duty, additional customs duty, true countervailing duty, protective duty, education cess and anti-dumping duty or safeguard duty.

- **Basic Customs Duty:**Basic customs duty is applicable on imported items that fall under the ambit of Section 12 of the Customs Act, 1962. These duties are levied at the rates prescribed in First Schedule to Customs Tariff Act, 1975, under the terms specified in Section 2 of the act. The levied rates may be standard or preferential as per the country of import.

- **Additional Customs Duty (Countervailing Duty (CVD)):**This duty is levied on imported items under Section 3 of Customs Tariff Act, 1975. It is equal to the Central Excise Duty that is levied on similar goods produced within India. This duty is calculated on the aggregate value of goods including BDC and landing charges.

- **Protective Duty:**Protective duty may be imposed to shield the domestic industry against imports at a rate recommended by the Tariff Commissioner.

These duties are levied at the rates prescribed in First Schedule to Customs Tariff Act, 1975, under the terms specified in Section 2 of the act. The levied rates may be standard or preferential as per the country of import.

- **Additional Customs Duty (Countervailing Duty (CVD)):**This duty is levied on imported items under Section 3 of Customs Tariff Act, 1975. It is equal to the Central Excise Duty that is levied on similar goods produced within India. This duty is calculated on the aggregate value of goods including BDC and landing charges.
- **Protective Duty:**Protective duty may be imposed to shield the domestic industry against imports at a rate recommended by the Tariff Commissioner.
- **Education Cess:**This duty is levied at 2% and higher education cess at another 1% of aggregate of customs duties.
- **Anti-dumping Duty:**Anti-dumping duty may be imposed if the good being imported is at below fair market price, and is limited to the difference between export and normal price (dumping margin).
- **Safeguard Duty:**Safeguard duty is levied if th government feels that a sudden increase in exports can potentially damage the domestic industry.

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