CUSTOMS LAW IN INDIA

Mrs. Anitta Thomas & Ms. Ria Francis
Assistant Professors Department of Commerce,
Christ College, Puliyanmala, Kattappana.

ABSTRACT

Custom Duty is an indirect tax, imposed under the Customs Act formulated in 1962. The power to enact the law is provided under the Constitution of India under the Article 265, which states that ―no tax shall be levied or collected except by authority of law. The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, aircrafts, goods, passengers etc., into or outside the country. The Act extends to the whole of the India. While revenue is a paramount consideration, Customs duties may also be levied to protect the domestic industry from foreign competition.

This paper is intended to give a bird's- eye view to the Customs Law in India. This study is a theoretical one and it is based on secondary data.

Index Terms :- Custom Duty.

1. INTRODUCTION

Custom Duty is an indirect tax, imposed under the Customs Act formulated in 1962. The power to enact the law is provided under the Constitution of India under the Article 265, which states that ―no tax shall be levied or collected except by authority of law. Entry No. 83 of List I to Schedule VII of the Constitution empowers the Union Government to legislate and collect duties on import and exports. The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, aircrafts, goods, passengers etc., into or outside the country. The Act extends to the whole of the India.

Customs duty is on import into India and export out of India. As per ancient custom, a merchant entering a kingdom with his goods had to make a suitable gift to the King. In the course of time, this 'custom' was formalized into 'Customs Duty'. This is collected on imports (and occasionally on exports too). The word 'Customary' is derived from 'customs', which indicates that it is a very old tax. Taxes on goods were levied on various goods right from the Veda period.

1.1 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 ; Regulation of imports and exports, Protection of domestic industry , Prevention of smuggling, Conservation and augmentation of foreign exchange, Generation of revenue to the government , Control the balance of payment position

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.

2.1 CONTIGUOUS ZONE

The contiguous zone of India is an area beyond and adjacent to the territorial waters and the limit of the contiguous zone is the line every point of which is at a distance of twenty-four nautical miles from the nearest point of the baseline. The Central Government may, whenever it considers necessary so to do having regard to International Law and State practice, alter, by notification in the Official Gazette, the limit of the contiguous zone.

The Central Government may exercise such powers and take such measures in or in relation to the contiguous zone as it may consider necessary with respect to,—

(a) The security of India, and

(b) Immigration, sanitation, customs and other fiscal matters.

State has the following rights.

a) The sovereign rights to explore, exploit, conserve, and mange the natural resources of the seas and seabed

b) To exercise jurisdiction over artificial installations and scientific research and,

c) To protect and preserve the marine environment.

2.2 HIGH SEAS

An area beyond 200 nautical miles from the base line is called high seas. All countries have equal rights in this area.

2.3 EXCLUSIVE ECONOMIC ZONE

Exclusive economic zone extends to 200 nautical miles from the base line

2.4 DOMESTIC TARIFF AREA (DTA)

Domestic tariff area means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the special economic zone & 100% export oriented units (EOUs)

3. DEEMED EXPORTS

Deemed Exports" refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. *Categories of Supply*

Following categories of supply shall be regarded as "Deemed Exports"

i. Supply of goods to EOU / STP / EHTP / BTP;

ii. Supply of capital goods to holders of licenses under the export promotion capital goods (EPCG) scheme;

iii. Supply of goods to projects financed by multilateral or bilateral Agencies / Funds as notified by Department of Economic Affairs (DEA), MoF under International Competitive Bidding (ICB) where legal agreements provide for tender evaluation without including customs duty;

iv. Supply of capital goods, including in unassembled / disassembled condition as well as plants, machinery, accessories, tools, dies and such goods which are used for installation purposes till stage of commercial production, and spares to extent of 10% of FOR value to fertilizer plants;

v. Supply of goods to any project or purpose in respect of which the MoF, by a notification, permits import of such goods at zero customs duty;

vi. Supply of goods to power projects and refineries not covered in (f) above;

vii. Supply of marine freight containers by 100% EOU (Domestic freight containers-manufacturers) provided said containers are exported out of India within 6 months or such further period as permitted by customs;

viii. Supply to projects funded by UN Agencies; and

ix. Supply of goods to nuclear power projects through competitive bidding as opposed to ICB.

4. TYPES OF CUSTOMS DUTY

- **Specific duty or tariff** – duty is imposed on the quantity of merchandise
- **Ad valorem duty-** duty is imposed on the basis of value of commodity
- **Compound tariff**- when both specific duty and ad valorem duty are imposed on import or export

4.1 ADDITIONAL CUSTOM DUTY/COUNTERVAILING DUTY (CVD)

The duty is equivalent to the amount of excise duty payable on like goods manufactured or produced in India. Countervailing duty is imposed when excisable articles are imported in order to counter balance the excise duty, which is leviable on similar goods if manufactured in India:

- Countervailing Duty is payable at effective rates.
- When excise duty is exempt/nil rate is applicable on goods imported, no Countervailing Duty is levied
- Countervailing Duty is leviable even if similar goods are not produced in India.
- Exemption of basic customs duty doesn‘t automatically mean exemption of Countervailing Duty.
- Countervailing Duty is payable in case of goods leviable under State Excise also.

Input Tax Credit of CVD/ IGST: If imported goods are used in manufacture of final products or for provision of output service, Input Tax credit of CVD/ IGST paid on imported capital goods is also available.

GST has already been brought into effect in India. By virtue of it, IGST (Integrated goods and service tax) is chargeable on goods imported into India. CVD is still payable, wherever applicable on the imported goods for which GST Laws are not applicable. Eg. petroleum, alcohol for human consumption.

4.2 ADDITIONAL DUTY/SPECIAL ADDITIONAL DUTY (SAD)

It is intended to counter balance the excise duty loss to the government due to importation of goods. It is equal to excise duty leviable on raw materials, components and ingredients used in the production or manufacture of the imported article. The Central Government may levy additional duty to counter balance the sales tax, value added tax, local tax or any other charges leviable in the like article on its sale, purchase or transportation in India. The rate shall be notified by the Central Government which cannot exceed 4%. This additional duty is eligible for Cenvat Credit for a manufacturer but not for a provider of taxable service.

In respect of capital goods, 100% credit of SAD is available to manufacturers in the first year itself. Special CVD is subsumed now under IGST, as such this duty is leviable only on the imported goods for which GST Laws are not applicable. It may be noted that petroleum products are yet to be brought under GST.

4.3 PROTECTIVE DUTY

There are two type of customs duties:-

- Revenue duties – to raise revenue
- Protective duties – to give protection to indigenous industries

Protective duties are levied by government upon recommendation made to it by the tariff commission. The protective duties should not be very stiff so as to discourage imports. It should be sufficiently attractive to encourage imports to bridge the gap between demand and supply of those articles in the market.

4.4 SAFEGUARD DUTY

The Central Government may impose safeguard duty on specified imported goods, if it is satisfied that the goods are being imported in large quantities and they are causing serious injury to domestic industry. It is imposed for the purpose of protecting the interest of any domestic industry to make it more competitive. It is not applicable on

- Articles imported by 100% EOU
- Undertakings in FTZ
- SEZ

4.5 ANTI DUMPING DUTY

To prevent consequences of dumping practices anti dumping duty is imposed.

4.6 COUNTERVAILING DUTY

Countervailing duties (CVDs), also known as anti-subsidy duties, are trade import duties imposed under World Trade Organization (WTO) rules to neutralize the negative effects of subsidies. They are imposed after an investigation finds that a foreign country subsidizes its exports, injuring domestic producers in the importing country. It was merged with GST and hence there is no CVD in India at present.

4.7 SOCIAL WELFARE SURCHARGE (SWC)

As per finance act 2018 a social welfare charge is levied at the rate of 10% of the duties levied under section 12 of customs act 1962. SWC was introduced in place of cess on imported goods with effect from 02/02/2018.

5. IMPORT DUTY UNDER GST

Under the GST regime, the supply of goods or of services or both in the course of import into the territory of India shall be deemed to be interstate trade or commerce. So import of goods or services will be treated as deemed interstate supplies and would be subject to IGST. Basic customs duty and IGST are applicable on imported goods.

6. EXPORT DUTIES

The rate of export duties are enlisted in schedule 2 of customs tariff act, 1975. the central government may impose export duties by making amendment to the second schedule by issue of a notification in the official gazette. Export duty can be specific or ad valorum. After GST export duty is not applicable in India on goods under GST regime.

7. CONCLUSION

The Central Government is the rulemaking Authority, and the Central Board of Excise and Customs (CBEC) have the delegated power of making regulations. In the past expense administration, laws of customs duty, Excise and Service Tax and VAT set out the duty treatment of imports and fares. In the present Goods and Service Tax (GST) organization, Excise, Service Tax, and VAT will require submission into GST, and custom obligation will continue its imposition independently.

The GST is a general destination-based tax leviable on the manufacture, sale, and utilization of goods and services at what would be considered a national level which subsumed other circuitous duty, in this way keeping up a vital separation from different layers of tax evaluation that by and by existing in India. It has made a solitary, brought together Indian market to make the economy more grounded. The embodiment of GST is that the falling impacts of both CENVAT and administration charge are anticipated that would be evacuated with set-off, and a logical chain of set-off from original producer's point and service provider's point up to the retailer's level will be established.

8. REFERENCE

1. Customs Law Manual — R. K. Jain's
2. Indirect Taxes Law and Practice — V.S. Datey
4. https://economictimes.indiatimes.com
3. www.gstcouncil.gov.in
4. www.gstn.org
5. www.cbic.gov.in