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Course on International Trade

Regulation under Custom Act

Background

- The Custom duty derived its value from the word —custom, under which whenever a merchant entered a Kingdom with his merchandise, he had to give some gift to the king.
- Subsequently, this custom formalized into the levy of custom duty or tax on goods imported into and exported from the country was organized through various laws during the British period.
- After Independence the Sea Customs Act 1878, the Land Customs Act, 1924 and other allied enactments were repealed by a consolidating and amending legislation entitled the Customs Act, 1962.
- Similarly the Indian Customs Act, 1934 was repealed by the Customs Tariff Act, 1975(CTA).

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.
- 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 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 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

LEVY OF CUSTOM DUTY

- There are four stages in any tax structure, viz., levy, assessment, collection and postponement.
- The basis of levy of tax is specified in Section 12, charging section of the Customs Act. It identifies the person or properties in respect of which tax or duty is to be levied or charged.
- Under assessment, the liability for payment of duty is quantified and the last stage is the collection of duty which is may be postponed for administrative convenience.
- As per Section 12, customs duty is imposed on **goods imported into or exported out of India** as per the rates specified under the Customs Tariff Act, 1975 or any other law.

- On analysis of Section 12, we derive the following points:
  - (i) Customs duty is imposed on goods when such goods are imported into or exported out of India;
  - (ii) The levy is subject to other provisions of this Act or any other law;
  - (iii) The rates of Basic Custom Duty are as specified under the Tariff Act, 1975 or any other law;
  - (iv) Even goods belonging to Government are subject to levy, though they may be exempted by notification(s) under Section 25.

Custom Tariff Act, 1975 has two schedules.

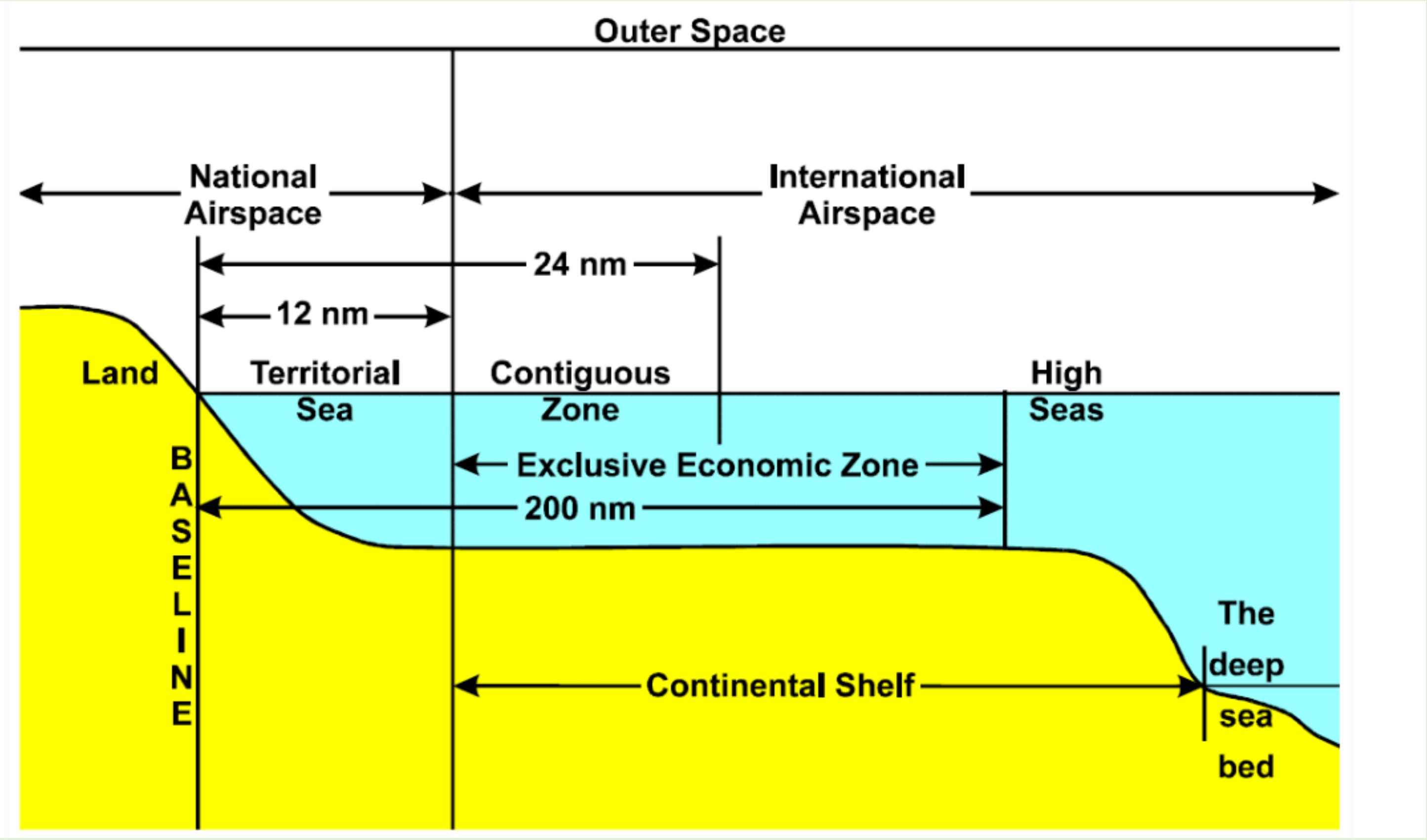
Schedule I prescribes tariff rates for imported goods, known as ―Import Tariff and

Schedule II contains tariff for export goods known as ―Export Tariff.

TAXABLE EVENT

- The basic condition for levy of customs duty is import/export of goods i.e. goods become liable to duty when there is import into or export from India.
- Import means bringing into India from a place outside India [Section 2(23)].
- Export means taking out of India to a place outside India [Section 2(18)].
- "India" includes the territorial waters of India [Section 2(27)]. The limit of the territorial waters is the line every point of which is at a distance of **twelve nautical miles** from the nearest point of the appropriate baseline.
- Though the taxable event is import/export yet it is difficult to determine the exact time of levy.
- Here in this part, we will discuss the types of duties leviable under Custom Tariff Act.
- As per section 12, Customs duties are levied on the goods imported into, or exported from, India at the rates specified in the schedules to the Customs Tariff Act, 1975.

Significance of Territorial Water



“**Indian customs waters**” means the waters extending into the sea up to the limit of contiguous zone of India under section 5 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 [Section 2(28)];

The concept of territorial waters and Indian customs waters are highly relevant for customs law. **Territorial waters extend up to twelve nautical** miles from the baseline on the coast of India.

Indian customs waters extend up to contiguous zone of India which twenty four nautical miles from the nearest point of base line. Thus Indian customs waters extend up to twelve nautical miles beyond territorial waters.

The significance of Indian customs waters is that the Customs Officer has powers to arrest a person; to stop and search any vessel; to confiscate a vessel concealing goods; to search any person on board any vessel and; to confiscate goods in the these waters.

TYPES OF DUTIES UNDER CUSTOMS

1. BASIC CUSTOM DUTY
2. ADDITIONAL CUSTOM DUTY/COUNTERVAILING DUTY [Section 3(1)]
3. ADDITIONAL DUTY/SPECIAL ADDITIONAL DUTY (SAD) UNDER SECTION 3(5)
4. PROTECTIVE DUTY - SECTION 6 & 7 OF THE CUSTOMS TARIFF ACT, 1975
5. SAFEGUARD DUTY - SECTION 8B OF CUSTOMS TARIFF ACT, 1975
6. COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES - SECTION 9 OF THE CUSTOMS TARIFF ACT
7. ANTI-DUMPING DUTY (ADD) ON DUMPED ARTICLES - SECTION 9A OF THE CUSTOMS TARIFF ACT, 1975

BASIC CUSTOM DUTY

- It is levied under Section 12 of Customs Act, 1962, and specified under Section 2 of the Customs Tariff Act, 1975. Normally, it is levied as a percentage of Value as determined under section 14(1). There are different rates for different goods.

- **Standard and Preferential Rates**
- Duty at the ―Standard rate‖ is charged where there is no provision for preferential treatment. To be eligible, for the preferential treatment the goods should be the one which are imported from any preferential area covered under the Government of India Agreements for charging preferential rate of duty. The Central Government has the power to increase or reduce or discontinue the preferential rate in respect of any article specified in the First Schedule provided it considers it to be necessary in the public interest. Preferential rate is applied only where the owner of the article (importer) claims at the time of importation, with supporting evidence, that the goods are chargeable with the preferential rate of duty.

ADDITIONAL CUSTOM DUTY/COUNTERVAILING DUTY

- This is levied under Section 3(1) of the Customs Tariff Act, 1975. The amount of this duty is equivalent to the amount of excise duty payable on like goods manufactured or produced in India.
- Post GST regime, CVD is applicable only on non-GST products.

ADDITIONAL DUTY/SPECIAL ADDITIONAL DUTY (SAD) UNDER SECTION 3(5)

- Special Additional Duty is countervailing to Vat/sales tax, if the goods supposed to have manufacture in India.

- It is levied to offset the effect of sales tax, VAT, local tax or other charges leviable on articles on its sale, purchase or transaction in India. It is leviable on imported goods even if article was not sold in India

- Post GST regime, SAD is applicable only on non-GST products.

PROTECTIVE DUTY - SECTION 6 & 7 OF THE CUSTOMS TARIFF ACT, 1975

- Protective Duties, as the name suggests, these duties are meant to protect indigenous or nascent industries from foreign competition.
- The Indian Government usually prescribes these duties after thoroughly investigating the market dynamics, competitive landscape, and the potential impact on domestic industry.
- 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.

SAFEGUARD DUTY - SECTION 8B OF CUSTOMS TARIFF ACT, 1975

- Under Section 8B of the Customs Tariff Act, Safeguard Duty protects domestic industries from a sudden and unexpected import surge. This duty is a bulwark, providing the domestic industry time to adjust and stand tall against external market pressures.
- 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
- However, the safeguard duty shall not be imposed in the following cases:
  - Articles originating from developing country (does not exceed 3% of the total imports of that article into India)
  - The articles imported by a 100% EOU or units in a Free Trade Zone or Special Economic Zone

COUNTERVAILING DUTY ON SUBSIDIZED ARTICLES - SECTION 9 OF THE CUSTOMS TARIFF ACT

- Countervailing Duties (CVDs) are tariffs levied on imported goods to offset subsidies made to producers of these goods in the exporting country.
- CVDs are meant to level the playing field between domestic producers of a product and foreign producers of the same product who can afford to sell it at a lower price because of the subsidy they receive from their government.

ANTI-DUMPING DUTY (ADD) ON DUMPED ARTICLES - SECTION 9A OF THE CUSTOMS TARIFF ACT, 1975

- Where any article is exported by an exporter or producer from any country or territory to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article. The anti dumping duty is dumping margin or injury margin whichever is lower.
- Dumping means exporting goods to India, at prices lower than the ones in the domestic market of the exporting country, subject to certain adjustments.

IGST (Section 3(7) of Custom Tariff Act

- GST is applicable on all imports into India in the form of levy of IGST. It is levied on the value of imported goods + any customs duty chargeable on the goods.
- Hence, IGST must be calculated after adding the applicable customs duty to the value of imported goods.
- Under GST, the input tax credit would be provided for IGST paid, and GST Compensation Cess paid. However, the input tax credit is not applicable for basics customs duty paid during imports. To avail input tax credit, the importer would have to obtain GST registration and quote the GSTIN on Bill of Entry. During the transitional period, provisional GSTIN can also be quoted instead of GSTIN.

Social Welfare Surcharge

- Social Welfare Surcharge is levied on the aggregate duties of customs, replacing the earlier Education Cess and Secondary and Higher Education Cess. This duty aims to raise revenue for the Government's social welfare initiatives, be it healthcare, education, or poverty alleviation.
- If aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of custom duty equal to 'Nil' (as aggregate amount of customs duties payable is zero).
- It is further stated that in the absence of any law, SWS cannot be computed on the notional customs duty calculated at tariff rate where applicable aggregate of duties of customs is zero.

Valuation Rules Under the Indian Customs Act

- Valuation of goods under the Indian Customs Act, 1962, is governed by Section 14 of the Act, which is aligned with the WTO's Agreement on Customs Valuation.
- The valuation rules are crucial as they determine the amount of customs duty payable on imported goods.
- The primary method for valuing imported goods is the "transaction value," which is the price actually paid or payable for the goods when sold for export to India.
- The transaction value includes: The cost of transport up to the place of importation. Loading, unloading, and handling charges associated with the delivery of goods to the place of importation and the cost of insurance.

Conditions for Accepting Transaction Value

- The transaction value is acceptable only if:
  - There are no restrictions on the buyer's ability to dispose of or use the goods, except those imposed by law, conditions of sale, or restrictions that do not substantially affect the value of the goods.
  - The sale or price is not subject to conditions or considerations for which a value cannot be determined.
  - No part of the proceeds of any subsequent resale, disposal, or use of the goods will accrue to the seller, unless an appropriate adjustment is made.
  - The buyer and seller are not related, or if related, the transaction value is acceptable for customs purposes.

Other Important aspects

- **Inclusion of Royalties and License** Fees: Royalties and license fees related to the imported goods, payable as a condition of sale, must be added to the transaction value if not already included.
- **Adjustment for Commissions and Brokerage: Commissions** and brokerage (except buying commissions) are also added to the transaction value if they have not been included.
- **Provisional Assessment: In** cases where the value cannot be determined at the time of import, a provisional assessment may be conducted. The final value is determined after additional information or documents are submitted.
- **Special Valuation Branch (SVB)**:For cases involving related party transactions, the valuation is scrutinized by the Special Valuation Branch of the customs department to ensure that the declared value reflects the true market value.
- **Anti-Dumping Duty and Safeguard Duty: The** value determined under the above rules forms the basis for applying additional duties such as anti-dumping duty or safeguard duty if applicable.

Alternative Valuation Methods:

- If the transaction value cannot be determined, the following alternative methods are used sequentially:

  - **Transaction Value of Identical Goods**: Based on the transaction value of identical goods sold for export to India.
  - **Transaction Value of Similar Goods**: Based on the transaction value of similar goods sold for export to India.
  - **Deductive Value Method**: Based on the sale price in India of goods that are identical or similar, less certain costs.
  - **Computed Value Method**: Based on the cost of production, profit, and general expenses.
  - **Fallback Method**: A flexible approach using reasonable means consistent with the principles and general provisions of the Customs Valuation Agreement.


QnA


THANK YOU!