

Import of Goods

- Import of Goods in India are governed by many laws. Prime among these are
- Foreign Trade (Development & Regulation Act) 1992
- The Objective of the act is to make provision for development and regulation of foreign trade by facilitating imports and increasing exports.
- DGFT is appointed under this Act.
- DGFT prescribes the procedures through HBP and public notices
- The latest version of FTP and HBP came into effect on 05th December 2017.

Customs Act 1962 and Customs Tariff Act 1975

- The main objective is to make provision for collection of revenue through customs duty on imported goods.
- The CBIC deals with the formulation of policy concerning levy and collection of custom duties, GST and prevention of smuggling

Foreign Exchange Management Act 1999

- The objective of FEMA Act 1999 is to facilitate external trade and payments
- Promote development and maintenance of Foreign exchange markets in India

Special Economic Zone Act 2005

 SEZ are specifically designated areas within India that are deemed to be Foreign territory for certain limited purposes.

Definition:

- Section 2(15)—
- Duty duty means a duty of customs leviable under this Act
- Imported Goods are subjected to following types of duties and taxes:
- Basic Custom Duties U/s 12 of Customs Act
- Additional Duties of Customs u/s 3(1), 3(3) & 3(5) of Customs Act
- Safeguard Duty U/s8B of Customs Act
- Anti Dumping duty u/s 9A of Customs Tariff Act
- Countervailing duty on subsidized articels u/s 9 of Customs Tariff Act

Export, Export Goods & Exporter

- Section 2 (18) —export, with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- Section 2 (19) —export goods means any goods which are to be taken out of India to a place outside India;
- Section 2 (20) —exporter in relation to any goods at any time between their entry for export and the time when they are exported, includes [any owner, beneficial owner] or any person holding himself out to be the exporter

Import, Import Goods & Importer

- Section 2 (23) import, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
- Section 2 (25) 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;
- Section 2 (26) 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 beneficial owner] or any person holding himself out to be the importer;

Bill of Entry V/s Bill of Export

	Bill of Entry	Bill of Export
	Section 2 (4) —bill of entry means a bill of entry referred to in section 46;	Section 2 (5) —bill of exportII means a bill of export referred to in section 50;
/	This is filed at the time of Import of Goods	This is filed at the time of Export of Goods
/	After the bill of entry is filed, the concerned goods are examined by a customs officer after which the importer has to pay taxes like GST, IGST and customs duty.	Let Export Order is issued after filing Bill of export
	The bill of entry can be issued either for bond clearance or	

Goods & Prohibited Goods

- Section 2 (22) —goods includes—
- (a) vessels, aircrafts and vehicles; (b) stores;
- (c) baggage;(d) currency and negotiable instruments;
- and
 (e) any other kind of movable property;

Section 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 in force but

does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

Value & Tariff Value

Section 2 (40) −

tariff value, in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14;

► Section 2 (41) -

yalue, in relation to any goods, means the value thereof determined in accordance with the provisions of 1 [sub-section (1) or sub-section (2) of section 14];

Warehouse

- Section 2 (43) —warehouse means
- a public warehouse licensed under section 57
- or a private warehouse licensed under section 58
- or a special warehouse licensed under section 58A;

Meaning & Scope of Imports

CGST Act 2017	Customs Act 1962	Foreign Trade Act 1992	SEZ Act 2005
Import of goods with its grammatical variations and cognate expression means bringing into India from a place Outside India	Import with its grammatical variations and cognate expression bringing into India from a place Outside India	Import means in relation to goods, bringing into India any goods by land sea or air	(i) Bringing goods or Receiving services, In a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or
			(ii) Receiving goods, or Receiving services By, Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;

Scope Of Import

- The common misconceptions of the law of Customs seem to be that it is applicable only if goods are brought into India:
- Ø for commercial transactions; or
- Ø if some form of consideration or payment is involved
- Ø if it is not of personal nature; or

- Under the Customs Act, all the transactions listed above constitute import. Does it mean on all those transactions duty of customs has to be paid?
- What is the scope of levy? Let us examine

	SI. No.	Illustrations	Common answers
	1	Indian Co. imports machinery from Germany	It is import, because there is some 'payment' involved
	2	Indian garment manufacturer receives a parcel by courier containing sample from a prospective customer	It is import, because it is for 'business purpose' even though payment is not required for samples
	3	On my birthday an uncle who lives in UK sends a watch as gift to India	It is not import, because the gift is 'not for sale'
	4	When on a holiday in New York I purchase a T-shirt which reads and brought it back to India	It is not import, because it is for 'own use' and it was purchased 'outside India
	5	What about the aircraft that I boarded on my journey back to India	No, the aircraft is not 'for sale', it is only for travel

Levy of Tax – Customs Duty

- Taxability or levy of duty or tax under each taxing statute has different ingredients.
- The process of levy of tax, need to be examined in three phases, namely:
- Taxable event
- One of the crucial ingredients of taxability is what is commonly known as "taxable event"
- Quantification of liability
- is the next sequential question of computing the tax
- It involves determination of Taxable value and the rate of tax on the imported goods

Discharge of liability

- Custom duties, as can be seen, are not paid by the manufacturer or supplier.
- It is paid by the customer of such (overseas) manufacturer or supplier.
- Importer is 'named' as person liable to discharge the taxes/duties on import

- 'Taxable event' under Customs Act can be said to have occurred when the goods are 'imported' into India.
- India begins at the point of entry in the territorial waters and extends all the way upto the point when they cease to be called 'imported goods'.
- Section 2(25) states that when goods are cleared for 'home consumption' they cease to be 'imported goods'.
- Goods brought into India become 'imported goods' no sooner than they cross the territorial waters of India but they remain so until they are 'cleared for home consumption'.
- Now, at what point in this spectrum does the liability to duty gets fastened to the goods is the key question.
- the liability to duty arises as soon as they entered the 'territorial waters' of India

When goods are imported into India, IGST would be levied under Customs Tariff Act and not under IGST Act.
 This is enabled by a proviso to section 5 of IGST Act and a corresponding sub-section for levy under section 3 of Customs Tariff Act.
 Hence, IGST levied under Customs Tariff Act is a tax not in the nature of GST but in the nature of a duty of customs

Examples of Customs Duty Calculation

		Imported Goods		Identical
				Domestic
Description	Rate	International	International	Goods
		(No dumping)	Dumping of Goods	
Assessable Value of an				
imported article		90	45	100
Countervailing duty u/s 9 of				
CTA	100%	0	45	
Customs duty under section 12				
of CA	10%	9	9	
Social Welfare Surcharge @ 10%				
on BCD of Rs.9	10%	0.9	0.9	
Total value		99.9	99.9	
"Duty equivalent IGST" under				
section 3(7) of CTA	18%	17.98	17.98	18
Landed Cost		117.88	117.88	118

Commissioner of Customs, Mumbai v/s M/s. Aban Loyd Chiles Offshore Ltd. & Others

- M/s Aban Loyd Chiles Offshore Ltd., engaged in business of offshore oil and gas exploratory drilling and related activities on contract basis, inter alia, for the Oil and Natural Gas Corporation Limited (ONGC) had import a Rig for such oil field services.
- It was granted a Special Import Licence for the import of the said Rig along with certain drilling equipments.
- The rig was towed directly to the drilling site at Bombay High in October 1987.
- In February 1996, the importer wrote to the Commissioner of Customs, Mumbai, seeking permission to import the rig into Mumbai for carrying out repairs and re-export
- It is not in dispute that the rig was towed into the waters comprising Mumbai Port on 12.11.1996 and after it was repaired, taken out of the territorial waters of India.
- Investigations by the Customs authorities into these two cases of importation led them to conclude that there had been contravention of certain provisions by the assessee and others with regard to these two acts of bringing the rig into India.

- "It was not meant for home consumption and therefore a bill of entry was not required to be filed.
- In our view, for the purpose of the levy of customs duty, in order to determine whether any imported goods are "goods for home consumption", we have to find out the primary intended use of the goods when the goods are brought into Indian Territorial Waters.
- If the goods are intended to be primarily used in India, they are goods for home consumption notwithstanding that they may also be used for the same or other purposes outside India.
- Imports should be for Home Consumption, if goods imported for repair and return custom duty not payable as import is not for home consumption.

Indian Airlines vs Commissioner Of Customs (Customs, Excise and Gold Tribunal – Bangalore)

- M/s. Indian Airlines normally function as Domestic Airlines. However, they have also International Flights.
- When the Aircraft returns to an airport in India and its international run is terminated,
- the Revenue demands Customs Duty on the fuel (ATF) remaining in the aircraft.
- The appellants challenge the levy of Customs Duty on the ATF onboard the aircraft.
- Aviation spirit loaded on board an aircraft for consumption though taken out of the country, is not exported since it has no destination where it can be said to be imported, and so long as it does not satisfy this test, it cannot be said that the sale was in the course of export. Further, the sales can hardly be said to 'occasion' the export. The seller sells aviation spirit for the use of the aircraft, and the sale is not integrally connected with the taking out of aviation spirit
- In the same way, when the aircraft returns with ATF in its fuel tank, it cannot be said that ATF is imported.

- For any import to take place, there is no need for sale as contended by the learned Counsel for the appellants. This is clear from the definition of the "importer" in the <u>Customs Act</u>.
- M/s. Indian Airlines brought ATF in their aircraft to India. Hence, import has taken place. Since they are the owners of the ATF in the aircraft, the appellants are the importers.
- As the ATF is going to be consumed in India, they are liable to pay duty

Kiran Spinning Mills vs Collector Of Customs (Hon'ble Supreme Court of India)

- The appellants had between 4th of April, 1977 and 20th of September, 1978 imported acrylic polyster fibre. The imported articles were placed in the bonded warehouse after they had landed in India.
- On 3rd of October, 1978 additional duty to excise equal to 10 per cent of the basic excise duty become payable on such articles
- The articles which were imported by the appellants were cleared from the bonded warehouse after 4th October, 1978.
- The Customs Authorities demanded an additional duty at the rate of 10 per cent under the aforesaid Ordinance.
- The contention was that at the time when the goods had landed in India additional duty of excise was not payable on a similarly manufactured goods in India even if they were placed in a bonded warehouse in India and, therefore, no additional duty could be charged under the Excise Act similarly under Section 3 of the Tariff Act no additional duty should be charged.

- Section 15 of the Customs Act which, inter alia, provides that the rate of duty which will be payable would be on the day when the goods are removed from the bonded warehouse.
- As on that day when the goods were so removed additional duty of excise under the said Ordinance was payable on goods manufactured after 4th October, 1978
- Import being complete, when the goods entered the territorial waters is the contention which has already been rejected
- The import would be completed only when the goods are to cross the customs barriers and that is the time when the import duty has to be paid

M Jahangir Bhatisha V/s UOI (1989) 3 SCR 356 (Constitution Bench of Hon'ble SC)

- Rate of duty and tariff valuation as on the date of presentation of bill of entry or date of entry inward of the vessel, whichever is later is relevant for determining the customs duty payable.
- Thus rate of duty when ship enters the port is relevant and not the date when ship enters territorial water

High Sea Sales

- The HIGH Sea is the open ocean, not part of the exclusive economic zone, territorial sea or internal water of any Country.
- According to UN Convention high sea means all parts of the sea that are not included in the territorial sea or in the territorial waters of a State.
- Can transaction like High Sea Sale be done for goods imported via air ?
- For example, Amit located in Chennai procures goods from vendor Binod of USA. The goods are exported from the Europe and when the goods are in transit, Amit enters into a contract with Charan of Nagpur, and sells these goods to Charan, before the goods cross the customs frontier of India.
- The sale of goods by Amit of Chennai to Charan of Nagpur, while they are in transit is called high sea sale.

There is no bar on the same goods being sold more than once on high seas. The same consignment of goods in transit can be sold multiple times before such goods cross customs frontier and enter into the territory of India

In the case of HSS, the end HSS buyer would be treated as an importer.

He clears the goods from customs on payment of applicable import duties.

Further, if there is any end user-based exemptions in respect of the goods, then such end HSS buyer who uses such goods, for specified purposes can claim such exemptions/concessional tax benefits when he presents the bill of entry for home consumption at customs.

GST & High Sea Sales

IGST on the imported goods is levied and collected in accordance with the Customs.

Since BCD is not payable on the HSS, even IGST is not payable on HSS.

Clause 8 (b) of Schedule III to CGST Act 2017 read as follows:

- "Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption."
- and treat the above transaction as neither as a supply of goods nor a supply of services

Valuation for the purpose of duty payment under Customs - HSS

- Assessment of duties and tax payment are made when the when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time
- Actual HSS contract price paid by the HSS buyer would constitute the transaction value under Rule 4 of Customs Valuation Rules

Where the same goods are being sold more than once on high seas the last HSS value is to be considered for the payment of BCD and IGST.

 IGST on HSS of imported goods, whether one or multiple, shall be levied and collected only at the time of importation

Procedure of High Sea Sales

- The HSS seller buys goods from an overseas supplier against POs received from its customer in India i.e., HSS buyer. That is, it will be a back to back PO. As against the PO given by the HSS seller, the overseas supplier will export the products.
- The export documents such as the bill of lading will show the HSS seller as the buyer of the goods.
- After the goods are dispatched from the port of the exporter country and before the goods reach/ cross the customs frontier of India and is entered for customs clearance, the goods will be sold by the HSS seller to its HSS customer by entering into HSS contract/ agreement.
- HSS contract should be entered on stamp paper, signed by both the HSS buyer and HSS seller and should be duly notarised.
- In the cases where the HSS Contract is not notarised, the same is required to be attested by the authorized signatory of bankers.

- The sale is to be effected by endorsing the bill of lading, invoice and packing list in favor of the HSS buyer.
- The endorsement should read "Transferred on High Sea Sales basis to M/S ----- for a sales consideration of Rupees -----".
- Such endorsement should be stamped and signed by the HSS seller.
- The Import General Manifest [IGM] is to be filed in the name of HSS buyer as the consignee of the goods by the shipping line if such shipping line is aware of the HSS contract before filing IGM.

Where the IGM is already generated by the shipping line and has mentioned the HSS seller as the consignee of the goods in the IGM, then the shipping line would be required to amend the IGM in order to change the consignee as the HSS buyer

Bonded Warehouse

Meaning of Warehouse



A warehouse is a place where products or materials can get stored before they move to another location

Or

 a large building where raw materials or manufactured goods may be stored prior to their distribution for sale.

Need for Warehousing

 Customs warehousing is a procedure under which imported goods are stored under customs control in designated place without payment of import duties.

Warehouses are facilities setup to avail the benefit of customs duty deferment.

Imported goods can be stored in a warehouse without payment of duty and the applicable duty is required to be paid only at the stage of their clearance from the warehouse.

Goods might not be immediately required Market price fluctuations

Saleability issues
Not required in production

- Paucity of funds
- Goods for supply to EOU/EHTP/STP/SEZ also allowed to be warehoused
- Goods for sale in Duty Free shops

- Customs Bonded Warehouse is a facility where imported goods can be stored and further manufacturing as well as associated activities like packing, re-packing, labelling, etc. can be carried out.
- The customs duty is deferred at the time of import of goods and is payable at a later stage only upon clearance of manufactured goods for home consumption.
- If goods are exported directly from the warehouse, no Customs duty is payable.
 The warehouse can be used to store locally procured domestic goods for processing.

Declaration of Public Warehouse or License to Private Warehouse

- Public Warehouses are appointed by the Asst./Dept. Commissioner at the customs stations.
- Container freight stations (CFS) and Inland container depots (ICD) are essentially custombonded facilities located either near the service port (in the case of CFS), or inland (as in the case of ICD).
- Upon an application being made to license a private warehouse, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may issue a licence to the applicant

either for depositing his own goods or to carry out any manufacturing activity

Any licence granted shall remain valid until and unless it is cancelled.

Types of Warehouse & Difference thereof
Three types of warehousing - Public warehouses
Private warehouses & Special warehouses

Public Warehouse	Private Warehouse
Managed by the warehousing corporation	Owned by the owner of goods
Appointed by the department	Licensed by the department
No question of cancellation of license	License can be cancelled for violation of warehousing provisions
Goods of any person can be deposited	Owners goods only to be deposited

Rate of Duty/ Value for Assessment:

- The rate of duty applicable is as per provisions of Section 15 of the Customs Act i.e. on the date on which the goods are actually removed from the warehouse.
- However, when the warehousing period or the extended warehousing period has expired, the duty payable is with respect to the date when the warehousing/extended warehousing period expired and not the actual date of removal.
- Insofar as value for assessment of duty for warehoused goods is concerned, it is not required to be re-determined and it is the original value as determined at the time of filing of into Bond Bill of Entry and assessments before warehousing.

Furnishing of Warehousing Bond

The importer or his representative is required to present to the Customs a Bill of Entry for warehousing and shall execute a bond

- for sum equal to thrice the amount of the duty assessed for such goods
- and to pay all duties and interest payable and to pay all fines
- and penalties incurred for the contravention of any provisions under this Act.
- The AC of Customs or DC of Customs may permit an importer to execute a general bond for such amount as approved by them within a specified period.
- Additionally, a security has to be furnished by the importer.

Storage Period in Warehouse

- Any goods deposited in a warehouse may be stored upto a period of one year in the Bonded Warehouse.
- In the case of capital goods intended for use in any 100% EOU, such goods can, however, be stored up to a period of 5 years.
- The warehousing period can be extended by the Commissioner of Customs for a of 6 months
 - and
- by the Chief Commissioner of Customs for such further period as is deemed fit by him.
- The importers should file their applications for extension well before the expiry of the initial/extended period of warehousing.
- Extensions in warehousing period are not meant to be granted routinely but only in such cases where the goods have to be kept in the warehouse under circumstances beyond the control of the importer.

Export / Clearance for Home Consumption from Bonded Warehouse

Export

- No customs duty on goods exported without clearance in India.
- Refund of IGST payable on export can be availed.

Clearance for Home Consumption

Applicable Customs duties payable

Applicable GST is payable on purchase of local goods

Applicable GST is payable on clearance of manufacture goods

Applicable GST is payable on Scrap/Waste generated

Rent & Interest for Storage of Goods

- The rent has to be paid by the owner of the warehoused goods to the warehousekeeper at the rates fixed under any law for the time being in force or
- where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs.
- In cases where the capital goods for 100% EOUs remain in a warehouse beyond a period of 5 years, interest shall be charged on the customs duty payable at the time of clearance of the goods for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods.
- In the case of all other goods,, interest is payable after the expiry of thirty days in the warehouse.

Non Compliance to Warehousing Provision

- Customs Officers may demand from the owner of bonded goods the full amount of duty chargeable on such goods, along with all penalties, rent, interest and other charges payable in the following cases:
- (a) Where any warehoused goods are removed in contravention of the Customs Act, 1962;
- (b) Where such goods have not been removed from a warehouse at the expiry of the period permitted under section 61;
- (c) Where any warehoused goods have been taken under section 64 as samples without payment of duty; and
- (d) Where any bonded goods have not been cleared for home consumption or exportation or are not duly accounted for to the satisfaction of the Customs.

In case the owner fails to pay the amount as demanded above, Customs may detain and sell, after notice to the owner,

such sufficient portion of the bonded goods as may be selected.

F. No. CBEC/20/16/03/2017- GST Government of India Ministry of Finance Department of Revenue Central Board of Indirect Taxes and Customs GST Policy Wing

New Delhi, Dated the 25th May, 2018

To.

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)/ The Principal Directors General/ Directors General (All)

Madam/Sir,

<u>Subject:</u> Applicability of Integrated Goods and Services Tax (integrated tax) on goods supplied while being deposited in a customs bonded warehouse-reg.

Attention is invited to Circular No. 46/2017-Customs dated 24.11.2017 whereby the applicability of integrated tax on goods transferred/sold while being deposited in a warehouse (hereinafter referred to as the "warehoused goods") was clarified.

Various references had been received by the Board on the captioned issue which has now been re-examined by the Board.

3. It is seen that the "transfer/sale of goods while being deposited in a customs bonded warehouse" is a common trade practice whereby the importer files an into-bond bill of entry and stores the goods in a customs bonded warehouse and thereafter, supplies such goods to another person who then files an ex-bond bill of entry for clearing the said goods from the customs bonded warehouse for home consumption.

4. It may be noted that as per sub-section (2) of section 7 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the "IGST Act"), the supply of goods imported into the territory of India, till they cross the customs frontiers of India, is treated as a supply of goods in the course of inter-State trade or commerce. Further, the proviso to subsection (1) of section 5 of the IGST Act provides that the integrated tax on goods imported into India would be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (hereinafter referred to as the "CTA"). Thus, in case of supply of the warehoused goods, the point of levy would be the point at which the duty is collected under section 12 of the Customs Act, 1962 (hereinafter referred to as the "Customs Act") which is at the time of clearance of such goods under section 68 of the Customs Act.



- 5. It may also be noted that sub-section (8A) has been inserted in section 3 of the CTA vide section 102 of the Finance Act, 2018, with effect from 31st March, 2018, so as to provide that the valuation for the purpose of levy of integrated tax on warehoused imported goods at the time of clearance for home consumption would be either the transaction value or the value as per sub-section (8) of section 3 of the CTA (i.e. valuation done at the time of filing the into-bond bill of entry), whichever is higher.
- 6. It is therefore, clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse.
- This Circular would be applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse, on or after the 1st of April, 2018.
- It is requested that suitable trade notices may be issued to publicize the contents of this Circular.
- Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Upender Gupta) Commissioner (GST)