**An Overview of the Customs Act- Basic Concepts and Legal Perspectives**

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**Introduction**

The Customs Act, 1962(“**Act**”) is a central law regulating *inter alia* the levy of customs duty on goods imported into and exported from India. The source of this legislation is Entry 41 of the Union List of the Seventh Schedule under the Constitution of India. Customs law applies mostly to B2B(business-to-business) as opposed to B2C(business-to-customer) transactions since individual customers do not avail of goods directly from foreign countries, in most cases and the goods are transported to business concerns in India. There is no customs duty when goods are imported within India and IGST is leviable on such transactions. The Act exhaustively deals with all aspects of customs law including appointment of governmental officers to discharge the functions under the Act, the designation of customs ports, airports for import and export, the mode for levy and payment of customs duty, the confiscation of goods, assessment and reassessment of duty etc.

**Basic concepts under the Act**

An overview of some important provisions of the Act is necessary to facilitate a better understanding of the law of customs:

1. Section 12 is the charging section which makes possible the levy of customs duty on goods imported into or exported from India at the rates chargeable under the Customs Tariff Act, 1975 or any other law in force. Both imports and exports are covered.
2. When goods are imported into India, the importer must file a bill of entry on the online portal(which is ICEGATE) and self assess the customs duty payable and discharge the customs duty on the date of presentation of the bill of entry for clearance for warehousing or for home consumption. The goods are stored in a warehouse for safekeeping before clearance for home consumption in case warehousing is opted for and are usually stored in a warehouse if the goods cannot be cleared within a reasonable time in cases such as bulk deals of import etc. Thereafter, if the proper officer is satisfied that the goods are not prohibited goods and there is proper payment of import duty an order may be made for clearance of the goods for home consumption. The entire exercise of filing of bills of entry to the stage of final clearance of goods is usually carried out by persons known as ‘clearing agents’ whose responsibility it is to ensure the goods are cleared for home consumption. If the goods stored in a warehouse are not cleared for home consumption within 30 days, the authorities may sell the goods.
3. Section 111 deals with confiscation of goods. If any of the clauses/conditions specified in section 111 are applicable, the proper officer shall confiscate the goods before clearance for home consumption. For example, under Section 111(d) if the goods are imported into India which are prohibited goods where there is a prohibition on such goods under any law for the time being in force, the goods will be confiscated. Or if the goods are imported in violation of the Baggage Rules, 2016 the goods may be confiscated. Before any confiscation, a show-cause notice is to be issued under Section 124 to the owner of the goods and the owner is given an opportunity to explain why the goods should not be confiscated. Alongwith such confiscation, the imposition of penalty is mandatory and shall be imposed, and a penalty equivalent to the value of the goods or Rs. 5000/- whichever is greater shall apply in case of prohibited goods(separate penalty for other goods).

Under Section 125 an option to pay a fine in lieu of confiscation of an amount equal to the market price of the goods is provided. The provisions dealing with confiscation are distinct than the provisions pertaining to assessment of customs duty. It may happen that goods are imported into India upon which customs duty has been validly discharged by the C&F(clearing and forwarding) agent, but it is found that the goods are prohibited goods. In such cases, the goods would be confiscated(option of fine to redeem the goods is applicable) and a penalty would be applicable.

1. If any person is aggrieved with the order of the officer of customs lower in rank than a Principal Commissioner or Commissioner may appeal to the Commissioner(Appeals), then to the CESTAT(Appellate Tribunal), then to the High Court and finally to the Supreme Court.

**Recent decisions of the Bombay High Court**

1. In *Patanjali Foods vs. UOI[[1]](#footnote-1)*, the Bombay High Court held that reassessment/assessment of customs duty to be paid, is liable to be quashed since the notification specifying an increase in the rate of duty is not applicable having been issued hours later than the presentation of the bill of entry. Per Section 15 of the Act, it is the date when the bills of entry are presented which will be the relevant date for determination of the rate of duty. The Hon’ble Court relied upon the decision of the Hon’ble Apex Court in *UOI vs. M/s G.S. Chatha Rice Mills & Anr.[[2]](#footnote-2)* and proceeded to quash the proceedings for levy of customs duty at the higher rate.
2. In the case of *Hemant Surgical Industries Ltd. & Anr. vs. UOI & Ors[[3]](#footnote-3).*, the Hon’ble Bombay High Court quashed the show-cause notice issued under Section 124 of the Act purporting to confiscate the goods being hemodialysis machines and impose the penalty equivalent to the market price of the goods. The goods had been imported, bill of entry presented, customs duty paid and cleared for home consumption. However, the show-cause notice was issued later to confiscate the goods since they were allegedly prohibited goods. The Hon’ble High Court quashed the proceedings since the show-cause notice was issued for confiscation and penalty, whereas the impugned order passed thereon was on the basis of misdeclaration of self-assessed value of the goods by the owner for payment of customs duty. Since the show-cause notice was issued for altogether different reasons, the impugned order was quashed and set aside.
3. In *Rajendra S. Bajaj vs. UOI*[[4]](#footnote-4), certain jewellery was seized by the customs authorities from a USA citizen originally from India on his arrival at the Indian airport, which was essentially a necklace/pendant purchased in the USA in 1989. The value of the jewellery ascertained by some alleged experts known to the customs authorities was to the tune of Rs. 1,20,35,000/-. A confiscation show cause notice was issued to the owner who explained that he acquired the jewellery in 1989 from a vendor in the USA and claimed exemption as personal possession/effects under the Baggage Rules, 2016. However, basis the Baggage Rules, 2016, which allows a male passenger to carry only Rs. 10,000/- as jewellery, the jewellery was confiscated. This is despite the explanation of the petitioner that the jewellery was his personal effect/possession only, which under the Baggage Rules is entitled to exemption from customs duty and that he had validly purchased the same in 1989 in the USA by a foreign vendor.

The High Court deprecated the manner in which the investigation was conducted by the authorities, and accepted the averments of the Petitioner that the jewellery was his personal effect and that the same was also purchased as far back as 1989 in the USA. The redemption fine as well as the penalty were directed to be refunded to the Petitioner which was paid when the jewellery was re-exported at the time of his return to USA.

Recently, the Hon’ble Delhi High Court has directed the customs authorities/CBIC to provide an explanation why the threshold for carrying jewellery under the Baggage Rules, 2016 should not be revisited, since many foreign tourists of Indian origin/OCI card holders/PIO attending Indian weddings or even otherwise, cannot carry jewellery beyond the threshold of only Rs. 1,00,000/-(female passengers) and Rs. 50,000/-(male passengers) as per the Baggage Rules, 2016, and their jewellery is confiscated upon their arrival into India.

**Conclusion**

The above is a pictorial analysis of the prevailing customs law in India where not every provision but only the key provisions are spelt out and a basic understanding of the workings of the Act as well as of the Hon’ble Bombay High Court is given, in as few pages as possible. I am confident that after reading this paper, one would have a better or a refreshed understanding of customs law.

1. WP 1816/2021 decided on 28.6.2024(Bom.) [↑](#footnote-ref-1)
2. 2020 SCC Online SC 770 [↑](#footnote-ref-2)
3. WP 963/2022 decided on 26.7.2024(Bom.) [↑](#footnote-ref-3)
4. WP 1862/2012 decided on 5.7.2024(Bom.) [↑](#footnote-ref-4)