

COURSE	:	II M.Com
SEMESTER	:	IV
SUBJECT	:	Core: XIV INDIRECT TAX, LAW AND PRACTICE
UNIT	:	V

Syllabus

Customs Act – definition – stamp duty – property tax – non GST items (alcohol and petroleum products).

Unit -V

CUSTOMS ACT 1962 CUSTOMS DUTIES (Import and Export Duty Tax)

INTRODUCTION

Customs is an authority or tax collection wings which is appointed by the Government in every country for controlling and collecting of tax. Customs Act and Tariff are two regulations which was developed by the World Customs Organization to control imports and exports of goods and that includes live animals goods. Each country has its own Customs Act and Tariff on the basis of the guidelines and principles of the World Customs Organisation.

INDIAN CUSTOM LAW

According to Customs Act, 1962 “The Customs Tariff (1975) has framed to regulate the movement of import goods into India and exports goods out of India.

ANTI-DUMPING LAW

Anti-Dumping measures are formulated and implemented by Government of India to remove the dumping margins and rescue from injury to the domestic industries. (shortly it is to save the domestic Sellers). Anti-Dumping duty is one of the novel tool to protect the domestic economic from external economics aggressions.

ANTI-DUMPING LAW AND PROCEDURES IN INDIA ARE BASED ON THE FOLLOWING LEGAL FRAME WORK

Pursuance of Article VI of GATTA 1994

Customs Tariff Act, 1975-section 9A,9B and 9C (as Amended in the year 1995)

Anti-Dumping Duty (Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on subsidized Articles and for Determination of injury) Rules,1995)Notification No. 1/95-cus(N.T), dated 1.1.1995.

Anti-Dumping Duty (Customs Tariff Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of injury) Rules,1995) Notification No. 2/95-Cus. (N.T), dated 1.1.1995.

Investigation and Recommendations by designed authority of Ministry of Commerce.
Imposition and collection by Ministry of Finance.

Chapter I - Preliminary

Section 1. Short title, extent and commencement:

(1) This Act may be called the Customs Act, 1962.

(2) It extends to the whole of India¹[and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.]

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

Section 2. Definitions:

In this Act, unless the context otherwise requires,

(1) "adjudicating authority" means any authority competent to pass any order or decision under this Act, but does not include the 4 [Board, Commissioner (Appeals)] or Appellate Tribunal;]

(1A) "aircraft" has the same meaning as in the Aircraft Act, 1934 (22 of 1934);]

(1B) "Appellate Tribunal" means the Customs, Excise and 5 [Service Tax] Appellate Tribunal constituted under section 129;]

(2) "assessment" means determination of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to— (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act; (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act; (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force; (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods; (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods; (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

- (3) "baggage" includes unaccompanied baggage but does not include motor vehicles;
- (3A) "beneficial owner" means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;]
- (4) "bill of entry" means a bill of entry referred to in section 46;
- (5) "bill of export" means a bill of export referred to in section 50;
- (6) "Board" means the [Central Board of Indirect Taxes and Customs]constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)];
- (7) "coastal goods" means goods, other than imported goods, transported in a vessel from one port in India to another;
- (7A) "Commissioner (Appeals)" means a person appointed to be a Commissioner of Customs (Appeals) under sub-section (1) of section 4;]
- (8) Principal Commissioner of Customs or Commissioner of Customs], except for the purposes of Chapter XV, includes an Additional Commissioner of Customs;]
- (9) "conveyance" includes a vessel, an aircraft and a vehicle;
- (10) "customs airport" means any airport appointed under clause (a) of section 7 to be a customs airport 13[and includes a place appointed under clause (aa) of that section to be an air freight station];
- (11) "customs area" means the area of a customs station 14[or a warehouse] and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;
- (12) "customs port" means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot];
- (13) "customs station" means any customs port, 16[customs airport, international courier terminal, foreign post office] or land customs station;
- (14) "dutiable goods" means any goods which are chargeable to duty and on which duty has not been paid;
- (15) "duty" means a duty of customs leviable under this Act;
- (16) "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export and includes the entry made under the regulations made under section 84;
- (17) "examination", in relation to any goods, includes measurement and weighment thereof;
- (18) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- (19) "export goods" means any goods which are to be taken out of India to a place outside India;

(20) "exporter", in relation to any goods at any time between their entry for export and the time when they are exported, includes 18[any owner, beneficial owner] or any person holding himself out to be the exporter;

(20A) "foreign post office" means any post office appointed under clause (e) of sub-section (1) of section 7 to be a foreign post office;]

(21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes –

(i) any naval vessel of a foreign Government taking part in any naval exercises;

(ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;

(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

(21A) "Fund" means the Consumer Welfare Fund established under section 12C of the Central Excises and Salt Act, 1944 (1 of 1944);]

(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;

(23) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(24) 21["arrival manifest or import manifest"]or "import report" means the manifest or report required to be delivered under section 30;

(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;

(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes 22[any owner, beneficial owner] or any person holding himself out to be the importer;

(27) "India" includes the territorial waters of India;

(28) "Indian Customs Waters" means the [waters extending into the sea up to the limit of [Exclusive Economic Zone under section 7] 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;

(28A) "international courier terminal" means any place appointed under clause (f) of sub-section (1) of section 7 to be an international courier terminal

- (29) "land customs station" means any place appointed under clause (b) of section 7 to be a land customs station;
- (30) "market price", in relation to any goods, means the wholesale price of the goods in the ordinary course of trade in India;
- (30A) "National Tax Tribunal" means the National Tax Tribunal established under section 3 of the National Tax Tribunal Act, 2005 (49 Of 2005)
- (30AA) "notification" means notification published in the Official Gazette and the expression "notify" with its cognate meaning and grammatical variation shall be construed accordingly
- (30B) "passenger name record information" means the records prepared by an operator of any aircraft or vessel or vehicle or his authorised agent for each journey booked by or on behalf of any passenger;]
- (31) "person-in-charge" means, -
- (a) in relation to a vessel, the master of the vessel;
 - (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
 - (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
 - (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance;
- (32) "prescribed" means prescribed by regulations made under this Act;
- (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;
- (34) "proper officer", in relation to any functions to be performed under this Act, means the officer of customs who is assigned those functions by the Board or the Principal Commissioner of Customs or Commissioner of Customs];
- (35) "regulations" means the regulations made by the Board under any provision of this Act;
- (36) "rules" means the rules made by the Central Government under any provision of this Act;
- (37) "shipping bill" means a shipping bill referred to in section 50
- (38) "stores" means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting;
- (39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;
- (40) "tariff value", in relation to any goods, means the tariff value fixed in respect thereof under sub-section (2) of section 14;
- (41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of 28[sub-section (1) or sub-section (2) of Section 14
- (42) "vehicle" means conveyance of any kind used on land and includes a railway vehicle;

(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

(44) "warehoused goods" means goods deposited in a warehouse

STAMP DUTY

Stamp duty is a state levy paid to register a document, typically an agreement or transaction paper between two or more parties, with the registrar. Usually, it is a fixed amount depending on the nature of document or is charged at a certain percentage of the agreement value stated in the document.

What is stamp duty?

It is a tax, similar to income tax, collected by the government. Stamp duty is payable under Section 3 of the Indian Stamp Act, 1899. Stamp Duty must be paid in full and on time. If there is a delay in payment of stamp duty, it attracts penalty. A stamp duty paid instrument / document is considered a proper and legal instrument / document and has evidentiary value and is admitted as evidence in courts. Document not properly stamped, is not admitted as evidence by the court.

When is the stamp duty payable?

It is payable before execution of the document or on the day of execution of document or on the next working day of executing such a document. Execution of the document means putting signature on the instrument by the person's party to the document.

What is the penalty charge?

Any delay in duty payment will pull in 2% per month to the maximum of 200% of the deficit amount of stamp duty. Stamp papers are to be purchased in the name of either of the parties, i.e, seller or buyer involved in the agreement, failing which will disable the

stamp paper. It is said to be valid for six months from the date of purchase, only if the duty is paid on time.

Who is liable to pay?

In the absence of any agreement to the contrary, the purchaser/transferee has to pay stamp duty or in case of exchange of properties, both parties have to bear stamp duty equally.

How should one sign an instrument affixed with adhesive stamp?

According to the provisions of Section 12, any person executing an instrument—affixed with adhesive stamp—shall cancel the adhesive stamp by writing on or across the stamp his name or initials. If such an adhesive stamp has not been cancelled in the aforesaid manner, such a stamp is deemed to be unstamped.

What is instrument?

Instrument means any document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded. It is payable on instruments and not on transactions. Stamp duty should be charged on the basis of the contents of the instrument only. If any information essential for working out stamp duty is missing in the instrument, valuation officer can call for it. Information such as the area of the flat, number of the floors and year of construction must be mentioned in the agreement for quicker response.

How should instruments stamped with impressed stamp be written?

As per the provision of Section 13 of the Indian Stamp Act, 1899, any instrument on an impressed stamp, shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument i.e., cancel the adhesive stamp so affixed by writing on or across the stamp his name or initials. If such an adhesive stamp has not been cancelled in the aforesaid manner, such a stamp is deemed to be unstamped.

Is stamp duty payable on all instruments / documents relating to the transfer of immovable property?

Except transfer by Will (or by original nomination in a co-operative housing society) all transfer instruments / documents including agreements to sell, conveyance deed, gift deed, mortgage deed, exchange deed, deed of partition, power of attorneys, leave

and license agreement, agreement of tenancy and lease deeds have to be properly stamped before registration.

It is clarified that when a nominee transfers the flat subsequently in the name of the legal heirs, that transfer instrument is to be stamped as per the market value. If you have purchased a flat in a co-operative housing society on or after 10-12-1985 you have to pay the stamp duty on market value as per the Ready Reckoner. A flat purchased through an agreement for sale on or before 9-12-1985 required stamp paper of Rs. 5 only. However a flat purchased on or before 9-12-1985 will require stamp duty on market value at the time of conveyance of the property in favour of the society. The concept of payment of stamp duty on market value was introduced from 04-07-1980 will be charged on agreement value only.

Stamp Duty Payment

It is important to note that stamp duty should be paid in full and without any delay, failing which, a penalty is levied. A stamp duty document is a legal instrument which has evidentiary value (admissible in a court of law as evidence). Stamp duty has to be paid prior to execution (signature by an individual's party) of a given document, the next day or on the day of document execution. Stamp duty is paid by a buyer in most cases. However, both the seller and the buyer have to bear the burden of stamp duty for property exchange cases. As per Section 13 of Indian Stamp Act, 1899, an individual executing a given instrument has to cancel the stamp (adhesive) by writing his initials or name across it. If a stamp is not cancelled in the aforementioned method, the document is considered unstamped. In other words, the stamp should be visible on the face of an instrument and therefore, cannot be applied to another instrument.

Stamp Duty Charges

Stamp duty rates differ in various states across the country as stamp duty in India, is a state subject. However, the central government fixes the stamp duty rates of specific instruments. As mentioned above, delay in the payment of stamp duty will attract a penalty of 2% on a monthly basis (up to 200% of remaining amount).

Stamp Duty on Property Registration

Legal evidence of ownership or transfer of a property is mandatory. To the end, the buyer, in most cases, has to register his or her name in the municipal records. The buyer has to pay a stamp duty at the time of registration. The amount of stamp duty may vary from one state to another. Stamp duty also depends on whether a given property is new or old.

Stamp Duty Registration Factors

Age of the Property

Value of the Property

City or location of the Property

Gender and age of the Property owner

Usage of Property

Stamp Duty Calculation

You should be aware of the fact that stamp duty charges on property registration vary from state to state. There are multiple parameters used by the authorities to calculate charges such as involving the type of building or plot involved.

For example, some states consider the constructed area for calculating stamp duty and registration charges for independent houses while a figure is arrived at on the basis of the built up area in case of apartments. The stamp duty can also be revised by states annually as per the state budget. In some states, women get a concession on both stamp duty and registration charges.

Here are some of the factors that you must keep in mind on the implication of stamp duty at the time of property registration.

The calculation is primarily done on the basis of the "Guidance Value" of the property, the minimum value at which the property should be registered. The value is decided by the competent authority under the state government.

The charges are indirectly proportional to the market value of the property and other aspects such as market performance.

The location of the property such as urban or rural area also has a say in deciding the stamp duty payable.

Other levies such as state and central taxes are also applicable on registration and stamp duty charges.

Documents which Require for Stamp Duty

Some of the documents which require stamp duty are listed below:

Transfer instruments

Deed of partition

Reconveyance of mortgaged property

Mortgage deed

Certificates of sale

Gift deed

Exchange deed

Tenancy agreement

Power of attorneys

License agreement

Lease deeds

PROPERTY TAX

A property tax or millage rate is an ad valorem tax on the value of a property, usually levied on real estate. The tax is levied by the governing authority of the jurisdiction in which the property is located. This can be a national government, a federated state, a county or geographical region or a municipality.

Definition:

Property tax is the annual amount paid by a land owner to the local government or the municipal corporation of his area. The property includes all tangible real estate property, his house, office building and the property he has rented to others.

KEY TAKEAWAYS

Property owners pay property tax calculated by the local government where the property is located.

Property tax is based on the value of the property, which can be real estate or—in many jurisdiction also tangible personal property.

Improvements in water and sewer use the assessed taxes.

The amount owners owe in property tax is determined by multiplying the property tax rate by the current market value of the lands in question. Most taxing authorities will recalculate the tax rate annually. Almost all property taxes are levied on real property, which is legally defined and classified by the state apparatus. Real property includes the land, structures, or other fixed buildings.

Ultimately, property owners are subject to the rates determined by the municipal government. A municipality will hire a tax assessor who assesses the local property. In some areas, the tax assessor may be an elected official. The assessor will assign property taxes to owners based on current fair market values. This value becomes the assessed value for the home.

The payment schedule of property taxes varies by locality. In almost all local property tax codes, there are mechanisms by which the owner can discuss their tax rate with the assessor or formally contest the rate. When property taxes are left unpaid, the taxing authority may assign a lien against the property. Buyers should always complete a full review of outstanding liens before purchasing any property.

NON GST (Alcohol and Petroleum)

The new Goods and Services Tax (GST) replaced most of the previous taxes in India. Now GST will be levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. Only value addition will be taxed and burden of tax is to be borne by the final consumer.

Alcohol for human consumption

Alcohol for human consumption does not fall under the purview of GST in India at present. The taxes imposed to Alcohol for human consumption are continued as per the structure before GST implementation.

Petroleum Products: petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel

Petroleum crude, motor spirit (petrol), high speed diesel, natural gas and aviation turbine fuel etc. are not attracted GST. However, the taxes for these products are attracted as per the structure before introduction of GST.

Electricity.

The category, Electricity has been kept aside under the purview of GST at present. So, electricity does not fall under GST at present. Hence, GST is not applicable for electricity. However, the taxes applicable at present for electricity is continued as before.

At present, the above items are kept outside the purview of GST in India.

Taxation of Liquor

Even though liquor hasn't been brought under the purview of Goods and Services Tax, it still falls under other taxes that contribute to its rising prices. These taxes are:

Excise Duty

VAT (Value Added Tax)

Alcohol was not brought under the purview of GST regime primarily due to two reasons:

To ensure that the State Governments continue to have a strong inflow of revenue (other than what they get from GST). It's estimated that taxes on liquor and beer fetch the state governments nearly INR 90,000 crores annually.

To keep the prices of liquor and beer high to limit consumption.

PETROLEUM TAXATION

Finance Minister Nirmala Sitharaman and Petroleum Minister Dharmendra Pradhan have batted for the inclusion of fuel under GST and indicated that the move may bring some relief to the common man. At present, the price of petrol and diesel includes excise duty charged by the Centre and value-added tax by the states. Though the GST was introduced on July 1, 2017, petrol and diesel were kept out of it due to this higher dependence of states.