

CA FINAL

GST

Customs Concept and OCOQ

- Covers Concepts & Q&As of Customs for a complete understanding.
- Concepts section includes explanations, examples, and diagrams for clarity.
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CA Karan Sheth

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CUSTOM THEORY

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CUSTOM OCOQ

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Section 12(1)

Except provided in this act or any other law for the time being in force duties of custom shall be levied at **such rates as maybe be specified** under Custom Tariff Act, 1975 Of goods that are imported to and exported from India

Section 12(2)

Provisions in 12(1) shall apply to all goods belonging to the government as they apply to goods not belonging to government.

(In case where goods have been imported or exported by government; such goods shall be subject to the customs duty to government as if any person other than government have imported/ exported such goods)

Definitions: Sec. 2 of Customs Act, 1962**India**

Includes -

1. Landmass of India
2. Territorial waters of India (TWI) - i.e. up to 12n.m. from baseline
3. Designated area in Exclusive Economic Zone and Continental shelf of India - i.e. up to 200 n.m. from baseline for a designated purpose like extraction and prospection of mineral oil and natural gas
4. Airspace above territory of India and EEZ

Indian Customs Waters (ICW)

ICW means water extending into sea **upto limit of exclusive economic zone** under the relevant act and includes bay, gulf, harbour, creek, tidal river.

Significance of ICW:

Finance act 2018 has extended the limit of ICW upto 200 n.m. i.e. entire EEZ shall be now called ICW. In ICW proper officer can stop a vessel, search vessel, confiscate the goods in the vessel and arrest a suspected person.

Significance of EEZ:

These are international waters, any vessels can navigate through these waters without any restriction and this is the area where India has been conferred economic rights w.r.t. exploitation of natural resources. Since the above area is included in the definition of India, any mineral oil or natural gas extracted from continental shelf or EEZ and is brought to the land mass of India shall not be treated as import of goods and a similar position will be taken in respect of the exports.

Water beyond continental shelf and EEZ are known as high seas.

Goods:

GOODS includes....

(1) Conveyance	(2) Stores	(3) Baggage	(4) Currency & negotiable instruments	(5) Any kind of movable property
Includes	Goods used on board a vessel	Personal luggage of passengers or crew members	Importer or exporter shall disclose what amount of currency is brought/ taken	Includes intangibles also imported in physical media
*vessel				
*aircrafts	or an aircraft			
*vehicles (including trains)	Example: foods, drinks, medical items, etc.	Includes unaccompanied baggage	by him	
		Excludes Motor vehicles	It is included in goods for monitoring reasons.	

In the case of **Associated Cement Companies**, it has been held that intangibles are also goods as the phrase 'any other kind of moveable property' has wider connation. Thereby concluding that software in CD's or pen drive if imported or exported shall also be considered as goods.

Imported goods

When goods are brought into India from a place outside India

But doesn't includes goods that have been cleared for home consumption

Taxable event in case of imports

In the case of **Garden Silk Mills Limited**, Supreme Court pronounced that the taxable event in the case of import of goods will commence when goods enter in **TWI** and Importation shall be completed when goods crosses the Custom Barrier after the importer files bill of entry for home consumption.

Exported goods

Exported goods means goods which are taken out of India to a place outside India

Taxable event in case of exports

Export is completed when goods crosses **TWI**. In the matter of **Rajindra Dyeing and Printing Mills (Supreme Court)**, it has been held that exports shall be considered as completed only when goods crossed the territorial waters of India. Therefore, if goods are dispatched from India and the ship carrying these goods sinks in water in territorial waters of India, then goods cannot be considered as exported goods.

Importer and Exporter

"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.

“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.

Modes of transport			
Mode	Conveyance	Person in charge	Custom station
Sea	Vessel	Master	Custom port/ ICD (Inland Container Depot)
Air	Aircraft	Pilot / commander	Custom airport/ AFS (Air Freight Station)
Road	Vehicle	Driver	Custom land station
Rail	Train	Conductor / guard of train	Custom land station

Inland Container Depots [ICD] are considered as an extension of custom ports. Similarly, Air Freight Stations [AFS] are extensions of airports. ICD is considered as a dry port.

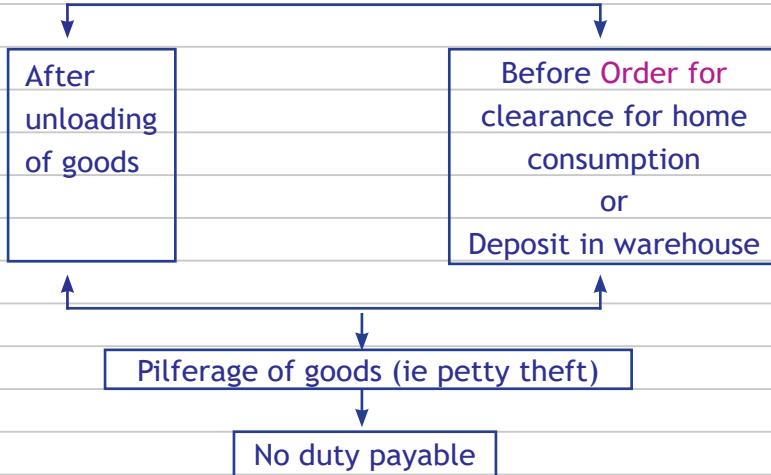
Consider case of Indore, a land locked city situated in the state of Madhya Pradesh. If some person of Indore wishes to import goods, he will have to come to Mumbai port to take his goods. Such practice is not possible as it shall involve lot of time and cost. CBEC notifies the ICD in Indore. Now, ICD at Indore will act as custom port. Goods & containers meant for Indore shall be transferred from Mumbai port to Indore ICD. The importer at Indore shall approach the ICD and takes the delivery of his goods. The custom duty shall be paid at Indore ICD and not at Mumbai port.)

Prohibited goods

“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.

Section 13: No duty payable on pilferage of goods:

If any imported goods are pilfered after unloading and before proper officer has made an order for clearance of home consumption or deposit in warehouse, importer shall not be liable to pay duty on such goods.



Note:

Instead of importer, Custodian shall pay duty, If good are pilfered

Applicable rate of duty = Rate prevailing on the date of delivery of Import Manifest /Report

In case goods are restored to be duty payable = Importer

If goods are pilfered i) before unloading of goods

ii) after order for clearance for H/C or WH

} Sec 13 = NA

Section 22: Abatement of duty in case of damaged/ deteriorated goods

- (1) Goods are **damaged or deteriorated** at anytime before or during the unloading of goods in India; or
- (2) When goods other than warehousing goods **are damaged** at anytime after unloading in India but before the assessment done by customs authorities u/s 17
- (3) When warehoused goods are **damaged** anytime before actual clearance of goods for home consumption.

} where any accident due to wilful act, negligence or default of owner employee, agent then no abatement shall be granted

Then abatement of duty shall be:

$$\left(\frac{\text{Value of Damaged Goods}}{\text{Value of Goods before Damage}} \right) \times \text{amount of duty payable on goods before damage}$$

Net duty payable = amount of duty payable before damage (-) abatement of duty

Section 21: duty payable on derelict, jetsam, flotsam, wreck.

Goods like derelict, jetsam, flotsam, wreck brought into India or coming automatically in India shall be dealt as if they were imported into India and duty shall be payable by the person who claims it as theirs.

Derelict: means goods/vessel that are abandoned into sea.

Jetsam : means goods thrown out of vessel to save vessel from sinking into water

Floatsam: means goods thrown out of the vessel to save it from sinking into water but continues to float on the water.

Wreck: means vessel/goods destroyed or ruined into water.(titanic)

Section 23(1): Remission of duty on lost (other than pilferage) or destroyed goods

If any imported goods have been lost or destroyed otherwise/than or result of pilferage at **any time before clearance for home consumption**, the assistance commissioner or deputy commissioner shall remit the duty on such goods

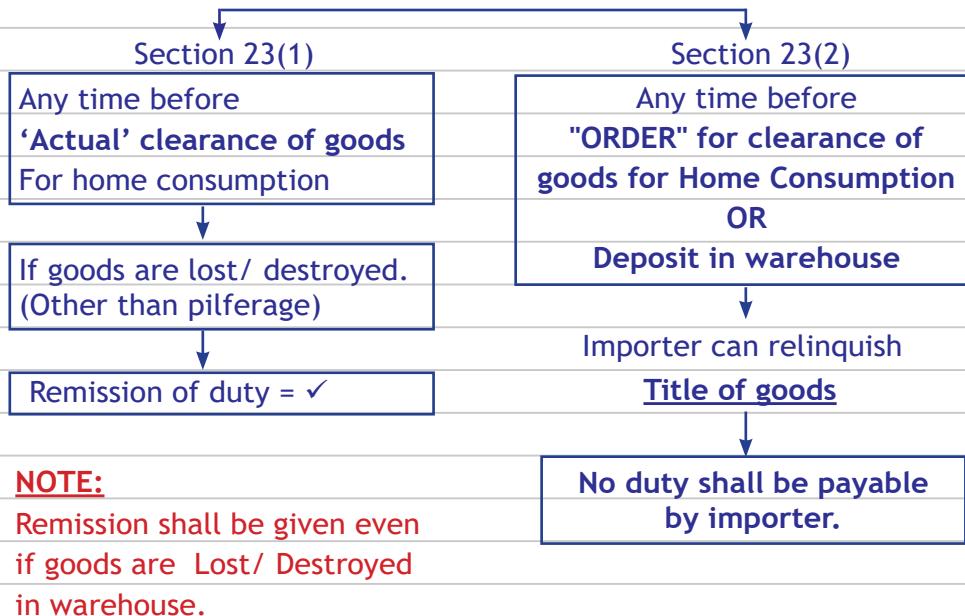
Analysis

It must be noted that any goods that are lost or destroyed when they are stored in warehouse then the importer shall be eligible to avail remission of duty on the loss of such goods as it has occurred before actual clearance for home consumption. If goods are lost/ destroyed when they are stored in warehouse in that case also they shall be allowed for remission of duty.

Section 23(2): No duty in case of relinquishment of title of goods

The owner of imported goods may at **anytime before the order for clearance of goods for home consumption or order permitting deposit in warehouse** has been made, relinquishes his title to goods then he shall not be liable to pay duty thereon.

Section 23



Section 24: Denaturing or mutilation of goods

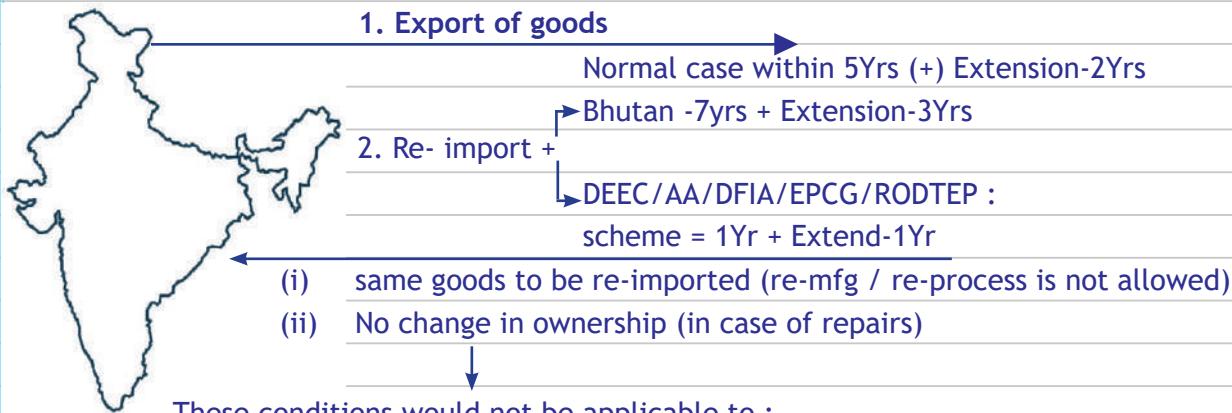
- (1) It is applicable when goods which are capable of being used for more than 1 purpose.
- (2) Rate of duty is high on such products.
- (3) Importer wants to use goods for only one purpose.
- (4) Importer requests the proper officer to denature or mutilate the goods by mixing such some other articles. After such denaturing or mutilation goods will be used only for 1 purpose for which the importer wants to use them and cannot be used for any other purpose, then importer shall pay duty as if such denature or mutilated goods were imported.

Example

Central government has framed denaturing of Spirit Rules, 1972 under this section covering Ethyl alcohol. Ethyl alcohol is used for manufacturing liquor as well as used for few medicines. The rate of custom duty on this material is high. But reduced rate of custom duty is applicable if the ethyl is used for medicines. If some person imports the ethyl for medicines, he may request for mutilation of ethyl by mixing a chemical in such manner that ethyl shall be rendered useless for manufacturing liquor. After the mutilation, the importer shall be liable to pay reduced custom duty as if ethyl for medicines only has been imported.

Mutilation - destroying severely so as to make the product unrecognizable.

Denaturing - making something unfit for use.



(i) 100% EOU or Free Trade Zone (ii) Public / Private WH (iii) Re-imported goods are 4th schedule, CEA 1944. (ie Tobacco / Petroleum products)	Export → Re-import ←
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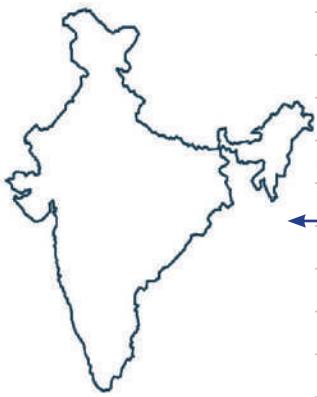
on Goods	Duty payable
1 Exported under claim of DBK OR Refund of IGST paid on Export Bond without payment of IGST	Amt of incentive availed at time of export
2 Exported under duty exemption Schemes (DEEC/AA/DFIA/EPCG)	Amt of Incentive availed at time at time of export
3 Goods other than these falling under S.No.1 exported for repairs abroad	Fair Cost of Repairs (incl. cost of materials used in repairs) (Whether such costs are actually incurred or not) insurance & freight (both ways).
4 Residual cases	NIL

→ Goods sent for exhibition/consignment basis (clarification by CBIC)

- Goods sent for exhibition purposes/consignment basis do not constitute supply as it does not involve consideration.
- There is no requirement of filing any LUT or bond and hence, no IGST is payable at the time of export of such goods and accordingly, no IGST is payable on re-import (situation 1 in the above table)

Hence, this case falls under the residuary entry in the table above and accordingly, exemption is available.

- Also, where exports have been made to related/distinct persons or principals/ agents for participation in exhibition or consignment basis, but, the same have been returned exemption of the residuary entry will be available and no duty will be levied provided re-import happens within 6 months of delivery challan



Section 20 → Reimport & re- export

1. Goods manufactured in India. are exported

2. Re-imported the same
for

- (i) Reparis / Reconditioning [within 3Years / 10Years (Nepal/Bhutan)]
- (ii) Reprocessing / Refining / Re-making [within 1Year]
- (iii) Specified goods (Eg:- TV, Projector, Hearing Aids, Telephone Sets)- 7yrs/10yrs (Nepal/Bhutan)

3. Re-export within 6m (Extend-1 Yr)
of date of importation

No
import
duty
payable

Conditions

- (i) AC/DC of Customs satisfied about identity of goods
- (ii) Importer executes bond at the time of importation.
- (iii) In Reprocess / Refining / Re-making if there is any loss during operation then such loss shall be exempted from duty.

Section 29: Arrival

Conveyance must enter through gateways. In case of emergency, person in charge may come at a place other than custom station but in that case, PIC to contact nearest proper officer.

Section 30: Manifest

PIC shall submit import manifest (vessel/ aircraft) **before** arrival of vessel/aircraft - electronically

PIC shall submit import report (vehicle) **within 12hrs.** of arrival of vehicle- manually

If IMF/IR is not delivered by PIC within above time limit then he shall be **subject to penalty upto ₹ 50,000**

Section 30A

PIC of conveyance along with IMF/IR shall file:

- i) Passenger and crew arrival manifest
- ii) Passenger name record information

PIC of vessel / aircraft shall file **before** arrival of vessel/ aircraft

PIC of vehicle shall file **upon arrival** of vehicle.

If both above submissions are not made within stipulated time limit, **penalty upto ₹ 50,000**

Section 31: Entry Inward Order

This section is only applicable to vessels.

Imported goods in a vessel can be unloaded by PIC on port only after PO grants 'entry inwards'

Entry inwards order shall be granted only after following conditions are fulfilled

1. The vessel has complied with Sec.29
2. IMF under Sec. 30 has been filed [if not filed, the proper officer must be satisfied that there is sufficient cause for not filing it]
3. The person in charge has answered all the questions under Sec.38;
4. The person in charge submits the departure permission of previous port;
5. The boarding officer has been appointed for the vessel.

Entry inwards is granted after berthing accommodation is available to vessel and entry inwards is not required to unload baggage, animals, perishable goods and hazardous goods.

Section 32

Imported goods not mentioned in IMF/IR cannot be unloaded.

If still unloaded, they shall be liable for "confiscation"

Section 33, 34, 36: Unloading of imported goods

Imported goods to be unloaded only at -

- 1) Approved customs area;
- 2) Under supervisor of customs officer; and
- 3) During working hours (i.e. goods cannot be unloaded on Sunday or on holiday or after working hours unless specific permission taken and merchant overtime charges (MOT) are paid)

If unloading or loading is urgent, it can be done with specific permission and after payment of overtime charges. This provision is not applicable for baggage and mail bags. Further, few of the ports and airports have now 24 X 7 clearance facility i.e. custom officers are available round the clock, MOT charges are not payable.

Section 35: boat note procedures

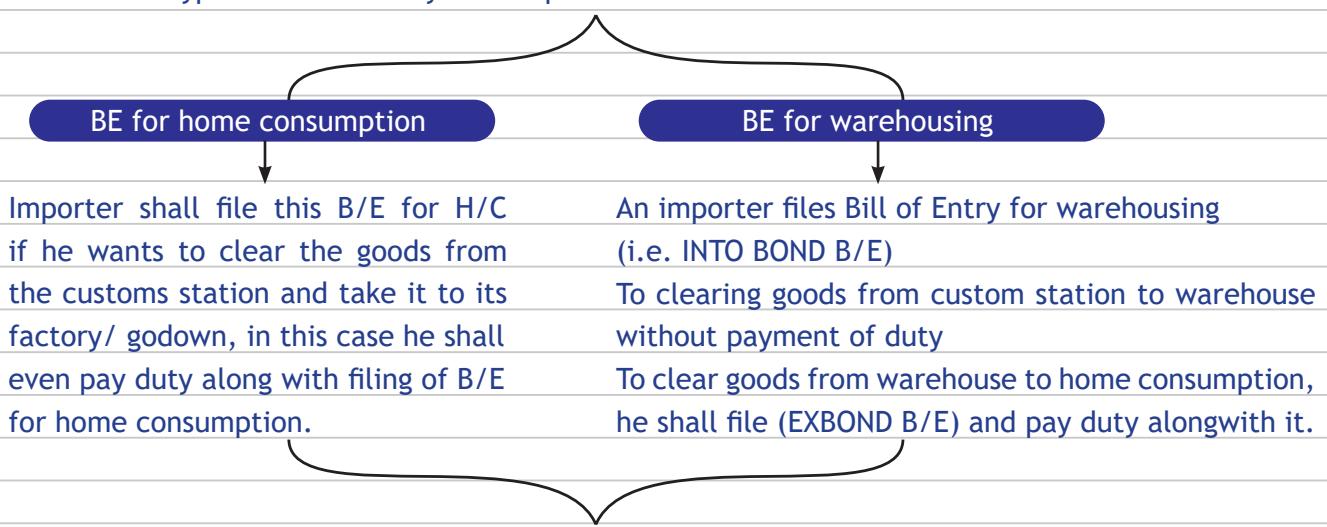
At times, vessel does not get berth in the port and there can also be a situation where water levels near the port are not appropriate for a huge vessel to come to the port. In such cases, goods will be transferred from huge vessels to a boat thereby following boat note procedure, where the PIC of such huge vessel shall handover a boat note indicating details of goods loaded in the boat, the boat will carry the goods to the port and PIC of the boat shall handover boat note along with goods to PO at that port.

Section 45: Rule of custodian

- i) After unloading of goods, PIC of conveyance hands over the imported goods to the custodian
- ii) Custodian shall keep record of such goods and send a copy to PO
- iii) Custodian shall not permit the goods to be removed from the customs area except with the permission of PO
- iv) If all goods mentioned in import manifest and import report are unloaded properly at port/ airport but then goods are pilfered after unloading but during the custody of custodian, then the custodian shall be responsible and therefore, he shall pay duty **on such pilfered goods at a rate prevailing on the date of delivering of IMF/IR**

Section 46: To clear the goods importer shall file B/E electronically.

There are 2 types of bill of entry that importer can file:



Time limit of filing B/E

B/E shall be filed either:

- **After arrival** of conveyance : Arrival date of conveyance (+) 1 day
- **Before arrival** of conveyance : Subject to condition the conveyance is expected to arrive within 30 days from the date of filing such bill of entry.

Late fees in case of delayed filing of B/E

Status of goods	Prescribed late fees
If duty is payable on goods	<p>Lower of:</p> <p>a) (First 3 days: ₹ 5000/ day) + (subsequent delay : ₹ 10,000/day)</p> <p>b) Duty payable in respect of that bill of entry</p>
If duty is not payable on goods (Exempted goods)	<p>Lower of:</p> <p>a) (First 3 days: ₹ 5000/ day) + (subsequent delay : ₹ 10,000/day)</p> <p>b) ₹ 50,000</p>

Example

Mr. X has imported goods from USA, the vessel reached India on 1/11/18 on which duty payable was ₹ 1,00,000. What shall be the late fees in the following cases -

1. He filed bill of entry on 2/11/18
2. He filed bill of entry on 5/11/18
3. He filed bill of entry on 9/11/18

Will your answer be different if in case of goods, he imported exempted goods.

Answer:

Status of goods	Delayed period	Prescribed late fees
Dutiable goods		
Case 1:	0	NIL (within 1 day)
Case 2:	3	$(5000 \times 3) = 15,000$ Or ₹ 1,00,000 $= 15,000$
Case 3:	7	$(5000 \times 3) = 15,000$ $(10,000 \times 4) = 40,000$ i.e. ₹ 55,000 Or ₹ 1,00,000 $= 55,000$
Exempted goods	4	$(5000 \times 3) = 15,000$ $(10,000 \times 1) = 10,000$ i.e. ₹ 25,000 Or ₹ 50,000 $= 25,000$

Can bill of entry for home consumption be substituted with B/E for warehousing?

Yes, subject to the approval of PO. Proper office shall grant such permission only when such substitution is not prejudicial to the revenue. That means if substitution of B/E results in lower duty, then the PO may not allow substitution.

Section 48: Rights of Custodian

It is pertained to note that imported goods shall be:

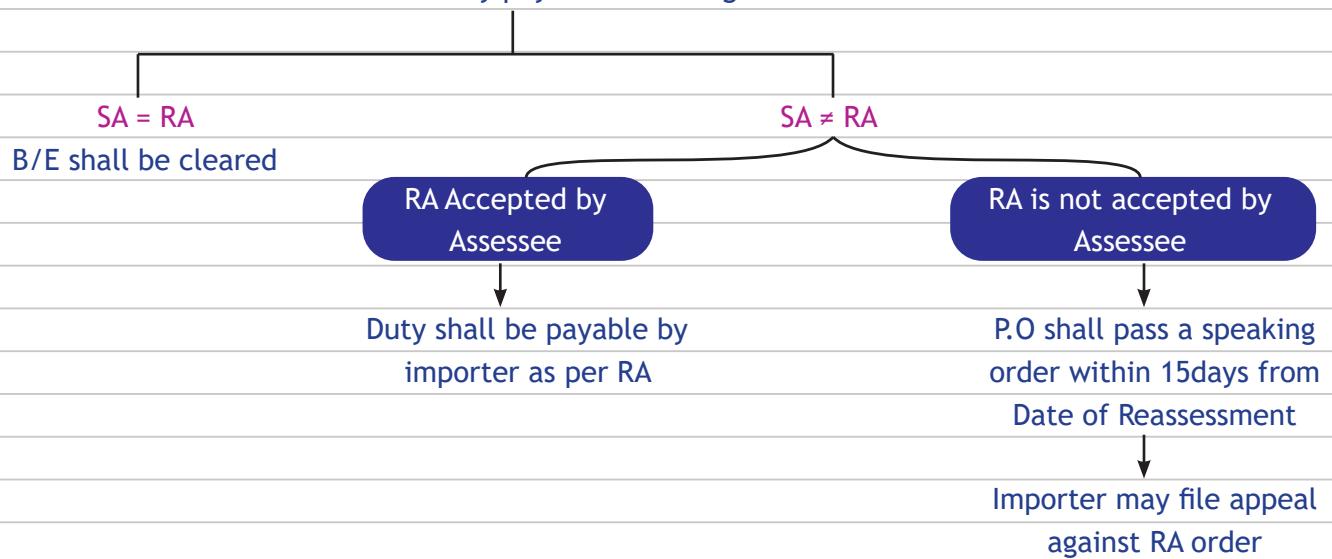
1. Either cleared for home consumption
2. Cleared for warehousing
3. Transhipped

Within 30 days from the date of unloading on the customs station. If that does not happen then in such case goods maybe sold by the custodian after sending the notice to importer and with the permission of PO.

Exception being perishable and hazardous goods that may be sold even before 30 days

Section 17 - Self - Assessment (SA) & Re - Assessment (RA)

Assessment may be self-assessment, provisional assessment or reassessment. An importer or exporter first has to self-assess custom duty payable. The custom law is also based on self - assessment. The importer shall file the BE stating therein the description of goods, quantity of the goods and value of goods. He shall also calculate the duty payable on such goods

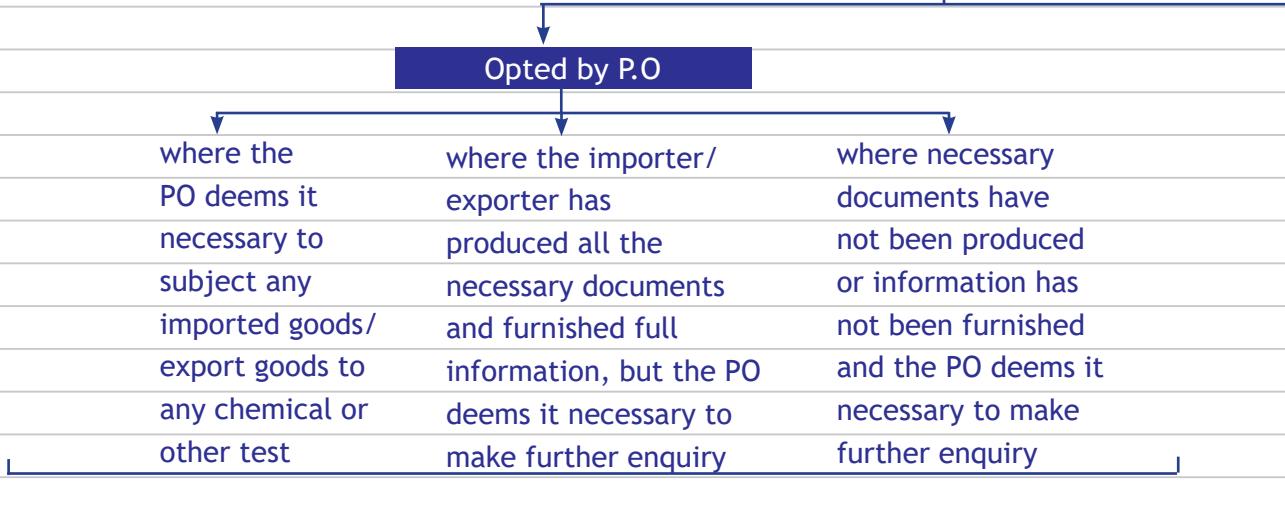


Post Removal Assessment

At the time of import, it may also happen that the proper officer clear the BE without verifying the self - assessment. This is to be followed as goods cannot be kept at port for long time. Therefore, the proper officer may clear the BE in normal cases. In these cases also, the proper officer is empowered to verify the self - assessment done by the importer / exporter later on by calling information or documents at his office or at the premises of the assessee. This is known as post removal assessment of the import documents.

Section 18- Provisional Assessment

Provisional Assessment



Opted by Assessee

- If the importer / exporter cannot assessee the duty payable due to any reason, then they may apply for provisional assessment.
- The proper officer shall it and directs the importer / exporter to pay the duty on provisional basis and clear the goods.
- Subsequently, the final assessment is done and differential duty is recovered from the importer / exporter or excess paid by the importer / exporter shall be refunded back to him.

FA>PA → Interest@15% p.a

1st day of month = xxx
in which duty was PA

Date of payment = xxx
Delayed no of days = xxx

FA<PA → Interest@6% p.a

Expiry of 3 months = xxx
from date of FA

Date of payment = xxx
Delayed no of days = xxx

Clearance Order to be Passed by the Proper Officer

Bill of entry can be of two types - for home consumption or for warehousing. If bill of entry for warehousing is filed, then proper officer will assess the bill of entry u/s 17 or 18 but duty is not payable as of now. The goods will be transferred to a warehouse & provisions of Chapter IX (Sec. 57 to Sec. 73) are applicable.

If importer had filed bill of entry for home consumption, then after assessment u/s 17 or 18, following process shall be followed....

Section 47 As Amended by Finance Act, 2016 & Finance Act, 2017

(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption.

On the basis of above provisions, due date of payment of duty can be summarised as below -

Case	Due date of Payment of duty.
i) If B/E is filed by importer who has opted for self-assessment and in that case the PO is in agreement with the self-assessment done by importer.	In that case, duty shall be paid on the date of filing B/E
ii) In case where importer has adopted for self-assessment but PO did not agree to it and went further for reassessment at a higher rate of duty and the importer agrees to pay such higher duty.	A part of duty must have been paid at the time of filing B/E but another part of duty that the importer has agreed to pay which has been re-assessed by the PO. Such differential duty shall be paid within next day when the re-assessed B/E is returned back to importer
iii) In case importer opts for provisional assessment or PO suo-moto request the importer to pay duty by opting for provisional assessment	In this case, no duty is paid at the time of filing B/E, duty shall be paid within 1 day from the date when B/E is returned by the PO to importer wherein he has mentioned rate of duty to be paid on provisional basis.

- i) E-payment is mandatory for :- Custom duty must be paid electronically if amount payable per bill of entry is ₹ 10,000/- or more.
- ii) For importers registered under Authorised economic operator scheme.

Deferred Payment of Import Duty Rules, 2016 read with Circular No. 52/2016- Cus dated 15.11.2016: Information about intent to avail benefit of notification An eligible importer intending to avail the benefit of deferred payment shall intimate to the Principal Commissioner/Commissioner of Customs, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with the eligibility of the importer allow him to pay the duty by due dates as given below.

Due dates for deferred payment of import duty-

S. No.	Goods corresponding to Bill of Entry returned for Entry payment	Due date of payment of duty, inclusive of the period (excluding holidays as mentioned in section 47(2))
1.	1st day to 15th day of any month	16th day of that month
2.	16th day till the last day of any month other than March	1st day of the following month
3.	16th day till the 31 day of March,	31 March

Electronic payment of duty: The eligible importer shall pay the duty electronically: However, the Assistant/Deputy Commissioner of Customs may for reasons to be recorded in writing, allow payment of duty by any mode other than electronic payment.

Deferred payment not to apply in certain cases: If there is default in payment of duty by due date more than once in three consecutive months, this facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

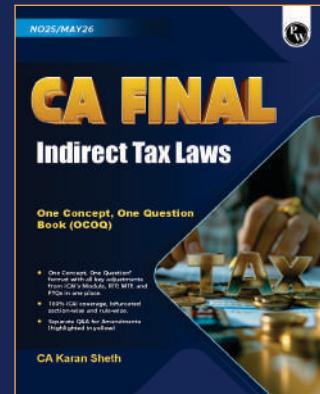
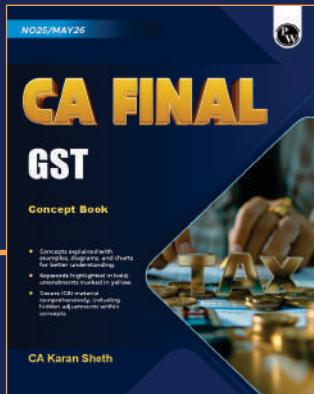
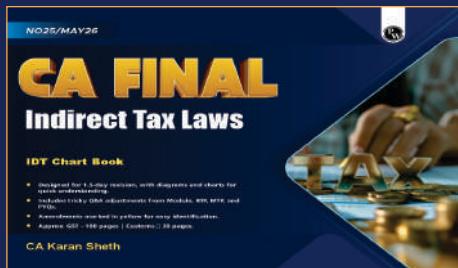
The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the entry.

About The Author

CA Karan Sheth, a distinguished educator in Indirect Tax, has over a decade of teaching experience, mentoring 50,000+ students through online and offline platforms across 15 cities in India. Renowned for his engaging storytelling approach, his entire focus is that the student should be able to remember concepts through logic and not by rote memorization method. His students have achieved remarkable success, including AIR 6- Mahesh Tapadiya, who scored 87 in Indirect Tax, and over 1,000 exemptions in the last five years alone. He's now looking for his next student who will beat his previous record of 87 marks in IDT and he wants it to be none other than you who is reading this note.

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