Overview of Customs Functions

Chapter 1

1. Introduction:

1.1 Central Board of Excise and Customs (CBEC or the Board) is a part of the Department of Revenue under the Ministry of Finance, Government of India. It deals with the tasks of formulation of policy concerning levy and collection of Customs and Central Excise duties, prevention of smuggling and administration of matters relating to Customs, Central Excise and Narcotics to the extent under CBEC’s purview. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise & Customs Commissionerates and the Central Revenues Control Laboratory.

1.2 The important Customs related functions include the following:

(a) Collection of Customs duties on imports and exports as per the Customs Act, 1962 and the Customs Tariff Act, 1975;

(b) Enforcement of various provisions of the Customs Act, 1962 governing imports and exports of cargo, baggage, postal articles and arrival and departure of vessels, aircrafts etc.;

(c) Discharge of agency functions and enforcing prohibitions and restrictions on imports and exports under various legal enactments;

(d) Prevention of smuggling including interdiction of narcotics drug trafficking; and

(e) International passenger clearance.

1.3 The Customs functions cover substantial areas of activities involving international passengers, general public, importers, exporters, traders, manufacturers, carriers, port and airport authorities, postal authorities and various other Government/semi-Government agencies, Banks etc. However, at any Customs station there are various other agencies/parties that are involved. On its part, the Customs is continuously rationalizing and modernizing its Customs procedures through adoption of EDI and global best practices. Also, as a member of the World Customs Organization, Indian Customs has adopted various international Customs Conventions and procedures including the Revised Kyoto Convention, Harmonized Classification System, GATT based valuation etc.

2. Statutory provisions for levy of Customs duty:

2.1 Entry No. 83 of List 1 to Schedule VII of the Constitution empowers the Union Government to legislate and collect duties on imports and exports. Accordingly, the Customs Act, 1962, effective from 1-2-1963 provides vide its Section 12 for the levy
of duties on goods imported into or exported from India. The items and the rates of
duties leviable thereon are specified in two Schedules to the Customs Tariff Act, 1975.
The First Schedule specifies the various import items in systematic and well considered
categories, in accordance with an international scheme of classification of
internationally traded goods known as ‘Harmonized System of Commodity
Classification’ and specifies the rates of import duties thereon, as prescribed by the
legislature. The duties on imported items are usually levied either on specific or ad-
valorem basis, but in few cases specific-cum-ad valorem duties are also levied. The
Second Schedule incorporates items that are subject to exports duties and the rates
duties thereof.

2.2 Levy of duties on ad-valorem (i.e., with reference to value) basis is the predominant
mode of levy. For this purpose the value of the imported goods is required to be
determined as per provisions of Section 14 of the Customs Act, 1962 read with the
Customs Valuation (Determination of Prices of Imported Goods) Rules, 2007. These
provisions are essentially the adoption of GATT based valuation system (now termed
WTO Valuation Agreement) that is followed internationally. Likewise, in respect of
export goods the value is to be determined as per provisions of Section 14 of the
Customs Act, 1962 read with the Customs Valuation (Determination of Value of Export

3. Control and regulatory provisions:

3.1 In tune with international practice the entry/exit of carriers/passengers etc. into and out
of the country is regulated by law. The Customs Act, 1962 is the basic statute which
governs/regulates entry/exit of different categories of vessels/crafts/goods/passengers
etc., into or outside the country. Various allied laws and regulations also apply. It is the
responsibility of the Customs to handle international traffic speedily and effectively
while ensuring that all the goods/passengers etc., imported/coming into the country or
exported/goiing out of the country by sea, air, land or rail routes are in conformity with
the laws of the land.

3.2 In terms of the Customs Act, 1962 the Board is given the powers to appoint Customs
ports, airports and Inland Container Depots (ICD) where alone the imported goods
can be brought in for unloading or export goods loaded. Similar powers have been
given to the Board to notify places as Land Customs Stations (LCS) for clearance of
goods imported or exported by land or by inland water. Thus, various airports, ports,
ICDs and LCSs have been notified across the country and also routes have been
specified for carrying out trade with neighboring countries like Nepal.

3.3 Once a particular Customs port or airport is notified, the Customs Act, 1962 empowers
the jurisdictional Commissioner of Customs to approve specific places therein where
only loading and unloading can take place and also to specify the limits of the Customs
area where the imported goods or the export goods are ordinarily to be kept before
clearance by the Customs authorities.
3.4 Essentially all goods brought into the country or meant for export must pass through authorized points, be reported to Customs, and the importers/exporters must fulfill the prescribed legal and procedural requirements laid down under Customs Act, 1962 and allied laws including payment of the duties leviable, if any. The legal provisions allow the Customs to regulate the outflow of the goods (and persons) out of the country and subject them to proper checks before allowing final exit out of the country by sea/air/land/rail routes. They also help detect any attempts of smuggling or commercial frauds by unscrupulous parties.

4. Role of custodians:

4.1 In regard to all imported goods unloaded in a Customs area, the Commissioner of Customs is required to appoint a custodian under whose custody the imported goods shall remain till these are cleared for home consumption, or are warehoused or transshipped as provided in the law. With the growth of containerized traffic the facility of Customs clearances in the interiors of the country has also been provided by opening various ICDs, which are actually dry ports and here too the goods remain with the appointed custodian till these are cleared by the Customs. In addition to custodians appointed by the Commissioner of Customs, the Customs Act, 1962 recognizes other custodians as provided under any other law. For instance, the Mumbai Port Trust is a legal custodian under the Major Ports Trust Act, 1963. The custodian is essentially required to take charge of the imported goods from the carrier, arrange its proper storage and safety and allow clearance to the importers only after they fulfill all the Customs formalities, pay requisite duties and other charges/fees and discharge various other obligations. No goods can be cleared from a Customs area without the express permission of the Customs. Moreover, since the Customs Act, 1962 obliges the custodians to ensure safe custody of the goods till delivery in case any imported goods are pilfered while in custody, the custodian is required to pay duty on such goods.

4.2 Various port trusts and other authorities in the public and private sectors handle the import and export cargo when kept in their custody at various ports, international airports/ICDs. The cargo handling and custody at the international airports is generally entrusted to International Airport Authority of India (IAAI), but there is an increasing trend of the IAAI leasing such facility to private sector or even direct entry of private sector. Also, new ICDs are being opened at various industrial centres as a facilitation measure with the result that Customs clearances of both imported and export cargo, from these places has expanded substantially in recent years.

4.3 Maximum import and export cargo is handled at different sea ports and there is a trend towards containerized cargo movement; increasing part of import cargo landed at some ports like Nhava Sheva is also transshipped to interior ICDs for final clearance by importers at their door steps. Security arrangements ensure there is no pilferage/theft of the cargo and arrangements of loading and unloading of cargo at different berths in various docks, their movement to different places including container yards/storage godowns etc., are arranged by the port authorities.
4.4 The Customs authorities are given appropriate office place and requisite facilities in the dock area as well as in international cargo complexes/ICDs etc., to discharge their functions in relation to imports and exports such as supervision of loading/unloading of goods from vessels/crafts etc., supervision of stuffing or de-stuffing of containers, inspection and examination of goods which are imported/presented for exportation before Customs clearance formalities etc. For this purpose and in order to provide comprehensive guidelines for custodians / Cargo Service Providers (CCSP) for handling, receipt, storage and transportation of cargo in a Customs area, the Board has framed the Handling of Cargo in Customs Areas Regulations, 2009

5. Obligations of carriers:

5.1 To regulate and have effective control on imports and exports the Customs Act, 1962 enjoins certain liabilities on the carriers. Thus, they have to bring in the cargo imported into the country for unloading only at notified ports/airports/Land Customs Stations; furnish detailed information to Customs about goods brought in for unloading at that particular port/international airport as also those which would be carried further to other ports/airports. Declaration of such cargo has to be made in terms of an ‘Import General Manifest’ (IGM) prior to arrival of the vessel/aircraft at the Customs station. In the case of imports through Land Custom Stations the person in charge of the vehicle has to give similar import report within 12 hours of its arrival. Since the cargo clearance formalities are linked generally with the availability of information about cargo being brought by a vessel for unloading at any port, provisions is also made for prior filing of an IGM if all details of relevant cargo for any port are available even before the vessel arrives. The final IGM can be filed after arrival of the vessel.

5.2 Unless, the IGM is furnished in the prescribed form, no unloading of cargo can be undertaken from any vessels/aircrafts/vehicles in normal circumstances. After the IGM is duly delivered the unloading takes place under the supervision of the Preventive Officers of Customs. The law prohibits unloading of any goods at a Customs station, which are not mentioned in the IGM/import report. Similarly, there are restrictions on loading for export such that no vessel/aircraft can begin loading goods for export unless intimation is given to Customs and its permission for loading obtained – what is also called ‘Entry Outward’ of the vessel. Loading of cargo on vessels, aircrafts etc. is checked and supervised by Preventive Customs Officers who ensure that cargo loaded has discharged the prescribed Customs formalities such as payment of duties or cess, where leviable, any other formalities enjoined by the law, and authorization for exports is duly given by the proper officer as a part of Customs clearance formalities.

5.3 The person in charge of the vessel/aircraft is required to furnish details of all the goods loaded on a vessel/aircraft in a prescribed form, which is termed ‘Export General Manifest’ (EGM). The person in charge of a vehicle must furnish a similar report called ‘Export Report’. The EGM/Export Report is to be furnished before the vessel/aircraft/vehicle departs and is essentially taken as the proof of shipment/export.
6. Customs preventive control:

6.1 No vessel/aircraft can leave a Customs station unless a written order for port clearance is given by the proper officer of Customs. This permission for departure is given subject to the satisfaction of the proper officer that all the prescribed formalities have been fulfilled, duties/penalties etc., have been paid or secured.

6.2 The Preventive Officers of Customs are authorized to board the vessels/aircrafts to take suitable declarations, Crew property list etc., and to check whether there are any goods which are not declared for unloading at a particular Customs station in the IGM with intention to smuggle them without following the prescribed formalities and payment of duties. A thorough examination and checking of the vessels/aircrafts - known as rummaging - is also undertaken on selective basis taking due note of the past history of the vessels, the area/country from which these are arriving, the intelligence report etc.

6.3 The Preventive Officers of Customs also keep a very careful vigil for checking any illegal activities and develop intelligence to guard against any possible attempts of unauthorized removals from the docks, unloading of unmanifested cargo etc.

7. Customs clearance of cargo:

7.1 Before any goods imported can be cleared for home consumption in the country or for warehousing for subsequent Customs clearances as and when needed etc., the importers have to comply with prescribed Customs clearance formalities. Essentially, these involve presentation of certain documents along with a prescribed application normally termed ‘Bill of Entry’, which gives essential particulars in relation to imported goods, country of origin, particulars of vessel/aircraft etc. seeking clearance of goods for home consumption/warehousing etc. The importer either himself handles the import clearance documents or appoints Custom House Agents (CHAs) who are trained and experienced in Customs clearance work and are licensed by Customs for such work in terms of the CHA Licensing Regulations, 2004.

7.2 The import clearance documentation, presentation, and processing is handled in the Custom Houses by Appraising staff trained in assessment matters. After a tally has been made with related IGM to ensure the goods sought for clearance have arrived and declared in the particular IGM of the vessel/aircraft mentioned in the Bill of Entry (or even where the prior manifest is filed) the scrutiny of documents – manually or through EDI system is taken up. The main function of the Appraising staff in the Custom Houses is the careful scrutiny of the Bill of Entry and related particulars / information with a view to checking the import permissibility in terms of the Foreign Trade Policy and any other laws regulating import and to determine value, classification and duties leviable on the goods on import – (Basic, Additional, Anti-dumping, Safeguards etc.). Permissibility of various benefits of duty free clearances under different schemes or applicability of any exemption notification benefits is also checked and decided.
7.3 Normally, the import declarations made are scrutinized without prior examination of the goods with reference to documents made available and other information about the values/classification available with Customs and duties chargeable on the goods are assessed and paid up by the importer or his authorized representative. It is only at the time of clearance of the goods from the custody of the port trusts/international airport authority or other custodians that these are examined on percentage basis by separate staff posted in the premises where the goods are stored pending Customs clearance. These officers undertake checking of nature of goods, valuation and other part of declaration, or draw samples as may be ordered by the Appraising officers of the Custom House/Cargo Complexes/ICDs. If no discrepancies in relation to the nature of goods, quantity, value etc., are observed at the time of examination of the cargo, ‘Out of Customs Charge’ orders are issued, and thereafter goods can be cleared after discharging any other fees/charges etc., of the custodians.

7.4 At times, for determining the duty liability and permissibility of import it may become necessary to examine the goods in advance. Such goods are got examined after filing of Bill of Entry and other documents and based upon the report of the examining staff, duties etc. are assessed and if there is no prohibition etc., the goods are taken clearance from the custodian without the need for further examination.

7.5 Where disputes arise in the matter of classification/valuation or any violations of any provisions of law are observed, where the goods cannot be allowed clearance finally without further investigations and following adjudication proceedings, the law provide for provisional clearances subject to suitable bond/security. Only where the goods are of prohibited nature or in certain other exceptional cases, where provisional release is not considered advisable, the final decision may be taken after results of enquiries etc. are known and adjudication proceedings completed, where necessary.

7.6 Customs clearance formalities for goods meant for export have to be fulfilled by presenting a ‘Shipping Bill’ and other related documents to the Export Section of the Custom Houses or EDI Service Centres. The Appraising staff checks the declarations to assess the duties/cess, if leviable, propriety of export incentives, where claimed under different schemes like Duty Drawback or duty free exemption schemes etc. Appropriate orders for examination before shipments are allowed export are given on the Shipping Bill. The staff in the docks/cargo complexes/ICDs examines the goods meant for export on percentage basis, and allows shipment if there are no discrepancies/ mis-declarations etc., and no prohibitions/violations come to light. Appropriate penal action as per law is initiated where any fraudulent practices get detected during initial stage of scrutiny or at the time of examination etc.

8. **Smuggling and other violations and penal provisions:**

8.1 Unscrupulous elements do attempt to evade the duties leviable and bypass various prohibitions/restrictions in relation to imports by attempting to bring the goods into the country from places other than the notified ports/airports/Land Custom Stations without reporting or presenting the goods to customs. Similar attempts are made to take
goods out of the country unauthorizedly. This is essentially termed as 'smuggling' and Customs officers have very important role in ensuring that they detect any such attempts of smuggling into or out of the country and take appropriate action both against the goods as well as against the persons involved.

8.2 The Customs Act, 1962 provides for strict penalties in relation to the goods/persons involved in smuggling and other violations of the legal provisions. These include seizure/confiscation (including absolute confiscation) of the offending goods and fines and penalties on the persons involved in the offence as well as those abetting the offence. The law also empowers Customs officers to carry out searches, arrests and prosecution of persons involved in smuggling and serious commercial frauds and evasion of duties or misuse of export incentives by fraudulent practices (mis-declaration of nature, and value of the goods or suppression of quantities etc.).

8.3 Whereas the Customs Act, 1962 provides for deterrent penal provisions for violations, due process of law has to be followed before action is taken against offending goods or persons/conveyance etc. involved. The Customs officers act as quasi-judicial authorities and the liabilities for duty evaded or sought to be evaded, fines, penalties etc., are adjudged by giving the persons concerned due notice (or Show Cause Notice) of contemplated action against including the gist of the charges and their basis, and providing opportunity for representation as well as personal hearing.

8.4 In grave offence cases the Customs Act, 1962 provides for prosecution with imprisonment upto maximum of 7 years. This action is taken following the usual criminal proceedings in a Court of law, after prosecution sanction is given by the competent Customs officer.

9. **Appellate remedies:**

9.1 Any concerned person aggrieved with the departmental adjudication is given the right to appeal against the said order. The first level of appeal is to Commissioner (Appeal) and thereafter to an independent Tribunal (CESTAT) unless the adjudication order is originally passed by the Commissioner of Customs in which case the first level of appeal is to the CESTAT. On questions of law, the orders of CESTAT could also be considered for reference to the High Court and certain categories of decisions involving classification or valuation can be appealed even before the Supreme Court.

10. **Passenger processing:**

10.1 All incoming international passengers after immigration clearance have to pass through the Customs who have the duty to ensure their maximum facilitation and speedy clearance. At the same time unscrupulous passengers may try to smuggle goods into the country which are sensitive and otherwise prohibited/restricted or evade duties by non-declaration/mis-declaration to Customs. Similarly, the Customs have to ensure that these passengers do not smuggle out foreign currency, antiques or other wildlife and prohibited items or narcotics drugs or psychotropic substances. The Customs have also to ensure enforcement of various other allied laws before any goods carried
by the passengers on person, in hand bag or accompanied baggage enter into the country or get out of the country.

11. **Import/Export by post/courier:**

11.1 Customs is charged with coordination with Postal authorities for giving Customs clearances after appropriate checks on selective basis of various goods coming as post parcels, etc. Customs also ensure that these postal mail/packets/parcels enter into the country in accordance with the provisions of the Customs Act, 1962. Unless the goods brought by post are within the value limits prescribed for free gift or free samples these have to be assessed to duties by Customs and the same indicated to Postal authorities. The duties are collected before the Postal authorities deliver the goods to addressees.

11.2 Imports/exports through couriers are governed by the Courier Imports and Exports (Clearance) Regulations, 1998 and the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. These Regulations facilitate such goods in terms of quick Customs clearance, after discharge of duties, if any, for delivery to the consignees. At few places dedicated Courier terminals manned by Customs officers (akin to Air Cargo Complexes) are established to handle courier cargo.

12. **Citizen Charter:**

12.1 Customs has committed in its Citizen Charter to provide to trade and industry time bound and speedy cargo clearance facility, quick redressal of grievances, and inculcating in its officers’ a sense of service with courtesy, understanding, integrity, objectivity and transparency. Customs is committed to render professional, efficient and prompt service to all stakeholders.