

Test - 1

Answer Sheet

Q. 1 (a)

Indian territorial waters and Indian custom waters

The territorial waters of India **extend to 12 nautical miles into the sea from the appropriate base line**. Further, it includes not only the surface of sea in the territorial waters, but also the air space above and the ground at the bottom of the sea. Levy of customs duty on import or export of goods based on Indian territorial water.

As defined by section 2(28) of the Customs Act, 1962 Indian customs waters means the waters extending into the sea up to the limit of contiguous zone of India (hereinafter abbreviated as CZI) under section 5 of the Territorial waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and includes any bay, gulf, harbour, creek or tidal river.

According to foregoing Act of 1976, CZI comes immediately after territorial waters. The outer limit of Contiguous Zone is 24 nautical miles from the nearest point of base line. Therefore, area beyond 12 nautical miles & upto 24 nautical miles is CZI. Looking from another perspective, Indian Customs Waters extend upto 12 nautical miles beyond territorial waters.

Q. 1 (b)

Export goods Sec. 2(19):

"Export goods," means any goods which are to be taken out of India to a place outside India.

Thus, the goods intended for export, when brought to the port and shipping bill for export of the same filed, become export goods. But, where the goods had already been exported pursuant to the order made under section 51 of the Customs Act, 1962, such goods cannot be deemed to be 'export goods' within the meaning of this sub-section.

Export goods v. Exported goods: There is a distinction between export goods and exported goods. The former is one, which is to be taken out of India (and not taken out of India) while the latter is one, which has already crossed the territorial waters of India.

Q. 1 (c) (i)

Person in Charge

As per section 2(31) of the Customs Act, 1962 person-in-charge means-

- (a) in relation to a vessel, the master of the vessel;
- (b) in relation to an aircraft, the commander or the 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.

Additional points :- (if question is for 4 marks)

The importance of person in charge is multidimensional for instance he is responsible for submitting Import Manifest and Export Manifest. He is also responsible for ensuring that –

- (a) the conveyance comes through approved route and lands at approved places only;
- (b) goods are unloaded after written order, at proper place;
- (c) goods are loaded only after proper permission;
- (d) conveyance does not leave without written order of Customs authorities; The person-in-charge can be penalised for –
 - (a) giving false declaration or statements, or
 - (b) shortages or non-accounting of goods in conveyance.

Q. 1 (c) (ii)

Prohibited Goods

He term prohibited goods has been defined under section 2(33) of the Customs Act, 1962

- as the goods the import or export of which is subject to any prohibition under the 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.

ICAI Examiner Comment :

Most of the candidates provided general meaning of prohibited goods without referring to the definition provided under the Customs Act. Few candidates listed out few prohibited goods.

Q. 2 (a)

General obligations [Sec. 29(1)]: The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land at any place other than a customs port or a customs airport for the first time after arrival in India; or at any time while it is carrying passengers or cargo brought in that vessel or aircraft unless permitted by Board.

Special obligation [Sec. 29(2)]: The above provisions shall not apply in relation to any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft -

- (a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and, on demand, produce to him the log book belonging to the vessel or the aircraft;
- (b) shall not permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft without the consent of any such officer; and
- (c) shall comply with any directions given by any such officer with respect to any such goods.

No passenger or member of the crew is allowed to leave the immediate vicinity of the vessel or the aircraft, without the consent of any such officer. However, where the departure of any crew or passenger from the vicinity of the vessel or aircraft or removal of the goods from the vessel or aircraft is necessary for reasons of health, safety or the preservation of life or property, they shall be allowed to so depart or permit to be removed from such vicinity.

Q. 2 (b)

Sr. No.	Transit	Transshipment
1	In case of Transit of goods the conveyance remains same.	In case of transshipment, goods first landed in the particular Indian customs station and loaded to another conveyance for destination port i.e. conveyances changes.
2	The records already made in the ship's/ aircraft's will continue. The goods will have to be shown in the manifest as the same bottom cargo.	In case of transshipment goods are to be mentioned in manifest or report, as for transshipment for any customs station. Record will change as bill of transshipment shall be presented to the proper officer.
3	In case of transit there is continuity in the record and there is no chance of the control over such transit goods being lost.	In case of Transshipment care or caution have to be exercised to ensure that the goods are not illicitly landed and smuggled into India.

Q. 2 (c)

- (i) The importer presents an '**Into-Bond' Bill of Entry** under section 46 while clearing the goods to the warehouse and an 'ex-Bond' Bill of Entry under section 68 while clearing the goods from warehouse. The relevant date for rate of exchange is the date on which the bill of entry is presented for warehousing under section 46 of the Customs Act, 1962 and not when bill of entry is presented under section 68 for clearance from warehouse.
- (ii) As per section 15(1)(b) of the Customs Act, 1962, **rate of duty as prevalent on date of presentation of bill of entry for home consumption for clearance from warehouse is applicable** and not the rate prevalent when goods were removed from customs port.
- (iii) Goods which are not removed within the permissible period are deemed to be improperly removed on the day it should have been removed. Thus, duty applicable on such date i.e. last date on which the goods should have been removed is relevant and not the date on which the goods were actually removed.

Q. 3 (a)

Section 19 of the Customs Act, 1962 prescribes the method for determination of duty where goods consist of articles liable to different rates of duty. It lays down that where goods consist of a set of articles, duty shall be calculated as follows :-

- (a) articles liable to duty with reference to quantity shall be chargeable to that duty;
- (b) articles liable to duty with reference to value shall, if they are liable to duty at the same rate, be chargeable to duty at that rate, and if they are liable to duty at different rates, be chargeable to duty at the highest of such rates;
- © articles not liable to duty shall be chargeable to duty at the rate at which articles liable to duty with reference to value are liable under clause (b)

However:

- (a) accessories of, and spare parts or maintenance and repairing implements for, any article which satisfy the conditions specified in the rules made in this behalf shall be chargeable at the same rate of duty as that article;
- (b) if the importer produces evidence to the satisfaction of the proper officer regarding the value of any of the articles liable to different rates of duty, such article shall be chargeable to duty separately at the rate applicable to it.

These provisions are subject to anything provided otherwise in any law for the time being in force.

Q. 3 (b)

1. Since product is covered under MRP provisions, ACD u/s 3(1) is payable on the basis of MRP.

2. Computation of ACD u/s 3(1):

Particulars		Rs.
Assessable Value u/s 4A of CEA, 1944	(60% x 200 x 10,000)	12,00,000
Additional duty of Customs	(8% x 12,00,000)	96,000

MRP of Imported Goods	₹ 200
Less : Abatement 40%	₹ 80
Value u/s 4A	₹ 120
Total value (10,000x120)	₹ 12,00,000
ACD 3(1) @ 8%	₹ 96,000

Q. 3 (c)

- (I) The value of the imported goods or export goods is its transaction value, which means the price actually paid or payable for the goods at the time & place of importation.

Where a contract has been entered into, the transaction value shall be the price stated in the contract, unless it is not acceptable.

Price rise between date of contract and date of actual import is irrelevant, as the price actually paid or payable shall be taken to be the value. Thus, price stated in the contract (unless unacceptable) shall be taken.

As per Rule 10(1)(e) any payment made by buyer to seller as a condition of sale is includible in Assessable Value

- (ii) As per explanation to **Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007**, the payment for post-importation process is includible in the value of the imported goods if the same is related to such imported goods and is a condition of the sale thereof.

Q. 4 (a)

Project Imports are the imports of machinery, instruments, an apparatus etc., falling under different classifications, required for initial set up of a unit or for substantial expansion of an existing unit.

Heavy customs duty on imported machinery for projects make the initial project cost very high and project may become unviable. Hence, concept of 'project import' is introduced to bring machinery etc. required for initial setup or substantial exemption at concessional customs duty.

In a project several different items are required, each of which is importable at different rates of customs duties. Thus, this simple method is adopted, as otherwise, classifying each machinery and its parts in different heads and valuing them would have been cumbersome and would have delayed clearances, which would cause demurrages.

The items eligible for project import are specified in Heading 9801 of the Customs Tariff Act, 1975. These include all items of machinery, instruments, apparatus and appliances, components or raw materials etc. for initial setting up of a unit or for substantial expansion of the same. The spare parts, raw material and consumables stores upto 10% of the value of goods can be imported.

Few of the eligible projects are:

- (i) Industrial plant
- (ii) Irrigation project
- (iii) Power project
- (iv) Mining project
- (v) Oil & mineral exploration project
- (vi) Other projects as notified by the Central Government

Q. 4 (b)

Yes, the owner of the warehoused goods has the right to relinquish his title to such goods after the expiration of warehousing period/extended warehousing period.

Proviso to section 68 of the Customs Act, 1962, provides that the owner of the warehoused goods can **relinquish his title to such goods any time before an order for clearance of goods for home consumption** has been made in respect of such goods.

However, **the owner** of any such warehoused goods shall **not be allowed to relinquish his title** to such goods regarding which an **offence appears to have been committed** under this Act or any other law for the time being in force.

On relinquishment of title to such goods, the owner of goods will be required to pay rent, interest, other charges and penalties that may be payable. However, **duty will not be payable on relinquishment.**

Q. 4 (c)

2. Entry on goods importation /Bill of Entry (Sec. 46)

1. Meaning: It is an application by Importer to Customs authority for assessment and clearance of goods from customs area.

2. Presentation: The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form.

Provided that the Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner:

3. Types of Bill of Entry:

There are three types of B/E prescribed by regulation

Form I	:	For Home Consumption
Form II	:	For warehousing (Into bond)
Form III	:	clearance for Home Consumption from warehouse (Ex-bond). [This Bill of Entry is to be submitted U/S 68 & not under Sec. 46]

A bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

4. Bill of Lading: The Bill of Lading given by carrier of the goods is importer's document of titles of goods. The Bill of Lading covers all the goods imported with full description.

5. Content of Bill of Entry: The importer is required to declare in the Bill of Entry amongst other things the particulars of packages, the descriptions of the goods, in terms of the description given in the Customs Tariff to enable proper classification of the goods and the correct value of the goods for the determining the amount of duty. Since the assessment is based on the declaration made by the importer, the onus is cast upon him to make a declaration and solemn affirmation about the truth of the contents in the Bill of Entry.

6. Incomplete Bill of Entry: If the importer unable to furnish all the particulars of the goods required under this sub-section and if he confesses his predicament to the department, the proper officer may, pending the production of such information, permit him,

- To examine the goods in the presence of an officer of customs, or
- To deposit the goods in a public warehouse appointed under section 57 without warehousing the same. Accordingly such goods shall not deemed to be warehoused goods and no provision of warehousing shall apply. (Warehousing without Warehousing)

7. Time Limit: A bill of entry may be presented at any time after the delivery of the import manifest or import report as the case may be.

8. Prior Bill of Entry : A bill of entry may be presented even before the delivery of such manifest or report if the vessel or the aircraft or vehicle by which the goods have been shipped for importation into India is expected to **arrive within thirty days from the date of such presentation.**

9. Conversion From Home Consumption to Warehousing And Vice –Versa:

If the proper officer is satisfied that

- ▶ the interests of revenue are not prejudicially affected and
- ▶ that there was no fraudulent intention,



he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

Q. 5 (a)

Rule 9 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 prescribes residual method of valuation. This rule is used when the value of imported goods cannot be determined under the provisions of any other rule. **According to this rule, the value of imported goods should be determined using reasonable means consistent with the principles and general provisions of these rules** and section 14(1) of the Customs Act and on the basis of the data available in India.

While determining the value under this method, the following should not be considered -

- (i) the selling price in India of the goods produced in India
- (ii) a system of accepting the highest of the **two** alternative values
- (iii) price of goods in the domestic market in the country of export
- (iv) the cost of production other than the computed value of identical goods or similar goods as determined in rule 8
- (v) the price of the goods for export to a country other than India
- (vi) minimum customs values
- (vii) arbitrary or fictitious values

Thus, the value of imported goods determined in accordance with the provisions of Rule 9 should to the greatest extent possible, be based on previously determined customs values.

Q. 5 (b)

Computation of export duty

Particulars	Amount (US \$)
FOB price of goods [Note 1]	1,00,000
Value in Indian currency (US \$ 1,00,000 x Rs. 55) [Note 2]	55,00,000
Export duty @ 8% [Note 3]	4,40,000

Notes:

1. As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBEC on the date of presentation of shipping bill of export.
3. As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.

Q. 5 (c)

As per Sec.3 (1) of Custom Tariff Act-1975, "Additional customs duty" is charged on imported goods, which is equal to the excise-duty on a like article, produced or manufactured in India"

If like articles not produced or manufactured in India, the excise duty is levied as per class of goods, to which imported goods belong. But if the imported good are not subject to excise levy, as they do not fall in the ambit of production or manufacture, then no additional custom duty under section 3 (1).

The above view was also confirmed in a landmark judgement of apex court in "**Hyderabad industries Ltd. v UOI**".

In the given case imported asbestos fibre will not attract ACD because, there is no manufacturing or production has taken place.