

CHAPTER 1 INTRODUCTION & LEVY OF CUSTOM DUTY

Illustration 1

Write a brief note on the constitutional provisions governing the levy of customs duties.

Solution

Articles 265 of the Constitution provides that **"No tax shall be levied or collected except by authority of law"**. All the enactments enacted by the Parliament should have its source in the Constitution of India.

The power of for enacting the laws is conferred on the Parliament and on the legislature of a State by Article 245 of the Constitution. The said Article provides:

Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the state.

No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra - territorial operation. Article 246 governs the subject matter of the laws made by the Parliament and by the legislature of a State. The matters are listed in the Seventh Schedule to the Constitution.

The seventh schedule is classified into three lists as follows:

- 1) List I 2) List II 3) List III

Further, the said Article provides that Parliament may by law formulate principles for determining when a supply becomes, import of export.

Thus, the power to levy customs duties on import / export, as well as the power to legislate the principles to determine whether a transaction qualifies as import / export, lies solely with the Union, i.e. the Parliament of India.

Illustration 2

Explain briefly with reference to the provisions of the Customs Act, 1962

Conveyance

Solution

"Conveyance": (Section 2(9) of the Customs Act, 1962) includes:

- a. A vessel
- b. An aircraft and
- c. A vehicle

Thus, the Customs Act, 1962 covers all three modes of transport of goods i.e. transport by air, water and land.

Illustration 3

Explain briefly with reference to the provisions of the Customs Act, 1962

1. Dutiable goods and imported goods

Solution

1. Dutiable goods and imported goods

'Dutiable goods' (Section 2(14)) means any goods:

- a. Which are chargeable to duty and
- b. On which duty has not been paid

In order to be dutiable any article must first satisfy both the following conditions:

- i. The article should fall within the ambit of the word goods (defined under section 2(22))
- ii. The article should find a mention in the Customs Tariff

'Imported goods' (Section 2(25) of the Customs Act, 1962 **means** any goods brought into India from a place outside India **but does not include** goods that have been cleared for home consumption.

Once goods are cleared by Customs authorities from customs area, they are no longer 'imported goods'.

Illustration 4

Explain briefly with reference to the provisions of the Customs Act, 1962

- 1) Export 2) Export Goods 3) Exporter

Solution

1. **Export:** The term with its grammatical variation and cognate expression is defined to mean taking out of India to a place outside India.
2. **Export goods Section 2(19):** means any goods which are to be taken out of India to a place outside India.
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.
3. **Exporter Section 2(20)** in relation to any goods
 - At any time between their entry and the time when they are exported,
 - Includes any owner, Beneficial Owner or any person holding himself out to be the exporter.

Illustration 5

State whether the following statement is true or false

Since the Government wants to encourage exports, there is export duty (customs duty) on very few items. (ICWA Inter June 2008)

Solution

True: Since Government actively encourage export, there is export duty is leviable are given in Second Schedule to Customs Tariff. At present, export duty is imposed on few items only.