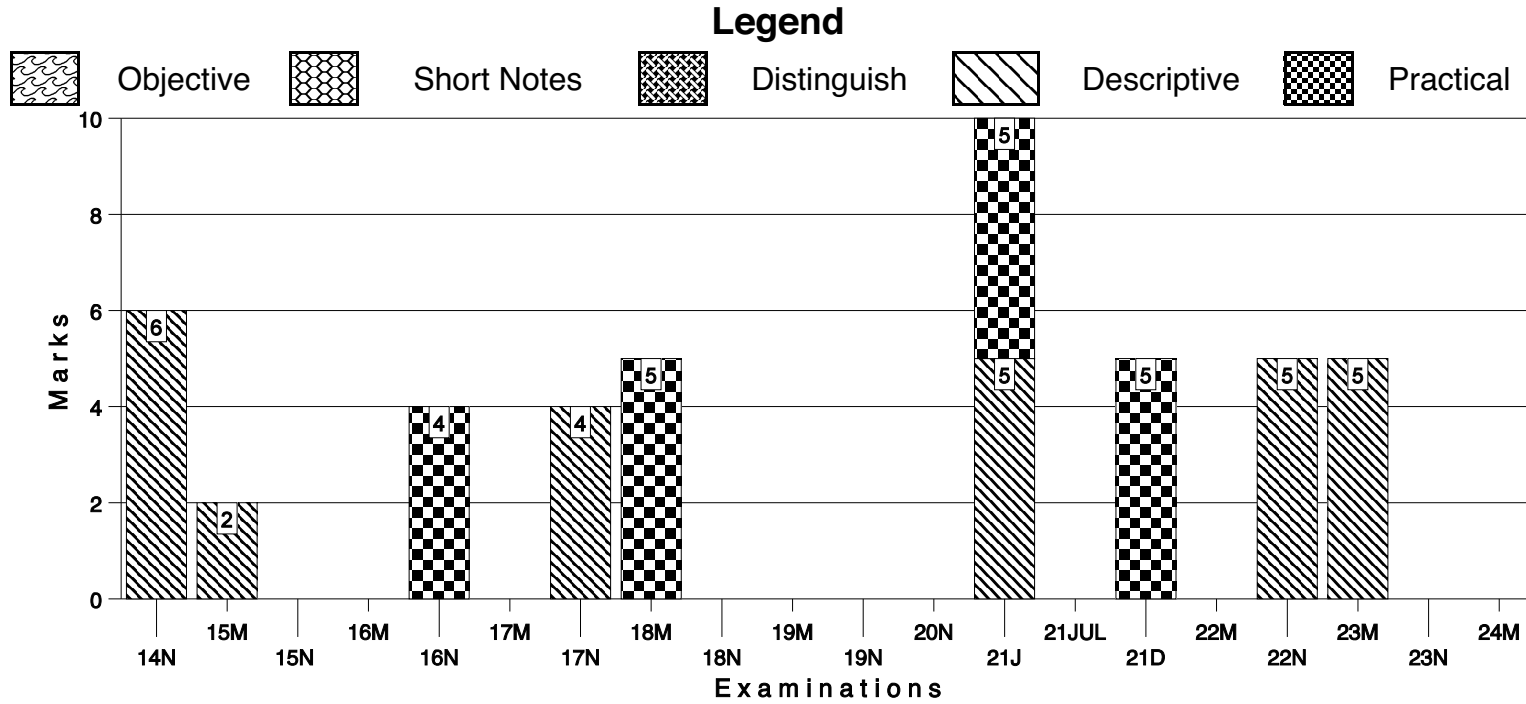


Marks of Objective, Short Notes, Distinguish Between, Descriptive & Practical Questions



CHAPTER	<h1>Levy and Exemptions from Customs Duty</h1>
1	
THIS CHAPTER COMPRISES OF	

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| <ol style="list-style-type: none"> 1. Basic Concepts 2. Constitutional provisions 3. Overview of the Customs Law 4. Administrative Aspects 5. Determining factors 6. Point and circumstances of levy | <ol style="list-style-type: none"> 7. Procedure, mechanism and organisation for assessment of duty 8. Remission, abatement and exemptions. |
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DESCRIPTIVE QUESTIONS

2014 - Nov [4] (c) (ii) Mention the new nomenclature of Customs House Agent and the need for such change. (2 marks)

Answer:

- (i) **New Nomenclature:** The new nomenclature of “Custom House Agent” is “Custom Broker”. Accordingly, there is also amendment in Section 146 of the Customs Act, 1962, by the Finance Act, 2013.
- (ii) **Need:** The term “Broker” is more wider than the “Agent”, so this new nomenclature was brought. Again, the change has been done to be in line with the global practice and internationally accepted nomenclature.

2014 - Nov [5] (c) Explain briefly the following with reference to the provisions of the Customs Act, 1962:

(1) Conveyance

(2) India

(2 × 2 = 4 marks)

Answer:

(1) **Conveyance:**

- **Definition:** As per Sec. 2(9) of Customs Act, 1962, conveyance is defined in an inclusive manner and includes a vessel, an aircraft and a vehicle.
- **Features:**
 - (i) It defines the type of transport or vehicle for transportation of imported goods or export goods.
 - (ii) It helps to fix the liability of controller of conveyance i.e. person - in- charge.

(2) India:

- **Definition:** As per Sec. 2(27) of Customs Act, 1962, "India" includes the territorial waters of India, i.e. upto 12 nautical miles into the sea from the baseline or land-mass.
- Symbolically, India = Landmass + 12 nautical miles into the sea. (1 nautical mile = 1.85 Km).

2015 - May [4] (d) (i) Briefly explain with reference to the provisions of the Customs Act the relevant date for determination of rate of duty and tariff valuation for imports through a vehicle where bill of entry is filed prior to the arrival of the vehicle. (2 marks)

Answer :

Section 15(1) provides for determination of rate of duty and tariff valuation of imported goods. Accordingly the date for determination of rate of duty and tariff valuation of imported goods entered for home consumption under Section 46 will be:

- (i) the date of presentation of Bill of Entry; or
- (ii) the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which goods are imported, **whichever is later.**

2017 - Nov [6] (d) Answer the questions below.

- (iii) Briefly discuss the conditions to be satisfied for remission of duty in case of volatile goods under the provisions of the Customs Act, 1962. (2 marks)
- (iv) Enumerate the goods specified as volatile for the purposes of remission of duty under the provisions of Customs Act, 1962. (2 marks)

Answer:

- (iii) As per Section 70 of the Customs Act, 1962, the conditions to be satisfied for remission of duty in case of volatile goods are:
- (i) The goods should be found deficient in quantity at the time of delivery from the warehouse;
 - (ii) The deficiency should be on account of natural loss, i.e. evaporation etc. and not due to pilferage or thefts.
- (iv) The goods specified as volatile for the purpose of remission of duty in terms of
- Notification No. 3/2016-Cus. (N.T.) dated 11.01.2016 are:**
- (a) aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naphtha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene bichloride, kept in tanks;
 - (b) wine, spirit and beer, kept in casks
 - (c) liquid helium gas kept in containers
 - (d) crude stored in caverns.

2021 - Jan [5] (b) Elaborate the meaning and historical background of "Customs". Also elucidate the Constitutional entries/provisions which provide the power to make laws relating to Customs duty, and who possesses the power to make such laws. (5 marks)

Answer:

The term 'customs' derives its colour and essence from the term 'custom', which means a habitual practice or course of action that characteristically is repeated in like circumstances.

Duties on import and export of goods were levied through legislations during the British period before which, during monarchical governance, said duty was collected at the city gates at the time of goods coming in and going out. The legislations of the British period were replaced by the enactment and promulgation of the Customs Act, 1962 and the Customs Tariff Act, 1975. The power to make laws is conferred on the Parliament and the legislature of a State by Article 245 of the Constitution of India.

Further, entry 83 of the List I [Union List] of the Seventh Schedule to Article 246 of the Constitution of India grants the power to frame laws relating to customs duty.

The power to make laws relating to customs duty vests exclusively with the Parliament.

2022 - Nov [3] (c) KIP Chemical, Ahmedabad, Gujarat supplies goods to ACCP, Bharuch, situated in Dahez SEZ (Gujarat), Examine with reference to decided case law, whether such supply is chargeable to export duty under the provisions of Customs Act, 1962. (5 marks)

Answer:

Supply made by KIP Chemical, Gujarat, to ACCP situated in Dahez SEZ, Gujarat is not chargeable to export duty.

In a judicial pronouncement¹, it is held that the clearances of goods from DTA to SEZ are not chargeable to export duty on the basis of the following observations:

- The charging section under Customs Act needs to be construed strictly.
- If a person is not expressly brought within the scope of the charging section, he cannot be taxed at all.

Customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract charging section for customs duty. Since there is no charging provision in the SEZ Act providing for levy and collection of export duty on goods supplied by a DTA unit to a Unit in a SEZ, export duty cannot be levied on the DTA supplier.

2023 - May [6] (c) Under which provisions of Constitution of India, government is empowered to levy taxes, custom duty and export duties. You are required to write a note on related provisions and restrictions under the Constitution of India. (5 marks)

1. Vide Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.). View taken in said case has also been confirmed in Essar Steel v. UOI 2010 (249) ELT 3 (Guj.) [maintained by SC] wherein the Departmental appeal has been dismissed by Supreme Court on 12.07.2010 - 2010 (255) ELT A115.

Answer:

Constitution¹ provides that no tax shall be levied or collected except by authority of law.

Entry 83 of Union List or List I of Seventh Schedule to the Constitution has given the power to the Union to frame laws to levy duties of customs including export duties.

Constitution² provides for restrictions as to imposition of tax on certain supply of goods or services or both. The said Article provides as follows-

No law of a state shall impose, or authorise the imposition of, a tax on the supply of goods or services or both, where such supply takes place-

- (a) outside the State, or
- (b) in the course of the import and/or export of the goods or services or both into and/or out of territory of India

it solely lies with the Union, i.e. the Parliament of India.

PRACTICAL QUESTIONS

2013 - May [3] (c) Sun Synthetic Fibres was an importer. It had imported one unit of the equipment which was declared as "High Speed Draw Warping Machine with 1536 ends along with essential spares". The importer claimed that these goods are covered under an exemption notification.

Under said notification, exemption was available in respect of the High Speed Warping Machine with yarn tensioning, pneumatic suction devices and accessories. Undisputedly, the assessee had imported High Speed Warping Machine, but it had drawing unit and not the pneumatic suction device. The textile commissioner, who was well conversant with these machines, had stated that the goods imported by the assessee were covered under the exemption notification. He further stated that drawing unit was just an essential accessory to the machines imported by assessee and, therefore, was covered under said notification. The opinion so furnished is

1. Article 265 of the constitution.

2. Article 286 of the constitution.

taken note of by the Tribunal while granting relief to the assessee. Revenue contended that the machine imported by the assessee was not in consonance with the exemption notification and, therefore, the benefit of exemption should not be available under the notification to the assessee. Discuss whether the contention of the Revenue is sustainable in law, with the help of decided case law, if any. (3 marks)

Answer:

No, the contention of the Revenue is not sustainable.

The facts of the given case are similar to the case of CCus. (import). Mumbai v. Konkan Synthetic Fibers 2012 (278) E.L.T. 37 (S.C.) wherein the Supreme Court stated that it is a settled proposition in a fiscal or taxation law that while ascertaining the scope or expressions used in a particular entry, the opinion of the expert in the field of trade, who deals in those goods, should not be ignored, rather it should be given due importance.

The Supreme Court further elaborated that when no statutory definition is provided in respect of an item in the Customs Act or the Central Excise Act, the trade understanding, i.e., the understanding in the opinion of those who deal with the goods in question would be the safest guide. Hence, the Supreme Court, relying on the opinion of the Textile Commissioner, concluded that the imported goods were covered under the exemption notification.

2013 - Nov [4] (c) M/s. Decent Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of its import. M/s. Decent Laminates sought an extension of the warehousing period which was granted. However, even after the expiry of extended period, it did not remove the goods from the warehouse. Subsequently, it applied for remission of duty under Sec. 23 of the Customs Act, 1962 on the ground that the imported goods had become unfit for use on account of non-availability of orders for clearance and had lost their shelf life also.

Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by M/s. Decent Laminates is valid in law?

(3 marks)

Answer:

No, the application for remission of duty filed by M/s Decent Laminates is not valid in law. The facts of the given case are similar to the case of *CCE v. Decorative Laminates (1) Pvt. Ltd. 2010 (257) E.L.T. 61(Kar.)* wherein the High Court held that the circumstances made out under Sec. 23 were not applicable in the instant case as the destruction/ loss of the goods had not occurred before the clearance for home consumption.

Remission can be granted under Sec. 23 only when the imported goods have been lost or destroyed at any time before the clearance for home consumption.

The High Court clarified that the expression “at any time before clearance for home consumption” as provided in Sec. 23 means the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not after the lapse of such period. The said expression cannot extend to a period after the lapse of the extended period merely because the goods were not cleared within the stipulated time. Instead, it would be a case of goods improperly removed from the warehouse.

2016 - Nov [5] (d) M/s Impex imported some consignment of goods on 1-6-2023. A bill of entry for warehousing of goods was presented on 01-7-2023 and the materials were duly warehoused. The goods were subject to duty @ 50% advalorem. In the meanwhile on 01-7-2023 an exemption notification was issued reducing the effective customs duty @ 30%, advalorem. M/s Impex filed their bill of entry for home consumption on 01-8-2023 claiming duty @ 30% advalorem. However, customs department charged duty @ 50% advalorem being the rate on the date of clearance into the warehouse. Explain with reference to the provisions of the Customs Act, 1962:

- (i) The rate of duty applicable for clearance for home consumption in this case.
- (ii) Whether the rate of exchange on 01-8-2023 could be adopted for purpose of conversion of foreign currency into local currency.

(4 marks)

Answer:

- (i) The rate of duty will be @ 30% i.e. rate of duty on filing of bill of entry for home consumption. [Sec. 15(1)(b) of the Customs Act, 1962]
- (ii) The rate of exchange will be the rate of the duty of filing of bill of entry for warehousing. [3rd Proviso to Sec. 14 of the Customs Act, 1962]

2018 - May [4] (d) An importer imported a consignment weighing 10,000 tons. The importer filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. The importer thereafter found, on taking delivery from the Port Trust Authorities i.e. before the clearance for home consumption, that only 9,000 tonnes of inputs were available at the docks although he had paid duty for the entire 10,000 tonnes. There was no short-landing of cargo. The short-delivery of 10,000 tonnes was also substantiated by the Port Trust Authorities, who gave a weightment certificate to the importer.

On filing a representation to the Customs Department, the importer has been directed in writing to justify as to which provision of the Customs Act, 1962 governs his claim for remission of duty on the 10,000 tonnes not delivered by the Port Trust. Examine the issue and tender your opinion as per law, giving reasons. (5 marks)

Answer:

As per Provisions of Section 23, where it is shown to the satisfaction of assistant or deputy commissioner that any important goods have been lost or destroyed, otherwise than as a result of pilferage at any time before clearance for home consumption, the assistant or deputy commissioner shall remit the duty of such goods. Therefore, duty shall be remitted only if loss has occurred before clearance for home consumption.

In the given case, it is apparent from the fact that quantity of inputs received in India was 10000 metric tons and 1 thousand metric ton was lost when it was in custody of port authority i.e., before clearance for home consumption was made. Also, the loss of 1000 tons of input cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "petty theft". Hence, peerless scraps may take shelter under Section 23 justifying his claim for remission of duty.

The duty already paid may be claimed as refund.

2021 - Jan [4] (c) M/s. Precise Finishing Ltd. imported consignment of graphic design system and one electronic flat knitting machine. The graphic design system is a computer system required to design the artwork which shall be knitted by the flat knitting machine. Graphic design system is not an integral part of electronic flat knitting machine.

In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, an exemption had been granted in respect of electronic flat knitting machine and falling within Chapter 85 of the First Schedule to the Customs Tariff Act, 1975. The exemption does not include any specific mention of accessories to the machine. M/s. Precise Finishing Ltd. has claimed exemption of the said notification in respect of Graphic Design System also as accessory of Flat Knitting Machine.

The Customs department rejected the importer's claim for exemption on Graphic Design System. Examine whether the department's action is sustainable in law. (5 marks)

Answer:

The graphic design system is not an integral part of the electronic flat knitting machine. It is an accessory to the machine.

Hence, electronic flat knitting machine and graphic design system cannot be treated as one single unit and should be classified and assessed separately. In the given case, the exemption had been granted under the customs law specifically in respect of the electronic flat knitting machine falling under Chapter 85 of the First Schedule to the Customs Tariff Act, 1975 and not to its accessory – the graphic design system.

Therefore, the benefit of the exemption notification available in respect of the electronic flat knitting machine will not be available to graphic design system. The Department's action is sustainable in law.

2021 - Dec [3] (c) Supreme Car Decors imported car music systems and GPS devices from Germany. The importer submits the following issues for your consideration,

- (i) 7 music systems were pilfered before unloading and before the proper officer has made an order for clearance for home consumption.

- (ii) 10 GPS Devices were pilfered after unloading and before the proper officer has made an order for clearance for home consumption.
- (iii) 30 music systems were damaged after unloading and examination for assessment by the customs authorities but before actual home clearance.

Supreme Car Decors seeks your expert advice with reason regarding the impact on Customs duty on the said goods. (5 marks)

Answer:

- (i) Duty is not leviable on the music systems pilfered before unloading since import duty is leviable only when import is completed; import gets completed only when goods become part of the mass of goods within the country.

However, it is also possible to take a view that duty is payable on the music systems pilfered before unloading since an importer is not liable to pay duty leviable on pilfered imported goods only if such goods are pilfered after unloading and before proper officer makes order for clearance for home consumption.

- (ii) Supreme Car Decors is not liable to pay duty leviable on GPS devices pilfered since an importer is not liable to pay duty leviable on any imported goods pilfered after unloading and before proper officer makes order for clearance for home consumption.
- (iii) Abatement of duty on damaged imported goods is available if such imported goods are damaged accidentally after unloading but before examination for assessment by the customs authorities.

In the given case, since imported music systems¹ are damaged after examination for assessment by the customs authorities, abatement of duty on such goods is not available.

1. It has been assumed that the imported music systems have not been warehoused.

TOPIC NOT YET ASKED BUT EQUALLY IMPORTANT FOR EXAMINATIONS**SHORT NOTES**

Q. 1. Write short note on:

- (iii) Indian customs waters. (3 marks)

Answer:

- (i) **Meaning of Indian Custom Water (Sec. 2(28)):** It means the water extending into the sea upto the limit of exclusive economic zone under section 7 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.
- (ii) Significance of “**Indian Customs Waters**” following actions can be taken by Custom Officer, which show the significance of Indian - Customs Waters:
- (a) Search of any person, who has landed from or about to board/is on board any vessel within Indian custom waters and who has secreted about his person, any goods etc. [Sec. 100]
 - (b) Arrest of the suspected persons (Sec. 104)
 - (c) Stop and Search of vessel (Sec.106)
 - (d) Confiscation of Conveyance (Sec.115).

Q. 2. Write short notes on of the following with reference to the Customs Act, 1962:

- (i) Goods
- (ii) Imported goods
- (iii) Dutiable goods. (3 × 2 = 6 marks)

Answer:

- (i) **Definition:** As per Sec. 2(22), goods includes
- Vessels, aircraft and vehicles
 - Stores
 - Baggage

- Currency and negotiable instruments, and
 - Any other kind of moveable property
- Jalyan Udyog Vs. UOI (1987/Bombay):** Vessels purchased by Shipping Corporation of India and brought to India for the purpose of carrying cargo for ports outside India are treated as “Imported Goods” and not mere conveyance.
- (ii) As per Sec. 2(25) of Custom Act - 1962, Imported goods “means any goods brought into India from a place outside India, but doesn’t include goods, which have been cleared for home consumption.”
- (iii) (i) **Definition:** As per Sec. 2(14) Dutiable goods means” any goods which are chargeable to duty and on which duty has not been paid.”
- (ii) **Features of Dutiable goods:**
- (a) It may be imported or export goods
 - (b) It is not released by custom officers and currently lying in the custom area.
 - (c) It also includes goods carrying ‘Nil’ duty as well as exempted goods.

DESCRIPTIVE QUESTIONS

Q. 1. Briefly explain with reference to the provisions of the Customs Act, 1962 any **two** of the following:

- (i) Coastal goods
- (ii) Customs Area
- (iii) Derelict, Jetsam, Flotsam and Wreck. (2×2=4 marks)

Answer:

- (i) (i) **Coastal Goods [sec. 2(7)]:** It means goods, other than imported goods, transported in a vessel from one port in India to another.
- (ii) **Example:** Goods loaded at Visakhapatnam port for being transported at Chennai port, then such goods are referred as costal goods.

- (iii) **Governed by:** Chapter XII, containing Sections 91 to 99 of Customs Act, 1962, governs the coastal goods.
- (ii) (i) **Definition of Customs Area (Sec.2(11)):**
- It means the area of a customs station or a warehouse; and
 - Includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.
- (ii) **Power to Demarcate Customs Area:** The Commissioner of Customs demarcates and appoint custom area as per Sec. 8 of Custom Act, 1962.
- (iii) These terms are used in Sec. 21 of Customs Act, 1962 and creates a fiction of Import, consequently liable for duty:

Terms	Meaning
(i) Derelict	Any property, say cargo, abandoned in the sea without any hope of its recovery.
(ii) Jetsam	When goods are thrown from the vessel to lighten it and avoid it from sinking.
(iii) Flotsam	When goods are thrown from the vessel and such goods remained floating.
(iv) Wreck	Cargo, vessel, which are cast ashore by tides after ship-wreck.

Q. 2. Explain briefly the meaning of the following with reference to the Customs Act, 1962:

- (ii) Dutiable goods and Imported goods (2 marks)

Answer:

As per Sec. 2(25) of Custom Act - 1962, Imported goods means" any goods brought into India from a place outside India, but doesn't include goods, which have been cleared for home consumption.

- (i) **Definition:** As per Sec. 2(14) Dutiable goods" means any goods which are chargeable to duty amount on which duty has not been paid.
- (ii) **Features of Dutiable goods:**
- (i) It may be imported as export goods

- (ii) It is not released by custom officers and currently lying in the custom area.
- (iii) It also includes goods carrying 'Nil' duty as well as exempted goods.

MULTIPLE CHOICE QUESTION

1. Goods means
 - (a) Stores
 - (b) Currency
 - (c) Baggage
 - (d) All of the above
2. Coastal goods means goods other than
 - (a) Exported goods
 - (b) Imported goods
 - (c) Both
 - (d) None of the above
3. Dutiable goods which are chargeable to duty and on which
 - (a) Duty has been paid
 - (b) Duty has not been paid
 - (c) Duty has been paid to some extent
 - (d) None of the above
4. FGV includes
 - (a) Naval vessel of foreign government taking part in naval exercises.
 - (b) Naval vessel of Indian government proceeding to foreign government taking part in naval exercise
 - (c) Both
 - (d) None of the above
5. FGV includes the oil rigs when it is situated
 - (a) Outside India
 - (b) Outside TWI
 - (c) Outside EEZ
 - (d) None of the above

6. FGV includes the vessel engaged in fishing when it is situated
 - (a) Outside India
 - (b) Outside TWI
 - (c) Outside EEZ
 - (d) None of the above
7. Tariff means the value fixed under section
 - (a) 14(1)
 - (b) 14(2)
 - (c) 14(3)
 - (d) 14(4)
8. Custom Station Includes:
 - (a) Land custom Station
 - (b) International courier terminal
 - (c) Foreign post office
 - (d) All of the above
9. Entry does not include
 - (a) Bill of entry
 - (b) Shipping bill
 - (c) Entry made under the regulations made under section 85
 - (d) Bill of export
10. Market price means
 - (a) Whole sale price
 - (b) Retail Price
 - (c) A or B Whichever is high
 - (d) A or B Whichever is lower
11. Section 13 of custom act is not applicable on the pilferage goods
 - (a) After unloading & before the proper office has made an order for clearance for home consumption
 - (b) After unloading & before the proper office has made an order for clearance for deposit in ware house
 - (c) After the unloading & before the physical removal of goods
 - (d) A and B

12. Basic custom duty is chargeable under
 - (a) Sec. 12 of Custom Act, 1962
 - (b) Sec. 13 of Custom Act, 1962
 - (c) Sec. 12 of Custom Tariff Act, 1975
 - (d) Sec. 14 of Custom Act, 1962
13. Sec. 13 or sec. 23(1) which has the wider scope:
 - (a) Sec. 13
 - (b) Sec. 23 (1)
 - (c) Both
 - (d) None of the above
14. Meaning of derelict
 - (a) Abandoned in sea no hope of recovery
 - (b) Goods jettisoned to save vessel from sinking
 - (c) Goods jettisoned to save vessel from sinking. They did not sink. They are floating.
 - (d) Cargo or vessel drifting after ship wrecks.
15. Under sec. 26A an application for refund cannot be made after the months from the relevant date.
 - (a) 6 months
 - (b) 9 months
 - (c) 3 months
 - (d) 12 months
16. No duty shall be collected if life the amount of duty is
 - (a) Equal to ₹ 100
 - (b) Less than: ₹ 100
 - (c) Equal to or less then: ₹ 100
 - (d) None of the above
17. Central Government issues a general notification on 1.1.2018 for the exemption of duty on import of mobile phones. CG also issue an explanation on 01.02.2019 for clarifying of scope of E/N dated 01.02.2018. effective date of such exemption notification:
 - (a) 01.01.2018
 - (b) 01.02.2019
 - (c) A or B whichever is earlier
 - (d) None of the above

18. Which section (s) provides the power to Central Government for greeting exemptions from duty?
- Sec. 25
 - Sec. 26
 - Sec. 27
 - Sec. 28
19. Under section 25 effective date of exemption notification:
- Provided in the notification
 - Date of its issue
 - A or B as the case may be
 - None of the above
20. Under section 22 which goods are covered?
- Damaged
 - Deteriorated
 - Both
 - None of the above

Answer

1.	(d)	2.	(b)	3.	(b)	4.	(c)	5.	(c)
6.	(b)	7.	(b)	8.	(d)	9.	(c)	10.	(a)
11.	(c)	12.	(a)	13.	(b)	14.	(a)	15.	(a)
16.	(c)	17.	(c)	18.	(a)	19.	(c)	20.	(a)