PROVISIONS RELATING TO ILLEGAL IMPORT, ILLEGAL EXPORT, CONFISCATION, PENALTY & ALLIED PROVISIONS

LEARNING OUTCOMES

After studying this chapter, you would be able to:

- comprehend the provisions relating to prohibited/ notified/specified goods & illegal importation/exportation of goods
- identify the power to search suspected persons
- analyse and apply the circumstances demanding power to arrest and inspect.
- analyse and apply the provisions relating to confiscation of improperly imported goods.
- identify and examine the cases where penalty is leviable for improper importation/exportation of goods
- identify the various offences and prosecution provisions relating thereto.

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UNIT: I - PROVISIONS RELATING TO PROHIBITED/NOTIFIED/SPECIFIED GOODS & ILLEGAL IMPORTATION/EXPORTATION OF GOODS

1. INTRODUCTION

Chapters IV, IV A, IV B and IV C of the Customs Act deals with the provisions relating to prohibition on importation and exportation of goods and detection of illegal imports and exports. The relevant sections are sections 11, 11A to 11N. Before we understand these provisions, we should understand the meaning of “prohibited goods”.

2. PROHIBITION ON ILLEGAL IMPORTATION/EXPORTATION OF GOODS [CHAPTER IV]

PROHIBITED GOODS

The term “prohibited goods” has been defined under section 2(33) meaning “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”.

This definition can be split as follows:

- any goods imports/exports 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 which complies with the conditions imposed.

Hence, this definition is of a wider scope which covers goods not only subject to prohibition under this Act but also under any other law in force. One exception is those goods which complies or fulfills the condition imposed on it.

The prohibition provided under the Customs Act is in four parts:

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POWER TO PROHIBIT IMPORTATION AND EXPORTATION OF GOODS [SECTION 11]

If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or export of goods of any specified description.

**Purposes for which import/export can be prohibited** The purposes referred to in sub-section (1) are the following:-

- the maintenance of the security of India;
- the maintenance of public order and standards of decency or morality;
- the prevention of smuggling;
- the prevention of shortage of goods of any description;
- the conservation of foreign exchange and the safeguarding of balance of payments;
- the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
- the prevention of surplus of any agricultural product or the product of fisheries;
- the maintenance of standards for the classification, grading or marketing of goods in international trade;
- the prevention of serious injury to domestic production of goods of any description;
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✓ the protection of human, animal or plant life or health;
✓ the protection of national treasures of artistic, historic or archaeological value;
✓ the conservation of exhaustible natural resources;
✓ the protection of patents, trade marks, copyrights designs and geographical indications;
✓ the prevention of deceptive practices;
✓ the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India;
✓ the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;
✓ the implementation of any treaty, agreement or convention with any country;
✓ the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;
✓ the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;
✓ the prevention of the contravention of any law for the time being in force; and
✓ any other purpose conducive to the interests of the general public.

The Central Government has issued a large number of notifications under section 11, prohibiting, restricting or conditionally permitting import or export of various goods.

3. DETECTION OF ILLEGALLY IMPORTED GOODS AND PREVENTION OF THE DISPOSAL THEREOF [CHAPTER IVA]

Reasons for insertion of this Chapter: With an idea to keep a check over the large scale smuggling of silver out of the country and various consumer articles smuggled into the country, this chapter was inserted in the Customs Act, in 1969. This Chapter is for detection of those goods which have been imported illegally into India.
DEFINITIONS [SECTION 11A]

(a) “Illegal import” means “the import of any goods in contravention of provisions of this Act or any other law for the time being in force”.

(b) “Notified date”, in relation to goods of any description, means the date on which the notification in relation to such goods is issued under section 11B.

(c) “Notified goods” means goods specified in the notification issued under section 11B.

(d) “Intimated place” means a place intimated under sub-section (1)/(2)/(3) of section 11C.

POWER OF CENTRAL GOVERNMENT TO NOTIFY GOODS [SECTION 11B]

If the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of
- checking the illegal import,
- checking circulation or disposal of such goods, or
- facilitating the detection of such goods,
it may, by notification in the Official Gazette, specify goods of such class or description. Such notification shall be issued having regard to the magnitude of the illegal import of goods of any class or description.

However, it may be noted that at present, no goods are specified as “notified goods”.

PERSONS POSSESSING NOTIFIED GOODS TO INTIMATE THE PLACE OF STORAGE, ETC. [SECTION 11C]

Intimation of possessing notified goods: Every person who owns, possesses or controls, on the notified date, any notified goods, shall, within seven days from that date, deliver to the proper officer a statement in such form and manner and containing such particulars as specified by rules made in this behalf in relation to the notified goods owned, possessed or controlled by him and the place where such goods are kept or stored.
Every person who acquires any notified goods, after the notified date, before making such acquisition,

- shall deliver to the proper officer an intimation containing the particulars of the place where such goods are proposed to be kept or stored after such acquisition and

- shall, immediately on such acquisition, deliver to the proper officer a statement in relation to the notified goods acquired by him.

However, a person who has delivered a statement, in relation to any notified goods, owned, possessed, controlled or acquired by him, shall not be required to deliver any further statement in relation to any notified goods acquired by him, after the date of delivery of the said statement, so long as the notified goods so acquired are kept or stored at the intimated place.

**Intimation of shifting of any notified goods:** If any person intends to shift any notified goods to any place other than the intimated place, he shall, before taking out such goods from the intimated place, deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted. No person shall, after the expiry of seven days from the notified date, keep or store any notified goods at any place other than the intimated place.

**Sale or transfer of notified goods:** Where any notified goods have been sold or transferred, such goods shall not be taken from one place to another unless they are accompanied by the voucher referred to in section 11F.

No notified goods (other than those which have been sold or transferred) shall be taken from one place to another unless they are accompanied by a transport voucher prepared by the persons owning, possessing or controlling such goods.

**PRECAUTIONS TO BE TAKEN BY PERSONS ACQUIRING NOTIFIED GOODS [SECTION 11D]**

No person shall acquire (except by gift or succession, from any other individual in India), after the notified date, any notified goods -

- unless such goods are accompanied by, -

  (a) the voucher referred to in section 11F or the memorandum referred to in sub-section (2) of section 11G, as the case may be, or
(b) in the case of a person who has himself imported any goods, any
evidence showing clearance of such goods by the Customs Authorities;
and

unless he has taken, before acquiring such goods from a person other
than a dealer having a fixed place of business, such reasonable steps as
may be specified by rules made in this behalf, to ensure that the goods so
acquired by him are not goods which have been illegally imported.

PERSONS POSSESSING NOTIFIED GOODS TO MAINTAIN ACCOUNTS
[SECTION 11E]

Every person who, on or after the notified date, owns, possesses, controls or
acquires any notified goods shall maintain (in such form and in such manner
as may be specified by rules made in this behalf) a true and complete account
of such goods and shall, as often as he acquires or parts with any notified
goods, make an entry in the said account in relation to such acquisition or
parting with, and shall also state therein the particulars of the person from
whom such goods have been acquired or in whose favour such goods have
been parted with, as the case may be, and such account shall be kept, along
with the goods, at the place of storage of the notified goods to which such
accounts relate.

However, it shall not be necessary to maintain separately accounts in the form
and manner specified by rules made in this behalf in the case of a person who
is already maintaining accounts which contain the particulars specified by the
said rules.

Every person who owns, possesses or controls any notified goods and who uses
any such goods for the manufacture of any other goods, shall maintain (in such
form, in such manner and containing such particulars as may be specified by rules
made in this behalf) a true and complete account of the notified goods so used
by him and shall keep such account at the intimated place.

SALE, ETC., OF NOTIFIED GOODS TO BE EVIDENCED BY VOUCHERS
[SECTION 11F]

On and from the notified date, no person shall sell or otherwise transfer any
notified goods, unless every transaction in relation to the sale or transfer of
such goods is evidenced by a voucher in such form and containing such
particulars as may be specified by rules made in this behalf.
SECTIONS 11C, 11E AND 11F NOT TO APPLY TO GOODS IN PERSONAL USE [SECTION 11G]

Nothing in sections 11C, 11E and 11F shall apply to any notified goods which are-
(a) in personal use of the person by whom they are owned, possessed or controlled, or
(b) kept in the residential premises of a person for his personal use.

If any person, who is in possession of any notified goods referred to in sub-section (1), sells, or otherwise transfers for a valuable consideration, any such goods, he shall issue to the purchaser or transferee, as the case may be, a memorandum containing such particulars as may be specified by rules made in this behalf and no such goods shall be taken from one place to another unless they are accompanied by the said memorandum.

4. PREVENTION OR DETECTION OF ILLEGAL EXPORT OF GOODS [CHAPTER IV B]

REASON FOR INSERTION OF THIS CHAPTER: Chapter IV B was introduced in the Customs Act to prevent or detect the export of goods illegally out of India.

DEFINITIONS [SECTION 11H]

Definitions of some of the terms relevant for this Chapter are given below:

(a) "Illegal export" means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force;

(b) "Intimated place" means a place intimated under sub-section (1), sub-section (2) or sub-section (3), as the case may be, of section 11J;

(c) "Specified area"
   includes the Indian customs waters, and
   such inland area, not exceeding 100 kms in width from any coast or other border of India, as the Central Government may, having regard to the vulnerability of that area to smuggling, by notification in the Official Gazette, specify in this behalf.
However, where a part of any village, town or city falls within a specified area, the whole of such village, town or city shall, notwithstanding that the whole of it is not within one hundred kms from any coast or other border of India, be deemed to be included in such specified area.

(d) “Specified date”, in relation to specified goods, means the date on which any notification is issued under section 11-I in relation to those goods in any specified area;

(e) “Specified goods” means goods of any description specified in the notification issued under section 11-I in relation to a specified area.

POWER OF CENTRAL GOVERNMENT TO SPECIFY GOODS [SECTION 11I]

Central Government is empowered to specify goods by notification in the Official Gazette, having regard to the magnitude of the illegal export of goods of any class or description for the purpose of checking the illegal export or facilitating the detection of goods which are likely to be illegally exported.

At present, acetic anhydride, drug formulations containing codeine or its salts and ephedrine and pseudo-ephedrine have been so notified.

PERSONS POSSESSING SPECIFIED GOODS TO INTIMATE THE PLACE OF STORAGE, ETC. [SECTION 11J]

Every person who owns, possesses or controls any specified goods on the specified date, the market price of which exceeds ₹ 15,000 shall, within seven days from that date, deliver to the proper officer an intimation containing the particulars of the place where such goods are kept or stored within the specified area.

Every person who acquires (within the specified area), after the specified date, any specified goods, -

(i) the market price of which, or

(ii) the market price of which together with the market price of any specified goods of the same class or description, if any, owned, possessed or controlled by him on the date of such acquisition, exceeds ₹ 15,000 shall, before making such acquisition, deliver to the proper officer an intimation containing the particulars of the place where such goods are proposed to be kept or stored after such acquisition.
If any person intends to shift any specified goods, to any place other than the intimated place, he shall, before taking out such goods from the intimated place, deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted.

**TRANSPORT OF SPECIFIED GOODS TO BE COVERED BY VOUCHERS [SECTION 11K]**

Transport of specified goods has to be covered by vouchers, in such form and containing such particulars as may be specified by rules made in this behalf.

**PERSONS POSSESSING SPECIFIED GOODS TO MAINTAIN ACCOUNTS [SECTION 11L]**

Every possessor of specified goods is required to maintain accounts in the prescribed form, inter alia, showing details of receipts and disposal.

**STEPS TO BE TAKEN BY PERSONS SELLING OR TRANSFERRING ANY SPECIFIED GOODS [SECTION 11M]**

Except where he receives payment by cheque drawn by the purchaser, every person who sells or otherwise transfers within any specified area, any specified goods, shall obtain, on his copy of the sale or transfer voucher, the signature and full postal address of the person to whom such sale or transfer is made and shall also take such other reasonable steps as may be specified by rules made in this behalf to satisfy himself as to the identity of the purchaser or the transferee, as the case may be, and if after an inquiry made by a proper officer, it is found that the purchaser or the transferee, as the case may be, is not either readily traceable or is a fictitious person, it shall be presumed, unless the contrary is proved, that such goods have been illegally exported and the person who had sold or otherwise transferred such goods had been concerned in such illegal export.

However, nothing in this section shall apply to petty sales of any specified goods if the aggregate market price obtained by such petty sales, made in the course of a day, does not exceed two thousand and five hundred rupees.

**Meaning of “petty sale”**

In this section “petty sale” means a sale at a price which does not exceed ₹ 1,000.
5. EXEMPTIONS FROM THE OPERATION OF CHAPTERS IV A & IV B [CHAPTER-IVC]

Section 11N empowers the Central Government to exempt generally, either absolutely or subject to such conditions as may be specified in the notification, goods of any class or description from all or any of the provisions of Chapter IVA or Chapter IVB.