

Import/Export Restrictions/Prohibitions under Customs law

Under sub-section (d) of section 111 and sub-section (d) of Section 113, any goods which are imported or attempted to be imported and exported or attempted to be exported, contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force shall be liable to confiscation. Section 112 of the Customs Act provides for penalty for improper importation and Section 114 of the Customs Act provides for penalty for attempt to export goods improperly. In respect of prohibited goods the Adjudicating Officer may impose penalty upto five times the value of the goods. It is, therefore, absolutely necessary for the trade to know what are the prohibitions or restrictions in force before they contemplate to import or export any goods.

2. The terms “Prohibited Goods” have been defined in sub-section 33 of Section 2 of the Customs Act as meaning “any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force”.

3. Under section 11 of the Customs Act, the Central Government has the power to issue Notification under which export or import of any goods can be declared as prohibited. The prohibition can either be absolute or conditional. The specified purposes for which a notification under section 11 can be issued are maintenance of the security of India, prevention and shortage of goods in the country, conservation of Foreign Exchange, safeguarding balance of payments etc. The Central Govt. has issued many notifications to prohibit import of sensitive goods such as coins, obscene books, printed waste paper containing pages of any holy books, armored guard, fictitious stamps, explosives, narcotic drugs, rock salt, saccharine, etc.

4. Under Export and Import Policy, laid down by the DGFT, in the Ministry of Commerce, certain goods are placed under restricted categories for import and export. Under section 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government can make provisions for prohibiting, restricting or otherwise regulating the import or export of the goods. As for example, import of second hand goods and second hand capital goods is restricted. Some of the goods are absolutely prohibited for import and export whereas some goods can be imported or exported against a licence. For example export of human skeleton is absolutely prohibited whereas export of cattle is allowed against an export licence. Another example is provided by

Notification No.44(RE-2000) 1997 dated 24.11.2000 in terms of which all packaged products which are subject to provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1997, when produced/packed/sold in domestic market, shall be subject to compliance of all the provisions of the said Rules, when imported into India. All packaged commodities imported into India shall carry the name and address of the importer, net quantity in terms of standard unit of weights measures, month and year of packing and maximum retail sale price including other taxes, local or otherwise. In case any of the conditions is not fulfilled, the import of packaged products shall be held as prohibited, rendering such goods liable to confiscation.

5. Another restriction under the aforesaid Notification issued by the Ministry of Commerce is that the import of a large number of products, presently numbering 133, are required to comply with the mandatory Indian Quality Standards (IQS) and for this purpose exporters of these products to India are required to register themselves with Bureau of Indian Standards (BIS). Non-fulfillment of the above requirement shall render such goods prohibited for import.

6. Import and export of some specified goods may be restricted/prohibited under other laws such as Environment Protection Act, Wild Life Act, Indian Trade and Merchandise Marks Act, Arms Act, etc. Prohibition under those acts will also apply to the penal provisions of the Customs Act, rendering such goods liable to confiscation under section 111(d) of the Customs Act (for import) and 113 (d) of the Customs Act (for export).

7. Any Importer or Exporter for being knowingly concerned in any fraudulent evasion or attempted evasion of any prohibition under the Customs Act or any other law for the time being in force in respect to any import or export of goods, shall be liable to punishment with imprisonment for a maximum term of three years (seven years in respect of notified goods) under section 135 of the Customs Act. Any person who is reasonably believed to be guilty of an offence, punishable under section 135, may be arrested under the provisions of section 104 of the Customs Act.

8. Keeping in view the above penal provisions in the Customs Act to deal with any deliberate evasion of prohibition/restriction of import of export of specified goods, it is advisable for the Trade to be well conversant with the provisions of EXIM Policy, the Customs Act, as also other allied Acts. They must make sure that before any imports are effected or export planned, they are

aware of any prohibition/restrictions and requirements subject to which alone goods can be imported/exported, so that they do not get penalised and goods do not get involved in confiscation etc. proceedings at the hands of Customs authorities.
