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ETHICS EDUCATION EXCELLENCE

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Re-import of Goods under Indian Customs Law: Duty Implications and Exemption Framework

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Introduction

Re-importation refers to goods originally exported from India being brought back whether rejected by the foreign buyer, returned under warranty, sent abroad for repair, or exported temporarily and now returning. At first glance, it seems anomalous to tax a business for receiving back its own goods. Yet the legal framework imposes exactly that position. Section 20 of the Customs Act, 1962 offers no comfort:

Section 20 — Customs Act, 1962

"If goods are imported into India after exportation therefrom, such goods shall be liable to duty and shall be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof."

The provision makes no distinction between a first import and a re-import. The rationale is straightforward: import duties are levied on the act of importation itself, not on the origin of the goods. Relief is available only through exemption notifications issued under Section 25 of the Customs Act, 1962 each carrying conditions that must be fulfilled. On the GST side, IGST on imports is levied under Section 3(7) of the Customs Tariff Act, 1975 read with Section 5(4) of the IGST Act, 2017, computed on the aggregate of the assessable value, Basic Customs Duty (BCD) and Social Welfare Surcharge (SWS).

In case of *Tata Tea Ltd. vs. Commissioner of Customs, Chennai 1999 (114) ELT 775 (SC)*, it was held that vide Section 20 of the Customs Act, 1962 read with the definition of 'import' as given in Section 2 (23) of the Customs Act, 1962, imported goods would include re-imported goods as well and therefore the goods sent out of India and re-imported would also be liable to payment, of duty in the same manner in which they would have been liable if imported for the first time in India subject to exemption notifications.

The choice of the correct notification is the single most consequential decision in any re-import transaction. It determines the assessable value, the duty quantum, and the GST treatment. An error here, citing the wrong notification or misreading its conditions, can result in either a large unexpected duty demand or, equally damaging, an overpayment that is difficu to recover.

The Exemption Framework

There is no single omnibus notification for re-imports. Different situations are governed by different notifications, and practitioners must identify the correct one at the outset. The principal notifications are as follows:

Notification No. 45/2017-Customs dated 30.06.2017

Notification No. 45/2017-Cus is the go-to provision for most permanent re-imports. Its' conditions are not onerous in principle but demand disciplined documentation in practice. The goods must be identifiable as those originally exported through serial numbers, marks, or other physical identification.

This is the primary notification for permanent re-imports of indigenously manufactured goods exported under drawback, rebate, bond, LUT, or export promotion schemes. It operates on a claw-back principle: on re-import, the importer pays back the equivalent of the export benefit availed. Goods exported without availing any benefit attract no duty on re-import.

Critically, Serial No. 2 of the notification specifically covers goods exported for repair abroad and permanently returned. Under this entry, duty is levied only on the fair cost of repairs including cost of materials used, insurance, and freight charges both ways and not on the original value of the goods. This is the statutory basis for the 'duty on repair value only' principle for permanent re-import after repairs.

The one-year time limit applies to re-import under this notification in cases of Goods exported under Advance Authorisation, EPCG, DEPB, Chapter 4 FTP schemes, etc. In other cases, the time limit to re-import is within 5 years from its' export. In case of re-import from Bhutan of machinery and equipments other than those exported under Advance Authorisation, EPCG, DEPB, Chapter 4 FTP schemes, etc., the re-import can be done within 7 years. Extensions are available from the Principal Commissioner of Customs on sufficient cause shown. In such a case, DGFT must be intimated of the re-import since the fulfilled export obligation will stand reduced, potentially creating a shortfall.

Re-import must take place within prescribed time limit from the date of the original Shipping Bill. Critically, if any drawback under Section 74 or Section 75 of the Customs Act, 1962 or any IGST refund on export, has been availed, the same must be reversed. The Proper Officer may also require a bond with surety or bank guarantee. These conditions are cumulative and non-fulfilment of even one disqualifies the claim entirely.

Where serial numbers, marks, or other identification particulars are absent or inconsistent between the Shipping Bill and the Bill of Entry, the exemption can be denied. Goods that have been remanufactured, reprocessed through melting, recycling or recasting abroad, are expressly excluded from being treated as the 'same goods'. Documentation at the export stage is therefore the primary insurance.

Notification No. 158/95-Customs dated 14.11.1995

This notification is fundamentally different in character. It covers goods manufactured in India and re-imported for the purpose of repairs, reconditioning, reprocessing, refining, remaking, or similar processes, with a mandatory obligation to re-export after the process is completed. The exemption under this notification is complete exemption from BCD and IGST but it is available only when the goods will go back out of India after repair. It is not for permanent return.

In case of repairs or reconditioning, the re-importation shall be done within 3 years from the date of export but in case of reprocessing, refining or remaking or such similar processes, re-goods shall be re-imported within 1 year from the date of export. Most importantly, the identity of the goods re-imported shall be established to the satisfaction of the AC/DC of Customs. Also, the conditions include execution of a bond undertaking re-export and payment of differential duty on failure.

To be precise: a manufacturer who sends machinery abroad for repair and will bring it back permanently into the factory must use Notification 45/2017-Cus (Serial No. 2) and pay duty on repair value. A manufacturer who sends goods abroad for repair and intends to re-export the repaired goods to a third country or back to the buyer uses Notification 158/95-Cus and pays no duty at all, subject to re-export.

Notification No. 174/66-Customs dated 24.09.1966

Notification No. 174/66-Cus provides exemption for re-import of private personal property not produced or manufactured in India, which

had earlier been exported from India and is subsequently brought back by the owner within 3 years from export subject to specified baggage-related relaxation. In case of free warranty repairs, there is no Customs Duty or GST but in case of goods repaired, Customs Duty is payable on the cost of repairing, renovation etc.

Situation-wise Analysis

Permanent Re-import — Goods Returned or Rejected

The most straightforward scenario is goods that go out and come back permanently because the buyer rejected them, the order was cancelled, quality dispute or the goods could not be sold in the foreign market. Please note that the duty consequence depends entirely on whether any export benefit was availed. If the goods were exported without claiming drawback or IGST refund, no duty is payable on re-import. If drawback was claimed, the equivalent must be paid back on re-import. If IGST refund was availed, that too must be reversed with interest under Section 50 of the CGST Act, 2017.

The one-year time limit for re-import is a practical trap. Exporters who claim drawback routinely, without tracking whether goods may return, often find themselves outside the window when goods are rejected abroad.

Where drawback has been availed at the time of export, the same is required to be repaid as a condition for claiming exemption under Notification No. 45/2017-Customs upon re-import. Depending upon the circumstances, interest may also become payable under Section 75A(2) of the Customs Act, 1962. The Principal Commissioner or Commissioner of Customs may extend the prescribed re-import period on sufficient cause being shown. As a matter of prudence, repayment of drawback and disclosure of the export benefits availed should be completed before assessment of the Bill of Entry. Failure to disclose the availment of drawback or any deliberate misstatement regarding export benefits may expose the importer to recovery proceedings and penal consequences, including penalty under Section 114A of the Customs Act, 1962 where the ingredients of fraud, suppression or wilful misstatement are established.

From a GST perspective, the mere re-import of goods by the original exporter generally does not constitute a separate supply under Section 7 of the CGST Act, 2017, since there is no transfer of title or independent commercial transaction between two persons. Nevertheless, the importation remains subject to the Customs and IGST provisions applicable to re-imported goods. Where the original export was made under LUT and refund of unutilized input tax credit was claimed, such refund may be required to be repaid or reversed as a condition for availing the benefit of Notification No. 45/2017-Customs. The notification is intended to prevent retention of export incentives while simultaneously claiming re-import exemption. Any interest liability would depend upon the statutory provisions governing recovery of the refund and should not automatically be assumed to arise under Section 50 of the CGST Act, 2017.

Permanent Re-import after Repairs Abroad

This is the scenario most relevant to manufacturing, engineering, and process industries. Expensive machinery is sent abroad for overhaul, precision calibration, or reconditioning that cannot be done domestically. The goods come back permanently and resume use in the Indian factory.

Notification No. 45/2017-Cus provides that where goods exported for repairs are permanently re-imported into India, customs duty is chargeable only on the cost of repairs, including labour charges, materials used, freight and insurance, and not on the original value of the goods. For high-value capital equipment, this distinction produces enormous savings. For example, where machinery worth 80 lakhs is sent abroad and re-imported after repairs costing 8 lakhs, customs duty is

levied on the repair value and associated charges rather than on the original machinery value. At prevailing rates of BCD and IGST, the difference in duty incidence between assessment on ₹8 lakhs and ₹80 lakhs can be substantial, making correct classification of the re-import commercially significant. The financial stakes are high and so is the scope for disputes.

An important GST compliance point that is frequently overlooked: the repair service received from the foreign workshop is an import of service and attracts IGST under the reverse charge mechanism (RCM) under Section 5(3) of the IGST Act. This RCM liability is in addition to, and legally distinct from, the customs IGST paid at the port. Both are eligible for input tax credit, but both must be discharged. Missing this obligation is a common audit finding.

Re-import for Repair and Re-export

By contrast, Notification No. 158/95-Cus applies where the goods are re-imported into India for repair, reconditioning, reprocessing or similar processes with a mandatory obligation to re-export them. In such cases, the notification grants complete exemption from customs duties at the time of re-import. The importer executes a bond undertaking to re-export within 6 months of re-importation (extendable by a further 6 months). The goods must be re-imported within 5 years from date of export generally.

This notification also covers reconditioning, reprocessing, refining, dyeing, remaking, and similar processes not just repairs. CBIC Circular No. 127/95-Customs dated 14 December 1995 confirms that even packing changes and similar operations qualify. The scope is therefore wider than commonly understood.

If goods are not re-exported within the stipulated period, the differential duty, i.e., the full duty that would have been payable as if no exemption existed, becomes payable along with interest. The bond provides the customs authority security for this contingency.

Warranty Claims and Defective Goods Return

Warranty-related re-imports split into distinct legal paths depending on the nature and direction of the goods flow.

Defective exported goods returned permanently:

Defective or rejected goods permanently returned by a foreign buyer are generally treated in the same manner as rejected export goods under Notification No. 45/2017-Customs. Where export incentives such as drawback, IGST refund, RoDTEP or other export benefits were availed at the time of export, the corresponding benefit is required to be repaid or surrendered in accordance with the notification. Where no export benefit was availed, the re-import may be eligible for exemption subject to fulfilment of the prescribed conditions. From a commercial perspective, the exporter may issue a credit note to the foreign buyer where the export transaction stands cancelled. Under FEMA, the return of goods and non-realisation of export proceeds may require appropriate reporting, adjustment or write-off through the Authorised Dealer bank in accordance with RBI directions governing export realisation and write-off of export receivable.

Imported goods sent abroad under warranty repair at NIL charge:

This covers goods that were originally imported (not indigenously manufactured) from foreign OEM (Original Equipment Manufacturer), sent back to the foreign manufacturer for warranty repair at no charge, and re-imported. Full exemption from customs duty is available provided the repair is truly free of charge under the manufacturer's warranty and no drawback or incentive was availed on the original import. If any charge is levied even for parts or consumables, duty equivalent to that charge becomes payable.

Defective goods returned to India for repair and re-export:

Defective goods returned to India for repair and subsequent re-export may be re-imported under Notification No. 158/95-Customs. The notification grants exemption from Customs Duty and IGST subject to execution of a bond, establishment of the identity of the goods and their re-export within the prescribed period. Although processing may be undertaken under customs-controlled or bonded arrangements, warehousing under Sections 57 to 73 of the Customs Act, 1962 is not a mandatory condition of the notification. If the goods are not re-exported within the prescribed period or other conditions are violated, the duty foregone under the notification becomes recoverable in accordance with the bond and the notification conditions. Where the goods have also been warehoused under Chapter IX of the Customs Act, the provisions of Section 72 may additionally become relevant.

Temporary Export and Re-import

Goods exported temporarily for trade exhibitions, professional equipment, commercial demonstrations, testing, project execution or similar purposes and subsequently returned to India without sale may be re-imported without payment of customs duty under the ATA Carnet system. India participates in the ATA Carnet framework established under the Istanbul Convention. The ATA Carnet serves as a unified customs declaration and international guarantee document, substantially simplifying customs procedures for temporary export and re-import. Provided the goods are re-imported within the validity period of the Carnet and the prescribed customs endorsements are obtained at export and re-import, no customs duty ordinarily becomes payable. Nevertheless, Customs authorities may verify the identity of the goods and compliance with the conditions of the Carnet at the time of clearance.

For temporary exports not covered by ATA Carnet, a bond is executed with Customs at export stage. On re-import, the goods attract duty under Notification 45/2017-Cus. If no export benefit was availed and the goods return in the same condition, no duty is payable. Natural depreciation during use abroad is a discretionary ground for reducing assessable value on re-import.

Conclusion

Sound re-import compliance begins at the export stage, not at the port of re-import. Exporters who record detailed identification particulars i.e. serial numbers, lot numbers, marks, photographs of goods at the time of export are in a far stronger position when the goods return. Equally, the question of whether to claim drawback or IGST refund on export should factor in the possibility of return, particularly for goods going to new or uncertain buyers.

Finally, all re-import documentation i.e. the original Shipping Bill, the Bill of Entry for re-import, the repair or warranty invoice, the bond executed, the drawback reversal proof, and all correspondence with Customs must be preserved for a minimum of 5 years. These records are the first line of defence in any customs audit, GST audit, or departmental inquiry. Their absence invariably weakens an otherwise valid position.

Re-import law is not complex, but it is unforgiving of sloppy documentation and incorrect notification citation. The legal framework provides clear relief for each situation but only to those who plan at the export stage, identify the right notification, and maintain meticulous records. Businesses that treat re-import as a routine clearance exercise without legal review consistently overpay duty or face unnecessary demands. A structured SOP for re-imports, reviewed by a customs practitioner, pays for itself many times over.

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