

COST OF NON-COMPLIANCE IN TRADE COMPLIANCE

- ✓ The costs of ignoring regulations—fines, litigation, and reputational ruin—far outweigh the investment in proactive compliance programs.
- ✓ Non-compliance can cripple organizations through operational shutdowns, lost trust, and massive penalties.
- ✓ Misclassification can amount to non-compliance under Indian Customs law, but the legal consequences depend on *intent, facts, and degree of negligence*. It is not automatically treated as fraud in every case.

At Trade Companion tool we ensure that you arrive at the correct classification irrespective of your Industry.

Let's analyze this like a legal note vis a vis classification related disputes.

Short Answer

Yes. Wrong classification of goods under the Customs Tariff can lead to:

- Demand of duty
- Interest
- Penalty
- Confiscation (in serious cases)
- Prosecution (in fraud cases)

However, the **severity depends on whether the misclassification is bona fide or intentional.**

1. Why classification is legally critical

Classification determines:

- Basic Customs Duty (BCD)
- IGST
- Anti-dumping duty
- Safeguard duty
- Import policy (free/restricted/prohibited)
- BIS/QCO applicability or any other allied acts
- Exemption eligibility

Hence, classification errors directly affect revenue and regulatory compliance.

Legal basis:

- Customs Tariff Act, 1975
- Customs Act, 1962
- General Rules for Interpretation (GRI)

2. Statutory provisions triggered by misclassification

(A) Section 17 — Self-Assessment

Importers now self-assess classification.

If wrong → re-assessment + demand.

(B) Section 28 — Demand of Duty

If duty short-paid due to wrong classification:

Two situations:

Bona fide error

Time limit: **2 years**

Consequence:

- Duty + Interest

Fraud / suppression / misstatement

Time limit: **5 years**

Consequence:

- Duty + Interest + Heavy Penalty

This distinction is extremely important in litigation.

(C) Section 111(m) — Confiscation

Goods become liable for confiscation if:

- Declaration is false or incorrect in material particulars.

Wrong classification = incorrect declaration.

This is why misclassification becomes **non-compliance**.

(D) Section 112 — Penalty

Penalty for improper importation:

- Up to duty amount (or more in fraud cases)

(E) Section 114A — Mandatory penalty (Fraud cases)

If misclassification involves:

- Suppression
- Willful misstatement
- Intent to evade duty

Penalty = **100% of duty**.

3. Judicial view — very important distinction

Indian courts repeatedly hold:

Not every misclassification = fraud.

Courts distinguish between:

- Interpretation dispute
vs
- Deliberate evasion

Courts say bona fide disputes are common because:

Classification involves:

- Technical interpretation
- Competing headings
- HSN notes
- Exemption conditions

Hence, mens rea matters.

4. When misclassification becomes serious non-compliance

Misclassification is treated as **serious violation** when:

Red flags courts consider:

1. Ignoring clear tariff headings
2. Using unrelated exemption notifications
3. Hiding product literature/specifications
4. Changing description across shipments
5. Repeated wrong classification despite queries
6. Import policy evasion (Restricted goods shown as free)
7. BIS/QCO or any other allied acts evasion via wrong HSN

This is where Section 28 extended period is invoked.

5. When misclassification is treated as bona fide

Courts grant relief when:

- Issue is interpretational
- Multiple rulings exist
- Classification debatable
- Full disclosure made to customs
- No suppression of facts

Typical examples:

- Chemical classification disputes
- Engineering goods
- Parts vs components disputes
- Raw material vs finished goods
- New technology products

This is very common in practice.

6. Link with BIS / Allied acts Import Policy (Very important today)

Misclassification is now treated more seriously because it may lead to:

- Import of restricted goods without license
- Avoidance of BIS certification or any allied acts
- Avoidance of anti-dumping duty, SFG, CVD etc.

Hence enforcement has become stricter post-2020.

7. Practical legal conclusion

| Situation | Legal Consequence |
|--------------------------------|---|
| Genuine classification dispute | Duty + interest only |
| Negligent misclassification | Duty + interest + penalty |
| Intentional misclassification | Duty + interest + 100% penalty + confiscation |
| Fraudulent evasion | Duty + penalty + prosecution possible |

Final Legal Position (Key Takeaway)

Misclassification = Non-compliance.

But punishment depends on **intent + disclosure + conduct.**

In litigation strategy, the entire defence revolves around proving:

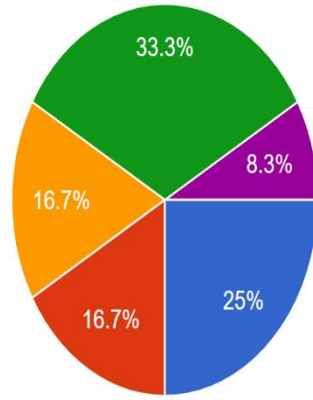
- Full disclosure
- No suppression
- Bona fide interpretational dispute

Survey Data

Survey-1: Empirical Survey on Exemption Notification u/s 25 of the Customs Act, 1962

Respondent Category

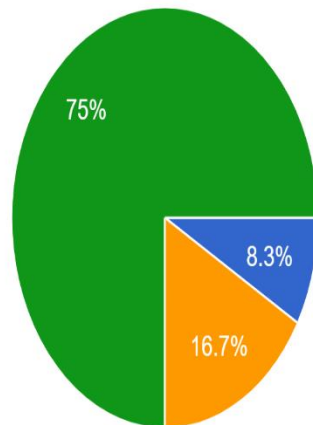
12 responses



- Importer
- Exporter
- Customs Broker (CHA)
- Trade Consultant
- Advocate (Indirect Tax)

Years of Professional Experience

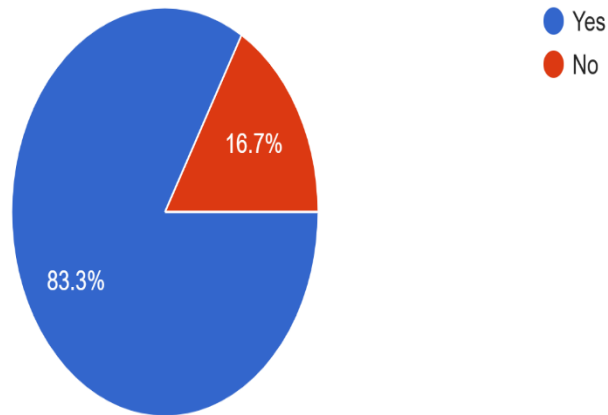
12 responses



- 0-3 Years
- 4-7 Years
- 8-15 Years
- 15+ Years

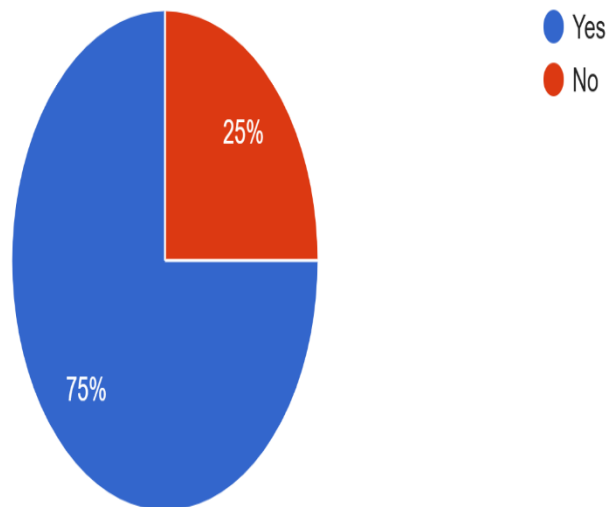
Are you aware that the Exemption notifications under Customs law are issued under Section 25 of the Customs Act, 1962?

12 responses



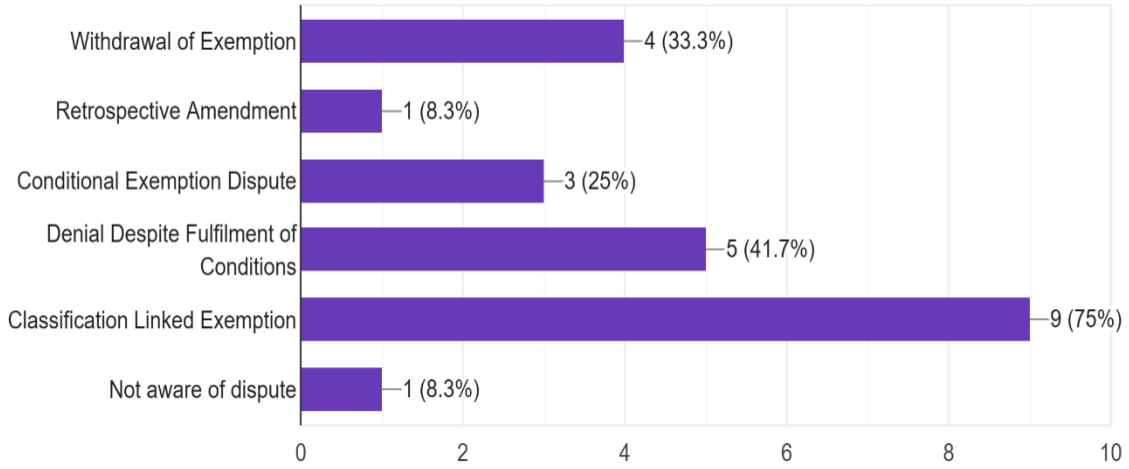
Have you personally faced or handled any dispute arising out of a customs exemption notification?

12 responses



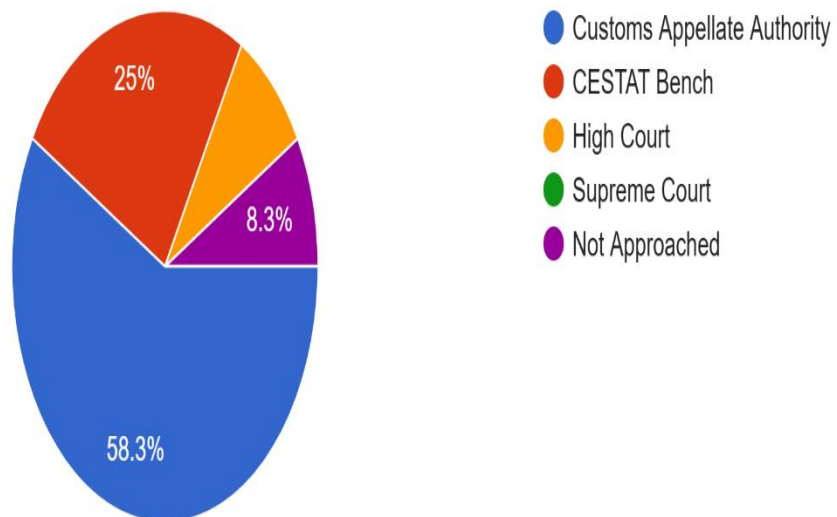
What was the nature of the exemption notification dispute?

12 responses



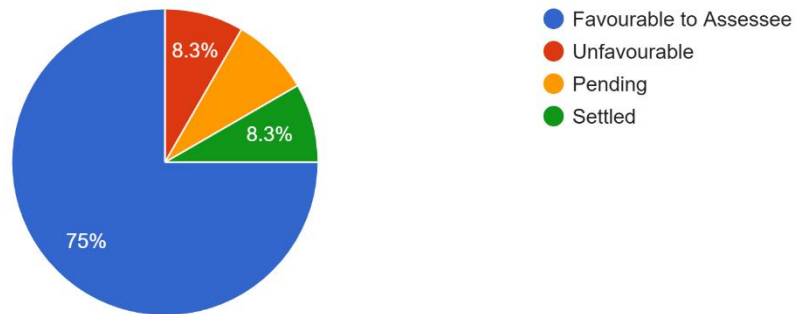
Which forum was approached for judicial relief?

12 responses



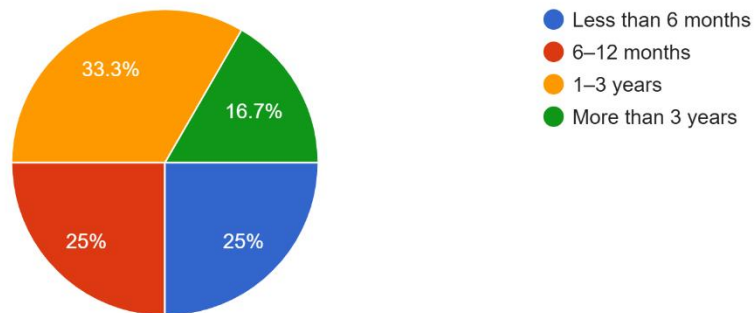
Outcome of the Case?

12 responses



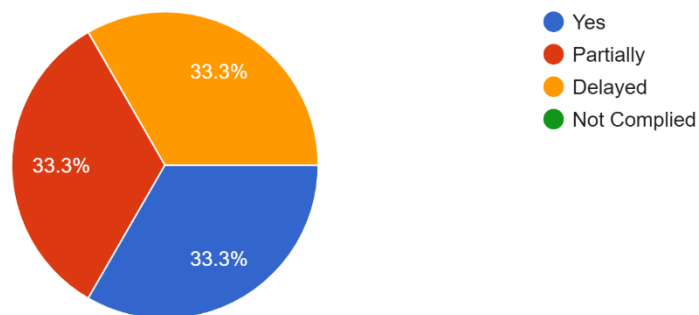
Time Taken for First Judicial Relief?

12 responses



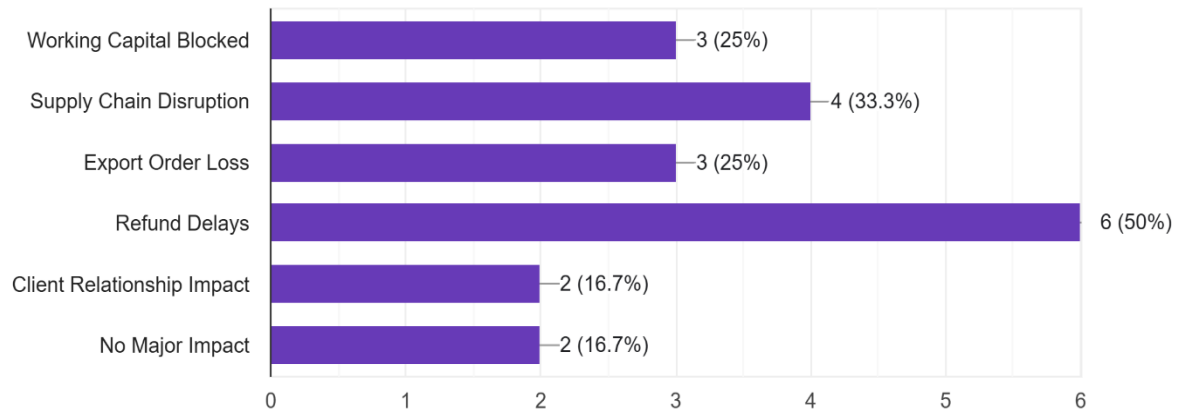
Did Customs authorities comply with the court order immediately?

12 responses



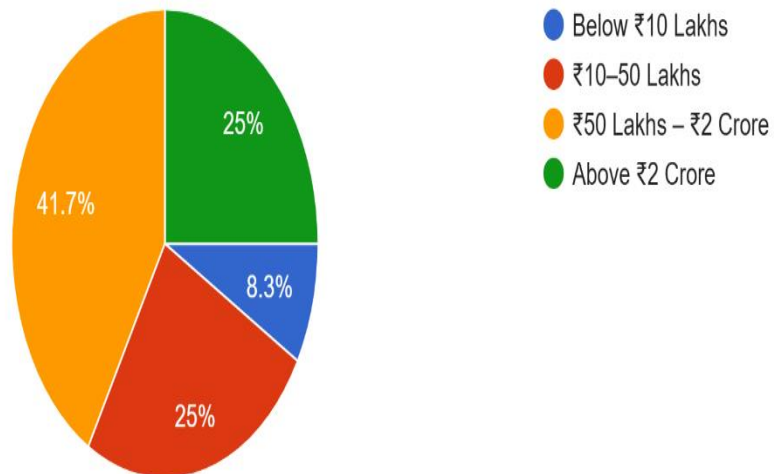
What type of business impact did you suffer due to the dispute?

12 responses



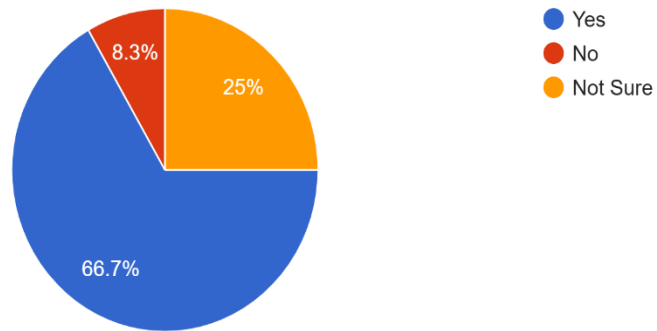
Estimated Financial Impact

12 responses



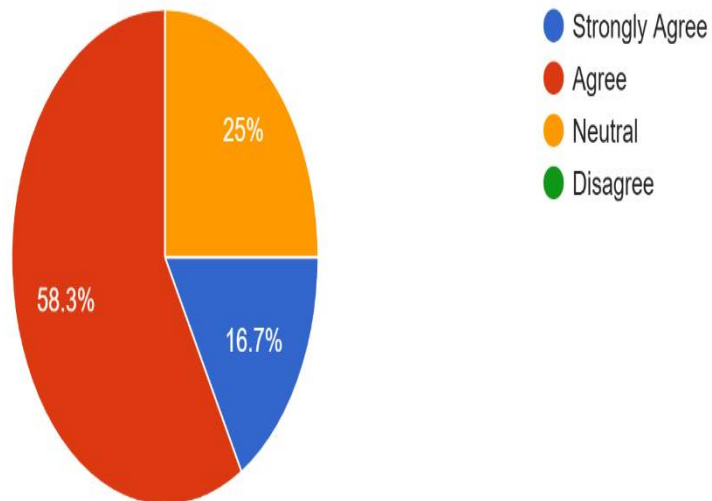
Do you believe Section 25 of the Indian Customs Act grants excessive discretionary power to the Government?

12 responses



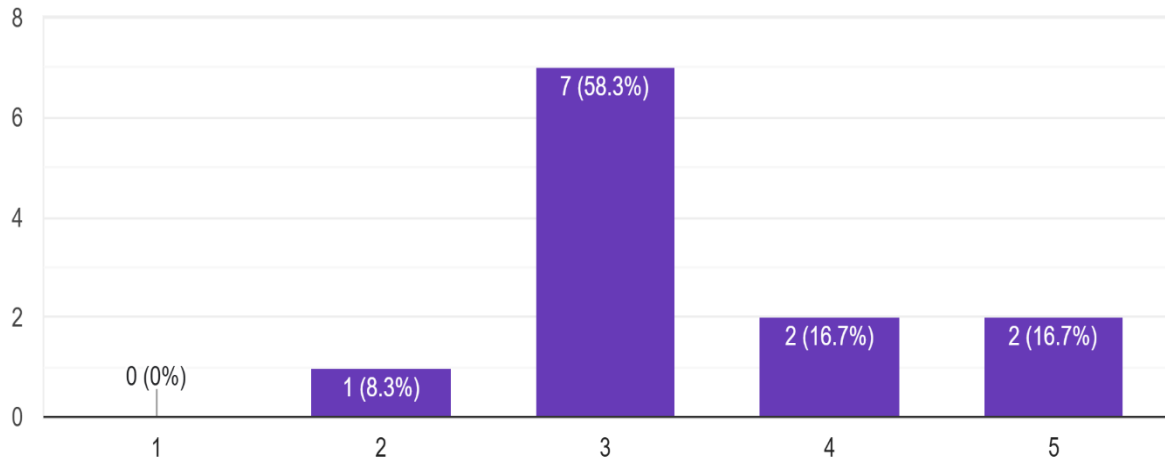
Do you think exemption notifications are frequently misused or issued arbitrarily?

12 responses



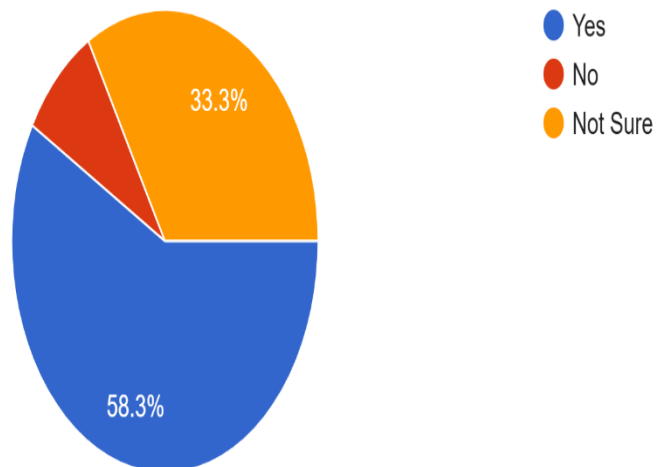
On a scale of 1–5, how effective is judicial review in controlling arbitrary exemption notifications?

12 responses



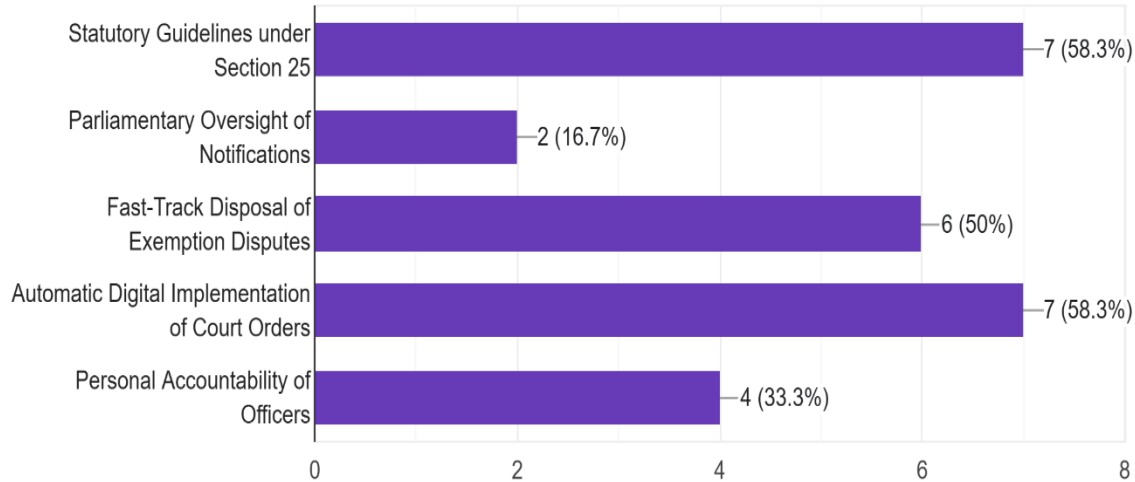
Without judicial review, would arbitrariness in exemption notifications increase?

12 responses



What reforms do you support?

12 responses



**Personal details of respondents cannot be disclosed due to Privacy laws and privileges associated with the same.*

EMPIRICAL SURVEY ANALYSIS OF DATA FOR **SURVEY-1**

Summary • Findings • Trends • Suggested Reforms

1. Overview of the Survey

The survey titled “**Empirical Data Survey – Exemptions under Section 25 of the Indian Customs Act, 1962**” collected responses from **12 trade professionals** including importers, exporters, consultants and legal practitioners. (Page 1)

The purpose was to understand:

- Practical impact of exemption notifications
- Litigation trends
- Compliance burden
- Views on judicial review and reforms

2. Respondent Profile

Category of Respondents (Page 1)

- Importers – **25%**
- Exporters – **8.3%**
- Consultants – **41.7%**
- Legal professionals – **25%**

👉 Majority respondents are **trade consultants and legal experts**, meaning responses are highly informed.

Years of Professional Experience (Page 1)

- 0–3 years – 8.3%
- 3–5 years – 16.7%
- 5+ years – **75%**

👉 **75% respondents are highly experienced professionals**, strengthening reliability of data.

3. Awareness and Litigation Exposure

Awareness of Exemption Notifications (Page 2)

- Yes – **83.3%**
- No – 16.7%

👉 Shows strong awareness of delegated legislation in trade practice.

Experience of Disputes (Page 2)

- Faced disputes – **75%**
- No disputes – 25%

👉 Indicates **very high litigation exposure** in exemption notifications.

4. Nature of Disputes

Main Types of Disputes (Page 3)

Most frequent dispute types:

| Type of dispute | % |
|-------------------------|------------|
| Disputed interpretation | 75% |
| Withdrawal of exemption | 33% |
| Conditional exemption | 25% |
| Retrospective amendment | 8% |
| No disputes | 8% |

👉 **Interpretation disputes dominate litigation.**

This confirms major doctrinal issue: ambiguity in delegated legislation.

5. Judicial Remedies Used

Forum Approached (Page 3)

- High Courts – **58.3%**
- CESTAT – 25%
- Supreme Court – 8.3%
- No appeal – 8.3%

👉 Most disputes escalate to **constitutional courts**, confirming importance of judicial review.

6. Outcome of Litigation

Case Outcomes (Page 4)

- Favourable to businesses – **75%**
- Against business – 16.7%
- Settled – 8.3%

👉 Courts frequently **intervene in favour of businesses**.

This strongly supports dissertation hypothesis.

7. Time Taken for Judicial Relief (Page 4)

| Time | % |
|-----------|-----|
| <1 year | 25% |
| 1–3 years | 25% |

Time %

3–5 years 33.3%

>5 years 16.7%

👉 Litigation is **time-consuming**, affecting trade certainty.

8. Compliance of Court Orders (Page 5)

- Yes – 33.3%
- No – 33.3%
- Delayed compliance – 33.3%

👉 Serious governance issue: **non-compliance by authorities**.

9. Business Impact of Disputes (Page 5)

Most affected areas:

| Impact | % |
|--------------------------|------------|
| Financial losses | 50% |
| Working capital blockage | 25% |
| Supply chain disruption | 25% |
| Reputation impact | 16.7% |

👉 Delegated legislation has **direct economic consequences**.

10. Estimated Financial Loss (Page 6)

- 1–5 Crore – **41.7%**
- Above 5 Crore – 25%
- Below 1 Crore – 25%
- No loss – 8.3%

👉 Confirms **high economic stakes** in exemption disputes.

11. Excessive Delegation Perception (Page 6)

“Does Section 25 grant excessive discretion?”

- Yes – **66.7%**
- No – 8.3%
- Not sure – 25%

👉 Strong perception of **excessive executive power**.

12. Frequency of Notification Changes (Page 7)

- Frequently issued – **58.3%**
- Neutral – 25%
- Disagree – 16.7%

👉 Confirms **policy instability**.

13. Need for Judicial Review (Page 7)

Scale rating:

- Strong support score **3–5 range majority**

👉 Respondents strongly favour judicial oversight.

14. Risk of Arbitrariness without Judicial Review (Page 8)

- Yes – **58.3%**
- No – 8.3%
- Not sure – 33.3%

👉 Judicial review seen as **essential safeguard**.

15. Reform Support (Page 8)

Most supported reforms:

| Reform | % |
|-------------------------|--------------|
| Statutory guidelines | 58.3% |
| Parliamentary oversight | 50% |
| Transparent drafting | 33.3% |
| Judicial oversight | 33.3% |

16. Qualitative Comments from Respondents (Page 9)

Key suggestions from professionals:

- Clear and stable exemption regime needed
- Mandatory consultation with industry

- Digital & transparent notification process
- Stronger legal accountability of authorities
- Judicial review should continue as safeguard

17. Key Findings (Consolidated)

The survey reveals 6 major findings:

1. Delegated legislation dominates customs practice
2. Litigation due to notifications is extremely high
3. Interpretation disputes are the biggest problem
4. Courts frequently rule in favour of businesses
5. Compliance by authorities is inconsistent
6. Stakeholders strongly believe Section 25 gives excessive power

18. Emerging Trends

Trend 1 — Litigation Driven by Ambiguity

Ambiguous notifications → disputes → judicial review.

Trend 2 — Courts as Primary Safeguard

High success rate of businesses confirms judicial protection.

Trend 3 — Policy Instability

Frequent changes → trade uncertainty → financial loss.

Trend 4 — Governance Gap

Court orders not implemented promptly.

19. Suggested Reforms (Derived from Survey)

Legislative Reforms

- Insert statutory guidelines in Section 25
- Mandatory publication of reasons for notifications
- Parliamentary scrutiny of major exemptions

Administrative Reforms

- Pre-notification industry consultation
- Advance notice before withdrawal of exemptions
- Centralised portal for all trade notifications

Judicial & Institutional Reforms

- Fast-track customs litigation benches
- Mandatory compliance timelines for authorities
- Strengthening doctrine of legitimate expectation

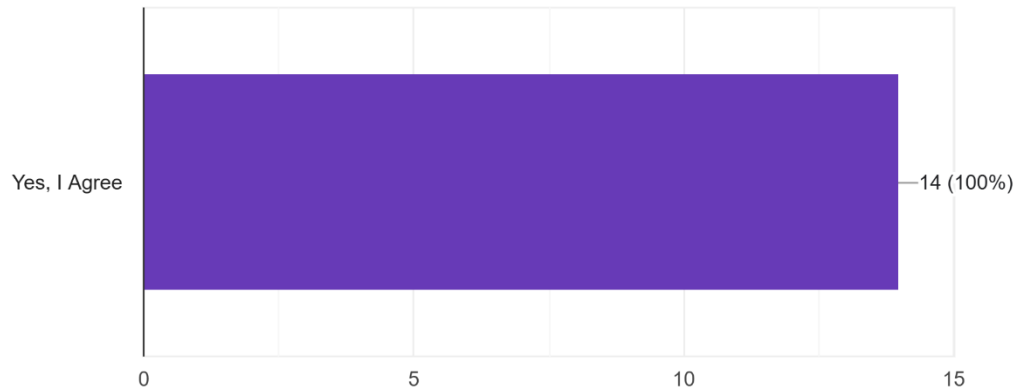
20. Conclusion of Survey Analysis-1

The empirical data strongly supports the dissertation hypothesis that **delegated legislation under customs law provides flexibility but creates uncertainty and litigation**, and that **judicial review acts as the primary constitutional safeguard**.

Survey-2: HSN Classification Dispute survey & Judicial Review

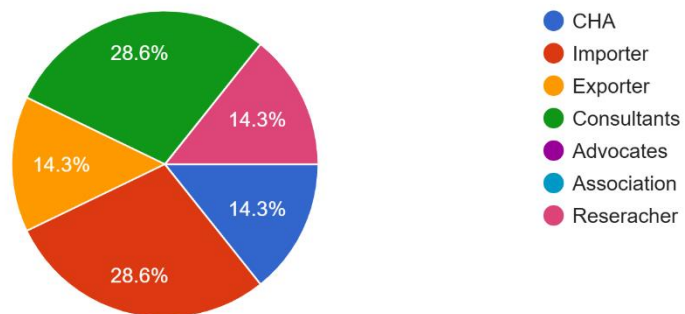
Voluntary Consent for Participating in this Empirical Study

14 responses



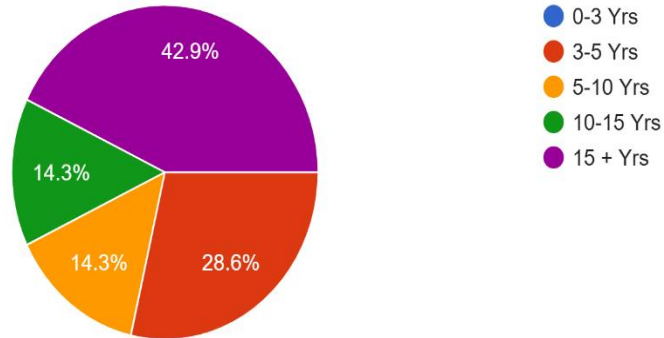
Participants Profile

14 responses



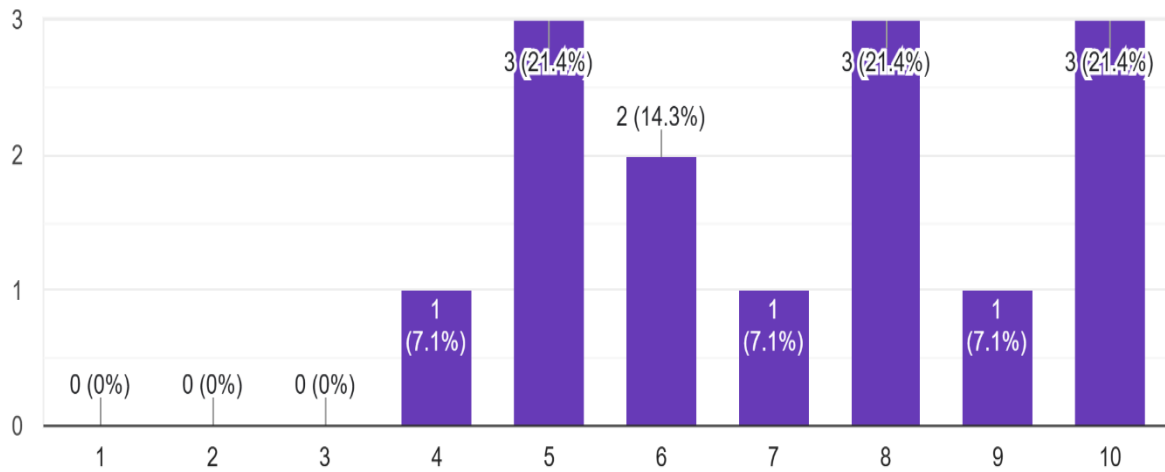
Participants Years of Experience

14 responses



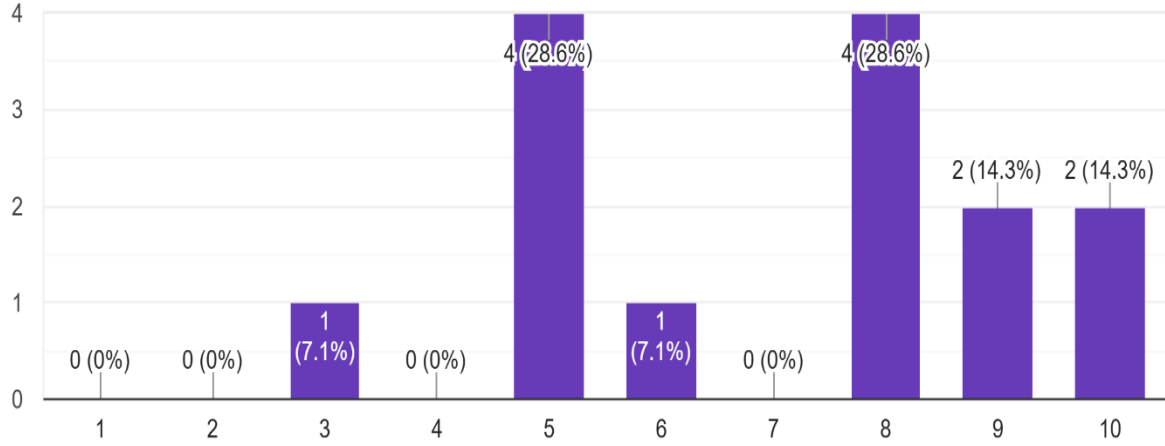
Awareness of HSN Classification System

14 responses



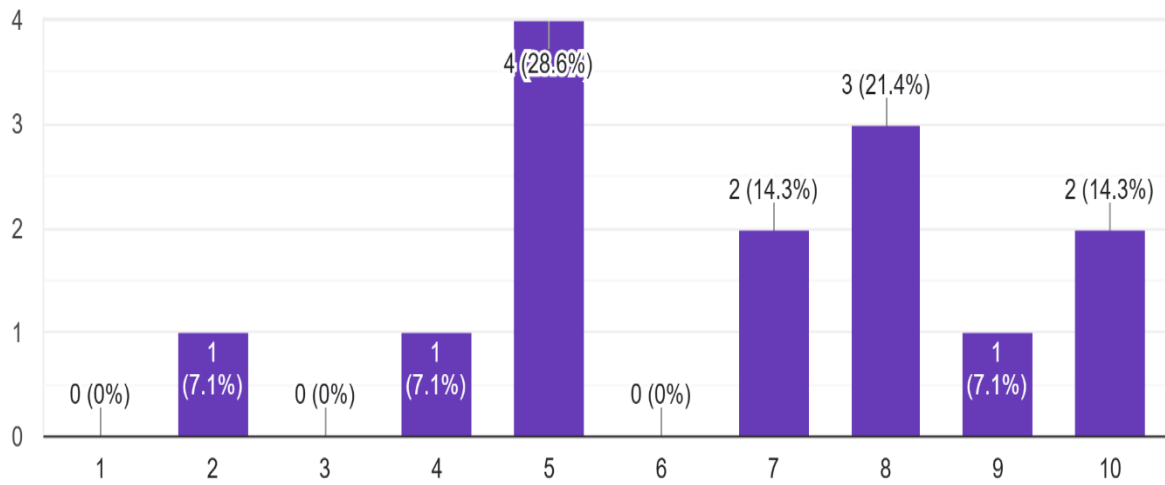
Awareness of Customs Tariff

14 responses



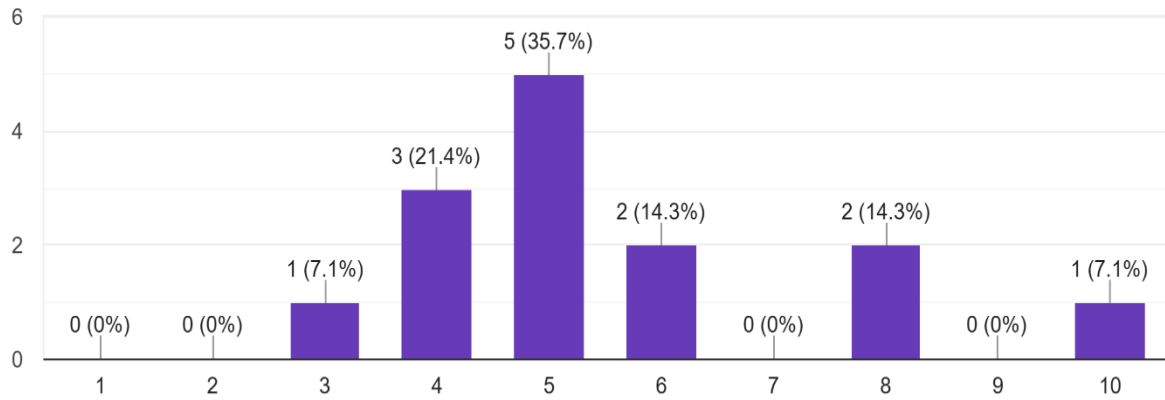
Awareness of DGFT Import Policy

14 responses



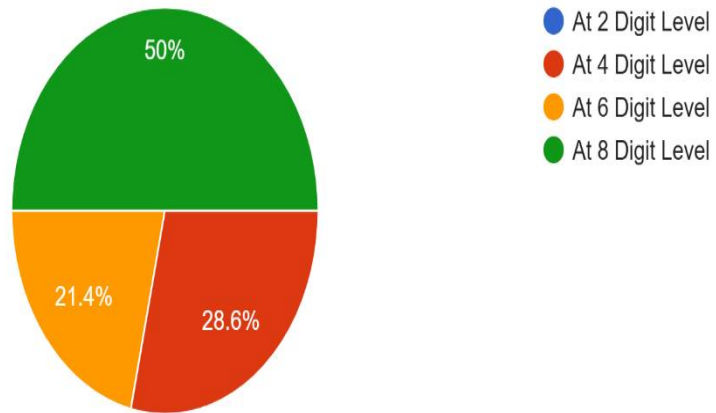
Awareness of WCO HS Explanatory Notes

14 responses



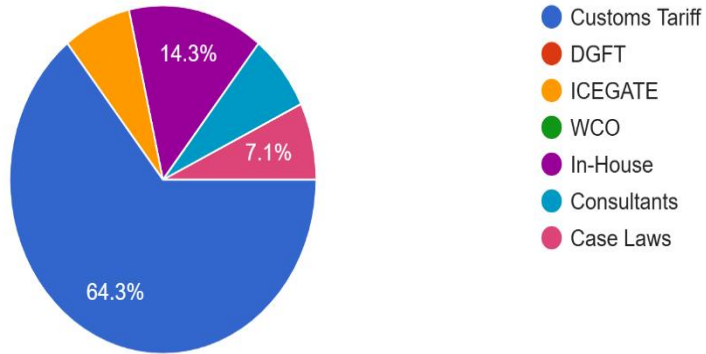
Typical HSN Classification level that you handle regularly

14 responses



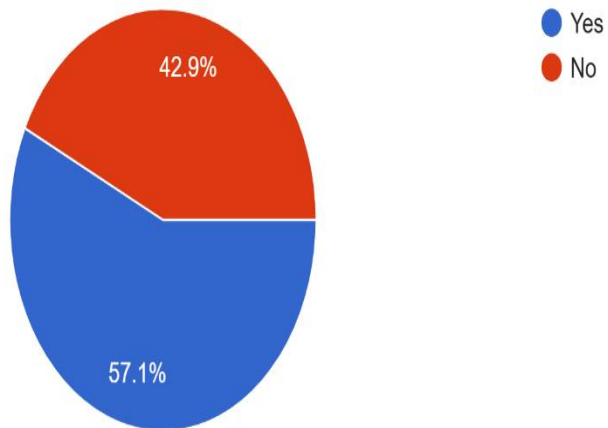
HSN Classification Sources & Tools Used

14 responses



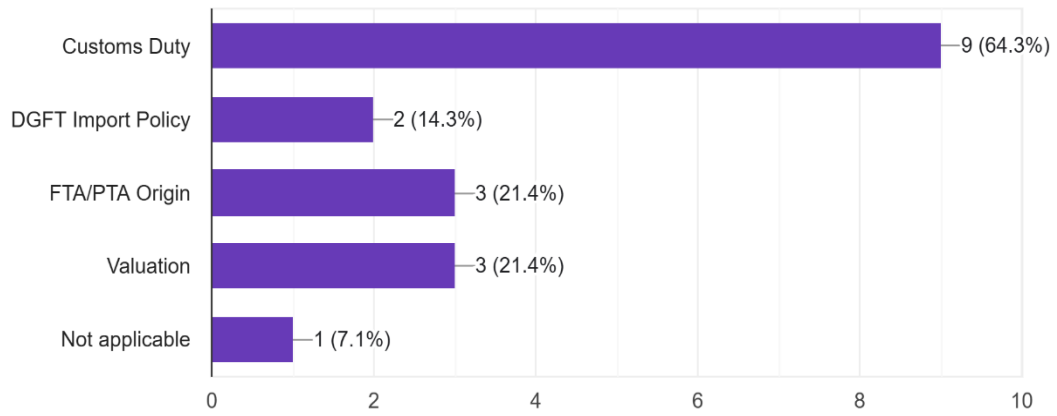
Faced classification disputes?

14 responses



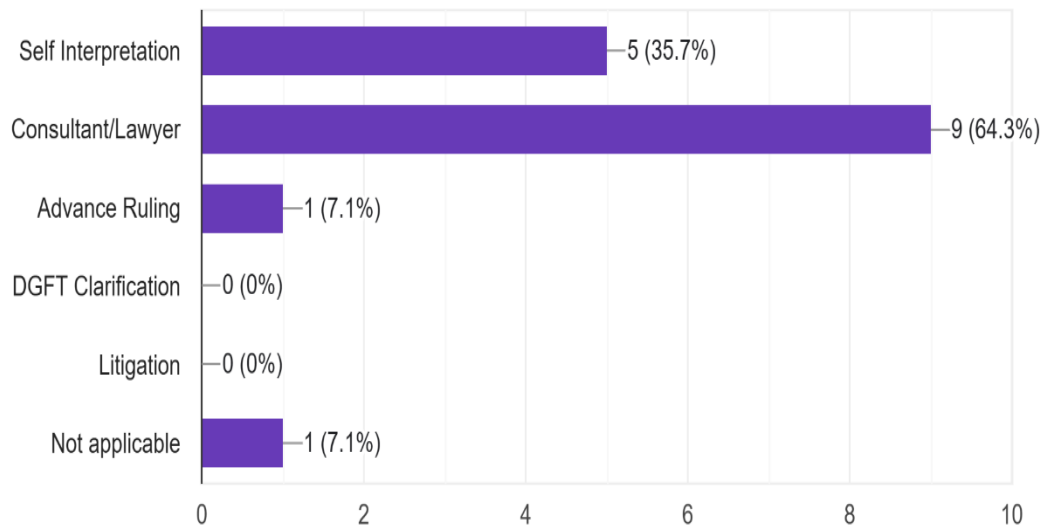
Nature of disputes

14 responses



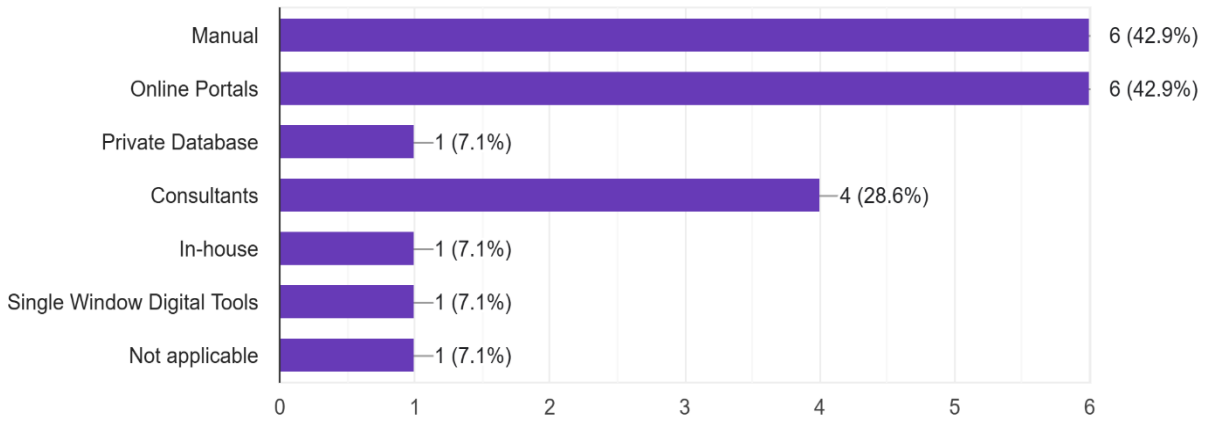
Resolution methods applied

14 responses



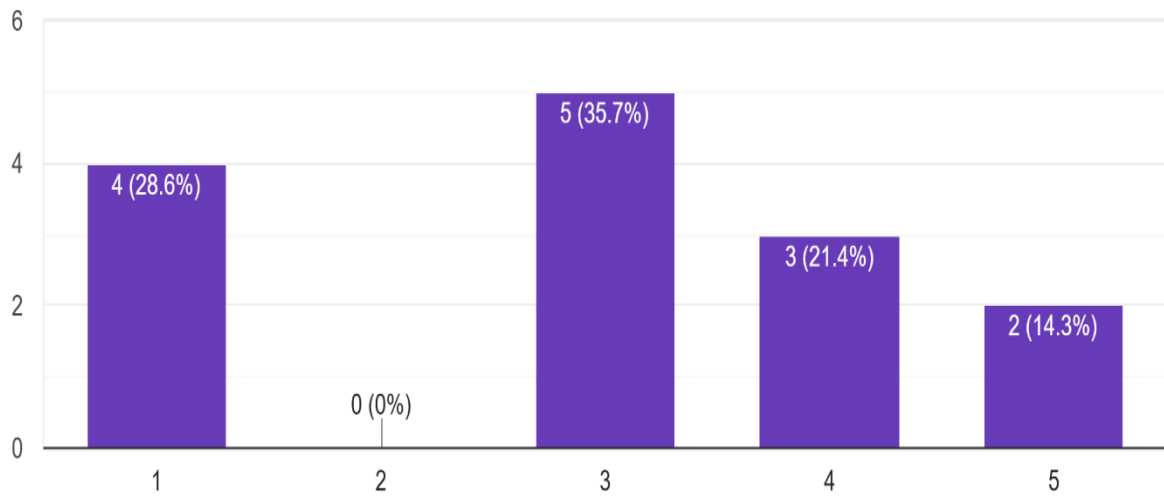
Digital tools used

14 responses



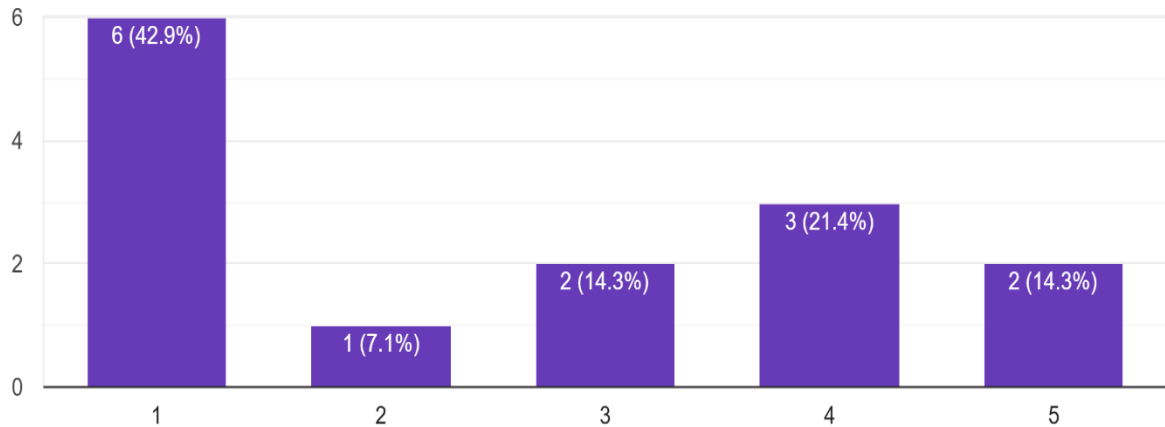
Cash flow impact

14 responses



Penalty/Interest exposure

14 responses



**Personal details of respondents cannot be disclosed due to Privacy laws and privileges associated with the same.*

HSN CLASSIFICATION EMPIRICAL SURVEY-2

Summary, Findings, Trends and Reforms

1. Survey Overview

The survey titled “**HSN Classification Empirical Survey**” collected responses from **14 professionals** engaged in customs, trade, compliance and legal practice. (Page 1)

Purpose of the survey:

- Understand challenges in HSN classification
- Identify dispute patterns
- Assess awareness levels

- Evaluate financial and compliance impact
- Collect reform suggestions

This survey is highly relevant to the dissertation theme because **classification disputes are a major trigger for judicial review.**

2. Respondent Profile

Participation Consent

All respondents voluntarily agreed to participate (**100% consent**). (Page 1)

Professional Categories (Page 1)

Participants included:

- Customs Brokers / CHA
- Importers & Exporters
- Consultants
- Advocates
- Researchers
- Industry professionals

This shows a **diverse and experienced stakeholder base.**

Industries Represented (Page 3)

Participants belong to multiple sectors:

- FMCG
- Steel & Metal Scrap
- Chemicals & Pharma
- Automobile & Manufacturing
- Medical Equipment
- Legal Advisory
- Machinery & Welding

👉 Indicates **cross-sector relevance of HSN disputes**.

3. Experience Level of Respondents

According to the chart on **Page 4**:

| Experience | % |
|-------------|--------------|
| 15+ years | 42.9% |
| 5–10 years | 28.6% |
| 10–15 years | 14.3% |
| 3–5 years | 14.3% |

👉 **86% respondents have more than 5 years experience**, making the dataset reliable.

4. Awareness Levels

4.1 Awareness of HSN Classification (Page 4)

Most respondents rated their awareness between **5–10 on a 10-point scale**.

👉 Indicates **moderate to high awareness**, yet disputes still occur.

4.2 Awareness of Customs Tariff (Page 5)

Majority rated awareness between **5–10**.

However, some responses at lower levels indicate **knowledge gaps in practice**.

4.3 Awareness of DGFT Import Policy (Page 5)

Awareness is **moderate**, not universal.

👉 Shows need for better integration between Customs and DGFT regimes.

4.4 Awareness of WCO HS Explanatory Notes (Page 6)

Awareness is **comparatively lower**.

This is a crucial finding because WCO Notes are essential for classification.

5. Level of HSN Classification Used

According to the pie chart on **Page 6**:

| Level | % |
|---------------|------------|
| 8-digit level | 50% |
| 6-digit | 28.6% |
| 4-digit | 21.4% |

👉 Majority work at **8-digit classification**, where disputes are most frequent.

6. Sources Used for Classification

From chart on **Page 7**:

| Source | % |
|----------------|--------------|
| Customs Tariff | 64.3% |
| Consultants | 14.3% |
| Case Laws | 7.1% |

| Source | % |
|-------------|---------|
| ICEGATE/WCO | Small % |

👉 Heavy reliance on tariff text alone → limited use of interpretative tools.

This is a major cause of disputes.

7. Frequency of Classification Disputes

From pie chart on **Page 7**:

- Faced disputes – **57.1%**
- No disputes – 42.9%

👉 More than half of respondents face classification disputes.

8. Nature of HSN Disputes

From bar chart on **Page 8**:

| Type of dispute | % |
|----------------------------|--------------|
| Customs Duty rate disputes | 64.3% |
| Valuation disputes | 21.4% |
| FTA/Origin disputes | 21.4% |
| DGFT Policy disputes | 14.3% |

👉 Classification disputes are **primarily duty-driven**.

9. Dispute Resolution Methods

From **Page 8**:

| Method | % |
|---------------------|----------------------|
| Consultants/Lawyers | 64.3% |
| Self-interpretation | 35.7% |
| Advance Ruling | 7.1% |
| Litigation | 0% (directly stated) |

👉 Businesses avoid litigation and prefer **advisory solutions**.

10. Digital Tools Usage

From **Page 9**:

| Tool | % |
|-----------------------|--------------|
| Manual classification | 42.9% |
| Online portals | 42.9% |
| Consultants | 28.6% |

👉 Lack of integrated digital tools is evident.

11. Financial Impact of Classification Issues

Cash Flow Impact (Page 9)

Majority rated impact between **3–5 on scale**, indicating **moderate to high financial strain**.

Penalty & Interest Exposure (Page 10)

Majority experienced **significant exposure** to penalties.

👉 Confirms economic consequences of classification disputes.

12. Qualitative Reform Suggestions (Page 11)

Respondents suggested:

- More workshops and training
- Digitisation of classification process
- Clearer rules and guidance
- User-friendly tools
- Clarity in Appendix 4R procedures

13. Key Findings

From the entire dataset, 6 major findings emerge:

1. HSN classification disputes are common.
2. Awareness exists but technical clarity is lacking.
3. Businesses rely heavily on consultants.
4. Financial and penalty exposure is significant.
5. Digital tools are inadequate.
6. Stakeholders strongly support reform.

14. Emerging Trends

Trend 1 — Duty-Driven Litigation

Classification disputes mainly arise due to duty differences.

Trend 2 — Knowledge Gap in WCO Tools

Low awareness of WCO explanatory notes → misclassification.

Trend 3 — Heavy Reliance on Advisors

Consultants are primary dispute-resolution mechanism.

Trend 4 — Digital Infrastructure Gap

Manual processes still dominate classification.

Trend 5 — Financial Risk Exposure

Penalties and interest create serious business risk.

15. Suggested Reforms

Legal & Policy Reforms

- Clear statutory guidelines for classification disputes
- Strengthen advance ruling mechanism
- Mandatory explanatory notes for major tariff changes

Administrative Reforms

- National HSN guidance portal
- Regular training by CBIC & DGFT
- Harmonization of Customs & DGFT classification practice

Technological Reforms

- AI-based classification tools
- Single-window digital classification platform
- Public database of classification rulings

16. Conclusion

The survey clearly shows that HSN classification is a major source of disputes, financial exposure and compliance burden. These findings strongly support the dissertation's central argument that delegated legislation and executive

interpretation must be supported by stronger safeguards, clarity and judicial oversight.

For Trainings/Workshops/Consulting/Litigation Support Please connect with
@Ravi Shekhar Jha intelconsul@gmail.com +91-9999005379

For Product Access Please connect with

@Sidharth Yadav sidharth_08@yahoo.com +91-9980493690