

For Departmental Use



# Customs Manual 2011



Directorate of Publicity and Public Relations  
Customs & Central Excise  
C.R. Building, I.P. Estate, New Delhi-110109

Central Board of Excise & Customs  
Department of Revenue  
Ministry of Finance

*FOR DEPARTMENTAL USE*

# **CUSTOMS MANUAL**

## **2011**

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Department of Revenue  
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## **Foreword**

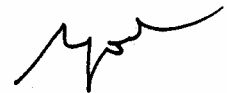
Central Board of Excise & Customs (CBEC) has been a major contributor to the national exchequer. In the year 2010-11, the indirect tax revenue is estimated to be ₹ 3,13,000 crores out of which Customs revenue is ₹ 1,15,000 crores. The department has also been in the forefront of automation, simplification and streamlining of procedures, introducing a number of measures for facilitation of trade and industry and reducing transaction cost.

2. In its endeavor to enhance compliance and ensure trade facilitation, the CBEC had issued the last Customs Manual in the year 2001. It contains various instructions, orders, circulars on Customs matters complied meticulously to guide the departmental officers in effectively rendering their duties as well as a guide to provide information to trade and industry in dealing with Customs.

3. Over the years, Customs have introduced a number of measures in order to facilitate the trade and enhance the level of compliance with the Customs laws, Rules and Regulations. Consequently legal and procedural provisions on different issues have undergone significant changes during these years and a number of clarifications have been issued. Further, automation of Customs EDI for electronic processing of various declarations filed with Customs, introduction of Risk Management System and other modern methods of working in all spheres of customs work has necessitated revision in procedures. Therefore, it has been decided to bring out an up-to-date edition of the Customs Manual. I am confident that this updated Customs Manual will be of great help to departmental officers in discharging their duties in the days to come.

4. While adequate precautions have been taken to include all amendments and additions in customs policy and procedures in this manual, possibility of some inadvertent errors may not be ruled out. It would be appreciated if the same is brought out to the notice of the Board at the earliest so that necessary corrections are carried out. Also, it merits mention that this Customs Manual is expected to serve as a useful guide, but in no way does it substitute for the statute, rules, regulations, notifications, circulars and instructions. Thus, all concerned are expected to carefully study the relevant legal provision and Board's circulars and instructions while carrying out their assigned functions and implementing the Customs Act, 1962 and other relevant laws.

5. I would like to place on record my deep appreciation for the hard work done by all concerned officers and the staff of the Customs Wing, CBEC and the Directorate of Publicity and Public Relations in the release of this long overdue updated Customs Manual.



**(S.K. Goel)**

**Member (Customs)**

Central Board of Excise & Customs

27<sup>th</sup> January, 2011.



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## Chapter 1

### Overview of Customs Functions

#### 1. Introduction:

1.1 Central Board of Excise and Customs (CBEC) or simply the Board is a part of the Department of Revenue under the Ministry of Finance, Government of India. It deals with the tasks of formulation of policy concerning levy and collection of Customs and Central Excise duties, Service Tax prevention of smuggling and administration of matters relating to Customs, Central Excise, Service Tax and Narcotics to the extent under CBEC's purview. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise & Customs Commissionerates and the Central Revenues Control Laboratory.

1.2 The important Customs related functions includes the following:

- (a) Collection of Customs duties on imports and exports as per basic Customs laws (Customs Act, 1962 and Customs Tariff Act, 1975);
- (b) Enforcement of various provisions of the Customs Act, 1962 governing imports and exports of cargo, baggage, postal articles and arrival and departure of vessels, aircrafts etc.;
- (c) Discharge of agency functions and enforcing prohibitions and restrictions on imports and exports under various legal enactments;
- (d) Prevention of smuggling including interdiction of narcotics drug trafficking; and
- (e) International passenger clearance.

1.3 The Customs functions cover substantial areas of activities involving international passengers, general public, importers, exporters, traders, manufacturers, carriers, port and airport authorities, postal authorities and various other Government/semi-Government agencies, Banks etc. However, at any Customs station there are various other agencies/parties that are involved. On its part, the Customs is continuously rationalizing and modernizing its Customs procedures through adoption of EDI and global best practices. Also, as a member of the World Customs Organization, Indian Customs has adopted various international Customs Conventions and procedures

including the Revised Kyoto Convention, Harmonized Classification System, GATT based valuation etc.

## **2. Statutory provisions for levy of Customs duty:**

2.1 Entry No.83 of List 1 to Schedule VII of the Constitution empowers the Union Government to legislate and collect duties on imports and exports. Accordingly, the Customs Act, 1962, effective from 1-2-1963 provides vide its Section 12 for the levy of duties on goods imported into or exported from India. The items and the rates of duties leviable thereon are specified in two Schedules to the Customs Tariff Act, 1975. The First Schedule specifies the various import items in systematic and well considered categories, in accordance with an international scheme of classification of internationally traded goods known as 'Harmonized System of Commodity Classification' and specifies the rates of import duties thereon, as prescribed by the legislature. The duties on imported items are usually levied either on specific or ad-valorem basis, but in few cases specific-cum-ad valorem duties are also levied. The Second Schedule incorporates items that are subject to exports duties and the rates of duties thereof.

2.2 Levy of duties on ad-valorem (i.e., with reference to value) basis is the predominant mode of levy. For this purpose the value of the imported goods is required to be determined as per provisions of Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Prices of Imported Goods) Rules, 2007. These provisions are essentially the adoption of GATT based valuation system (now termed WTO Valuation Agreement) that is followed internationally. Likewise, in respect of export goods the value is to be determined as per provisions of Section 14 of the Customs Act, 1962 read with the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

## **3. Control and regulatory provisions:**

3.1 In tune with international practice the entry/exit of carriers/passengers etc. into and out of the country is regulated by law. The Customs Act, 1962 is the basic statute which governs/regulates entry/exit of different categories of vessels/crafts/goods/passengers etc., into or outside the country. Various allied laws and regulations also apply. It is the responsibility of the Customs to handle international traffic speedily and effectively while ensuring that all the goods/passengers etc., imported/coming into the country or exported/going out of the country by sea, air, land or rail routes are in conformity with the laws of the land.

3.2 Under the Customs Act, 1962 the Board is given the powers to appoint Customs ports, airports and Inland Container Depots (ICD) where alone the imported goods can be brought in for unloading or export goods loaded. Similar powers have been given to the Board to notify places as Land Customs Stations (LCS) for clearance of goods

imported or exported by land or by inland water. It is under the authority of these provisions that various airports, ports, ICDs and LCSs have been notified across the country and routes specified for carrying out trade with neighboring countries like Nepal.

3.3 Once a particular Customs port or airport is notified the Customs Act, 1962 empowers the jurisdictional Commissioner of Customs to approve specific places therein where only loading and unloading can take place as also specify the limits of the Customs area thereof where the imported goods or the export goods are ordinarily to be kept before clearance by the Customs authorities.

3.4 Essentially all cargo brought into the country or meant for export must pass through authorized points, be reported to Customs and the concerned importers/exports must fulfill the prescribed legal and procedural requirements laid down under Customs Act, 1962 and allied laws including payment of the duties leviable, if any. The legal provisions allow the Customs to regulate the outflow of the goods (and persons) out of the country and subject them to proper checks before allowing final exit out of the country by sea/air/land/rail routes. They also help detect any attempts of smuggling or commercial frauds by unscrupulous parties.

#### **4. Role of custodians:**

4.1 In regard to all imported goods unloaded in a Customs area, the Commissioner of Customs is required to appoint a custodian under whose custody the imported goods shall remain till these are cleared for home consumption, or are warehoused or transhipped as provided in the law. With the growth of containerized traffic the facility of Customs clearances at the interior centres in the country has been provided by opening various ICDs, which are actually dry ports and here too custody of imported goods the remain with the appointed custodian till these are cleared by the Customs. In addition to custodian appointed by the Commissioner of Customs the Customs Act, 1962 recognizes other custodians as provided under any other law. For instance, the Mumbai Port Trust is a legal custodian under the Major Ports Trust Act, 1963. The custodian is essentially required to take charge of the imported goods from the carrier, arrange its proper storage and safety and allow clearance to the importers only after they fulfill all the Customs formalities, pay requisite duties and other charges/fees and discharge various other obligations. No goods can be cleared from a Customs area without the express permission of the Customs. Moreover, since the Customs Act, 1962 obliges the custodians to ensure safe custody of the goods till delivery, in case any imported goods which are pilfered while in custody, the custodian is required to pay duty on such goods.

4.2 Various port trusts and other authorities in the public and private sectors handle the import and export cargo when kept in their custody at various ports, international



airports/ICDs. The cargo handling and custody at the international airports is generally entrusted to International Airport Authority of India (IAAI), but there is an increasing trend of the IAAI leasing such facility to private sector or even direct entry of private sector. Also, new ICDs are being opened at various industrial centres as a facilitation measure with the result that Customs clearances of both imported and export cargo, from these places has expanded substantially in recent years.

4.3 Maximum import and export cargo is handled at different sea ports and there is a trend towards containerized cargo movement; increasing part of import cargo from some ports like Nhava Sheva also moves by transshipments to interior ICDs for final clearance by various importers at their door steps. Security arrangements ensure that there is no pilferage/theft of the cargo and arrangements of loading and unloading of cargo at different berths in various docks, their movement to different places including container yards/storage godowns etc., are arranged by the port authorities.

4.4 The Customs authorities are given appropriate office place and requisite facilities in the dock area as well as in international cargo complexes/ICDs etc., to discharge their functions in relation to imports and exports such as supervision of loading/unloading of goods from vessels/crafts etc., supervision of stuffing or de-stuffing of containers, inspection and examination of goods which are imported/presented for exportation before Customs clearance formalities etc. For this purpose and in order to provide comprehensive guidelines for custodians / Cargo Service Providers (CCSP) for handling, receipt, storage and transportation of cargo in a Customs area, the Board has framed the Handling of Cargo in Customs Areas Regulations, 2009

## **5. Obligations of carriers:**

5.1 To regulate and have effective control on imports and exports the Customs Act, 1962 enjoins certain liabilities on the carriers. Thus, they have to bring in the cargo imported into the country for unloading only at notified ports/airports/Land Customs Stations; furnish detailed information to Customs about goods brought in for unloading at that particular port/international airport as also those which would be carried further to other ports/airports. Declaration of such cargo has to be made in a prescribed form termed 'Import General Manifest' (IGM) prior to arrival of the vessel/aircraft at the Customs station. In the case of imports through Land Custom Stations the person in charge of the vehicle has to give similar import report within 12 hours of its arrival. Since the cargo clearance formalities are linked generally with the availability of this information about cargo being brought by a vessel for unloading at any port, provisions his also made for prior filing of an IGM if all details of relevant cargo for any port are available even before the vessel arrives. The final IGM can be filed again after arrival of the vessel.

5.2 Unless, the IGM is furnished in the prescribed form, no unloading of cargo can be undertaken from any vessels/aircrafts/vehicles in normal circumstances. After the IGM is duly delivered the unloading takes place under the supervision of the preventive staff of Customs. The law prohibits unloading of any goods at a Customs station, which is not mentioned in the IGM/import report. Similarly, there are restrictions on loading for export. No vessel/aircraft can start loading goods for export unless intimation is given to Customs and Customs have given permission for loading – what is also called 'Entry Outward' of the vessel. Loading of cargo on vessels, aircrafts etc. has to be checked and supervised by Preventive Customs Officers who ensure that cargo loaded has discharged the prescribed Customs formalities such as payment of duties or cess where leviable, and any other formalities enjoined by the law before the exports are permissible, and authorization for exports has been duly given by the proper officer as a part of Customs clearance formalities.

5.3 The person in charge of the vessels/aircrafts are required to furnish details of all the goods loaded on a vessel or aircraft in a prescribed form which is termed 'Export General Manifest' (EGM). The person in charge of a vehicle must furnish a similar report called the Export Report. The EGM/Export Report is to be furnished before the vessel/aircraft/vehicle departs and is essentially taken as the final proof of shipment/export.

## **6. Customs preventive control:**

6.1 No vessel/aircraft can leave a Customs station unless a written order for port clearance is given by the proper officer of Customs. This permission for departure is given subject to the satisfaction of the proper officer that all the prescribed formalities have been fulfilled, duties/penalties etc., have been paid or secured.

6.2 The Preventive Officers are authorized to board the vessels/aircrafts to take suitable declarations, Crew property list etc., and to check whether there are any goods which are not declared for unloading at a particular Customs station in the IGM with intention to smuggle them without following the prescribed formalities and payment of duties. A thorough examination and checking of the vessels/aircrafts is also undertaken – known as rummaging - on selective basis taking due note of the past history of the vessel, the area/country from which the vessels are arriving, the intelligence report etc.

6.3 The Preventive staff of the Customs also keep a very careful vigil for checking any illegal activities and develop intelligence to guard against any possible attempts of unauthorized removals from the docks, unloading of unmanifested cargo etc.

## **7. Customs clearance of cargo:**

7.1 Before any goods imported can be cleared for home consumption in the country or for warehousing for subsequent Customs clearances as and when needed etc., the importers have to comply with prescribed Customs clearance formalities. Essentially, these involve presentation of certain documents along with a prescribed application normally termed 'Bill of Entry', which gives essential particulars in relation to imported goods, country of origin, particulars of vessel/aircraft etc. seeking clearance of goods for home consumption/warehousing etc. The importer either himself handles the import clearance documents or appoints an authorized Customs House Agents (CHAs) who are trained and experienced in Customs clearance work and are licensed by Customs for such work subject to certain conditions as laid down in the CHA Licensing Regulations, 2004.

7.2 The import clearance documentation, presentation, and processing is handled in the Custom Houses by Appraising staff trained in assessment matters. After a tally has been made with related IGM to ensure the goods sought for clearance have arrived and declared in the particular IGM of the vessel/aircraft mentioned in the Bill of Entry (or even where the prior manifest is filed) the scrutiny of documents – manually or through EDI system is taken up. The main function of the Appraising staff in the Custom Houses is careful scrutiny of the Bill of Entry and related particulars, and information on various documents with a view to checking the import permissibility in terms of the Foreign Trade Policy and any other laws regulating import and to determine value, classification and duties leviable on the goods on import – (Basic, Additional, Anti-dumping, Safeguards etc.). Permissibility of various benefits of duty free clearances under different schemes or applicability of any exemption notification benefits is also checked and decided.

7.3 Normally, the import declarations made are scrutinized without prior examination of the goods with reference to documents made available and other information about the values/classification available with Customs and duties chargeable on the goods are assessed and paid up by the importer or his authorized representative. It is only at the time of clearance of the goods from the custody of the port trusts/international airport authority or other custodians that these are examined on percentage basis by separate staff posted in the premises where the goods are stored pending Customs clearance. These officers undertake checking of nature of goods, valuation and other part of declaration, or draw samples as may be ordered by the Appraising officers of the Custom House/Cargo Complexes/ICDs. If no discrepancies in relation to the nature of goods, quantity, value etc., are observed at the time of examination of the cargo, 'Out of Customs Charge' orders are issued, and thereafter goods can be cleared after discharging any other fees/charges etc., of the custodians.

7.4 At times, for determining the duty liability and permissibility of import it may become necessary to examine the goods in advance. Such goods are got examined after filing of Bill of Entry and other documents and based upon the report of the examining staff, duties etc. are assessed and if there is no prohibition etc., the goods are taken clearance from the custodian without the need for further examination.

7.5 Where disputes arise in the matter of classification/valuation or any violations of any provisions of law are observed, where the goods cannot be allowed clearance finally without further investigations and following adjudication proceedings, the law provide for provisional clearances subject to suitable bond/security. Only where the goods are of prohibited nature or in certain other exceptional cases, where release on provisional basis is not considered advisable, the final decision may be taken after results of enquiries etc. are known and where necessary adjudication proceedings completed.

7.6 Customs clearance formalities for goods meant for export have to be fulfilled by presenting a 'Shipping Bill' and other related documents to the Export Section of the Custom Houses or EDI Service Centres. The Appraising staff checks the declarations to assess the duties/cess, if leviable, propriety of export incentives, where claimed under different schemes like Duty Drawback or duty free exemption schemes etc. Appropriate orders for examination before shipments are allowed export are given on the Shipping Bill. The staff in the docks/cargo complexes/ICDs examines the goods meant for export on percentage basis, and allows shipment if there are no discrepancies/ mis-declarations etc., and no prohibitions/violations come to light. Appropriate penal action as per law is initiated where any fraudulent practices get detected during initial stage of scrutiny or at the time of examination etc.

## **8. Smuggling and other violations and penal provisions:**

8.1 Unscrupulous elements do attempt to evade the duties leviable and bypass various prohibitions/restrictions in relation to imports by attempting to bring the goods into the country from places other than the notified ports/airports/Land Custom Stations without reporting or presenting the goods to customs. Similar attempts are made to take goods out of the country unauthorizedly. This is essentially termed as 'smuggling' and Customs officers have very important role in ensuring that they detect any such attempts of smuggling into or out of the country and take appropriate action both against the goods as well as against the persons involved.

8.2 The Customs Act, 1962 provides for strict penalties in relation to the goods/persons involved in smuggling and other violations of the legal provisions. These include seizure/confiscation (including absolute confiscation) of the offending goods and fines and penalties on the persons involved in the offence as well as those abetting the

offence. The law also empowers Customs officers to carry out searches, arrests and prosecution of persons involved in smuggling and serious commercial frauds and evasion of duties or misuse of export incentives by fraudulent practices (mis-declaration of nature, and value of the goods or suppression of quantities etc.).

8.3 Whereas the Customs Act, 1962 provides for deterrent penal provisions for all violations, due process of law has to be followed before any action is taken against the offending goods or persons/conveyance etc. involved. The Customs officers act as quasi-judicial authorities and the liabilities for duty evaded or sought to be evaded, fines and penalties etc., are adjudged by giving the persons concerned due notice (referred to as Show Cause Notice) of the contemplated action against the goods/persons/conveyance etc. including the gist of the charges and their basis, and providing opportunity for representation as well as personal hearing.

8.4 In grave offence cases prosecution with imprisonment upto maximum of 7 years is permissible under the Customs Act, 1962 but this action is taken following the usual criminal proceedings in a Court of law, after prosecution sanction is given by the competent Customs officer.

## **9. Appellate remedies:**

9.1 Any concerned person aggrieved with the departmental adjudication action is given the right to appeal against the said determination/order. The first level of appeal is to Commissioner (Appeal) and thereafter to an independent Tribunal (CESTAT) unless the adjudication order is originally passed by the Commissioner of Customs in which case the first level of appeal is to the CESTAT. On questions of law, the orders of CESTAT could also be considered for reference to the High Court and certain categories of decisions involving matters relating to classification or valuation can be appealed even before the Supreme Court.

## **10. Passenger clearance:**

10.1 All incoming international passengers after immigration clearance have to pass through the Customs who have the duty to ensure their maximum facilitation and speedy clearance. At the same time unscrupulous passengers may try to smuggle goods into the country which are sensitive and otherwise prohibited/restricted or evade duties by non-declaration/mis-declaration to Customs. Similarly, the Customs have to ensure that these passengers do not smuggle out foreign currency, antiques or other wildlife and prohibited items or narcotics drugs or psychotropic substances. The Customs have also to ensure enforcement of various other allied laws before any goods carried by the passengers on person, in hand bag or accompanied baggage enter into the country or get out of the country.

**11. Import/Export by post/courier:**

11.1 Customs is charged with necessary coordination with Postal authorities for giving Customs clearances after appropriate checking on selective basis of various goods coming by post parcels, etc. Customs ensure that these postal mail/packets/parcels enter into the country in accordance with the provisions of the Customs Act, 1962. Unless the goods brought by parcels are within the value limits that are permissible as free gift or free samples these have to be assessed to duties by Customs and the same indicated to Postal authorities. The duties are collected before the Postal authorities deliver the goods to the addressees.

11.2 Imports/exports through couriers is governed by the Courier Imports and Exports (Clearance) Regulations, 1998 and the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. These facilitate goods brought in by courier get Customs cleared quickly, discharging duties where leviable, before these are forwarded for delivery to the consignees. At few places dedicated Courier terminals manned by Customs officers (akin to Air Cargo Complexes) are established to handle courier cargo.

**12. Citizen's Charter:**

12.1 Customs has committed in its Citizen Charter to provide to trade and industry time bound and speedy cargo clearance facility, quick redressal of grievance, and inculcating in its officers' a sense of service with stress on courtesy, understanding, integrity, objectivity and transparency. Customs is committed to constantly take measures to further professionalize and render efficient and prompt service to all stakeholders.

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## **Chapter 2**

### **Arrival of Conveyances and Related Procedures**

#### **1. Introduction:**

1.1 Customs control over conveyances that bring imported goods and take out export goods is necessitated by the fact that all imports and exports are required to be subjected to appropriate Customs clearance procedures. Hence, legal provisions are in place to monitor such conveyances and the goods carried thereon. Furthermore, in terms of Section 2 of the Customs Act, 1962 conveyances include a vessel, an aircraft and a vehicle thereby covering all possible modes of transport and carriage of cargo.

#### **2. Conveyances to call only at notified Customs ports/airports:**

2.1 Section 7 of the Customs Act, 1962 envisages that the unloading/clearance of imported goods and loading/clearance of export goods shall be allowed only at places notified by the Board as Customs ports or Customs airports or Land Customs Stations or Inland Container Depots. At each such Customs ports or airport, the Commissioner of Customs is empowered to approve proper places for the unloading and loading of goods, and specify the limits of such Customs area. It is further provided vide Section 29 *ibid* that the person in charge of the vessel or an aircraft shall not call or land at any place other than a Customs port/airport, except in cases of emergencies.

#### **3. Power to board conveyance, to question and to demand documents:**

3.1 Section 37 of the Customs Act, 1962 empowers the proper officer of Customs to board any conveyance carrying imported goods or export goods and Section 38 *ibid* provides that the proper officer may question the person in charge of the vessel or aircraft or demand production of any documents. The person in charge of the conveyance is bound to comply with these requirements.

#### **4. Delivery of Import Manifest:**

4.1 In accordance with Section 30 of the Customs Act, 1962 the person in charge (Master / Agent) of the vessel or an aircraft has to deliver an import manifest (an import report in case of a vehicle), prior to arrival in the case of a vessel and an aircraft or within 12 hours of arrival in case of a vehicle in the prescribed form. The time limit for filing the manifest is extendable on showing sufficient cause, but otherwise a penalty not exceeding Rs.50,000/- can be imposed on account of any

delay. A person filing the manifest/report declarations under this section has to declare the truthfulness of contents, which has legal consequences.

## **5. Person filing the manifest to be registered:**

5.1 In terms of the Import Manifest (Vessels) Regulations, 1971 and Import Manifest (Aircrafts) Regulations, 1976 any person, who delivers the import manifest for a vessel or an aircraft to the proper officer under Section 30 of the Customs Act, 1962 is required to be registered with Customs.

5.2 In order to ensure that the Import Manifest for vessel or aircraft is filed prior to arrival of vessel or aircraft, in terms of the said Regulations, the following procedure has been formulated:

- (i) The person responsible for filing of the Import Manifest, both at Master as well as House-level details, shall register with the Customs in advance. The application for registration shall be made to the Jurisdictional Commissioner of Customs in Form V or Form VI, as the case may be, of the said Regulations. The application should be accompanied by an undertaking to file the manifest details as required.
- (ii) Airlines/Steamer Agents/Shipping Lines/Consol Agents (including 'any other person' notified as per Section 30 of the Customs Act, 1962) are assigned business category codes as AL, SA, SL and CN, respectively. For the purpose of registration of Airlines/Steamer Agents/Shipping Lines, the existing Airline Code or Steamer Agents Code or Shipping Lines Code already allotted to them shall be used for filing manifest and same shall be their registration number. As regards consol agents, their registration number shall be of 12 digits (10-digit Income Tax PAN, followed by business category code, i.e. CN). A sample of registration number of a consol agent will look like AAACK8719PCN.
- (iii) Airlines/Steamer Agents/Shipping Lines/Consol Agents are required to submit the information as per the prescribed Annexure "A", which is a system compliant form that contains information prescribed as per the Form V and Form VI of the Import Manifest (Aircraft) Regulations, 1976 and Import Manifest (Vessels) Regulations, 1971 respectively, to the respective Commissioners, where they are operating, for capturing the details in the EDI System.
- (iv) In the case of chartered flights where the consol agents themselves are entrusted with the responsibility of filing both Master as well as House-level details, the consol agents will have to be registered with the Customs as airline agent and will be allotted an ad-hoc/temporary code (accepted by system), as per existing format for each such flight.



- (v) Access to the system for filing IGM details will be allowed after the receipt of the applications, in the Annexure "A" along with a self-declaration of the correctness of the particulars, by the jurisdictional Commissioner. The verification of details will be done subsequently and for this the applicant will mention in Annexure "A" the name of the Commissionerate i.e. "Port/Airport/ICD of verification" where their details would be verified. In the case of any discrepancies observed at the time of verification the registered party would be debarred from filing IGM. The concerned Commissionerate after the verification will send the registration number along with the name of the registered entity to webmaster of [www.cbec.gov.in](http://www.cbec.gov.in) who in turn will post the details on the website for the information of all stakeholders. Verification of the declaration will be done only by the "Port/Airport/ICD of verification" mentioned in Annexure "A" and no other port etc. will be required to do further verification. In case of doubt, they may refer to the Commissioner of "Port/Airport/ICD of verification".
- (vi) The responsibility for filing the import manifest with Master level details shall rest with the person in-charge of the vessel or aircraft or their agent while the House level details shall be filed by "any other person" specified under Section 30 of the Customs Act, 1962. In case the "any other person" is not registered under the said Regulations, then, the responsibility to file House level details shall also rest with the person in-charge of the vessel or aircraft or their agent. The shipping lines or airlines should, therefore, ensure that the person authorized to issue delivery orders in respect of goods carried by them, are duly registered with Customs. Failure to file the IGM in advance will invite action as per Section 30(1) of the Customs Act, 1962.
- (vii) At Customs stations where Indian Customs EDI (ICES) system is in operation, the IGM shall be filed through electronic mode. At other i.e. non-EDI places, the hard copies of IGM shall be required to be filed manually, in advance as per the Section 30 of Customs Act, 1962. Where ICES is operational but some Bills of Entry are filed manually, hard copy of IGM will have to be filed but late filing of hard copy will not be considered as non-filing or late filing of IGM, provided that the soft copy is filed in time.
- (viii) In the case of vessels, where the voyage from the last port of call exceeds 4 (four) days, the IGM shall be filed at least 48 (forty eight) hours before the entry inward of such vessels. In the case of short haul voyages, i.e., where the voyage from the last port of call is less than 4 (four) days, the IGM is required to be filed 10 hours before entry inward of the vessel.
- (ix) In the case of long haul flights i.e. flight time of at least 3 hours from the last airport, the IGM shall be filed within 2 (two) hours before the arrival of the aircraft and for short haul flights, before the arrival of the aircraft. Further, flights in domestic sector, which carry transshipped imported goods from one

Indian airport to another airport in India, would be treated as short haul flight for the purpose of filing IGM under Section 30 of the Customs Act, 1962.

- (x) The vessel's stores list and list of private property in possession of the Master, officer and crew etc. should contain the quantity of store on board at the time of departure from the last port of call and estimated quantity likely to be consumed till the grant of entry inward.
- (xi) At the time of registration, the requirement stipulated in the para 5 of Form V and Form VI of the Import Manifest (Aircraft) Regulations, 1976 and Import Manifest (Vessels) Regulations, 1971 respectively.

[Refer Circulars No.110/2003-Cus., dated 22-12-2003, No. 15/2004-Cus., dated 16-2-2004 and No. 30/2004-Cus., dated 16-4-2004]

## **6. Amendments of IGM:**

6.1 Section 30(3) of the Customs Act, 1962 read with Levy of Fee (Customs Documents) Regulations, 1970 allows the proper officer to permit an IGM to be amended or supplemented, on payment of prescribed fees, if he is satisfied that there is no fraudulent intention. Further, Board has provided that all amendments to the IGM may be considered on the basis of the provisions contained in Section 30(3) of the Customs Act, 1962.

6.2 The need for adjudication will arise only in cases where there are major amendments involving fraudulent intention or substantial revenue implication. Further it is possible that in certain special situations such as mother/daughter vessel operation for lighterage on account of shortage of draft, congestion of port, natural calamity, the final quantity of goods covered by the IGM would be known only after completion of such lighterage operation, requiring amendment in quantity originally declared at the time of filing IGM. These exceptional situations need to be taken care so that penal action is not initiated mechanically.

6.3 Amendment of IGM after the arrival of vessel or aircraft would not be treated as late filing. However, the veracity of the amendment would be examined by the Assistant/Deputy Commissioner of Customs for the purpose of invoking penal provisions under Section 116 of the Customs Act, 1962.

[Refer Circulars No. 13/2005-Cus., dated 11-3-2005 and No. 44/2005-Cus., dated 24-11-2005]

## **7. Penal liability:**

7.1 Any mis-declaration in the IGM will attract the penal provisions of Section 111(f) and Section 112 of the Customs Act, 1962. Thus, the goods concerned would be liable to confiscation and the person concerned liable to penalty.

## **8. Exclusion from IGMs of items originally manifested:**

8.1 Exclusion from IGMs of items originally manifested is permitted only on the basis of an application from the person filing the IGM and on production of the documentary evidence of short shipment of goods. Further, prescribed fee will have to be paid for the amendment, if permitted.

8.2 Exclusions or amendments of items in the IGM involving reduction in number of packages or weight thereof is allowed on an application from the person filing the IGM and on the basis of connected documentary evidence. Such excisions or amendments will only be allowed if investigation proves that the excess quantity was originally shown in error. In the absence of such proof, the application will be dealt with by the Manifest Clearance Section at the time of closure of the manifest file.

8.3 Applications for the excision or amendments of items for which Bills of Entry have been noted will be dealt with by the Manifest Clearance Section if made two months after the arrival of the vessel.

8.4 Matters such as the number of copies of IGMs to be filed, nature of forms, manner of declaring cargo etc. are governed by the Regulations listed below. Generally, these Regulations stipulate declaring separately cargo to be landed, unaccompanied Baggage, goods to be transhipped and same bottom or retention cargo. Separate declarations are also to be filed in respect of dangerous/prohibited/sensitive goods such as Arms and Ammunitions, Narcotics, Gold etc. These Regulations require that the IGM shall cover all the goods carried in the conveyance.

- (i) Import Manifest (Vessels) Regulation, 1971;
- (ii) Import Report (Form) Regulation, 1976; and
- (iii) Import Manifest (Aircraft) Regulation, 1976.

8.5 In respect of a vessel, an IGM shall, in addition, consist of an application for grant of Entry Inwards.

## **9. Enclosures to Import General Manifest:**

9.1 The various IGM forms are designed according to IMO-FAL Convention. The forms have to be filed in prescribed sizes only and the following declarations have to be filed alongwith IGM:

- (i) Deck Cargo declaration/certificate.
- (ii) Last port clearance copy.
- (iii) Amendment application (when relevant).
- (iv) Income Tax Certificate in case of export cargo.

- (v) Nil export cargo certificate.
- (vi) Port Trust "No Demand" certificate.
- (vii) Immigration certificate.
- (viii) Application for sign on/sign off of crew (when relevant).
- (ix) Application for crew baggage checking when they sign on (when relevant).

[Refer Circular No.36/95-Cus., dated 10-4-1995]

## **10. Procedure for filing IGM at EDI Custom Houses:**

10.1 In case of sea cargo the shipping lines are required to submit the electronic version of the IGM through the EDI Service Centre or through internet at ICEGATE, containing all the details and particulars. It is to be ensured that all the particulars and details of the IGM are correct and that details of House Bill of Lading are also incorporated in case of consol cargo.

10.2 In case of air cargo the airlines are required to file IGM in prescribed format through electronic mode. The IGMs should contain all details and particulars. In other words, the airlines would not only be furnishing the details of the Master Airway Bills but also the House Airway bills in the case of consol cargo. The airlines are also to furnish the additional information, namely, the ULD numbers for use by the custodians.

## **11. Filing of Stores List:**

11.1 When entering any port/airport, all vessels are required to furnish to the proper officer, a list (or nil return) of ships stores intended for landing (excluding any consumable stores issued from any Duty Free Shops in India). Retention on board of imported stores is governed by Import Store (Retention on board) Regulations, 1963. The consumable stores can remain on board without payment of import duties during the period the vessel/aircraft remains as 'foreign going'. Otherwise, such consumable stores are to be kept under Customs seal. Even in respect of foreign going vessels, only the stores required for immediate use of the personnel may be left unsealed. Excessive stocks of stores such as liquor, tobacco, cigarettes, etc are kept under Customs seal.

## **12. Entry Inwards and unloading and loading of goods:**

12.1 On arrival of the vessel, the shipping line needs to approach the Preventive Officer for granting Entry Inwards. Before making the application, the shipping line has to make payment of the Light House dues, as may be applicable.

12.2 Section 31 of the Customs Act, 1962 requires that the Master of the vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting Entry Inwards to such vessel. Normally, Entry Inwards is granted only after the import manifest has been delivered. The date of Entry Inwards is crucial for determining the rate of duty in case of filing of prior Bill of Entry, as provided in Section 15 of the Customs Act, 1962. However, unloading of certain items like accompanied baggage, mail bags, animals, perishables and hazardous goods are exempt from this stipulation.

12.3 No imported goods are to be unloaded unless they are specified in the import manifest/report for being unloaded at that Customs station. No imported goods shall be unloaded at any place other than the places provided for such unloading. Further, imported goods shall not be unloaded except under the supervision of the proper officer. Similarly, for unloading imported goods on any Sunday or on any holiday, prior notice shall be given and fees prescribed in this regard shall be paid.

### **13. Other liabilities of carriers:**

13.1 The person in charge of vessel or aircraft has other legal liabilities under the Customs Act, 1962, the non-fulfillment of which may result in suitable penal action, as reflected in Sections 115 and 116 of the Customs Act, 1962. For instance, Section 115 *ibid* provides for confiscation of vessel or other conveyance under the following circumstances:

- (a) A conveyance within Indian waters or port or Customs area, which is constructed, adopted, altered or altered for concealing goods.
- (b) A conveyance from which goods are thrown overboard, staved or destroyed so as to prevent seizure by Customs officers.
- (c) A conveyance, which disobeys any order under Section 106 to stop or land, without sufficient cause.
- (d) A conveyance from which goods under drawback claim are unloaded without the proper officer's permission.
- (e) A conveyance, which has entered India with goods, from which substantial portion of goods are missing and failure of the master to account therefor.
- (f) Any conveyance, when used as means of transport for smuggling of any goods or in the carriage of any smuggled goods, unless the owner establishes that it was used without the knowledge or connivance of the owner, his agent and the person in-charge of the vessel.

13.2 Under Section 116 of the Customs Act, 1962, penalty may be imposed on the person in-charge of vessel if there is failure to account for all goods loaded in the vessel for importation into India or transshipped under the provisions of Customs Act and these are not unloaded at the place of destination in India or if the quantity unloaded is short of the quantity to be unloaded at particular destination. Penalty

may be waived if failure to unload or deficiency in unloading is accounted for to the satisfaction of competent officer. Thus, if there is any shortage, which is not satisfactorily accounted for, the person in-charge of the vessel will be liable to penalty, which may be twice the duty payable on the import goods not accounted for.

[Refer Circulars No.36/95-Cus., dated 10-04-1995; No.110/2003-Cus., dated 22-12-2003; No.15/2004-Cus., dated 16-2-2004; No.30/2004-Cus., dated 16-4-2004; No.34/2004-Cus., 13-5-2004; No.13/2005-Cus, dated 11-3-2005; and No.44/2005-Cus., dated 24-11-2005]

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## **Chapter 3**

### **Procedure for Clearance of Imported and Export Goods**

#### **1. Introduction:**

1.1 In terms of the Customs Act, 1962 read with the relevant rules and regulations, imported and export goods are subjected to certain legal and procedural formalities before being permitted clearance by Customs. These requirements include the submission of prescribed documents and adherence to laid down procedures before an appropriate legal order is given by the proper officer permitting the importer/exporter to clear the goods for the intended purpose.

#### **2. Import procedure - Bill of Entry:**

2.1 Goods imported into the country attract Customs duty and are also required to conform to relevant legal requirements. Thus, unless the imported goods are not meant for Customs clearance at the port/airport of arrival such as those intended for transit by the same vessel/aircraft or transshipment to another Customs station or to any place outside India, detailed Customs clearance formalities have to be followed by the importers. In contrast, in terms of Section 52 to 56 of the Customs Act, 1962 the goods mentioned in the IGM/Import Report for transit to any place outside India or meant for transshipment to another Customs station in India are allowed transit without payment of duty. In case of goods meant for transshipment to another Customs station, simple transshipment procedure has to be followed by the carrier and the concerned agencies at the first port/airport of landing and the Customs clearance formalities have to be complied with by the importer after arrival of the goods at the other Customs station. There could also be cases of transshipment of the goods after unloading to a port outside India. Here also simple procedure for transshipment is prescribed, and no duty is required to be paid.

2.2 For goods which are offloaded at a port/airport for clearance the importers have the option to clear the goods for home consumption after payment of duties leviable or to clear them for warehousing without immediate discharge of the duties leviable in terms of the warehousing provisions of the Customs Act, 1962. For this purpose every importer is required to file in terms of the Section 46 *ibid* a Bill of Entry for home consumption or warehousing, as the case may be, in the form prescribed by regulations. The Bill of Entry is to be submitted in sets, different copies meant for different purposes and also bearing different colours, and on the body of the Bill of Entry the purpose for which it will be used is mentioned.

2.3 The importers have to obtain an Importer-Export Code (IEC) number from the Directorate General of Foreign Trade prior to filing of Bill of Entry for clearance of imported goods. The Customs EDI System receives the IEC number online from the DGFT.

2.4 If the goods are cleared through the EDI system, no formal Bill of Entry is filed as it is generated in the computer system, but the importer is required to file a cargo declaration having prescribed particulars required for processing of the Bill of Entry for Customs clearance.

2.5 The importer clearing the goods for domestic consumption through non-EDI ports/airports has to file Bill of Entry in four copies; original and duplicate are meant for Customs, third copy for the importer and the fourth copy is meant for the bank for making remittances. Along with the Bill of Entry the following documents are also generally required:

- (a) Signed invoice
- (b) Packing list
- (c) Bill of Lading or Delivery Order/Airway Bill
- (d) GATT valuation declaration form duly filled in
- (e) Importers/CHA's declaration
- (f) Import license, wherever necessary
- (g) Letter of Credit, wherever necessary
- (h) Insurance document
- (i) Import license, where necessary
- (j) Industrial License, if required
- (k) Test report in case of items like chemicals
- (l) DEEC Book/DEPB in original, where relevant
- (m) Catalogue, technical write up, literature in case of machineries, spares or chemicals, as applicable
- (n) Separately split up value of spares, components, machineries
- (o) Certificate of Origin, if preferential rate of duty is claimed

2.6 While filing the Bill of Entry, the correctness of the information given therein has also to be certified by the importer in the form a declaration at the foot of the Bill of Entry and any mis-declaration/incorrect declaration has legal consequences.



2.7 Under the EDI system, the importer does not submit documents as such but submits declarations in electronic format containing all the relevant information to the Service Centre. A signed paper copy of the declaration is taken by the service centre operator for non-repudiability of the declaration. A checklist is generated for verification of data by the importer/CHA. After verification, the data is filed by the Service Centre Operator and EDI system generates a Bill of Entry Number, which is endorsed on the printed checklist and returned to the importer/CHA. No original documents are taken at this stage. Original documents are taken at the time of examination. The importer/CHA also needs to sign on the final document before Customs clearance.

2.8 The first stage for processing a Bill of Entry is termed as the noting/registration of the Bill of Entry vis-à-vis the IGM filed by the carrier. In the manual format, the importer has to get the Bill of Entry noted in the concerned Noting Section which checks the consignment sought to be cleared having been manifested in the particular vessel and a Bill of Entry number is generated and indicated on all copies. After noting, the Bill of Entry gets sent to the appraising section of the Custom House for assessment functions, payment of duty etc. In the EDI system, the noting aspect is checked by the system itself, which also generates Bill of Entry number.

2.9 After noting/registration the Bill of Entry is forwarded manually or electronically to the concerned Appraising Group in the Custom House dealing with the commodity sought to be cleared. Appraising Wing of the Custom House has a number of Groups dealing with commodities falling under different Chapter Headings of the Customs Tariff and they take up further scrutiny for assessment, import permissibility angle etc.

### **3. Assessment under the manual mode:**

3.1 The basic function of the assessing officer in the appraising groups is to determine the duty payable on imported goods taking due note of any exemptions or benefits claimed under different export promotion schemes or other exemption notification. The assessing officer also has to check whether there are any restrictions or prohibitions on the imported goods and if they require any permission/license/permit etc. Assessment of duty essentially involves proper classification of the imported goods as per the Customs Tariff Act, 1975 having due regard to its Rules of Interpretations, Chapter and Sections Notes etc., and determining the duty liability thereon. It also involves correct determination of value where the goods are assessable on ad valorem basis. For this, the assessing officer has to take note of the invoice and other declarations submitted alongwith the Bill of Entry in support of the declared value, and adjudge whether the same is acceptable, or needs to be redetermined. The determination of value is to be done in terms of Section 14 of the Customs Act, 1962 and the valuation rules issued thereunder, the case law and various instructions on the subject. The assessing officer also takes

note of the contemporaneous values and other information on valuation available with the Custom House.

3.2 Where the appraising officer is not clear about the description of the goods from the document or has doubts about the proper classification, which may require detailed examination of the nature of the goods or testing of its samples, he may give an examination order in advance of finalisation of assessment including order for drawl of representative sample. This is done generally on the reverse of the original copy of the Bill of Entry which is presented by the authorized agent of the importer to the examining staff in the Docks/Air Cargo Complexes where the goods are got examined in the presence of the authorized agent.

3.3 On receipt of the examination report, the group appraising officer assesses the Bill of Entry, indicating the final classification, valuation, and various duties such as basic, countervailing, anti-dumping, safeguard duty etc. that are leviable. Thereafter the Bill of Entry goes to Assistant Commissioner/Deputy Commissioner for confirmation depending upon certain value limits and sent to computist who calculates the duty amount taking into account the rate of exchange at the relevant date as provided under Section 14 of the Customs Act, 1962.

3.4 After the assessment and calculation of the duty liability the importer's representative has to deposit the duty with the treasury or the nominated banks. Thereafter, the goods can be taken delivery of from the custodian. Since the goods have already been examined for finalization of classification or valuation, no further examination/checking by the dock appraising staff is required at the time of giving delivery and the goods can be taken delivery after taking appropriate orders and payment of dues to the custodians, if any.

3.5 In most cases, the appraising officer assesses the goods on the basis of information and details furnished to the importer in the Bill of Entry, invoice and other related documents including catalogue, write-up etc. The appraising officer also determines whether the goods are permissible for import or are subject to any restrictions/prohibitions. Thus the appraising officer may allow payment of duty and delivery of the goods on what is called second check/appraising basis in case there are no restriction/prohibition. In this method, the duties as determined and calculated are paid in the Custom House/Bank and appropriate order is given on the reverse of the duplicate copy of the Bill of Entry and the importer or his agent after paying the duty submits the goods for examination in the import sheds in the docks etc., to the examining staff. If the goods are found to be as declared, and no other discrepancies/mis-declarations etc., are detected, the importer or his agent can clear the goods after the shed appraiser gives out of charge order.

3.6 Wherever the importer is not satisfied with the classification, rate of duty or valuation as may be determined by the appraising officer, he can seek an

assessment order. An appeal against the assessment order can be made to appropriate appellate authority within the time limits and in the manner prescribed.

#### **4. EDI assessment:**

4.1 In the EDI system of assessment of Bill of Entry, the cargo declaration is transferred to the assessing officer in the groups electronically and assessed thereon with regard to all the parameters as given above for manual process. However, in EDI system, all the calculations are done by the system itself. In addition, the EDI system supplies useful information for calculation of duty, for example, when a particular exemption notification is accepted, the system itself gives the extent of exemption under that notification and calculates the duty accordingly. Similarly, it automatically applies relevant rate of exchange in force while calculating. Thus, no computerist is required in EDI system. Also, in the event the assessing officer needs any clarification from the importer, he may raise a query, which is printed at the service centre, and the importer replies to it through the service centre.

4.2 After assessment, a copy of the assessed Bill of Entry is printed in the service centre. The supporting documents are normally examined at the time of examination of the goods. Final Bill of Entry is printed after 'out of charge' is given by the Custom Officer.

4.3 In EDI system, in certain cases, the facility of system appraisal is available. Under this process, the declaration of importer is taken as correct and the system itself calculates duty which is paid by the importer. In such case, no assessing officer is involved.

4.4 Also, a facility of kiosk is provided in certain major Customs stations through which the status of documents filed through EDI systems could be ascertained.

#### **5. Examination of goods:**

5.1 All imported goods are required to be examined for verification of correctness of description given in the Bill of Entry. However, ordinarily only a part of the consignment is selected on random selection basis and examined. Also, the goods may be examined prior to assessment in case the importer does not have complete information with him at the time of import and requests for examination of the goods before assessing the duty liability or, if the Customs Appraiser/Assistant Commissioner feels the goods are required to be examined before assessment. This is called First Check Appraisement. The importer has to request for First Check Appraisement at the time of filing the Bill of Entry or at data entry stage giving the reason for the same. The Customs Appraiser records on original copy of the Bill of Entry the examination order and returns the Bill of Entry to the importer/CHA for being taken to the import shed for examination of the goods. Thereafter, Shed Appraiser/Dock Examiner examines the goods as per examination order and records his findings. In case appraising group has called for samples, he forwards sealed

samples accordingly. The importer is required to bring back the said Bill of Entry to the assessing officer for assessing the Bill of Entry, which is countersigned by Assistant/Deputy Commissioner if the value is more than Rs.1 lakh.

5.2 The imported goods can also be examined subsequent to assessment and payment of duty. This is called Second Check Appraisement. Most of the consignments are cleared on Second Check Appraisement basis. In this case whole of the consignment is not examined and only those packages which are selected on random basis are examined.

5.3 Under the EDI system, the Bill of Entry, after assessment by the appraising group or first appraisement, as the case may be, needs to be presented at the counter for registration for examination in the import shed. A declaration for correctness of entries and genuineness of the original documents needs to be made at this stage. After registration, the Bill of Entry is passed on to the shed Appraiser for examination of the goods. Alongwith the Bill of Entry, the CHA is required to present all the necessary supporting documents. After examination of the goods, the Shed Appraiser enters the report in EDI system and transfers first appraisement Bill of Entry to the appraising group and gives 'out of charge' in case of already assessed Bills of Entry. Thereupon, the system prints Bill of Entry and order of clearance (in triplicate). All these copies carry the examination report, order of clearance number and name of Shed Appraiser. Two copies each of Bill of Entry and the order are to be returned to the CHA/importer, after the Appraiser signs them. One copy of the order is attached to the Customs copy of Bill of Entry and retained by the Shed Appraiser.

## **6. Execution of bonds:**

6.1 Wherever necessary, for availing duty free assessment or concessional assessment under different schemes and notifications, execution of end use bonds with Bank Guarantee or other surety is required to be furnished. These have to be executed in prescribed forms before the assessing Appraiser. For instance, when the import of goods are made under Export Promotion schemes, the importer is required to execute bonds with the Customs authorities for fulfillment of conditions of respective notifications. If the importer fails to fulfill the conditions, he has to pay the duty leviable on those goods. The amount of bond of bond and bank guarantee is in terms of the instructions issued by the Board from time to time as well the conditions of the relevant Notification etc.

## **7. Payment of duty:**

7.1 The duty can be paid in the designated banks through TR-6 challans. It is necessary to check the name of the bank and the branch before depositing the duty. Bank endorses the payment particulars in challan which is submitted to the Customs.

## **8. Amendment of Bill of Entry:**

8.1 Whenever mistakes are noticed after submission of documents, amendments to the Bill of Entry is carried out with the approval of Deputy/Assistant Commissioner. The request for amendment may be submitted with the supporting documents. For example, if the amendment of container number is required, a letter from shipping agent is required. On sufficient proof being shown to the Deputy/Assistant Commissioner amendment in Bill of Entry may be permitted after the goods have been given out of charge i.e. goods have been cleared.

## **9. Prior Entry Bill of Entry:**

9.1 For faster clearance of the goods, Section 46 of the Customs Act, 1962 allows filing of Bill of Entry prior to arrival of goods. This Bill of Entry is valid if vessel/aircraft carrying the goods arrives within 30 days from the date of presentation of Bill of Entry. The importer is required to file 5 copies of the Bill of Entry and the fifth copy is called Advance Noting copy. The importer has to declare that the vessel/aircraft is due within 30 days and present the Bill of Entry for final noting as soon as the IGM is filed. Advance noting is available to all imports except for Into-Bond Bill of Entry and also during certain special period.

9.2 Often goods coming by container ships are transferred at intermediate ports (like Colombo) from mother vessel to smaller vessels called feeder vessels. At the time of filing of advance noting Bill of Entry, the importer does not know as to which vessel will finally bring the goods to Indian port. In such cases, the name of mother vessel may be filled in on the basis of the Bill of Lading. On arrival of the feeder vessel, the Bill of Entry may be amended to mention names of both mother vessel and feeder vessel.

## **10. Bill of Entry for bond/warehousing:**

10.1 A separate form of Bill of Entry is used for clearance of goods for warehousing. All documents, as are required to be attached with a Bill of Entry for home consumption are also required to be filed with the Bill of Entry for warehousing and this Bill of Entry is assessed in the same manner and duty payable is determined. However, since duty is not required to be paid at the time of warehousing of the goods, the purpose of assessing the goods at this stage is only to secure the duty in case the goods do not reach the warehouse. The duty is paid at the time of ex-bond clearance of goods for which an Ex-Bond Bill of Entry is filed. The rate of duty applicable to imported goods cleared from a warehouse is the rate in-force on the date of filing of Ex-Bond Bill of Entry.

## **11. Risk Management System:**

11.1 The Board has introduced the 'Risk Management System' (RMS) in major Customs locations where the EDI System (ICES) is operational. The implementation of the RMS is one of the most significant steps in the ongoing Business Process Re-

engineering of the Customs Department. RMS is based on the realization that ever increasing volumes and complexity of international trade and the deteriorating global security scenario present formidable challenges to Customs and the traditional approach of scrutinizing every document and examining every consignment will simply not work. Also, there is a need to reduce the dwell-time of cargo at ports/airports and to reduce the transaction costs in order to enhance the competitiveness of Indian businesses, by expediting release of cargo where compliance is high. Advances in Information Technology offer an opportunity to address these challenges through an effective RMS whose primary objective is to strike an optimal balance between facilitation and enforcement and to promote a culture of compliance. RMS is also expected to improve the management of the Department's resources by enhancing efficiency and effectiveness in meeting stakeholder expectations and bring the Customs processes at par with the best international practices.

[Refer Circular No. 43/2005-Cus., dated 24-11-2005]

11.2 With the introduction of the RMS, the practice of routine assessment, concurrent audit and examination is discontinued and the focus is on quality assessment, examination and Post Clearance Audit of Bills of Entry selected by the RMS.

11.3 Bills of Entry and IGMs filed electronically in ICES through the Service Centre or the ICEGATE are transmitted by ICES to the RMS. The RMS processes the data through a series of steps and produces an electronic output for the ICES. This output determines whether a particular Bill of Entry will be taken-up for action (appraisal or examination or both) or be cleared after payment of duty and Out of Charge directly, without any assessment and examination. Also where necessary, RMS provides instructions for Appraising Officer, Examining Officer or the Out-of-Charge Officer. It needs to be noted that the appraising and examination instructions communicated by the RMS have to be necessarily followed by the proper officer. It is, however, possible that in a few cases the proper officer might decide to apply a particular treatment to the Bill of Entry which is at variance with the instruction received from the RMS. This may happen due to risks which are not factored in the RMS. Such a course of action shall however be taken only with the prior approval of the jurisdictional Commissioner of Customs or an officer authorized by him for this purpose, who shall not be below the rank of Addl./Joint Commissioner of Customs, and after recording the reasons for the same. A brief remark on the reasons and the particulars of Commissioner's authorization should be made by the officer examining the goods in the departmental comments section in the EDI system.

11.4 The system of concurrent audit has been abolished and replaced by a Post-Clearance Compliance Verification (Audit) function. The objective of the Post Clearance Verification Programme is to monitor, maintain and enhance compliance levels, while reducing the dwell time of cargo. The RMS will select the Bills of Entry

for audit, after clearance of the goods, and these selected Bills of Entry will be directed to the audit officers for scrutiny by the EDI system. In case any possible short levies are noticed, the officers will issue a Consultative Letter mentioning the grounds for their view to the importers/CHAs. This is intended to give the importers an opportunity to voluntarily comply and pay the duty difference if they agree with the department's point of view. In case there is no agreement, the formal processes of demand notices, adjudication etc. would follow. It may also be noted that the auditors are specifically instructed to scrutinize declarations with reference to data quality and advise the importers/CHAs suitably where the quality of their declarations is found deficient. Such advice is expected to be followed by the trade and monitored by the local risk managers.

11.5 The facilitation schemes viz., Self-assessment scheme, Fast Track / Green Channel, Accelerated Customs Clearance etc., are phased out with the implementation of the RMS and the Accredited Clients Programme.

## **12. Risk Management Division:**

12.1 With a view to streamline the operations of the RMS, a Risk Management Division (RMD) has been created under the Directorate General of Systems with the following charter of functions:

- (i) The RMD has the overall responsibility for designing, implementing and managing RMS using various risk parameters and risk management tools to address risks facing Customs, i.e., the potential for non-compliance with Customs and allied laws and security regulations, including risks associated with the potential failure to facilitate international trade.
- (ii) The RMD will suggest assessment and examination in respect of consignments perceived to be risky and facilitate the remaining ones.
- (iii) The RMD is responsible for collecting and collating information and developing an intelligence database to effectively implement the RMS and also carry out effective risk assessment, risk evaluation and risk mitigation techniques. It will update and maintain risk parameters in relation to the trade, commodities and all stakeholders associated or involved with the supply chain logistics.
- (iv) The RMD is the nodal agency for Accredited Client's Programme (ACP). It will maintain a list of accredited clients in the RMS and closely monitor their compliance standards.
- (v) The RMD will closely interact with all Custom Houses, Directorate of Revenue Intelligence (DRI) and Directorate of Valuation (DOV) to enable it to effectively address national risks. The RMD shall also work in close coordination with Directorate General of Audit (DG Audit). The local risks will be largely addressed by RMD in co-operation with the Custom Houses. Further, the

RMD will also closely interact with DOV on all matters pertaining to the Valuation Risk Assessment Module (VRAM) of RMS. DOV will also supply the list of Most Sensitive Commodities with value bands, the list of valid valuation alerts and the list of Unusual Quantity Code (UQC) at agreed intervals.

- (vi) The RMD will review the performance of the RMS in terms of reviewing the various targets/interventions inserted by the Local Risk Management (LRM) Committee, make objective assessment of the effectiveness of such insertions, and ensure that the performance is consistent with the objective laid down. For this purpose, the RMD shall provide necessary advice and guidance to Custom Houses as and when required, which shall be followed. The RMD will also review the extent of facilitation being provided to the trade and offer necessary guidance to the officers in the Custom Houses with a view to providing appropriate facilitation and also ensuring compliance.
- (vii) The RMD will coordinate and liaise with other Government Departments (OGDs), in order to deal with risks relating to the compliance requirements under relevant Allied Acts.
- (viii) The RMD will work in close coordination with NACEN in developing training manuals and other documentation necessary for implementing RMS and also work out regular training schedules for officers responsible for the RMS in major Customs locations.

### **13. National Risk Management (NRM) Committee:**

13.1 A National Risk Management (NRM) Committee headed by DG (Systems) has been established to review the functioning of the RMS, supervise implementation and provide feedback for improving its effectiveness. The NRM Committee includes representatives of Directorate General of Revenue Intelligence (DGRI), Directorate General of Valuation (DGOV), Directorate General of Audit (DG Audit), Directorate General of Safeguards (DGS) and Tax Research Unit (TRU). The NRM Committee meeting is to be convened by RMD at least once every quarter. The following are some of the functions of the NRM Committee:

- (i) Review performance of the RMS including implementation of ACP and PCA.
- (ii) Review risk parameters and behaviour of important risk indicators.
- (iii) Review economic trends, policies, duty rates, exemptions, market data etc. that adversely impact Customs functions and processes and suggest remedial action thereof.

### **14. Local Risk Management (LRM) Committee:**

14.1 A Local Risk Management (LRM) Committee headed by Commissioner of Customs has been constituted in each Custom House / Air Cargo Complex / ICD,



where RMS is operationalised. The LRM Committee comprises the Additional / Joint Commissioner in charge of Special Investigation and Intelligence Branch (SIIB), who is designated as the Local Risk Manager and includes the Additional / Joint Commissioner in charge of Audit and a nominee, not below the rank of a Deputy Director from the regional / zonal unit of the DRI, and a nominee, not below the rank of Deputy Director from the Directorate of Valuation, if any. The LRM Committee meets once every month and some of its functions are as follows:

- (i) Review trends in imports of major commodities and valuation with a view to identifying risk indicators
- (ii) Decide the interventions at the local level, both for assessment and examination of goods prior to clearance and for PCA.
- (iii) Review results of interventions already in place and decide on their continuation/modification or discontinuance etc.
- (iv) Review performance of the RMS and evaluate the results of the action taken on the basis of the RMS output.
- (v) Send periodic reports to the RMD, as may be prescribed by the RMD, with the approval of the Commissioner of Customs.

#### **15. Accredited Clients Programme:**

15.1 The Accredited Clients Programme (ACP) has been introduced with the objective of granting assured facilitation to importers who have demonstrated capacity and willingness to comply with the laws administered by the Customs. This programme replaces all existing schemes for facilitation in the Customs stations where EDI and RMS is implemented. Importers registered as "Accredited Clients" form a separate category to which assured facilitation is provided. Except for a small percentage of consignments selected on random by the RMS, or cases where specific intelligence is available or where a specifically observed pattern of non-compliance is required to be addressed, Accredited Clients are allowed clearance on the basis of self assessment without examination of goods as a matter of course.

15.2 Considering the likely volume of cargo imported by the Accredited Clients, Custom Houses may create separately earmarked facility/counters for providing Customs clearance service to them. Commissioners of Customs are also required to work with the Custodians for earmarking separate storage space, handling facility and expeditious clearance procedures for these clients.

15.3 The RMD administers the ACP and maintains the list of Accredited Clients centrally in the RMS. The importers who have been granted the status of Accredited Clients are required to maintain high levels of compliance, which is closely monitored by the RMD in co-ordination with the Commissioners of Customs. Where compliance levels fall, the importer is at first informed for improvement and in case of persistent non-compliance, the importer may be deregistered under the ACP.

15.4 In order to ensure that there is no misuse of the program by imposters (persons who assume the Accredited Client's name and identity), the Accredited Clients should file Bills of Entry using digital signatures. Additionally, all Bills of Entry must be filed through the ICEGATE facility and duty in respect of these consignments paid through such Accredited Clients' bank account at the designated bank.

15.5 Eligibility criteria for importers to get ACP status:

- (i) They should have imported goods valued at Rs. Ten Crores [assessable value] in the previous financial year; or paid more than Rs. One Crore Customs duty in the previous financial year; or, in the case of importers who are also Central Excise assesses, paid Central Excise duties over Rs. One Crore from the Personal Ledger Account in the previous financial year, or they should be recognized as 'status holders' under the Foreign Trade Policy.
- (ii) They should have filed at least 25 Bills of Entry in the previous financial year in one or more Indian Customs stations.
- (iii) They should have no cases of Customs, Central Excise or Service Tax, as detailed below, booked against them in the previous three financial years:
  - (a) Cases of duty evasion involving mis-declaration/mis-statement/collusion / willful suppression / fraudulent intent whether or not extended period for issue of SCN has been invoked.
  - (b) Cases of mis-declaration and/or clandestine/unauthorized removal of excisable / import / export goods warranting confiscation of said goods.
  - (c) Cases of mis-declaration/mis-statement/collusion/willful suppression/fraudulent intent aimed at availing CENVAT credit, rebate, refund, drawback, benefits under export promotion/reward schemes.
  - (d) Cases wherein Customs/Excise duties and Service Tax has been collected but not deposited with the exchequer.
  - (e) Cases of non-registration with the Department with intent to evade payment of duty/tax.
- (iv) They should not have any cases booked under any of the Allied Acts being implemented by Customs.
- (v) The quality of the submissions made by the applicants to Customs should be good as measured by the number of amendments made in the Bills of Entry in relation to classification of goods, valuation and claim for exemption benefits. The number of such amendments should not have exceeded 20% of the Bills of Entry during the previous financial year.

- (vi) They should have no duty demands pending on account of non-fulfillment of export obligation.
- (vii) They should have reliable systems of record keeping and internal controls and their accounting systems should conform to recognized standards of accounting. They are required to provide the necessary certificate from their Chartered Accountants in this regard.

15.6 The ACP accreditation is initially valid for a period of one year and would be renewable thereafter upon a review of the compliance record of the Accredited Client.

[Refer Circulars No. 22/97-Cus., dated 4-7-1997; No.63/97-Cus., dated 21-11-1997; No.42/2005-Cus., dated 24-11-2005; and No.43/2005-Cus dated 24.11.2005]

## **16. Export procedure – Shipping Bill:**

16.1 For clearance of export goods, the exporter or his agent has to obtain an Importer-Export Code (IEC) number from the Directorate General of Foreign Trade prior to filing of Shipping Bill. Under the EDI System, IEC number is received by the Customs System from the DGFT online. The exporter is also required to register authorised foreign exchange dealer code (through which export proceeds are expected to be realised) and open a current account in the designated bank for credit of any Drawback incentive.

16.2 All the exporters intending to export under the export promotion scheme need to get their licences/DEEC book etc. registered at the Customs Station. For such registration, original documents are required.

## **17. Processing of Shipping Bill - Non-EDI:**

17.1 Under manual system, Shipping Bills or, as the case may be, Bills of Export are required to be filed in format as prescribed in the Shipping Bill and Bill of Export (Form) Regulations, 1991. The Bills of Export are being used if clearance of export goods is taken at the Land Customs Stations. Different forms of Shipping Bill/Bill of Export have been prescribed for export of duty free goods, export of dutiable goods and export under drawback etc.

17.2 Shipping Bills are required to be filed along with all original documents such as invoice, AR-4, packing list etc. The assessing officer in the Export Department checks the value of the goods, classification under Drawback schedule in case of Drawback Shipping Bills, rate of duty/cess where applicable, exportability of goods under Foreign Trade Policy and other laws in force. The DEEC/DEPB Shipping Bills are processed in the DEEC group. In case of DEEC Shipping bills, the assessing officer verifies that the description of the goods declared in the Shipping bill and invoice match with the description of the resultant product as given in the DEEC book. If the assessing officer has any doubts regarding value, description of goods,

he may call for samples of the goods from the docks. He may also call for any other information required by him for processing of Shipping Bill. He may assess the Shipping Bill after visual inspection of the sample or may send it for test and pass the Shipping Bill provisionally.

17.3 Once, the Shipping Bill is passed by the Export Department, the exporter or his agent presents the goods to the Shed Appraiser (Export) in docks for examination. The Shed Appraiser may mark the document to a Custom officer (usually an examiner) for examining the goods under his supervision. If the description and other particulars of the goods are found to be as declared, the Shed Appraiser gives a 'Let Export Order', after which the exporter may contact the Preventive Superintendent for supervising the loading of goods on to the vessel.

17.4 In case the examining staff in the docks finds some discrepancy in the goods, they may mark the Shipping Bill back to Export Department/DEEC group with their observations as well as sample of goods, if needed. The Export Department reconsiders the case and decides whether export can be allowed, or amendment in description, value etc. is required before export and whether any other action is required to be taken under the Customs Act, 1962 for mis-declaration of description of value etc.

## **18. EDI Processing of Shipping Bill:**

18.1 Under EDI System, declarations in prescribed format are to be filed through the Service Centers of Customs. A checklist is generated for verification of data by the exporter/CHA. After verification, the data is submitted to the System by the Service Center operator and the System generates a Shipping Bill Number, which is endorsed on the printed checklist and returned to the exporter/CHA. For export items which are subject to export cess, the TR-6 challans for cess is printed and given by the Service Center to the exporter/CHA immediately after submission of shipping bill. The cess can be paid on the strength of the challan at the designated bank. No copy of shipping bill is made available to exporter/CHA at this stage.

18.2 In many cases the Shipping Bill is processed by the EDI system on the basis of declarations made by the exporters without any human intervention. In other cases where the Shipping Bill is processed on screen by the Customs Officer, he may call for the samples, if required, for confirming the declared value or for checking classification under the Drawback Schedule. He may also give any special instructions for examination of goods, if felt necessary.

18.3 The exporter/CHA can check up with the query counter at the Service Center whether the Shipping Bill submitted through the EDI system has been cleared or not, before the goods are brought into the Docks for examination and export. In case any query is raised, the same is required to be replied through the Service Center or in case of CHAs having EDI connectivity, through their respective terminals.

**19. Octroi certification for export goods:**

19.1 Since the Shipping Bill is generated only after the 'Let Export' order is given by Customs, the exporter may make use of export invoice or such other document as required by the Octroi authorities for the purpose of Octroi exemption.

**20. Waiver of GR form:**

20.1 Generally the processing of Shipping Bills requires the production of a GR form that is used to monitor the foreign exchange remittance in respect of the export goods. However, there are few exceptions when the GR form is not required. An example is export of goods valued not more than US \$25,000/- and another is export of gifts valued upto Rs.5,00,000/-.

[Refer RBI Notifications No.FEMA.23/2000-RB, dated 3-5-2000; and No.FEMA.116/2004-RB, dated 25-3-2004]

**21. Arrival of export goods at docks:**

21.1. The goods brought for the purpose of export are allowed entry to the Dock on the strength of the check list and other declarations filed by the exporter in the Service Center. The custodian has to endorse the quantity of goods actually received on the reverse of the check list.

**22. Customs examination of export goods:**

22.1 After the receipt of the goods in the Docks, the exporter/CHA may contact the Customs Officer designated for the purpose, and present the check list with the endorsement of custodian and other declarations along with all original documents such as, Invoice and Packing list, AR-4, etc. The Customs Officer may verify the quantity of the goods actually received and enter into the system and thereafter mark the Electronic Shipping Bill and also hand over all original documents to the Dock Appraiser who assigns a Customs Officer for examination and indicate the officers' name and the packages to be examined, if any, on the check list and return it to the exporter/CHA.

22.2 The Customs Officer may inspect/examine the shipment along with the Dock Appraiser and enter the examination report in the EDI system. He would then mark the Electronic Shipping Bill along with all original documents and check list to the Dock Appraiser. If the Dock Appraiser is satisfied that the particulars entered in the EDI system conform to the description given in the original documents and as seen in the physical examination, he may proceed to allow "Let Export" for the shipment and inform the exporter/CHA.

**23. Examination norms:**

23.1 The Board has fixed norms for examination of export consignments keeping in view the quantum of incentive, value of export goods, the country of destination etc.

The scale of physical examination of various categories of exports at the port of export is as follows:

**A. Factory stuffed export cargo:**

<b>Category of Exports</b>	<b>Scale of Examination</b>
Export goods stuffed and sealed in the presence of the Customs/Central Excise officers at the factories of manufacture, ICD/CFS, notified warehouses and other places where the Commissioner has, by a special order, permitted examination of goods for export.	No examination except: (a) where the seals are found tampered with; or (b) there is specific intelligence in which case, permission of Deputy/Assistant Commissioner would be required before checking.

**B. Export under Free Shipping Bills:**

<b>Category of Exports</b>	<b>Scale of Examination</b>
Exports under Free Shipping Bills i.e. where there is no export incentive	No examination except where there is a specific intelligence.

**C. Export under Drawback/DEPB Schemes:**

<b>S.No.</b>	<b>Category of Exports</b>	<b>Scale of Examination</b>	
		<b>Export consignments shipped to sensitive places viz. Dubai, Sharjah, Singapore, Hong Kong and Colombo</b>	<b>Others</b>
(i)	Consignments where the amount of drawback/DEPB involved is Rs.1lakh or	25%	2%

	less		
(ii)	Consignments where the amount of drawback/DEPB involved is more than Rs.1 lakh	50%	10%

**D. Export under EPCG/DEEC schemes:**

S.No.	Category of Exports	Scale of Examination	
		Export consignments shipped to sensitive places viz. Dubai, Sharjah, Singapore, Hong Kong and Colombo	Others
(i)	Consignments where the FOB value is Rs.5 lakh or less	25%	2%
(ii)	Consignments where the FOB value is more than Rs.5 lakh	50%	10%

**E. Export under Shipping Bills claiming benefits under Reward Schemes:**

S.No.	Category of Exports	Scale of Examination	
		Export consignments shipped to sensitive places viz. Dubai, Sharjah, Singapore, Hong Kong and Colombo	Others
(i)	Exports under Free Shipping Bills where benefits under	25%	2%

	Chapter 3 of the FTP have been claimed by the Exporter and where the FOB value is Rs.20 lakhs or less		
(ii)	Exports under Free Shipping Bills where benefits under Chapter 3 of the FTP have been claimed by the Exporter and where the FOB value is more than Rs.20 lakhs.	50%	10%

23.2 In all cases referred to above, in respect of consignments selected for examination, a minimum of two packages with a maximum of 5% of packages (subject to a maximum of 20 packages from a consignment) shall be opened for examination. The package number to be opened for examination is selected by the EDI system.

23.3 It is to be ensured that exporters do not split up consignments so as to fall within the lower examination norms. Therefore, wherever on the same day the same exporter attempts to export a second consignment (other than under Free Shipping Bills) involving export incentive of Rs.1 lakh or less (Drawback/DEPB) or in other cases having the FOB value upto Rs.5 lakhs to the same country, the EDI system would alert the Examining Officer. The Examining Officer can then decide whether to subject the second consignment for examination or not. In case the buyer in both or more consignments happens to be the same person, subsequent consignments should be examined.

23.4 After the goods have been presented for registration to Customs and determination has been made whether or not to examine the goods, no amendments in the normal course are expected. However, in case an exporter wishes to change any of the critical parameters resulting in change of value, Drawback, DEPB credit, port etc. such consignment should be subjected to examination.

23.5 Notwithstanding the examination norms, any export consignment can be examined by the Customs (even upto 100%), if there is any specific intelligence in respect of the said consignment. Further, to test the compliance by trade, once in three months a higher percentage of consignments (say for example, all the first 50 consignments or a batch of consecutive 100 consignments presented for examination in a particular day) would be taken up for examination. Out of the consignments selected for examination a minimum of two packages with a maximum of 5% of packages (subject to a maximum of 20 packages from a consignment) would be taken up for checking/examination.

23.6 In case export goods are stuffed and sealed in the presence of Customs/Central Excise officers at the factory of manufacture, ICD/CFS,



warehouses and other places where the Commissioner has, by a special order, permitted, the containers should be bottle sealed or lead sealed. Also, in such case the consignments shall be accompanied by an examination report in the prescribed form. In case of export through bonded trucks, the truck should be similarly bottle sealed or lead sealed. In case of export by ordinary truck/other means, all the packages are required to be lead sealed.

[Refer Circulars No.6/2002-Cus., dated 23-1-2002; and No.1/2009-Cus., dated 13-1-2009]

23.7 If the export is made claiming benefits of Drawback / DEPB or any other export promotion scheme in addition to claiming benefits under any Schemes of Chapter 3 of FTP, then the examination norms as prescribed by the Board for the respective export promotion schemes would apply. In order to claim benefits under the Reward Schemes, the exporter is required to declare the intention to claim such benefits on the Shipping Bill itself.

23.8 Exports by EOUs and units in SEZs are governed by examination norms, as applicable for EPCG/DEEC schemes. However, if the export consignment of EOUs or SEZs unit has been sealed by Customs/Central Excise Officer, the norms for factory stuffed cargo will apply.

23.9 Routine examination of perishable export cargo is not to be conducted. Customs should resort to examination of such cargo only on the basis of credible intelligence or information and with prior permission of the concerned Assistant Commissioner/ Deputy Commissioner. Further, the perishable cargo which is taken up for examination should be given Customs clearance on the day itself, unless there is contravention of Customs laws.

[Refer Circular No.8/2007-Cus., dated 22-1-2007]

23.10 In cases of cargo transported for exports through containers or bonded closed trucks to Gateway Port after following the Central Excise/ Customs officer supervised sealing or self-sealing by manufacturer exporters, EOUs; and containers aggregated with LCL cargo in CFSs/ ICDs sent to the port after sealing in the presence of officers the tamper proof one-time bottle seal alone should be adopted as it ensures safety and security of sealing process and avoid any resealing at the point of export. In respect of one-time bottle seals provided by the department, its cost may be recovered from exporters/ manufacturers or their agents. However, exporters/manufacturers need not be compelled to procure such bottle seals only from the department as this would defeat the very purpose of self-sealing facility and avoid delay. When trucks/ other means used for export cargo cannot be bottle sealed, same would be subject to normal examination norms at gateway port.

[Refer Circular No.1/2006-Cus., dated 2-1-2006]

23.11 The exporters can avail of the facility of removal of export goods from the factories on the basis of self-certification and self-sealing; but these shall be examined at the port of export on the basis of prescribed examination norms.

[Refer Circulars No.6/2002-Cus., dated 23-1-2002; and No.31/2002-Cus., dated 7-6-2002]

#### **24. Factory stuffing permission:**

24.1 The grant of a single factory stuffing permission valid for all the Customs stations instead of Customs station-wise permission is permitted. This facility is subject to the following safeguards:

- (i) The exporter is required to furnish to Customs a list of Customs stations from where he intends to export his goods.
- (ii) The Customs House granting the factory stuffing permission should maintain a proper register to keep a track-record of such permissions, and also create a unique serial number for each of such permissions.
- (iii) The Customs House granting the factory stuffing permission should circulate the permission to all Customs Houses concerned clearly indicating the name and contact details of the Preventive Officer/Inspector and Superintendent concerned of the Customs House granting the permission as well as those of the Central Excise Range concerned to facilitate real time verifications, if required.
- (iv) In case, something adverse is noticed against the exporter, the Customs station concerned shall promptly intimate the Customs house which has granted the permission, which will, in turn, withdraw the permission, and inform to all Customs houses concerned.

[Refer Circular No.20/2010-Cus., dated 22-7-2010]

#### **25. Variation between Declaration and physical examination:**

25.1 The check list and the declaration along with all original documents submitted with the Shipping Bill are retained by the Appraiser concerned. In case of any variation between the declaration in the Shipping Bill and physical documents/examination report, the Appraiser may mark the Electronic Shipping Bill to the Assistant Commissioner/Deputy Commissioner of Customs (Exports) alongwith sending the physical documents and instruct the exporter or his agent to meet the Assistant Commissioner/Deputy Commissioner of Customs (Exports) for settlement of dispute. In case the exporter agrees with the views of the Department, the Shipping Bill needs to be processed accordingly. Where, however, the exporter disputes the view of the Department the issue will be finalized in accordance with the principles of natural justice.

**26. Drawl of samples:**

26.1 Where the Appraiser Dock (Export) orders for samples to be drawn and tested, the Customs Officer may proceed to draw two samples from the consignment and enter the particulars thereof along with details of the testing agency in the ICES/EDI system. There is no separate register for recording dates of samples drawn. Three copies of the test memo shall be prepared by the Customs Officer and signed by the Customs Officer and Appraising Officer on behalf of Customs and the exporter or his agent. The disposal of the three copies of the test memo are as follows:

- (i) Original – to be sent along with the sample to the test agency.
- (ii) Duplicate – Customs copy to be retained with the 2nd sample.
- (iii) Triplicate – Exporter's copy.

26.2 If he considers it necessary, the Assistant Commissioner/Deputy Commissioner, may also order sample to be drawn for purposes other than testing such as for visual inspection and verification of description, market value inquiry, etc.

**27. Stuffing / loading of goods in containers:**

27.1 The exporter or his agent should hand over the Exporter's copy of the Shipping Bill duly signed by the Appraiser permitting "Let Export" to the steamer agent who would then approach the proper officer (Preventive Officer) for allowing the shipment. In case of container cargo the stuffing of container at Dock is done under Preventive Supervision. Further, loading of both containerized and bulk cargo is to be done under Preventive Supervision. The Customs Preventive Superintendent (Docks) may enter the particulars of packages actually stuffed into the container, the bottle seal number, details of loading of cargo container on board into the EDI system and endorse these details on the Exporter's copy of the Shipping Bill. If there is a difference in the quantity/number of packages stuffed in the containers/goods loaded on vessel the Superintendent (Docks) may put a remark on the Shipping Bill in the EDI system and that it requires amendment or change in quantity. Such Shipping Bill may not be taken up for the purpose of sanction of Drawback/DEEC logging, till it is suitably amended. The Customs Preventive Officer supervising the loading of container and general cargo into the vessel may give "Shipped on Board" endorsement on the Exporters copy of the Shipping Bill.

27.2 Palletisation of cargo is done after grant of Let Export Order (LEO). Thus, there is no need for a separate permission for palletisation from Customs. However, the permission for loading in the aircraft/vessel would continue to be obtained.

[Refer Circular No.18/2005-Cus., dated 11-3-2005]

**28. Amendments:**

28.1 Any correction/amendments in the check list generated after filing of declaration can be made at the Service Center provided the documents have not yet been submitted in the EDI system and the Shipping Bill number has not been generated. Where corrections are required to be made after the generation of the Shipping Bill number or after the goods have been brought into the Export Dock, the amendments will be carried out in the following manner:

- (i) If the goods have not yet been allowed "Let Export" the amendments may be permitted by the Assistant Commissioner (Exports).
- (ii) Where the "Let Export" order has already been given, amendments may be permitted only by the Additional/Joint Commissioner in charge of Export.

28.2 In both the cases, after the permission for amendments has been granted, the Assistant Commissioner/Deputy Commissioner (Export) may approve the amendments on the EDI system on behalf of the Additional/Joint Commissioner. Where the print out of the Shipping Bill has already been generated, the exporter may first surrender all copies of the Shipping Bill to the Dock Appraiser for cancellation before amendment is approved on the system.

28.3 In respect of amendment in AEPC Certificate on receipt of request from the exporter, the Assistant Commissioner /Deputy Commissioner (Exports) should allow the change of port in EDI Shipping Bills / invoice to help exporters in getting the goods cleared without waiting for an amendment of documents by AEPC. The ratification of the port of change would be done subsequently by AEPC.

[Refer Circular No.46/2003-Cus., dated 5-6-2003]

**29. Drawback claim:**

29.1 After actual export of the goods, the Drawback claim is automatically processed through EDI system by the officers of Drawback Branch on first-come-first-served basis. The status of the Shipping Bills and sanction of Drawback claim can be ascertained from the query counter set up at the Service Center. If any query is raised or deficiency noticed, the same is also shown on the terminal and a print out thereof may be obtained by the authorized person of the exporter from the Service Center. The exporters are required to reply to such queries through the Service Center. The claim will come in queue of the EDI system only after reply to queries/deficiencies is entered in the Service Center.

29.2 All the claims sanctioned on a particular day are enumerated in a scroll and transferred to the Bank through the system. The bank credits the drawback amount in the respective accounts of the exporters. The bank may send a fortnightly statement to the exporters of such credits made in their accounts.

29.3 The Steamer Agent/Shipping Line may transfer electronically the EGM to the Customs EDI system so that the physical export of the goods is confirmed, to enable the Customs to sanction the Drawback claims.

### **30. Generation of Shipping Bills:**

30.1 After the "Let Export" order is given on the EDI system by the Appraiser, the Shipping Bill is generated in two copies i.e., one Customs copy, one exporter's copy (EP copy is generated after submission of EGM). After obtaining the print out the Appraiser obtains the signatures of the Customs Officer on the examination report and the representative of the CHA on both copies of the Shipping Bill and examination report. The Appraiser thereafter signs and stamps both the copies of the Shipping Bill at the specified place.

30.2 The Appraiser also signs and stamps the original and duplicate copy of SDF. The Customs copy of Shipping Bill and original copy of the SDF is retained along with the original declarations by the Appraiser and forwarded to Export Department of the Custom House. The Appraiser may return the exporter copy and the second copy of the SDF to the exporter or his agent.

### **31. Export General Manifest:**

31.1 All the shipping lines/agents need to furnish the Export General Manifests, Shipping Bill-wise, to the Customs electronically before departure of the conveyance.

31.2 Apart from lodging the EGM electronically the shipping lines need to continue to file manual EGMs along with the exporter copy of the Shipping Bills in the Export Department where they would be entered in a register. The shipping lines may obtain acknowledgement indicating the date and time at which the EGMs were received by the Export Department.

[Refer Circulars No.33/96-Cus., dated 17-6-1996; No.6/2002-Cus., dated 23-1-2002; No.31/2002-Cus., dated 7-6-2002; No.3/2003-Cus., dated 3-3-2003; No.53/2004-Cus., dated 13-10-2004; No.18/2005-Cus., dated 11-3-2005; No.42/2005-Cus., dated 24-11-2005; No.43/2005-Cus., dated 24-11-2005; No.1/2006-Cus., dated 2-1-2006; No.8/2007-Cus., dated 22-1-2007; No.23/2007-Cus., dated 28-6-2007; and No.1/2009-Cus., dated 13-1-2009]

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## Chapter 4

### Classification of Goods

#### 1. Introduction:

1.1 Import and export of goods are required to be assessed to duty which may include an assessment of nil duty. For this purpose, it is necessary to determine the classification of the goods, which basically means the categorization of the goods in a specific heading of the Schedules to the Customs Tariff Act, 1975.

1.2 Classification of imported/export goods is governed by the Customs Tariff Act, 1975 which contains two Schedules. The First Schedule specifies the nomenclature that is based on the Harmonized Commodity Description and Coding System generally referred to as "Harmonized System" or simply "HS", developed by the World Customs Organization (WCO) which is applied uniformly by more than 137 countries the world over. The Second Schedule contains description of goods chargeable to export duty. As the nomenclature also specifies the Customs duty rates (Tariff), it is called the 'Indian Customs Tariff' or 'Tariff Schedule'.

#### 2. Methodology of classification:

2.1 In the Tariff Schedule, commodities/products are arranged in a fixed pattern with the duty rates specified against each of them. The pattern of arrangement of goods in the Tariff is in increasing degree of manufacture of commodities/products in the sequence of natural products, raw materials, semi finished goods and fully finished goods / article / machinery, etc. The Indian Customs Tariff has 21 Sections and 98 Chapters. A Section is a group consisting of a number of Chapters which codify a particular class of goods. The Section notes explain the scope of chapters / headings, etc. The Chapters consist of chapter notes, brief description of commodities arranged at four digit, six digit and eight digit levels. Every four-digit code is called a 'heading' and every six digit code is called a 'subheading' and 8-digit code is called a 'Tariff Item'.

2.2 The Harmonized System (HS) provides commodity/product codes and description up to 4-digit (Heading) and 6-digit (Sub-heading) levels only and member countries of WCO are allowed to extend the codes up to any level subject to the condition that nothing changes at the 4-digit or 6-digit levels. India has developed 8-digit level classification to indicate specific statistical codes for indigenous products and also to monitor the trade volumes.

2.3 The HS is amended periodically in a review cycle of 4/6 years, taking note of the trade flow, technological progress, etc. After the HS came into effect on 1.1.1988, it was amended in 1992, 1996, 2002 and 2007. The amendments for 2012 have already been approved by the WCO in 2009 and will come into force w.e.f. 1.1.2012. Member countries including India are under obligation in terms of International Convention on Harmonized System to amend their Tariff Schedules in alignment with HS. Therefore, the classification of some commodities/products may change over a period of time. Those involved in the negotiation of international commercial arrangements, multilateral tariff agreements etc. should refer to correlation tables showing the transposition of sub-headings from older version to the newer and the newer to the older version of the HS.

2.4 For purposes of uniform interpretation of the HS, the WCO has published detailed Explanatory Notes to various headings/subheadings. This forms the basis for interpreting the HS. The WCO, in its various committees discusses the classification of individual products and gives classification opinion on them. Such information, though not binding in nature provides a useful guideline for classifying goods.

2.5 The process of arriving at a particular heading/subheading code, either at four digit, six digit or eight digit level for a commodity in the Tariff Schedule is called 'classification'. The titles of Sections, Chapters and Sub-chapters are provided for ease of reference only. For legal purposes the texts of the Section Notes, Chapter Notes, Subheading Notes, Supplementary Notes, Headings, Subheadings, and the General Rules for Interpretation of Import Tariff (GIR) should be relied upon to determine the classification of an item. Classification helps in determining the rate of duty leviable as prescribed by the legislature. The Indian Customs Tariff provides specific headings for goods imported under Project Import Scheme, goods imported by post and goods imported as baggage in Chapter 98 under which they will be classified straightaway even though they may be covered elsewhere.

2.6 The GIR is a set of 6 rules for classification of goods in the Tariff Schedule. These rules have to be applied sequentially. Rule 1 gives precedence to the Section notes/Chapter notes while classifying a product. Rule 2(a) applies to goods imported in incomplete / finished condition and assembled / unassembled condition. Rule 2(b) is applicable to 'mixtures' and 'composite goods'. Goods which cannot be classified by application of Rule 2(b), will be classified by application of Rule 3 i.e. by application of 'most specific description' as per Rule 3 (a) or by ascertaining the 'essential character' of the article as per Rule 3 (b) or by taking into consideration the heading that occurs last in the numerical order as per Rule 3 (c). Rule 4 states that goods which cannot be classified by application of the preceding rules may be classified under the heading appropriate to the goods to which they are most akin. Rule 5 applies to packing materials / articles in which the goods are carried. Rule 6 is applied to arrive at the appropriate subheading within a heading and for that purpose the provisions of Rules 1 to 5 apply *mutatis mutandis* on the understanding that subheadings at the same level are comparable. For the purpose of Rule 6 the relative Section and Chapter Notes also apply unless the context otherwise requires.

2.7 While classifying goods, the foremost consideration is the 'statutory definition'. In the absence of any statutory definition, and any guideline provided by HS Explanatory Notes, the cardinal principle would be the way goods are known in

'common parlance'. Many times statutes contain definitions and meanings of only a restricted number of words, expressions or phrases. While interpreting the common words used in the statute, giving more than due importance to common dictionary meanings may be misleading as the dictionary gives all shades of meaning of a particular word. Similarly, meanings assigned in technical dictionaries will also have limited application.

2.8 For purposes of classification the 'trade meaning' should be given due importance unless the Tariff itself requires that the terms should be interpreted in a strict technical sense. Technical dictionaries should be used in such circumstances. If any scientific test is to be performed, the same has to be carried out as prescribed to arrive at the classification of goods. The common dictionary meaning of technical words should not be accepted in such cases since normally, the common parlance understanding is indicative of the functional character of the goods. Further, in matters of classification it makes no difference whether the quality of goods is prime or defective. There is no prohibition on Customs in revising the classification once decided. However revision should be only done for good and sufficient reasons. In case of difficulty in understanding the scope of the headings / subheadings, reference should invariably be made to supplementary texts like the Explanatory Notes to the HS.

2.9 The rate of duty specified in the Tariff Schedule is called 'Tariff rate of duty'. Goods which are not identified for concessional rate of duty / exemption from duty by issue of an exemption notification issued in terms of provisions of the Customs Act, 1962 are levied the Tariff rate of duty. The Export Tariff Schedule mentions only the commodities on which export tariff is levied. Likewise the Central Excise Tariff prescribed Excise duties against each subheading, which is relevant for the purpose of computing the Additional Duty of Customs. Goods which are prescribed 'nil' rates of duty in the Tariff are those goods which are levied to 'free' rates of duty.

2.10 Board issues Tariff Advices in the form of circulars to ensure uniformity in classification of goods at an All India level. Such issues also get discussed and resolved in the Conferences of Chief Commissioners/Commissioners of Customs on Tariffs and Allied Matters held periodically. An Advance Ruling Authority has also been set up for giving binding tariff information to Joint Ventures set up by Non residents.

2.11 Permissibility of import and export of goods is governed by the ITC (HS) Classification of Import and Export Goods, published by the Directorate General of Foreign Trade (DGFT). In this nomenclature, goods are arranged as in the HS but are codified by ten digit numerical code for more precision for purposes of import / export control.

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## Chapter 5

### Classification/Assessment of Projects Imports, Baggage and Postal imports

#### 1. Introduction:

1.1 For the sake of convenience, a special classification has been introduced in the Customs Tariff for project imports, baggage and postal imports. By virtue of this classification, the diverse goods that are imported for the purpose of execution of projects or as baggage and postal imports are classified under one heading and subjected to a uniform rate of duty. This facilitates assessment and ensures faster clearances since the alternative would be to classify each item distinctly and subject the same to the applicable duty.

#### 2. Project imports:

2.1 'Project Imports' is an Indian innovation to facilitate setting up of and expansion of industrial projects. Normally, imported goods are classified separately under different tariff headings and assessed to applicable Customs duty, but as a variety of goods are imported for setting up an industrial project their separate classification and valuation for assessment to duty becomes cumbersome. Further, the suppliers of a contracted project, do not value each and every item or parts of machinery which are supplied in stages. Hence, ascertaining values for different items delays assessment leading to demurrage and time and cost overruns for the project. Therefore, to facilitate smooth and quick assessment by a simplified process of classification and valuation, the goods imported under Project Import Scheme are placed under a single Tariff Heading 9801 in the Customs Tariff Act, 1975. The Central Government has formulated the Project Import Regulations, 1986 prescribing the procedure for effecting imports under this scheme.

2.2 The Project Import Scheme seeks to achieve the objective of simplifying the assessment in respect of import of capital goods and related items required for setting up of a project by classifying all goods under heading 9801 of the Customs Tariff Act, 1975 and prescribing a uniform Customs duty rate for them even though other headings may cover these goods more specifically.

2.3 The different projects to which heading 9801 applies are; irrigation project, power project, mining project, oil/mineral exploration projects, etc. Such an assessment is also available for an industrial plants used in the process of manufacture of a commodity. The Central Government can also notify projects in public interest keeping in view the economic development of the country to which this facility will apply. Thus, a number of notifications have been issued notifying a large number of projects for assessment under Tariff Heading 9801. However, this

benefit is not available to hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops. This benefit is also not available to a single or composite machine.

2.4 Goods that can be imported under Project Import Scheme are machinery, prime movers, instruments, apparatus, appliances, control gear, transmission equipment, auxiliary equipment, equipment required for research and development purposes, equipment for testing and quality control, components, raw materials for the manufacture of these items, etc. In addition, raw material, spare parts, semi-finished material, consumables up to 10% of the assessable value of goods can also be imported.

2.5 The purposes for which such goods can be imported under the Project Import Scheme are for 'initial setting up' or for 'substantial expansion' of a unit of the project. The 'unit' is any self contained portion of the project having an independent function in the project. A project would fall under the category of 'substantial expansion' if the installed capacity of the unit is increased by not less than 25%, as per the Project Import Regulations.

### **3. Registration of contracts:**

3.1 In terms of Regulation 4 of the Project Import Regulations, 1986 (PIR) the basic requirement for availing the benefit of assessment under Tariff Heading No.98.01 is that the importer should have entered into one or more contracts with the suppliers of the goods for setting up a project. Such contracts should be registered prior to clearance in the Customs House through which the goods are expected to be imported. The importer shall apply for such registration in writing to the proper officer of Customs.

3.2 Regulation 5 provides in the manner of registering contracts, as follows:

- (i) Before any order is made by the proper officer of Customs permitting the clearance of the goods for home consumption;
- (ii) In the case of goods cleared for home consumption without payment of duty subject to re-export in respect of fairs, exhibitions, demonstrations, seminars, congresses and conferences, duly sponsored or approved by the Government of India or Trade Fair Authority of India, as the case may be, before the date of payment of duty.

3.3 To expedite registration, the importers are advised to submit the following documents alongwith the application for registration:

- (i) Original deed of contract together with true copy thereof.
- (ii) Industrial Licence and letter of intent, SSI Certificate granted by the appropriate authority with a copy thereof.
- (iii) Original Import licence, if any, with a list of items showing the dimensions, specifications, quantity, quality, value of each item duly attested by the Licensing Authority and a copy thereof.
- (iv) Recommendatory letter for duty concession from the concerned Sponsoring Authority, showing the description, quantity, specification, quality, dimension

of each item and indicating whether the recommendatory letter is for initial set-up or substantial expansion, giving the installed capacity and proposed addition thereto.

- (v) Continuity Bond with Cash Security Deposit equivalent to the 2% of CIF value of contract sought to be registered subject to the maximum of Rs.50,00,000/- and the balance amount by Bank Guarantee backed by an undertaking to renew the same till the finalisation of the contract. The said continuity bond should be made out for an amount equal to the CIF value of the contract sought to be registered.
- (vi) Process flow chart, plant layout, drawings showing the arrangement of imported machines along with an attested copy of the Project Report submitted to the Sponsoring authorities, Financial Institution, etc.
- (vii) Write up, drawings, catalogues and literature of the items under import.
- (viii) Two attested copies of foreign collaboration agreement, technical agreement, know-how, basic/detailed engineering agreement, equipment supply agreement, service agreement, or any other agreement with foreign collaborators/suppliers/persons including the details of payment actually made or to be made.
- (ix) Such other particulars, as may be considered necessary by proper officer for the purpose of assessment under Heading No. 9801.

3.4 After satisfying that goods are eligible for project imports benefit and importer has submitted all the required documents, the contract is registered by the Custom House and as a token of registration the provisional duty bond is accepted by the Assistant/ Deputy Commissioner of Customs, Project Import Group. The details of the contracts are entered in the register kept for the purpose and a Project Contract Registration Number is assigned and communicated to the importer. The importer is required to refer to this number in all subsequent correspondence.

#### **4. Clearance of goods after registration:**

4.1 On every Bill of Entry filed for clearance of goods under the Project Import Scheme, the importer/CHA is required to indicate the Project Contract Registration Number allotted to it. After noting, the Bill of Entry is sent to the Project import Group, which is required to check the description, value and quantity of the goods imported vis-à-vis the description, value and quantity registered. In case these particulars are found in order, the Bill of Entry is assessed provisionally and handed over to the importer or his agent for payment of duty. The Project Import Group keeps a note of the description of the goods and their value in the Project Contract Register and in the file maintained in the Group for each project.

#### **5. Finalisation of contract:**

5.1 Under Regulation 7 of the PIR, 1986 the importer is required to submit, within three months from the date of clearance of the last consignment or within such extended time as the proper officer may allow, the following documents for the purpose of finalization of the assessment:

- (i) A reconciliation statement i.e. a statement showing the description, quantity and value of goods imported along with a certificate from a registered Chartered Engineer certifying the installation of each of the imported items of machinery;
- (ii) Copies of the Bills of Entry, invoices, and final payment certificate. The final payment certificate is insisted upon only in cases where the contract provides that the amount of the transaction will be finally settled after completion of the supplies.

5.2 To ensure that the imported goods have actually been used for the projects for which these were imported, plant site verification may be done in cases where value of the project contract exceeds Rs.1 crore. In other cases plant site verification is normally done selectively.

5.3 In the normal course, after submission of the reconciliation statement and other documents by the importers, the provisional assessments are finalized within a period of three months where plant site verification is not required and within six months where plant site verification is required. In cases where a demand has been issued and confirmed on such finalization and importer has not paid the duty demanded, steps are taken as per law to realise the amount.

## **6. Baggage:**

6.1 All goods imported by a passenger or a member of crew in his baggage are classifiable under Tariff Heading 9803 and levied to a single rate of duty. Such goods need not be classified separately in the Tariff. However, Tariff Heading 9803 does not apply to motor vehicles, alcoholic drinks, and goods imported through courier service. Such assessment will also not apply to goods imported by a passenger or a member of the crew under an import license or a customs clearance permit.

## **7. Postal imports for personal use:**

7.1 All goods imported by Post or Air for personal use are classifiable under a single Tariff Heading 9804 and levied to duty accordingly. This heading has been sub divided into two subheadings, one applicable to drugs and medicines and the other, to the balance items so imported. Such goods will however be governed by the FTP as far their importability is concerned. Motor vehicles, alcoholic drinks and goods imported through courier service can however not be classified under this heading. Goods imported under an import license or a customs clearance permit will however not be classified under this tariff heading.

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## Chapter 6

### Customs Valuation

#### 1. Introduction:

1.1 The rates of Customs duties leviable on imported goods and export goods are either specific or on ad valorem basis or at times on specific cum *ad valorem* basis. When Customs duties are levied at ad valorem rates, i.e., based on the value of the goods, it becomes essential to lay down in the law itself the broad guidelines for such valuation to avoid arbitrariness and to ensure that there is uniformity in approach at different Customs formations. Accordingly, Section 14 of the Customs Act, 1962 lays down the basis for valuation of import and export goods. The present version of the said Section 14 is applicable with effect from October 2007.

#### 2. Tariff value:

2.1 The Board is empowered to fix values, under Section 14(2) of the Customs Act, 1962 for any item, which are called "Tariff Values". If tariff values are fixed for any goods, *ad valorem* duties thereon are to be calculated with reference to such tariff values. The tariff values may be fixed for any class of imported or export goods having regard to the trend of value of such or like goods and the same have to be notified in the official gazette. Tariff values have presently been fixed in respect of import of Crude Palm Oil, RBD Palm Oil, Other Palm Oils, Crude Palmolein, RBD Palmolein, Other Palmoleins, Crude Soyabean Oil, Brass Scrap (all grades) and Poppy Seeds.

[Refer Notification No.36/2001-Cus. (N.T.), dated 3-8-2001]

#### 3. Valuation of imported/export goods where no Tariff Value is fixed:

3.1 Section 2(41) of the Customs Act, 1962 defines 'Value' in relation to any goods to mean the value thereof determined in accordance with the provisions of Section 14(1) *ibid*. In turn, Section 14(1) states that the value of the imported goods and export goods shall be "*the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf*". It is also provided that in the case of imported goods such transaction value shall include "*in*

*addition...any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf”*

3.2 In accordance with the provisions of Section 14(1) of the Customs Act, 1962 the rules specified for the purpose of valuation may provide for:

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
- (iii) The manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purpose of this section.

3.3 The price paid or payable shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under Section 46, or a Shipping Bill of export, as the case may be, is presented under Section 50 of the Customs Act, 1962.

3.4 When compared to the earlier provisions of Section 14(1), the present provisions have discarded the concept of ‘deemed value’ and adopted the concept of ‘transaction value’. Also, the present Section 14 contains therein provisions for specific rules to be made for determination of value and also for specific additions to value on account of cost and services. Some provisions deleted from the earlier Section 14 include:

- (i) Reference to such or like goods. Thus, the value (transaction value) shall be the price actually paid or payable for the goods under consideration.
- (ii) The reference to price of the goods ordinarily sold or offered for sale.
- (iii) The price of the goods when sold for export to India is to be considered and not the price in the course of international trade.

3.5 As provided in Section 14(1), the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007 and the Custom Valuation (Determination of Value of Export Goods) Rules, 2007 have been framed for valuation of imported goods and export goods, respectively.

3.6 The provisions of Section 14(1) and the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007 are based on the provisions of Article VII of

GATT and the Agreement on implementation of Article VII of GATT. The methods of valuation prescribed therein are of a hierarchical (sequential) order.

3.7 The importer is required to truthfully declare the value in the import declaration and also provide a copy of the invoice and file a valuation declaration in the prescribed form to facilitate correct and expeditious determination of value for assessment purposes.

#### **4. Methods of valuation of imported goods:**

4.1 According to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the Customs Value should be the "Transaction Value", i.e., the price actually paid or payable after adjustment by Valuation Factors and subject to (a) compliance with the Valuation Conditions and (b) satisfaction of the Customs authorities with the truth and accuracy of the Declared Value.

#### **5. Transaction value:**

5.1 Rule 3(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 states that the value of imported goods shall be the transaction value adjusted in accordance with the provisions of its Rule 10.

5.2 The price actually paid or payable is the total payment made or to be made by the buyer to the seller or for the benefit of the seller for the imported goods. It includes all payments made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller.

5.3 If objective and quantifiable data do not exist with regard to the Valuation Factors, if the Valuation Conditions are not fulfilled, or if Customs authorities have doubts concerning the truth or accuracy of the declared value in terms of Rule 12 of the said Valuation Rules, 2007 the valuation has to be carried out by other methods in the following hierarchical order;

- (i) Comparative Value Method - Comparison with transaction value of identical goods (Rule 4);
- (ii) Comparative Value Method — Comparison with transaction value of similar goods (Rule 5);
- (iii) Deductive Value Method — Based on sale price in the importing country (Rule 7);
- (iv) Computed Value Method — Based on cost of materials, fabrication and profit in the country of production (Rule 8); and
- (v) Fallback Method — Based on previous methods with greater flexibility (Rule 9).

## 6. Valuation factors:

6.1 Valuation Factors are the various elements which must be taken into account by addition (factors by addition) to the extent these are not already included in the price actually paid or payable or by deduction (factors by deduction) from the total price incurred in determining the Customs Value, for assessment purposes.

6.2 **Factors by addition deduction** are the following charges:

- (i) Commissions and brokerage, except buying commissions;
- (ii) The cost of containers, which are treated as being one for Customs purposes with the goods in question;
- (iii) The cost of packing whether for labour or materials;
- (iv) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:
  - (a) Material, components, parts and similar items incorporated in the imported goods;
  - (b) Tools, dies, moulds and similar items used in the production of the imported goods;
  - (c) Materials consumed in the imported goods; and
  - (d) Engineering, developing, artwork, design work, and plans and sketches undertaken elsewhere than in the importing country and necessary for the production of imported goods;
- (v) Royalties and license fees related to goods being valued that the buyer must pay either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (vi) The value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues directly or indirectly to the seller;
- (vii) Advance payments;
- (viii) Cost of transportation up to the place of importation. The cost of transport of the imported goods includes the ship demurrage charges on chartered vessels, lighterage or barge charges;



- (ix) Loading, unloading and handling charges associated with transporting the goods; and
- (x) Insurance.

6.3 As regards (v) and (vi) above, an Explanation to Rule 10 (1) clarifies that the royalty, licence fee or any other payment for using a process, whether patented or otherwise, when they are otherwise includible referred in terms of clause (c) or (e) of Rule 10(1), shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

[Refer Circular No. 38/2007-Cus., dated 9-10-2007]

6.4 **Factors by deduction** are the following charges provided they are separately declared in the commercial invoices:

- (i) Interest charges for deferred payment;
- (ii) Post-importation charges (e.g. inland transportation charges, installation or erection charges, etc.); and
- (iii) Duties and taxes payable in the importing country.

## 7. **Cases where transaction value may be rejected:**

7.1 The transaction value may not be accepted in the following categories of cases as provided in Rule 3(2) of the said Valuation Rules, 2007:

- (i) If there are restrictions on use or disposition of the goods by the buyer. However, the transaction value not to be rejected on this ground if restrictions:
  - (a) Are imposed by law or public authorities in India;
  - (b) Limit geographical area of resale; and
  - (c) Do not affect the value of the goods substantially.
- (ii) If the sale or price is subject to a condition or consideration for which a value cannot be determined. However, conditions or considerations relating to production or marketing of the goods shall not result in rejection.
- (iii) If part of the proceeds of the subsequent resale, disposal or use of the goods accrues to the seller, unless an adjustment can be made as per valuation factors.
- (iv) Buyer and seller are related; unless it is established by the importer that:
  - (a) The relationship has not influenced the price; and

- (b) The importer demonstrates that the price closely approximates one of the test values.

7.2 The transaction price declared can be rejected in terms of Rule 12 of the said Valuation Rules, 2007, when the proper officer of Customs has reason to doubt the truth or accuracy of the value declared and if even after the importer furnishes further information/documents or other evidence, the proper officer is not satisfied and has reasonable doubts about the value declared. An Explanation to Rule 12 clarifies that this rule does not, as such, provide a method for determination of value, and that it merely provides a mechanism and procedure for rejection of declared value in certain cases. It also clarifies that where the proper officer is satisfied after consultation with the importer, the declared value shall be accepted. This Explanation also gives certain illustrative reasons that could form the basis for doubting the truth or accuracy of the declared value.

7.3 The interpretative notes are specified in the schedule to the rules for the interpretation of the rules.

## **8. Provisional clearance of imported goods:**

8.1 Section 18 of the Customs Act, 1962 and Customs (Provisional Duty Assessment) Regulations, 1963 allow an importer to provisionally clear the imported goods pending final determination of value by giving a guarantee in the form of surety, security deposit or bank guarantee. Rules 4(1)(a) and 5(1) of the import valuation rules concerning identical goods and similar goods, respectively provide that the value of goods provisionally assessed under Section 18 of the Customs Act, 1962, shall not be the basis for determining the value of any other goods.

## **9. Valuation of imported goods in case of related party transaction:**

9.1 Rule 2(2) of the said Customs Valuation Rules, 2007 enumerates the persons who shall be deemed to be "related". It has been made clear by Explanation II thereto that the sole agent, sole distributor or sole concessionaire can be termed as related only if they fall within the criteria of this sub-rule. Further, Rule 3(3) provides that where buyer and seller are related, the transaction value can be accepted if the examination of circumstances of the sale of the imported goods indicate that the relationship did not influence the price or if the importer demonstrates that the declared value of the goods being valued, closely approximately to one of the test values namely transaction value of identical/similar goods, in sales to unrelated buyers in India, deductive value for identical/similar goods or computed value for identical/similar goods ascertained at or about the same time can be used.

9.2 Related party transactions are examined by Special Valuation Branches (SVB) located presently in the major Custom Houses at Mumbai, Calcutta, Chennai and Delhi. In such cases the goods are first assessed provisionally and the importer

is required to fill a questionnaire and furnish a list of documents so that finalisation of provisional assessments is expedited.

[Refer Circular No.11/2001-Cus., dated 23-2-2001]

## **10. Methods of valuation of export goods:**

10.1 The provisions of Section 14(1) of the Customs Act, 1962 specifically cover the valuation of export goods. Also, the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 have been framed to provide a sound legal basis for the valuation of export goods and check deliberate overvaluation of export goods and mis-utilization of value based export incentive schemes.

10.2 Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules 2007 that are framed in a format similar to the said Valuation Rules, 2007 for the imported goods emphasizes for acceptance of the transaction value, which is the primary basis for valuation of export goods. In cases where the transaction value is not accepted, the valuation shall be done by application of Rules 4 to 6 sequentially. As per Rule 7, exporter has to file Export Value Declaration relating to the value. Also, the value of the export goods declared by the exporter can be rejected under Rule 8.

10.3 Wherever there are doubts about the declared value of export goods and an investigation/enquiry is being undertaken to determine whether or not the Declared Value should be accepted, the export consignments should not be ordinarily detained. Due process envisaged under Rule 8, for rejection of declared value and consequent re-determination of value may be undertaken by applying valuation Rules sequentially.

## **11. Rights of appeal:**

11.1 The principles of natural justice are required to be followed in valuation matters also. When the Customs authorities do not accept the declared value and re-determine the Customs value, the importer or his representative is normally required to be given a written notice followed by a personal hearing. An adjudication order giving in detail the basis of determination of the value can be obtained, if the importer is aggrieved with the re-determination of value. Under the Customs Act, 1962, an importer can appeal against a decision on valuation to the Commissioner of Customs (Appeal) in the first instance. A second appeal lies to the Tribunal (CESTAT) consisting of administrative and judicial members. A third appeal lies to the Supreme Court of India. The importer is informed regarding his rights of appeal by each of the adjudicating and appellate authorities.

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## Chapter 7

### Provisional Assessment

#### 1. Introduction:

1.1 Once Bill of Entry or Shipping Bill containing all the relevant information/details along with all the relevant documents is submitted, the duty leviable on the imported goods or export goods, if any, is assessed by the Customs officer. Sometimes, it is not possible to assess the duty due to non-availability of some relevant information/document or any other reason. Withholding clearance of goods in such cases may cause hardship to the importers/exporters on account of payment of demurrage/detention charges, disturbance in production schedule and other financial losses. Similarly in exports, delay in clearance may cause cancellation of export order, increase in interest liability and other financial losses to the exporters. To meet such exigencies, Section 18 of the Customs Act, 1962 provides for assessing the duty provisionally and allowing clearance of the goods by taking a bond with appropriate security.

#### 2. Conditions for allowing provisional assessment:

2.1 The provisional assessment may be resorted to in following situations:

- (a) Where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be, or
- (b) Where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or order test for the purpose of assessment of duty thereon, or
- (c) Where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty.

2.2 In above situations, pending the production of such documents or furnishing of such information or completion of such or enquiry, the proper of Customs may order that the duty leviable on goods be assessed provisionally. The importer (or exporter), has to execute appropriate bond and furnish requisite security to the satisfaction of proper officer for payment of the deficiency, if any between the duty finally assessed and the duty provisionally assessed. In case of goods cleared for home consumption or exportation, the amount paid provisionally is adjusted against

the duty finally assessed and if the amount so paid falls short of the duty finally assessed, the importer or exporter has to pay the deficiency. However, if amount so paid is in excess of duty finally assessed the importer or exporter is entitled to a refund. In the case of goods being warehoused, if duty finally assessed is in excess of the duty provisionally assessed the proper officer of may require the importer to execute a bond, binding himself in a sum equal to twice the amount of excess duty.

### **3. Terms of bond:**

3.1 Where the provisional assessment is allowed pending the production of any documents or furnishing of any information by the importer or exporter, as the case may be, the terms of bond generally are that documents/information shall be furnished within one month or within such extended period as the proper officer may allow, and that the person executing the bond shall pay the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

3.2 Where the provisional assessment is allowed pending the completion of any test or enquiry, the terms of bond generally are that the person executing the bond shall pay the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

### **4. Determination of amount of bond and security/surety:**

4.1 The provision of the Customs (Provisional Duty Assessment) Regulations, 1963 lay down that the importer or exporter claiming provisional assessment is required to execute a bond for the difference between the duty that may be finally assessed and the provisional duty. Even in cases where calculation of exact difference between duty provisionally assessed and duty finally assessed may not be possible, it would be possible to make some estimate of the same. In all the case, the amount of surety and security for provisional assessment is normally restricted to the difference of duty provisionally assessed and duty which maybe finally assessed.

4.2 In terms of the said Regulations, 1963 the bond for provisional assessment is required to be submitted with such surety or security or both as deemed fit by the proper officer. Normally, the requirement of surety/security is dispensed with in respect of Government Departments or undertakings.

### **5. Finalisation of provisional assessment:**

5.1 In most cases the provisional assessments are finalized expeditiously, well within 6 months. In respect of machinery contract cases or large project import cases, where imports take place over long period, such finalisation may take place over a number of years since action to finalise the case can be taken only after all the imports under the contract have been made. Here too, every effort should be made to finalise the cases within 6 months of the date of import of the last consignment covered by the contract.

[Refer Instructions F.No.512/5/72-Cus.VI, dated 23-4-1973; and F.No.511/7/77-Cus.VI, dated 9-1-1978]

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## Chapter 8

### Import/Export Restrictions and Prohibitions

#### 1. Introduction:

1.1 Deliberate evasion of duty or violation of prohibition/restriction imposed upon import of export of specified goods invites penal action under the Customs Act, 1962 or any of the allied legislations that are enforced by the Customs in terms of the said Act. Thus, importers and exporters and other connected with international trade require to be well conversant with the provisions of Customs Act, 1962, the Foreign Trade Policy, as well as other relevant allied Acts and 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.

#### 2. Legal provisions governing restrictions/prohibitions:

2.1 Some of the relevant penal legal that come into play when there is violation of the Customs Act, 1962 or any allied Acts are as follows:

- (a) The terms "Prohibited Goods" are defined in Section 2(33) of the Customs Act, 1962 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". Thus, a prohibition under any other law can be enforced under the Customs Act, 1962. For instance, under Sections 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 of export of the goods, which finds reflected in the Foreign Trade Policy, laid down by the DGFT, Department of Commerce. Some of the goods are absolutely prohibited for import and export whereas some goods can be imported or exported against a licence and/or subject to certain restrictions. One example is provided by Notification No.44(RE-2000)1997-2002, 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. Thus, all such 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. Another example is that certain products 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. Action on such goods and persons involved can be taken under the Customs Act, 1962.

- (b) Under Section 11 of the Customs Act, 1962 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.
- (c) Section 111(d) and Section 113(d) of the Customs Act, 1962 provide that 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 said Act or any other law for the time being in force shall be liable to confiscation.
- (d) Section 112 of the Customs Act, 1962 provides for penalty for improper importation and Section 114 of the said 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.

### **3. Prohibitions/restrictions under Foreign Trade Policy and other Allied Acts:**

3.1 Apart for collection of duty, Customs has also been entrusted with the responsibility to ensure compliance with prohibitions or restrictions imposed on the import and export of goods under the Foreign Trade Policy (FTP) and other Allied Acts. The Customs has a pivotal role to play because, it is the agency stationed at the border to enforce the rules, regulations and orders issued by various administrative Ministries. For instance, import and export of 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. and these will apply to the penal provisions of the Customs Act, 1962 rendering such goods liable to confiscation under Sections 111(d) – for import - and 113(d) – for export - of the said Act. Thus, for the purpose of the penal provisions of the Customs Act, 1962 it is relevant to appreciate the provisions of these allied legislations.

### **4. The Prevention of Food Adulteration Act, 1954 and Food Safety and Standards Authority Act, 2006:**

4.1 As per the Prevention of Food Adulteration Act, 1954 (PFA), any product not fulfilling the statutory provisions is not allowed to be imported into the country. Likewise, there are several rules, regulations, orders, notifications, etc. issued by the Government, laying down procedures as to how the imports of above products are to be dealt with. Further, the Food Safety and Standards Authority Act, 2006 (FSSA)

seeks to replace many of the existing legislations including the PFA Act relating to import of edible items. The FSSAI has been established to lay down standards and regulate/monitor the manufacturing, import, processing, distribution and sale of food. The FSSAI has taken over PHO functions at select ports such as Nava Sheva and Mumbai with effect from 13-9-2010 with the stipulation that the existing rule and procedures will continue to be followed without any change till FSSAI regulations are notified. Thus, FSSAI has replaced PHO with its authorized officers at abovementioned ports in terms of Section 47 (5) of the FSSA Act, 2006.

4.2 PFA/FSSAA lay down detailed guidelines for examination and testing of food items prior to Customs clearance. It is, thus, provided that the Customs shall undertake the following general checks and if the product does not satisfy these requirements, clearance shall not be allowed:

- (i) All consignments of high risk food items, as listed in DGFT Policy Circular No. 37(RE-2003)/2002-2007 dated 14.06.2004 (as may be modified from time to time), shall be referred to Authorised Representative of FSSAI or PHOs, as the case may be, for testing and clearance shall be allowed only after receipt of the test report as per the instructions contained in the Customs Circular No. 58/2001–Cus., dated 25-10-2001.
- (ii) All consignments of perishable items like fruits, vegetables, meat, fish, cheese, etc., will continue to be handled in terms of the guidelines contained in Para 2.3 of the Board's Circular No.58/2001-Customs dated 25-10-2001.
- (iii) In respect of food items not covered under (a) and (b) above, the following procedure would be adopted in addition to the general checks prescribed under Para 2.1 of the Circular No. 58/2001–Cus., dated 25-10-2001:
  - (a) Samples would be drawn from the first five consecutive consignments of each food item, imported by a particular importer and referred to Authorised Representative of FSSAI or PHOs, as the case may be, for testing to ascertain the quality and health safety standards of the consignments.
  - (b) In the event of the samples conforming to the prescribed standards, the Customs would switch to a system of checking 5% - 20% of the consignments of these food items on a random basis, for checking conformity to the prescribed standards. The selection of food items for random checking and testing would be done by the Customs taking into consideration factors like the nature of the food products, its source of origin as well as track record of the importers as well as information received from FSSAI from time to time.
  - (c) In case, a sample drawn from a food item in a particular consignment fails to meet the prescribed standards, the Customs would place the



import of the said consignment on alert, discontinue random checking for import of such food items and revert to the procedure of compulsory checking. The system of random sampling for import of such food items would be restored only if the test results of the samples drawn from the 5 consecutive consignments re-establish that the food items are in conformity with the prescribed standards.

4.3 The 'general checks' include checking the condition of the hold in which the products were transported to see whether they meet the requirements of storage, as per the nature of the product, and does not in any way cause deterioration or contamination of the products. Also, physical/ visual appearance in terms of possible damage - whether it is swollen or bulged in appearance; and also for rodent/insect contamination or presence of filth, dirt etc. - should be checked. Finally, it should be checked that the product meets the labelling requirements under the Prevention of Food Adulteration Rules and the Packaged Commodities Rules. This includes ensuring that the label is written not only in any foreign language, but also in English. The details of ingredients in descending order, date of manufacture, batch no., best before date etc. are mandatory requirements. All products will also have to indicate details of best before on all food packages.

4.4 Authorised Officers of FSSAI will ascertain that for the imported pre-packaged food items, the language and other major requirements of the label like mention of best before date, nutrition information etc. should comply the labeling provisions under PFA Rules, failing which sample may not be drawn from such consignment for testing.

4.5 Risk Management System (RMS) module for import consignments of edible / food items, presently does not provide for random sampling as it is one of its CCR (Compulsory Customs Requirements) targets. Accordingly, Risk Management System (RMS) shall take necessary steps to modify the RMS module to conform to the new requirements. Till such time, this modification is carried out, Customs shall take appropriate decision to waive the CCR requirements in respect of food items not covered under clause (a) and (b) above and to the extent mentioned under clause (c) above. Such a course of action shall, however, be taken only with the prior approval of the jurisdictional Commissioner of Customs or an officer authorized by him for this purpose, who shall not be below the rank of Addl./Joint Commissioner of Customs, and after recording the reasons for the same. A brief remark on the reasons and the particulars of Commissioner/ADC/JC authorization should be made by the officer examining the goods in the departmental comments in the EDI system.

4.6 As per Para 13 of Chapter IA (General Notes Regarding Import Policy) of the ITC (HS) Classification of Export and Import items, import of all such edible/ food products, domestic sale and manufacture which are governed by PFA Act, 1954 shall also be subject to the condition that at the time of importation, the products are having a valid shelf life of not less than 60% of the original shelf life. Shelf life of the

product is to be calculated based on the declaration given on the label of the product, regarding its date of manufacture and the due date for expiry. Therefore, Customs shall ensure that this condition is complied with before allowing clearance of such consignments.

4.7 At certain ports / airports / ICDs / CFSs where Port Health Officers (PHO) under PFA, 1954 or Authorised officers under FSS Act, 2006 are not available, the samples will be drawn by Customs and these may be got tested from the nearest Central Food Laboratory or a laboratory authorized for such testing by DGHS or FSSAI.

4.8 RMD shall develop an application software that incorporates the stipulation of testing of imported foodstuff and alerts the Customs officer to the effect the number of past shipments already tested and found fit warrants future shipments need not ordinarily be tested. This should apply regardless of port of import so long as the importer, supplier and item of import do not change. In other words, if such a shipment is imported say, at Mumbai and the previous 5 shipments imported at, say, Delhi have passed the test, then the next shipment at Mumbai need not be tested. A suitable data base would also be prepared at each Custom House to indicate the compliance history of importers.

[Refer Circular No.58/2001-Cus., dated 15-6-2001; No.43/2005-Cus., dated 24-11-2005; and Circular No.3/2011-Cus., dated 6-1-2011]

## **5. The Livestock Importation Act, 1898:**

5.1 The import of livestock and livestock products is regulated by the Livestock Importation Act, 1898. The objective of this Act and the notifications/orders issued therein is to regulate the import of livestock products in such a manner that these imports do not adversely affect the country's human and animal health population.

5.2 The livestock products are allowed to be imported into India only through the sea ports or airports located at Delhi, Mumbai, Kolkata and Chennai, where the Animal Quarantine and Certification Services Stations are located. In addition, import of perishable fish items, exclusively meant for human consumption but excluding seed material for breeding or rearing purposes, is allowed at Petrapole, District North 24 Parganas, West Bengal, through land route. On arrival at the port/seaport, the livestock product is required to be inspected by the officer in-charge of the Animal Quarantine and Certification Services Station or any other veterinary officer duly authorised by the Department of Animal Husbandry and Dairying. After inspection and testing, wherever required, quarantine clearance is accorded by the concerned quarantine or veterinary authority for the entry of the livestock product into India. If required in public interest, the quarantine or veterinary authority may also order the destruction of the livestock product or its return to the country of origin. The Customs

will have to ensure that the livestock products are granted clearance for home consumption only after necessary permission is granted by the quarantine or veterinary authorities.

5.3 Wherever any disinfection or any other treatment is considered necessary in respect of any livestock product, it is the importer who has to arrange the same at his cost under the supervision of a duly authorized quarantine or veterinary officer.

[Refer Circulars No.43/2001-Cus., dated 6-8-2001, No.48/2005-Cus., dated 28-11-2005 and No. 13/2007-Cus., dated 2-3-2007 and Instructions F.No.450/132/2004-Cus.IV, dated 4-1-2005 and F.No.450/122/2005-Cus.IV, dated 13-10-2005]

## **6. Destructive Insects & Pests Act, 1914, PFS Order, 1989 and Plant Quarantine (Regulation of Import into India) Order, 2003:**

6.1 Import of plants and plant materials into the country is regulated under the Destructive Insects & Pests (DIP) Act, 1914 and PFS Order, 1989 and Plant Quarantine (Regulation of Import into India) Order, 2003. As per the requirements of these enactments, subject to exemptions, as may be applicable, no consignment shall be imported even for consumption unless it is accompanied by an Import Permit and an Official Phytosanitary Certificate issued by the authorised officer. However, cut flowers, garlands, bouquets, fruits and vegetables weighing less than 2 kgs. imported for personal consumption is allowed without a Phytosanitary Certificate or an Import Permit. Likewise, the requirement of Import Permit is relaxed for import of (a) mushroom spawn culture by EOUs and (b) tissue culture materials of any plant origin and flower seeds.

6.2 The Department of Agriculture and Co-operation has issued detailed guidelines for inspection and clearance of plant/plant materials, the basis features of which are as follows:

- (i) Registration of application: The importer or his authorized representative is required to file an application at the Plant Quarantine Station in respect of each consignment immediately upon arrival at the port. In case of perishable consignments, such application can be filed in advance to enable the Plant Quarantine authorities to organize inspection/testing on priority. Alongwith application for registration, copies of documents namely, import permit, phytosanitary certificate issued at the country of origin, copy of bill of entry, invoice, packing list and fumigation certificate, etc. are required to be submitted. The Plant Quarantine Officer shall register the application and the assessed inspection fee is required to be paid by the importer or his authorised agent. No such application is required to be filed in the case of import of plant and plant materials through passenger baggage and post parcels.
- (ii) Sampling/inspection/fumigation of consignments: The importer or his authorised agent is required to arrange for inspection/sampling of the

consignment. In the event of live insect infestation having been noticed, the importer or his authorised agent shall arrange for fumigation of consignment by an approved pest control operator at his own cost under the supervision of the Plant Quarantine officer.

- (iii) Release/detention of consignments: A release order is issued to Customs, if a consignment on inspection is found to be free from pests. However, in case it is found infested with live pests, the same is permitted clearance only after fumigation and re-inspection. The detention order is issued, if the consignment is imported in contravention of the PQ Regulations, for arranging deportation failing which the same shall be destroyed at the cost of importer under the supervision of the Plant Quarantine Officer, in presence of Customs Officers after giving due notice in advance i.e. for perishable plant material 24-48 hours and 7 days for other plant material. The Customs will ensure that plant/plant material (primary agricultural products) are granted clearance for home consumption only after necessary permission is granted by the concerned Plant and Quarantine Officer.

6.3 In terms of Plant Quarantine (Regulation of Import into India) Order, 2003, no article, packed with raw or solid wood packaging material shall be released by the Customs unless the wood packaging material has been appropriately treated and marked as per International Standards for Phytosanitary Measures (ISPM) No. 15 or accompanied by a phytosanitary certificate with the treatment endorsed. The proper officer of Customs shall grant release of such articles packed with untreated wood packaging material only after ensuring that the wood packaging material has been appropriately treated at the point of entry under the supervision of Plant Quarantine Officer. The Customs Officers are required to report the non-compliant cases to the concerned Plant Quarantine Station / authorities for necessary action.

## **7. Standards of Weights and Measures (Packaged Commodities) Rules, 1977:**

7.1 As per Chapter 1A of General Notes regarding Import Policy (ITC (HS) Classification of Export and Import Items, Schedule I, all such packaged products, which are subject to provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 when produced/ packed/ sold in domestic market, shall be subject to compliance of all the provisions of the said rules, when imported into India. The compliance shall be ensured before the import consignment of such commodities is cleared by Customs for home consumption. All prepackaged commodities, imported into India, shall in particular carry the following declarations:

- (a) Name and address of the importer;
- (b) Generic or common name of the commodity packed;

- (c) Net quantity in terms of standard unit of weights and measures. If the net quantity in the imported package is given in any other unit, its equivalent in terms of standard units shall be declared by the importer;
- (d) Month and year of packing in which the commodity is manufactured or packed or imported; and
- (e) Maximum retail sale price at which the commodity in packaged form may be sold to the ultimate consumer. This price shall include all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertising, delivery, packing, forwarding and the like, as the case may be.

## **8. Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945:**

8.1 In terms of Rule 133 of the Drugs and Cosmetics Rules, 1945, no cosmetics shall be imported into India except through the points of entry specified in Rule 43A of the said Rules. Further, under Schedule "D" to the said Rules read with Rule 43, an exemption is provided to certain categories of substances from the restrictions under Chapter III of the Drugs and Cosmetics Act, 1940 relating to import of drugs and cosmetics. Further, the Drugs Controller General of India (DCGI) has clarified that under Schedule "D" to the said Rules, an exemption has been provided for substances not intended for medical use from the provisions of Chapter III of the Drugs and Cosmetics Act and Rules made thereunder. The Act provides for separate definition for 'cosmetic' and 'drug' under Sub-Section 3(aaa) and 3(b), respectively. Hence, the phrase 'substances not intended for medical use' would only relate to substances which would otherwise fall under the definition of the term 'drug' under Section 3(b) of the Act, but are being imported not for medicinal use or for some other purposes or are of commercial quality and are being labelled indicating that they are not for medicinal use. Accordingly, DCGI had clarified that this exemption does not extend to other categories of products defined under the Act including cosmetics. For the purpose of import of cosmetics, provision of Rule 133 therefore remains applicable.

8.2 Import of cosmetics at points of entry/places other than those specified under Rule 43A may not be permitted as per the provisions of the Drugs and Cosmetics Rules, 1945. The points of entry specifically mentioned in Rule 43A are Chennai, Kolkata, Mumbai, Nhava Sheva, Cochin, Kandla, Delhi, Ahmedabad, Hyderabad and Ferozepur Cantonment, Amritsar, Ranaghat, Bongaon and Mohiassan Railways Stations. If the imports are noticed through Customs stations, then necessary action may be taken for non-compliance of the Drugs and Cosmetics Rules.

8.3 As per rule 43A of the Drugs and Cosmetics Rules, 1945, drugs can be only imported into India through specified places. Accordingly, import of drugs at any other place may not be permitted. Further, whenever in doubt, field formations may

seek necessary clarification about the generic name versus chemical name of medicines before clearance. The specified places are:

- (i) Ferozepore Cantonment and Amritsar Railway Stations (for drugs imported by rail across the frontier with Pakistan)
- (ii) Bongaon, Mohiassan and Ranaghat Railways Stations (for drugs imported by rail across the frontier with Bangladesh)
- (iii) Raxaul (for drugs imported by road and railway lines connecting Raxaul in India and Birganj in Nepal)
- (iv) Chennai, Cochin, Kandla, Kolkata, Mumbai and Nhava Sheva (for drugs imported by sea)
- (v) Ahmedabad, Chennai, Delhi, Hyderabad, Kolkata and Mumbai (for drugs imported by airports)

## **9. Import of hazardous substances:**

9.1 As per Chapter 1A of General Notes regarding Import Policy (ITC (HS) Classification of Export and Import Items, Schedule I, imports of Hazardous Waste into India shall be subject to the provisions of Hazardous Wastes (Management and Handling) Amendment Rules, 1989. Further, notwithstanding anything contained in ITC (HS) Classifications of Export and Import Items, import of hazardous waste or substances containing or contaminated with such hazardous wastes as specified in Schedule 8 of Hazardous Wastes (Management and Handling) Amendment Rules, 1989 shall be prohibited.

9.2 Clearance of waste oil/sludge derived from the normal course of a ship's operation and covered by the MARPOL Protocol will be allowed without a license only to persons registered with the Ministry of Environment and Forests or the Central Pollution Control Board, as the case may be, for re-processing waste. Such waste oil/sludge will conform to the definition in Schedule 3 of the Hazardous Waste (Management and Handling) Amendment Rules, 1989.

9.3 Import of Hazardous Chemicals permitted is permitted in accordance with the provisions of the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989 (made under the Environment (Protection) Act, 1986). Besides other conditions mentioned in the Rules, the importer shall, before 30 days but not later than the date of import, furnish the details specified in Rule 18 to the Authority specified in Schedule 5 of the said Rules.

9.4 Import of products, equipments containing Ozone Depleting Substances (ODS) will be subject to Rule 10 of the Ozone Depleting Substances Rules, 2000. In terms of these Rules no person shall import or cause to import any product specified in Column (2) of Schedule VII, which was made with or contains Ozone Depleting

Substances specified in Column (3), unless a license is obtained from the Directorate General of Foreign Trade.

9.5 Import of Genetically Modified Food, Feed, Genetically Modified Organism (GMOs) and Living Modified Organisms (LMOs) will be subject to the following conditions :

- (i) The import of GMOs / LMOs for the purpose of (i) R & D; (ii) food; (iii) feed; (iv) processing in bulk; and (v) for environment release will be governed by the provisions of the Environment Protection Act, 1986 and Rules 1989.
- (ii) The import of any food, feed, raw or processed or any ingredient of food, food additives or any food product that contains GM material and is being used either for industrial production, environmental release, or field application will be allowed only with the approval of the Genetic Engineering Approval Committee (GEAC).
- (iii) Institutes / Companies who wish to import Genetically Modified material for R&D purposes will submit their proposal to the Review Committee for Genetic Modification (RCGM) under the Department of Bio-Technology. In case the Companies / Institutes use these Genetically Modified material for commercial purposes approval of GEAC is also required.
- (iv) At the time of import all consignments containing products which have been subjected to Genetic Modification will carry a declaration stating that the product is Genetically Modified. In case a consignment does not carry such a declaration and is later found to contain Genetically Modified material, the importer is liable to penal action under the Foreign Trade (Development and Regulation) Act, 1992.

9.6 As per Chapter 1A of General Notes regarding Import Policy (ITC (HS) Classification of Export and Import Items, Schedule I, import of textile and textile articles is permitted subject to the condition that they shall not contain any of the hazardous dyes whose handling, production, carriage or use is prohibited by the Government of India under the provisions of Section 6(d)(2) of the Environment (Protection) Act, 1986 read with the relevant rule(s) framed thereunder. For this purpose, the import consignments shall be accompanied by a pre-shipment certificate from a textile testing laboratory accredited to the National Accreditation Agency of the Country of Origin. In cases where such certificates are not available, the consignment will be cleared after getting a sample of the imported consignment tested and certified from any of the agencies indicated in Public Notice No. 12 (RE-2001)/1997-2002, dated 3-5-2001. The sampling will be based on the following parameters:

- (i) At least 25% of samples are drawn for testing.

- (ii) While drawing the samples, Customs will ensure that majority samples are drawn from consignments originating from countries where there is no legal prohibition on the use of harmful hazardous dyes.
- (iii) The test report will be valid for a period of 6 months in cases where the textile/textile articles of the same specification/quality are imported and the importer, supplier and the country of origin are the same.

#### **10. Clearance of imported metal scrap:**

10.1 In terms of the relevant provisions of the Foreign Trade Policy, the following procedure is prescribed for clearance of imported metal scrap.

- (i) Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.
- (ii) Import of metallic waste and scrap of certain categories, listed in para 2.32.2 of Handbook of Procedures (Vol. I), in shredded form shall be permitted through all ports of India subject to the conditions that importer shall furnish the following documents to the Customs at the time of clearance of goods:
  - (a) Pre-shipment inspection certificate as per the format in Annexure I to Appendix 5 from any of the Inspection & Certification agencies given in Appendix-5 to the effect that the consignment does not contain radioactive contaminated material in any form; and II) Copy of the contract between the importer and the exporter stipulating that the consignment does not contain any radioactive contaminated material in any form.
  - (b) Copy of the contract between the importer and the exporter stipulating that the consignment does not contain any radioactive contaminated material in any form.
- (iii) Import of metallic waste, scrap, listed in para 2.32.2 of Handbook of Procedures (Vol. I), in unshredded compressed and loose form shall be subject to the conditions that the importer shall furnish the following documents to the Customs at the time of clearance of goods:
  - (I) Pre-shipment inspection certificate as per the format in Annexure-I to Appendix 5 from any Inspection & Certification agencies given in Appendix-5 to the effect that:
    - (a) The consignment does not contain any type of arms, ammunition, mines, shells, cartridges, radioactive contaminated



or any other explosive material in any form either used or otherwise.

- (b) The imported item(s) is actually a metallic waste/ scrap/ seconds/ defective as per the internationally accepted parameters for such a classification.
- (II) Copy of the contract between the importer and the exporter stipulating that the consignment does not contain any type of arms, ammunition, mines, shells, cartridges, radioactive contaminated, or any other explosive material in any form either used or otherwise.
- (III) Import of scrap would take place only through following designated ports and no exceptions would be allowed even in case of EOUs, SEZs:

<b>S.No.</b>	<b>Ports</b>	<b>S.No.</b>	<b>Port/ICDs</b>
1.	Chennai	14.	Vishakaptnam
2.	Cochin	15.	Ahmedabad ICD
3.	Ennore	16.	Dadri (Greater Noida) ICD
4.	JNPT	17.	Jaipur ICD
5.	Kandla	18.	Jodhpur ICD
6.	Kolkata	19.	Kanpur ICD
7.	Mormogua	20.	Loni. Ghaziabad
8.	New Mangalore	21.	Ludhiana ICD
9.	Mumbai	22.	Malanpur ICD
10.	Mundra	23.	Mulund ICD
11.	Paradip	24.	Nagpur ICD
12.	Pipava	25.	Pitampur ICD
13.	Tuticoron	26.	Udaipur ICD

- (iv) Import of other kinds of metallic waste and scrap will be allowed in terms of conditions of ITC (HS). Further, import from Hodaideh, Yemen and Bandar Abbas, Iran will be in shredded form only.
- (v) In respect of metal scrap in unshredded, compressed or loose form accompanied by a pre-shipment inspection certificate, examination will be

25% of the containers in respect of manufacturer-importers and 50% in respect of traders, for each import consignment, subject to examination of a minimum of one container. The container selected will be examined 100%. Where EDI is operational with Risk Management Module (RMM), the percentage of examination will be determined by the RMM.

- (vi) Imported metal scrap in unshredded, compressed or loose form not accompanied by the prescribed pre-shipment inspection certificate will be subject to 100% examination apart from stringent penal action for violation of provisions of the FTP. The examination may be done in the presence of police authorities, if considered necessary by the Commissioner, at the risk and cost of the importer.
- (vii) For scrap imported in shredded form examination may be limited to 10% of the consignment subject to examination of minimum one container. The container so identified should be examined 100%.
- (viii) In respect of metal scrap consignments meant for EOUs and SEZ units the existing procedure is relevant subject to 100% examination at the premises of the EOU or the SEZ unit, in the presence of police authorities, if considered necessary by the proper officer.
- (ix) It will also be the responsibility of the shipping line to ensure that every consignment of metal scrap in unshredded, compressed or loose form is accompanied by such a pre-shipment inspection certificate before it is loaded on the ship. Failure to observe this precaution would invite penal action for abetment regarding irregular import of metal scrap.

[Refer Circulars No. 43/2001-Cus., dated 6-8-2001; No.58/2001-Cus., dated 25-10-2001; No.21/2003-Cus., dated 28-3-2003; No.23/2004-Cus., 15-3-2004; No.39/2004-Cus., dated 3-6-2004; No.60/2004-Cus., dated 26-10-2004; No.2/2005-Cus., dated 12-1-2005; No.10/2005-Cus., dated 22-2-2005; No.24/2005-Cus., dated 24-5-2005; No.32/2005-Cus., dated 28-7-2005; No.40/2005-Cus., dated 3-10-2005; No.48/2005-Cus., dated 28-11-2005; No.28/2006-Cus., dated 6-11-2006; No.13/2007-Cus., dated 2-3-2007; No.2/2010-Cus., dated 9-2-2010; and No.8/2010-Cus., dated 26-3-2010; and Instructions F.No.450/80/2000-Cus.IV, dated 24-7-2000; F.No.450/132/2004-Cus.IV, dated 4-1-2005; F.No.450/122/2005-Cus-IV, dated 13-10-2005; F.No.450/08/2007-Cus.IV, dated 22-1-2007; and F.No.450/19/2005-Cus.IV, dated 2-4-2009]

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## **Chapter 9**

### **Warehousing**

#### **1. Introduction:**

1.1 There are instances when the importer does not want clearance of the imported goods immediately due to factors such as market price, salability, requirement in the factory of production, paucity of funds etc. Some imported goods are also warehoused for supplies to EOU/EHTP/STP/SEZ units. Goods imported for sale in Duty Free Shops at International Airports are also warehoused before being sold to international travellers. Thus, the Customs Act, 1962 contains specific provisions that facilitate the warehousing of imported goods. The imported goods after landing may be allowed to be removed to a warehouse without payment of duty and duty is paid at the time of clearance from the warehouse. Provisions lay down the time period up to which the goods may remain in a warehouse, without incurring any interest liability and thereafter, with interest liability.

#### **2. Legal provisions:**

2.1 The facility of warehousing of the imported goods in Custom Bonded Warehouses, without payment of Customs duty is permitted in terms of Chapter IX of the Customs Act, 1962. Further, where necessary the Manufacture and Other Operations in Warehouse Regulations, 1966 provide the procedure to be followed for manufacture under bond. On their part, Warehoused Goods (Removal) Regulations, 1963 provide the procedure for movement of the goods from one warehouse to another.

#### **3. Warehousing Stations:**

3.1 Public or Private bonded warehouses can be operated only at places which are declared as warehousing stations under Section 9 of the Customs Act, 1962. This also applies to the operations in Customs bonded warehouses like EOU/EHTP/STP units.

3.2 As per provisions of Section 9 of the Customs Act, 1962, Board may declare places as warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed. Board has vide Notification No. 34/94 (NT)-Cus., dated 1-7-1994 delegated these powers to the Chief Commissioners of Customs or Chief Commissioners of Customs and Central Excise, as the case may

be. Also, in respect of setting up of EOUs, the powers for declaring places as warehousing stations have been delegated to the jurisdictional Commissioner of Customs or Commissioner of Customs and Central Excise, as the case may be.

3.3 The following guidelines shall be followed for ensuring uniformity in practice in the declaration of places as warehousing stations:

- (i) The industrial development of the proposed area and the need for warehousing of the imported goods shall be assessed.
- (ii) Only those places shall be declared as warehousing stations where adequate facilities are available for appointing public bonded warehouses. However, this condition shall be relaxed only in case of EOUs.
- (iii) Adequate Customs/Central Excise staff is available in the vicinity of the proposed warehousing stations and arrangements for training of the staff from NACEN or by attachment in the nearest Custom House should be made.
- (iv) Requests not fulfilling aforesaid criteria but if it is considered that there is a strong justification for declaring a place as a warehousing station shall be referred to the Board for decision.

[Refer Circular No. 473/232/88–Cus VIII, dated 28-11-1988 and F.No.473/25/91-Cus IV, dated 30-5-1991]

#### **4. Appointment of Public Warehouses:**

4.1 Section 57 of the Customs Act, 1962 provides that at any warehousing station, the Assistant Commissioner of Customs or Deputy Commissioner of Customs, may appoint public warehouses wherein dutiable goods may be deposited. Other than CWC and SWCs, private operators can also be appointed as custodians of the Public Warehouses. In case of Private owned Public Warehouses there is a requirement of Cash deposit or Bank guarantee equal to 25% of the duty in respect of sensitive goods.

4.2 All the applications for custodianship of Public Warehouses shall be carefully scrutinized and due consideration shall be given to the following criterion for their appointment:

- (i) Feasibility and financial viability of the warehouse operator, his financial status and his expertise in warehousing field;
- (ii) Past record of the applicant in complying with the provisions of the Customs and Central Excise Laws:

- (iii) The operational requirements such as suitability and security of the premises, availability of customs expertise, proximity to the users etc. shall be taken into account;
- (iv) The applicant should agree to take the services of the Customs Officer on Cost–Recovery basis, if services of the Customs Officers are required on a continuous basis or on payment of Merchant Overtime/Supervision Charges, as the case may be.

## **5. Licensing of Private Warehouses:**

5.1 As per Section 58 of the Customs Act, 1962, at any warehousing station, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may license private warehouses for depositing without payment of duty following types of goods:

- (i) Dutiable goods imported by the licensee; or
- (ii) Dutiable goods imported on behalf of the licensee; or
- (iii) Any other goods imported by other importers in respect of which specialised storing /handling facilities are required and such specialised storing /handling facilities for deposit are not available in a public warehouse. The specialized facilities are like liquids in bulk, hazardous goods, explosive goods, goods requiring controlled temperature conditions etc.

5.2 The main conditions for granting Private Bonded Warehouse licences are:

- (i) The applicant is financially sound and credible and the proprietor or partner or any of the Directors have not been involved in any Customs or Central Excise duty evasion cases or smuggling offences and have not been subject to penalty or other action under the Customs Law and similarly under the Central Excise Law. Where the applicant is involved in such cases (other than technical offences), licences shall be denied even if such offences were committed before five years;
- (ii) The premises are suitable and adequately secured against theft, pilferage and other risks; fire fighting equipments shall be installed in the warehouse;
- (iii) The premises shall be accessible to the Customs officers for verification;
- (iv) The warehouse shall not be located in residential area;
- (v) The goods deposited in the warehouse shall be fully insured against theft, pilferage, fire accident, other natural calamities, risk against rioting etc. by a comprehensive insurance policy drawn in favour of Commissioner of Customs or Central Excise, as the case may be.

[Refer Circular No. 28/96-Cus., dated 14-5-1996]

## **6. Licences for storage of sensitive and non-sensitive goods:**

6.1 It is for the concerned Commissioner to decide as to whether a product is sensitive or not depending upon rates of duty, licencing aspects and nature of the commodity. Thereafter the following conditions shall apply for issue of licences for Private Bonded Warehouses in respect of sensitive and non-sensitive goods.

(a) For **sensitive goods** the applicants should produce a solvency certificate (not a reference or confidential letter) from a Scheduled bank of repute (i.e. other than a co-operative bank or a bank which has operation limited to a city) for a value not less than Rs. 50 lakhs. Further, in case of individual consignments to be warehoused, a bond as per Section 59 of the Customs Act, 1962 for a sum equal to twice the duty leviable on the goods should be given backed by bank guarantee/cash deposit of 25% of the duty liability for each consignment. Also, if the licensee desires to give bond for a number of consignments, a revolving bond may be taken subject to cash deposit/bank guarantee of 25% of the duty involved on the goods brought for storage in the warehouse. This requirement would be applicable not only to Private Bonded Warehouses but to private owned Public Bonded Warehouses as well.

(b) For **non-sensitive goods** the applicants for Private Bonded Warehouses are exempt from requirement of furnishing solvency certificate. However, they shall be solvent for an amount of Rs.10 lakhs and should possess a good record. The double duty bond as per Section 59 of the Customs Act, 1962 shall be sufficient for bonding of non-sensitive goods without a cash deposit/bank guarantee. However, if concerned Assistant/Deputy Commissioner of Customs is not satisfied about the transactions of a particular licensee, a suitable bank guarantee may be obtained.

[Refer Circulars No. 99/95–Cus., dated 20-9-1995; No.20/96-Cus., dated 4-4-1996; and No.18/2007-Cus., dated 24-4-2007]

## **7. Cancellation/suspension of licences for Private Bonded Warehouses:**

7.1 Section 58(2) of the Customs Act, 1962 provides that the Assistant/Deputy Commissioner of Customs may cancel a license, if the licensee has contravened any of the provisions of the said Act or the rules or regulations or committed breach of any of the conditions of the license after giving a reasonable opportunity of being heard.

7.2 Pending an enquiry regarding cancellation of a license, the Assistant/Deputy Commissioner of Customs may suspend the license.

## **8. Warehousing Bond:**

8.1 The importer of any goods who wants to store the goods in a warehouse is required to file an into-bond Bill of Entry at the place of import and get it assessed to duty. For warehousing the goods in a Public Bonded Warehouse or a Private Bonded Warehouses, the importer as per Section 59 of the Customs Act, 1962 is

required to execute a bond for a sum equal to twice the amount of the duty assessed on such goods. The terms of the bond are as under:

- (i) To observe all the provisions of the Customs Act, 1962 and the rules and regulations in respect of such goods;
- (ii) To pay on or before a date specified in a notice of demand:
  - (a) All duties, and interest, if any, payable under Section 61(2) of the Customs Act, 1962; and
  - (b) Rent and charges claimable on account of such goods under the Customs Act, together with interest on the same;
- (iii) To discharge all penalties incurred for violation of the provisions of the Customs Act and the rules and regulations in respect of such goods.

8.2 Importer may enter into a general bond in such amount as the Assistant/Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

8.3 A bond executed by an importer in respect of any goods shall continue in force even if the goods are transferred to any other person or removed to another warehouse. However, if the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred and thereupon the bond executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee.

## **9. Permission for deposit of goods in a warehouse:**

9.1 After assessment of the into-bond Bill of Entry and execution of the bond by the importer, the proper officer may make an order permitting the deposit of the goods in a warehouse.

9.2 The goods should be stored in a Bonded Warehouse only after due examination. Reverse of the Bill of Entry must conform the veracity of the declared description with distinctive identification marks of the subject goods.

## **10. Period for which goods may remain warehoused:**

10.1 As per section 61 of the Customs Act, 1962, the warehousing period of goods deposited in a warehouse or in any other warehouse to which they may be removed, is as under:

- (i) Capital goods intended for use in any EOU, may be kept for five years;

- (ii) Goods other than the capital goods intended for use in any EOU, may be kept for three years;
- (iii) Any other goods may be kept for one year. However, if the goods are likely to deteriorate, the period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit:

#### **11. Extension of warehousing period:**

11.1 In the case of any goods which are not likely to deteriorate, the warehousing period, on sufficient cause being shown, be extended-

- (i) In the case of such goods intended for use in any EOU, by the Commissioner of Customs, for such period as he may deem fit;
- (ii) In any other case, by the Commissioner of customs, for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit.

11.2 The extension of warehousing period is not granted as a matter of routine and there should be valid grounds for granting extensions. The prescribed guidelines in this regard are as follows:

- (i) Extension shall be granted only if the authority granting the extension is satisfied that the goods are not likely to deteriorate during extended period. Wherever necessary, goods should be got tested to ensure quality and fitness for further extension of warehousing period.
- (ii) Lack of finance to pay the duty is not necessarily a good ground for granting extension of warehousing period.
- (iii) Depending on the circumstances of the case, requests made to the Chief Commissioners for extension in warehousing period, beyond the extension granted by the Commissioners of Customs, may be considered for the shortest period, not exceeding three months at a time. Such extensions are to be granted after due circumspection only in deserving cases.
- (iv) The requests for extension for a period beyond six months at the Chief Commissioner's level may be considered only in respect of those cases where it is really warranted that the goods have to be kept in the warehouse under circumstances beyond the control of the importer viz. closure of the factory due to strike, lock-out, natural calamities, etc. Financial constraints of the importers are not to be considered as adequate ground for granting extension of warehousing period.



- (v) Before consideration of a request for extension of warehousing period, Custom Houses should ensure that the interest accrued on the goods in the preceding period are paid by the applicants before further extension is permitted. Interest thus collected will be adjusted against the interest finally payable.
- (vi) A liberal approach may, however, be adopted in granting extension of warehousing period in respect of the following cases provided the goods are in good condition and not likely to deteriorate during the extended period of warehousing:
  - (a) Goods supplied as ships stores/aircraft stores,
  - (b) Goods supplied to diplomats,
  - (c) Goods warehoused and sold through duty free shops,
  - (d) Goods imported by EOUs,
  - (e) Goods used in the units operating under manufacture-in-bond scheme,
  - (f) Machinery, equipments and raw materials imported for building and fitment to ships.
- (vii) The applications for extension of warehousing period shall, as far as possible, be filed prior to 15 days of expiry of the warehousing period. All such requests should normally be decided by the Customs within this period. The requests for grant of extension of warehousing period can be considered after the expiry of initial or extended period of warehousing, after taking into consideration the exceptional circumstances of the cases, nature of commodity, rate of duties, particularly, whether the same could result in loss of revenue to Government, licencing aspects involved etc.
- (viii) In case an importer makes a request to permit re-export of the goods under Section 69 of the Customs Act, 1962, the same may be allowed even if the permitted period for bonding has expired and demand notice issued under Section 72, or it has been decided to put the goods under auction. Before permitting re-export, however, it will be necessary to extend the period of warehousing under Section 61 of the Customs Act, 1962 to enable the importer to export the goods within the permitted period of warehousing. Chief Commissioners would consider/decide such requests from the importers taking into consideration all the relevant rules/regulations for export.

[Refer Circulars No.473/232/88-Cus VII, dated 28-11-1988, No.12/98-Cus., dated 6-3-1998, F.No.473/77/89-Cus VII, dated 9-10-1989, No. 47/02-Cus., dated 29-7-2002 and No.3/2003-Cus., dated 14-1-2003]

## **12. Interest for storage beyond permissible period:**

12.1 In the event the warehoused goods remain the warehouse beyond the initial warehousing period on account of extension or otherwise, interest is payable on the

duty, if any, payable on the goods at the time of their clearance from the warehouse. The rate of interest is specified vide a notification issued under Section 47 of the Customs Act, 1962. The interest on warehoused goods will be payable in the following situations:

- (i) If the capital goods for use by EOUs are warehoused for a period beyond 5 years or goods other than the capital goods for use by EOUs are warehoused for a period beyond 3 years, by reason of extension of the aforesaid period or otherwise;
- (ii) If goods other than the goods for use by EOUs remain in a warehouse beyond a period of ninety days.

12.2 The current rate of interest for warehousing of the goods beyond specified period as per Notification No.28/02(NT)-Cus., dated 13-5-2002 issued under Section 47(2) of the Customs Act, 1962 and Notification No.18/03-Cus., dated 1-3-2003 issued under Section 61(2)(ii) of the said Act is 15% per annum.

12.3 No interest is liable to be paid in terms of the provisions of Section 47(2) of the Customs Act, 1962 on goods deposited in a warehouse and being cleared for home consumption by filing the Bill of Entry prescribed under Section 68 of the Act, *ibid*, for delayed payment of duty. In other words, the provision for payment of interest if the importer fails to pay the duty within 5 working days from the date on which such Bill of Entry is returned to him for payment of duty are not attracted in case of clearances made under Section 68 of the Act *ibid*.

### **13. Waiver of interest:**

13.1 As per Section 61(2) of the Customs Act, 1962, Board may, in exceptional cases, waive the whole or part of any interest payable in respect of any warehoused goods. Board may also by a notification, specify the class of goods in respect of which no interest shall be charged. Accordingly, the interest on warehoused goods imported by EOUs/EHTP/STP units is exempted vide Notification No. 67/95-Cus.(N.T.), dated 1-11-1995.

13.2 The powers of waiver of interest on Customs duty warehoused goods upto a limit of Rs. 2 crores have been delegated by the Board to the Chief Commissioners of Customs and Central Excise vide Notification No.122/2004-Cus.(NT), dated 25-10-2004. All requests for waiver of interest on Customs duty on warehoused goods are to be received at the Commissionerates and where amount of interest is not within the delegated powers of Chief Commissioner of Customs, forwarded to the Board with comments for consideration.

13.3 Guidelines have been laid down for considering requests for interest waiver by the Chief Commissioners. Thus, the interest may be waived for following types of goods stored in a warehouse beyond the permissible storage period:

- (i) Goods supplied as ship stores/aircraft stores
- (ii) Goods supplied to diplomats
- (iii) Goods used in the units operating under manufacture-in-bond scheme
- (iv) Goods imported by EOUs
- (v) Goods warehoused and sold through duty free shops
- (vi) Machinery, equipment and raw materials imported for building and fitment to ships
- (vii) Petroleum products
- (viii) Plant and Machinery imported for projects
- (ix) Machinery, equipment and raw-materials imported for manufacture and installation of power generation units
- (X) Goods imported under OGL and warehoused for subsequent clearance against valid advance licences/Import-Export Pass Book Scheme or any similar scheme
- (xii) Goods imported in bulk by canalizing agencies/public sector trading or service agencies and warehoused for subsequent release for export production
- (xii) Imports under EPCG Scheme
- (iii) Import of Capital Goods by Public Sector Undertakings

13.4 In respect of above category of cases relating to export promotion, the demand for interest shall be raised by the Customs officers but shall not be enforced immediately. Further, the request of waiver of interest from EOUs shall be considered only at the time of de-bonding of the unit.

13.5 Cases not covered by the guidelines mentioned above should be referred to the Board for decision.

13.6 With regard to the issue as to whether interest is payable in case of export of warehoused goods under Section 69 of the Customs Act, 1962, Board has adopted the ratio of Hon'ble Supreme Court's judgment in the case of M/s. Pratibha Processors vs. UOI [1996 (88) E.L.T. 12 (SC)], wherein the Apex Court held that the interest on warehoused goods is merely an accessory of the principal and, if the principal is not recovered/payable, so is the interest on it. The interest under Section 61(2) of the Customs Act, 1962 has, thus, no independent or separate existence.

**14. Control over warehoused goods:**

14.1 All warehoused goods shall be subject to the control of the proper officer of Customs and no person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.

14.2 The proper officer may cause any warehouse to be locked with the lock of the Customs Department and no person shall remove or break such lock.

14.3 The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

**15. Payment of rent and warehouse charges:**

15.1 The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs.

15.2 If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse-keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select.

**16. Owner's right to deal with warehoused goods:**

16.1 With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same:

- (i) inspect the goods;
- (ii) Separate damaged or deteriorated goods from the rest;
- (iii) Sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;
- (iv) Deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- (v) Show the goods for sale; or
- (f) Take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.

**17. Manufacture and other operations in a warehouse:**

17.1 Section 65 of the Customs Act, 1962 provides for manufacture under bond and all the EOU/EHTP/STP units work under this provision. There are also several exporters who import the goods for repairs, re-conditioning etc. and then export and such exporters also work under the said Section 65. This activity is referred to as manufacturing and other operations in Bonded Warehouses and the procedure for such manufacturing operations is prescribed as per the "Manufacture and Other Operations in Warehouse Regulations, 1966".

17.2 The owner of any warehoused goods intending to undertake any manufacturing process or other operations in the warehouse is required to make an application to the Assistant/Deputy Commissioner of Customs in the proper form and furnish following information:

- (i) Nature of the manufacturing process or other operations;
- (ii) Particulars of imported and other goods proposed to be used in the manufacturing process or other operations;
- (iii) Detailed plan and description of the warehouse; and
- (iv) Data regarding the volume of trade anticipated of the manufacturing process or other operations.

17.3 The warehouse owner is required to execute a bond with the Assistant/Deputy Commissioner of Customs, binding himself to:

- (i) Observe all the provisions of Manufacture and Other Operations in Warehouse Regulations, 1966;
- (ii) Maintain detailed accounts of all imported and other goods used in the manufacturing process or other operations in the proper form and to produce such accounts for inspection by the proper officer;
- (iii) Submit detailed statements of all imported and other goods used in the manufacturing process or other operations and those remaining in stock, at any time the proper officer directs;
- (iv) Provide to the officers of Customs office space, wherever required, and access to warehouse, for control and supervision of the manufacturing process or other operations or imported and other goods as may be specified by Assistant/Deputy Commissioner of Customs;
- (v) Pay all the charges including pay, allowances, leave and pensionary charges of such officers as may from time to time be posted by the Assistant/Deputy

Commissioner of Customs in the warehouse for supervision and control of the manufacturing process or other operations, or imported and other goods; and

- (vi) Comply with such conditions as may be imposed by the D.C./A.C. of Customs from time to time for carrying out the purposes of Manufacture & Other Operations in Warehouse Regulations, 1966 and the Act.

17.4 After execution of the bond, Assistant/Deputy Commissioner of Customs shall accord sanction to the applicant to carry on such manufacturing process or other operations. He should specify the following aspects in the permission:

- (i) The manufacturing process or other operations to be carried on;
- (ii) The types and nature of imported and other goods permitted to be used;
- (iii) The period for which the sanction is valid;
- (iv) The conditions, if any, subject to which the manufacturing process or other operations may be carried on;
- (v) The input-output norms, wherever considered necessary, for the raw materials and the finished goods.
- (vi) Determine the number of Customs officers that may be attached to the warehouse for purposes of supervising the manufacturing process or other operations; and
- (vii) Fix the sum payable by the manufacturer towards the cost of such establishment and the extra charges payable towards the overtime services, if any, performed by such establishment at the request of the manufacturer.

17.5 The manufacturer is required to maintain accounts relating to stocks, raw materials, goods in process, finished goods, waste and refuse in proper form. However, the accounts maintained by the manufacturer may be accepted, if same contain minimum requirements.

17.6 The Chief Commissioner of Customs may direct a manufacturer to get the accounts of his warehouse, office, stores, godowns, factory, depot, or other establishment audited by a Cost Accountant, nominated by him in this behalf. The expenses of such audit are determined by the Chief Commissioner and paid by the manufacturer and in default of such payment shall be recoverable from the manufacturer in the manner provided in Section 142 of the Customs Act, 1962. The manufacturer shall be given a copy of the audit report and he may make a representation.

17.7 The Assistant/Deputy Commissioner of Customs may direct the manner in which the imported goods shall be issued from and the unused items received back

into stock. Further, the application for issue of imported goods and the vouchers against which the unused items may be returned shall be in the proper form.

17.8 If the manufacturer or any person in his employ commits a breach of the provisions of the Customs Act, 1962 or the terms and conditions imposed by or under Manufacture and Other Operations in Warehouse Regulations, 1966 or if the particulars furnished in the application for sanction are false or incorrect/ or if any undertaking given in the bond is not fulfilled, the Assistant/Deputy Commissioner of Customs may, without prejudice to any other action that he may take under the provisions of the Act or these regulations cancel the sanction for carrying on the manufacturing process or other operations after giving reasonable opportunity of being heard.

17.9 The waste or refuse arising during the course of manufacture under bond may be disposed by any of the following modes:

- (i) If goods manufactured in bond are exported, import duty on the quantity of the warehoused goods contained in the waste or refuse shall be remitted provided that:
  - (a) Such waste or refuse is either destroyed; or
  - (b) Duty is paid on such waste or refuse as if it had been imported into India in that form.
- (ii) If goods manufactured in bond are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

## **18. Transfer of goods from one warehouse to another:**

18.1 As per provisions of Section 67 of the Customs Act, 1962, the owner of any warehoused goods may, with the permission of the proper officer, remove the warehoused goods from one warehouse to another warehouse. The procedure as per Warehoused Goods (Removal) Regulations, 1963 is to be followed for removal of goods from one warehouse to another warehouse. The procedure for removal of goods is as per Warehoused Goods (Removal) Regulations, 1963 and the following guidelines apply:

- (i) As per Regulation 2 of Warehoused Goods (Removal) Regulations, 1963, If the goods are transferred within the same metropolitan city, same may be sent under the Customs escort without any bond. However, the cost of supervision is to be paid by the warehouse owner.
- (ii) If the goods are transferred outside the city, a transit bond is to be taken. As per Regulation 3 of Warehoused Goods (Removal) Regulations, 1963, the

transit bond shall be for a sum equal to the import duty leviable on such goods.

- (iii) The terms of bond as per Regulation 4 shall be that the warehouse owner shall produce re-warehousing certificate within a period of three months otherwise shall pay import duty leviable on such goods.
- (iv) If transfer takes place within the territorial jurisdiction of Commissioner of Customs and is within a reasonable distance of say 50 Kms. Commissioner of Customs may waive bank guarantee if he is satisfied with the bonafides of the party and goods are sent under customs escort.
- (v) If the goods are of sensitive nature, Customs duty is to be secured by a transit bond backed by a bank guarantee/cash security for 50% of the duty involved.
- (vi) If the goods are of non-sensitive nature, Customs duty is to be secured by a transit bond backed by a bank guarantee/cash security for 25% of the duty involved.
- (vii) Commissioners of Customs may prescribe higher cash deposit/bank guarantee, if they feel necessary in certain cases to safeguard the interests of revenue depending upon the track record of the warehouse owner.

18.2 In case of EOUs, the requirement of furnishing bank guarantee has been waived subject to the condition that the jurisdictional Assistant/Deputy Commissioner of Customs/Central Excise has issued a Procurement Certificate for removal of goods to EOUs. The waiver is due to the fact that the B-17 bond executed by EOUs covers the transit risk also and therefore there is no need of executing a separate transit bond for removal of the goods from a warehouse to an EOU.

[Refer Circular No.99/95–Cus., dated 20-9-1995]

18.3 After transfer of goods from a bonded warehouse, to another bonded warehouse, the Customs officer in-charge of the receiving warehouse is required to send a re-warehousing certificate to the Customs officer in-charge of the warehouse which transferred the goods. If the re-warehousing certificate is not received within a period of three months, the action for recovery shall be taken by enforcing the terms of the transit bond or encashment of bank guarantee.

## **19. Clearance of warehoused goods for home consumption:**

19.1 The importer of any warehoused goods may clear them for home consumption after filing an ex-bond (Green) Bill of Entry for home consumption and payment of the import duty leviable on such goods alongwith penalties, rent, interest and other charges, if any.



19.2 At the time of actual removal of the goods from the warehouse, the declared description of the goods recorded on warehousing bill of entry, should be tallied with the description declared on the ex-bond (Green) bill of entry.

19.3 As per provisions of Section 15 of the Customs Act, 1962, the rate of duty and tariff value for clearance of the goods from a bonded warehouse shall be the rate of duty and tariff value on the date on which a Bill of Entry for home consumption is presented under Section 68 of the Customs Act, 1962. The value of the goods is taken as the same as assessed on the into-bond Bill of Entry at the time of warehousing the goods.

19.4 The following procedure had been prescribed for clearance of warehoused goods:

- (i) Bills of Entry in which the total value of goods exceeds Rs. 1 lakh should be invariably counter-signed by the Assistant/Deputy Commissioner in charge of the bonded warehouse.
- (ii) All Bills of Entry covering products noticed for the first time, must be countersigned by the Assistant/Deputy Commissioner.
- (iii) All ex-bond Bills of Entry in respect of which there is any reassessment done by the Superintendent should be countersigned by the Assistant/Deputy Commissioner.
- (iv) All Bills of Entry after the clearance of the goods should be immediately sent for post audit.

[Refer Circular No. 473/291/88-Cus VII, dated 3-10-1988]

## **20. Clearance of warehoused goods for exportation:**

20.1 Warehoused goods may be re-exported to a place outside India without payment of import duty after filing a Shipping Bill or a Bill of Export and payment of the export duty, if any, penalties, rent, interest and other charges payable in respect of such goods.

20.2 Warehoused goods shall be allowed to be re-exported subject to the following conditions:

- (a) On re-export, the exporter realizes full foreign exchange spent on import in freely convertible foreign currency, if the goods were imported on payment in freely convertible foreign currency; and
- (b) The import in the first instance was not un-authorized or in contravention of the FTP.

20.3 It shall be ensured that due to re-export from the bonded warehouses there is no net loss of foreign exchange i.e. value of the goods at the time of re-export shall not be less than the foreign exchange paid at the time of their import. Moreover, if the goods were imported by payment in freely convertible currency, the re-export shall not be allowed against Indian Rupees.

20.4 Section 69 of the Customs Act, 1962 provides that if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification. In exercise of powers under Section 69 of the Customs Act, 1962, the following notifications have been issued:

- (i) Notification No.45-Cus., dated 13-2-1963 provides that the warehoused goods shall not be exported to Bhutan, Nepal, Burma, Sikang, Tibet or Sinkiang, However, the warehoused goods can be exported to Nepal under the following circumstances:
  - (a) If goods are exported against an irrevocable letter of credit in freely convertible currency;
  - (b) If goods are exported for supplies to projects financed by any UN Agency or IBRD Association or ADB or any other multilateral agency of the like nature and for which payments are received in freely convertible currency; and
  - (c) If the specified capital goods are supplied against any global tender invited by HMG of Nepal for which payment is received in Indian Rupees. These goods can be exported only from Jogbani or Raxaul LCS on production of bank certifies of receipt of the payment in freely convertible currency or Indian Rupees, as the case may be.
- (ii) As per notification No.46-Cus., dated 1-2-1963, export of warehoused goods without payment of import duty in a vessel of capacity less than 1000 tons gross is permitted subject to the condition that the exporter or agent of the vessel executes a bond for an amount equal to the import duty leviable on such goods backed by surety or security and produces a certificate within 3 months from the Customs authorities at the port of destination that the goods have been landed at the port of destination.
- (iii) Notification No.47-Cus., dated 1-2-1963 bans export of warehoused (a) Alcoholic liquors, (b) Cigarettes, (c) Cigars, and (d) Pipe Tobacco without payment of import duty as stores on board in a vessel of capacity less than 200 tons gross.

**21. Allowance in case of volatile warehoused goods:**

21.1 Section 70 of the Customs Act, 1962 provides that when any warehoused goods at the time of delivery from a warehouse are found to be deficient in quantity on account of natural loss, the Assistant/Deputy Commissioner of Customs may remit the duty on such deficiency.

21.2 Notification No.122–Cus., dated 11-5-1963 issued under Section 70 of the said Act specifies the volatile goods on which duty may be remitted on account of natural loss. These goods are aviation fuel, motor spirit, mineral turpentine, acetone, menthol, raw naphtha, vaporizing oil, kerosene, HSD, batching oil, diesel oil, furnace oil and Ethylene Dichloride kept in tanks; liquid helium gas kept in containers; wine, spirit and beer, all kept in casks.

**22. Audit of bonded warehouses:**

22.1 Bonded warehouses shall be audited by the audit parties once in six months. The audit parties in addition to normal audit of the documents of a warehouse shall pay special attention to the following aspects:

- (i) The description of goods, nature, number and other relevant particulars mentioned in into-bond Bills of Entry shall be matched with corresponding ex-bond Bill of Entry.
- (ii) All the consignments, which continue to lie in a warehouse after expiry of the warehousing period should be taken up for scrutiny in order to guard against deterioration, substitution or other unlawful removal.

[Refer Circular No. 52/98-Cus., dated 27-7-1998]

**23. Recovery of duty from bonded warehouses:**

23.1 The Customs Officer in-charge of the bonded warehouse is required to recover the duty from the warehouse owner in the following cases:

- (i) Where any warehoused goods are removed from a warehouse without payment of duty or if transferred to any other warehouse and re-warehousing certificate has not been received within three months period;
- (ii) Where any warehoused goods have not been removed from a warehouse at the expiry of the bonding period;
- (iii) Where any warehoused goods have been taken as samples without payment of duty; and
- (iv) Where any goods in respect of which a bond has been executed under Section 59 of the Customs Act, 1962 and which have not been cleared for

home consumption or exportation are not duly accounted for to the satisfaction of the proper officer.

23.2 The proper officer shall demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with all penalties, rent, interest and other charges payable in respect of such goods.

23.3 If any owner fails to pay any amount demanded, the proper officer shall detain and sell, after notice to the owner such sufficient portion of his goods, if any, in the warehouse, as the said officer may select.

#### **24. Cancellation and return of warehousing bond:**

24.1 When the whole of the goods covered by any bond have been cleared for home consumption or exported or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond.

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## Chapter 10

### Transshipment of Cargo

#### 1. Introduction:

1.1 A number of ports, airports, Inland Container Depots (ICD), Container Freight Stations (CFS) having Customs clearance facilities have been developed in the country to reduce congestion at the gateway ports/airports and to allow importers and exporters to take Customs clearance of imported and export goods at their door steps. The objectives of bringing the Customs facility to door step of importing community and decongesting the gateway ports/ airports requires the movement of imported cargo or export cargo between a port/airport and other ports/airports, ICDs/CFSs in India or a port/airport abroad.

1.2 As per the Customs Act, 1962 duty becomes payable immediately after imported goods are landed at a port or airport. To avoid payment of duty at the port of landing in cases where goods are to be carried to another port/airport or ICD/CFS or to a port/airport abroad, the Customs Act, 1962 provides a facility of transshipment of cargo without payment of duty. The goods can be transshipped from one port/airport to another port/airport/ICD/CFS either by vessel, air, rail or road or by combination of more than one such mode of transport.

1.3 The procedure for transshipment provided in Section 54 of the Customs Act, 1962 is applicable for imported cargo only. The imported cargo unloaded at a port is allowed to be transshipped to another port/ICD/CFS or a port abroad, if the cargo is mentioned in the import manifest for such transshipment. In regard to export cargo cleared from a port/ACC or ICD/CFS and exported through some gateway port/airport, a similar procedure is being followed to allow carriage of Customs cleared export cargo from port/airport/ICD/CFSs to another port/airport.

#### 2. Transshipment of imported containerized cargo from gateway port to another port/ICD/CFS in India:

2.1 The transshipment procedure of imported cargo is governed by Section 54 of the Customs Act, 1962 read with Goods Imported (Conditions of Transshipment) Regulations, 1995.

2.2 Transshipment Permit is the permission granted by the Customs, at the port/airport of unloading of imported goods, to shipping agents for carriage of goods to another port/airport/ICD/CFS in India. The shipping agent submits an application along-with transshipment forms (5 copies), sub-manifest and a copy of IGM to the

Customs. The Customs scrutinizes the details furnished by the shipping agents in the application for transshipment. In case, the documents are in order and there is no alert notice against the shipping agent, permission for transshipment is granted.

2.3 To ensure that imported cargo, on which duty has not been paid, are not pilfered en-route to another port/airport/ICD/CFS and reach safely, a bond with bank guarantee is executed by the carrier engaged for the transshipment of the goods. The quantum of bank guarantee for transshipment to be furnished by different categories of carriers is as below:

- (a) The carriers in public sector (Central/State Government Undertakings) are exempt.
- (b) All carriers (shipping lines/ICDs/CFSS/other carriers) of containerized cargo handling more than 1000 TEUs as import containers in a financial year, are exempt, irrespective of the fact whether movement is by road or coastal shipping or rail. Further, request of carriers having annual transshipment volume below the limit of 1000 TEUs, but having good track record may be considered for exemption from BG on merit by the jurisdictional Commissioners of Customs.
- (c) The custodians of ICDs/CFSS operating as carriers of transshipment cargo between gateway ports and their ICDs/CFSS shall in their terms and conditions of their bank guarantees executed with Customs for custodianship of ICDs/CFSS cover safety and security of cargo being transshipped by them. The details of such bank guarantee shall be informed to the Commissioner of Customs having jurisdiction over the gateway port. The custodians of ICDs/CFSS shall be allowed to transship the cargo against the said bank guarantee and they will not be required to execute a separate bank guarantee for transshipment.
- (d) The remaining carriers are required to furnish bank guarantee @ 15% of the bond amount.

2.4 The terms of the bond is that if the carrier produces a certificate from Customs of the destination port/airport/ICD/CFS for safe arrival of goods there, the bond stands discharged. In case such certificate is not produced within a month or within such extended period as the proper officer of Customs may allow, an amount equal to the value, or as the case may be, the market price of the imported goods is forfeited.

2.5 The bond value should be equal to the value of the goods. However, considering the difficulties of shipping agents in producing documents for determination of value of the goods sought to be transshipped, the bond value is determined on the basis of notional value of the goods, which is an average value of cargo per container transshipped in the past.

2.6 To avoid multiplicity of bonds, the carriers are allowed to execute a running mother bond instead of individual bonds. The value of mother bond can be arrived on the basis of the average number of containers carried per trip, the average time taken for submission of proof of safe landing of containers at the destination ICDs/CFSs, frequency of such transshipment as well as notional value of cargo per container. As mother bond is a running bond, its amount may be high. If a running bank guarantee @ 15% of total bond amount is taken, it may block huge sum of money. To avoid blockage of money of carriers, an option has been given to furnish either a running bank guarantee or individual bank guarantee for each transshipment, the latter being released as soon as the landing certificates from destination Customs are produced.

2.7 The bond or mother bond and bank guarantee are debited at the time of transshipment of import/export containers at the port of origin, and credited on receipt of proof of safe landing of containers at the port/ICD/CFS of destination. Further EDI system has a 'bond module' which will be fully utilized once 'message exchange facility' is operationalised between two ports. In an online environment, bond re-credit is done automatically in the EDI system on receipt of electronic message between Gateway port and destination port or between two Customs stations.

2.8 On lines of similar provision for waiver of bank guarantee in case of transshipment of cargo from the gateway port to feeder ports/ICDs/CFSs and vice versa, bank guarantee is waived for air cargo transshipment. Accordingly, airlines/ other carriers having annual transshipment volume above 2500 MT to/from any airport are exempt from Bank Guarantee for carriage of transshipment goods. Further, in deserving cases the jurisdictional Commissioners of Customs may also consider giving waiver of bank guarantee.

[Refer Circular No. 24/2006-Cus., 25-8-2006]

2.9 After issuance of transshipment permit and execution of bonds, containers are sealed with 'one time bottle seal' by the Customs. In case, containers are already sealed with 'one time bottle seal' by the shipping agents, there is no requirement of sealing again by the Customs. In such cases, shipping agents are required to inform the serial number of seals to Customs, which is just verified by the Customs.

2.10 After sealing and/or checking of seals by Customs, containers are moved from the gateway port and carried by the shipping agents to destination port/ICD/CFS by vessels, rail or road. Transshipment formalities in all these modes are similar.

2.11 To optimize the capacity utilisation of vessels, Indian flag foreign going vessels operating in routes covering more than one Indian port to a port outside India and vice versa, have been allowed to carry coastal containers alongwith

imported/export cargo between two Indian ports. Further, coastal vessels have also been allowed to carry coastal containers along-with imported/export cargo between two Indian ports. However, to guard against the possibility of replacement of transshipment goods with domestic containerised cargo, some safeguards have been prescribed. All the transshipment containers as well as domestic containers are required to be sealed by 'one time bottle seal' at the port of loading. The domestic containers are required to be suitably painted with bold letters ' For Coastal Carriage only' for their identification. Carriers are also required to file a manifest for domestic containers.

2.12 At the destination, carrier is required to present the sealed cover containing a copy of transshipment permit to Customs. The Customs checks the particular of containers, seals etc. with reference to transshipment permit. The carrier is required to obtain a certificate regarding landing of container from the Customs.

2.13 In case, the seals are found to be broken at the time of examination of containers by the Customs, a survey of contents of the containers is conducted in presence of Customs officer, carrier, importer or his representative and representative of insurance company. Shortage if any, noticed is recorded and is signed by all those present. The carriers are required to pay the duty for pilferage in terms of the condition of bond executed by them with the Customs at the port of loading. This is apart from other action which can be taken under Section 116 of the Customs Act, 1962.

2.14 The carriers have to obtain the landing certificates of containers from the Customs at the destination port/ICD/CFS and submit the same to the Customs at the originating port. The Customs reconciles its record and closes IGMs on the basis of these certificates.

2.15 After safe landing of containers at the destination port/ICD/CFS, the importers or their authorised agents are required to follow all Customs formalities such as filing of Bill of Entry, assessment, examination of goods etc., for clearance of the goods.

### **3. Duty free import of containers:**

3.1 As the containers themselves are liable to duty, Customs duty exemption is provided vide Notification No.104/94-Cus., dated 16-3-1994 which, inter-alia, facilitates them being taken out of the port without duty payment subject to execution of bond. The shipping agents are required to file this bond with the container cell of the Custom House, binding themselves to re-export containers within six months of their import into India. The period of six months may be extended by the Deputy/Assistant Commissioner of Customs for a further period of three months and thereafter by the Commissioner of periods not exceeding six months at one time, in terms of the said Notification.

3.2 The procedure for clearance of containers imported temporarily is as follows:



- (a) The nature of bond should be “continuity bond”.
- (b) No Bank Guarantee / Security is required is furnished alongwith the bond.
- (c) Bond should be executed by shipping line, Non Vessel Owning Common Carrier (NVOCC), Steamer agents or their authorised representatives.
- (d) The bond amount should cover only the duty element of the imported containers and not the cargo it is carrying.
- (e) The validity period of the bond should be for a year, extendable till further such period as requested by the person executing the bond.
- (f) Till module for automatic matching of imported and export containers within permissible time is rolled out at all Customs ports, the process of monitoring of period of temporary importation would be done manually.

[Refer Circulars No.83/1998-Cus., dated 5-11-1998 and No.31/2005-Cus., dated 25-7-2007]

#### **4. Transshipment of imported containerized cargo from gateway port to a foreign port:**

4.1 For transshipment of containers from a port in India to a foreign port abroad, shipping agents have to file transshipment application along with relevant documents to Customs for grant of permission to transship the cargo, which is the transshipment permit. In such cases, execution of bond or bank guarantee is not required. After issuance of transshipment permit, goods are allowed to be loaded on to the ship under the Customs supervision. The Preventive Officer supervising the loading is to acknowledge loading of such cargo. The record is reconciled on the basis of endorsement of the Preventive Officer and copy of EGM showing details of such transshipment. Transshipment facility for imported goods in Less than Full Container Load (LCL) is allowed at identified Custom Houses.

4.2 The procedure for international transshipment of LCL containers is as under:

- (i) The application for international transshipment of FCL cargo can be made by master of the vessel or his authorized agent, Non-Vessel Operating Common Carrier (NVOCC) or any other person duly authorized in this behalf by the foreign supplier.
- (ii) No goods for international transshipment should be unloaded from the vessel until the permission for the same is given by the Assistant/Deputy Commissioner of Customs authorized in this behalf by the Commissioner of Customs, on the basis of manifested details in IGM.
- (iii) The ITP (international transshipment) container details such as Container Number, broad description of goods etc. shall be mentioned in the IGM. In the electronic IGM, there are fields for specifying (a) port of destination, and

(b) 'cargo movement' code. For cargo movement, there are three codes which need to be filled correctly with proper port of destination. These are as follows:

- 'LC' – Local Cargo: This refers to the port code where cargo is delivered. It is the same as the port of arrival.
  - 'TC' – Transshipment Cargo: This refers to international cargo and the port of destination shall be the port code where transshipment cargo is destined to or delivered.
  - 'TI' – Transshipment to ICD: This is the local cargo where the cargo meant for transshipment to hinterland port i.e. ICD. The port of destination is the port code of the ICD.
  - In electronic manifest message, there is a field to specify that whether the cargo is FCL or LCL or 'EMPTY'. This field is called 'Container Status'. The line and the sub-line numbers provide the inter-linkage between the cargo details and the container details.
- (iv) The unloading of ITP containers at gateway port would be in presence of Customs Officers and the containers would be taken to approved place / premises under Customs escort. Custodian of such premises would provide a segregated secure space for ITP containers.
- (v) Customs Officers would examine the seal of the ITP containers and if found tampered, such container should be immediately resealed with the Customs seal in the presence of the custodian / shipping agent and same should be recorded. Such containers will be examined 100% by the Customs Officers and findings recorded thereof and put up to the Assistant/Deputy Commissioner of Customs in charge for further action.
- (vi) LCL cargo meant for a foreign port outside India would be de-stuffed in the presence of Customs Officer and stored in a secured area as provided by custodian. LCL cargo may contain consignments meant for transshipment to any port outside India (foreign port) as well as consignments for home consumption or transshipment to ICDs. This would necessitate segregation of the two types of cargo at the time of de-stuffing and moving them to respective storage areas under Customs escort. Till such time, sufficient precaution should be taken to avoid duplication / mixing up or manipulation of cargo meant for transshipment / home consumption.
- (vii) Whenever the LCL cargo are required to be exported to foreign destination, The re-stuffing of such LCL cargo meant for the foreign port along with the export cargo and its sealing would be done under the supervision of a Customs officer.
- (viii) The details of LCL cargo would be entered in Export General Manifest (EGM).

- (ix) Custodian would maintain the record of ITP LCL cargo, both loaded and unloaded, and submit a monthly summary to Customs. He shall execute a general bond for an amount equal to the approximate value of goods expected to be imported in 30 days for the purpose of international transshipment. In such bond, custodian should undertake to export transshipment cargo within 30 days or within extended period as Commissioner may allow and follow all the relevant Acts, Rules and Regulations in force.
- (x) Custodian would be responsible for safe handling of the LCL cargo and ensure that there is no intermixing of ITP LCL cargo with other cargo lying with the custodian.
- (xi) International transshipment of cargo needs to be effected within 30 days of Entry Inward of the importing ship. The provisions of Section 48 relating to the procedure in case of goods not transshipped within 30 days after unloading shall apply to the goods meant for transshipment as these are covered under the scope of "imported goods".
- (xii) The permission for transshipment would not be given to cargo having arms, ammunition, explosives and other cargo considered as constituting a threat to the security/safety and integrity of the country and other goods attracting prohibition under Section 11 of the Customs Act, 1962. However goods 'restricted' as per the FTP may be permitted for transshipment to destination abroad. Further, transshipment shall not be allowed to any port / destination, in respect of which any order or prohibition is in force for the time being. Commissioners may also prescribe any additional safeguard for securing safe transshipment.

4.3 In order to introduce international transshipment of LCL containers, the Custom Houses need to identify suitable premises within the approved place for the purpose of safe custody of imported goods and other authorized operations. Commissioners should adopt consultative approach with the stakeholders / operators to identify particular premises for such international transshipment taking into account the following factors:

- (a) Location of the premises.
- (b) Availability of adequate infrastructure - modern handling equipment for loading, unloading of containers from rail flats, chassis, their stacking, movement, cargo handling, stuffing/de-stuffing, refrigerated storage facility for perishable cargo etc.
- (c) Availability of sufficient secured area for segregation/ consolidation of cargo and for its safe handling.

- (d) The premises need to be connected with Custom House on EDI to handle the transshipment in ICES.
- (e) Experience of custodian in handling import export matters and working knowledge of Customs Act, rules and regulations.
- (f) Logistics arrangements including constraints, if any, in movement of containers between approved place / premises and port.

[Refer Circular No.14/2007-Cus., dated 16-3-2007]

## **5. Transshipment from gateway port to SEZ:**

5.1 The procedure for transshipment of cargo from gateway port to Special Economic Zones (SEZs) is laid down under Special Economic Zones Rules, 2006. Broadly, the procedure is the fifth copy of the registered or assessed Bill of Entry filed by an importer in SEZ is to be submitted to Customs officer at the port of import, and is itself treated as permission for transfer of goods to SEZ. No separate documents or transshipment bond is required to be filed, and the transshipment permission is stamped on the fifth copy of the Bill of Entry. The SEZ importer shall submit fifth copy of Bill of Entry bearing endorsement of the authorized officer that the goods have been received in SEZ to the Customs Officer in charge of the airport or port or inland container depot or land Customs station or post office or public or private bonded warehouse, as the case may be, failing which the officer in charge of such airport or port or inland container depot or land Customs station or post office or public or private bonded warehouse, as the case may be, shall write to the Specified Officer for raising demand of applicable duty from the SEZ importer. Similar procedure for export goods is prescribed under the SEZ Rules, 2006.

## **6. Timely issuance of transshipment permits:**

6.1 Filing of transshipment applications and issuance of Transshipment Permits on Saturdays is allowed.

6.2 Transshipment permits would not be denied if the goods imported at a Customs station are manifested for being transshipped to any port/airport or any ICD/CFS, except in case of a specific intelligence about mis-declaration of goods in the IGM or presence of contrabands in the container. Even in such cases, before detaining any such container at the gateway port, permission from Joint/Additional Commissioner shall be obtained in writing. The Commissioners are required to look into this aspect personally and ensure that such permits are issued smoothly and in a hassle-free manner.

[Refer Circulars No. 46/2002-Cus., dated 29-7-2002 and No.90/2002-Cus., dated 19-12-2002.]

## **7. Automated movement of containerized cargo from gateway ports to hinterland – SMTP:**

7.1 The transshipment of containerized cargo from one port to an inland port or ICD/CFS is automated where the EDI system (ICES) is operational. This involves exchange of messages for Transshipment of Cargo electronically among Customs, Port authorities, ICDs and Shipping Agents. The implementation of this module is a significant step in the ongoing Business Process Re-engineering initiatives of the department and will reduce the congestion and dwell-time of cargo at the ports and contribute to reduction in transaction costs of imports.

7.2 In the automated Transshipment Module, the requirement of an application by the carrier is done away with and the SMTP (Sub manifest Transshipment Permit) portion of the IGM itself is treated as a request for transshipment. Carriers are not required to separately file an application for this purpose. They will however be required to indicate the code of the transporter undertaking the transshipment (e.g. CONCOR) in a specific field in the IGM. The ICES system allows transshipment of those containers against whom the port of destination is indicated as ports other than the port of discharge.

7.3 The transshipment permit information is sent to the carrier, the transporter undertaking the transshipment, custodian of the gateway port, and the ICES system at the destination ICD. Transshipment permit can also be printed by the carrier in his office or in the custom house.

7.4 The transshipment permit transmitted to the recipient port/ ICD/ CFS is automatically converted into an IGM and the Shipping Lines is not be required to file any fresh IGM in respect of such containers.

7.5 The transporter performing the transshipment activity will be required to electronically submit a container arrival report to the ICES system at the destination ICD/ CFS in a specified format. The container arrival report will be matched with transshipment message received from the Gateway Port and a 'landing certificate' message will be generated by the inland port/ICD/CFS which will be transmitted to the Gateway port for closure of IGM Lines.

[Refer Circular No.46/2005-Cus., dated 24-11-2005]

## **8. Movement of export cargo from port/ICD/CFS to gateway port:**

8.1 The export cargo, after its clearance at a port/ICD/CFS, may be carried in sealed containers to the gateway port for export. Broadly, the procedure in this regard is as follows:

- (a) The exporters are required to bring their goods meant for exports to the Port/ICD/CFS and file six copies of Shipping Bill with all necessary documents like GR form/SDF, AR-4 Form, Certificate issued by Export Promotion

Councils, etc. In addition to the usual information given in the Shipping Bill, the exporter is required to mention the gateway port of export along-with the serial number(s) of the container(s). The Shipping Bill is assessed as usual, the goods examined, samples drawn, and if required, inspection carried out by other agencies to check compliance with provisions of various Allied Acts before export is permitted.

- (b) The examination order is given on the duplicate and two transference copies of the Shipping Bill i.e. on all three copies. After examination of the goods, container is sealed by the Customs with 'one time bottle seal'. The duplicate copy of Shipping Bill is retained at the ICD/CFS/port and the transference copies forwarded to the gateway port. The E.P. copy of Shipping Bill is required to be suitably endorsed/stamped by the Customs officer to the effect that the goods are to be transshipped at the gateway port mentioned on the Shipping Bill for their destination outside India.
- (c) The goods cleared for export at the port/ICD/CFS are allowed to be carried to the gateway port subject to the conditions of execution of bond similar to that provided for transshipment of import goods under relevant Regulations, and if export goods are manifested for the final destination through the gateway port. The FOB value of goods is to be debited from the continuity bond executed by the custodians. The carriers/custodians transporting the goods are to be handed over the transference copies of Shipping Bill in a sealed cover.
- (d) The containers are allowed to be carried from a port/ICD/CFS to the gateway port by vessel or rail or road or by combination of two or more of these modes of transport.
- (e) The Drawback, if any, is required to be paid to the exporters as soon as the Shipping Bill is passed and goods are shipped at the originating port/ICD/CFS subject to the condition that the necessary bond has been executed by the Steamer Agent/carrier to bring back and submit the proof of export to the Customs within 90 days.
- (f) At the gateway port, the containers are normally allowed to be exported under Customs supervision after checking the seals. In case seals are intact and documents are in order, no further examination of goods is undertaken. The Preventive Officer supervising the export of container, endorses the fact of shipment in both the transference copies of the Shipping Bill. Steamer agent has to file EGM in duplicate.
- (g) One copy of transference Shipping Bill along with a copy of EGM is sent back to the originating port/ICD/CFS.

- (h) At the originating port/ICD/CFS, export manifest and transference copy of Shipping Bill, received from the gateway port, are co-related with the duplicate copy of the Shipping Bill and other relevant documents for closure of export manifest and cancellation of bond.

**9. Movement of export cargo from one port to another by rail:**

9.1 Movement of export cargo after its clearance at the originating port is allowed by rail to another port for export therefrom. The procedure for such movement and the documentation will be similar to that being followed for movement of export cargo from the ICDs/CFSs to gateway ports. Thus, all the documentation relating to Customs clearance of export goods and examination etc. will take place at the originating port. After clearance, cargo will be stuffed and sealed in containers in the presence of Customs. The drawback and other import incentives are to be paid/credited at the originating port.

[Refer Circular No.75/2001-Cus., dated 5-12-2001]

**10. Export of container cargo from ICDs/CFSs to Bangladesh and Nepal through LCSs:**

10.1 Movement of export cargo from ICDs/CFSs to Nepal and Bangladesh through Land Customs Stations is as per the following procedure:

- (a) The exporters are required to bring their goods meant for export to ICD/CFS, and to file six copies of Shipping Bills (including two transference copies) along with all necessary documents like GR Form, AR Form, certificates issued by Export Promotion Councils, etc. The Shipping Bill is assessed as usual, the goods are to be examined and samples drawn, if required. Inspection can be carried out by other agencies if applicable under other Allied Act(s). After the assessment of Shipping Bill, the original and duplicate copies of Shipping Bill along with two more copies (transference copies) and original GR Form are to be retained at the ICD. The original GR form is to be forwarded to the concerned branch of Reserve Bank of India.
- (b) The examination order is to be given on duplicate and transference copies of the Shipping Bill. The examination report shall be recorded on all these copies. The duplicate copy shall be retained in the ICD/CFS and both transference copies shall be forwarded to the LCS through the carrier in a sealed cover along-with a copy of invoice, packing list and other required documents. After examination, the goods shall be stuffed in a container and the container shall be sealed with tamper proof bottle seal. The seal no. shall be recorded in the copies of Shipping Bill and AR form. The copies of Shipping Bill and the AR form shall be duly endorsed with the examination

report and loading report recording the container number etc. and this shall be jointly signed by the Customs, carrier and the exporter's representative.

- (c) The carrier shall then transport the containers by road or/and rail upto the LCS. At the LCS, both transference copies of Shipping Bill shall be submitted by the carrier to the proper officer of Customs. The Customs Officer shall inspect the seal of the container and if found intact and the seal no. tallies with the Shipping Bill, he shall record the same in the transference copies of the Shipping Bill and the AR 4 form, as given below, and put his name, signature and date before allowing the movement of the containers into Nepal/Bangladesh, as the case may be.

*"Inspected and seals found intact, Seal Nos. found to tally with the Shipping Bill and AR 4 form".*

- (d) In case the Customs seal on the container is found broken or tampered with or some discrepancy found in the seal nos., the matter shall be brought to the notice of the Deputy/Assistant Commissioner of Customs and such container shall be subjected to 100% examination. If any deviation from the Shipping Bill or invoice is detected during examination, adjudication proceedings may be initiated.
- (e) In case the Customs seal on the container is found intact as per documents and the documents are in order, the Proper Officer at the LCS shall endorse the transference copies of Shipping Bill with "Export Allowed". He may also make an endorsement to the effect that the container has been duly identified by him and has crossed the border into Nepal/Bangladesh on both the copies of Shipping Bill and AR form at the time of actual export. One copy of the Shipping Bill may be retained at the LCS and the other transference copy shall be returned to ICD/CFS from which the container had originated.
- (f) On receipt of transference copy of the Shipping Bill, the Customs at the originating ICD/CFS shall match it with duplicate copy of Shipping Bill so as to ensure that the goods have been exported. If the copy is not received within 90 days, the Assistant/Deputy Commissioner of Customs at the originating ICD/CFS may raise a demand on the custodian equal to the export duty and Drawback in respect of the export goods in addition to any other action that may be taken against the exporter. He may also intimate the DGFT and RBI accordingly. The matter shall also be reported to the jurisdictional Commissioner of Central Excise for recovery of excise duty on the goods.
- (g) To ensure safety and security of goods during transit to LCS, the custodian of the ICD has to furnish a bond with security as is being done for movement of cargo from ICDs/CFSS to the gateway port. The bond shall be debited with



the value of the goods every time a container is given to carrier for transport. The amount can be re-credited once the proof of export is received.

- (h) The facility for movement of export cargo from ICDs/CFSS to Nepal and Bangladesh mentioned above shall be available if cargo is moved through LCSs at Petrapole and Gede in Indo-Bangladesh border and Raxaul and Nautanwa (Sonauli) at Indo-Nepal border.

[Refer Circulars No.18/2002-Cus., dated 13-3-2002 ;and No. 61/2003-Cus., 18-7-2003]

## **11. Transshipment of cargo by air:**

11.1 A detailed procedure has been prescribed for transshipment by air of (i) imported cargo between two airports in India, (ii) international transshipped cargo (Foreign to Foreign), and (iii) export of cargo tendered at one Customs airport for export from another Customs airport. The movement of cargo between the gateway airport and inland airport is allowed in Indian Airlines flights and also in private sector airlines flights.

### **11.2 Transshipment of cargo from a gateway airport to an inland airport:**

- (i) On arrival of flight, the transshipment cargo should be segregated in custodian's premises.
- (ii) For transshipment of cargo, the carrier/ console agent is required to file an application for transshipment of cargo, consigned to another airport as indicated in HAWB. Cargo Transfer Manifest (CTM) prepared by the carrier/consol agent, as the case may be, shall itself be treated as application for transshipment. Separate CTMs may be prepared destination-wise. Such transshipment should be approved by the Proper Officer.
- (iii) The cargo mentioned in the CTM needs to be escorted by the Preventive Officer from the warehouse of the custodian to the warehouse of receiving airlines which acknowledges the same. The concerned airlines/custodian warehouse should have double locking arrangement, one key of which will be with the airlines/custodian and the other with Customs, for storage of transshipment cargo. No physical examination needs to be conducted, except on specific intelligence, for allowing transshipment and only marks and numbers of cargo need to be verified.
- (iv) The receiving airlines should prepare its cargo manifest and transshipment be allowed under Customs supervision. The value of transshipped cargo should be debited from the Transshipment Bond.
- (v) Customs at destination airport will acknowledge the receipt of the cargo and send back the acknowledgement manifest through the carrier. The carrier should produce such acknowledgement at the originating airport within 10 days of transshipment. On the basis of such acknowledgement the Transshipment Bond would be re-credited.

- (vi) The usual procedure for Customs clearance of cargo shall be adopted at the destination airport.

11.3 International transshipped cargo (Foreign to Foreign):

- (i) On the arrival of flight, the transshipment cargo meant for destination abroad should be segregated in the Custodian's premises.
- (ii) The carrier is required to file application for transshipment of cargo and CTM prepared by the airlines shall be treated as application for transshipment. Such transshipment should be approved by the Proper Officer.
- (iii) Cargo mentioned in CTM need to be escorted by the Preventive Officer from the warehouse of custodian to the export terminal. No physical examination needs to be conducted, except on specific intelligence, and only marks and numbers of cargo need to be verified. Such cargo may be exported with other export cargo.

11.4 Export of cargo tendered at one Customs airport for export from another Customs airport:

- (i) Shipping Bill shall be filed at the originating Customs station and "Let Export Order" should be given by the Customs at the same station. Transshipment Permit (TP) should be prepared by the airlines/ carrier and approved by the proper officer. TP should be sent alongwith the cargo and Transshipment Bond shall be debited for the value of cargo.
- (ii) On arrival at the gateway airport, the cargo should be taken to the warehouse of the domestic airlines/custodian in a clearly identified area. The warehouse should have double locking arrangement, one key of which will be with the airlines/custodian and the other with Customs. The Customs officers in charge of warehouse should verify the details of the packages with the TP, Airway Bill, etc. The domestic airlines may prepare the CTM airlines-wise which shall be certified by the Export Freight Officer (EFO).
- (iii) Cargo should be shifted to the transshipment warehouse in the export terminal of custodian and acknowledgement obtained. No examination of such cargo should normally be done at gateway airport, except on credible intelligence or information.
- (iv) When the aircraft is ready for loading, the airlines should seek permission from the EFO for loading. The load plan prepared by the airlines should be signed by the Airlines, EFO and the custodian.
- (v) Cargo should be loaded in the aircraft under Customs supervision.
- (vi) Copy of manifest signed by the EFO and Airway Bill alongwith copy of Shipping Bill should be sent by the airlines to the originating station within 30 days of transshipment. Transshipment Bond shall be re-credited at originating airport.
- (vii) In case the transshipment is by bonded truck, the marks and numbers of the packages shall be verified with the details in the transshipment permission and the bonded truck sealed with bottle seal in the presence of the Preventive Officer.

- (viii) If transshipment of cargo is also desired at some intermediate Customs airport, carrier/ airlines should give advance intimation to intermediary airport. Customs at intermediary airport would supervise the movement of cargo and endorse the same on Transshipment Permit. The concerned airlines/custodian warehouse should have double locking arrangement, one key of which will be with the Airlines / custodian and the other with Customs, for storage of transshipment cargo. The loading of such cargo again would be under the supervision of Customs Officer.

11.5 If the cargo transhipped under the provisions of the Customs Act, 1962 is not unloaded at the place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and if the failure to unload or the deficiency is not accounted for, then the person-in-charge of the conveyance shall be liable for penal action as per the provisions of Customs Act, 1962.

[Refer Circular No.6/2007-Cus., dated 27-1-2007]

11.6 Airlines/ other carriers having annual transshipment volume above 2500 MT to/from any airport would be exempt from Bank Guarantee for carriage of goods on transshipment.

[Refer Circular No.24/2006-Cus., dated 25-8-2006]

## **12. Bonded trucking facility:**

12.1 With a view to supplement the existing facility and provide adequate flexibility to the trade in the choice of modes of transport, movement of imported cargo in containers / trucks has been allowed between airports/ACCs and airports/ACCs/CFSS/ICDs as per the following procedure:

- (i) On the basis of the request made by the trade and in terms of Section 45(1) of the Customs Act, 1962 the Commissioner of Customs will appoint the airlines or their duly approved agents or the custodians of gateway airport/ACCs or the custodians of destination ICDs/CFSS/airports/ACCs as the custodian of all cargoes to be transhipped under bonded cargo trucking facility from airport/ACCs to ICDs/CFSS/airports/ACCs in hinterland by road. The permit will be valid for one year from the date of issue initially and shall be renewed every three years subsequently.
- (ii) Transshipment of imported cargo is governed by the provisions of Chapter VIII of the Customs Act, 1962 and the Goods Imported (Conditions of Transshipment) Regulations, 1995.
- (iii) The imported cargo should be manifested for transshipment. In respect of consol cargo where the Master Airway Bill does not show the final destination, the airlines filing transshipment application should keep a copy of both Master Airway Bill and House Airway Bill to indicate that the particular consignment sought for transshipment is for an inland Customs airport/ICD/CFSS/ACC.

- (iv) For proper accountal of cargo the custodian should execute a suitable running bond with a bank guarantee for an amount approved by Commissioner of Customs concerned. The amount will be debited from this bond when the transshipment cargo is taken by the custodian and it will be credited when the proof of handing over of the cargo to Customs at final destination is produced. The custodian will be responsible for any shortage or pilferage of the cargo.
- (v) The custodian will submit a list of trucks together with registration numbers to be used for movement of each transshipment cargo. The trucks so deployed for transport should be specially secured to avoid pilferage of cargo and have provision of affixing of Customs "Bottle Seals".
- (vi) The airlines/custodian should have a transshipment warehouse within the Airport Apron area so that the goods on unloading can be shifted to the transshipment warehouse without having to be moved outside the Airport area. The concerned airlines/custodian warehouse should have double locking arrangement, one key of which will be with the airlines/custodian and the other with Customs, for storage of transshipment cargo. Preventive Officers will be posted at the airlines/custodian warehouse on cost recovery basis.
- (vii) If the airlines/custodian does not have a transshipment warehouse, the import cargo for transshipment duly passed with transshipment application will be received by them from the Airport Authority of India's (AAI) custody to their make-up area specially earmarked for the purpose of palletisation/containerisation on the same day under Customs supervision and if for any reason the goods cannot be transshipped immediately, the same should be handed over to AAI.
- (viii) The custodian appointed and deciding to transship the cargo will present transshipment application (5 copies) alongwith the copy of Airway Bill (both Master Airway Bill and House Airway Bill, wherever applicable) to the Customs Officer in charge of transshipment clearance. The original transshipment copy must be affixed with Rs.20 stamp as T.P fees. The transshipment application should contain details such as (a) name and address of the importer; (b) name and address of the exporter; (c) country of origin; (d) airport of destination; (e) flight no. and date; (f) IGM no. and date; (g) description of goods; (h) value of the goods; (i) No. of packages; (j) weight gross/net; and (k) details of container/palletised vehicle on which the cargo consignment is to be carried.
- (ix) After scrutiny of T.P. application the T.P. Officer will issue Customs Bottle Seal and hand it over to the Customs Officer supervising the loading of the

cargo in container/truck. The T.P. Officer will mention S.No. of Customs Bottle Seal on all copies of transshipment application.

- (x) On getting the transshipment permission the custodian/airlines will shift the goods from AAI warehouse to the make-up area earmarked for the purpose of palletisation/containerisation or shift the goods from their warehouse into the container/truck within the premises of the warehouse under the supervision of the Customs Officer posted for the purpose. After loading of the goods, the Customs Officer will seal the container/truck with Customs Bottle Seal and under his name and signature endorse all T.P. copies as :

*“Supervised the loading of .....No. of packages on container / truck No. .... destined to ..... airport/ACC/CFS/ICD and sealed with Customs Bottle Seal No. .... on ..... (date) covered by Transshipment Permit No. ....”*

- (xi) Original copy of T.P. application will be forwarded to the Import Freight Officer (IFO) of Customs at the airport/ACC/CFS of destination. Duplicate copy will be retained by T.P. Officer. Triplicate copy of T.P. application will be handed over to the airlines/custodian. The Quadruplicate copy will remain with the Customs Officer posted in the airlines/custodian warehouse and supervising the loading of cargo. The Quintuplicate copy will be sent in sealed cover alongwith the truck/container to IFO of Customs at the airport/ACC/CFS/ICD of destination who will retain it after verification of cargo.
- (xii) The IFO of Customs at the airport/ACC/CFS/ICD of destination will check the Customs Bottle Seal and description of packages as per T.P. copy and tally the packages with the copies of the manifest received to ensure that the packages are in good condition. The safety and security of the packages is the responsibility of the custodian and in case of any damage at the time of in transit, it should be clearly indicated in all copies of manifest and attested by custodian. The IFO at the airport/ACC/CFS/ICD of destination after receiving the cargo shall under his name and signature give a suitable endorsement on the original T.P. copy, as given below, and retain the T.P. copy sent with the truck for record.

*“Checked Customs Bottle Seal and packages as per T.P. application No. .... dated.....arrived on Container/Truck No.....on .....(date).*

- (xiii) The endorsed original T.P. copy will be presented by the airlines/custodian as evidence of handling over of the cargo to the transshipment officer at the ACC/airport from where the transshipment permission was granted. On

receiving such endorsed T.P. copy the transshipment officer will close the entry in the register.

- (xiv) The airlines/custodian shall make necessary arrangements at the airport/ACC/ICD/CFS of destination to remove the cargo and deposit the same with custodians appointed under Section 45 of the Customs Act, 1962, under Customs supervision.
- (xv) The airlines/custodian shall produce the evidence of handling over of the cargo at the inland airport/ACC/CFS/ICD of destination within 30 days from the dispatch of goods / failing which suitable action will be taken.
- (xvi) The airlines/custodian will be required to bear the expenditure on cost recovery basis over the preventive staff to be provided exclusively for this purpose.

12.2 The movement of unaccompanied baggage from airports/ACCs to ICDs/CFSs/Airports/ACCs shall be allowed by the bonded trucks.

12.3 The procedure of bonded trucking facility is available for movement of imported cargo both by containers and trucks.

[Refer Circulars No. 69/1999-Cus., dated 6-10-1999; and No.6/2007-Cus., dated 22-1-2007]

### **13. Carriage of domestic cargo on international flights:**

13.1 Air India, Indian Airlines and private domestic private airlines are permitted to carry domestic cargo between domestic airports on their international flights subject to the fulfillment of the following conditions:

- (i) Separate space shall be assigned by the airlines or custodian in the cargo complex/area of the airport for receipt and storage of domestic cargo till these are delivered or dispatched.
- (ii) Domestic cargo will be received by the airlines in the designated area during the normal working hours of Customs at the respective airport.
- (iii) The containers/Unit Load Devices (ULDs) used to carry the domestic or international cargo shall be clearly marked or coloured or strapped, for identification, distinction at the time of loading/ unloading, transportation.
- (iv) Domestic tags shall be prepared for identification of the domestic cargo with separate colour coding.
- (v) Loading or unloading of domestic cargo in any international flight/ aircraft shall be carried under the supervision of Customs officers.

- (vi) Domestic and international cargo will be loaded separately, and shall be carried in hold area onboard the aircraft distinctly identifying these cargoes.
- (vii) On arrival of the domestic cargo, at the destination airport, the airlines shall make necessary arrangements to deliver the domestic cargo.
- (viii) In respect of transshipment of international cargo, airlines shall be required to execute necessary bond and bank guarantee unless exempted on account of fulfilling the specified threshold limit of annual transshipment volume. In addition, prescribed transshipment procedure shall be strictly adhered to. Accordingly, no separate bond or bank guarantee shall be required in respect of domestic cargo.
- (ix) In case of any violation of the prescribed conditions or any other regulations providing for the manner in which the imported goods/ export goods shall be received, stored, delivered or otherwise handled in a Customs area, necessary action may be taken against the person including withdrawal of the facility and imposition of penalty under the Handling of Cargo in Customs Areas Regulations, 2009.

[Refer Circulars No. 78/2001-Cus., dated 7-12-2001; No.45/2005-Cus., dated 24-11-2005; No.6/2007-Cus., dated 22.01.2007; and No.4/2010-Cus., dated 15-2-2010]

#### **14. Movement of domestic courier bags on domestic segments of international flights:**

14.1 The movement of domestic courier bags on domestic sector of international flights of all the airlines is permitted subject to following conditions:

- (i) The Courier company must be registered with Customs.
- (ii) The packages/bags of domestic courier should be clearly and identifiably differentiated from the International Courier bags/packets by printing in bold "DOMESTIC COURIER".
- (iii) The domestic courier bags should be kept in separate pallets and should be stored in the separately marked domestic bins/containers on the aircraft.
- (iv) At the place of embarkation the domestic courier company will submit "goods declaration", indicating the number of bags, number of packages in bags, content of packages, to the on board courier or person in-charge of the aircraft with a copy to the Escort Officer of Customs.
- (v) At the place of disembarkation/ arrival, the cargo manifest will be filed by person in-charge of the aircraft or on-board courier, as the case may be, with the proper officer of Customs. In case, on board courier is not accompanying the courier consignment, the responsibility to file the cargo

manifest with the proper officer of Customs will vest with the person in charge of the aircraft.

- (vi) The copy of the declaration submitted to escort officer of Customs will be handed over by the Escort Officer to the Customs Officer at the disembarking airport, for carrying out the checks and verifications, if so required.
- (vii) If the courier consignment is accompanied by "on board courier", they will not be allowed to carry any courier bags on board the aircraft as hand baggage.

[Refer Circulars No.47/96-Cus., dated 16-9-1996; No.57/98-Cus., dated 4-8-1998; No. 31/99-Cus., dated 27-5-1999; No.69/99-Cus., dated 6-10-1999; No.34/2000-Cus., dated 3-5-2000; No.56/2000-Cus., dated 5-7-2000; No.61/2000-Cus., dated 13-7-2000; No.75/2001-Cus., dated 5-12-2001; No.78/2001-Cus., dated 7-12-2001; No.15/2002-Cus., dated 25-2-2002; No.18/2002-Cus., dated 13-3-2002; No.46/2002-Cus., dated 29-7-2002; No.90/2002-Cus., dated 19-12-2002; No. 61/2003-Cus., dated 18-7-2003; No.87/2003-Cus., dated 6-10-2003; No.52/2004-Cus., dated 7-10-2004; No.45/2005-Cus., dated 24-11-2005; No.46/2005-Cus., dated 24-11-2005; No.47/2005-Cus., dated 24-11-2005; No.24/2006-Cus., dated 25-8-2006; No.6/2007-Cus., dated 22-1-2007; No.14/2007-Cus., dated 16-3-2007; No.31/2005-Cus., dated 25-7-2007; and No.4/2010-Cus., dated 15-2-2010]

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## **Chapter 11**

### **Consolidation of Cargo**

#### **1. Introduction:**

1.1 With the development of a number of ICDs/CFSs in the hinterland, importers and exporters have the option to either get their import/export consignments cleared at the gateway ports or any nearby ICD/CFS. The export goods cleared by Customs at an ICD/CFS are sent in sealed containers to gateway port where these containers are normally allowed to be exported without further examination of the goods. Similarly, imported cargo meant for any ICD/CFS is allowed to be transshipped in sealed containers from the gateway ports to such ICDs/CFSs and all Customs formalities for clearance of cargo are completed by the importers at ICD/CFS.

1.2 Export containers sealed at the ICD/CFS were earlier not allowed to be re-opened for consolidation at the gateway port, which led to shifting this activity to international hub ports e.g. Dubai, Singapore and Colombo. Similarly, import containers with LCL cargoes used to be brought to hub ports, where shipping lines used to consolidate the cargo and stuff in containers destination wise. There was thus a demand from exporters, importers, shipping lines, agents and consolidators to allow the re-working of containers at the gateway ports to avoid the extra expenditure incurred for undertaking the same job at the foreign hub ports.

1.3 Re-working containers is allowed at the gateway ports. Shipping lines can take containers stuffed with LCL export cargo, irrespective of destination, from ICD/CFS to a gateway port, where these can be re-worked with cargo received from different ICDs/CFSs and stuffed in containers, destination-wise. Similarly, LCL import cargo brought at any gateway port can be re-worked and consolidated in containers ICD-wise. With this facility, exporters get benefit of saving in freight charges, reduction in transit time, better handling and safer delivery of cargo. The facility reduces freight charges for imported LCL cargo as it helps in optimum utilization of container capacity. It also helps in attracting business for Indian ports and developing them as transshipment hubs.

#### **2. Procedure for consolidation of import cargo:**

2.1 Broadly, the procedure for consolidation of import cargo at the gateway ports is as follows:

- (i) On arrival of the LCL cargo meant for ICDs/CFSs, at the gateway port the concerned shipping line files the IGM with the Customs;

- (ii) The de-stuffing and consolidation of the LCL cargo ICD/CFS-wise is to be done at the earmarked space under Customs supervision and surveyors of the custodians;
- (iii) After consolidation of LCL cargo (ICD/CFS-wise), the custodian at the gateway port shall prepare a tally list showing details of the import consignments, the previous container number, IGM No. and the details of the new container. The shipping line has to then file sub-IGMs for all LCL (Import) cargo IGM-wise;
- (iv) After acceptance of sub-IGM by Customs, the LCL cargo ICD/CFS-wise is allowed to be re-stuffed in empty containers. The containers so re-stuffed are sealed by the custodian as per the procedure. The details of the new bottle seal should be indicated in the sub-IGM;
- (v) For transshipment of re-stuffed LCL cargo in new containers to different ICDs/CFSSs, the concerned shipping line is to follow the procedure laid down in the Goods Imported (Conditions of Transshipment) Regulations, 1995; and
- (vi) After completion of Customs formalities and clearance of LCL cargo at the respective ICDs/CFSSs, a copy of the sub-IGM is to be sent back to Customs authorities at the gateway port for confirmation/closure of IGM.

### **3. Procedure for consolidation of export cargo:**

3.1 Broadly, the procedure for consolidation of export cargo at the gateway ports is as follows:

- (i) LCL cargo brought to an ICD/CFS is subject to routine documentation, assessment and examination by Customs. After examination and clearance of LCL cargo at the ICD/CFS, the packages opened for Customs examination are sealed by Customs. The shipping line is required to use identification mark on each package, clearly indicating serial number of package, description of goods, total number of packages covered under that particular shipping bill, exporters identity and their own codified identity;
- (ii) After completion of Customs formalities, the packages are handed over to the custodians along with two transference copies of Shipping Bill, certified copies of invoice, packing list, Bill of Lading and other documents;
- (iii) The custodian consolidates the cargo irrespective of shipping line and destination and stuffs these in containers. After sealing of such containers in presence of Customs, containers are carried to the gateway port or a CFS near gateway port by the custodian;
- (iv) At the gateway port, the documents are handed over to Customs and the containers are opened in presence of Customs. The cargo is handed over to

shipping lines/their agents/MTOs/consolidators, etc., who re-work the cargoes received from different ICDs as well as cargo cleared for export at the gateway port or CFSs near the gateway port and re-stuff the cargo in containers destination-wise in presence of Customs;

- (v) The custodians of the gateway port or CFS near gateway port have to maintain a tally sheet container-wise indicating details of the export consignments, the previous container number, Shipping Bill number, AR-4 number and the details of new containers in which goods are re-stuffed;
- (vi) The container number in which such cargoes are stuffed is to be indicated by the Customs Officer on both the transference copies of Shipping Bill and AR-4. One copy of Shipping Bill is retained by the Customs at the gateway port and other copy of Shipping Bill is returned to the originating ICD/CFS;
- (vii) The LCL cargo cleared by Customs at the ICD/CFS is normally not to be examined again by Customs at the gateway port or at the CFS where LCL cargo is being consolidated; and
- (viii) The Drawback is to be paid at the inland ICDs/CFSs immediately after the clearance of LCL cargo by Customs without waiting for actual shipment of cargo from the gateway port.

3.2 Jurisdictional Commissioners shall, by issue of suitable standing order allow the movement of containers/ trucks loaded with LCL cargo from one CFS to another CFS under their jurisdiction so as to have optimum utilization of space in a containers/ truck. They should, however, ensure this facility is not misused and revenue is safeguarded.

[Refer Circulars No.55/2000-Cus., dated 30-6-2000; and No.22/2001-Cus., dated 17-4-2001 and Instruction F.No.450/66/2005-Cus.IV, dated 24-11-2005]

#### **4. International transshipment of LCL containers at Indian ports:**

4.1 As per Section 54(2) of the Customs Act, 1962 transshipment of imported goods to any place outside India, referred as 'International transshipment', is allowed except in respect of goods prohibited under Section 11 of the said Act. Accordingly, international transshipment of imported goods in Full Container Load (FCL) is permitted at all ports and transshipment facility for imported goods in Less than Full Container Load (LCL) is permitted at approved places at Chennai, Cochin, Nhava Sheva, and Tuticorin.

4.2 The following procedure is prescribed on arrival of the international transshipment (ITP) containers:

- (i) The application for international transshipment of FCL cargo can be made by master of the vessel or his authorized agent, Non-Vessel Operating Common

Carrier (NVOCC) or any other person duly authorized in this behalf by the foreign supplier;

- (ii) No goods for international transshipment should be unloaded from the vessel until the permission for the same has been given by the Assistant/Deputy Commissioner of Customs authorized in this behalf by the Commissioner of Customs, on the basis of manifested details in IGM;
- (iii) The ITP container details such as container number, broad description of goods etc. shall be mentioned in the IGM. In the electronic manifest, there are fields for specifying (a) Port of destination, and (b) 'cargo movement' code. For cargo movement, there are three codes, which need to be filled correctly with proper port of destination, as follows:
  - (a) 'LC' – Local Cargo: This refers to the port code where cargo is delivered. It is the same as the port of arrival.
  - (b) 'TC' – Transshipment Cargo: It refers to international cargo and the port of destination shall be the port code where transshipment cargo is destined to or delivered.
  - (c) 'TI' – Transshipment to ICD: This is the local cargo meant for transshipment to hinterland port i.e. ICD. The port of destination is the port code of the ICD.
  - (d) There is a field 'Container Status' to specify whether the cargo is FCL or LCL or 'Empty'. The line and the sub-line numbers provide the inter-linkage between the cargo details and the container details.
- (iv) The unloading of such ITP containers at gateway port would be in presence of Customs Officers. The containers would be taken to approved place / premises under Customs escort. Custodian of such premises would provide a segregated secure space for ITP containers.
- (v) Customs Officers would examine the seal of the ITP Containers and in case of its tampering, such container should be immediately resealed with the Customs seal in the presence of the custodian/shipping agent and same should be recorded. Such containers will be examined 100% by the Customs Officers and findings recorded thereof and put up to the Assistant/Deputy Commissioner in charge for further action.
- (vi) LCL cargo meant for a foreign port outside India would be de-stuffed in the presence of Customs Officer and stored in a secured area as provided by custodian. LCL cargo may contain consignments meant for transshipment to any port outside India as well as consignments for home consumption or transshipment to ICDs. This would necessitate segregation of the two types of cargo at the time of de-stuffing and moving them to respective storage areas

under Customs escort. Till such time, sufficient precaution should be taken to avoid duplication/mixing up or manipulation of cargo meant for transshipment/home-consumption.

- (vii) Whenever the LCL cargo are required to be exported to foreign destination, The re-stuffing of such LCL cargo meant for the foreign port along with the export cargo would be done under the supervision of a Customs officer. Further, container would be sealed in presence of a Customs Officer.
- (viii) The details of LCL cargo would be entered in EGM.
- (ix) Custodian would maintain the record of ITP LCL cargo, both loaded and unloaded, and submit a monthly summary to Customs. He shall execute a general bond for an amount equal to the approximate value of goods expected to be imported in 30 days for the purpose of international transshipment. In such bond, custodian should undertake to export transshipment cargo within 30 days or within extended period as Commissioner may allow and follow all the relevant Acts, Rules and Regulations in force.
- (x) Custodian would be responsible for safe handling of the LCL cargo and ensure that there is no intermixing of ITP LCL cargo with other cargo.
- (xi) International transshipment of cargo needs to be effected within 30 days of "Entry Inward" of the importing ship. The permission for transshipment would not be given to cargo having arms, ammunition, explosives and other cargo considered as constituting a threat to the security/safety and integrity of the country and other goods attracting prohibition under Section 11 of the Customs Act, 1962. However goods which are 'restricted' as per the FTP may be permitted for transshipment to destination abroad. Further, transshipment shall not be allowed to any port / destination, in respect of which any order or prohibition is in force for the time being. Commissioners may also prescribe any additional safeguard for securing safe transshipment. The provisions of Section 48 relating to the procedure in case of goods not transshipped within 30 days after unloading shall apply to the goods meant for transshipment as these are covered under the scope of "imported goods".
- (xii) In order to introduce international transshipment of LCL containers, the Custom Houses need to identify suitable premises for the purpose of safe custody of imported goods and for such other authorized operations. Commissioners should adopt consultative approach with the stakeholders/operators to identify particular premises for such international transshipment. Following factors may be considered by the Commissioner for identification of the premises:
  - (a) Location of the premises.

- (b) Availability of adequate infrastructure - modern handling equipment for loading, unloading of containers from rail flats, chassis, their stacking, movement, cargo handling, stuffing/de-stuffing, refrigerated storage facility for perishable cargo etc.
  - (c) Availability of sufficient secured area for segregation/ consolidation of cargo and for its safe handling.
  - (d) The premises need to be connected with Custom House on EDI to handle the transshipment in ICES.
  - (e) Experience of custodian in handling import export matters and working knowledge of Customs Act, rules and regulations.
  - (f) Logistics arrangements including constraints, if any, in movement of containers between approved place/premises and port.
- (xiii) Jurisdictional Commissioners may also indicate detailed operational procedure, taking into account the requirements, physical movement involved in carrying goods to the approved place / premises etc. at individual Customs stations, keeping in view of the Board's instructions.

[Refer Circular No.55/2000-Cus., dated 30-6-2000; No.61/2000-Cus dated 13-7-2010; No.67/2000-Cus., dated 17-8-2000; No.22/2001-Cus., dated 17-4-2001; and No.14/2007-Cus., dated 16-3-2007 and Instruction F.No.450/66/2005-Cus.IV, dated 24-11-2005]

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## Chapter 12

### Merchant Overtime Fee

#### 1. Introduction:

1.1 At times, the trade requests for Customs clearance facilities or for Customs supervision of loading/unloading of vessels, stuffing, de-stuffing of containers, examination of cargo etc. beyond normal working hours of Customs or on holidays. Sometimes requests are received for posting of officers to supervise activities like stuffing, de-stuffing of containers etc., at a factory or place beyond the Customs area. Normally, the trade is required to plan its activities requiring Customs supervision or presence during working hours on working days and within the Customs area. However, in certain cases, e.g. in case of perishable cargo, life saving drugs or other consignments required urgently which has landed at an airport after working hours or on holidays, the importer may require immediate clearance. Considering the difficulties of the trade, the services of Customs, after normal working hours or on holidays within the Customs area or at any time at a place beyond Customs area, are provided on payment of overtime fee.

1.2 The overtime fee (also referred as MOT fee) is collected in terms of Section 36 of the Customs Act, 1962 which allows unloading/loading of imported/export cargo from/on a vessel beyond working hours on a working day or on holidays only on payment of a prescribed fees and the Customs (Fees for Rendering Services by Customs Officers) Regulations, 1998 which prescribes the rates and the manner for collection of such fee.

#### 2. Levy of overtime fee:

2.1 The overtime fee is levied for services rendered by the Customs officers to trade beyond normal working hours or on holidays. If the service is rendered by officials at a place that is not their normal place of work or at a place beyond the Customs area, overtime is levied even during the normal working hours. The term 'service' means any function performed by the Customs officer under the Customs Act, 1962 and it includes:

- (a) Examination of the goods and related functions,
- (b) Loading and unloading of goods whether generally or specifically,
- (c) Escorting goods from one Customs area to the other, and
- (d) Any other Customs work authorised by the Commissioner of Customs.

2.2 The term 'working hours' means the duty hours prescribed by the jurisdictional Commissioner of Customs for normal Customs work. Where different working hours have been prescribed by the Commissioner of Customs for different items of Customs work or for different places within his jurisdiction, such working hours are to be considered as 'working hours' for the purpose of levy of overtime fee.

2.3 At present, the prescribed rates of overtime fee for rendering services by the Custom officers are as follows:

Category of officers	Fee per hour or part thereof on working days (in Rs.)		Fee per hour or part thereof on holidays (in Rs.)	
	6 am - 8 pm	8 pm - 6 am	6 am - 8 pm	8 pm - 6 am
(1)	(2)	(3)	(4)	(5)
1. Appraisers, Superintendent (Customs Preventive) and Superintendent (Central Excise)	85	125	140	180
2. Air Customs Officers, Examiners, Preventive Officers and Inspectors of Central Excise	75	100	105	145
3. Class IV staff	35	45	55	60

2.4 Overtime fee is levied for a minimum of 3 hours in each case, except in cases of overtime postings immediately preceding or immediately following the working hours of the concerned cadre of officers. The period between the midnight and 6 am is treated as a block for calculation of overtime fee whether the services are required for the entire block or for a portion thereof. In regard to services provided by Customs officers during working hours at a place beyond Customs area, the overtime fee is charged for the entire block of working hours before lunch or after lunch, as the case may be, whether the request for the services of Customs officer is for the entire block or a portion thereof.

### 3. Procedure for posting of officers on overtime basis:

3.1 The party desirous of availing of the services of officers on overtime basis is required to make prior request for such posting. The Customs scrutinizes the application and ascertains the requirement of the job and calculates the overtime fee on the basis of rates prescribed in the said Regulations. A separate fee will be charged if either the CHA, vessel, party(importer/exporter) changes. Once the party pays the overtime fee, the officers are posted to perform Customs work.

3.2 In case a CHA has more than one Bill of Entry/Shipping Bill of an importer/exporter, he need not pay separate set of fee for each such document. Similarly, if an exporter or importer has more than one activity to be supervised by Customs during the same block, he need not pay overtime fee for each activity separately.

3.3 In case a custodian requests for services of Customs officers beyond the normal working hour, the same is allowed on payment of merchant overtime fee.



## Chapter 13

### Procedure for Less Charge Demand

#### 1. Introduction:

1.1 During the course of import/export of goods, an importer/exporter is required to pay applicable Customs duty, if any, leviable on such goods. However, there could be situations such as short levy, non-levy of appropriate duty or erroneous refund of duty. In such cases, recovery of duty which was short levied or non-levied and the interest thereon is collected by the Department by applying the relevant legal provisions and procedures.

#### 2. Legal provisions:

2.1 Section 28 of the Customs Act, 1962 provides for recovery of any duty which has not been levied or has been short levied or erroneously refunded or if any interest payable has not been paid, part paid or erroneously refunded provided a notice demanding such duties/interests is issued within the time limit specified in that Section. Where the short levy is by reason of collusion or any willful misstatements or suppression of facts by the Importer the period for issuing the demand notice is five years from the relevant date specified in Section 28.

2.2 Section 28(1A) of the Customs Act, 1962 provides that the importer or the exporter or the agent or employee of the importer or exporter, to whom a notice is served under the Section 28(1) of the said Act pays the duty in full or in part as may be accepted by him, and the interest payable thereon under Section 28AB of the said Act and penalty equal to 25% of the duty specified in the notice or the duty so accepted by such person within 30 days of the receipt of the notice. In such case if such person has paid the duty in full together with interest and penalty, the proceedings in respect of such person and other persons to whom notice is served shall, without prejudice to the provisions of Sections 135, 135A and 140 of the said Act, be deemed to be conclusive as to the matters stated therein.

#### 3. Adjudication proceedings:

3.1 Show Cause Notice for demand of duty under Section 28 of the Customs Act, 1962 can be issued by respective adjudicating officers depending upon the powers of adjudication.

3.2 Upon receipt of the noticee's reply to a demand notice the matter is examined in detail and the noticee is offered an opportunity of 'personal hearing' to explain his case before the adjudicating authority. After the personal hearing the adjudicating authority shall examine the material placed before him and the relevant legal provisions and come to a conclusion. Generally, the issues involved are mis-declaration of the description of the goods resulting in wrong classification and levy of lesser duty, mis-declaration of value, quantity and weight having a bearing on duty, calculation error resulting in short levy of duty, non inclusion of certain components of value in the assessable value etc.

3.3 The adjudicating authority is required to take an independent decision as an quasi-judicial authority and pass appropriate orders either determining the amount of short levy in terms of Section 28(2) of the Customs Act, 1962 or dropping the proceedings where it is found that there is no short levy. In either case an appealable order is to be issued by the adjudicating authority. The duties, fines and penalties imposed, if any, are required to be paid immediately, unless the party files an appeal and obtains a stay from the competent authority.

3.4 The Board has prescribed the powers of different adjudicating authorities under Section 28 of the Customs Act, 1962 as under:

<b>Adjudicating Officer</b>	<b>Nature of Case</b>	<b>Monetary Level</b>
Commissioner	All cases	Without any limit
Additional/Joint Commissioner	SCN in cases involving collusion, willful misstatement or suppression of facts etc.	Duty involved upto Rs.50 lakhs
Additional/Joint Commissioner	Other cases	Value of goods upto Rs.50 lakhs
Assistant/Deputy Commissioner	SCN with/without invoking extended period	Value of goods upto Rs.2 lakhs

3.5 In case of baggage, the Additional Commissioner or Joint Commissioner shall adjudicate the cases without limit, since such cases are covered by the offences under Chapter XIV of the Customs Act, 1962 and it is necessary to expeditiously dispose such cases in respect of passengers at the airport.

3.6 In other cases such as short landing, Drawback, etc., the adjudication power are the same as provided under the Customs Act, 1962.

3.7 As regards breach of condition of a notification after availing of the exemption thereunder, the Apex Court has held that that the obligation under a notification is a continuing one and the Customs authorities are well within their power to recover the duty whenever it comes to their notice that the imported has failed to fulfill the conditions. In such cases the demand can be issued irrespective of the time factor and the amount can be recovered in terms of the provisions of the Customs Act.

3.8 The confirmed demands are enforced and recoveries effected in accordance with the provisions of Section 142 of Customs Act, 1962. Where it is not possible to recover the amount by adjusting against any money which the Department owes to such persons, or by detaining and selling any goods belonging to such persons which are under the control of the Department, action is initiated to recover Government dues through the District Collector as if it were an arrears of land revenue. Powers are also vested with Customs for attaching/detaining and selling any movable or immovable property belonging to/or under control of such person.

[Refer Circular No.23/2009-Cus., dated 1-9-2009]

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## **Chapter 14**

### **Customs Refunds**

#### **1. Introduction:**

1.1 On import or export of goods, at times duty may be paid in excess of what was actually leviable. Such excess payment may be due to lack of information on the part of importer/exporter or non-submission of documents required for claim of lower value or rate of duty. Sometimes, such excess payment of duty may be due to shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, refund of excess amount of duty paid can be claimed by the importer or exporter. If any excess interest has been paid by the importer/exporter on the amount of duty paid in excess, its refund can also be claimed.

#### **2. Legal provisions:**

2.1 Section 27 of the Customs Act, 1962 deals with the refund of duty and interest. As provided therein, refund of duty and interest can be claimed either by a person who has paid the duty in pursuance to an order of assessment or a person who has borne the duty.

2.2 Any person claiming refund of any duty or interest has to make an application in duplicate in the form as prescribed in the Customs Refund Application (Form) Regulations, 1995, to the jurisdictional Deputy/Assistant Commissioner of Customs.

#### **3. Relevant dates for submission of a refund application:**

3.1 In terms of Section 27 of the Customs Act, 1962 an application for refund is required to be filed within six months from the date of payment of duty and interest and in case of any import made by an individual for his personal use or by Government or by an educational, research or charitable institution or hospital, application for refund is to be filed within one year from the date of payment of duty and interest. Normally, the time limit of six months or one year is computed from the date of payment of duty, however, in following situations, such time limit is computed differently:

- (a) In case of goods which are exempt from payment of duty by an ad-hoc exemption order issued under Section 25(2) of the Customs Act, 1962 the limitation of one year or six months, as the case may be, is to be computed from the date of issue of such order;

- (b) Where duty becomes refundable as a consequence of judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year or six months, as the case may be, is to be computed from the date of such judgment, decree, order or direction.
- (c) Where any duty is paid provisionally under Section 18 of the Customs Act, 1962 the limitation of one year or six months, as the case may be, is to be computed from the date of adjustment of duty after the final assessment thereof; and
- (d) The date of payment of any duty and interest in relation to a person, other than the importer shall be 'the date of purchase of goods' by such person.

3.2 The limitation of one year or six months, as the case may be, for claiming refund does not apply where any duty and interest has been paid under protest.

#### **4. Processing of refund claim:**

4.1 The application for refund is required to be filed with documentary or other evidence including documents relating to assessment, sales invoice and other like documents to support the claim that the duty and interest was paid in excess, incidence of duty or interest has not been passed on by him to any other person, and the refund has not been obtained already.

4.2 Where on scrutiny, the application is found to be complete in all respects the Customs issues an acknowledgement in the prescribed Form. However, in case the application is found to be incomplete, the Customs will return the same to the applicant, pointing out the deficiency. The applicant has to then re-submit the application after making good the deficiency.

4.3 The application of refund found to be complete in all respects by Customs, is processed to see if the whole or any part of the duty and interest paid by the applicant is refundable. In case, the whole or any part of the duty and interest is found to be refundable, an order for refund is passed. However, in view of the provisions of unjust enrichment enshrined in the Customs Act, the amount found refundable has to be transferred to the Consumer Welfare Fund except in the following situations when it is to be paid to the applicant:

- (a) If the importer has not passed on the incidence of such duty and interest to any other person;
- (b) If such duty and interest was paid in respect of imports made by an individual for his personal use;
- (c) If the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;

- (d) If amount found refundable relates to export duty paid on goods which were returned to exporter as specified in Section 26 of the Customs Act, 1962;
- (e) If amount relates to Drawback of duty payable under Sections 74 and 75 of the Customs Act, 1962; and
- (f) If the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.

## **5. Unjust enrichment:**

5.1 In terms of Section 27(2) of the Customs Act, 1962 the concerned Assistant/Deputy Commissioner of Customs has to examine the facts of the case and the material placed before him in order to determine whether the amount claimed by an applicant is refundable to him or not. Further, the Assistant/Deputy Commissioner of Customs should go through the details of audited balance sheet and other related financial records, certificate of the Chartered Accountant etc., submitted by the applicant in order to decide whether the applicant had not passed on the incidence of the duty and interest thereon, if any, to any other person. The Order-in-Original passed by the Assistant/Deputy Commissioner of Customs on the refund application should be a speaking order providing specific details including the relevant financial records that are relied upon to arrive at a conclusion whether the burden of duty or interest, as the case may be, has been passed on or not. Refund orders issued in a routine and casual manner thereby sanctioning the amount but crediting the same to the Consumer Welfare Fund without going through the factual details of the case and the due process as provided in the first proviso cannot be considered as a complete and speaking order.

## **6. Interest on delayed refund:**

6.1 The Customs has to finalize refund claims immediately after receipt of the refund application in proper form along with all the documents. In case, any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund, interest that is currently fixed @ 6% is to be paid to the applicant. The interest is to be paid for the period from the date immediately after the expiry of 3 months from the date of receipt of such application till be date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.

6.2 Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal or by the Court, as the case may be is deemed to be an order for the purpose of payment of interest on delayed refund.

6.3 The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.

## **7. Expeditious disposal of refund applications:**

7.1 The procedure to ensure expeditious disposal of Customs duty refund applications and to enhance transparency in refund disbursement is as follows:

- (a) **Receipt and acknowledgement of all refund applications:** All refund applications made under Section 27 of the Customs Act, 1962 whether by post or courier or personal delivery, shall be received by the department and a simple receipt of having received the 'refund application' shall be issued immediately. The receipt should make it clear that the application has not been scrutinized for its completeness. These applications are required to be scrutinized for their completeness within 10 working days of their receipt, for giving acknowledgement by the Proper Officer as per the Customs Refund Application (Form) Regulations, 1995. Hence, if any deficiency is found in the application or any document is required by the department, the same shall be informed at this stage of initial scrutiny itself within 10 working days of the initial receipt. This will avoid any chance for raising repeated queries to the applicant, in a piece-meal manner and bring certainty in dealing with refund applications.
- (b) **Processing of refund applications and their disposal:** Application found complete in all respects after scrutiny, shall be processed on 'first-come-first served' basis. If refund is due, an order for refund is required to be passed in terms of Section 27(2) of the Customs Act, 1962 or where the claim for refund is found liable to be rejected, as the case may be, a speaking order shall be passed giving complete reasons for the order. Further, the order should indicate that the aspect of unjust enrichment has been examined based on the applicable guidelines. The order should also contain the findings of adjudicating authority on the documents produced in support of the claim and the basis for determining the amount as either refundable to the claimant or payable to the Consumer Welfare Fund or the claim not being admissible.
- (c) **Issue of cheque:** Where the refund application is admitted, whether in part or in full, and claimant is eligible for refund, the Assistant/Deputy Commissioner of Customs may ensure that payment is made to the party within 3 days of the order passed after due audit, if any. In all such cases refund amount shall be paid to the applicant by a cheque drawn on the authorised bank with which the sanctioning authority maintains account. After the cheque is signed, it shall either be delivered to the claimant or his authorised representative personally or sent to him by Registered Post 'Acknowledgement Due' at

Government cost, on the basis of pre-receipt already obtained from the claimant.

- (d) **Audit:** Pre-audit of refund claims (other than those to be post-audited) will be conducted by the Assistant/Deputy Commissioner (Audit), in the Commissionerate Headquarters Office. Thereafter, the Assistant/Deputy Commissioner of Group/Division will pass an order-in-original in respect of the claim. Thereafter, the orders-in-original passed in this regard shall be subjected to review by the Commissioner concerned. The applications of refund of amount below Rs.50,000/- may be post-audited on the basis of the random selection by Assistant/Deputy Commissioner (Audit). The selection can be made in such a way that 25% of the refund applications are post-audited. The applications of refund for amount between Rs.50,000/- and Rs. 5 lakhs should be compulsorily post-audited. This audit system is aimed at checking improper sanction and payment of refunds. However, this does not dispense with the verification of the refund vouchers and the re-conciliation of refunds, which shall be done by the Chief Account Officers. It may be ensured that where pre-audit is involved, the same is completed at the earliest so that the disposal of refund applications is not unduly delayed.
- (e) **CVC's instructions:** Under authority of Section 8(1)(h) of the CVC Act, 2003 Central Vigilance Commission (CVC) has issued instructions to bring about greater transparency and accountability in the discharge of regulatory, enforcement and other public dealings of the Government organisations. These instructions require that status of individual applications/matters should be made available on the organisation's website and updated from time to time so that the applicants are duly informed about the status of their applications. It is further stated that the manual records maintained for various purposes may continue. In pursuance of CVC's instructions, all Commissioners of Customs shall establish a mechanism for maintenance of a comprehensive database in their respective website, indicating the receipt, acknowledgement, action taken for disposal (either payment or rejection) of refund applications and those pending at the end of the month. The details of refund application such as name of the claimant, file number, date of application, amount of refund claimed, date of its acknowledgement shall be indicated in chronological order by the date of its receipt. The applications may be serially numbered for each year and shall be shown in a single list indicating their respective status distinctly. The illustrative status that could be mentioned for easy understanding of any applicant may include the following:
- (i) refund application received but pending for scrutiny and acknowledgement
  - (ii) refund application acknowledged for its completeness
  - (iii) refund application found incomplete and returned for rectification of deficiency
  - (iv) refund application rejected by passing a speaking order
  - (iv) refund application sanctioned, pending verification by audit
  - (v) cheques issued for refunds

sanctioned and paid to applicant/ credited to consumer welfare fund. This is not exhaustive and any other stage of processing of refund application may also be indicated. An abstract at the end of the month about the total number of refund applications received, acknowledged, disposed and pending may also be indicated. This online data base would be accessible to the trade and public as well as by all Customs officers to enhance transparency. Further, the status of individual applications for refund of Customs duty shall be updated from time to time, at least daily, so that the applicants remain duly informed about the status of their applications. The data may be allowed for display in the website for three months period from the date of its final disposal and thereafter it can be moved to the history database.

- (f) **Monitoring Mechanism:** Chief Commissioners/ Directorate General of Inspection (DGI) are to review the position of refunds in their respective zones/select zones, to check on the timely sanction of refund applications. If any refund application is pending for long period, the reasons for the same may be identified by the concerned Chief Commissioner and action initiated for disposal by reference to the concerned Commissionerate. DGI may also access the database of refund applications and maintain the data in respect of those refund applications pending for long period and action taken thereon, for reporting to the Board.

[Refer Notifications No.32/95-Cus (N.T.), dated 26-5-1995; and No.75/2003-Cus(N.T), dated 12-9-2003 and Circulars No.59/95-Cus., dated 5-6-1995; No.24/2007-Cus., dated 2-7-2007; No.7/2008-Cus., dated 28-5-2008; No.22/2008-Cus., dated 19-12-2008 and CVC Circular No.40/11/06, dated 22-11-2006 (<http://www.cvc.nic.in>)]

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## Chapter 15

### Detention and Release/Storage of Imported/Export Goods

#### 1. Introduction:

1.1 Normally, the goods liable for confiscation under the Customs Act, 1962 are seized by the Customs. However, in some cases where seizure is not practicable, it may become necessary to detain the goods for investigation. The provisions for detention of goods are contained in Section 110 of the Customs Act, 1962. The goods are detained for various reasons and at the instance of various agencies of the Department, such as the Directorate of Revenue intelligence, the Directorate of Central Excise Intelligence, Narcotics Control Bureau and Directorate of Enforcement and even other agencies, like the Central Bureau of Investigation. Once order for detention of goods is served to the owner of the goods, he cannot remove, part with, or otherwise deal with the goods except with the prior permission of the proper officer of the Customs. During investigation and subsequent adjudication proceedings, if the contravention of provisions of the Customs Act, 1962 and other allied laws is established, action is taken against the importers/ offending goods as provided in the law. In other cases, the charges are dropped at initial stages or at the appeal stage.

1.2 In respect of goods detained at the port/airport/ICD/CFS/LCS etc, the custodians of goods demand their dues for storing the goods (i.e. the warehousing charges) from the importers/exporters. Likewise the shipping lines demand container detention charges for the period the goods are kept in their custody. When the goods are detained for a long period, the warehousing/demurrage charges and container detention charges become high. In cases where the charges against the importers or exporters are dropped, the Customs usually issues detention certificates for the period when goods were under detention. The custodians normally remit the detention/demurrage charges wholly or partially on the basis of detention certificates issued and recommendation made by the Customs. However, it is not obligatory, as held in some recent Court judgments that custodians must waive the rentals payable to them.

1.3 The Apex Court examined the matter of quantum of demurrage and payment of demurrage in the cases of International Airport Authority of India vs. Grand Slam International [1995 (77) ELT 753 SC] and Trustees of Port of Madras vs. Nagavedu Lungi & Co., [1995 (80) ELT 241 SC] and held that detention charges and warehousing charges are payable to the custodians and shall be paid by the

exporter or the importer even where the Customs detention has been finally held as improper/illegal.

## **2. Guidelines for expeditious clearance/provisional release:**

2.1 To avoid delays in the release and minimize hardship to the trade if goods remain detained pending investigation into any dispute in relation to assessment etc. the stress is on expeditious assessment/investigations. Further, unless the goods are prohibited or involved in serious fraud even if there is a dispute in assessment etc., provisional release option be given to the importers.

2.2 The following guidelines are to be followed by importers and Customs Officers to keep a check on unnecessary detention of goods and ensure speedy Customs clearance:

- (a) Import/export goods are not to be detained unless prohibited as per the FTP and/or under other allied laws. Goods are not to be detained on simple valuation or classification disputes.
- (b) If it becomes necessary to detain the goods for investigation of any serious suspected fraud etc., the importer/exporter must be intimated in writing that he may shift the goods to a bonded warehouse under Section 49 of the Customs Act, 1962, with a clear indication that if he does not avail of this facility and the goods incur demurrage, etc., he would have to bear the demurrage and other charges levied by the custodian/other agencies.
- (c) But for certain exceptional categories, in any dispute case pending investigation wherever importer or exporter is willing, he should be allowed provisional clearance of the goods by furnishing a bond for full value of the goods supported by adequate bank guarantee as may be determined by the proper officer. The value of bank guarantee shall not exceed twice the amount of duty. The provisional clearance should be allowed as a rule and not as an exception. Provisional release may not be resorted to in the cases mentioned below but here too option for storage in warehouses under Section 49 of the Customs Act, 1962 should be provided to the importers (goods can be allowed entry into the country only after the laid down quality standards etc. are satisfied):
  - (i) Goods prohibited for import/export;
  - (ii) Imports not complying with the specifications/conditions/requirements of various Orders/Acts (e.g. Livestock Importation Act, 1898, Prevention of Food Adulteration Act, 1954, etc.); and
  - (iii) Where gross fraudulent practices are noticed and release of the goods may seriously jeopardize further investigations as also interests of the revenue.

- (d) In the case of containerized cargo, wherever the parties are not in a position to execute bond and bank guarantee for taking provisional release or the Department is of the view that clearance cannot be allowed, the goods may be de-stuffed after giving notice to all concerned and stored in port's godowns and warehouses to avoid container detention charges.

2.3 In order to ensure expeditious clearance of export cargo it is provided that:

- (a) In case the export goods are found to be mis-declared in terms of quantity, value and description and are seized for being liable to confiscation under the Customs Act, 1962, the same may be ordered to be released provisionally on execution of a Bond of an amount equivalent to the value of goods along with furnishing an appropriate security to cover the redemption fine and penalty.
- (b) In case the export goods are either suspected to be prohibited or found to be prohibited in terms of the Customs Act, 1962 or ITC (HS), the same should be seized and appropriate action for confiscation and penalty initiated.
- (c) In case the export goods are suspected of mis-declaration or where declaration is to be confirmed and further enquiry / confirmatory test or expert opinion is required (as in case of chemicals or textiles materials), the goods should be allowed exportation provisionally. The exporters in these cases are required to execute a Bond of an amount equal to the value of goods and furnish appropriate security in order to cover the redemption fine and penalty in case goods are found to be liable to confiscation. In case exports are made under any Export Promotion / Reward Schemes, the finalization of export incentives should be done only after receipt of test report / finalisation of enquiry and final decision in the matter. Bond executed for provisional release shall contain a suitable clause,
- (d) Export goods detained for purpose of tests etc. must be dealt with on priority and the export allowed expeditiously unless the prohibited nature of goods is confirmed. Continued detention of any export goods in excess of 3 days must be brought to the notice of the Commissioner of Customs, who will safeguard the interest of the genuine exporters as well as the revenue

2.4 Wherever in adjudication proceedings, the parties have been allowed to clear the goods on payment of redemption fine and penalty and parties, but instead of clearing the goods they prefer an appeal, they will have to pay demurrage/detention charges, etc. even if they succeed in appeal, as the liability has arisen due to their filing appeal and not clearing the goods for which option was available.

2.5 The Departmental officers will be held accountable for cases where detention of goods have been ordered on insufficient and weak grounds resulting in unconditional release of detained goods in adjudication stage itself, where importers have to suffer avoidable demurrage charges/loss by pilferage etc.

[Refer instruction F.No. 450/82/95-Cus. IV, dated 7-7-1997 and Circulars No.42/2001-Cus., dated 31-7-2001; and No.1/2011-Cus., dated 4-1-2011]

## Chapter 16

### Import and Export through Courier

#### 1. Introduction:

1.1 Imports and exports through courier are becoming increasingly popular. At present, the courier clearances are allowed both under manual mode as well as electronic mode. The courier clearances under the manual mode are governed by Courier Imports and Exports (Clearance) Regulations, 1998, and courier clearance under electronic mode are governed by Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. The courier goods are cleared through a fast track basis on observance of simple formalities by courier companies. Examination of parcels is kept to the minimum and clearance is allowed on the basis of selective scrutiny of documents. The duty, where leviable, is paid by the courier company on behalf of importers/exporters before taking delivery of the parcels.

1.2 The facility of imports and exports through courier mode is allowed to only to those courier companies which are registered by the Customs. These courier companies are called "Authorized Couriers". The courier parcels are normally carried by passenger/cargo aircrafts. In the case of clearance through Land Customs Stations (LCS), other mode of transport is used. Both of them are allowed to file the Courier Import Manifest.

1.3 At present, the facility of courier clearance under the manual mode is available at Customs airports in Mumbai, Delhi, Chennai, Calcutta, Bangalore, Hyderabad, Ahmedabad, Jaipur, Trivandrum, Cochin, Coimbatore and Land Customs Stations at Petrapole and Gojadanga. The courier clearances under the electronic mode of Customs clearance will be soon made operational at Delhi and Mumbai airports.

1.4 The scheme of Customs clearance of imports and exports by courier mode introduces certain procedural relaxation. Such imports and exports shall, however, continue to be governed by the applicable provisions of the FTP or any other law, for the time being in force.

#### 2. Categories of goods allowed import through courier:

2.1 Except for certain excluded categories, all goods are allowed to be imported through the courier mode. The exclusion of certain categories of goods is based

upon the fact that these broadly require specific conditions to be fulfilled under any other Act or rule or regulation such as testing of samples etc. on reference to the relevant authorities or experts before their clearance. In these cases, due to additional compliance requirements, the assessment and clearance takes time. These goods, therefore, do not fit into the scheme, which envisages Customs clearance on a fast track basis. Further, air terminals and LCS are not equipped to handle certain goods. Thus, in general the following categories of goods are not allowed import through the courier mode:

- (a) Precious and semi precious cargo;
- (b) Animals and plants;
- (c) Perishables;
- (d) Publications containing maps depicting incorrect boundaries of India;
- (e) Precious and semi precious stones, gold or silver in any form;
- (f) Goods under Export Promotion Schemes including EOU scheme;
- (g) Goods exceeding weight limit of 70 kgs. (individual packages) imported through courier under manual mode. However, under the electronic mode, no such restriction regarding weight has been provided.

2.2 Clearance of goods under EOU scheme is permitted under the electronic mode.

### **3. Categories of goods allowed export through courier:**

3.1 As in the case of imports, all goods are allowed to be exported through courier except for the following excluded categories:

- (a) Goods attracting any duty on exports;
- (b) Goods exported under export promotion schemes, such as Drawback, DEPB, DEEC, EPCG etc.;
- (c) Goods where the value of the consignment is above Rs.25,000/- and transaction in foreign exchange is involved (the limit of Rs.25,000/- does not apply where the G.R. waiver or specific permission has been obtained from the RBI).

### **4. Import and export of gems and jewellery:**

4.1 Import of gems and jewellery including samples thereof by EOUs or SEZ units is allowed through courier. Likewise, export of cut and polished diamond, gems and jewellery under any scheme of FTP from EOUs, SEZs or DTA is allowed through

courier subject to the condition that the value of each export consignment under such export does not exceed Rs.20 lakhs.

## **5. Procedure for clearance of import goods:**

5.1 For facilitating Customs clearance, the goods imported by courier are divided into the following categories:

- (a) Documents that include any message, information or data recorded on paper, cards or photographs having no commercial value, and which do not attract any duty or subject to any prohibition/restriction on their import or export;
- (b) Samples - any bonafide commercial samples and prototypes of goods supplied free of charge of a value not exceeding Rs.50,000/- for exports and Rs.10,000/- for imports which are not subject to any prohibition or restriction on their import or export and which does not involve transfer of foreign exchange.
- (c) Free gifts - any bonafide gifts of articles for personal use of a value not exceeding rupees 25,000/- for a consignment in case of exports and Rs.10,000/- for imports which are not subject to any prohibition or restriction on their import or export and which do not involve transfer of foreign exchange.
- (d) Low value dutiable or commercial goods - goods having a declared value of upto Rs.1,00,000/-; and
- (e) Dutiable or commercial goods - goods having a declared value of more than Rs.1,00,000/-.

5.2 Different Customs declaration forms have been prescribed under the Courier Regulations for manual mode and electronic mode. Under the manual mode, simplified Bills of Entry have been specified, as mentioned below, for the clearance of goods. The goods are assessed to duty on merits like any other imported goods, and exemption, wherever available, is allowed to such imports when claimed.

- (a) Courier Bill of Entry-III for documents,
- (b) Courier Bill of Entry-IV for samples and free gifts, and
- (c) Courier Bill of Entry-V for commercial shipments upto a declared value of Rs. one lakh.

5.3 The courier regulations for the manual mode stipulate that for certain categories of imports, a regular Bill of Entry prescribed in the Bill of Entry (Forms)

Regulations, 1976 is to be filed. These include, (a) goods imported under EOU scheme; (b) goods imported under DEPB, DEEC and EPCG schemes; (c) goods imported against the license issued under the Foreign Trade (Development and Regulation), Act, 1992; (d) goods imported by a related person defined under the Customs Valuation Rules, 1988 (e) goods in respect of which the proper officer directs filing of a Bill of Entry; and (f) goods having a declared value of more than Rs. one lakh.

5.4 Under the courier regulations for the electronic mode the forms prescribed for filing Customs declarations are:

- (a) Courier Bill of Entry-XI (CBE-XI) for documents in Form B,
- (b) Courier Bill of Entry-XII (CBE-XII) for free gifts and samples in Form C,
- (c) Courier Bill of Entry-XIII (CBE-XIII) for low value dutiable consignments in Form D, and
- (d) Courier Bill of Entry-XIV (CBE-XIV) for other dutiable consignments in Form E for import consignments.

## **6. Procedure for clearance of export goods:**

6.1 In case of export goods, the Authorised Courier files Courier Shipping Bills with the proper officer of Customs at the airport or LCS before departure of flight or other mode of transport, as the case may be. Different Forms have been prescribed for export of documents and other goods. The Authorised Courier is required to present the export goods to the proper officer for inspection, examination and assessment.

6.2 For certain categories of export goods, a regular Shipping Bill, as prescribed in the Shipping Bill and Bill of Export (Form) Regulations, 1991 is required to be filed. Such Shipping Bills are processed at the Air Cargo Complex or the EOUs or STP or EHTP and thereafter with the permission of Customs, the goods are handed over to a courier agency for onward dispatch. The goods to which this procedure applies are:

- (a) Goods originating from EOUs/STPs/EHTP,
- (b) Goods exported under DEPB/ DEEC/ EPCG/Drawback schemes, and
- (c) Goods which require a licence for export under the Foreign Trade (Development and Regulation) Act, 1992.

6.3 Under courier Regulations for electronic mode, the forms for filing Customs declarations for export goods are (a) Courier Shipping Bill-III (CSB-III) for documents in Form G and (b) Courier Shipping Bill-IV (CSB-IV) for goods in Form H.

## **7. Examination norms for goods imported or exported by courier:**

7.1 The following examination norms are provided for import and export of courier consignments:

- (a) 100% screening of import/ export consignments (documents and all types of cargo) is required to be done through X-ray or other NII techniques. Wherever possible the facility of X-ray machines available with Customs could be used; otherwise the airlines or AAI's screening facility may be resorted to for such screening. Further, wherever feasible such screening by multi-agencies could be combined to reduce the time taken and avoid duplicity.
- (b) Physical examination of export documents, gifts, samples and export goods limited up to a maximum of 10% of the total courier consignments or specific intelligence. The consignments so selected will be examined 100%.
- (c) Physical examination of import documents, gifts, samples and dutiable goods limited upto a maximum of 10% of the total courier consignments. The consignments so selected will be examined 100%.
- (d) Selection of consignments physical examination would be based on the various parameters such as nature of goods, value, weight, status of importer etc.
- (e) Commissioner of Customs in respective port can exercise the discretion of random examination of goods, on specific parameter such as country of import/export, nature of goods as presently provided in the EDI system.
- (f) Any consignment can be examined by the Customs (even upto 100% examination), if there is any specific intelligence or there is doubt during X-ray in respect of the said consignment.
- (g) Under the automated process the consignments would be identified for examination on the basis of 'risk analysis'.

[Refer Circular No. 23/2006-Cus., 25-8-2006]

## **8. CENVAT credit:**

8.1 Whenever a consignee intends to take CENVAT credit of the duty paid on imported goods, normal Bill of Entry may be filed. This applies to courier clearances under the manual mode.

[Refer Circular No. 31/2007-Cus., dated 29-8-2007]

## **9. Transshipment of goods:**

9.1 The facility of transshipment between two Customs stations is available under courier mode as per the provisions of the Customs Act, 1962, Goods Imported (Conditions of Transshipment) Regulations, 1995 and other instructions. Many times consignments imported through courier mode may also need to be transferred to cargo terminal of the same airport for clearance purposes. Such transfer is akin to



local movement of cargo from one custom area of the Customs station to another custom area of the same station and is covered by local procedure evolved by the jurisdictional Commissioner of Customs.

[Refer Circular No.18/2009-Cus., dated 8-6-2009]

#### **10. Disposal of uncleared goods:**

10.1 The Courier regulations for both manual and electronic mode prescribe a procedure for clearance of uncleared goods. In case of imported goods, the same are required to be detained by Customs and a notice issued to the Authorised Courier and goods can be disposed of after the expiry of 30 days of the arrival of the said goods. The charges payable for storage and holding of such goods are to be borne by the Authorised Courier.

10.2 In the case of export goods, a similar procedure as in respect of imported goods is prescribed, the only difference being that such goods can be disposed of if they have not been exported within 7 days of arrival into the Customs Area or within such extended period as may be permitted by the Customs.

#### **11. Registration of Authorised Courier:**

11.1 A person desirous of operating as an Authorised Courier is required to get himself registered with the jurisdictional Commissioner of Customs. Under the regulations for the manual mode, the registration is valid for 10 years and renewable for another 10 years if performance of courier is satisfactory. Similar provisions are contained in the regulation for the electronic mode except that the initial registration period is fixed as 2 years.

11.2 The person applying for registration should be financially viable and in support thereof he is required to produce a certificate issued by a scheduled bank or such other proof evidencing possession of assets of a value not less than Rs. 25 lakhs. Further, he will have to execute a bond with a security of Rs. 10 lakhs for registration at Mumbai, Calcutta, Delhi and Chennai. At other airports and LCS, the security deposit is kept at Rs. 5 lakh. The security can be in cash or in the form of postal security or National Savings Certificate or Bank Guarantee. A condition of registration is that the applicant agrees to pay the duty, if any, not levied or short levied with interest, if applicable, on any goods taken clearance by the Authorised Courier.

11.3 An Authorised Courier registered at one Customs station is allowed to transact business at more than one airport or LCS subject to giving of intimation in the prescribed form. However, separate bond and security will have to be furnished at each airport and LCS.

11.4 Existing Authorised Couriers who are registered or transacting business in terms of Regulation 12 of the Courier Imports and Exports (Clearance) Regulations

1998 at locations where automated clearance facilities become operational shall be eligible to file declarations under the electronic mode without any requirement for fresh appointment or fresh intimation, subject to the fulfillment of other conditions or requirements imposed under courier Regulations for the electronic mode. In short, once a person is registered as an Authorized Courier, he can file declarations under both the modes subject to compliance of other requirements of the respective Regulations.

## **12. Obligation of Authorised Courier:**

12.1 A number of obligations are cast on the Authorised Courier. These include obtaining an authorization from the consignees for clearance of import or export goods (except import goods having a declared value of Rs.10,000 or less, where the authorization may be obtained at the time of delivery of the consignments to consignee). Some of the important obligations are as follows:

- (a) File declarations, for clearance of imported or export goods, through a person who has passed the examination referred to in Regulation 8 or 19 of the Customs House Agents Licensing Regulations, 2004 and who are duly authorised under Section 146 of the Act;
- (b) Advise his client to comply with the provisions of the Customs Act, 1962 and rules and regulations made there-under;
- (c) Verify the antecedent, correctness of Importer Exporter Code (IEC), identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information;
- (d) Exercise due diligence in furnishing information to the Customs in relation to clearance of import or export goods;
- (e) Not withhold any information communicated to him by Customs relating to assessment and clearance of import/export goods from a client;
- (f) Not withhold any information relating to assessment and clearance of import/export goods from the assessing officer and not attempting to influence the conduct of any officer of Customs in any matter by the use of threat, false accusation, duress or offer of any special inducement etc.; and
- (g) Maintain records and accounts prescribed by the Customs and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued thereunder.

12.2 The obligation on the Authorized Courier to verify the antecedents, identity of his client and the functioning of his client in the declared address by using reliable,

independent, authentic documents, data or information is based upon the increasing number of offences involving various modus-operandi such as fraud and duty evasion by bogus IEC holders etc. In this regard, the detailed guidelines on the list of documents to be verified and obtained from the client/ customer are laid down. It is obligatory for the client/ customer to furnish to the Authorised Courier any two of the listed documents. However, there is no requirement for the client/ customer to furnish a photograph separately to the Authorised Courier.

[Refer Circular No.9/2010-Cus., dated 8-4-2010]

### **13. Outsourcing/Sub-letting:**

13.1 On the lines of similar requirement for Customs Cargo Service Providers (CCSP) under the Handling of Cargo in Customs Areas Regulations, 2009, a provision is made prescribing the requirement of prior permission of Customs if the Authorised Courier wants to sub-let/outsourcing any of the components in the door-to-door supply chain. This is necessary since an Authorized Courier is defined as one, who, in relation to import or export of goods, is a person engaged in the international transportation of goods for export and imports on door-to-door delivery basis, and is registered in this behalf by the jurisdictional Commissioner. Also, the basic reason for expeditious clearance facilities being extended is that Authorized Couriers have in place verifiable and secure work processes on a global basis backed by an elaborate IT infrastructure for knowledge and information management. These companies have their own in-house mechanisms to guard against use of express supply chain by unscrupulous elements. Therefore, any unauthorized sub-letting or outsourcing of any of the components in the door-to-door supply chain may defeat the very purpose behind facility of expeditious clearance. Hence, the Commissioners of Customs should review the facilities available with the Authorised Couriers appointed under their charge to ensure compliance. Further, while allowing, any sub-letting or outsourcing due care should be taken to ensure that it does not go against the very purpose behind facility of expeditious clearance.

### **14. De-registration and forfeiture of security:**

14.1 The registration of an Authorised courier can be revoked by the Commissioner and his security can be forfeited on grounds of his failure to comply with the conditions of the bond, the provisions of regulations and misconduct. Revocation of registration can be made only after a notice is issued to the Authorised Courier and he is given an opportunity to present his case in writing as well as opportunity of being heard in the matter. In cases where an inquiry needs to be conducted to establish prima facie the grounds against the Authorised Courier, the Commissioner of Customs can, pending such inquiry, suspend the registration. An Authorised Courier, if aggrieved by the order of the Commissioner, may represent to the Chief Commissioner within 60 days of communication of the impugned order.

[Refer Courier Imports and Exports (Clearance) Regulations, 1988; Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010; Circulars No.56/95-Cus., dated 30-5-1995; No.85/98-Cus., dated 13-11-1998; No.23/2006-Cus., dated 25-8-2006; No.31/2007-Cus., dated 29-8-2007; and No.33/2010-Cus., dated 7-9-2010]

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## Chapter 17

### Import and Export through Post

#### 1. Introduction:

1.1 The facility for import and export of goods by Post Parcels is provided by the Postal Department at its Foreign Post Offices and sub-Foreign Post Offices. Customs facilities for examination, assessment, clearance etc. are available at these Post Offices. Limited facility for export clearances is also available at Export Extension Counters opened by the Postal Department where parcels for export are accepted and cleared by the Customs.

#### 2. Legal provisions:

2.1 Goods imported through post are classified under Chapter Heading 9804 of the Customs Tariff Act, 1975 and rate of duty applicable thereon is charged on all the goods imported by post. Importantly, Heading 9804 specifically applies to goods permitted for import through post which are exempted from prohibition under Foreign Trade (Development and Regulation) Act, 1992. As per Note 6 to Chapter 98, goods against an import licence or Customs Clearance Permit can also not be imported through post. Further, Note 4 to Chapter 98 states that motor vehicles, alcoholic drinks and goods imported through courier are not covered under Heading 9804.

2.2 Goods imported or exported by post are governed by Sections 82, 83 and 84 of the Customs Act, 1962 whereas the procedure for clearance of goods through post is prescribed in Rules regarding Postal Parcels and Letter Packets from Foreign Ports In/Out of India of 1953.

[Refer Notification No. 53-Cus., dated 17-6-1950]

2.3 In respect of import and exports through post, any label or declaration accompanying the packet or parcel containing details like description, quantity and value of the goods is treated as entry for import or export of the goods and no separate manifest for such goods is required to be filed.

2.4 The relevant date for rate of duty and tariff value, if any, applicable in respect of imports through post is the date on which the postal authorities present to the Proper Officer of Customs the list containing details of the goods for assessment. Thus, presentation of said list is equivalent to filing of Bill of Entry so far as assessment of goods imported by post is concerned.

2.5 If the post parcels come through a vessel and the said list presented by the postal authorities is presented before arrival of the vessel, the rate of duty and tariff value applicable shall be as on the date of arrival of the vessel i.e. Entry Inward of the vessel.

2.6 In respect of export goods, the relevant date for rate of duty and tariff value, if any, applicable, is the date on which the exporter delivers the goods to postal authorities for exportation.

### **3. Clearance of Letter Mail Articles:**

3.1 Letter Mail Articles are generally cleared by the Customs at the time of their arrival and sorting unless they appear to contain contraband or dutiable articles. In such cases, the Letter Mail is subjected to further examination at the Foreign Post Offices or sub- Foreign Post Offices, as the case may be.

### **4. Importability of dutiable items through post:**

4.1 Import of dutiable goods by letter, packet or parcel posts is prohibited except where such letter or packet bears a declaration stating the nature, weight and value of the contents on the front side or if such a declaration is attached alongside indicating that the letter/packet may be opened for Customs examination. Dutiable goods may also be not imported by post if Customs is not satisfied that the details of nature, weight and value of the contents in declaration as above are correctly stated.

[Refer Notification No.78-Cus., dated 2-4-1938]

4.2 Items intended for personal use, which are exempt from the prohibitions under the FTP or the Customs Act, 1962, can be imported by postal channel on payment of appropriate duties under Tariff Heading 9804 of the Customs Tariff Act, 1975.

4.3 In case the Customs duty payable is not more than Rs.100/-, the same is exempt.

[Refer Notification No. 21/02-Cus., dated 1-3-2002]

### **5. Import of gifts through post:**

5.1 Bonafide gifts up to a value limit of Rs.10,000/-, imported by post, are exempt from Basic and Additional Customs duties vide Notification No.171/93-Cus., dated 16-9-1993. Further, only those items can be imported as gifts, which are not prohibited for importation under Foreign Trade (Development and Regulation) Act, 1992.

5.2 The sender of the gift may not necessarily be residing in the country from where the goods have been dispatched and any person abroad can send the gifts to relatives, business associates, friends, companies and acquaintances. The gifts have to be for bonafide personal use. The purpose of this stipulation is that the person receives the gift genuinely free and the payment is not made for it through some other means. The quantity and frequency of the gifts should not give rise to the belief that it is used as a route to transfer money. The gifts can be received by individuals, societies, institutions, like schools and colleges and even corporate bodies.

5.3 For calculating the value limit of Rs.10,000/- in case of imports of gifts, postal charges or the airfreight is not taken into consideration. The value of Rs.10,000/- is taken as the value of the goods in the country from where these were dispatched.

5.4 If the value of the gifts received is more than Rs.10,000/-, the receiver has to pay Customs duty on the whole consignment, even if the goods were received free, unsolicited. In addition, at the discretion of the Assistant/ Deputy Commissioner, if the goods are restricted for import, the receiver has a liability for penalty for such import, even if the goods have been sent unsolicited. The restricted goods are also liable to confiscation and receiver has to pay redemption fine in lieu of confiscation in addition to duty and penalty. Certain prohibited goods like narcotic drugs, arms, ammunition, obscene films/printed material etc. are liable to absolute confiscation and the receiver is liable to penal action, even if the goods have been sent unsolicited.

5.5 Customs duty is chargeable on gifts assessed over Rs.10,000/- by the Customs. In case of post parcel, the customs department assesses the duty payable and the postal department collects the assessed duty from the receiver of the gift and subsequently deposits it with the customs.

## **6. Import of samples through post:**

6.1 Bonafide commercial samples and prototypes imported by post are exempted from Customs duty, subject to the value limit of Rs.10,000/-, provided that the samples are supplied free of cost.

6.2 Importers having IEC code number can import commercial samples through post without payment of duty upto a value of Rs.100,000/- or 15 units in number within a period of 12 months. The goods so imported shall be clearly marked as "Samples". The importer is required to furnish a declaration to the effect that the samples are solely for the purpose of being shown to the exporters for securing or executing export orders. The importer is also required to undertake that if declaration is found to be false, he will pay appropriate duty on the goods imported as commercial samples.

[Refer Notification No.154/94-Cus., dated 13-7-1994]

## **7. Import of Indian and Foreign Currencies by post:**

7.1 Under the provisions of Foreign Exchange Management Act, 1999, no person may bring or send into India any foreign exchange or Indian currency except with special or general permission of the RBI. Import of Indian currency notes and coins by post is not permitted.

7.2 To reduce pendency and to avoid delay in clearance of mail articles, Customs may allow import of both Indian and foreign currencies received by residents by post, provided the value does not exceed Rs.5,000/-, subject to the following conditions:

- (a) Approval is granted by Assistant/ Deputy Commissioner of Customs;
- (b) A detailed record should be maintained of the exemptions granted;
- (c) Record of the name and addresses of the remitter and addressee in India should be maintained; and
- (d) Where a spurt is noticed in the number of covers received over a time, the matter may be reported to the concerned Regional Office of RBI.

7.3 Parcels/packets containing foreign/Indian currency, etc., in excess of Rs.5,000/- shall be detained and adjudicated on merits and released on the basis of "No Objection Certificate" from the RBI.

[Refer Circular No.16/2002-Cus, dated 5-3-2002]

7.4 There is a general permission given to Authorised Dealers to import currency notes from their overseas branches/correspondents for meeting their normal banking requirements. In view of this, no specific clearance is required from RBI for such imports.

[Refer Circular No.60/02-Cus., dated 13-9-2002 read with Annexure V to RBI's AD (MA Series) Circular No.11, dated 16-5-2000]

## **8. Procedure in case of postal imports:**

8.1 Rules Regarding Postal Parcels and Letter Packets from Foreign Ports in/out of India prescribe procedure for landing and clearing at notified ports/airports/LCSs of parcels and packets forwarded by foreign mails or passenger vessels or airliners. The procedure broadly is as under:

- (a) The boxes or bags containing the parcels shall be labeled as "Postal Parcel", "Parcel Post", "Parcel Mail", "Letter Mail" and will be allowed to pass at specified the Foreign Parcel Department of the Foreign Post Offices and Sub Foreign Post Offices.
- (b) On receipt of the parcel mail, the Postmaster hands over to the Customs the following documents:
  - (i) A memo showing the total number of parcels received from each country of origin;
  - (ii) Parcel Bills in sheet form (in triplicate) and the senders' declarations (if available) and any other relevant documents that may be required for the examination, assessment etc. by the Customs Department;
  - (iii) The relative Customs Declarations and dispatch notes (if any); and
  - (iv) Any other information required in connection with the preparation of the Parcel Bills which the Post Office is able to furnish.



- (c) On receipt of the documents, the Customs Appraiser shall scrutinize the particulars given in the Parcel Bill and identify the parcels to be detained for examination either for want of necessary particulars or defective description or suspected misdeclaration or under-valuation of contents. The remaining parcels are to be assessed by showing the rates of duty on the declarations or Parcel Bill, as the case may be. For this purpose, the Appraisers are generally guided by the particulars given in the Parcel Bill or Customs declarations and dispatch notes (if any). When any invoice, document or information is required to ascertain the real value, quantity or description of the contents of a parcel, the addressee may be called upon by way of a notice to produce or furnish such invoice, document and information.
- (d) Whenever necessary, the values from the declarations are entered into the Parcel Bill and after conversion into Indian Currency at the ruling rates of exchange, the amount of duty is calculated and entered. The relevant copies of Parcel Bills with the declarations so completed are then returned to the Postmaster.
- (e) Duty is calculated at the rate and valuation in force on the date that the postal authorities present a list of such goods to the Customs. In case the parcels are brought through a vessel and postal authorities present list of goods before arrival of the vessel, the rate of duty and tariff value shall be the date on which Inward Entry is granted to the vessel.
- (f) All parcels marked for detention are to be detained by the Postmaster. Rest of the parcels will go forward for delivery to the addressee on payment of the duty marked on each parcel.
- (g) The detained parcels are submitted together with the Parcel Bill to the Customs. After examining them and filling in details of contents of value in the Parcel Bills, Customs Appraiser notes down the rate and amount of duty against each item. The remark "Examined" is then entered against the entry in the Parcel Bill relating to each parcel examined by the Customs Appraiser and the Postmaster's copies will be returned by the Customs.
- (h) In the case of receipt of letter mail bags, the Postmaster gets the bags opened and scrutinized under the supervision of the Customs with a view to identify all packets containing dutiable articles. Such packets are to be detained and presented in due course to the Customs Appraiser with letter mail bill and assessment memos for assessment. After examining them and filling the details of contents of value in the bill, the Customs Appraiser will note the rate and amount of duty against each item. He will likewise fill in these details on the assessment memos to be forwarded along with each packet.
- (i) All parcels or packets required to be opened for Customs examination are opened, and after examination, closed by the Post Office officials and are then sealed with a distinctive seal. The parcels or packets shall remain throughout in the custody of the Post Office officials.

- (j) If on examination the contents of any parcel or packet are found misdeclared or the value understated or consisting of prohibited goods, such parcels or packets must be detained. The Postmaster shall not allow such parcels or packets to go forward without the Customs' orders. Adjudication proceedings shall be initiated in such cases by the competent officer and the parcels released only after payment of fine and penalty, if any, levied by the adjudicator.
- (k) The duties as assessed by the Customs Appraiser and noted in the Parcel Bill or letter mail bill shall be recovered by the Post Office from the addressees at the time of delivery to them. The credit for the total amount of duty certified by the Customs Appraiser at the end of each bill is given by the Post Office to the Customs Department in accordance with the procedure settled between the two Departments.
- (l) The Parcel Bills or letter mail bills and other documents on which assessment is made remain in the custody of the Post Office, but the duplicates, where prepared, are kept in the Customs Department for dealing with claims for refunds, etc.

## **9. Legal provisions and exemptions in case of postal exports:**

9.1 Goods which are not prohibited or restricted for export as per FTP can be exported by post through specified Foreign Post Offices or Sub-Foreign Post Offices or Export Extension Counters. The goods under claim of Drawback can also be exported through post but not under other export promotion schemes like DEPB, Advance Licence, DFRC, EPCG etc. Commercial samples, prototypes of goods and free gifts may also be exported by the post.

9.2 The rate of duty and tariff value, if any, applicable to any goods exported by post shall be the rate and valuation in force on the date on which the exporter delivers such goods to the Postal Authorities for exportation.

9.3 Bonafide commercial samples and prototype of goods supplied free of charge of a value not exceeding Rs.50,000/- which are not subject to any prohibition or restriction for export under FTP and which do not involve transfer of foreign exchange, may be exported through post.

9.4 Bonafide gifts of articles for personal use of a value not exceeding Rs.25,000/- which are not subject to any prohibition or restriction on their export under FTP and which do not involve transfer of foreign exchange, may be exported through post.

9.5 Export by post of Indian and foreign currency, bank drafts, cheques, National Saving Certificates and such other negotiable instruments is not allowed unless accompanied by a valid permit issued by the RBI, except in cases where such

negotiable instruments are issued by an authorised dealer in foreign exchange in India.

9.6 Indian currency notes of Rs.500/- and Rs.1000/- denominations are prohibited by Government of Nepal. Therefore, the Indian currency notes of Rs.500/- and Rs.1000/- denominations shall not be allowed for export to Nepal.

9.7 Prohibitions/restrictions under the FTP and the Customs Act, 1962 apply on the export of various articles by post. Some of these articles are viz. arms and ammunitions, explosives, inflammable material, intoxicants, obscene literature, certain crude and dangerous drugs, antiquities, narcotic drugs etc.

9.8 Export of purchases made by the foreign tourists is allowed through post subject to proof that the payment has been made in foreign exchange.

#### **10. Procedure in case of postal exports:**

10.1 Articles exported by post are required to be covered by a declaration in the prescribed form.

10.2 All exports by post, where the value exceeds Rs.50/- and payment has to be received, must be declared on the exchange control form viz. P.P. form. When the postal article is covered by a certificate issued by the RBI (with or without limit) or by an authorised dealer in foreign exchange that the export does not involve any transaction in foreign exchange upto Rs. 500/-, the declaration in a P.P. form is not necessary.

10.3 The letters and parcels are produced by the postal authorities to Customs officer in the Foreign Post Office. After preliminary scrutiny of the letters and declarations the proper officer shall ensure that prohibited goods like narcotic drugs, foreign exchange, currency etc. is not being sent through the parcel. The suspected parcels are detained and other letters/parcels are handed over to the postal authorities for sending to their destination.

10.4 The detained parcels are opened by Customs officer in presence of the postal authorities and if same do not contain any prohibited or restricted goods and there is no mis-declaration of value or drawback, the parcels are re-packed and handed over to postal authorities for export.

10.5 If the detained parcels contain restricted or prohibited goods or mis-declared goods with intention to avail inadmissible export benefits, the case is investigated and adjudication proceedings are initiated.

#### **11. Procedure for claiming Drawback on exports through post:**

11.1 The procedure for claiming Drawback through post is prescribed in Rule 11 of Customs and Central Excise Duties Drawback Rules, 1995. The outer packing of the consignment shall be labeled "Drawback Export" and the exporter shall deliver to postal authorities a claim in Annexure I to said Rules in quadruplicate. The date of

receipt of aforesaid claim to proper officer of Customs shall be the relevant date for filing of claim for the purpose of Section 75A of the Customs Act, 1962.

11.2 In case the claim is incomplete, a deficiency memo shall be issued within 15 days and if exporter complies with the deficiencies within 30 days, an acknowledgement shall be issued. The date of issue of acknowledgement shall be taken as date of filing the claim for the purpose of Section 75A of the Customs Act, 1962.

11.3 Drawback in respect of exports through post is sanctioned in the Foreign Post Office itself.

## **12. Drawback in respect of goods re-exported through post:**

12.1 The goods imported on payment of duty may also be re-exported through post and applicable rate of Drawback under Section 74 of the Customs Act, 1962 claimed. The Drawback of the duty paid at the time of import is permissible subject to the fulfillment of the conditions of Section 74 of the Customs Act, 1962 and Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. The Proper Officer of Customs at Foreign Post Office shall be satisfied about the identity of the goods being re-exported and if the same cannot be established, no Drawback would be payable.

12.2 The procedure to be followed for claim of Drawback on goods re-exported through post is as follows:

- (i) Rule 3 of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 requires the outer packing of the parcel to carry the words "Drawback Export" and exporter shall give a claim as per Annexure I to said Rules in quadruplicate to the Postal authorities. The date of receipt of aforesaid Annexure I by Customs from Postal authorities shall be the date of receipt of the claim for the purposes of Section 74 of the Customs Act, 1962 and exporter shall be informed.
- (ii) If claim is incomplete, a deficiency memo shall be issued within 15 days and if claim is again filed by exporter after complying with the deficiencies within 30 days, the receipt shall be acknowledged and this date shall be treated as date of filing the claim for the purposes of Section 74 of the Customs Act, 1962.
- (iii) Drawback under Section 74 of the Customs Act, 1962 is paid by the Customs Officer in Foreign Post Office.

## **13. Re-export of partial consignment:**

13.1 If the addressee takes delivery of parcels on payment of duty and then wishes to return to the sender, they can do so only under claim for Drawback after observing the prescribed procedure.

13.2 Permitting an addressee to open a parcel and take the delivery of part contents on payment of duty and repack the balance of the contents for re-export without payment of duty thereon is not authorised and is irregular.

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## Chapter 18

### Import of Samples

#### 1. Introduction:

1.1 In international trade it is often necessary to send samples of goods manufactured in one country to another country for being shown or demonstrated for customer appreciation and familiarization and for soliciting orders. Samples are imported by the trade, industry, individuals, companies, associations, research institutes or laboratories. These are brought by representatives of foreign manufacturers as a part of their personal baggage or through port or by courier.

1.2 Commercial samples are basically specimens of goods that may be imported by the traders or representatives of manufacturers abroad, to know its characteristics and usage and to assess its marketability in India. Samples include consumer goods, consumer durables, prototypes of engineering goods or even high value equipment, machineries (including agricultural machinery) and their accessories

#### 2. Legal provisions:

2.1 India is a signatory to a 1952 Geneva Convention to facilitate the Importation of commercial samples and advertising materials. The notifications issued in this regard enable duty free import of genuine commercial samples into the country for smooth flow of trade. It is, however, not to be used as a means to avoid paying Customs duty through repeated imports of samples in smaller lots.

2.2 Goods which are prohibited under Foreign Trade (Development and Regulation) Act, 1992 are not allowed to be imported as samples e.g. wild animals, wild birds and parts of wild animals and birds, ivory, arms and ammunitions, and narcotic drugs.

2.3 Bonafide trade samples can be imported provided these have been supplied free of charge. For duty free clearance the value of individual sample should not exceed Rs.5,000/- and aggregate value should not exceed Rs.3,00,000/- per year or 50 units of samples in a year. However, the prototypes of engineering goods can be imported even if the value is more than Rs.5,000/-. Such prototypes can be imported upto a value of Rs.10,000/- without payment of duty as long as the goods are rendered useless as merchandise by a suitable process. In case the value exceeds Rs.10,000/-, the said goods have to be re-exported within a period of 9 months or such extended period as the Assistant/Deputy Commissioner of Customs may allow. The high valued samples are cleared after depositing duty with Customs and giving an undertaking for their re-export within nine months. The deposited duty is refunded when the machinery is exported back. However, if more than one product is being imported into the India, the value limit is increased proportionately. Similarly, if the samples are consigned to more than one consignee, by any foreign company, and are sent at the same time through the same port/airport, it shall not be charged to duty if the value limit of Rs.5,000/- per unit is adhered to. The consignments meant for distribution to different parties in India can also be imported together for

convenience of transport, if the packets are clearly marked and addressed to different persons in India.

2.4 A commercial traveler of foreign country is eligible to carry bonafide samples if the value of each of the item is not more than Rs.5,000/- per unit. He is also not required to produce the IEC code at the time of clearance of these goods. The traveler must declare that these goods are meant for securing export order or guidance of exporters, and that the total value does not exceed Rs.3,00,000/- per item during the 12 month period and that he has not imported more than 50 units of the said goods within the last 12 months. He also undertakes that he would not sell these goods and if he sells he will pay the duty leviable on those goods.

2.5 The value of Rs.5,000/- is the value of the goods in the country of dispatch excluding local refundable taxes like VAT. In case of free samples of Rs.5,000/-, its value does not include freight or courier charges. If value is above Rs.5000/-, the freight and insurance charges would be added to calculate the duty payable.

2.6 Importers are trusted to declare correctly and adhere to the undertaking of the limit of yearly value and quantity. However, if any person is suspected to contravene the limit or undertaking deliberately he is liable to be investigated, penalized and/or prosecuted.

### **3. Machinery import:**

3.1 Machinery, which are prototypes of engineering goods, imported either for further manufacture of the said goods or to be used as capital goods for export production or in connection of securing further export orders can be imported duty free if the value does not exceed Rs.10,000/-. The said goods are normally defaced or made un-saleable by punching, cracking, marking with indelible ink etc. In case the machinery is valued more than Rs.10,000/- duty will be charged. The machinery can be cleared by furnishing a Bank Guarantee (or) deposit of the duty payable and an undertaking from the importer that these would be re-exported within 9 months of import. In case of high valued machinery, the importer has to give an undertaking that the said goods are utilised for the purpose of demonstration at the place(s) which is declared. The Customs authority may also seal the machinery during its journey from the port of importation to the place of demonstration and it is unsealed only at the place of operation or place of demonstration

### **4. Failure to re-export:**

4.1 The samples have to be re-exported within 9 months. However, the Assistant/Deputy Commissioner of Customs, may under special circumstances extend the period of 9 months for a further reasonable period.

### **5. Import of samples under other schemes:**

5.1 Duty free import of samples is also permitted under the following provisions/schemes:

- (a) Samples can be imported for private commercial exhibition for display or demonstration with the prior permission of Ministry of Commerce and Indian Trade Promotion Organization vide Notification No.3/89-Cus., dated 9-1-1989.
- (b) Sample can be imported for Government of India sponsored events viz. trade and industry fairs under a Carnet in terms of Notification No.157/90-Cus., dated 28-3-1990.
- (c) Under EOU schemes samples of all types of goods manufactured by the units can be imported duty free in terms of Notification No.52/2003-Cus., dated 31-3-2003.

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## Chapter 19

### Re-importation and Re-exportation of Goods

#### 1. Introduction:

1.1 Sometimes, indigenously manufactured goods, when exported, are returned back for various reasons including cancellation of export order or after exhibition/display etc., or after use in particular project/contract and completion of the contract etc. (such as machinery). Similarly imported goods which may have discharged duties at the time of original importation have also to be often sent out for repair, reconditioning etc. Private, personal imported property may also have to be sent abroad for repair within the warranty period and returned. There are also goods that may have to be sent for special processes like electroplating, polishing or coating and re-imported. Thus, specific legal provisions permit the facility of re-import and re-export of goods.

#### 2. Re-importation of indigenously manufactured/imported goods:

2.1 Under Section 12 of the Custom Act, 1962 import duties of Customs are leviable on all import goods, and no distinction is made whether the goods being imported had discharged duties earlier are being re-imported after exportation for particular purposes. Similarly, even if goods are indigenously manufactured which had been exported earlier under various export incentive schemes or duty drawback claim or even without any export incentive claim, when these are re-imported they attract the Customs duty leviable on like import goods (as the duty is on the act of importation) unless an exemption notification is issued.

2.2 To avoid incidence of double duty on re-imported goods such when sent abroad for repairs, certain relief from duty has been provided. Similarly, where the goods are indigenously manufactured, they should bear the Central Excise duties, which may not have been discharged at the time of exportation. Further, the exporters should not retain any benefits obtained as an export incentive if the goods are re-imported.

2.3 The salient elements of the duty exemption governing the re-imported goods are as follows:

- (i) On re-import of indigenously manufactured goods under duty Drawback/rebate claims, export under bond or under other claim of export

incentives, essentially the duties equivalent to the export incentives etc. availed have to be paid, on re-importation. Thus, if the goods were exported on payment of Central Excise duty, without claiming any rebate, and without claiming any export incentives such as Drawback or benefits of the duty exemption schemes, EPCG/DEPB schemes, and where the indigenously manufactured goods are being returned then no Customs duties are leviable. Further, where the indigenously manufactured goods are exported for repair and returned without claiming any benefits, duty is to be paid on a value comprising fair cost of repairs including cost of materials used in repairs, insurance and freight charges both ways. Basically the benefit is available if the Assistant/Deputy Commissioner of Customs is satisfied that the goods are the same which were exported earlier and certain other conditions as laid down in the said notification are fulfilled.

[Refer Notification No.94/96-Cus., dated 16-12-1996]

- (ii) Goods manufactured in India or parts thereof that are re-imported for repairs or reconditioning or reprocessing/refining/remaking etc. are exempt from duty subject to the condition that the re-importation takes place within a specified period; the goods are re-exported within six months of re-importation; the Assistant/Deputy Commissioner of Customs is satisfied as regards the identity of the goods; and certain other conditions ensuring re-export including execution of bonds are fulfilled.

[Refer Notification No.158/95-Cus., dated 14-11-1995]

- (iii) Re-imported private personal property, which was imported earlier but exported out for any alteration, renovation, repair free of charge etc. is exempt from duty subject to the condition that the goods are repaired on free of charge basis in accordance with the terms of warranty given by the manufacturers and in accordance with the established trade practice and Drawback or other incentives have not been availed. However, certain Custom duties equivalent to the cost of alterations/renovations/additions/repairs, if any, are payable.

[Refer Notification No.174/66-Cus. dated 24-9-1966]

### **3. Re-exportation of imported goods:**

3.1 There are often occasions where imported goods may have to be re-exported such as when the import goods are found defective after Customs clearance or are not found as per specifications or requirements. Various machinery items imported for use in certain projects or otherwise are also often to be re-exported by the original owner. Re-exports can be made by sea, air, baggage or post.

3.2 Section 74 of the Customs Act, 1962 provides for grant of Drawback @98% of the Customs duties leviable at the time of importation, if the goods are re-exported

by the importer, subject to certain conditions. The re-export is to be made within a maximum period of two years from the date of import (which period can be extended on sufficient grounds being shown) and goods have to be identified with the earlier import documents and duty payment to the satisfaction of the Assistant/Deputy Commissioner of Customs at the time of export. If such goods are used after importation, Drawback is granted on a proportionate basis but if such goods are re-exported after more than 18 months of import 'nil' Drawback is admissible. Further, no Drawback of the import duty paid is permissible for specific categories of goods such as wearing apparel, tea chests, exposed cinematographic films passed by Film Censor Board, unexposed photographic films, paper and plates and x-ray films. Also, in respect of motor vehicles imported for personal and private use the Drawback is calculated by reducing the import duty paid according to the laid down percentage for use for each quarter or part thereof, but upto maximum of four years.

[Refer Notification No.19/65-Cus., dated 6-2-1965]

3.3 Section 26A of the Customs Act, 1962 allows refund of import duty if the imported goods are found defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods. One of the conditions for claiming refund is that the goods should not have been worked, repaired or used after the importation except where such use was indispensable to discover the defects or non-conformity with the specifications. Another condition is that the goods are either exported without claiming Drawback or abandoned to Customs or destroyed or rendered commercially valueless in the presence of the Proper Officer within a period of 30 days from the date on which the Proper Officer makes an order for the clearance of imported goods for home consumption. The period of 30 days can be extended by the jurisdictional Commissioner of Customs on sufficient cause being shown. However, no refund shall be available in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

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## Chapter 20

### Disposal of Unclaimed/Uncleared Cargo

#### 1. Introduction:

1.1 Imported goods are allowed to be cleared for home consumption by the Customs, if there are no restrictions or prohibitions, assessment formalities have been completed, and duty leviable has been paid. However, it is often the case that the importer files the Bill of Entry but does not clear the goods due to various reasons such as financial problems, lack of demand for the goods, etc. Such goods are called 'uncleared goods'. In some cases, the importer does not even come forward to file the Bill of Entry for clearance of goods. Such goods are known as 'unclaimed goods'.

1.2 In terms of the provisions of the Customs Act, 1962, the duty is leviable on imported goods, regardless of whether they are cleared by the importers or not. Similarly, dues of other agencies, such as, carriers and custodians for carriage and storage of goods respectively, may also arise. Where the importers do not come forward to make payment of such dues, the Customs duty and other dues can be recovered by selling the unclaimed/uncleared goods.

#### 2. Legal provisions:

2.1 As per Section 48 of the Customs Act, 1962, if any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within 30 days from the date of unloading thereof at a port, such goods can be disposed of by the custodian. The Act, however, stipulates that the goods can be sold only after a notice is issued to the importer and the permission from Customs is obtained. The provisions relating to manner of disposal of unclaimed/uncleared goods and apportionment of sale proceeds thereof are contained in Sections 48 and 150 of the Customs Act, 1962.

#### 3. Procedure for sale of unclaimed/uncleared goods:

3.1 The Board has laid down a comprehensive procedure for disposal of unclaimed/uncleared goods. The salient features of the procedure in respect of disposal of unclaimed/uncleared cargo falling in the category of 'landed more than one year' is as follows:

- (i) The custodian will furnish the list of items to be considered for disposal to Customs. The list will contain complete particulars such as Bill of Lading/Airway Bill number, description of goods, weight, name of the

consignee/consignor, etc. The custodian will simultaneously issue a notice to the consignee at his known address and also display the same on the custodian's notice board stating that if the goods are not cleared within 15 days they shall be sold under Section 48 of the Customs Act, 1962.

- (ii) Customs shall scrutinize the custodian's list with their own files/records and intimate the custodian the goods not to be disposed viz. (a) disputed or stayed consignments or (b) consignments required to be retained for any investigation/adjudication/court proceedings, (c) motor vehicles or (d) negative list items. If no such intimation is received from the Customs within 15 days, the custodian shall go ahead with the disposal of the goods.
- (iii) The responsibility for disposal shall exclusively be with the custodian who shall fix a reserve price arrived at by their appointed panel of Government approved valuers (irrespective of value, if any, arrived at by the Customs Appraisers earlier), which should include an expert on the product line.
- (iv) The Customs will not insist on complete and detailed inventory of the contents of the consignments to be drawn in their presence. They shall, instead choose 10% consignments for which detailed inventory shall be made in their presence for sample check.
- (v) The goods shall be disposed by public auction/E-auction/tender and its date should be adequately publicized in advance through national newspapers (both in English and Hindi), departmental website as well as in at least one newspaper in the local language.
- (vi) The values assessed by the approved valuers appointed by the custodians shall form the "reserve price". The maximum number of auctions/tenders to which a lot is subjected should be four, with the goods necessarily sold for the highest bid in the last auction/tender regardless of the reserve price fixed. In the event of the goods not being disposed of in the first auction, subsequent auctions/tender should be conducted in time bound manner.
- (vii) Guidelines issued by the Central Vigilance Commission as available at CVC website <http://www.cvc.nic.in>, particularly letter No.98/ORD/1, dated 18-12-2003 should be kept in view.
- (viii) The custodian should fix a date for holding the auction/tender and communicate such date to the concerned Customs officer and the concerned Assistant/Deputy Commissioner who would, if necessary, nominate, an officer not below the rank of Superintendent /Appraiser to witness the auction/tender. Customs shall not withdraw any consignments at the last moment from the auction/tender except with the written approval of the Commissioner of Customs.

- (ix) The bidding shall be on cum-duty price and duty shall be back-calculated from the sale price [local taxes like Sales Tax etc, will however have to be charged/recovered extra from the buyer].
- (x) For each consignment which is sold, the custodian will file a consolidated Bill of Entry, buyer-wise, for assessment of the effective rate of duty by the Customs in terms of Unclaimed Goods (Bill of Entry) Regulations, 1972. Auctioned goods will be allowed out of charge only after the duty assessed is paid by the custodian.
- (xi) The sale proceeds shall be shared as per the provisions of Section 150 of the Customs Act, 1962.

3.2 The procedure of disposal of uncleared cargo in the 'landed less than one year category' is that the custodian would get the reserve price fixed by their appointed panel of Government approved valuers and the Customs shall not associate itself with the valuation of such goods. However, both reserve price and bids would be approved by the Customs. Further, if these goods remain unsold and pass into the category of 'landed-more-than-one-year-prior', then the custodians can sell the same following the independent procedure for such category without reference to Customs, and adjusting the number of auctions/tenders to which the lot was already subjected to against the prescribed number of four such auctions/ tender.

[Refer Circular No.50/2005-Cus., dated 1-12-2005]

#### **4. Disposal of hazardous cargo:**

4.1 The disposal of hazardous cargo is to be carried out in accordance with the directions dated 14-10-2003 of the Hon'ble Supreme Court in WP No. 657/95. Basically, the Apex Court has directed that such wastes are to be categorized as either those that are banned or those that are regulated. The wastes in the banned category should be either re-exported, if permissible, or destroyed at the risk, cost and the consequence of the importer. The wastes in the regulated category are permitted for recycling and reprocessing within the permissible parameters by specified authorized persons having the requisite facilities under the rules. However, before allowing clearance for recycling and domestic use, clearances should be obtained from the Monitoring Committee on Hazardous Waste Management. Further, where the importer of any of the categories is not traceable, the consignments shall be dealt with at the risk, cost and consequences of the importer. The disposal/auction shall be carried out under the supervision of the Monitoring Committee on Hazardous Waste Management.

[Refer Circular No.31/2004-Cus., dated 26-4-2004]

4.2 The disposal of cargo which is subject to restrictions/prohibitions under any law for the time being in force, can only be made in terms of the relevant statutes.

**5. Interaction between custodians and Customs:**

5.1 There would be a formal mechanism for interaction and a quarterly meeting between the custodians and Customs to review the pendency of uncleared cargo and to reconcile/update the status of pending consignments by matching the pendency with the custodian with the figures of uncleared consignments as per Customs records.

[Refer Circulars No.31/2004-Cus., dated 26-4-2004; No.50/2005-Cus., dated 1-12-2005; No.52/2005-Cus., dated 10-12-2005; No.11/2006-Cus., dated 16-2-2006; and Instruction F.No.450/97/2010-Cus.IV, dated 22-7-2010]

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## Chapter 21

### Intellectual Property Rights

#### 1. Introduction:

1.1 India is a signatory to the WTO Treaty on Trade Related Aspects of Intellectual Property Rights (TRIPS), which was brought into force on 1<sup>st</sup> January, 1995. Articles 51 to 60 of TRIPS [Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization] relate to border measures (i.e. measures required to be taken for providing protection against infringement of IPRs at the border).

#### 2. Legal provisions:

2.1 Copyright Act, 1957, the Trade Marks Act, 1999, the Patents Act, 1970, the Designs Act, 2000 and the Geographical Indications of Goods (Registration and Protection) Act, 1999 have provisions prohibiting import of goods infringing Intellectual Property Rights under the respective Acts.

2.2 Central Government has been empowered under Section 11 of the Customs Act, 1962 to issue notifications for prohibiting either absolutely or subject to such conditions as may be specified in the notification, the import or export of goods of any specified description. Section 11(2) of the said Act details the purpose for which such a notification may be issued by the Central Government which, inter-alia, covers the following purpose:

- (i) The protection of patents, trademarks and copyrights. [Section 11 (2) (n)]; and
- (ii) The prevention of the contravention of any law for the time being in force. Section 11 (2) (u)].

2.3 Notification No.51/2010-Cus.(NT), dated 30-6-2010 prohibits import of goods infringing specified provisions of Trademarks Act, Copyrights Act, Designs Act, Geographical Indications Act and Patent Act subject to following the procedure prescribed under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (IPR Rules) issued under Notification No. 47/ 2007-Cus.(NT), dated 8-5-2007. Goods in transit through India are excluded from its coverage and only goods intended for sale or use in India would be covered under the notification.

2.4 The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 provide a procedure to be followed by the right holders and Customs officers to prohibit importation of goods infringing Intellectual Property Rights and the action to be taken, by the right holders and Customs Officers, after suspension of release of the infringing goods. These Rules provide for, inter alia:



- (i) Notice to be given by a right holder in writing to the Commissioner of Customs or any Customs Officer authorised by Commissioner requesting for suspension of release of goods imported;
- (ii) Notice to be accompanied by fees of Rs.2,000/-;
- (iii) Within 15 days or extended period additional information to be supplied by the right holder to Deputy/Assistant Commissioner, if missing from the format; and
- (iv) Right holder to inform Customs, when his IPR ceases to be valid.
- (v) Time limit for right holders to join proceedings.
- (vi) A single point for registration of the right holder.
- (vii) Adequate protection to the rightful importer and for indemnifying Customs.
- (viii) Suo-moto action by Customs.
- (ix) Disposal of the confiscated goods.
- (x) Goods of non-commercial nature contained in personal baggage or sent in small consignments meant for personal use would not attract prohibition.

### **3. Conditions for registration:**

3.1 The grant of registration shall be subject to following conditions, namely:

(i) The right holder or his authorised representative shall execute a bond with the Commissioner of Customs for such amount with such surety and security as deemed appropriate by the Commissioner, undertaking to protect the importer, consignee and the owner of the goods and the competent authorities against all liabilities and to bear the costs towards destruction, demurrage and detention charges incurred till the time of destruction or disposal, as the case may be;

(ii) The right holder shall execute an indemnity bond with the Commissioner of Customs indemnifying the Customs authorities against all liabilities and expenses on account of suspension of the release of allegedly infringing goods.

(iii) The right holder shall undertake to execute Consignment Specific Bond with the jurisdictional Commissioner of Customs at the port of interdiction within three days from the date of interdiction of any allegedly infringing imported consignment. This takes into account the difficulty at the time of registration but prior to importation in fixing the bond amount corresponding to the value of suspected infringing goods. Also, this ensures against locking in right holders' money in the form of security. An alternative provides for ARTS facilitated a single centralized bond and surety/security account that can be used at all ports in India, so that the IPR holders do not have to execute consignment specific bonds and sureties/securities upon receipt of information about an interdiction of allegedly infringing consignment.

3.2 The bond amount equal to 110% of the value of goods and security of 25% of the bond value is required to be furnished by the right holder.

3.3 The Commissioner shall notify the applicant within 30 days of receipt of notice or from the date of expiry of extended period whether the notice has been registered or rejected.

3.4 If registration is granted, its validity period, which has to be minimum validity for one year, would be indicated and the same shall normally be 5 years (unless the right holder wants it for a lesser period).

3.5 After the grant of the registration of the notice by the Commissioner, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962.

[Refer Circular No.41/2007-Cus., dated 29-10-2007]

#### **4. Automation in monitoring imports involving IPR:**

4.1 In addition to the legal measures implemented to check import of counterfeit and pirated goods, an automated system facilitates genuine trade and targeting of infringing goods more effectively. Such a mechanism also integrates the custom clearance procedures with the new IPR regime.

4.2 A software module called Automatic Recordation & Targeting System (ARTS) has been developed with the following objectives:

- (i) Effective implementation of the IPR (Imported Goods) Enforcement Rules, 2007;
- (ii) Integration of IPR enforcement with Customs clearance procedure;
- (iii) Web-based on-line recordation;
- (iv) Providing a platform for right holders to record their rights with Customs;
- (v) Enabling National targeting of suspect consignments;
- (vi) Creation of a centralized national database containing useful information for enforcement;
- (vii) Providing access to National data for the Customs field officers; and
- (viii) Trade facilitation.

4.3 ARTS has provision for recording and targeting of Trade Marks, Copyright, Patents, Designs and Geographical Indications. ARTS seeks to integrate IPR enforcement with the Customs clearance procedure being done using the Risk management System (RMS). The consignments suspected to be infringing the rights of the IPR holders are interdicted through the RMS.

4.4 An on-line, system driven, centralized bond management module is a part of ARTS. This provides for a single centralized bond and surety/security account that can be used at all ports in India, so that the IPR holders do not have to execute consignment specific bonds and sureties/securities upon receipt of information about an interdiction of allegedly infringing consignment.

[Refer Notifications No. 47/2007-Cus (N.T), dated 8-5-2007; No. 49/2007-Cus (N.T), dated 8.5.2007; and No.51/2010-Cus (N.T), dated 30.06.2010; and Circular No.41/2007-Cus., dated 29-10-2007]

## Chapter 22

### Duty Drawback Scheme

#### 1. Introduction:

1.1 The Duty Drawback seeks to rebate duty or tax chargeable on any imported / excisable materials and input services used in the manufacture of export goods. The duties and tax neutralized under the scheme are (i) Customs and Union Excise Duties in respect of inputs and (ii) Service Tax in respect of input services. The Duty Drawback is of two types: (i) All Industry Rate and (ii) Brand Rate.

1.2 The All Industry Rate (AIR) is essentially an average rate based on the average quantity and value of inputs and duties (both Excise & Customs) borne by them and Service Tax suffered by a particular export product. The All Industry Rates are notified by the Government in the form of a Drawback Schedule every year and the present Schedule covers 2837 entries. The legal framework in this regard is provided under Sections 75 and 76 of the Customs Act, 1962 and the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 (henceforth referred as Drawback Rules). The Brand Rate of Duty Drawback is allowed in cases where the export product does not have any AIR of Duty Drawback or the same neutralizes less than 4/5th of the duties paid on materials used in the manufacture of export goods. This work is handled by the jurisdictional Commissioners of Customs & Central Excise. Exporters who wish to avail of the Brand Rate of Duty Drawback need to apply for fixation of the rate for their export goods to the jurisdictional Central Excise Commissionerate. The Brand Rate of Duty Drawback is granted in terms of Rules 6 and 7 of the Drawback Rules, 1995.

1.3 The Duty Drawback facility on export of duty paid imported goods is available in terms of Section 74 of the Customs Act, 1962. Under this scheme part of the Customs duty paid at the time of import is remitted on export of the imported goods, subject to their identification and adherence to the prescribed procedure.

#### 2. All Industry Rate (AIR) of Duty Drawback:

2.1 The AIR of Duty Drawback are notified for a large number of export products every year by the Government after an assessment of average incidence of Customs, Central Excise duties and Service Tax suffered by the export products. The AIR are fixed after extensive discussions with all stake holders viz. Export Promotion Councils, Trade Associations, and individual exporters to solicit relevant data, which includes the data on procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Corroborating data is also collected from Central Excise and Customs field formations. This data is analysed and forms the basis for the AIR of Duty Drawback.

2.2 The AIR of Duty Drawback is generally fixed as a percentage of FOB price of export product. Caps have been imposed in respect of many export products in order to obviate the possibility of misuse by unscrupulous exporters through over invoicing of the export value.

2.3 The scrutiny, sanction and payment of Duty Drawback claims in major Custom Houses is done through the EDI system. The EDI system facilitates credit/disbursal of Drawback directly to the exporter's bank accounts once the EGM has been filed by respective airlines / shipping lines. The correct filing of EGM is essential for speedy processing and disbursal of Drawback claims.

2.4 Notification No.84/2010-Cus(N.T.), dated 17-9-2010 is relevant for ascertaining the current AIR of Duty Drawback for various export products.

### **3. Brand Rate of Duty Drawback:**

3.1 Where the export product has not been notified in AIR of Duty Drawback or where the exporter considers the AIR of Duty Drawback insufficient to fully neutralize the duties suffered by his export product, he may opt for the Brand Rate of Duty Drawback. Under this scheme, the exporters are compensated by paying the amount of Customs, Central Excise duties and Service Tax incidence actually incurred by the export product. For this purpose, the exporter has to produce documents/proof about the actual quantity of inputs / services utilized in the manufacture of export product along with evidence of payment of duties thereon.

3.2 The exporter has to make an application to the Commissioner having jurisdiction over the manufacturing unit, within 3 months from the date of the 'Let Export' order. The application should include details of materials/components/input services used in the manufacture of goods and the duties/taxes paid on such materials/ components/input services. The period of 3 months can be extended upto 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

3.3 In terms of Rule 6 of the Drawback Rules, 1995 on receipt of the Brand Rate application, the jurisdictional Commissioner shall verify the details furnished by the exporter and determine the amount/rate of Drawback. Where exporter desires that he may be granted Drawback provisionally, the jurisdictional Commissioner may determine the same, provided the exporter executes a general bond, binding himself to refund the Drawback amount granted to him, if it is found later that the Duty Drawback was either not admissible to him or a lower amount was payable. The Brand Rate letter is thereafter issued to the exporter. The Custom House of the port of export is also given a copy to facilitate payment of Drawback to the exporter.

#### **4. Section 74 Drawback:**

4.1 In case of goods which were earlier imported on payment of duty and are later sought to be exported within a specified period, Customs duty paid at the time of import of the goods, with certain cuts, can be claimed as Duty Drawback at the time of export of such goods. Such Duty Drawback is granted in terms of Section 74 of the Customs Act, 1962 read with Re-export of Imported Goods (Drawback of Customs Duty) Rules, 1995. For this purpose, the identity of export goods is cross verified with the particulars furnished at the time of import of such goods.

4.2 Where the goods are not put into use after import, 98% of Duty Drawback is admissible under Section 74 of the Customs Act, 1962. In cases the goods have been put into use after import, Duty Drawback is granted on a sliding scale basis depending upon the extent of use of the goods. No Duty Drawback is available if the goods are exported 18 months after import. Application for Duty Drawback is required to be made within 3 months from the date of export of goods, which can be extended upto 12 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

#### **5. Supplementary claims of Duty Drawback:**

5.1 Where any exporter finds that the amount of Duty Drawback paid to him is less than what he is entitled to on the basis of the amount or rate of Drawback determined by the Central Government, he may prefer a supplementary claim. This claim has to be filed within 3 months of the relevant date, which is fixed, as follows:

- (i) Where the rate of Duty Drawback is determined or revised under Rules 3 or 4 of the Drawback Rules, 1995 from the date of publication of such rate in the Official Gazette;
- (ii) Where the rate of Duty Drawback is determined or revised upward under Rules 6 or 7 of the Drawback Rules, 1995, from the date of communicating the said rate to the person concerned; and
- (iii) In all other cases, from the date of payment or settlement of the original Duty Drawback claim by the proper officer:

5.2 The period of 3 months can be extended upto 18 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

#### **6. Procedure for claiming Duty Drawback:**

6.1 The Duty Drawback on export goods (whether AIR or Brand Rate) is to be claimed at the time of export and requisite particulars filled in the prescribed format of Shipping Bill/Bill of Export under Drawback. In case of exports under electronic Shipping Bill, the Shipping Bill itself is treated as the claim for Drawback. In case of manual export, triplicate copy of the Shipping Bill is treated as claim for Drawback. The claim is to be accompanied by certain documents as laid down in the Drawback Rules 1995. If the requisite documents are not furnished or there is any deficiency, the claim may be returned for furnishing requisite

information/documents. The export shipment, however, will not be stopped for this reason.

## **7. Limitations on admissibility of Duty Drawback:**

7.1 The Customs Act, 1962 lays down certain limitations and conditions for grant of Duty Drawback. No Duty Drawback shall be admissible where:

- (i) The Duty Drawback amount is less than Rs.50/-.
- (ii) The Duty Drawback amount exceeds one third of the market price of the export product.
- (iii) The Duty Drawback amount is less than 1% of FOB value of export (except where the amount of Duty Drawback per shipment exceeds Rs.5000/-).
- (iv) Where value of export goods is less than the value of imported material used in their manufacture. If necessary, certain minimum value addition over the value of imported materials can also be prescribed by the Government.

7.2 In case there is a likelihood of export goods being smuggled back, the Government can impose certain conditions which need to be fulfilled before the Duty Drawback is granted. Thus, notifications have been issued under Section 76 of the Customs Act, 1962.

7.3 The prior repatriation of export proceeds is not a pre-requisite for grant of Duty Drawback. However, the law prescribes that if sale proceeds are not received within the period stipulated by the RBI, the Duty Drawback will be recovered per procedure laid down in the Drawback Rules, 1995.

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## Chapter 23

### Export Promotion Schemes

#### 1. Introduction:

1.1 The Duty Exemption Schemes are export promotion schemes that enable free of Customs duties import of inputs required for export production. There are two types of duty exemption schemes: Advance Authorisation Scheme and the Duty Free Import Authorisation (DFIA) Scheme. These schemes find place in Chapter 4 of the Foreign Trade Policy (FTP), 2009-14.

1.2 Duty Remission Schemes enable post-export replenishment/remission of duty paid on inputs used in the export product. The only duty remission scheme currently in operation is Duty Entitlement PassBook (DEPB) scheme.

#### 2. Advance Authorisation scheme:

2.1 The Advance Authorisations are issued to allow duty free import of inputs, which are physically incorporated in the export product (after making normal allowance for wastage). In addition, fuel, oil, energy catalysts, etc., which are consumed in the course of their use to obtain the export product are also allowed under the scheme. The raw materials/inputs are allowed duty free as per the quantity specified in the Standard Input-Output Norms (SION) notified by the DGFT or as per self-declared norms of the exporter in terms of Para 4.7 of Handbook of Procedures (HBP) Vol.1. The Advance Authorisations are not issued for some specified items like vegetable oils, cereals, spices, honey etc.. The Advance Authorisation holder is required to fulfill the export obligation (EO) by exporting a specified quantity/value of the resultant product.

2.2 The Advance Authorisations are issued both for physical exports as well as deemed exports. These are also issued on the basis of annual requirements of the exporter, which enables him to plan his manufacturing / export programme on a long term basis. All provisions of Advance Authorisation scheme would apply to Advance Authorisation for Annual Requirements except as specified under Para 4.24A of HBP Vol. 1. The Advance Authorisations are issued on pre-export or post-export basis in accordance with the FTP and procedures in force on the date of issue of Authorisation.

2.3 The Advance Authorisations are issued either to a manufacturer exporter or merchant exporter tied to a supporting manufacturer(s). They can also be issued to sub-contractors in respect of supplies of goods to specified projects provided the name of such sub-contractor appears in the main contract. The Advance Authorisation schemes (normal Advance Authorisation, Advance Authorisation for Annual Requirement and Advance Authorisation for Deemed Export schemes)

have been operationalized through the Notifications No.96/2009-Cus. and No.99/2009-Cus., both dated 11-9-2009 and No.112/2009-Cus., dated 29-9-2009, respectively.

2.4 The Advance authorisations are issued with a minimum of 15% value addition with effect from the current FTP, 2009-14. The value addition for gems and jewellery and for specified goods is specified as per Appendix-11B and para 4A2.1 of HBP Vol.1. In case of Authorisation for Tea, the minimum value addition is 50% as per para 4.1.6 of FTP (RE-2010). Higher value additions are prescribed for exports for which payments are not received in freely convertible currency. The Advance Authorisations and/or materials, imported thereunder are not transferable even after completion of export obligation.

2.5 The imports/exports against Advance Authorisations and their utilization require proper monitoring as the goods are imported duty free against a liability to export. For this, the Advance Authorisation holder is required to maintain a proper record of his imports and exports and to pay the duties in case he is unable to fulfill his export obligation. Further, to ensure proper account of export obligation, the Advance Authorisation holder is required to indicate the Advance Authorization No./date on the body of the Shipping Bill/invoice (in case of deemed exports). After fulfillment of specified export obligation, the Advance Authorisation holder is required to submit relevant export documents alongwith Advance Authorisation to the DGFT authorities for obtaining Export Obligation Discharge Certificate (EODC). After obtaining EODC, the Advance Authorisation Authorization holder produces the same before the Customs for the purpose of obtaining redemption of bond/Bank Guarantee filed by him. The concerned Commissioners of Customs and Central Excise as well as Regional Licencing Authority (RLA) of DGFT are also required to effectively monitor imports/exports and to take action to recover the Customs duties with interest in the cases of default. The Commissioners of Customs have also been advised to put in place an institutional mechanism whereby they meet the RLA at least once every quarter to pursue issues relating to EO fulfillment status so that the concerted action is taken against defaulters.

[Refer Circular No.5/2010–Cus., dated 16-3-2010; and Instruction F. No.609/119/2010, dated 18-1-2011]

2.6 The Advance Authorisation holder is required to file a bond with 100% bank guarantees for the duty difference at the time of import of duty free inputs. Certain categories of exporters, however, have been exempted from filing the Bank Guarantees subject to certain conditions. In the event of failure to fulfill the EO the Advance Authorisation holder becomes liable to pay the differential Customs duties with interest @15% per annum on such duties.

[Refer Circulars No.58/2004-Cus., dated 21-10-2004; No.17/2009-Cus., dated 25-5-2009; No.32/2009-Cus., dated 25-11-2009; and No.6/2011-Cus., dated 18-1-2011]

2.7 The Advance Authorisations normally have a validity period of 36 months from the date of issue with certain exceptions as per para 4.22 of HBP Vol.1. The relevant DGFT authority who issues the Authorisation is competent to grant revalidation or grant extension of EO period beyond the prescribed period. No All



Industry Rate (AIR) of Duty Drawback is admissible to an Advance Authorisation holder. However, the Advance Authorisation holder is entitled to claim Brand Rate of Duty Drawback in respect of inputs which are not imported against the Advance Authorisation and on which Customs/Excise duties have been paid. Every Advance Authorisation holder is required to maintain a true and proper account of consumption and utilisation of duty free imported/domestically procured goods for a minimum period of 3 years as per para 4.30 of HBP Vol.1.

### **3. Duty Free Import Authorisation (DFIA):**

3.1 The Duty Free Import Authorisation (DFIA) scheme introduced in 2006 is similar to Advance Authorisation scheme in most aspects with minimum value addition requirement of 20%. Once export obligation is completed, transferability of authorisation/ material imported against the authorisation is permitted. However, once the transferability has been endorsed, the inputs can be imported/domestically sourced only on payment of Additional Customs duty/Central Excise duty. The DFIA Authorisations are issued only for products for which SION have been notified. This scheme is operationalized through Notification No.40/2006-Cus., dated 1-5-2006.

3.2 The monitoring of export obligation is an essential ingredient of the DFIA scheme. Thus, the Commissioners of Customs have been advised to put in place an institutional mechanism whereby they meet the RLA at least once every quarter to pursue issues relating to EO fulfillment status so that the concerted action is taken against defaulters. Further, there is a requirement that in case the facility of rebate under Rules 18 or 19(2) of the Central Excise Rules, 2002 or CENVAT facility under the Cenvat Rules, 2004 has been availed, then the duty free imported goods have to be used in the manufacture of the dutiable goods.

[Refer Circular No.11/2009-Cus., dated 25-2-2009; and Instruction F. No.609/119/2010, dated 18-1-2011]

### **4. Duty Entitlement Pass Book (DEPB) scheme:**

4.1 DEPB scheme was announced on 1-4-1997 and is presently valid till 30-6-2011. This is an export promotion scheme that envisages grant of DEPB Credit Entitlement to an exporter at the time of export at an ad-valorem rate notified by DGFT, in relation to FOB value of the export product. The DGFT have so far notified DEPB rates for nearly 2700 export products, which are based on the computation of basic Customs duty suffered by the exporters on the inputs listed in the SION applicable to the export product. The crucial feature of the DEPB scheme is that all the inputs listed in the SION are deemed to have been imported and to have suffered Customs duties. DEPB rates are finalised by the DEPB Committee, chaired by Additional DGFT and including representative from Ministry of Finance. The DEPB scheme is operationalised vide Notification No.97/2009-Cus., dated 11-9-2009.

4.2 The normal validity period of a DEPB scrip is 12 months and DGFT authority who issues the scrip is empowered to grant revalidation. These scrips are for a certain amount of DEPB credit and can be utilised for adjusting Customs duties

(Basic or CVD) against import of any products, without the necessity of any correlation between the export product and the import goods.

4.3 The DEPB scrip and/or the items imported against it are freely transferable. Import against DEPB scrips is allowed at the port specified in the DEPB which is the port from where exports have been made. Imports from a port other than the port of export are also allowed under Telegraphic Release Advice (TRA) facility as per the terms and conditions of the notification issued by Department of Revenue.

4.4 No Duty Drawback is allowed on exports made under DEPB scheme. However, in cases where CVD is paid in cash on imported inputs, or where indigenous duty paid inputs, not specified in SION, are used in the manufacture of export product, Brand Rate of Duty Drawback is admissible provided CENVAT credit in respect of such duty incidence is not availed.

[Refer Circular No.39/2001-Cus., dated 6-7-2001]

## **5. Reward scheme - Served From India Scheme:**

5.1 Reward schemes such as Served From India Scheme (SFIS) incentivise exports of certain specified goods/exports to certain specified countries. The objective of SFIS is to “accelerate growth in export of services so as to create a powerful and unique ‘Served From India’ brand, instantly recognized and respected world over.” SFIS is operationalised vide Notification No.91/2009-Cus., dated 11-9-2009.

5.2 All Indian service providers, who have free foreign exchange earning of at least Rs.10/- lakhs in preceding financial year/current financial year are eligible for SFIS. For individuals, the limit of minimum free foreign exchange earnings is Rs.5/- lakhs. Under this scheme, duty credit scrip @10% of free foreign exchange earnings are given to the exporter.

5.3 The duty credit scrip can be used for import of any capital goods including spares, office equipment and professional equipment, office furniture and consumables that are otherwise freely importable and/or restricted under ITC (HS). Imports have to relate to any service sector business of applicant. While import of vehicles per se is not permitted, vehicles in the nature of professional equipments to the service provider like Air Fire Fighting and Rescue Vehicles (AFFRVS), Heavy Duty Modular Trailer Combination etc. are permitted. In case of hotels, clubs having residential facility of minimum 30 rooms, golf resorts and stand-alone restaurants having catering facilities, duty credit scrip can also be used to import consumables including food items and alcoholic beverages.

5.4 The entitlement/goods (imported/procured) are subject to Actual User condition i.e. non-transferable (except within group company and managed hotels)

5.5 The duty credit scrip is permitted to be utilized for payment of excise duty for procurement from domestic sources, in terms of Notification No. 34/2006-CE, dated 14-6-2006.

## **6. Reward scheme - Vishesh Krishi and Gram Udyog Yojana (VKGUY) or Special Agriculture and Village Industry scheme:**

6.1 The objective of VKGUY is to promote exports of specified agricultural products, and Gram Udyog products, forest based products. The scheme is operationalized vide Notification No.94/2009-Cus., and No.95/2009-Cus., both dated 11-9-2009.

6.2 Duty credit scrips are granted @5% of FOB value of exports in free foreign exchange. This rate is reduced to 3% in cases where exporter has also availed benefits of (i) Drawback at rates higher than 1%; and/or (ii) Specific DEPB rate i.e. other than Miscellaneous Category – Sr. Nos. 22D & 22C of Product Group 90 of the DEPB Schedule; and/or (iii) Advance Authorization or Duty Free Import Authorization import for inputs other than catalysts, consumables and packing materials. Some specified flowers, fruits, vegetables and other products, are entitled to an additional duty credit scrip equivalent to 2% of FOB value of exports (over and above the 5% or 3% VKGUY reduced rate entitlement).

6.3 The Status Holders, as defined in para 3.10.2 of the FTP exporting specified agricultural products are entitled to Agri. Infrastructure Incentive Scrip (AIIIS) equal to 10% of FOB value of agricultural exports (including VKGUY benefits). The following capital goods / equipments are permitted for import against AIIIS:

- (i) Cold storage units including Controlled Atmosphere (CA) and Modified Atmosphere (MA) stores; Pre-cooling units and Mother Storage units for Onions, etc.;
- (ii) Pack Houses (including facilities for handling, grading, sorting and packaging etc.);
- (iii) Reefer Van/containers; and
- (iv) Other capital goods/equipments as may be notified in Appendix 37F.

6.4 The goods imported against AIIIS are subject to actual user condition and hence non-transferable. However, the scrips issued under AIIIS are freely transferable amongst Status Holders as well as to units (not including developers) in Food Parks for import of Cold Chain equipment.

## **7. Reward scheme - Focus Market Scheme (FMS):**

7.1 The objective of this scheme is to offset high freight cost and other externalities to select international markets with a view to enhance India's export competitiveness in these countries. The scheme is operationalized vide Notification No.94/2009-Cus., and No.95/2009-Cus., both dated 11-9-2009.

7.2 The exporters of all products to countries, as notified in Appendix 37C of HBP Vol.1, are entitled for Duty Credit Scrip equivalent to 3% of FOB value of exports in free foreign exchange.

7.3 In terms of Notification No. 93/2009-Cus., dated 11-9-2009 the following categories of export products/sectors are ineligible for Duty Credit Scrip, under FMS:

- (a) Supplies made to SEZ units;
- (b) Service exports;
- (c) Diamonds and other precious, semi precious stones, gold, silver, platinum and other precious metals in any form, including plain and studded jewellery;
- (d) Ores and concentrates, of all types and in all forms;
- (e) Cereals, of all types;
- (f) Sugar, of all types and in all forms;
- (g) Crude/petroleum oil and crude/petroleum based products covered under ITC HS codes 2709 to 2715, of all types and in all forms; and
- (h) Milk and milk products covered under ITC HS codes 0401 to 0406, 19011001, 19011010, 2105 and 3501.

#### **8. Reward scheme - Focus Product Scheme (FPS):**

8.1 The objective of this scheme is to incentivise export of specified products notified in Appendix 37D of HBP Vol.1 to all countries (including SEZ units). The exporters are entitled for Duty Credit Scrip @ 2% of FOB value of exports in free foreign exchange. However, Special Focus Product(s)/sector(s), covered under Tables 2 and 5 of Appendix 37D, are eligible for Duty Credit Scrip equivalent to 5% of FOB value of exports in free foreign exchange. Further, Focus Product(s)/sector(s) notified under Table 7 of Appendix 37D of the HBP Vol.1 are granted additional Duty Credit Scrip equivalent to 2% of FOB value of exports in free foreign exchange over and above the existing rate for that product/sector from the admissible date of export /period specified in the public notice issued to notify the product/sector. This scheme is operationalized vide Notification No.92/2009-Cus., dated 11-9-2009.

#### **9. Reward scheme - Market Linked Focus Products Scrip (MLFPS):**

9.1 The export of products/sectors of high export intensity/employment potential (which are not covered under present Focus Product Scheme List) are incentivized at 2% of FOB value of exports in free foreign exchange under Focus Product Scheme when exported to the Linked Markets (countries), which are not covered in the present FMS list.

#### **10. Reward scheme - Status Holders Incentive Scrip (SHIS):**

10.1 The Status Holders of specified sectors are provided with an extra scrip called the SHIS @ 1% of the of FOB value of exports of these sectors made during 2009-10, 2010-11 and 2011-12. The objective of the scheme is to promote investment in upgradation of technology of some specified sectors. This scheme is operationalized vide Notification No.104/2009-Cus., dated 14-9-2009.

10.2 The SHIS is not issued to the exporters in a particular year if they have in that year availed the benefits of Technology Upgradation Fund Scheme (TUFS) or/and have got zero percent EPCG Authorisation.

10.3 The SHIS is issued with actual user condition and may be used for imports of capital goods (as defined in FTP) relating to certain specified sectors.

## 11. Expired/abolished Export Promotion schemes:

11.1 There are some Export Promotion schemes that have expired and no longer in vogue, but imports against scrips issued to beneficiaries of these schemes are continuing and hence their monitoring becomes important:

- (i) **Duty Free Credit Entitlement (DFCE) scheme:** This scheme for status holders was announced on 31-3-2003 whereby the status holders having incremental growth of more than 25% in FOB value of exports subject to a minimum export turnover of Rs.25 crores, were entitled to duty credit at 10% of the incremental growth in exports. The duty credit scrip / the goods imported against it are governed by the Actual User condition. This scheme was replaced by the Target Plus Scheme on 1-9-2004.
- (ii) **Target Plus Scheme (TPS):** This scheme was introduced for the Star Export Houses w.e.f. 1-9-2004 whereby the exporters were entitled to rewards in the form of duty free credit based on incremental export performance. Initially, the entitlement was 5% to 15% of the incremental growth in exports, but later w.e.f. 1-4-2005, it was reduced to 5%. The duty credit scrip/the goods imported against it are governed by the actual user condition and can be used for import of any inputs, capital goods including spares, office equipment, professional equipment and office furniture. The scheme ended on 1-4-2006.
- (iii) **Duty Free Replenishment Certificate (DFRC) scheme:** This scheme permitted duty free import (exemption from only Basic Customs duty) of inputs which were used in the manufacture of export product on post-export basis as replenishment. The DFRC authorisations were issued with a minimum value addition of 25% and only in respect of export products covered under the SION notified by DGFT. The DFRC authorisation and /or material(s) imported against it are freely transferable. The scheme ended on 1-5-2006.

## 12. Special provisions:

12.1 The following exports categories /sectors are ineligible for Duty Credit Scrip entitlement under VKGUY, FMS, FPS (including MLFPS) and Status Holders Incentive Scrip schemes:

- (a) EOUs / EHTPs / BTPs who are availing direct tax benefits / exemption;
- (b) Export of imported goods covered under Para 2.35 of FTP;

- (c) Exports through transshipment, meaning thereby that exports originating in third country but transshipped through India;
  - (d) Deemed Exports;
  - (e) Exports made by SEZ units or SEZ products exported through DTA units; and
  - (f) Items, which are restricted or prohibited for export under Schedule-2 of Export Policy in ITC (HS).
- 12.2 For computation of Duty Credit Scrip Benefits, FOB Value of Exports (in free foreign exchange) shall include up to 12.5% Foreign Agency Commission.
- 12.3 Duty Credit Scrip and items imported against it are freely transferable. However, Duty Credit Scrip issued under DFCE scheme, TPS, SFIS and SHIS are not freely transferable.
- 12.4 Duty Credit Scrip may be used for import of inputs or goods including capital goods, provided same is freely importable and / or restricted under ITC (HS). However, import of items listed in Appendix 37B of HBPv1 is not permitted to be debited. Duty Credit Scrips can also be utilized for payment of duty against imports under EPCG scheme provided the item is importable against the scrip.
- 12.5 Additional customs duty/excise duty paid in cash or through debit under Duty Credit scrip can be adjusted as CENVAT Credit or Duty Drawback, except under SFIS.
- 12.6 Utilization of Duty Credit Scrip for imports from a port other than port of registration is allowed under Telegraphic Release Advice (TRA).
- 12.7 The benefit of only one Reward scheme can be claimed against a shipment. The exporter has to declare his intention to claim the benefit of the reward schemes, in case of duty free shipment, at the time of export.
- 12.8 Utilization of Duty Credit Scrip is permitted for payment of duty in case of import of capital goods under lease financing.
- 12.9 Transfer of export performance from one to another is not permitted. However, for VKGUY, FMS and FPS (including MLFPS), benefits can be claimed either by the supporting manufacturer (along with disclaimer from the company / firm who has realized the foreign exchange directly from overseas) or by the company / firm who has realized the foreign exchange directly from overseas.
- 12.10 Duty Credit Scrips can also be used / debited towards payment of Customs Duties in case of EO defaults under Authorizations issued under Chapters 4 and 5 of the Foreign Trade Policy. However, penalty / interest shall be required to be paid in cash.

### **13. Export Promotion Capital Goods (EPCG) scheme:**

- 13.1 Under EPCG scheme, import of capital goods which are required for the manufacture of resultant export product specified in the EPCG Authorization is

permitted at nil/concessional rate of Customs duty. This Scheme enables upgradation of technology of the indigenous industry. For this purpose EPCG Authorizations are issued by RA (Regional Authority) of DGFT on the basis of nexus certificate issued by an independent chartered engineer.

13.2 At present the EPCG Authorization holder is permitted to import capital goods at 0% or 3% Customs duty. Under the 0% duty EPCG scheme the Authorization holder is required to undertake export obligation (EO) equivalent to 6 times of the duty saved amount on the capital goods imported within a period of 6 years reckoned from the date of issue of Authorization. Under the 3% duty EPCG scheme, the Authorization holder has to fulfill EO equivalent to 8 times of the duty saved amount on the capital goods imported in 8 years.

13.3 EO under the scheme is to be over and above the average level of exports achieved by the authorization holder in the preceding three licensing years for the same and similar products.

13.4 EPCG Authorizations are issued to manufacturer exporters and merchant exporter with or without supporting manufacturer, and service providers. EPCG scheme is also available to a service provider who is designated/certified as a Common Service Provider (CSP) by the DGFT or State Industrial Infrastructural Corporation in a Town of Export Excellence. EPCG authorization issued to a CSP gives details of the users and the quantum of EO which each user has to fulfill. The CSP as well as the specific users are under an obligation to fulfill the export obligation under the scheme.

13.5 The EPCG Authorization specifies the value/quantity of resultant export product to be exported against it. In the case of manufacturer/merchant/service exporters, such EO is required to be fulfilled by exporting goods manufactured or capable of being manufactured or services rendered by the use of capital goods imported under the scheme. Upto 50% of the EO may also be fulfilled by export of other goods manufactured or service(s) provided by the importer or his group company or managed hotel, which has the EPCG Authorization, subject to the condition that in such cases, additional EO imposed shall be over and above the average exports achieved by the importer or his group company or managed hotel in preceding three years for both the original and the substitute product(s)/service(s). In order to ensure fulfillment of specified EO as also to secure interest of revenue, the EPCG Authorization holder is required to file bond with or without bank guarantee with the Customs prior to commencement of import of capital goods. Bank guarantee equal to 100% of the differential duty in case of merchant exporters and 25% in case of manufacturer exporters is required to be submitted except in case of a few exempted categories.

[Refer Circulars No. 58/2004-Cus., dated 21-10-2004; No.17/2009-Cus., date 25-5-2009; and No.32/2009-Cus., dated 25-11-2009]

13.6 EPCG Authorization can also be obtained for annual requirement with a specific duty saved amount and corresponding EO. It indicates the export products through which EO shall be fulfilled.

13.7 Capital goods imported under EPCG scheme are subject to actual user condition and the goods imported cannot be transferred/sold till the fulfillment of EO. In order to ensure that the capital goods imported under EPCG scheme are utilized in the manufacture of resultant export product, after importation/clearance of capital goods from Customs, the Authorization holder is required to produce certificate from the jurisdictional Central Excise Authority or Chartered Engineer confirming installation of such capital goods in the declared premises. A period of 6 months is allowed for the purpose of installation of capital goods and commencement of production. This period may be extended by the Assistant/Deputy Commissioner of Customs.

13.8 The normal validity period of zero duty EPCG Authorization is 9 months and that of 3% EPCG Authorization is 24 months. RA concerned may revalidate authorization for six months at a time and maximum upto 12 months from the date of expiry of validity. In order to ensure proper account of fulfillment of EO, the EPCG Authorization holder is required to indicate the EPCG Authorization No./date on the body of the Shipping Bill/invoice (in case of deemed exports). After fulfillment of specified EO, the Authorization holder submits relevant export documents along with EPCG Authorization to the DGFT authorities for the purpose of obtaining EO discharge certificate. After obtaining EO discharge certificate from DGFT, the Authorization holder produces the same before Customs for the purpose of obtaining redemption of bond/BG filed by him. In order to ensure that the Authorization holder maintains a specified level of EO throughout the EO period of 6/8 years, in addition to average EO, block wise EO is also specified.

13.9 The Licensing Authority or RA can grant extension of block-wise period for any block(s) or overall period of fulfillment of EO upto a period of two years on payment of composition fee equal to 2% of proportionate duty saved amount on unfulfilled EO for each year of extension. The RA grant further extension in the overall period of EO upto a period of further two years if the authorization holder pays 50% of differential duty on the unfulfilled portion of EO and agrees to fulfill other conditions as may be specified by the RA for this purpose. However, for zero duty EPCG scheme only one extension of two years in EO period shall be available subject to conditions mentioned above.

13.10 Exports in discharge of EO under the EPCG scheme are entitled to duty neutralisation schemes like Drawback, Advance Authorization, DFIA etc. as well as benefits of reward schemes such as FPS, FMS, VKGUY etc. in accordance with the terms and conditions of those scheme(s). However, benefits of TUFs and SHIS will not be available in the year in which the zero duty authorisation has been issued.

13.11 Since this scheme permits import of capital goods at nil/concessional Customs duties subject to conditions specified in the Customs notifications, monitoring of fulfillment of EO is essential, the Customs are directed to put in place a mechanism to effectively monitor all imports under the EPCG scheme and take action to recover the Customs duty in case of default. Further, they should maintain close liaison with the Regional Licencing Authority (RLA) of the DGFT. The Commissioners of Customs have also been advised to put in place an institutional mechanism whereby they meet the RLA at least once every quarter to pursue issues relating to EO fulfillment status so that the concerted action is taken against defaulters.



[Refer Notifications No.100/2009-Cus.; No.101/2009-Cus.; No.102/2009-Cus.; and No.103/2009-Cus., all dated 11-9-2009; Circular No.5/2010-Cus., dated 16-3-2010; and Instruction F. No.609/119/2010, dated 18-1-2011]

**14. General provisions of Export Promotion schemes:**

14.1 Imports and exports under the Export Promotion schemes are restricted to limited ports, airports, ICDs and LCSs, as specified in the respective Customs duty exemption notifications. However, the Commissioners of Customs are empowered to permit export/import under these schemes from any other place which has not been notified, on case to case basis by making suitable arrangements at such places.

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## Chapter 24

### Special Economic Zones

#### 1. Introduction:

1.1 Special Economic Zone Scheme was announced in April, 2000 with a view to provide an internationally competitive environment for exports. The objectives of Special Economic Zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth.

1.2 Earlier, the policy relating to the Special Economic Zones was contained in the Foreign Trade Policy and incentives and other facilities offered to the Special Economic Zone developer/co-developer and units were implemented through various notifications and circulars issued by the concerned Ministries/Department. However, in order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, a Central Act for Special Economic Zones was found to be necessary. Accordingly, the SEZ Act, 2005 was enacted, which was given effect to with from 10.02.2006. Thus, activities of SEZs and its units are governed by the provisions of the SEZ Act, 2005 and the rules issued thereunder viz. SEZ Rules, 2006. SEZ Scheme is administered by the Department of Commerce under Ministry of Commerce & Industry.

1.3 The Central Government, while notifying any area as a Special Economic Zone or an additional area to be included in the Special Economic Zone and discharging its functions under this Act, is to be guided by the following criteria, namely:

- (a) Generation of additional economic activity;
- (b) Promotion of exports of goods and services;
- (c) Promotion of investment from domestic and foreign sources;
- (d) Creation of employment opportunities;
- (e) Development of infrastructure facilities.

1.4 SEZs may be set up for manufacturing of goods or rendering services or both and may be multi-product, sector specific, or Free Trade and Warehousing Zone. In terms of Section 53 of the SEZ Act, SEZs are deemed to be a territory outside the Customs territory of India for the purpose of undertaking the authorised operations and goods/services entering it (from DTA) are treated as exports.

1.5 19 SEZs were established / notified before the enactment of the SEZ Act, 2005. Of which, seven SEZs were established by Central Government and rest by State Governments and private sector, which are as follows:

- (a) **Central Government SEZs:** Kandla SEZ (Gujarat), SEEPZ-SEZ (Maharashtra), Noida SEZ (U.P.), Madras SEZ (Tamil Nadu), Cochin SEZ (Kerala), Falta SEZ (West Bengal), Visakhapatnam (AP).
- (b) **State Government & Private Sector SEZs:** Surat SEZ (Gujarat), Jaipur SEZ (Rajasthan), Indore SEZ (Madhya Pradesh), Jodhpur SEZ (Rajasthan), Moradabad SEZ, Manikanchan SEZ (West Bengal), Mahindra City (Chennai Tamil Nadu), Mahindra City (Chennai, Tamil Nadu), Mahindra City (Chennai, Tamil Nadu), Salt Lake Electronic City (Kolkata), Surat Apparel SEZ, Nokia SEZ (Chennai).

## 2. Board of Approvals:

2.1 As per Section 8 of the SEZ Act, the Board of Approval (BOA) is to be chaired by an officer not below the rank of Additional Secretary in the Department of Commerce and includes Member (Customs), CBEC as its member. Presently, the BOA meetings are chaired by Commerce Secretary. The BOA approves proposals for establishing SEZs and providing infrastructure facilities. Its functions include approving authorized operations of Developer/Co-developer.

## 3. Unit Approval Committee:

3.1 As per Section 13 of the SEZ Act, a Unit Approval Committee is to be notified for each SEZ, within six months from the date of establishment of such SEZ. Development Commissioner chairs the Unit Approval Committee.

3.2 The Unit Approval Committees are, inter-alia, expected to accord approval to the procurement of goods and services by SEZ units indigenously or through imports. The Committees are also required to monitor and supervise compliance of conditions mentioned in the letter of Approval (LOA). Commissioner of Customs or his nominee not below the rank of a Joint Commissioner is an ex-officio member of the UAC. However, meetings of the Approval Committee must be attended by the Jurisdictional Commissioner of Customs or Central Excise and never go unrepresented as decisions taken have serious revenue implications. It should also be ensured that the view point of revenue is conveyed effectively in each such meeting and that such views are duly reflected in the minutes of these meetings.

3.3 The decisions of the Approval Committee are by a 'general consensus' implying that in the absence of a consensus amongst all the Members, the proposal cannot be carried forward and shall stand referred to the Board of Approval.

[Refer F. No. 305/155/2005-FTT, dated 2-8-2005; and F.No. DGEP/SEZ/473/2006, dated 4-7-2007]

#### **4. Establishment of SEZs:**

4.1 The Special Economic Zones can be set up either jointly or severally by the Central Government, State Government, or any person as per Section 3 of the SEZ Act. Such person or body or authority is termed as developer/co-developer of the SEZ in terms of Section 2(g) of the SEZ Act. A Co-developer is a person who is allowed to provide any infrastructure facility in the SEZ in accordance with an agreement with the developer and as approved by the Board of Approval. The State Government is required to forward the proposals received under section 3 of SEZ Act for setting up of a SEZ to the Board of Approval alongwith its recommendations, within forty-five days of receipt of such proposal and where the Board approves a proposal received directly under Section 3(3) of the SEZ Act, the person is required to obtain concurrence of the State Government within six months from the date of such approval.

4.2 The BOA may approve as such or modify and approve a proposal for establishment of a Special Economic Zone, in accordance with the provisions of Section 3(8) of the SEZ Act subject to the requirements of minimum area of land and other terms and conditions indicated in Rule 5(2) of the SEZ Rules.

#### **5. Setting up of SEZ unit:**

5.1 As per Section 15 of the SEZ Act, any person, who intends to set up a Unit for manufacture of goods or rendering services in a Special Economic Zone, may submit a proposal to the Development Commissioner concerned. On receipt of the proposal, the Development Commissioner is required to submit the same to the Approval Committee for its approval. The Approval Committee may approve or approve with modification or reject a proposal placed before it within fifteen days of its receipt as per conditions prescribes in Rule 18 of SEZ Rules.

5.2 As per Rule 19 of the SEZ Rules, the Letter of Approval shall be valid for one year within which period the Unit shall commence production or service or trading or Free Trade and Warehousing activity and the Unit shall intimate date of commencement of production or activity to Development Commissioner. On receipt of a request from the entrepreneur, further extension can be granted by the Development Commissioner for a further period not exceeding two years. The Development Commissioner may grant further extension of one year subject to the condition that two-thirds of activities including construction, relating to the setting up of the Unit is complete. If the Unit has not commenced production or service activity within the validity period or the extended validity period, the Letter of Approval shall be deemed to have been lapsed with effect from the date on which its validity expired. The Letter of Approval shall be valid for five years from the date of commencement of production or service activity and it shall be construed as a licence for all purposes related to authorized operations, and, after the completion of five years from the date of commencement of production, the Development

Commissioner may, at the request of the Unit, extend validity of the Letter of Approval for a further period of five years.

**6. Monitoring of activities of SEZ units:**

6.1 As per Rules 15 and 54 of the SEZ Rules, the performance of the Unit is to be monitored by the Approval Committee. If Approval Committee comes to the conclusion that a Unit has not achieved positive Net Foreign Exchange Earning or failed to abide by any of the terms and conditions of the Letter of Approval or Bond-cum-Legal Undertaking, without prejudice to the action that may be taken under any other law for the time being in force, the said Unit shall be liable for penal action under the provisions of the Foreign Trade (Development and Regulation) Act, 1992.

**7. Net Foreign Exchange Earnings:**

7.1 SEZ units shall achieve positive Net Foreign Exchange Earnings (NFE), which is calculated cumulatively for a period of 5 years from the commencement of production, subject to conditions prescribed in terms of Rule 53 of the SEZ Rules.

**8. Import and procurement:**

8.1 A Unit or Developer/co-developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park unit or Bio-technology Park unit, various types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) and subject to condition prescribed under Rule 26 of the SEZ Rules.

8.2 As per Rule 30 of the SEZ Rules, the movement of goods from the place of manufacture to the SEZ is to be (i) on the basis of ARE1 (in cases where export entitlements are not availed); (ii) on the basis of ARE 1 and Bill of Export (in cases where export entitlements are availed). In the event of non-receipt of the proof of export in the form of endorsement, regarding admittance of goods in full into the Special Economic Zone, by the Authorized Officer of Customs posted in the SEZ, on ARE-1 and /or Bill of Export, as the case may be, within a period of 45 days, the duty should be demanded from the DTA supplier by the jurisdictional Central Excise Officer.

[Refer Circular No.29 /2006-Cus., dated 27-10-2006]

**9. Exports:**

9.1 As per Rule 45 of the SEZ Rules, a unit may export goods or services as per the terms and conditions of Letter of Approval including agro-products, partly processed goods, sub-assemblies and components except prohibited items under the Import Trade Control (Harmonized System) Classification of Export and Import Items and the Unit may also export by-products, rejects, waste scrap arising out of the manufacturing process.

**10. Sub-contracting:**

10.1 As per rule 41 of the SEZ Rules, a unit may sub-contract a part of its production or any production process, to a unit in the Domestic Tariff Area or in a Special Economic Zone or Export Oriented Unit or a unit in Electronic Hardware Technology Park unit or Software Technology Park unit or Bio-technology Park unit with prior permission of the Specified Officer to be given on an annual basis. No permission is necessary if sub-contracting is done through units in same SEZ but both the supplying and receiving units should maintain proper account of goods involved in the sub-contracting. A Developer/co-developer/on their behalf their contractor, may also temporarily remove the goods, procured or imported duty free by them for their authorized operations, to a place in the Domestic Tariff Area or a unit in the same or another Special Economic Zone or Export Oriented Unit or a unit in Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, for sub-contracting a process, with prior permission of and subject to such conditions as may be prescribed by the Approval Committee.

**11. Sub-contracting for DTA unit for export:**

11.1 A Unit may on the basis of annual permission from the Specified Officer undertake sub-contracting for export on behalf of a Domestic Tariff Area exporter subject to conditions prescribed in Rule 43 of the SEZ Rules.

11.2. As per Rule 47(2) of the SEZ Rules, scrap or dust or sweepings of gold or silver or platinum may be sent to Government of India Mint or Private Mint from a Unit and returned in standard bars in accordance with the procedure specified by Customs authorities or may be sold in the Domestic Tariff Area on payment of duty on the gold or silver or platinum content in the said scrap.

**12. DTA sale:**

12.1 A Unit may sell goods and services including rejects, wastes, scraps, remnants, broken diamonds, by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of applicable Customs Duties in terms of Section 30 of the SEZ Act and subject to fulfillment of condition laid down in the SEZ Rules.

**13. Valuation of goods cleared into DTA:**

13.1 As per Rule 48 of the SEZ Rules, valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India. If goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods and shall be subject to such procedure and conditions as applicable in the case of normal re-import of goods from outside India.

**14. Temporary removal of goods into the DTA:**

14.1 As per Rule 50 of the SEZ Rules, the SEZ units can remove the goods from the Zone into the DTA temporarily without payment of duty for the purpose of inter-alia display, export promotion, exhibition job work, test, repair, refining, calibration or subject to conditions as prescribed. If a unit fails to bring back the goods into SEZ within the prescribed period, the unit is liable to pay applicable duty on such goods.

**15. Duty remission on destruction of goods:**

15.1 As per Rule 39 of the SEZ Rules, after advance intimation to the Specified Officer, a Unit may destroy, without payment of duty, goods including capital goods, procured from Domestic Tariff Area or goods imported or goods manufactured/produced by the Unit including rejects, waste, scrap subject to prior environmental clearance if any required for such destruction. Where it is not possible to destroy goods within the Special Economic Zone, destruction of goods shall be carried out, outside the Special Economic Zone with the permission of Specified Officer and in the presence of the Authorized Officer. However, destruction of precious metals, diamond, precious stones and semi-precious stones is not allowed. The officers supervising destruction are required to ensure that goods are destroyed fully rendering them unfit for further use and give certificate to that effect. The Unit shall be required to pay back the drawback and Duty Exemption Pass Book credit availed in of case goods procured from Domestic Tariff Area are destroyed due to natural calamities.

**16. Exit of units:**

16.1 As per Rule 74 of the SEZ rules, the Unit may opt out of Special Economic Zone with the approval of the Development Commissioner and such exit shall be subject to payment of applicable duties on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock and if the unit has not achieved positive Net Foreign Exchange, the exit shall be subject to penalty that may be imposed under the Foreign Trade (Development and Regulation) Act, 1992.

16.2 In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gem and other materials available for manufacture of

jewellery is required to be handed over to an agency nominated by the Central Government at a price to be determined by that agency.

16.3 Development Commissioner can permit a Unit, as one time option to exit from Special Economic Zone on payment of duty on capital goods under the prevailing Export Promotion Capital Goods Scheme under the Foreign Trade Policy subject to the Unit satisfying the eligibility criteria under that Scheme.

## **17. Drawback on supplies made to SEZs:**

17.1 Section 26(d) of the SEZ Act provides that every Developer and entrepreneur is entitled to Drawback of duties on goods brought from the DTA into an SEZ. The triplicate copy of the assessed Bill of Export is to be treated as the Drawback claim and processed in the Customs section (Specified Officer) of the Special Economic Zone. Dy./Asstt. Commissioner of Customs posted on deputation at the SEZ being the Dy./Asstt. Commissioner of Customs at the Customs Station of export could sanction such Drawback claims. Thus, Drawback claim in respect of such supplies are not to be processed or sanctioned by the Customs and Central Excise formations.

17.2 Drawback can also be claimed by the DTA supplier on the basis of the disclaimer issued by the SEZ Unit/Developer. In such cases, the Commissionerate of Customs and Central Excise having jurisdiction over the DTA unit would sanction the Drawback. The jurisdictional Commissioner of Customs in consultation with the Pay and Accounts Officer shall make arrangements for issue of authorization and drawback cheque books.

[Refer Circulars No.6/2005-Cus, dated 3-2-2005; and  
No. 43/2007-Cus., dated 5-12-2007]

17.3 The office of Principal CCA has issued instructions regarding banking arrangements for payment of refund / Drawback cheques and accounting procedure to be followed in that regard. Accordingly, the PAOs are issuing cheque books to each Central Excise division for payment of refund / Drawback claims and the same cheque book can be used for making refunds and payment of Drawback. The cheque issuing officer is required to submit separate list of payment for Central Excise (0038) and Customs (0037) to their jurisdictional PAO.

[Refer Circular No.39/2010-Cus., dated 15-10-2010]

## **18. Other administrative guidelines:**

18.1 The Customs/Central Excise Officers nominated to the Approval Committee of SEZs should ensure that the decisions taken at the Committee are within the provisions of law and should be made keeping in mind the revenue implications of such decisions.



18.2 The Customs/Central Excise Officers are advised to conduct verification of credentials of the entrepreneurs proposing to set-up SEZ units and provide inputs on past history to the Committee for taking appropriate decision.

- (i) While granting assent to the approval, the representatives of DOR should ensure whether the particular process to be carried out by the unit constitutes manufacture or not in terms of Section 2 (r) of the SEZ Act.
- (ii) The Committee approves the import or procurement of goods from the DTA in the SEZ for carrying on the authorized operations by a developer. It should be ensured that the authorized operations are covered under the provisions of SEZ Act and Rules. Activities like Housing, etc, should only be allowed in phases of 20% of approval at a time and commensurate with the needs of SEZs. In case of activities like setting up of hospitals, hotels and other such social infrastructure, no duty free material is permitted for operation and maintenance of such facilities.
- (iii) Any activity outside the SEZ cannot be allowed as Authorized Operation.
- (iv) No tax benefits would be available for measures taken to establish contiguity.
- (v) Field formations (Range/Divisions) should follow the specified procedure laid down for movement of goods from SEZ to DTA and from DTA to SEZ .
- (vi) No unit should be allowed to start functioning till the walls and specified entry/exit points and the offices of the Development Commissioner (including the Customs officers posted under him) are in place. Only one entry/exit gate should be permitted in view of security and revenue loss concerns.

[Refer Circular No. 29/2006-Cus., dated 27-10-2006 and Instruction  
F.No.DGEP/SEZ/473/2006, dated 3-4-2008]

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## Chapter 25

### Export Oriented Units

#### 1. Introduction:

1.1 EOU scheme was introduced in the year 1980 vide Ministry of Commerce resolution dated 31st December 1980. The purpose of the scheme was basically to boost exports by creating additional production capacity. It was introduced as a complementary scheme to the Free Trade Zones/ Export Processing Zone (EPZ) Scheme introduced in the sixties, which had not attracted many units due to locational restrictions. The exporters showed willingness to set up units with long term commitment to exports under Customs bond operations provided they had the freedom to locate them in places of their choice and given most of the benefits as provided to units set up in the Zones.

1.2 The Export Oriented Units (EOUs) are governed by the provisions of Chapter 6 of the Foreign Trade Policy (FTP) and its procedures, as contained in the Handbook of Procedure (HBP). Provisions of the said Chapter 6 and its procedures have also been made applicable to the Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs). Hence the scheme is for EOU/STP/EHTP/BTP and is referred in common parlance as EOU scheme.

1.3 Over the years, the EOU Scheme has undergone various changes and its scope has also expanded substantially as compared to the initial Scheme, which was basically for manufacturing sector with certain minimum value addition in terms of export earnings. Presently, the units undertaking to export their entire production of goods are allowed to be set up as an EOU. These units may be engaged in the manufacture, services, development of software, repair, remaking, reconditioning, re-engineering including making of gold/silver/platinum jewellery and articles thereof, agriculture including agro-processing, aquaculture, animal husbandry, biotechnology, floriculture, horticulture, pisciculture, viticulture, poultry, sericulture and granites. The EOUs can export all products/ services except prohibited items of exports in ITC (HS).

1.4 Some benefits that are extended to the EOUs to impart to them a competitive edge to compete in export market are, as follows:

- (i) EOUs are allowed to procure raw materials / capital goods duty free, either through import or through domestic sources;
- (ii) Reimbursement of Central Sales Tax (CST);
- (iii) Reimbursement of duty paid on fuels procured from domestic oil companies;
- (iv) CENVAT credit on the goods and service and refund thereof;
- (v) Fast track clearance facilities;

- (vi) Exemption from Industrial Licensing for manufacture of items reserved for SSI sector; and
- (vii) Income Tax exemption for 10 years (upto 31.03.2011).

## **2. Customs and Central Excise exemptions:**

2.1 EOUs/EHTPs/STPs are entitled to import/procure locally duty free raw materials, capital goods and office equipment etc. vide (i) Customs Notification No. 52/2003-Cus., dated 31-3-2003 (for duty free imports) and (ii) Central Excise Notification No. 22/2003-CE., dated 31-3-2003 (for duty free procurements).

## **3. Setting up of an EOU:**

3.1 Projects having a minimum investment of Rs. 1 Crore and above in building, plant and machinery are usually considered for establishment under EOU Scheme. Minimum investment criteria is to be fulfilled at the time of commencement of production by the unit. The minimum investment criterion does not apply for certain sectors like Electronic Hardware Technology Park unit, Software Technology Park unit, Handicrafts, Agriculture and Aquaculture. Setting up of trading units is not permitted under EOU scheme.

3.2 EOUs are normally permitted to be set up by a Unit Approval Committee headed by the Development Commissioner. Jurisdictional Commissioner of Central Excise & Customs is a member of the said committee. Proposals for setting up EOUs requiring industrial license also require clearance by the Board of Approval (BOA) and Department of Industrial Policy and Promotion (DIPP). 100% foreign direct investment (FDI) is permitted through Automatic Route.

3.3 For setting up of an EOU, three copies of the application in the prescribed form (Appendix 14-I-A) are required to be submitted to the Development Commissioner. In certain cases, approval of the Board of Approval (BOA) is required. Applications for setting up of Electronic Hardware Technology Park/Software Technology Park units are submitted to the officer designated by the Department of Information Technology for this purpose. After approval of the application and issuance of Letter of Permission, the applicant is required to execute a legal undertaking (Appendix 14-I-F) with the Development Commissioner/ Designated Officer concerned within the prescribed time period. On execution of legal undertaking, a Green Card is issued to the unit.

3.4 On approval for setting up an EOU by Unit Approval Committee, a Letter of Permission (LOP/LOI) is issued by the jurisdictional Development Commissioner. It mentions inter-alia the capacity and items of manufacture and export, capital goods permitted to be imported/ procured. Thereafter, the unit has to execute a legal undertaking with the Development Commissioner. The LOP/ LOI issued is construed as a license for all purposes. After obtaining the LOP and execution of legal undertaking, the unit is required to apply for a license for Private Bonded Warehouse and In-bond manufacturing sanction order under provisions of Section 58 and 65 of the Customs Act, 1962 respectively from the jurisdictional Assistant/Deputy Commissioner of Central Excise and Customs.

#### **4. Import/procurement and warehousing:**

4.1 Under the EOU scheme, the units are allowed to import or procure from DTA or bonded warehouses in DTA/ International exhibitions in India, without payment of duty all types of goods including capital goods, raw materials, components, packing materials, consumables, spares and various other specified categories of equipments including material handling equipments, required for export production or in connection therewith. However, the goods prohibited for import are not permitted. In the case of EOUs engaged in agriculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry, sericulture and granite quarrying, only specified categories of goods mentioned in the relevant notification are permitted duty-free import.

4.2 The Customs exemption notification No. 52/03-cus for imports and related Central Excise exemption Notification No. 22/03-CE, both dated 31-3-2003 prescribe several conditions to be fulfilled by the beneficiaries keeping in view the objective of the Scheme and to prevent abuse. The entire premises of the EOU is a Customs bonded premise. A few exceptions, however, may be available under specific schemes. They also provide various flexibilities in the matter of taking out the materials for jobwork, inter-unit transfer. The EOU/ EHTP/ STPI/ BTP are required to be positive net foreign exchange earner except for sector specific provision of appendix 14-I-C of HBP v.1 where a higher value addition shall be required as per the provisions of Foreign Trade Policy. NFE earnings is calculated cumulatively in blocks of 5 years from the commencement of commercial production according to a prescribed formula as per para 6.9.1 of HBP v.1.

4.3 The EOUs are licensed to manufacture goods within the bonded premises for the purpose of export. The period of LOP bonding is initially for five years after the unit has commenced production, which is extendable to another five years by the Development Commissioner. On completion of the bonding period, it is for the unit to decide whether to continue under, or to opt out, of the scheme. The imported capital goods are allowed to be warehoused for a period of 5 years. For other goods, the warehousing period is one year, which can be extended further by the Commissioner/ Chief Commissioner of Central Excise & Customs. On an application being made by the unit, extension of the time limit is granted in all cases unless there is malafide and diversion of duty free materials.

#### **5. Monitoring and administrative control:**

5.1 The EOUs basically function under the administrative control of the Development Commissioner of the Special Economic Zones, whose jurisdiction has been notified by the Ministry of Commerce. In all, there are seven Development Commissioners at Mumbai, Gandhidham, Chennai, Cochin, Visakhapatnam, Noida and Kolkata, who supervise the functioning of the EOUs. The Development Commissioners of the SEZs are the Licensing Authorities in respect of units under the EOU scheme, as per specified territorial jurisdiction as indicated in the FTP.

5.2 The provisions of the Customs and Central Excise law in respect of the EOUs are administered by the Commissioners of Customs and Central Excise, who work under the control of Central Board of Excise & Customs. The work relating to the

EOUs located in port cities/towns or within the municipal limits of port cities/towns, which was being handled by jurisdictional Commissioner of Customs. has been transferred to the jurisdictional Commissioner of Central Excise.

[Refer Circular Nos. 72/2000-Cus, dated 31-8-2000; No.87/2000-Cus, dated 2-11-2000; and No. 932/22/2010-CX, dated 4-8-2010]

5.3 On the policy front, all decisions relating to the EOUs are taken by the Board of Approvals (BOA), set up under the Department of Commerce. The BOA is chaired by the Secretary, Ministry of Commerce. In the case of units engaged in manufacture of electronic hardware and software, the policy decisions are taken by the Inter Ministerial Standing Committee (IMSC) set up under the Department of Information Technology and the same are implemented through its Designated Officers. CBEC representative is a member of both the BOA/IMSC. The availability of any benefit under Customs or Central Excise Acts or the notifications issued thereunder has, however, to be determined by the Commissioner of Central Excise and Customs having jurisdiction over the unit. Appropriate inter-Ministerial liaison is maintained for ensuring uniformity as far as possible in the Foreign Trade Policy provisions and the provisions built in the relevant Customs and Central Excise notifications.

## **6. Customs bonding:**

6.1 The premises of EOU are approved as a Customs bonded warehouse under the warehousing provisions of the Customs Act. The manufacturing and other operations are carried out under customs bond and the unit bears appropriate charges for officers on cost recovery basis. In case of units in Aquaculture, Horticulture, Floriculture, Granite quarrying etc exemption from bonding is given for administrative reasons with certain other safeguards being put in place to check that duty free benefits where availed are not abused. The EOUs are required to execute a multipurpose bond with surety/ security with jurisdictional Central Excise and Customs officers.

[Refer Circular No. 15/95-Cus, dated 23-2-1995]

## **7. Items allowed duty free imports/procurement:**

7.1 Under the EOU scheme, the units are allowed to import or procure locally without payment of duty, all types of goods including capital goods, raw materials, components, packing material, consumables, spares and various other specified categories of equipments like material handling equipments, UPSs, quality assurance equipments, captive power plants, central air conditioning equipments, security systems, pollution control equipments, modular furniture and parts thereof etc. required for the production/ jobwork and other operations in terms of letter of permission (LOP). All goods other than prohibited goods are allowed to be imported

by an EOU/STP/EHTP. The specified activities for setting up an EOU/STP/EHTP are as follows:

- (i) Manufacture of articles for export or for being used in connection with the production or packaging or job work for export of goods or services by export oriented undertaking;
- (ii) Manufacture or development of software, data entry and conversion, data processing, data analysis and control data management or call center services for export by Software Technology Park (STP) unit, or a unit in Software Technology Park Complex under the export oriented scheme;
- (iii) Manufacture and development of electronics hardware or electronics hardware and software in an integrated manner for export by an Electronic Hardware Technology Park (EHTP) unit or a unit in Electronic Hardware Technology Park Complex under the export oriented scheme; production, manufacture or packaging of articles by export oriented undertaking in horticulture, agriculture and animal husbandary sector;
- (iv) Use in aqua-culture farm in connection with operational requirements of such aquacultural farm and export of aquacultural products so produced by export oriented undertaking in aquaculture sector;
- (v) Quarrying of granite by export oriented undertaking engaged in processing and manufacture or production of articles of granite for export;
- (vi) Manufacture of gems and jewellery and export thereof by EOUs in the Special Export Oriented Complex, Jhandewalan and EOUs in gems and jewellery sector.

## **8. Time limit for utilization of imported capital goods and inputs:**

8.1 An EOU is required to install the capital goods within a period of one year from the date of import or procurement thereof and account for the usage of inputs within a period of three years from the date of import or procurement thereof. This period can be extended by the jurisdictional Assistant/Deputy Commissioner of Central Excise and Customs/ Central Excise.

## **9. Manufacture in bond:**

9.1 EOUs are private bonded warehouse under provisions of Section 58 of the Customs Act, 1962. To undertake manufacturing or other operations in the warehouse in relation to warehoused goods, the required permission is granted under Section 65 of the Customs Act, 1962, read with "Manufacture and Other Operations in Warehouse Regulations, 1966". The degree of supervision of the Departmental officers on movement of raw materials, components, finished goods and manufacturing process and accounting in an EOU is aimed at providing operational flexibility, easing restrictions and removing practical difficulties faced by EOUs. Accordingly, the manufacture is now allowed without any physical supervision of the Central Excise and Customs authorities, locking of the warehouse premises, control over the issue and return of imported goods. Further, all movements from

and to the units like clearance of raw materials/ components to the job worker's premises, return of goods from the job worker's premises, clearance to other EOUs, export and sale into DTA can be made by the manufacturer subject to recording of each transaction in the records prescribed by the Board/Commissioners or their private records approved by the Commissioner.

[Refer Circular No. 88/98-Cus., dated 2-12-1998]

9.2 Exports by EOUs are allowed on self-sealing and self-certification basis.

9.3 The EOUs are allowed self-bonding/self-warehousing without the requirement of physical verification of goods by officers of Customs and Central Excise for both imported as well as indigenously procured goods. This relaxation is presently available to those EOUs with a clean track record and whose physical export turnover of goods or services is Rs.15 crores or above in the preceding financial year.

[Refer Circular No.19/2007-Cus., dated 3-5-2007]

## **10. B-17 bond:**

10.1 Import/procurement of goods by an EOU for use in manufacture or in connection with production or packaging of goods for export is exempted from payment of customs and central excise duties. EOUs execute a general purpose B-17 bond along with surety or security covering the duty foregone on imported goods. This bond is prescribed under Notification No. 6/98-CE (NT) dated 02.03.1998 as General Bond to be executed by the EOUs for provisional assessment of goods to Central Excise duty, for export of goods and for accounting/disposal of excisable goods procured without payment of duty. This bond also takes care of the interest of revenue against risks arising out of goods lost in transit, goods taken into Domestic Tariff Area for job work/ repair/ display etc but not brought back. Basically the B-17 bond is an 'all purpose' bond covering liabilities of the EOU both under Customs and Central Excise Acts. However, it does not cover the differential duty amount against advance DTA sale for which a separate bond is to be executed.

10.2 The B-17 bond is executed with the jurisdictional Assistant/Deputy Commissioner of Central Excise and Customs, as the case may be. The bond is taken for an amount equivalent to 25% of the duty forgone on the sanctioned requirement of capital goods plus the duty forgone on raw materials required for three months. Surety or security equivalent to 5% of the bond amount in the form of bank guarantee or cash deposit or any other mode of security recognized by the Government is required to be given by the EOUs. In the case of surety, a letter from the person standing surety duly certified by a Chartered Accountant for solvency is also required to be submitted.

10.3 Units in existence for the last three years with unblemished track record having export turnover of Rs. five crores or above, are exempted from furnishing Bank Guarantee etc. or Surety along with B-17 bond.

[Refer Circulars No. 14/98-Cus., dated 10-3-1998; No. 42/98-Cus., dated 19-6-1998; No.66/98-Cus., dated 15-9-1998; and No.76/99-Cus., dated 17-11-1999]

## **11. Monitoring of export performance / foreign exchange realization:**

11.1 The EOUs basically function under the administrative control of the Development Commissioner of the SEZ as per the jurisdiction notified by the Ministry of Commerce. The Development Commissioner is the licensing authority in respect of EOU. In respect of STP / EHTP units, the designated officer (Director) of the Ministry of Communication and Information technology is the licensing authority. These authorities are also responsible for monitoring the export performance of the units in terms of Para 6.12.1 of HBP read with Appendix 14-I-G of HBP.

11.2 The concept of NFEP and EP has been replaced with Net Foreign Exchange Earning (NFE) from 2003-04. Further, duty liability is fixed in proportion to shortfall in NFE. Now the unit has to achieve a positive NFE i.e. their foreign exchange earning has to be more than the foreign exchange outflow. The NFE is calculated cumulatively in the block of 5 years. If the unit is not NFE positive, Development Commissioner is required to inform the Central Excise authorities for recovery of the proportionate duty. This provision is not only more equitable but also prevents a unit to become unviable on account of huge demand without taking into account the exports performance achieved.

11.3 The Development Commissioner is responsible for monitoring foreign exchange realization/remittances of EOUs in coordination with the concerned General Manager of RBI.

[Refer RBI Circular No. COEXD.3109/05.62.05/1999-2000, dated 21-02-2000]

11.4 The Unit Approval Committee headed by the Development Commissioner is responsible for monitoring the performance of EOUs.

## **12. Import and export procedures:**

12.1 With regard to clearance of import cargo, the EOUs are placed in a special category, eligible for fast track clearance through the Customs on the strength of procurement certificate issued by the jurisdictional Assistant/Deputy Commissioner. Generally, the EOU cargo is not examined at the gateway port/airport and in case of loose cargo, marks and numbers on the packages are verified. As for sealed containers, the seal number and container number are verified with the Bill of Lading. If the seal is found intact, the container is allowed clearance. The imported cargo so cleared and brought into the unit's premises are examined by the jurisdictional Central Excise and Customs officials. After examination (percentage check only), the goods are allowed to be used for export production. Re-warehousing certificate is to be submitted to the Assistant/Deputy Commissioner in charge of the port of import within 90 days of the issue of procurement certificate.

12.2 On the export side, the units having status of a Super Star Trading House, Star Trading House, Trading House, and Export House are allowed the facility of self-sealing of their export containers.

[Refer Circulars No. 63/97-Cus, dated 21-11-1997; No.14/98-Cus., dated 10-3-1998; and No.90/98-Cus, dated 8-12-1998]



**13. Goods imported / exported and found defective:**

13.1 Subject to grant of GR waiver by the RBI, the EOUs are allowed to make free replacement of the goods exported by them earlier and found defective, damaged or otherwise unfit by the overseas buyer. However, such defective, damaged or otherwise unfit for use goods are required to be brought back subsequently, to the country. The units are also allowed to re-import part consignment/full consignment in case of failure of the foreign buyer to take delivery.

13.2 The EOUs are also allowed to receive free replacement of the goods imported and found defective, damaged or otherwise unfit for use prior to re-export of the same. However, such damaged, defective goods are required to be re-exported subsequently. In case the supplier of such goods does not insist for re-exportation, such goods are required to be either destroyed or cleared into DTA on payment of full customs duty. (Reference Boards Circular 60/99-Cus, dated 10-9-1999)

**14. Procurement of indigenous goods under CT-3 procedure:**

14.1 The EOUs can procure goods from DTA without payment of Central Excise duty on strength of CT-3, which is issued by the Superintendent of Central Excise in charge of the EOU. Such goods are required to be brought directly from the manufacturer/ warehouse into the unit's premises under A.R.E.-3 procedure. To avoid separate permission every time, the EOUs are issued pre-authenticated CT-3 in booklet form and against such pre-authenticated CT-3, the EOUs are allowed to procure capital goods, raw materials, consumables etc. Goods procured from DTA and found to be defective can be returned to the manufacturer as prescribed under Central Excise law.

**15. DTA sale:**

15.1 The goods manufactured by EOU, which are similar to the goods exported or likely to be exported from the EOU, are allowed to be sold in Domestic Tariff Area (DTA) at concessional rate of duty upon fulfillment of certain conditions in terms of Para 6.8(a) of the FTP read with Para 6.14 and Appendix 14-I-H of the HBP.

15.2 'Similar goods' has been defined as goods which are identical in all respects including goods which although not alike in all respect, have like characteristics and like components, materials which enable them to perform the same function and are commercially interchangeable with the goods exported or expected to be exported.

15.3 The EOUs (other than gems & jewellery units) are allowed to sell goods (including rejects, scrap, waste, remnants and by-products) in DTA up to 50% of FOB value of exports on payment of concessional duty if they are NFE positive. However, units which are manufacturing and exporting more than one product, can sell any of these products into DTA, upto 90% of FOB value of export of the specific products within the overall DTA entitlement of 50%. Gems and Jewellery units may sell up to 10% of FOB value of export of preceding year subject to fulfillment of positive NFE.

15.4 The DTA sale entitlement earned by an EOU is valid for 3 years from the date of its accrual. DTA sales over and above the 50% of FOB value of exports could be made on payment of full duty subject to positive NFE condition.

15.5 For a newly set up unit, Advance DTA sale is also allowed on the basis of the projection of export in the first year. For pharmaceutical units, advance DTA sale is allowed on the basis of the projection of export in the first two years. The advance DTA sale is to be adjusted within two years from the date of commencement of production by an EOU. However, in case of pharmaceutical units, this period for adjustments is three years. For this purpose, a separate bond is to be executed with the Assistant/ Deputy Commissioner to cover the difference of duty paid on the advance DTA sale and the duty payable on such goods.

15.6 The DTA sale facility on concessional rate is not available for certain products namely motor car, alcoholic liquor, tea (except instant tea), and such other items as are notified from time to time. This facility is also not available to units engaged in the activities of packaging/ labeling/ segregation/ refrigeration/ compacting/ micronisation/ pulverization/ granulation/ conversion of monohydrate form of chemical to anhydrous form or vice versa.

15.7 DTA sale of pepper & pepper products, marble is not allowed even on payment of full duty.

15.8 Specified supplies of goods in DTA which are in the nature of 'deemed exports' as provided in Para 6.9 of FTP and are counted for fulfillment of positive NFE, are also allowed on payment of customs duties leviable on these goods.

## **16. Valuation of goods sold in DTA:**

16.1 Section 3 of the Central Excise Act, 1944, provides that the valuation of goods manufactured in the EOU and cleared into DTA is to be done in accordance with the provisions of the Customs law. Thus, when the invoice price of the goods under assessment is in the nature of transaction value, such invoice value can be accepted.

[Refer Circulars No.23/84-CX-6, dated 29-5-1984; and No. 330/46/97-CX dated 20-8-1997; and Instruction F.No. 268/35/92-CX-8, dated 17-8-1994]

## **17. Duty liability on DTA clearances/sales:**

17.1 In terms of proviso to Section 3(1) of the Central Excise Act, 1944, duty payable on goods cleared in DTA is equal to the aggregate of the Customs duties which would be leviable under the Customs Act, 1962 or under any other law for the time being in force, on like goods produced or manufactured outside India, if imported into India. The value for payment of duty is arrived at in accordance with the provisions of the Customs Act, as if these are imported goods.

17.2 On fulfillment of positive NFE, the EOUs other than Gem and Jewellery units are allowed to sell goods including rejects, waste, scrap, remnants, byproducts and services in DTA, its products similar to goods which are exported or expected to be

exported from units, within overall ceiling of 50% of FOB value of exports at a concessional rate of duty in an amount equal to 50% of Customs duties. Sales beyond 50% of entitlement would attract full duties. Sale of rejects upto 5% of FOB value of exports and sale of Scrap/ waste/ remnants shall not be subject to achievement of NFE. The words "FOB value of exports" refers to physical exports only. Therefore, the value of deemed exports made by the unit is not considered while determining the FOB value of exports.

17.3 Sales made to a unit in SEZ is also taken into account for purpose of arriving at FOB value of export by EOU provided payment for such sales are made from Foreign Exchange Account of SEZ unit. Sale to DTA would also be subject to mandatory requirement of registration of pharmaceutical products (including bulk drugs). An amount equal to Anti Dumping duty under section 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.

17.4 For services, including software units, sale in DTA in any mode, including on line data communication, is also permissible up to 50% of FOB value of exports and /or 50% of foreign exchange earned, where payment of such services is received in foreign exchange.

17.5 In case of new EOUs, advance DTA sale are allowed not exceeding 50% of its estimated exports for first year, except pharmaceutical units where this will be based on its estimated exports for first two years.

17.6 Units in Textile and Granite sectors have an option to sell goods into DTA in terms of sub- paras 6.8 (a), (d), (e), (g) and (k) of the FTP, on payment of an amount equal to aggregate of duties of excise leviable under section 3 of the Central Excise Act, 1944 or under any other law for the time being in force, on like goods produced or manufactured in India other than in an EOU, subject to the condition that they have not used duty paid imported inputs in excess of 3% of the FOB value of exports of the preceding year and they have achieved positive NFE. Once this option is exercised, the unit will not be allowed to import any duty free inputs for any purpose.

17.7 The concessional rate of duties for goods sold in DTA by an EOU are prescribed under Notification No. 23/2003-CE, dated 31-3-2003.

## **18. Goods manufactured from indigenous materials in EOUs:**

18.1 Goods manufactured out of wholly indigenous inputs are allowed clearance into DTA on payment of only Central Excise duty. Earlier, goods supplied from DTA to EOU on which deemed export benefits had been availed were also considered as indigenous goods for extending the benefit of Notification No.23/2003-CE, dated 31-3-2003 for payment of Central Excise duty, but w.e.f. 06.07.2007 the exemption is denied where goods are manufactured out of indigenous goods on which deemed exports benefits have been availed.

18.2 Where goods are either non-excisable or are leviable to nil rate of import duty, no exemption in respect of inputs utilized for manufacture of such goods is allowed.

An EOU is required to pay back the duty foregone on the inputs used in manufacture of goods cleared in DTA on which no duty is leviable.

**19. Clearance of by-products, rejects, waste, scrap, remnants, non-excisable goods, etc.:**

19.1 Scrap/ waste/ remnants arising out of production process or in connection therewith are allowed to be sold in DTA, as per SION notified by Directorate General of Foreign Trade (under Duty Exemption Scheme), on payment of concessional duties as applicable, within overall ceiling of 50% of FOB value of exports. Such sales of scrap/ waste/ remnants shall not be subject to achievement of positive NFE. In respect of items not covered by SION norms, Development Commissioner may fix ad-hoc norms for a period of six months and within this period, norm should be fixed by Norms Committee and ad-hoc norms will continue till such time. Sale of waste/ scrap/ remnants by units not entitled to DTA sale, or sales beyond DTA sale entitlement, shall be on payment of full duties. Scrap/ waste/ remnants may also be exported. However, no duties/ taxes on scrap/ waste/ remnants are charged, in case same are destroyed with permission of Central Excise & Customs authorities.

19.2 The DTA clearance of by-products and rejects on concessional rate duty is not allowed to the EOUs, which have failed to achieve the positive NFE. In such cases, the EOUs are liable to pay full duty. Further, in case of such units, DTA clearance of finished goods is not allowed even on payment of full duty.

19.3 DTA clearance of goods manufactured by the EOUs which are not excisable (e.g. cut flowers) the duty on inputs and consumables etc. procured/ imported duty free under exemption notifications, which have gone into production of such non-excisable goods cleared into DTA, is recovered.

19.4 In case of Gems and Jewellery EOUs and EHTP/STP units, scrap, dust or sweepings of gold/ silver/ platinum generated in the unit is allowed to be forwarded to the Government Mint or Private Mint for conversion into standard gold bars and return thereof to the unit subject to the observance of procedure laid down by the Commissioner of Central Excise & Customs. The said dust, scrap or sweepings are also allowed clearance into DTA on payment of applicable customs duty on the gold/ silver/ platinum content in the said scrap, dust or sweepings. Samples of the sweepings/ dust are taken at the time of clearance and sent to mint for assaying. The assessment is finalized when the reports are received from the mint.

[Refer Circular 19/99-Cus, dated 29-4-1999]

**20. Special concessions for certain waste products and other goods:**

20.1 Rags, trimmings and tailor cuttings arising in the course of manufacture of readymade garments are fully exempt from excise duty when cleared into DTA by EOUs. This is subject to the condition that the percentage of waste material in the form of rags, trimmings and tailor cuttings does not exceed the percentage fixed in this regard by the Board of Approval. The waste of fish or crustaceans, mollusks or other aquatic invertebrates falling in chapter heading 05.01, castor oil cake manufactured from the indigenous castor oil seeds on indigenous plant and

machinery falling under chapter heading 23.01, guar meal manufactured wholly from indigenous guar seeds falling under chapter heading 23.02 and yarn of jute and goods of jute, manufactured from wholly indigenous raw materials headings 53.07, 53.10, 5702.12, 5703.20, 58.01, 58.02, 58.06 or 6305.10 are fully exempt from payment of duty if manufactured by EOUs wholly from indigenous materials and cleared into DTA. Also, cotton waste (including yarn falling under heading 52.02) is fully exempted if produced or manufactured by EOU and allowed to be sold in India.

20.2 Gems and Jewellery units may sell jewellery upto 10% of FOB value of exports of the preceding year in DTA, subject to fulfillment of positive NFE. In respect of sale of plain jewellery, recipient shall pay concessional rate of duty as applicable to sale from nominated agencies. In respect of studded jewellery, duty shall be payable as applicable.

20.3 Specified textile items are allowed clearance on payment of concessional duty.

## **21. Reimbursement of Central Sales Tax (CST) / Drawback:**

21.1 Supplies from DTA to EOUs are regarded as “deemed exports” and considered for discharge of any export obligation on the supplier. For such supplies, the DTA supplier (or the EOU if the DTA supplier gives a disclaimer) is eligible for the following benefits:

- (i) Supply of goods against Advance Authorisation/ Advance Authorisation for annual requirement / DFIA;
- (ii) Deemed Export Drawback;
- (iii) Exemption from terminal excise duty where supplies are made against ICB. In other cases, refund of terminal excise duty.

21.2 Goods manufactured in India and supplied to EOU are eligible for reimbursement of CST.

21.3 All the above benefits are administered and disbursed by the Development Commissioner/ Regional Authority of DGFT under the Ministry of Commerce.

## **22. Calculation of duty on goods/ services/ waste/ scrap/ by-products cleared in DTA under Paragraph 6.8 of the FTP:**

22.1 The concessional rate of duties for goods sold in DTA by an EOU are prescribed under Notification No. 23/2003-CE, dated 31-3-2003.

## **23. Clearance of samples:**

23.1 EOUs may on basis of records maintained by them, and on prior intimation to jurisdictional Central Excise and Customs authority:

- (i) Supply or sell samples in DTA for display/ market promotion on payment of applicable duties.

- (ii) Remove samples without payment of duty, on furnishing a suitable undertaking to jurisdictional Central Excise and Customs authorities for bringing back samples within a stipulated period.
- (iii) Export free samples, without any limit, including samples made in wax moulds, silver mould and rubber moulds through all permissible mode of export including through courier agencies/ post. For statutory requirement of Stability & Retention sample with manufacturer, an EOU may re-import without payment of duty, those samples, which were exported by it, under intimation to Custom Authorities, and FOB value of such samples shall not be counted for NFE purpose and other export benefits, if any.
- (iv) Send samples to other EOUs for display on returnable basis within a period of 30 days.

23.2 EOUs are allowed to send samples abroad through the courier. The packages containing such samples are sealed in the presence of the departmental officer and are handed over to the representative of the courier company authorised by the Commissioner of Central Excise & Customs for presentation to the Customs at the port of export. These sealed samples are not normally examined again before "let export" is given if the seals are found intact and not tampered. The representative of the courier company later hands over the proof of export to the jurisdictional Assistant/ Deputy Commissioner.

[Refer Circulars No.22/98-Cus, dated 27-3-1998; and No.52/99-Cus, dated 20-8-1999]

#### **24. Clearance of Fax/laptop computers outside approved premises:**

24.1 EOUs may:

- (i) Install one fax machine at a place of choice, outside the premises of unit, subject to intimation of its location to concerned Customs/ Central Excise authorities.
- (ii) Temporarily take out of premises of unit, duty free laptop computers and video projection systems for working upon by authorized employees.
- (iii) Install personal computers not exceeding two in number, imported/ procured duty free in their registered / administrative office subject to CBEC guidelines.
- (iv) For IT and IT enabled services, persons authorized by software units may access facility installed in EOU/EHTP/STP/BTP unit through communication links.

#### **25. Sale of surplus/unutilized goods:**

25.1 EOUs are allowed to sell surplus/unutilized goods and services, imported or procured duty free, into DTA on payment of duty on the value at the time of import/procurement and at rates in force on the date of payment of such duty, in case the unit is unable, for valid reasons, to utilize the goods. The permission for

such DTA sale is given by the jurisdictional Assistant/ Deputy Commissioner of Central Excise and Customs.

25.2 Unutilized goods and services may also be transferred to another EOU/EHTP/STP/BTP/SEZ unit or exported. Such transfer to another such unit would be treated as import for receiving unit.

25.3 Obsolete/ surplus capital goods and spares can either be exported, transferred to another EOU/EHTP/STP/BTP/SEZ unit or disposed of in the DTA on payment of applicable duties. The benefit of depreciation, as applicable, will be available in case of disposal in DTA only when the unit has achieved positive NFE. Duty is not charged in case of obsolete/ surplus capital goods, consumables, spares, goods manufactured, processed or packaged and scrap, waste, remnants are destroyed within the unit after intimation to Central Excise & Customs authorities or destroyed outside unit with the permission of Central Excise & Customs authorities.

## **26. Destruction of flowers/horticulture products:**

26.1 Flowers, vegetables and agricultural products have a very short shelf life and are prone to malformation, injury, damage, infection etc. These products cannot be preserved for a longer period. There are circumstances (especially in case of floriculture units) when the EOUs do not find the goods exportable/marketable for various reasons such as malformation, injury, damage, infection by pest and diseases etc. and the units have to resort to forced destruction of flowers, vegetables etc. In such cases, duty is not charged from the EOUs.

26.2 At times, the flowers and floriculture products deposited in the warehouse of the airlines at the international airports for the purpose of exports are not exported owing to various reasons, such as, delay in flights, cancellation of flights etc. In such cases, the units are allowed to sell such flowers and floriculture products in DTA on payment of applicable duty. For such DTA sales, the unit must have DTA sale entitlement under the scheme. The unit is required to obtain permission from the concerned Development Commissioner for such DTA sale and shall clear the goods on payment of duty assessed by the concerned Assistant Commissioner/ Deputy Commissioner in charge of the cargo. The DTA sale is allowed against documents as are used for DTA sale by EOUs in the manner as if the goods cleared from the unit itself.

[Refer Circular No.31/2001-Cus, dated 24-5-2001]

## **27. Sub-contracting:**

27.1 EOUs, including Gems and Jewellery units, are allowed to sub-contract their production process to DTA. These units may also sub-contract upto 50% of the overall production of previous year in value terms for job work in DTA. For this, permission is to be obtained from the Central Excise authorities. Sub-contracting of both production and production process are also allowed to be undertaken through another EOU or SEZ unit on the basis of records maintained by the unit. The units are also allowed to sub-contract part of the production process abroad.

27.2 To help utilize the idle capacity, an EOU can undertake job work for export, on behalf of DTA exporter, provided the goods are exported directly from EOU's premises and export documents are prepared jointly in the name of DTA/EOU. For such exports, the DTA unit is entitled for refund of duty paid on the inputs by way of Brand rate of duty Drawback.

27.3 Sub-contracting by EOU Gems and Jewellery units through other EOUs, or SEZ units, or units in DTA shall be subject to following conditions:-

- (i) Goods, finished or semi finished, including studded jewellery, taken out for sub-contracting shall be brought back to the EOU within 90 days.
- (ii) No cut and polished diamonds, precious and semiprecious stones (except precious, semi-precious and synthetic stones having zero duty) shall be allowed to be taken out for sub-contracting.
- (iii) Receive plain gold/ silver/ platinum jewellery from DTA/ EOU/ SEZ units in exchange of equivalent quantity of gold/ silver/ platinum, as the case may be, contained in said jewellery.
- (iv) EOUs shall be eligible for wastage as applicable as per para 4A.2 of HBP v1 for sub-contracting and against exchange.
- (v) DTA unit undertaking job work or supplying jewellery against exchange of gold/ silver/ platinum shall not be entitled to deemed export benefits.

[Refer Circulars No. 65/2002-Cus., dated 7-10-2002; and No. 26/2003-Cus dated 1-4-2003]

## **28. Temporary removal of goods:**

28.1 The EOUs, STP, EHTP units engaged in development of software are allowed to remove imported laptop computers and video projection system out of the bonded premises temporarily without payment of duty subject to following the prescribed procedures.

[Refer Circulars No.17/98-Cus dated 16-3-1998; and No.84/2000-Cus., dated 16-4-2000]

## **29. Inter-unit transfer:**

29.1 Inter-unit transfer of manufactured and capital goods from one EOU unit to another EOU/SEZ unit is permitted in terms of Para 6.13 of the FTP. Sale of unutilized goods is also allowed from one EOU to another EOU/SEZ unit in terms of Para 6.15 of FTP. Inter-unit transfer of the raw material is not allowed in normal course. However, where a unit proves that it is not able to utilize the raw material, same can also be allowed to be transferred.

29.2 Inter-unit transfer is allowed without payment of duty. Goods supplied by one unit to another unit are treated as imported goods for the receiving unit in terms of Para 6.13(c) of the FTP and therefore, the usual procedure of bonding and re-warehousing is to be followed. Further the value of goods obtained from another



EOU is to be included in the import value for fulfillment of NFE in terms of Para 6.10.2 of the HBP. Further, such supplies are also counted towards FE earning provided these are permissible in terms of Para 6.15 of the HBP.

29.3 Capital goods and goods manufactured, produced, processed, or packaged in an EOU can be taken to another EOU/SEZ unit without payment of duty under the cover of ARE-3 for manufacture and export there from or for use within the unit after giving intimation to the proper officer. Both the units have to keep account of such removal and receipt and are required to follow in-bond movement procedure or rewarehousing procedure as the case may be.

### **30. Repair, reconditioning and re-engineering:**

30.1 EOU/EHTP/STP/BTP units may be set up with approval of BOA to carry out reconditioning, repair, remaking, testing, calibration, quality improvement, up-gradation of technology and re-engineering activities for export in foreign currency. Provisions of paras 6.8, 6.9, 6.10, 6.13, 6.14 of the FTP and para 6.28 of the HBP shall not, however, apply to such activities. In other words the unit undertaking these activities are not permitted sale in DTA and some other benefits.

### **31. Replacement/repair of imported /indigenous goods:**

31.1 EOUs may send capital goods abroad for repair with permission of Customs authorities. Any foreign exchange payment for this purpose will also be allowed. However, no permission will be required for sending capital goods for repair within the country.

### **32. Special provisions relating to Gems and Jewellery EOUs:**

32.1 The EOUs in Gems and Jewellery sector are allowed certain special facilities as mentioned below, with prior permission of Assistant/ Deputy Commissioner of Central Excise and Customs.

- (i) An authorized person of the EOU can import gold in primary form, upto 10 Kgs in a financial year through personal carriage, as per guidelines prescribed by RBI and DOR;
- (ii) The items of gems and jewellery to be taken out temporarily into DTA without payment of duty for the purpose of display and to be returned thereafter;
- (iii) Personal carriage of gold/ silver/ platinum jewellery, cut & polished diamonds, semi-precious stones, beads and articles as samples upto US\$ 1 million for export promotion tours and temporary display/ sale abroad with the approval of development Commissioner subject to the condition that the exporter would bring back the goods or repatriate sale proceeds within 45 days from the date of departure through normal banking channel and that the unit shall declare personal carriage of such samples to Customs while leaving country and obtain necessary endorsement;

- (iv) Export of jewellery including branded jewellery for display and sale in the permitted shops setup abroad, or in the showroom of their distributors or agents provided that items not sold abroad within 180 days, shall be re-imported within next 45 days;
- (v) Gems and jewellery manufactured in the EOUs situated in the municipal limits of Calcutta, Chennai, Delhi and Mumbai and sold to a foreign-bound passenger are allowed to be transferred to the retail outlets or showrooms set up in the departure lounge or Customs warehouse at international airports for being handed over to the said passenger for the purpose of export.
- (vi) Removal of moulds, tools, patterns, and drawings into the DTA for jobwork without payment of duty and to be returned to the unit thereafter.

### **33. Cost Recovery charges:**

33.1 Cost recovery charges are the amount recoverable from the EOU on account of the expenses incurred by the Government for the posting of Central Excise & Customs staff at its premises to supervise their operations. The cost of posts created for EOUs has been determined at an amount equivalent to the actual salary and emoluments of the staff deployed i.e. the average pay and allowances including D.A., H.R.A etc. The EOUs pay in advance the cost recovery charges determined for the entire year. Generally, one Central Excise and Customs officer supervises the functioning of four to five units and the cost recovery charges are shared amongst them.

[Refer Instructions F.No.305/105/85-FTT, dated 10-6-1986; and F. No. 11018/63/87-Ad IV, dated 11-1-1988]

### **34. Supervision by Departmental officers:**

34.1 in terms of the Manufacture and Other Operations in Warehouse Regulations, 1966 operational flexibility is provided to EOUs and they do not need to carry out manufacturing operations under physical supervision of Central Excise and Customs officers and are also exempt from locking of the warehouse, control over the issue of imported goods etc. by these officers. All the movements from and to the EOU like clearance of raw materials/ component to the job workers premises, return of goods from the job-workers' premises, clearance to other EOUs, export and sale in DTA are allowed to be made by the EOU subject to maintenance of the records.

34.2 In absence of physical control greater stress is given on proper maintenance of prescribed records & accounts and non-maintenance of the accounts by the units is viewed seriously. The officers incharge of EOUs are required to scrutinize /examine the accounts/ records and transactions of the EOU at least once a month and ensure that all movements of goods are recorded in the proper register. The Chief Commissioner is empowered to order special audit of the EOU by Cost Accountant nominated in this regard. Cost audit is employed as a tool to check the correctness of raw materials, quantity used, finished goods produced or other such situation.

[Refer Circular No.88/98-Cus, dated 2-12-1998]

**35. Monitoring of EOUs:**

35.1 in terms of Appendix 14-I-G of the HBP, the performance of EOUs is to be reviewed by the Unit Approval Committee (UAC) of the SEZ headed by the Development Commissioner which consists of Commissioner of Central Excise and Customs or his nominee as one of the members. The purpose of review is to ensure that the performance of EOUs is effectively monitored and action is taken against the units which have contravened the provisions of the FTP/HBP and the Customs Law/ Procedures. Besides, such monitoring gives an opportunity to the Government to discuss and help resolve the problems/ difficulties being faced by the EOUs. The idea is to remove all bottlenecks in export promotion efforts while not jeopardizing the interests of revenue.

**36. Recovery of duty forgone and penal action for abuse/diversion etc.:**

36.1 EOUs are required to achieve positive NFE as stipulated in the FTP and in case of failure to do so, the duty forgone under the EOU scheme along with interest is recoverable from the units. Further, the duty is recoverable from the units in case of non receipt of imported/ indigenously procured goods in the factory premises after import/ procurement, loss of goods in transit, non accountal of imported/ indigenously procured goods, unauthorized DTA sale, clandestine removal etc. Duty can also be demanded in case of failure to utilize duty free imported/ indigenously procured goods including capital goods within the prescribed time limit. The duty is also recoverable on goods removed for job work/ display/ testing/ quality testing, but not received back in the unit within the specified period of time.

36.2 Apart from recovery of duty forgone, the law also provides for taking penal action where any EOU is found to have indulged into any fraudulent activities eg. clandestine removal of production into DTA without payment of duties, diversion of duty free materials in transit to the unit after customs clearance or after receipt etc., not only the offending goods can be seized and confiscated, but even units penalized heavily/ prosecuted.

**37. De-bonding of goods/ exit from EOU scheme:**

37.1 An EOU can clear any capital goods to any other place in India or de-bond in accordance with FTP with the permission of the Development Commissioner and on payment of duty at the rate in force on the date of clearance/de-bonding on the depreciated value.

37.2 Clearance or debonding of capital goods are allowed on payment of duty on the depreciated value thereof and at the rate in force on the date of debonding or clearance, as the case may be, if the unit has fulfilled the positive NFE criteria taking into consideration the depreciation allowable on the capital goods at the time of clearance or debonding. In case of failure to achieve the said positive NFE, the depreciation shall be allowed on the value of capital goods in the same proportion as the achieved portion of NFE.

37.3 The depreciation of capital goods shall be allowed in straight line method as specified below, namely:

- (a) **For computer and computer peripherals:**
- |  |       |
|--|-------|
| For every quarter in the first year            | @ 10% |
| For every quarter in the second year           | @ 8%  |
| For every quarter in the third year            | @ 5%  |
| For every quarter in the fourth and fifth year | @ 1%  |
- (b) **For capital goods other than computer and computer peripherals:**
- |  |         |
|--|---------|
| For every quarter in the first year            | @ 4%    |
| For every quarter in the second year           | @ 3%    |
| For every quarter in the third year            | @ 3%    |
| For every quarter in the fourth and fifth year | @ 2.5 % |
| and thereafter for every quarter               | @ 2%    |

37.4 For the purpose of computing rate of depreciation for any part of a quarter, a full such quarter is taken into account. There is no upper limit for such depreciation and depreciation upto 100% could be allowed;

37.5 Raw materials, semi-finished and finished goods including empty cones, containers suitable of repeated use lying in stock at the time of de-bonding can also be cleared on payment of duty on their value at the time of import and at the rate of duty in force on the date of payment of such duty.

37.6 Used packing materials such as cardboard boxes, polyethylene bags of a kind unsuitable for repeated use can be cleared without payment of duty.

37.7 As per para 6.18(e) of FTP and Appendix 14-I-L of HBP, an EOU can opt out of the scheme after taking approval of the Development Commissioner. Such exit is permitted subject to payment of the duties and the industrial policy in force at the time of exit. The Development Commissioner first gives permission for 'in-principle' de-bonding, then unit is required to pay all pending Customs/ Central Excise duties to obtain no-dues certificate from Central Excise & Customs authorities. Thereafter the Development Commissioner permits final de-bonding.

37.8 If the unit has not achieved the export obligation under the scheme, it is also liable to pay penalty under Foreign Trade (Development and Regulation) Act at the time of exit.

37.9 After obtaining in principle de-bonding order, the unit is required to assess the duty liability by itself and submit such details to jurisdictional Customs/Central Excise authority. The Assistant/ Deputy Commissioner of Central Excise and Customs is required to confirm the duty liability within 15 days of the receipt of the details of assessment from the unit and issue 'No-dues Certificate' to the unit. In case of any discrepancy, it has to be conveyed to the unit within 15 days.

## **Chapter 26**

### **International Passenger Facilitation**

#### **1. Introduction:**

1.1 Customs is mandated to ensure passengers entering or leaving India by international flights carry on person/handbag or accompanied baggage, goods in accordance with the permissible quantity/value and legal provisions and do not attempt to smuggle prohibited or banned or sensitive goods. Also, all passengers including businessmen, trade delegations, professionals expect speedy Customs clearance at the airports. Thus, Customs officials at the airports have a challenging role of ensuring quick clearance and passenger facilitation, as well as enforcing the Customs Act, 1962 and various allied laws that protect the interests of society/economy/revenue.

1.2 Over the time Indian Customs have aligned its procedures in tune with the best international practices in terms of duty free baggage allowances and other facilities and procedures. Steps have also been taken to educate general public and incoming and outgoing passengers of the extant Customs rules and regulations. In this direction Customs prominently display the relevant provisions/baggage allowances and list of prohibited/restricted items (endangered species or articles made from flora and fauna such as ivory, musk, reptile skins, furs, shahtoosh, antiques, satellite phones, etc.) at all international airports, with the 'dos and don'ts' for benefit of passengers. A booklet on "Customs Guide to Travellers" is also brought out periodically and circulated at airports as well as to our Embassies/Consulates abroad. Passenger related Customs information is also made available on the CBEC's web-site [www.cbec.gov.in](http://www.cbec.gov.in).

#### **2. Clearance of arriving passengers:**

2.1 Airlines generally provide the Disembarkation Card to the passengers in the aircraft itself and each passenger must fill up the same clearly mentioning the quantity and value of goods brought. On landing, the passenger is first cleared by Immigration authorities, who retain the Immigration portion of the Disembarkation Card. Thereafter, the passenger takes delivery of baggage, if any, from the conveyer belt and approaches the Customs where the passenger exercises the option of seeking clearance through the Green Channel or through the Red Channel.

2.2 The Green Channel or Walk Through Channel applies to passengers who have nothing to declare and are carrying dutiable goods within the prescribed free allowance. On the basis of their Oral Declaration/Declaration on their Disembarkation Card such passengers cross the Green Channel without any question being asked by Customs and exit the airport after handing over the Customs portion of the Disembarkation Card to the Customs Officer/Sepoy at the exit.

2.3 The Red Channel is meant for passengers who have something to declare or are carrying goods in excess of the duty free allowance. The passenger hands over the Customs portion of the Disembarkation Card to the officer on duty at this Channel. In case the card is incomplete the Customs Officer helps record the Oral Declaration (O.D) of the passenger and thereafter countersigns/stamps the same, after taking the passenger's signature. In order to identify the frequent 'short visit' passengers the Customs Officer also scrutinizes the passport/other travel documents of the passengers. The declaration of goods and their values is generally accepted and duty assessed. On payment of this duty the passenger is allowed clearance.

2.4 Any passenger found walking through the Green Channel with dutiable/prohibited goods or found misdeclaring the quantity, description or value of dutiable goods at the "Red Channel" (the baggage is examined where misdeclaration suspect), is liable to strict penal action including arrest/prosecution apart from seizure/confiscation of the offending goods depending upon gravity of violation detected. In case the passenger brings any goods in baggage that are essentially for commerce and not for personal use, or imports goods in commercial quantity, these goods become liable to confiscation and the passenger liable to strict penal action. Only bonafide baggage items for personal use or use by members of his family are allowed to be imported as baggage. In case of frequent 'short visit' passengers and repeat offenders, the Customs officers would impose higher levels of fines and penalties and for deterrent effect even consider prosecution in a Court of law.

### **3. Duty free allowances and entitlements for Indian Residents and Foreigners Residing in India:**

3.1 The duty free entitlement of passengers includes used personal effects (excluding jewellery) required for satisfying the daily necessities of life. In addition, articles valued at upto Rs.25,000/- are allowed free of duty if carried as accompanied baggage of the passenger. This amount is proportionately reduced to Rs.12,000/- if stay abroad is of 3 days or less. For children below 10 years, the free allowance is Rs.6,000/- (Rs3,000/- if stay abroad is of 3 days or less). However, for such passengers coming from Nepal, Bhutan, Myanmar or China, by routes other than by Land route, and for such passengers coming from Pakistan by land route, the free allowance is Rs.6,000/-.

3.2 In addition, to the above such passengers are allowed the following quantities of tobacco products and alcohols within the aforesaid duty free allowances:

- (i) 200 cigarettes or 50 cigars or 250 gms tobacco.
- (ii) Alcoholic liquor & wines upto 2 litre each.

3.3 The items that are not allowed free of duty include firearms, cartridges of firearms, cigarettes/ cigars/ tobacco or alcoholic liquor and wines that is in excess of what is allowed within the free allowance, gold or silver, in any state (other than ornaments) unless specified otherwise.

3.4 The bonafide baggage items that are in excess of the duty free allowance can be cleared on payment of a uniform rate of Customs duty that is currently @35%+ Cess, as applicable, except for items like liquor, cigarette etc. that are charged to a higher rate of duty as applicable to imports other than as baggage.

3.5 Professionals, who are returning to India after at least 3 months stay abroad are eligible for additional free allowance of Rs.12,000/- for used household articles such as utensils, linen, kitchen appliances, iron etc. and Rs.20,000/- for professional equipment. The allowance is proportionately higher if passenger is returning after 6 months stay or 1-year stay abroad.

#### 4. Import of jewellery/gold/silver:

4.1 An Indian passenger who has been residing abroad for over 1 year is allowed to bring jewellery, free of duty upto an aggregate value of Rs.10,000/- in the case of a male passenger or Rs.20,000/- in the case of a lady passenger.

4.2 Any passenger of Indian origin (even if a foreign national) or a passenger holding a valid passport issued under the Passport Act, 1967 if coming to India after a period of not less than 6 months of stay abroad is allowed to import specified quantities of gold and silver as baggage on payment of duty, which has to be paid in foreign currency. Such passenger can also obtain the permitted quantity of gold and silver from authorized Banks - SBI, Bank of Nova Scotia etc. The specified quantities and rate of duty are as follows:

Item	Permitted Quantity	Present Duty
Gold	Upto 10 kgs.	@ Rs.300/- per 10 gms + 3% Education Cess
Silver	Upto 100 kgs.	@ Rs.1,500/- per kg. + 3% Education Cess

#### 5. Duty free allowances and entitlements for tourists:

5.1 A tourist is a passenger who is not normally resident in India or who enters India for a stay of not more than 6 months in the course of any 12-month period for legitimate non-immigrant purposes, such as touring, recreation, sports, health, family reasons, study, religious pilgrimage, or business. The duty free allowances and entitlements for tourists are as follows:

Category of Tourist	Duty Free Allowance
Tourists of Indian origin coming to India (other than those coming from Pakistan by land route)	Same as for Indian passengers or foreigners residing in India
Foreign tourists	Rs.8,000/-
Tourist of Pakistani origin	Rs.6,000/-
Tourist of Nepalese and Bhutanese origin	Nil

## **6. Allowances and entitlements on Transfer of Residence (TR):**

6.1 A person transferring his residence to India after a minimum stay of 2 years abroad, immediately preceding the date of his arrival on transfer of residence, is entitled to certain benefits in addition to those available to a passenger, subject to certain conditions. Short visits are permitted during the 2 preceding years but total stay in India on short visits should not exceed 6 months. Further, a shortfall in period of stay abroad can be relaxed upto 2 months by the Assistant/Deputy Commissioner and shortfall in period of stay abroad exceeding 6 months by the Commissioner of Customs in deserving and exceptional cases.

6.2 The person transferring his residence to India after 2 years stay abroad as mentioned above is eligible to clear free of duty, articles such as used personal and household articles of a value of upto Rs.5/- lakhs. However, goods such as firearms, cartridges of firearms, cigarettes/ cigars/ tobacco or alcoholic liquor and wines in excess of what is allowed within the normal free allowance, gold or silver, in any state (other than ornaments) are not allowed to be imported. Moreover, few specified goods are not eligible for a complete duty exemption and are charged to a lower concessional duty that is presently @31%. These goods are: T.V, VCR/VCP/VTR, washing machine, air conditioner, microwave oven, personal computer, dish washer, music system, electrical/LPG cooking range (other than cooking range with not more than 2 burners and without any extra attachment), refrigerator, deep freezer, video camera or a combination of video camera and TV receiver; sound recording or reproducing apparatus; video reproducing apparatus, word processing machine, fax machine, vessels, aircraft, cinematographic films of 35 mm and above, gold or silver, in any form, other than ornaments.

6.3 TR concession is available provided the passenger has not availed this facility in the preceding 3 years. In other words there is no bar if the passenger who returns for stay in India on TR goes abroad but on his return again the TR concession is available for another 3 years.

## **7. Import of baggage of deceased person:**

7.1 In terms of Notification No.21/2002-Cus., dated 1-3-2002 used, bonafide personal and household articles of a deceased person are allowed free of duty subject to the condition that a Certificate from the concerned Indian Embassy / High Commission is produced regarding the ownership of the goods by the deceased person.

## **8. Import of unaccompanied baggage:**

8.1 The unaccompanied baggage is required to have been in the possession abroad of the passenger and dispatched within 1 month of his/her arrival in India or within such further period as the Assistant Commissioner of Customs may allow. The unaccompanied baggage may arrive in India upto 2 months before the passenger or within such period, not exceeding 1 year, as may be permitted by the Assistant Commissioner of Customs if he is satisfied that the passenger was prevented from arriving in India within the period of 2 months due to circumstances beyond his control.



8.2 No free allowance is admissible in respect of unaccompanied baggage, which is charged the normal baggage rate of duty (35% ad valorem + Cess, at present).

### **9. Import of foreign exchange/currency:**

9.1 Any person can bring into India foreign exchange without any limit. However, declaration of foreign exchange/currency is required to be made in the prescribed Currency Declaration Form in the following cases:

- (a) Where the value of foreign currency notes exceeds US\$ 5000/- or equivalent; and
- (b) Where the aggregate value of foreign exchange (in the form of currency notes, bank notes, traveler cheques etc.) exceeds US\$10,000/- or its equivalent.

### **10. Import of Indian currency:**

10.1 The import of Indian currency is prohibited, however, passengers normally resident in India who are returning from a visit abroad may import Indian currency not exceeding Rs.7,500/-.

### **11. Import of fire arms as baggage:**

11.1 Import of firearms is strictly prohibited. Import of cartridges in excess of 50 is also prohibited. However, in the case of persons transferring their residence (as per conditions specified in the rules) to India for a minimum period of 1 year, one firearm of permissible bore can be allowed to be imported subject to the conditions that:

- (i) The firearm was in possession and use abroad by the passenger for a minimum period of 1 year and also subject to the condition that such firearm, after clearance, shall not be sold, loaned, transferred or otherwise parted with, for consideration or otherwise, during the lifetime of such person; and
- (ii) The firearm is subjected to applicable duty; and
- (iii) The passenger has a valid arms licence from the local authorities in India.

### **12. Import of pet animals as baggage:**

12.1 Domestic pets like dogs, cats, birds etc. may be imported. Import of animals and birds is governed by strict health certificate regulations

### **13. Detained baggage:**

13.1 There may be occasions when the passenger is not in a position to clear his baggage for any reason e.g. inability to pay the Customs duty demanded. In such a situation, the passenger may request the Customs to detain his baggage either for re-export at the time of his departure from India or for clearance subsequently on

payment of duty. The detained baggage would be examined and its full details inventorised before being taken in the custody of Customs.

**14. Mishandled baggage:**

14.1 There are numerous occasions when passenger baggage gets lost or mishandled by the Airlines. In all such cases the passenger is required to obtain a certificate to that effect from the airlines and get it countersigned by Customs indicating specifically the unutilized portion of the free allowance. This would enable the passenger to avail the unutilised portion of the duty free allowance when his baggage is delivered by the airlines.

**15. Clearance of departing passengers:**

15.1 On the departure side, the principal task of Customs is enforcement related. These include checks to prevent narcotic drug trafficking, smuggling of other sensitive items such as Indian including foreign currency, wild life products, antiques etc. Customs also plays an important role in facilitating the re-import of the high valued articles including jewelry, being carried out of the country by issuing to the departing passengers a re-export certificate.

**16. Export of gold jewellery as baggage:**

16.1 There is no value limit on the export of gold jewellery by a passenger through the medium of baggage so long as it constitutes the bonafide baggage of the passenger

**17. Export of currency:**

17.1 Export of Indian currency is strictly prohibited. However, Indian residents going abroad are allowed to carry Indian currency not exceeding Rs.7,500/-.

17.2 Indians going abroad are permitted to take with them foreign currency without any limit so long as the same has been purchased from an authorised foreign exchange dealer.

17.3 Tourists while leaving India are allowed to take with them foreign currency not exceeding the amount brought in by them at the time of their arrival in India. As no declaration is required to be made for bringing in foreign exchange/currency not exceeding equivalent of U.S. \$10,000/-, generally tourists can take out of India foreign exchange/currency not exceeding the above amount.

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## Chapter 27

### Setting up of ICDs/CFSS

#### 1. Introduction:

1.1 With the liberalization of the economy, widespread industrialization, enhanced economic growth, development of multi-modal transport system, a need was felt to develop Inland Container Depots (ICDs) or Container Freight Stations (CFSs) that function like a dry port and offer common user Customs clearance facilities at the doorstep of importers and exporters.

1.2 An ICD/CFS may be defined as: *"A common user facility with public authority status equipped with fixed installations and offering services for handling and temporary storage of import/export laden and empty containers carried under Customs transit by any applicable mode of transport placed under Customs control. All the activities related to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, take place from such stations."*

1.3 An Inter-Ministerial Committee (IMC) under the chairmanship of the Additional Secretary (Infrastructure), Ministry of Commerce comprising representatives of various concerned Ministries/Departments including Department of Revenue considers the proposals for setting up of new ICDs/CFSS at different centres in the country and monitors their progress.

#### 2. Distinction between ICD & CFS:

2.1 An ICD is a 'self contained Customs station' like a port or air cargo unit where filing of Customs manifests, Bills of Entrys, Shipping Bills and other declarations, assessment and all the activities related to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, etc., take place. An ICD would have its own automated system with a separate station code [such as INTKD 6, INSNF6 etc.] being allotted by Directorate General of Systems and with in-built capacity to enter examination reports and enable assessment of documents, processing of manifest, amendments, etc.

2.2 A CFS is only a Customs area located in the jurisdiction of a Commissioner of Customs exercising control over a specified Customs port, airport, LCS/ICD. A CFS

cannot have an independent existence and has to be linked to a Customs station within the jurisdiction of the Commissioner of Customs. It is an extension of a Customs station set up with the main objective of decongesting the ports. In a CFS only a part of the Customs processes mainly the examination of goods is normally carried out by Customs besides stuffing/destuffing of containers and aggregation/segregation of cargo. Thus, Custom's functions relating to processing of manifest, import/export declarations and assessment of Bill of Entry/Shipping Bill are performed in the Custom House/Custom Office that exercises jurisdiction over the parent port/airport/ICD/LCS to which the said CFS is attached. In the case of Customs Stations having facility of automated processing of documents, terminals are provided at such CFSs for recording the result of examination, etc. In some CFSs, extension Service Centers are available for filing documents, amendments etc. However, the assessment of the documents etc. is carried out centrally.

2.3 An ICD may also have a number of CFSs attached to it within the jurisdiction of the Commissioner of Customs just as in the case of a port and its CFSs (as on date there are 28 CFSs linked to Chennai port).

[Refer Circular No.18/2009-Cus., dated 8-6-2009]

2.4 A standalone Customs clearance facility in an inland Commissionerate cannot be approved by the Commissioner as a CFS, if there is no ICD/port within its jurisdiction to which the said CFS can be attached. Such a facility can, however, be notified as an ICD i.e., as an independent Customs station with provision for filing and assessment of documents and examination of goods. A Customs clearance facility could be established as a CFS at a port city for examination of imported/export goods, since the CFS would fall under the jurisdiction of Commissioner of Customs, having jurisdiction over the Customs port with which the CFS would be attached. Further, in a port city such as Chennai or Mumbai, it may be possible to develop an ICD within the territorial jurisdiction of the concerned Customs Commissionerate in addition to existing CFSs. Such an ICD should be capable of providing full-fledged Customs services, independent EDI system, and all procedures meant for transshipment of cargo have to be followed for movement of goods from the port of import to the ICD. Further, such an ICD would function as an independent Customs Station in all respects and would not be attached to any other port or airport. Thus, in respect of proposals for setting up of ICD/CFS from prospective operators it has to be examined whether the proposed facility is required to be approved as an ICD or CFS.

2.5 Movement of goods from a port/airport/LCS to an ICD is in the nature of movement from one Customs station to another, governed by Goods Imported (Condition of Transshipment) Regulations, 1995. On the other hand, movement of goods from a port/airport/LCS or an ICD to a CFS is akin to local movement from a Customs area of the Customs station to another Customs area of the same station, covered by local procedure evolved by the Commissioner of Customs and covered

by bonds, bank guarantee, etc. Further, the person undertaking the transshipment would be required to follow the prescribed procedure.

2.6 Goods intended for transshipment from the Customs station of first arrival shall be allowed to be unloaded/loaded in a Customs area, approved by the jurisdictional Commissioner of Customs, within the same Customs station. Movement of goods directly from a Customs station to a CFS of another Customs station shall not be permitted, since manifest is required to be filed only at a Customs station. In exceptional cases, such as strike or disruption resulting in congestion at some ports, the direct movement of goods to a CFS of another Customs station can be permitted only with approval of the Board, after due waiver of Sub-Manifest Transshipment Procedure (SMTP).

[Refer Circulars No.79/2001-Cus., dated 7-12-2001; and No.46/2005-Cus., dated 24-11-2005]

### 3. **Procedure for approval of ICD/CFS:**

3.1 Proposals for setting up ICD/CFS are considered and approved by the IMC on the basis of applications in prescribed form submitted to the Infrastructure Division, Department of Commerce, duly accompanied by requisite copies of feasibility report as mentioned in the guidelines.

3.2 The applicant should also send a copy of the application to the jurisdictional Commissioner of Customs, who will send his comments to the Department of Commerce and the Board within 30 days. The applicants are expected to be familiar with the statutory Customs requirements in relation to Bonding, Transit Bond, Security Insurance and other necessary procedural requirements and cost recovery charges payable before filing the application.

3.3 On receipt of the proposal, the Department of Commerce takes action to obtain the comments from CBEC and other concerned agencies within 30 days and IMC normally takes six weeks to take a decision. On acceptance of a proposal, a Letter of Intent is issued to the applicant, which will enable it to initiate steps to create infrastructure.

3.4 The applicant is required to set up the infrastructure within one year from the date of approval, but the Department of Commerce may grant an extension of 6 months. Thereafter, IMC may consider a final extension for a further period of 6 months or withdraw the approval granted. The applicant, after receipt of approval, shall send quarterly/annual progress report to Ministry of Commerce, as per prescribed format through electronic mode as well as through hard copy.

3.5 After the applicant has put up the required infrastructure, met the security standards of the jurisdictional Commissioner of Customs and provided a bond backed by bank guarantee to the Customs, final clearance and Customs notification

will be issued. The approval will be subject to cancellation in the event of any abuse or violation of the conditions of approval.

[Refer Chapter on Customs Cargo Service Providers]

#### 4. Posting of Customs officers on cost recovery basis:

4.1 For the purpose of Customs clearance at the ICDs/CFSs, Customs staff is provided on cost recovery basis by issue of a sanction order by the Administrative Wing of the Board. The custodians are required to pay @ 185% of total salary of officers actually posted at the ICD/CFS.

4.2 Cost recovery posts of ICDs/CFSs that have been in operation for two consecutive years with following performance benchmark for past two years will be considered for regularization. However, the waiver of cost recovery charges would be prospective with no claim for past period.

(i)	No. of containers handled by ICD	7200 TEUs per annum
(ii)	No. of containers handled by CFS	1200 TEUs per annum
(iii)	No. of B/E processed by ICDs / CFSs	7200 per annum for ICDs and 1200 for CFSs.
(iv)	Bench mark at (i) to (iii) shall be reduced by 50% for these ICDs / CFSs exclusively dealing with exports as per staffing norms.	

[Refer Instruction F.No.434/17/2004-Cus-IV, dated 12-9-2005]

4.3 Normally, at an ICD/CFS having both import and export functions the staff allocation is 13 (1 Assistant/Deputy Commissioner, 2 Appraisers, 2 Inspectors, 2 UDCs, 2 LDCs, 4 Sepoys) and at ICD/CFS having only export it is 7 (1 Assistant/Deputy Commissioner, 1 Appraiser, 1 Inspector, 1 UDC, 1 LDC, 2 Sepoys).

4.4 In the initial stages of operations of an ICD/CFS, due to less volume of trade, full strength of the officers may not be required. In such a situation, if the custodian requests, the Commissioner of Customs may, after due consideration post less than the sanctioned strength of officers. Gradually, when the business picks up at the ICD, the full contingent of staff may be posted. The Commissioner of Customs would accept the deposit of advance cost recovery charges for 3 months for the number of staff actually posted in an ICD/CFS.

[Refer Circulars No. 52/97-Cus dated 17-10-1997; No.80/98-Cus., dated 26-10-1998; No.27/2004-Cus., dated 6-4-2004; No.13/2009-Cus., dated 23-3-2009; No.18/2009-Cus., dated 8-6-2009; and No.21/2009-Cus., dated 4-8-2009]

## Chapter 28

### Customs Cargo Service Providers

#### 1. Introduction:

1.1 The Public Accounts Committee (PAC) in its 27<sup>th</sup> Report (2005-06) recommended formulating appropriate legal provisions and guidelines to control the activities of custodians. In pursuance of these recommendations, the Government inserted a new Section 141(2) to the Customs Act, 1962 and thereafter under its authority framed the Handling of Cargo in Customs Areas Regulations, 2009 (HCCR, 2009).

1.2 The HCCR, 2009 provide for the manner in which the imported goods/ export goods shall be received, stored, delivered or otherwise handled in a Customs area. The regulations also prescribe the responsibilities of persons engaged in the aforesaid activities.

#### 2. Salient features of the HCCR, 2009:

2.1 The HCCR, 2009 apply to all 'Customs Cargo Service Providers' (CCSPs), who are persons operating in a Customs area and engaged in the handling of import/export goods. These include the custodians of imported/export goods and those handling such goods and all persons working on their behalf such as fork lift or material handling equipment operators, etc. Consolidators/ break bulk agents and other persons handling imported/export goods in any capacity in a Customs area are also covered.

2.2 The HCCR, 2009 indicate various responsibilities and conditions for different kinds of CCSPs. The conditions prescribed under its Regulation 5 apply to the CCSPs who desire to be approved as custodians of imported/export cargo and thus handle goods in Customs areas. These conditions shall not apply to persons who only provide certain services on their own or on behalf of the custodians.

2.3 Responsibilities prescribed in Regulation 6 of the HCCR, 2009 apply to both custodians and persons who provide various services, though certain responsibilities specifically apply to one or the other category. For example, the responsibility for safety and security, pilferage of goods under their custody, disposal of uncleared, unclaimed or abandoned goods within the prescribed time limit, payment of cost recovery charges of the Customs officers posted in the facility are applicable to an approved custodian who handled imported or export goods. On the other hand, responsibilities for publishing or display of the schedule of charges for the activities undertaken in respect of imported/ export goods shall apply to both categories of

persons. These responsibilities are aimed at expeditious clearance of goods, reduction of dwell time, transaction cost and safeguarding revenue.

2.4 As specified in Regulation 3 of the HCCR, 2009, these regulations shall apply to handling of imported goods and export goods in Customs area specified under Section 8 of the Customs Act, 1962. This would cover all Customs facilities such as ports, airports, ICDs/CFs and LCSs. Also, imported goods would cover goods under transshipment and all goods held under the custody of CCSP. However, these regulations do not apply to Customs bonded warehouse or to the warehoused goods covered by Chapter IX of the Customs Act, 1962.

2.5 Major ports notified under the Major Port Trusts Act, 1963 and airports notified under the Airports Authority of India Act, 1994 will continue to be authorized to function as custodians under their respective Acts and these regulations shall not impact their approval as a custodian. Thus, in terms of Section 45 of the Customs Act, 1962, the Port Trusts of the notified major ports and the Airports Authority of India shall not be required to make an application under Regulation 4 or 9 of the HCCR, 2009 for approval or renewal under these regulations. However, they would be required to discharge the responsibilities cast upon them as specified in its Regulation 6.

2.6 Regulation 5 of the HCCR, 2009 provides the conditions to be fulfilled by an applicant who wishes to be appointed as a custodian of the imported/ export goods in a Customs area. This contains an exhaustive list of infrastructure and operational requirements for efficient handling of imported or export goods, though sufficient discretion is provided for the Commissioner of Customs to decide on the nature of infrastructure and equipments required. Hence, it is to ensured that the facilities provided by the custodians are sufficient for efficient handling of cargo However, the facilities should be sufficient to enable efficient handling of the cargo having regard to the volume of containers/ cargo and its nature, etc. (the requirement may, or course, vary between Customs areas at different places in the country). The Commissioner of Customs can also specify general standards or requirements such as height of boundary wall, quantum and specifications of material handling and other equipments etc., to ensure the facilities are adequate for effective and efficient handling of cargo.

2.7 Under Regulation 5(1)(j) of the HCCR, 2009, the infrastructure required to be provided by the custodian shall include the civil and electrical infrastructure including properly air-conditioned office space, cabins with proper furniture, power backup facilities, hardware, networking and secure connectivity to Customs data centres for Customs officers and service centres specified by Customs. Facilities required for secure exchange of electronic information between the custodian and Customs shall also be provided. In addition, the custodian would undertake site preparation including civil works, electrical works, electrical fittings, air-conditioning, etc. and provide DG Set for power back up and link to the Customs EDI server. The networking, communication equipments, UPS, computers/personal computers/thin



clients, servers, printers and other computer peripherals as may be specified by the Directorate General of Systems shall also be provided by the custodian.

2.8 Regulation 5(2) of the HCCR, 2009 requires the custodian to pay cost recovery charges in respect of the Customs officers deployed at the ICD/CFS/port/airport etc., unless exempted by a specific order or a circular or instructions issued by the Ministry of Finance. Presently, payment of cost recovery charges in respect of ports and airports has been exempted for three categories of custodians, as follows:

- (i) Custodians notified under Section 45 of the Customs Act, 1962 prior to 26-6-2002 and there is no change in custodianship or area after 26-6-2002;
- (ii) Custodians notified prior to 26-6-2002 but part or whole of the same premises is transferred (on lease or otherwise) to new custodian on or after 26-6-2002 (e.g. AAI, custodian of Mumbai Air Cargo Complex prior to 26-6-2002 later transferred part custodianship to Air India); and
- (iii) Custodians notified prior to 26-6-2002 but premises extended after 26-6-2002 under the same custodianship.

[Refer Circular No.27/2004-Cus., dated 6-4-2004]

2.9 The Greenfield Airports Policy notified by the Ministry of Civil Aviation specifies that the applicant for setting up of a greenfield airport will obtain clearance from the Department of Revenue for provision of Custom services and the cost of providing these services will be borne by the Airport Company.

2.10 Cost recovery charges paid by ICD/CFS may be waived if they fulfill the laid down norms (given below) and are in existence for a consecutive period of two financial years. Accordingly, in respect of the eligible ICDs/CFSS specific orders in individual cases for grant of exemption from the payment of cost recovery charges are issued by Ad.IV Section of the Board. The waiver of cost recovery charges would be prospective with no claim for past period.

(i)	No. of containers handled by ICD	7200 TEUs per annum
(ii)	No. of containers handled by CFS	1200 TEUs per annum
(iii)	No. of B/E processed	7200 per annum for ICDs / 1200 for CFSS
(iv)	Bench mark at (i) to (iii) shall be reduced by 50% for these ICDs / CFSS exclusively dealing with exports as per staffing norms.	

[Refer instructions F.No.434/17/2004-Cus-IV, dated 12-9-2005]

2.11 Regulation 6(1)(m) of the HCCR, 2009 deals with disposal of imported or export goods lying unclaimed, uncleared or abandoned in ICDs/CFSs/Customs areas by the CCSP who is holding custody of the such goods. Proper and timely disposal of unclaimed, uncleared or abandoned goods is to be ensured.

[Refer Circular No.50/2005-Cus., dated 1-12-2005]

2.12 The power to exempt the conditions required to be fulfilled by CCSPs is provided under Regulation 7 of the HCCR, 2009 to the Commissioner of Customs. For example, the requirement of sufficient facilities for installation of scanning equipment may not be an immediate requirement in respect of ICD/CFS who have established their operations as new custodian. However, when this requirement becomes a necessity, then these conditions may have to be fulfilled by such custodian at that point of time. Hence, the Commissioner of Customs needs to examine individual cases where exemptions are sought to be given to the custodian and record the reasons in writing before providing exemptions.

2.13 In order to overcome situations where clearances of imported/ export goods are getting affected by congestion at a particular Customs facility (e.g. CFS), it has been provided that the Commissioner of Customs may consider regulating the entry of goods in that particular CFS for a temporary period, say, 15 days, in terms of Regulation 7(2) of the HCCR, 2009. In such cases, the Commissioner of Customs may not allow any import/ export cargo to be received and handled in the facility or may allow such reduced quantity as considered sufficient for being handled efficiently for such temporary period till the congestion is cleared and the delay in clearance of goods is sorted out.

2.14 In terms of Regulation 9 of the HCCR, 2009, at the time of submission of applications for acquiring custody and handling of imported/export goods, the applicant shall provide complete details of the facility such as extent of the area, equipment, infrastructure etc. for receiving, unloading/loading, stacking, storage, delivery of imported/ export goods including the map. Further, the projected capacity of the cargo or container proposed to be handled at the premises, would form the basis for determining the adequacy of the infrastructural facilities and bond or bank guarantee, wherever applicable. For example, in respect of containers, the volume in terms of Twenty feet Equivalent Units (TEUs) may be ascertained. As regards X-Ray scanning equipment, the custodians are expected to provide for suitable land and other site requirements, but the actual scanning equipments would be installed by the Customs department subject to conditions as may be prescribed.

2.15 Only such CCSPs who wish to be appointed as custodian of imported/ export goods need to take approval as specified in Regulation 10 of the HCCR, 2009. CCSPs who either operate on behalf of the custodian or with his permission, do not require any approval. However, custodian will be responsible for fulfillment of the conditions of these regulations by such CCSPs.

2.16 The procedure for approval of appointment, renewal, suspension or revocation of CCSP as per Regulations 10 to 13 of the HCCR, 2009 is based upon transparency and objectivity. Cases involving outright transfer of custodianship, leasing of premises without informing Customs, subletting, sub-contracting, outsourcing, gift or lease of any of the services of CFS/ICD have to be dealt by the jurisdictional Commissioner of Customs. In case of violations of the conditions or obligations prescribed under the regulations, necessary action may be taken against the erring CCSP including imposition of penalty. Further, action would need be initiated against the CCSP, wherever lack of infrastructure facilities is noticed leading to deterioration in services or damage of imported or export goods, loss of its value and loss of revenue etc.

[Refer Instructions F.No.450/105/2008-Cus.IV, dated 25-7-2008]

2.17 All the CCSPs are required to publish a schedule of charges associated with various services in relation to imported or export goods in the Customs area and its display at prominent places including webpage or website of the CCSP. It has also been clarified that no exemption is available to existing custodians / CCSPs in so far as the provisions of facilities and fulfillment of prescribed conditions in Regulation 5 & 6, as applicable, within the specified limits are concerned.

2.18 The custodians under the Major Port Trusts Act, 1963, and Airports Authority of India Act, 1994 shall not be required to make an application under Regulation 4 or 9 for approval or renewal under these regulations, but they would be required to necessarily discharge the responsibilities cast upon them in terms of Regulation 5 & 6 of the regulations without any exception.

2.19 The CCSP will also undertake to indemnify the Commissioner of Customs from any liability arising on account of damages caused or loss suffered on imported or export goods, due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling by furnishing an indemnity bond.

2.20 No relaxation or exemption from requirements on safety and security of premises shall be allowed by the Commissioner of Customs to the custodians or CCSPs in terms of provisions of Regulation 7 of HCCR, 2009. also keeping in view the paramount importance of overall safety and security of imported / export goods, detailed guidelines have been prescribed in order to ensure that all concerned persons ensure that suitable arrangements are put in place for safety and security of premises relating to imported or export goods.

2.21 The HCCR, 2009 provide for levy of penalty in case the CCSP contravenes any of the provisions of the regulations or fails to comply with the regulations. However, these provisions do not impact the past proceedings against the custodian, if any, where necessary action has been initiated against erring custodians.

[Refer Circulars No. 52/97-Cus., dated 17-10-1997; No.80/98-Cus., dated 26-10-1998; No.27/2004-Cus., dated 6-4-2004; No.13/2009-Cus., dated 23-3-2009; No.18/2009-Cus.,dated 8-6-2009; No.21/2009-Cus., dated 4-8-2009; and No.4/2011-Cus., dated 10-1-2011]

## Chapter 29

### Custom House Agents

#### 1. Introduction:

1.1 Section 146 of the Customs Act, 1962 states that no person shall carry on business as an agent relating to entry or departure of a conveyance or the import or export of goods at any Customs station unless such person holds a licence granted in this behalf in accordance with regulations made in this regard by the Board. Thus, any person desirous to carry on business as a Customs House Agent relating to entry or departure of a conveyance or import or export of goods at any Customs station is required to obtain a licence, which is referred to as the CHA licence and the person concerned as the Custom House Agent (CHA).

1.2 Section 146 of the Customs Act, 1962 read with the Custom House Agents Licensing Regulations (CHALR), 2004 governs all legal and procedural aspects of the grant of CHA licence as well as the obligations and responsibilities of a CHA.

#### 2. Application for CHA licence and eligibility:

2.1 Regulation 4 of CHALR, 2004 provides for invitation of applications for grant of CHA licence by the concerned Commissioner of Customs for grant of a such licences as assessed by him in the month of January every year by means of a Public Notice and also through publications in at least two newspapers. Ideally no restriction should be placed on the number of CHAs operating in the Customs Houses and market forces should govern the number of proficient and qualified persons required to carry out the job of CHA commensurate with the volume of import / export cargo. There is no justification in prescribing a turnover based criteria for ascertaining the number of CHA licences required to be issued at particular Customs House / station. No numeric criterion has also been fixed governing the number of CHA licences being issued.

[Refer Circular No.9/2010-Cus., dated 8-4-2010]

2.2 The eligibility condition as per Regulation 6 of CHALR, 2004 is that an applicant should be a citizen of India having a financial viability supported by a certificate issued by a scheduled bank or such other proof acceptable to Commissioner of Customs evidencing possession of assets of value of not less than 2 lakhs. Further, the applicant or his authorized employee should be a graduate from a recognized University or possesses a professional degree i.e. C.A., M.B.A., L.L.B., Diploma in Customs clearance work from any institute or University recognized by the Government with a working knowledge of Computers and Customs procedure, or is a graduate having three experience in transacting CHA work as 'G' card holder, or a person who has passed the examination referred to in Regulation 8 or is retired

Group A officer from Indian Customs and Central Excise Service having a minimum of 10 years of experience in Group A.

2.3 MBA degree or the equivalent degree PGDM, granted by an institute or university recognized by Government / AICTE under Ministry of HRD shall be acceptable qualification for the degree holders to appear in the examination under CHALR, 2004.

[Refer Circular No.16/2010-Cus., dated 29-6-2010]

### **3. Qualifying examinations:**

3.1 Any applicant who satisfies the criteria of Regulations 5 and 6 of CHALR, 2004 and has applied for grant of licence under Regulation 4 shall be required to appear in the written as well as the oral examination conducted by the Directorate General of Inspection (Customs & Central Excise) at select centers annually for which intimation will be sent in advance. The applicant who has passed the written examination will be called for oral examination and has to pass the same within 2 years of passing of related written examination without any limitation of chances and in the event of failing to do so, he shall be treated as having failed in the examination. An applicant will however be allowed a maximum period of seven years within which he shall pass both the written and oral examination. The examination may include questions on the following:

- (a) preparation of various kinds of bills of entry and shipping bills;
- (b) arrival entry and clearance of vessels;
- (c) tariff classification and rates of duty;
- (d) determination of value for assessment;
- (e) conversion of currency;
- (f) Nature and description of documents to be filed with various kinds of bills of entry and shipping bills;
- (g) procedure for assessment and payment of duty;
- (h) examination of merchandise at the Customs Stations;
- (i) provisions of the Trade and Merchandise Marks Act, 1958, the Patents Act, 1970 and the Copy Rights Act, 1957;
- (j) prohibitions on import and export;

- (k) bonding procedure and clearance from bond;
- (l) re-importation and conditions for free re-entry;
- (m) Drawback and export promotion schemes;
- (n) offences under the Act;
- (o) the provisions of allied Acts including the Foreign Trade (Development and Regulation) Act 1992, the Central Excise Act, 1944, Foreign Exchange Management Act, 2000, the Indian Explosives Act, 1884, the Arms Act, 1959, the Narcotics Drugs and Psychotropic Substances Act, the Drugs and Cosmetics Act, 1940, Destructive Insects and Pests Act, 1914, the Dangerous Drugs Act, 1930, in so far as they are relevant to the clearance of goods through Customs;
- (p) provisions of the Prevention of Corruption Act, 1988;
- (q) procedure in the matter of refund of duty paid, appeals and revision petitions under the Act; and
- (r) on-line filing of electronic shipping bills or bills of entry and Indian Customs and Central Excise Electronic Commerce/Electronic Data interchange Gateway (ICEGATE) and Indian Customs Electronic Data Interchange Systems (ICES).

3.2 The Commissioner of Customs shall also satisfy whether the applicant who is an individual possesses in case of a company or firms, the directors or partners of the company / firm, possess satisfactory knowledge of English and local language of the Customs station. In case of person deputed to work exclusively in the docks, knowledge of English will not be compulsory. Knowledge of Hindi will be considered as desirable qualification.

3.3 Before granting the licence under the Regulation 9 of CHALR, 2004, the Commissioner of Customs shall require the applicant to enter into a bond prescribed in this regard for due observance of these regulations and shall also require to furnish a bank Guarantee, Postal Security or National Saving Certificate in the name of Commissioner of Customs for an amount of Rs.75,000/- for carrying out the business as a Customs House Agent. The licence granted under Regulation 9 shall be valid for a period of 10 years from the date of issue and shall be renewed from time to time if the performance of the licensee is found to be satisfactory with reference *inter alia* to (1) the quantity or value of goods cleared by such licensee conforming to norms as may be specified by the Commissioner (2) absence of instances of any complaints of misconduct including non compliance of any obligations as mandated in the said regulations. Every Licence granted or renewed

under CHALR, 2004, shall be deemed to have been granted or renewed in favour of the licensee and no licence shall be transferred or sold otherwise.

#### **4. Obligations of CHA:**

4.1 Regulation 13 of the CHALR, 2004 casts certain obligations on a CHA. Some of the important obligations enjoin the CHA to:

- (a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as CHA and produce such authorisation whenever required by the Assistant/Deputy Commissioner of Customs;
- (b) transact business in the Customs Station either personally or through an employee duly approved by the Assistant/Deputy Commissioner of Customs;
- (c) not represent a client before an officer of Customs in any matter to which he, as an officer of the Department of Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;
- (d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Assistant/Deputy Commissioner of Customs;
- (e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;
- (f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner of Customs, from a client who is entitled to such information;
- (g) Promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of the clearance of cargo or baggage on behalf of the client;
- (h) not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by the proper officer;
- (i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;
- (j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a CHA which is sought or may be sought by the Commissioner of Customs;

- (k) maintain records and accounts in such form and manner as may be directed from time to time by a Assistant/Deputy Commissioner of Customs and submit them for inspection to the said Assistant/Deputy Commissioner of Customs or an officer authorised by him whenever required;
- (l) ensure that all documents, such as bills of entry and shipping bills delivered in the Customs Station by him show the name of the importer or exporter, as the case may be, and the name of the CHA, prominently at the top of such documents;
- (m) in the event of the licence granted to him being lost, immediately report the fact to the Commissioner of Customs;
- (n) ensure that he discharges his duties as CHA with utmost speed and efficiency and without avoidable delay.

4.2 In the context of increasing number of offences involving various modus operandi such as misuse of export promotion schemes, fraudulent availment of export incentives and duty evasion by bogus IEC holders, it has been provided that KYC (Know Your Customers) Guidelines should be followed by CHA so that they are not used intentionally or unintentionally by importers/ exporters who indulge in fraudulent activities. Regulation 13 of CHALR, 2004 is suitably modified to provide certain obligations on the CHA to verify the antecedent, correctness of IEC code, identity of his client and the functioning of his client at declared addresses by using reliable, independent, authentic documents, data or information. It is also made obligatory on the part of client/ Customer to furnish to the CHA, a photograph of himself/ herself in the case of an individual or those of authorized signatory in respect of other forms of organizations such as Company / trusts etc. and any two of prescribed documents.

[Refer Notification No.30/2010-Cus.(NT), dated 8-4-2010; and Circular No.9/2010-Cus., dated 8-4-2010]

4.3 A CHA can employ any number of person to assist him depending upon the work subject to the minimum qualification of such person being 10+2 or equivalent. Under Regulation 19 of the CHALR, 2004 such persons will be appointed by Assistant/Deputy Commissioner of Customs designated by the Commissioner of Customs for this purpose who will also take into account the antecedent and any other information pertaining to the character of such person. Such person shall within four attempts pass an examination conducted by Assistant/Deputy Commissioner of Customs or by Committee of officers of Customs appointed by him for this purpose. This examination will ascertain the adequacy of knowledge of such person regarding the provisions of the Act subject to which goods and baggage are cleared through Customs. Any person who has passed the examination in terms of Regulation 19 of the CHALR 2004 and is employed under a CHA will be exempted to pass the examination if he is appointed to work under any CHA, with the approval of Assistant/Deputy Commissioner of Customs. Also, only those persons who are qualified in the Regulations 8 or 19(3) examinations are authorized to sign the declarations filed before the Customs.



4.4 The examination under Regulation 19(3) shall be conducted by Commissionerate of Customs on annual basis.

4.5 The Assistant/Deputy Commissioner of Customs shall issue photo identity card to every person employed by a CHA who at all times while transacting the work at the Custom Station, shall carry such card with him and produce the same on demand by any officer of Customs. The identity cards shall be as follows:

- (a) In Form 'F', if he has passed the Regulation 8 examination.
- (b) In Form 'G', if he has passed the Regulation 19(3) examination.
- (c) In Form 'H', if he has not passed the Regulation 19(3) examination.

4.5 The Assistant/Deputy Commissioner of Customs concerned may ensure that individuals involved in any fraudulent activity (i.e. individuals suspended or blacklisted or denied permission to work in any section of the Customs House) shall not be allowed to be employed by CHA for transacting business with Customs. Necessary undertaking in this regard may also be taken from the CHA. Further, for this purpose the Commissioner of Customs shall undertake an annual review of 'H card' holders.

[Refer Circular No.9/2010-Customs dated  
8.04.2010]

4.6 Under Regulation 9(3) of the CHALR, 2004, the Commissioner of Customs may reject an application for grant of licence to act as CHA if the applicant is convicted for fraud or forgery, or any criminal proceedings are pending before any court of law against him or he has been convicted in any court of law. The applicant aggrieved by such order can file an appeal before the Chief Commissioner of Customs within thirty days from the communication of such order and the same shall be decided by the Chief Commissioner of Customs/Customs and Central Excise within one year.

4.7 For granting CHA license in respect of persons who had already passed the written and oral examinations held under Regulation 9 examination of Customs House Agents Licensing Regulations (CHALR), 1984 written examination shall be held for these persons on additional subjects viz. (a) The Patents Act, 1970 and Indian Copy Right Act; 1957 (b) Central Excise Act, 1944 (c) Export promotion schemes (d) Procedure on appeal and revision petition (e) Prevention of Corruption Act, 1988 and (f) Online Filing of Electronic Customs Declarations, (g) Narcotic Drugs and Psychotropic Substances Act, 1985 and (h) Foreign Exchange Management Act, 1999. The examination would be conducted by the Directorate General of Inspection (DGICCE) and persons who qualify shall be deemed to have passed under the Regulation 8 of CHALR, 2004, and be considered for grant of CHA license in terms of its Regulations 9 by the concerned Commissionerate from where they had earlier passed the CHA examination held under CHALR, 1984.

[Refer Circular No.9/2010-Cus., dated 9-4-2010]

4.8 Regulation 9(2) of the CHALR, 2004 allows the CHA to operate in all Customs Houses in the country subject to intimation in Form 'C' to the Commissioner of Customs of the concerned Customs station where he intends to transact business.

## **5. Revocation and suspension of CHA licence:**

5.1 The Commissioner of Customs may revoke the licence of a CHA and order for forfeiture of part or whole of security subject to provision of Regulation 22 on any of the following grounds:

- (i) If the CHA has failed to comply with any of the conditions of Bond executed by him under Regulation 10.
- (ii) If the CHA has failed to comply with any of the provisions of these regulation, within the jurisdiction of the said Commissioner of Customs or anywhere else.
- (iii) Any misconduct on his part, whether within jurisdiction of the said Commissioner of Customs or anywhere else which in opinion of the Commissioner renders him unfit to transact any business in the Customs House.

5.2 In cases where Commissioner of Customs is of the opinion that immediate action is necessary, he may suspend the licence of CHA within fifteen days from the date of receipt of a report from investigating authority where an enquiry against such agent is pending or contemplated.

5.3 Where a licence is suspended, the Commissioner of Customs, may, within 15 days give an opportunity of the hearing to the CHA and may pass such order as he may deem fit either revoking the suspension or continuing it.

5.4 When a CHA operates under Form 'C' intimation at another Customs station has violated any provision of the CHALR, 2004 at any Customs station, the suspension action may be taken by the Commissioner of Customs at the station who issued the CHA license and such action would either be limited to a particular Customs station where a violation has been noticed or action against the CHA in general, applicable at all Customs stations where the CHA operates, depending upon the gravity and seriousness of the violation.

5.5 Where the CHA licence is suspended, all 'G' and 'H' cards issued in respect of that licence would become non-operational. Also, the Commissioner of Customs, who had authorised a CHA to operate on 'C' form intimation at a Customs station, may take action in deserving cases under Regulation 21 of CHALR, 2004 for prohibiting the working of such defaulting CHA in any section of the Custom House/Customs Station.

5.6 For completion of regular suspension proceedings an overall time limit of nine months from the date of receipt of offence report is prescribed. This limit takes into

account the time limit of thirty days each for reply by CHA to the notice of suspension and for representation against the report of Assistant/Deputy Commissioner of Customs on the grounds not accepted by CHA.

5.7 In cases where immediate suspension action against a CHA is required to be taken by a Commissioner of Customs a 'post-decisional hearing' should be given so that errors apparent, if any, can be corrected and an opportunity for personal hearing is given to the aggrieved party. Further, in cases warranting immediate suspension under Regulation 20(2) of CHALR, 2004 the investigating authority shall furnish its report to the Commissioner of Customs who had issued the CHA license within thirty days of the detection of an offence; the Licensing authority shall take immediate suspension action within fifteen days thereof and grant a post-decisional hearing to the party within fifteen days from the date of his suspension. The Commissioner of Customs concerned shall issue an Adjudication Order, where it is possible to do so, within fifteen days from the date of personal hearing so granted by him.

[Refer Circulars No.42/2004-Cus., dated 10-6-2004; No.9/2010-Cus., dated 8.4.2010; No. 6/2010-Cus., dated 29-6-2010]

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## **Chapter 30**

### **Offences and Penal Provisions**

#### **1. Introduction:**

1.1 Persons involved in import or export activity in violation of prohibitions or restrictions in vogue or with the intent to evade duties or fraudulently claim export incentives are liable for strict penal action under the Customs Act, 1962. The offending goods can be confiscated and heavy fines and penalties imposed on the persons concerned. In fact, sensitive goods like narcotics, FICN, arms and ammunitions, etc. are absolutely confiscated. There are also provisions for arrests and prosecution to deter smuggling or commercial fraud, which seriously affects the economy.

1.2 In the context of penal provisions under the Customs Act, 1962 the term “smuggling” has vast connotations and means “any act or omission which will render such goods liable for confiscation under Sections 111 or 113 of the said Act.

1.3 In general terms, the word ‘penalty’ means punishment under the law, i.e., such punishment as is provided in penal laws. It also means the sum payable as a punishment for a default. The Customs Act, 1962 contains specific provisions for imposition of penalty in case of contraventions of the legal stipulations.

#### **2. Seizure of offending goods:**

2.1 In terms of Section 110 of the Customs Act, 1962 an officer of Customs can seize any goods, if he has reason to believe that the goods are liable to confiscation under the said Act. If it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. The proper officer may also seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under the said Act. The person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts there from in the presence of an officer of customs.

2.2 The person from whom the goods are seized is issued Show Cause Notice, usually within 6 months, otherwise the goods shall be returned to the person from whose possession they were seized. However, Commissioner of Customs, on sufficient cause being shown can extend the time period for issue of Show Cause Notice, for a period not exceeding 6 months.

2.3 In case the seized goods are perishable or hazardous in nature or prone to depreciate in value over time or for reasons of constraints in space, Government can notify such goods for disposal before the conclusion of the proceedings viz.,

electronic goods, currency, liquors, P&P medicines, gold, silver, software, POL products, sandalwood, etc.

### **3. Confiscation of seized goods:**

3.1 The word 'confiscation' implies appropriation consequential to seizure. The essence and the concept of confiscation is that after confiscation, the property of the confiscated goods vests with the Central government.

3.2 The adjudicating authority makes the decision regarding confiscation of goods. The specific/different categories of violations under which the import or export goods are liable to confiscation, are enumerated in Section 111 and 113 of the Customs Act. In general, the goods that are attempted to be smuggled into or out of the country, by route other than land routes notified under Section 7 of the Customs Act, 1962 or is attempted to be cleared by way of mis-declaration in quantity, description or value etc. are liable to be confiscated. The imported or export goods are also liable to confiscation if there is an intention to evade Customs duty or to fraudulently avail the benefits available under various export promotion schemes, such as Drawback, DEPB, EOU etc. Also liable to confiscation are goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made or in the case of baggage with the declarations made under Section 77 of the Customs Act, 1962.

3.3 Smuggled goods may be confiscated even if its form has been changed. In case the smuggled goods are kept with other goods in such a manner that the goods cannot be separated then the whole of goods are liable to be confiscated as per Section 120 of the Customs Act, 1962.

### **4. Confiscation of conveyances/packages etc.:**

4.1 In addition to confiscation of goods, the conveyances, i.e., vessels, aircrafts or vehicles, or animal's used in the smuggling activities or in connection with exportation under claim of Drawback and unloaded without permission of the proper officer are liable to confiscation as per Section 115 of the Customs Act, 1962.

4.2 In case the goods liable to confiscation are imported in a package, the package and its other contents, if any, are also liable to confiscation as per Section 118 of the Customs Act, 1962.

4.3 The goods used for concealing smuggled goods are liable to confiscation as per Section 119 of the Customs Act, 1962.

4.4 There may be situations when the smuggled goods are sold off. In such a situation, the sale proceeds thereof are liable to confiscation as per Section 121 of the Customs Act, 1962.

### **5. Penalties in respect of improper importation of goods:**

5.1 In terms of Section 112 of the Customs Act, 1962 any person involved in acts of omission or commission, in relation to any goods which renders such goods liable

to confiscation under Section 111 of the said Act, or abets the same, or acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under the said Section 111, shall be liable to penalties as follows:

- (i) In the case of goods in respect of which any prohibition is in force under the Customs Act, 1962 or any other law for the time being in force, to a penalty not exceeding the value of the goods or Rs.5,000/-, whichever is the greater;
- (ii) In the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or Rs.5,000/-, whichever is the greater;
- (iii) In the case of goods in respect of which the value declared is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or Rs.5,000/-, whichever is the greater;
- (iv) In the case of goods falling both under (i) and (iii) above, to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or Rs.5,000/-, whichever is the highest; and
- (v) In the case of goods falling both under clauses (ii) and (iii) above, to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or Rs.5,000/-, whichever is the highest.

## **6. Penalties in respect of improper exportation of goods:**

6.1 In terms of Section 114 of the Customs act, 1962 the person involved in commission or omission, in relation to any goods, which renders such goods liable to confiscation under Section 113 of the said Act, or abets the same, shall be liable to penalties in different types of cases as follows:

- (i) In the case of goods in respect of which any prohibition is in force under Customs Act, 1962 or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under the said Act, whichever is the greater;
- (ii) In the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or Rs.5,000/-, whichever is the greater; and
- (iii) In the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under the Customs Act, 1962, whichever is greater.

## **7. Mandatory penalty in certain cases:**

7.1 Section 114A of the Customs Act, 1962 deals with imposition of mandatory penalty in certain cases. Thus, in cases of non-levy or short levy of duty or where the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or willful mis-

statement or suppression of facts, the person liable to pay the duty or interest, as the case may be, as determined under Section 28(2) of the Customs Act, 1962 shall also be liable to pay a penalty equal to the duty or interest so determined. However, where such duty or interest, as the case may be, and the interest payable thereon, is paid within 30 days from the date of the communication of the order, the amount of penalty to be paid shall be reduced to 25% of the duty or interest.

7.2 If the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate tribunal or, as the case may be, the Court, then the duty or interest as reduced or increased, as the case may be, shall be taken into account for the purpose of mandatory penalty under Section 114A of the Customs Act, 1962. Also, in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), The Appellate tribunal or, as the case may be, the Court, then, the benefit of reduced penalty shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon, and 25% of the consequential increase in penalty has been levied under the said Section 114A, no penalty shall be levied under Sections 112 or 114 of the said Act.

## **8. Other penalties:**

8.1 If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, then in terms of Section 114AA of the Customs Act, 1962 such person shall be liable to a penalty not exceeding five times the value of goods.

8.2 In terms of Section 116 of the Customs Act, 1962 if any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of the said Act or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and, if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant/Deputy Commissioner of Customs, the person-in-charge of the conveyance shall be liable to the following penalty:

- (i) In the case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of the Customs Act, 1962 to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported; and
- (ii) In the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported.

8.3 Any person who contravenes any provision of the Customs Act, 1962 or abets any such contravention or who fails to comply with any provision of this Act, with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding Rs.1 lakh.

## **9. Adjudication of confiscations and penalties:**

9.1 The Customs Act, 1962 enjoins quasi-judicial proceedings to be followed before any penalties are imposed and any confiscation action etc., initiated against any offending goods. Apart from issuing Show Cause Notice under Section 124 of the said Act, the persons concerned are required to be given opportunity of representation in writing and personal hearing in the matter. The adjudication authority is then required to pass final order taking due note of all evidences brought on record.

9.2 As per Section 122 of the Customs Act, 1962 the adjudication powers given to different officers are as follows:

- (a) Without limit, by a Commissioner of Customs or a Joint Commissioner of Customs;
- (b) Where the value of the goods liable to confiscation does not exceed Rs.2 lakhs by an Assistant/Deputy Commissioner of Customs; and
- (c) Where the value of the goods liable to confiscation does not exceed Rs.10,000/-, by a Gazetted Officer of Customs lower in rank than an Assistant/Deputy Commissioner of Customs.

9.3 Generally, 'mensrea' is not required to be proof for the imposition of penalty under the provisions of the Customs Act. The amount of penalty depends on the gravity of the offence and is to act as a deterrent for the future.

9.4 Whenever the goods confiscated are not prohibited goods, an option is to be given as per Section 125 of the Customs Act, 1962 to pay a fine known as 'redemption fine' of quantum as the adjudicating authority deems fit, in lieu of the confiscation. Prohibited goods shall be confiscated absolutely.

## **10. Arrest:**

10.1 To tackle the menace of smuggling and other serious economic offences including commercial frauds effectively, apart from penal action in Departmental adjudication, the Customs Act, 1962 provides for criminal prosecution in a Court of law. Prosecution action can also be taken for providing false documents/declaration to the Customs and for obstructing Customs officers in their work.

10.2 Any person guilty of serious offence under Customs Act, 1962 which is punishable under Section's 132, 133, 135, 135A and 136 of the said Act, can be arrested by a Customs officer authorised in this behalf, as provided under Section 104(1) of the said Act. Under the law, the person being arrested is entitled to be informed of the grounds for such arrest. Also, every arrested person has to be taken without unnecessary delay to the nearest Magistrate. The Customs Act, 1962 does not contain any provision regulating the manner in which an arrested person arrested is to be dealt with by the Magistrate, therefore, the provisions of the Criminal Procedure Code which regulate this aspect would be applicable. The power to



remand an arrested person to judicial custody vests in the Magistrate by virtue of Section 165 of the CrPC.

10.3 Though under Section 104 of the Customs Act, 1962 Commissioners of Customs are empowered to delegate to an officer of Customs by general or special order, powers of arrest of persons guilty of offence punishable under Section 135 of the said Act, extreme circumspection and care is to be exercised at senior level in exercising these powers and ordering arrests. Arrest should be resorted to only in cases of sufficient grave nature.

10.4 Persons involved in Customs related offence cases who may be liable to prosecution should not be arrested in routine unless exigencies of certain situations demand their immediate arrest. At times, prior to prosecution, arrests (s) may be necessary to ensure proper investigations and penal action against the persons (s), as otherwise the person involved in the offence may hamper investigations or disappear from the scene/area – such as in cases involving outright smuggling by Sea/Air/Land route.

10.5 In all commercial fraud cases in relation to regular imports or exports, before arresting any person(s) the Commissioner/ADG concerned should be approached by the Investigating Officer and the Commissioner/ADG should be personally satisfied that there are sufficient grounds warranting arrest of the person(s). These grounds/reasons should also be recorded by the concerned Commissioner/ADG in writing on file before the arrest is ordered and effected by the proper officer.

10.6 As far as possible, in other than commercial fraud cases warranting prosecution under Section 135 of the said Act, where arrest is considered necessary prior clearance and approval for arrest may be taken from Commissioners/ADGs. However, there could be situations, for example in outright smuggling cases in remote areas (and sometimes even in town seizure or international passenger clearance offence cases) where it may not be administratively possible to get prior permission of concerned Commissioner/ADG before effecting arrest. In such cases, the decision to arrest a person in accordance with the guidelines - taking due note of the offence against the person which has come to light in investigations carried out, should be taken at the minimum level of the concerned Assistant Commissioner/Assistant Director – recording the reasons in writing. Further, in such cases, the concerned Assistant Commissioner/Assistant Director or other higher officer (lower than Commissioner/ADG) who has ordered arrest, should immediately after arrest furnish a report incorporating reasons for arrest, to the jurisdictional Commissioner/ADG and his satisfaction for the arrest made should also be kept on record in writing.

[Refer Instruction F.No.394/71/97-Cus(AS), dated 22-6-1999]

## **11. Offences and prosecution - non-bailable or cognizable offences:**

11.1 The offences under the Customs Act, 1962 can be broadly categorized in two categories – non-bailable or cognizable offences and bailable or non-cognizable offences. Non-bailable or cognizable offences are those that are punishable with imprisonment for a term of more than 3 years. Further, Section 135(1) of the Customs Act, 1962 provides for imprisonment for a maximum term of 7 years and

with fine to any person who is, in the context of any goods which he knows or has reason to believe are liable to confiscation under Sections 111 or 113 of the said Act:

- (a) Involved, in relation to any goods, or
- (b) Anyway knowingly concerned in mis-declaration of value or
- (c) In any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under the said Act or any other law with respect to such goods or
- (d) Acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods or
- (e) Attempts to export any goods or
- (f) Fraudulently avails of or attempts to avail of drawback or any exemption from duty in connection with export of goods.

11.2 The said Section 135 provides the following punishments to the person held liable for offences mentioned therein:

- (i) Imprisonment for a term not exceeding 7 years (and in any case ordinarily not less than 1 year) in the case of an offence relating to:
  - (a) Any goods the market price of which exceeds Rs.1 crore; or
  - (b) The evasion or attempted evasion of duty exceeds Rs.30 lakhs; or
  - (c) Such categories of prohibited goods as the Central Government may, by notification, specify; or
  - (d) Fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to above, if the amount of drawback or exemption from duty exceeds Rs.30 lakhs.
- (ii) In any other case, with imprisonment for a term not exceeding 3 years.

11.3 If any person convicted under Section 135(1) [or Section 136(1) which applies to Custom Officers] of the Act is again convicted of an offence under the same sections, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to 7 years and with fine.

## **12. Offences and prosecution - bailable or non-cognizable offences:**

12.1 The offences punishable with imprisonment for a term of less than 3 years or only fine are covered in the category of bailable or non-cognizable offences. These offences are as follows:

- (a) Section 132 of the Customs Act 1962: If a person makes, signs or uses, or causes to be made, signed or used, any declaration,

statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, he shall be punishable with imprisonment for a term which may extend to 2 years, or with fine, or with both.

- (b) Section 133 of the Customs Act 1962: If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term, which extend to 2 years, or with fine, or with both.
- (c) Section 134 of the Customs Act 1962: If any person resists or refuses to allow a radiologist to screen or to take X-Ray picture of his body in accordance with an order made by a Magistrate under Section 103 of the said Act, or resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body, he shall be punishable with imprisonment for a term which may extend to 6 months, or with fine, or with both.
- (d) Section 135 of the Customs Act 1962: In all offences under the Customs Act other than those mentioned under 'non-bailable or cognizable offences' above, the punishment for imprisonment may extend to a term of three years, or with fine, or with both. However, under Section 135(1)(i) of the said Act, in the absence of special and adequate reasons to the contrary to be recorded in the judgment or the court, such imprisonment shall not be for less than 1 year.
- (e) Section 135A of the Customs Act 1962: If a person makes preparation to export any goods in contravention of the provisions of this Act, and from the circumstances of the case, it may be reasonable inferred that if not prevented by circumstances independent of his will, he is determined to carry out his intention to commit the offence, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

### **13. Offences by Customs officers:**

13.1 The officers of Customs also cannot escape serious action including prosecution action, if they are found abusing their powers or are shown to be colluding/conniving with tax evaders. In the following cases, prosecution proceeding against a Custom officer may be initiated under Section 136 of the Customs Act, 1962:

- (i) In cases of connivance in the act or any fraudulent export is effected or thing whereby any duty of customs leviable on any goods, or any prohibition for the time being in force under the said Act or any other law for the time being in force with respect to any goods is or may be evaded, a customs officer shall be punishable with imprisonment for a term which may extend to 3 years, or with fine, or with both.

- (ii) In cases of vexatious search, i.e., where any person is searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or documents secreted about his person, a Customs Officer may be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.1,000/-, or with both; or
- (iii) If a Customs Officer arrests any person without having reason to believe that he has been guilty of an offence punishable under Section 135 of the said Act, he may be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.1,000/-, or with both; or
- (iv) If a Customs Officer searches or authorizes any other officer of customs to search any place without having reason to believe that any goods, documents, or things of the nature referred to in Section 105 of the said Act are secreted in that place, he may be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.1,000/-, or with both.
- (v) If any officer of customs, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, discloses any particulars learnt by him in his official capacity in respect of any goods, he may be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.1,000/-, or with both.

#### **14. Presumption of culpable mental state:**

14.1 As per Section 138A of the Customs Act, 1962 in prosecution proceedings thereunder, the culpability (guilty conscience or mensrea) on the part of the accused person shall be presumed and it will be for the accused to prove that he had no deliberation with respect of alleged offence. When the presumption of culpable mental state is drawn under this provision, that presumption includes intention, motive, knowledge, belief as well as reason to believe. The presumption could be deemed as rebutted only if the proof is beyond reasonable doubt not merely when its existence is established by a preponderance of probability.

#### **15. Prosecution:**

15.1 No prosecution proceedings can be launched in a court of Law against any person under the Customs Act, 1962 and no cognizance of any offence under Sections 132, 133, 134, 135 and 135A of the said Act can be taken by any Court, except with the previous sanction of concerned Commissioner of Customs. Thus, based upon the results of investigations and evidence brought on record, Commissioners of Customs shall sanction prosecution only after being satisfied that there are sufficient reasons justifying the same. Criminal complaint is thereafter filed in appropriate Court of law and followed up with a view to get expeditious conviction.

## Chapter 31

### Appeal, Review and Settlement of Cases

#### 1. Introduction:

1.1 Like any other taxation statute, the Customs Act contains detailed provisions for judicial review, for resolution of disputes, by way of appeals and review. The various appellate authorities are Commissioner (Appeal), Revision Authority, Customs Excise and Service Tax Appellate Tribunal (CESTAT), High Court and the Supreme Court. Any appeal by the department, before any appellate authority, is filed only after following a procedure of review of orders as prescribed in the Customs Act. Beside the route of appeals, an alternative dispute resolution mechanism has also been provided by way of the settlement of cases by the Settlement Commission. These provisions are contained in Chapter XV and XIVA respectively of the Customs Act, 1962.

#### 2. Appeal to Commissioner (Appeals):

2.1 The power of adjudication of cases is bestowed on all officers of the rank of Superintendent/Appraiser and above as per specified monetary limits and other criterion. Thus, the first stage of appeal against any order passed by any officer below the rank of Commissioner of Customs lies with the Commissioner of Customs (Appeals) in terms of Section 128 (appeal by any person aggrieved by such order) or Section 129 (D)(4) [Departments appeal on review of order], as the case may be, of the Customs Act, 1962.

2.2 The procedure of filing of appeal by Department against the order/decision of officers below the rank of Commissioner is that every such adjudication order is reviewed, for legality and propriety of such order, by the Commissioner of Customs, under Section 129D(2) of the said Act. If on review, the adjudication order/decision is not found to be legal and proper, the Commissioner may direct any officer subordinate, by an order, to file an appeal to Commissioner (Appeal). The said order shall be made by the Commissioner within three months from the date of communication of adjudication order and in pursuance of such order, an appeal would be filed to Commissioner (Appeal) within a period of one month from the date of issue of said order by the Commissioner.

2.3 The limitation period for filing of appeal to Commissioner (Appeal) is sixty days from the date of communication of order being appealed against. However, Commissioner (Appeal) may allow a further period of thirty days for filing of appeal

provided he is satisfied that appellant was prevented by sufficient cause from presenting the appeal within the period of sixty days.

2.4 The procedure for filing of appeal before Commissioner (Appeal) is that the appeal is required to be filed in a Form No. CA-1 [under Section 128 of the said Act] and Form CA-2 [under Section 129D(4) of the said Act], as prescribed under rule 3 and rule 4, respectively, of the Customs (Appeals) Rules, 1982. Once (Appeal) is filed, The Commissioner (Appeal) shall give opportunity to the appellant to be heard. Commissioner (Appeal), on being shown sufficient cause, can give adjournment from hearing upto three times. The Commissioner (Appeal), may allow any grounds of appeal not specified in the appeal filed, provided he is satisfied that omission thereof was not willful or unreasonable. The Commissioner (Appeal), wherever possible, would decide the appeal within six month from the date of filing of appeal, by issue an order in writing, and shall communicate such order to the appellant, the adjudicating authority, the jurisdictional Chief Commissioner and Commissioner. The relevant provisions are contained in Sections 128 and 128A of the said Act and the Customs (Appeals) Rules, 1982.

### **3. Appeal to CESTAT:**

3.1 The Customs Excise and Service Tax Appellate Tribunal (CESTAT) has been constituted by the Central Government under Section 129(1) of the said Act.

3.2 In terms of Sections 129A(1) (appeal by any person aggrieved by such decision or order) or Section 129 (D)(4) [departments appeal on review of order of Commissioner of Customs, by the Committee of Chief Commissioner] of the said Act any person may file appeal to CESTA if aggrieved by:

- (a) any decision or order passed by a Commissioner of Customs as an adjudicating authority; or
- (b) an order passed by the Commissioner (Appeals).

3.3 Appeal cannot be filed before CESTAT if the matter relates to:

- (i) import or export of goods as baggage;
- (ii) import goods not landed or short landed. and
- (iii) Drawback.

3.4 The CESTAT may refuse to admit an appeal where the value of goods that have been confiscated or differential duty involved or the amount of fine and penalty involved does not exceed Rs.50,000/-, except the cases that involve any question relating to rate of duty of customs or determination of value of goods for the purpose of assessment.

3.5 The limitation period for filing of appeal to CESTAT is three months from the date of communication of order being appealed against. The Tribunal may admit appeal after the expiry of this period if it is satisfied that there was sufficient cause for not presenting it within the limitation period.

3.6 In accordance with Sections 129A, 129B and 129C of the Customs Act, 1962 read with the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982, the procedure for filing of appeal before CESTAT and disposal thereof is as follows.

- (i) The appeal is required to be filed in a Form No. CA 3 [Section 129A(1) of the said Act] and Form CA-5 [Section 129 D(4) of the said Act], prescribed under rule 6(1) and rule 7, respectively, of the Customs (Appeals) Rules, 1982.
- (ii) On receipt of notice of appeal the respondent may file a memorandum of cross objection within 45 days of receipt of notice [Section 129A(4) of the said Act]. The memorandum of cross examination is required to be filed in Form CA 4, prescribed under rule 6 (2) of the Customs (Appeals) Rules, 1982. In the memorandum of cross objections, the respondent can agitate against any part of the order appealed against and such cross objections are disposed of by the Tribunal as if it were an appeal. Rules 15 and 15A of the CESTAT (Procedure) Rules, 1982 allow filing of reply to such appeal within a month by the respondent, and rejoinder to the reply within a month by the appellant.
- (iii) The CESTAT shall give opportunity to the appellant to be heard, and on being shown sufficient cause, can give adjournment from hearing. In terms of proviso to Section 129B(1A) of the said Act, no such adjournment shall be granted more than three times to a party during hearing of the appeal. After hearing the case, CESTAT, pass an order confirming, annulling or modifying the order appealed against or remand the case back to the authority, which passed the order appealed against.
- (iv) The CESTAT may, within six months from the date of its order, amend its order to rectify any mistake apparent from the record that is brought to its notice by the appellant or the respondent.
- (v) A prescribed fee is required to be paid for filing of appeal or rectification of mistake (ROM) or for restoration of appeal. The fee prescribed at present is (i) Rs 1000, where amount of duty, interest and penalty is upto Rs 5 lakh; (ii) Rs 5000, where amount of duty, interest and penalty is between Rs 5 lakh to Rs 50 lakh; (iii) Rs 10000, where amount of duty, interest and penalty is more than Rs 50 lakh; (iv) Rs 500 for any other purposes, including ROM or restoration of appeal. However, no fee is payable in case of appeal or ROM or restoration of appeal application by department.

- (v) The CESTAT, shall decide the appeal, where order has been stayed, within a period of 180 days from the date of stay order, and would decide the appeal in other cases, wherever possible, within three years from the date of filing of appeal, by issue an order in writing, and shall communicate such order to the appellants to the Commissioner and the other party. In case where order of stay has been made by the CESTAT and appeal is not decided within 180 days, the stay order shall stand vacated.

#### **4. Review of orders passed by Commissioner and Commissioner (Appeals):**

4.1 The process of review of the order of Commissioner of Customs and Commissioner of Customs (Appeals), by the Department is prescribed in Section 129 D(1) and Section 129A(2) of the Customs Act, respectively.

4.2 The order of Commissioner of Customs is examined, for legality and propriety of such order, by the Committee of Chief Commissioners that consists of two Chief Commissioners, one of them being Jurisdictional Chief Commissioners. The Committee may direct, by an order, the Commissioner to file an appeal to the Tribunal. Such order has to be passed within three months from date of communication of decision/order being examined. An appeal would be filed by the Commissioner of Custom, within a period of one month from the date of order passed by the Committee. In case the Committee disagrees in its opinion, it shall make a reference to the Board, through Joint Secretary (Review), and the Board will examine such order, and if it is of the view that order is not legal and proper, will direct the concerned Commissioner to appeal to the Tribunal.

4.3 The Committee of Chief Commissioners is notified by the Board under Section 129A(1B) of the said Act vide Notification No. 39/2005-Cus.(NT), dated 13-5-2005.

4.4 The order of Commissioner (Appeal) is examined by a Committee of Commissioners, consisting of two members, one of them being the Commissioner, to whose jurisdiction the order concerns. In case the Committee of Commissioners differs in its opinion, it would make a reference to the jurisdictional Chief Commissioner for taking a view as regards legality and propriety of order under examination.

4.5 The Committee of Commissioners is notified by the Board under Section 129A(2) of the said Act vide Notification No. 40/2005-Cus.(NT), dated 13-5-2005.

#### **5 Revision Application:**

5.1 The appeals against the order of Commissioner or Commissioner (Appeals), in cases of baggage, Drawback and short-landing/ not landing of goods lies with the Revision Authority (instead of CESTAT) under Section 129DD of the Customs Act,



1962. However, the Revision Authority may refuse to admit an application differential duty, fine and penalty involved does not exceed Rs.5,000/-.

5.2 The limitation period for filing of an application to Revision Authority is three months from the date of communication of order being appealed against. The Revision Authority may allow a further period of three months if it is satisfied that there was sufficient cause for not presenting it within the limitation period.

5.3 In terms of Sections 129A and 129DD of the Customs Act, 1962 and the Customs (Appeals) Rules, 1982 the Revision Application is required to be filed in a Form No. CA 8, prescribed under Rules 8A and 8B of the said Rules. The fee prescribed at present is (i) Rs.200/-, where amount of duty, interest and penalty is upto Rs.1 lakh; (ii) Rs.1,000/-, where amount of duty, interest and penalty is more than Rs.1 lakh. However, no fee is to be paid in case Revision Application is filed by the Department.

## **6. Pre-deposit of duty demanded or penalty levied:**

6.1 Section 129E of the Customs Act, 1962 requires that a person desirous of appealing against a decision or order before Commissioner (Appeals) or the Appellate Tribunal shall, pending the appeal, deposit with the adjudicating authority the duty demanded or the penalty levied. In case an appellant is not in a position to pre-deposit the entire amount of duty demanded or penalty levied, the appellant should file the stay application for waiver of pre-deposit. The Commissioner (Appeals) and the Appellate Tribunal are empowered to waive pre-deposit, either fully or partially, if the appellant is able to show that pre-deposit of duty or penalty levied would cause undue hardship to such person.

6.2 Commissioner (Appeals) is required, wherever it is possible to do so, to decide a stay application within 30 days from the date of its filing.

6.3 Section 19EE prescribes that if the pre-deposit made by the party under Section 129E is required to be refunded consequent to the order of the Commissioner (Appeal) or CESTAT, and such amount is not refunded within three months from the date of communication of order, unless the order of appellate authority is stayed by the higher appellate authority, an interest at the rate specified in Section 27A shall be paid to the after expiry of three month from the date of order. Presently, the interest rate is 6% per annum.

## **7. Appeal to High Court:**

7.1 Against any order passed in appeal by the CESTAT, on or after 1.7.2003, which is not relating to determination of rate of duty or value of goods for the purposes of assessment, appeal lies to the High Court. However, where the issue involved relates to determination of rate of duty or value for the purpose of assessment, appeal lies to Supreme Court.

7.2 The limitation period for filing of appeal to High Court one hundred and eighty days from the date when the order being appealed against was received by the Commissioner of Customs. The High Court may admit appeal after the expiry of this period if it is satisfied that there was sufficient cause for not presenting it within the limitation period.

7.3 If appeal is filed by party, a fee of Rs 200 is required to be paid.

7.4 Where High Court is satisfied that question of law is involved, it shall formulate the question of law. The High Court may hear any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. High Court may determine any issue that has not been determined by the CESTAT or has been wrongly determined.

7.5 The Code of Civil procedure, 1908 applies to the Appeal so filed to the High Court except as otherwise provided in the said Act.

7.6 In respect of order passed by CESTAT prior to 1-7-2003, Section 130A of the Customs Act, 1962 provides that within 180 days of receipt of order of Tribunal passed under Section 129B of the said Act, a person could have filed an application if the order of the Tribunal does not relate to determination of any question having relation to the rate of duty of Customs or the valuation of goods for purposes of assessment.

[Refer Circular No. 935/25/2010-CX, dated 21-9-2010]

## **8. Appeal to Supreme Court:**

8.1 Under Section 130E of the Customs Act, 1962 appeal lies to the Supreme Court against:

- (i) Any judgment of a High Court delivered on an appeal under Section 130 or a reference made by CESTAT, in respect of order passed by it before 1-7-2003 of the said Act or a reference application filed by Commissioner under Section 130A, in respect of order of CESTAT received by him before 1.7.2003, provided the High Court certifies, on its own motion or on an oral application made by the party aggrieved, it to be a fit case for appeal to Supreme Court; and
- (ii) Civil Appeal against any order passed by the CESTAT relating, among other things, to the determination of any question having a relation to the rate of duty of Customs or to the value of goods for purposes of assessment can be made to the Supreme Court.

8.2 The time limit for filing civil appeal before the Supreme Court is 60 days from the date of receipt of order.

8.3 Normally no application is made by the aggrieved party before the High Court, to certify that case is fit for filing of appeal before the Supreme Court. Therefore in such cases, the aggrieved party can agitate the order / judgment of the High Court before the Supreme Court by way of filing a Special Leave Petition under Article 136 of the Constitution of India. The limitation for filing of SLP is 90 days from the date of the High Court's order. The time taken by the Court from the date of filing of application for certified copy of the order till the copy is ready for delivery is excluded from the computation of the period of limitation.

8.4 The proposal for filing of SLP and Civil Appeal are examined and processed in the Board, on receipt of proposals from field formations duly approved by the Chief Commissioner.

[Refer Circular No. 935/25/2010-CX, dated 21-9-2010]

## **9. Disputes with PSUs/other Government Departments:**

9.1 In cases where disputes arise between two Central Government Departments or a Government Department and Public Sector Undertaking, a clearance is required to be obtained from the Committee on Disputes, for filing appeals before CESTAT or Courts. While there is no bar in lodgment of an appeal so as to save time and adhere to limitation, obtaining clearance of the Committee on Disputes is necessary for pursuing the appeal and for obtaining decision from CESTAT and Courts in such cases.

[Refer Circulars No. 27/27/94-CX, dated 2-3-1994; No.156/67/95-CX, dated 17-11-1995; No.515/11/2000-CX, dated 18-2-2000; and F.No.578/15/2001-CX, dated 20-6-2001]

## **10. Monetary limits for filing appeals to CESTAT/High Court and Supreme Court:**

10.1 In accordance with the National Litigation Policy that is aimed at reducing Government litigation and also expedite the dispute resolution process, so that Government becomes an "efficient" and "responsible" litigant, in revenue matters appeal shall not be filed if the amount involved is not significant. Hence, appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs.1 lakh and below. Similarly in the case of High Courts appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs.2 lakhs and below. As regards Supreme Court, appeals should not be filed in cases where the duty involved is Rs 5 Lakh or less. However, adverse judgments relating to the following should be contested irrespective of the amount involved:

- (i) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- (ii) Where notification/instruction/order or Circular is held illegal or ultra vires.

- (iii) Where audit objection on the issue involved in a case has been accepted by the Department.

[Refer Instruction DO F No. 390/170/92-JC, dated 13-1-1993]

10.2 In such cases wherever it is decided not to file appeal, such cases shall not have any precedent value. In such cases, it should specifically be record that *“even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit prescribed by the Board.”* Further, in such cases, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same assessee or in case of any other assessees, if the amount involved exceeds the monetary limits.

[Refer Instruction F No. 390/170/92-JC, dated 13-1-1993; and F.No. 390/Misc./163/2010-JC, dated 20-10-2010]

## **11. Settlement Commission:**

11.1 An alternative channel for resolution of dispute for assessees without prolonged litigation in adjudication/appeals/revisions etc. is the Customs & Central Excise Settlement Commission. Presently, four Benches of the Settlement Commission function at Delhi, Mumbai, Chennai and Kolkata. Provisions relating to Settlement Commission are contained in Sections 127A to 127N of the Customs Act, 1962

11.2 In terms of Section 127B of the Customs Act, 1962, any importer, exporter or any other person, may file an application before the Settlement Commission for settlement, before adjudication of case. However, the Settlement Commission cannot entertain the cases which are pending with the Appellate Tribunal or in a Court. Similarly, the matters relating to classification cannot be raised before the Commission. It is also specified that no application can be made unless the appellant has filed a Bill of Entry, or a Shipping Bill etc., or a Show Cause Notice issued by Proper Officer and the additional amount of duty accepted by the applicant in his application exceeds Rs.3 lakhs. Further, no application shall be made for the interpretation in relation to goods to which Section 123 of the said Act applies or to goods in relation to which any offence under the Narcotics and Psychotropic Substances Act, 1985 has been committed.

11.3 The procedure prescribed for the Settlement Commissions essentially requires examination of the application for its acceptability, payment of additional duty admitted by the applicant, calling and examination of records from jurisdictional Commissioner of Customs, getting further enquiries/investigations caused from Commissioner of Customs or Commissioner (Investigation) attached to Settlement Commission, giving opportunity for detailed submission to the applicant and passing order by the Commission. Where any duty or interest or fine or penalty is not paid

within thirty days of receipt of the order of Settlement Commission, such amount is recoverable in accordance with the provision of Section 142 of the Customs Act.

11.4 Every order passed by the Settlement Commission under Section 127J of the Customs Act, 1962 is conclusive in respect of the matters stated therein. The Settlement Commission can consider immunity from prosecution proceedings if the applicant cooperates with the Commission in the proceedings before it and makes full and true disclosure of his duty liability. Even grant of immunity, whole or part, from imposition of penalty, fine and interest may also be considered. Further Settlement Commission has power to reopen completed proceeding, if the Settlement Commission is of the opinion that it is necessary to re-open the case for proper disposal of case.

[Refer Circulars No. 935/25/2010-CX, dated 21-9-2010; No. 27/27/94-CX, dated 2-3-1994; No.156/67/95-CX, dated 17-11-1995; No.515/11/2000-CX, dated 18-2-2000; and No.578/15/2001-CX, dated 20-6-2001, and Instructions F.No. 390/Misc./163/2010-JC, dated 20-10-2010; F.No.390/170/92-JC, dated 13-1-1993]

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## Chapter 32

### Grievance Redressal

#### 1. Introduction:

1.1 The Citizen's Charter of the Department envisions that the Customs & Central Excise officers shall carry out their assigned tasks with integrity and judiciousness; courtesy and understanding; objectivity and transparency; promptness and efficiency. The officers are also committed to providing every possible assistance to the public and trade in implementation of the Customs policies and procedures. The Department has also taken numerous other measures to ensure that complaint(s)/grievance(s) are minimized and where received, these are attended to promptly.

1.2 In order to take care of the grievance(s)/complaint(s) the Department has put in place a grievance redressal mechanism for both cargo clearance and passenger clearance in the field formations of Customs.

#### 2. Grievance Redressal related to cargo clearance:

2.1 The clearance of cargo at ports, air cargo complexes, ICDs and CFSs involves interaction of the trade with the Customs officials, which often results in complaints of harassment, corruption, and delays. Thus, to redress these grievances the focus has been to simplify procedures, enhance transparency, sensitize the Departmental officers to their responsibilities, and expand use of EDI in Customs clearance procedures. Some specific measures for facilitation and handling complaints/grievances of trade and industry are as follows:

(a) **Management Information System (MIS):** A major area of concern for the importers, exporters, Custom House Agents is in respect of getting information regarding clearance of their consignments, which has been significantly resolved with the introduction of EDI (Electronic Data Interchange) at all major Custom Houses. In all major Custom Houses, a "Tele Enquiry System" allows exporters, importers etc. to dial the assigned numbers and ascertain the status of the Bills of Entry/Shipping Bills or Drawback claim. This system can also be used on fax mode. Further, Supervisory officers of Customs can monitor the delays in clearance at any stage. The system also generates a daily report of all pending Bills of Entry, Shipping Bills, Drawback claims along with the date of receipt and the level at which the document is pending. For this purpose the System Manager looks after all EDI related problems and holds regular meetings with the Remote EDI (RES) users, CHAs representatives, NIC, CMC and other agencies that support the EDI system.

(b) **Accessibility of Senior Officers:** The Chief Commissioner/Commissioners of Customs earmark time on all working days during which any person having any grievances is free to meet the officer without prior appointment. These meetings ensure timely and prompt remedial measures.

(c) **Public Grievance officer:** Each Commissionerate has a designated Public Grievance Officer and Public Notices have been issued giving the names and telephone numbers of these officers. These Public Grievance Officer may be approached by the trade and public if their grievance is not being redressed by the dealing officer or his supervisor.

(d) **Public Grievance Committee (PGC):** A PGC is constituted in each Customs Commissionerate, consisting of representatives of trade and industry, Custom House Agents, representatives of Custodians, such as AAI, CONCOR, Banks, Export Promotion Agencies, such as the Garments Exporters Association, Handicraft Export Association, and Chambers of Commerce etc. The PGC meets once in a month to address grievances relating to Customs functioning. In case grievances relate to other agencies such as the Wildlife, NIC or CMC, their representatives are also invited for these meetings.

(e) **Watch Dog Committee:** A Watchdog Committee has been constituted under the chairmanship of the Chief Commissioner of Customs, which meets once in two months. Leading association of trade and industry and other agencies that interact with Customs are included in this Committee alongwith the senior officers of Customs to ensure meaningful dialogue. This Committee takes note of various procedural delays or problems in general being faced in Customs clearance of export/import cargo or grant of various incentives. Feedback from trade and industry is used for necessary review of procedures and taking measures to remove the difficulties of importers/exporters.

### **3. Grievance redressal and facilitation measures for passengers:**

3.1 At international airports more than 90% of the passengers that have nothing to declare walk through the Green Channel without interaction with Customs. Even otherwise, the Air Customs Officers have been sensitized to show due courtesy and exemplary conduct towards all passengers. However, in case any passenger still has a grievance there are a number of illuminated boards installed by Customs in the arrival/departure halls and in the immigration area advising them to approach the PRO (Customs) for help. Senior officers of the rank of Assistant/Deputy Commissioners of Customs are also available round the clock and can be directly approached by passengers for redressal of their grievances.

3.2 The Notices displayed prominently at the airports also invite the public to lodge any complaint been with the Commissioner of Customs or the CVC.

3.3 An Airport Facilitation Committee has been constituted to look into the complaints of the passengers at the international airports. This Committee includes representatives of various agencies working at the airport like IAAI, Customs, Immigration, and Police etc. and meets once a month.

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