

# Central Board of Excise & Customs

## Customs Manual 2015

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## Chapter 1

### Overview of Customs Functions

#### 1. Introduction:

- 1.1 Central Board of Excise and Customs (CBEC or the Board), Department of Revenue, Ministry of Finance, Government of India deals with the formulation of policy concerning levy and collection of Customs and Central Excise duties and 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, Service Tax, Central Excise & Customs Commissionerates and the Central Revenues Control Laboratory.
- 1.2 The important Customs related functions include the following:
- (a) Collection of Customs duties on imports and exports as per the Customs Act, 1962 and the 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 Customs functions cover substantial areas of activities involving international passengers, general public, importers, exporters, traders, custodians, manufacturers, carriers, port and airport authorities, postal authorities and various other Government and semi-Government agencies, banks etc.
- 1.4 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, the 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 The predominant mode of levy of duties is on ad-valorem basis i.e., with reference to value. For this purpose the value of the imported goods is required to be determined as per 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 globally. Likewise, the value of export goods is required 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. Ease of Doing Business

3.1 Board has initiated numerous measures to facilitate the Customs clearance process and reduce transaction costs. The objective is to make the Customs clearance process in India a world class experience by reducing dwell time of cargo, which in turn improves the competitiveness of businesses. Some of these measures are presently works in progress and their present importance is in the fact that these highlight the approach of the Board towards ensuring the ease of doing business.

3.2 **Single Window:** An Indian Customs Single Window Project has begun with the establishment of an appropriate administrative structure in the form of an inter-ministerial Steering Group that is chaired by Member (Customs), CBEC, a Project Management Group in CBEC and Project Management Units in the Ministries. As an interim measure, the Board has implemented an electronic online message exchange between the Food Safety and Standards Authority of India (FSSAI) and the Department of Plant Protection, Quarantine and Storage (PQIS) with the Customs with effect from 1-4-2015 at JNPT (NhavaSheva), ICD, Tughlakabad and ICD, Patparganj. Under this online message exchange system for import goods there will be seamless online exchange in real time of the Customs Bill of Entry (Import declaration) with these agencies and Release Order (RO) from both the agencies will be received by the Customs in electronic message format. The salient features of this online message exchange system are as under:

- (i) Indian Customs EDI (ICES) would transmit “BE message” to the FSSAI and PQIS on completion of assessment of the relevant Bills of Entry (Bs/E) by the Customs ICES application after entry-inward of the consignment. The BE message would be provided to FSSAI/PQIS for all Bs/E falling under the identified Custom Tariff Heads (CTHs), as per list made available by the respective agencies.
- (ii) The Customs officers would be able to access the details of the Bs/E referred by the ICES to FSSAI/PQIS.
- (iii) The importers would track the status of the Bs/E on ICEGATE (<https://www.icegate.gov.in>).
- (iv) The receipt of the Bs/E message shall be acknowledged by the FSSAI/PQIS through a receipt message to the ICES.
- (v) On processing of the Bs/E message by the FSSAI/PQIS, these agencies would electronically transmit an RO, concerning each item of the Bs/E. From the Customs side, Out of Charge (OOC) will not be allowed in the system till the RO is received from the agency concerned for all the items. There are 6 types of ROs which may be provided by the FSSAI/PQIS to the ICES, as follows:
  - (a) Release – goods can be released by the Customs.
  - (b) Destruction – goods to be destructed by the Customs.
  - (c) Deportation – goods to be exported back to the Country of Origin.

- (d) No Objection Certificate (NOC)– goods can be released by the Customs.
  - (e) NCC (Non-compliance Certificate) – non-rectifiable defects observed in the goods.
  - (f) Product Out of scope – goods are out of scope for FSSAI/PQIS.
- (vi) In case, the Release Order falls under types (b), (c) and (e) above, the OOC would not be allowed in the ICES. Details of such consignments will be entered by the Customs Assessing Officer in the closure of B/E menu after all processes are complete.
  - (vii) On receipt of RO online, the Customs ICES shall integrate the data in the ICES database, which shall be available to the Customs officers concerned.
  - (viii) The other formalities under the Customs Act, 1962 such as duty payment, goods registration, examination would continue during the time interval between transmission of Bs/E message from ICES to the receipt of RO message from FSSAI/PQIS. During this period the samples of the goods under consideration may also be taken for testing purposes.
  - (ix) In terms of Board's Circular No.3/2011-Cus., dated 6-1-2011 import consignments that have been tested on previous five consecutive occasions and found in order may not be referred to FSSAI.
  - (x) Since, the electronically received RO in regard to Bs/E referred to FSSAI/PQIS shall be accepted by the Customs for clearance of the imported foods items/plant materials, the Customs shall not insist on a physical copy of the RO from these agencies.

[Refer Circular No.9/ 2015–Cus., dated 13-4-2015]

3.3 **CCFC:** Board has set up a Customs Clearance Facilitation Committee (CCFC) at every major Customs seaport and airport, which is chaired by the Chief Commissioner of Customs/Commissioner of Customs concerned. Its membership includes the senior-most functionary of the departments/agencies/stakeholder at the particular seaport/airport namely, (i) Food Safety Standards Authority of India/Port Health Officer (PHO), (ii) Plant Quarantine Authorities, (iii) Animal Quarantine Authorities, (iv) Drug Controller of India (CDSO), (v) Textile Committee, (vi) Port Trust / Airport Authority of India / Custodians, (vii) Wild Life Authorities, (viii) Railways/CONCOR, (ix) Pollution Control Board and (x) any other Department / Agency / stakeholder to be co-opted on need basis. The CCFC is required to meet once a week or more frequently, if needed, as per the following mandate:

- (i) Ensuring and monitoring expeditious clearance of imported and export goods in accordance with the timeline specified by the parent ministry/Department concerned;
- (ii) Identifying and resolving bottlenecks, if any, in the clearance procedure of imported and export goods;
- (iii) Initiating Time Release Studies for improvement in the clearance time of imported and export goods;
- (iv) Having internal consultations to speed up the clearance process of imported and export goods and recommending best practices thereto for consideration of CBEC / Departments / Agencies concerned; and
- (v) Resolving grievances of members of the trade and industry in regard to clearance process of imported and export goods.

[Refer Circular No 13/2015–Cus., dated 13-4-2015]

3.4 **IGM / SMTP:** Taking into account the requirement of Customs as well the fact that an electronic version of IGM is already available, Board has decided that the number of hard copies of IGM to be submitted by shipping lines / steamer agents at a Customs House shall be restricted to 2 (two) only. Further, the steamer agent has the option to (a) give a continuity bond and (b) merge the guarantee with the continuity bond, which would reduce the number of required documents to 1 (one) only and the periodicity (of submission) would also get reduced drastically. Also, it is decided that only **1 (one)** copy of SMTP would be sufficient for the Customs at ICDs. Finally, no separate permission is

required from jurisdictional Customs in case of change of mode of transshipment under the Goods Imported (Conditions of Transshipment) Regulations, 1995. However, the carrier is required to intimate the change to the jurisdictional Commissioner of Customs who will ensure the bond covers both modes of transport.

[Refer Circular No. 2/2015–Cus.. dated 15-1-2015]

- 3.5 **Reduction of documents:** The Board has decided that in case an importer/exporter submits a commercial invoice cum packing list that contain all necessary data fields / information otherwise contained separately in these document, a separate packing list would not be insisted upon by Customs. However, the option to do so is with the importer/exporter. As a result, the documents ordinarily required by the Customs stand reduced to only 3 viz. Bill of Entry or Shipping Bill, commercial invoice cum packing list and Bill of Lading or Airway Bill.

[Refer Circular No 1/2015–Cus., dated 12-1-2015]

- 3.6 **Dispensing with SDF:** The Board has issued Notification No 46/2015-Cus(N.T.), dated 18.05.2015 to incorporate the following declaration in lieu of SDF form in the Shipping Bill.

*“I/We undertake to abide by provisions of Foreign Exchange Management Act, 1999, as amended from time to time, including realization / repatriation of foreign exchange to / from India.”*

Thus, submission of SDF form along with Shipping Bill has been dispensed with provided the said declaration is furnished in the Shipping Bill.

[Refer Circular No.15/2015–Cus., dated 18-5-2015]

- 3.7 **Digital Signature:** The Board has decided that with effect from 1-4-2015 importers, exporters, customs brokers, shipping lines, airlines or their agents shall have the facility to use Digital Signature Certificate for filing Customs process documents viz. Bills of Entry, Shipping Bills, IGM (General Declaration and Cargo Declaration), EGM (General Declaration), CGM through Remote EDI System (RES). For the present, the facility of using digital signatures is optional for all users but the ACP importers are required to mandatorily file Bills of Entry with digital signature w.e.f. 1-5-2015.

[Refer Circular No.10/2015–Cus., dated 31-3-2015]

- 3.8 **Re-export permission:** With a view to expedite decision-making in respect of re-export of when the said goods are destined elsewhere but which are inadvertently imported at a particular Customs station, the Board has decided that the permission for re-export may be granted on merit by the officer concerned as per the adjudication powers as per Section 122 of the Customs Act, 1962.

[Refer Circulars No.24/2011-Cus., dated 31-5-2011 and No.4/2015–Cus.. dated 20-1-2015]

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

- 4.1 The Customs Act, 1962 is the basic statute which regulates the 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 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.

- 4.2 In terms of 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 unloaded 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. Thus, various airports, ports, ICDs and LCSs have been notified across the country and also routes have been specified for carrying out trade with neighbouring countries like Nepal.

- 4.3 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 and also to specify the limits of the Customs area where the imported goods or the export goods are ordinarily to be kept before clearance by Customs authorities.
- 4.4 Essentially all goods brought into the country or meant for export must pass through authorized points, be reported to Customs, and the importers/exporters must fulfil 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 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. Customs also detect legal infringements and foil any attempts of smuggling or commercial frauds by unscrupulous parties.

## **5. Role of Custodians:**

- 5.1 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 in the interiors of the country has also been provided by opening various ICDs, which are actually dry ports and here too the goods remain with the appointed custodian till these are cleared by the Customs. In addition to custodians 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 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 Customs. Moreover, since the Customs Act, 1962 obliges the custodians to ensure safe custody of the imported goods till delivery, in case these goods are pilfered while in custody, the custodian is required to pay duty on such goods.
- 5.2 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 of direct entry of private sector in this area. Also, new ICDs are being opened at various places in the interior of the country 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.
- 5.3 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 landed at some ports like Nhava Sheva is also transhipped to interior ICDs for final clearance by importers at their door steps. Security arrangements ensure 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.
- 5.4 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

## **6. Obligations of carriers:**

- 6.1 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 an 'Import General Manifest' (IGM) prior to arrival of the vessel/aircraft at the Customs station. In the case of imports through Land Customs 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 information about cargo being brought by a vessel for unloading at any port, provisions is 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 after arrival of the vessel.
- 6.2 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 Officers of Customs. The law prohibits unloading of any goods at a Customs station, which are not mentioned in the IGM/import report. Similarly, there are restrictions on loading for export such that no vessel/aircraft can begin loading goods for export unless intimation is given to Customs and its permission for loading obtained - what is also called 'Entry Outward' of the vessel. Loading of cargo on vessels, aircrafts etc. is 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, any other formalities enjoined by the law, and authorization for exports is duly given by the proper officer as a part of Customs clearance formalities.
- 6.3 The person in charge of the vessel/aircraft is required to furnish details of all the goods loaded on a vessel/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 'Export Report'. The EGM/Export Report is to be furnished before the vessel/aircraft/vehicle departs and is essentially taken as the proof of shipment/export.

## **7. Customs preventive control:**

- 7.1 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.
- 7.2 The Preventive Officers of Customs 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 - known as rummaging - is also undertaken on selective basis taking due note of the past history of the vessels, the port/airport from which these are arriving, the intelligence report etc.
- 7.3 The Preventive Officers of 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 un-manifested cargo etc.

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

- 8.1 Before any imported goods 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 Customs Brokers, who are trained and experienced in Customs clearance work and are licensed by Customs for such work in terms of the Customs Broker Licensing Regulations, 2013.
- 8.2 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 the careful scrutiny of the Bill of Entry and related particulars / information 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.
- 8.3 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/Air 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.
- 8.4 At times, for determining the duty liability and permissibility of import it may become necessary to examine the goods. Such goods are 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.
- 8.5 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 provisional release is not considered advisable, the final decision may be taken after results of enquiries etc. are known and adjudication proceedings completed, where necessary.
- 8.6 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 Customs 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.

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

- 9.1 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 Customs Stations without reporting or presenting the goods to customs. Similar attempts are made to unauthorizedly take goods out of the country. 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.
- 9.2 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.).
- 9.3 Whereas the Customs Act, 1962 provides for deterrent penal provisions for violations, due process of law has to be followed before action is taken against 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, penalties etc., are adjudged by giving the persons concerned due notice (or Show Cause Notice) of contemplated action against including the gist of the charges and their basis, and providing opportunity for representation as well as personal hearing.
- 9.4 In grave offence cases, the Customs Act, 1962 provides for prosecution with imprisonment upto maximum of 7 years. This involves criminal proceedings in a Court of law, after sanction for prosecution is given by the competent Customs officer.

## **10. Appellate remedies:**

- 10.1 Any concerned person aggrieved with the departmental adjudication is given the right to appeal against the said 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 classification or valuation can be appealed even before the Supreme Court.

## **11. Passenger processing:**

- 11.1 All incoming international passengers after immigration clearance have to pass through Customs who ensure their facilitation and speedy clearance. However, at 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.

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

- 12.1 Customs is charged with coordination with Postal authorities for giving Customs clearances after appropriate checks on selective basis of various goods coming as post parcels, etc. Customs also 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 post are within the value limits prescribed for 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 addressees.
- 12.2 Imports/exports through couriers are governed by the Courier Imports and Exports (Clearance) Regulations, 1998 and the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. These Regulations facilitate such goods in terms of quick Customs clearance, after discharge of duties, if any, 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.

**13. Citizen Charter:**

- 13.1 Customs has committed in its Citizen Charter to provide to trade and industry time bound and speedy cargo clearance facility, quick redressal of grievances, and inculcating in its officers' a sense of service with courtesy, understanding, integrity, objectivity and transparency. Customs is committed to render professional, 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 goods.

#### 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, Inland Container Depots or Air Freight Stations. 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 without approval of the Board, except in 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), in electronic form, 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, 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 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 the same 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 having operational Indian Customs EDI (ICES) system, the IGM shall be filed through electronic mode. At other i.e. non-EDI Customs stations, 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 days, the IGM shall be filed at least 48 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 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 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 transhipped 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 placed all amendments in two broad categories - Major and Minor:

(a) Major Amendments:

- (i) Addition of extra entries (Line numbers in the IGM).
- (ii) Amendment in the quantity of goods already declared.
- (iii) Changing the date of the Bill of Lading mentioned in the IGM.
- (iv) Changing the Importer's/consignee name.
- (v) Commodity description.
- (vi) Conversion of general description of goods from cargo to un-accompanied baggage and vice-versa.

(b) Minor Amendments:

- (i) Changing the Importers address only.
- (ii) Correcting any spelling mistakes.
- (iii) Conversion from one unit of measurement to another.
- (iv) Change in the container number (only alphabetic prefix and last 10th test numerical).
- (v) Change/addition of marks and numbers.
- (vi) Conversion from local to TP/SMTP and vice-versa.
- (vii) Port of Loading.
- (viii) Size of containers (provided there is no change in weight of consignment).
- (ix) Port of discharge;
- (x) Type of packages.
- (xi) Number of packages (provided there is no change in the weight).
- (xii) Seal number.

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 Sections 111(f) and 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 exclusion or amendments of items for which Bills of Entry have been noted will be dealt with by the Manifest Clearance Section if made within two months of 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 / retention cargo. Separate declarations are 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 alongwith the following declarations:
- (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, including the details of the Master Airway Bills and the House Airway Bills in the case of consol cargo. The airlines are also required 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 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 the vessel without payment of 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 stores for immediate use may be left unsealed while excessive 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 unloading of any imported goods until an order is given by the proper officer granting Entry Inwards to such vessel. Normally, Entry Inwards is granted only after the IGM is 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 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 specified in the IGM/Import Report for being unloaded at that Customs station and such unloading shall only be at places provided therefor. Further, imported goods shall not be unloaded except under the supervision of the proper officer. Similarly, for unloading imported goods on a Sunday or on any holiday, prior notice shall be given and prescribed fees paid.
- 12.4 Board has clarified that unloading of liquid bulk cargo from the ship to the bonded storage tanks through pipe lines is allowed under the provisions of Section 33 of Customs Act, 1962 subject to the conditions that the premises where the goods are received through pipe lines is a bonded warehouse under Section 58 or 59 of Customs Act, 1962; permission of the proper officer is obtained for unloading prior to discharge of such cargo; and other requirements under the Customs Act, 1962 are fulfilled. If the bonded tanks are located outside the jurisdiction of the Commissioner in charge of port permission may be granted subject to concurrence of Commissioner in whose jurisdiction the bonded tanks are located, and other safeguards as necessary.

[Refer Instruction F.No.473/19/2009-LC, dated 9-5-2011]

**13. Other liabilities of carriers:**

- 13.1 The person in charge of vessel/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 provides for confiscation of vessel / conveyance in 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 an 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 The imported goods before clearance for home consumption or for warehousing are required to comply with prescribed Customs clearance formalities. This includes presentation of a Bill of Entry containing details such as description of goods, value, quantity, exemption notification, Customs Tariff Heading etc. This Bill of Entry is subject to verification by the proper officer of Customs (under self assessment scheme) and may be reassessed if declarations are found to be incorrect. Normally import declarations made are scrutinized without prior examination of goods with reference to documents made available and other information about the value / classification etc. It is at the time of clearance of goods that these are examined by the Customs to confirm the nature of goods, valuation and other aspects of the declarations. In case no discrepancies are observed at the time of examination of goods 'Out of Charge' order is issued and thereafter the goods can be cleared. Similarly Customs clearance formalities for goods meant for export have to be fulfilled by presenting a Shipping Bill and other related documents. These documents are verified for correctness of assessment and after examination of the goods, if warranted, 'Let Export Order' is given on the Shipping Bill.

#### 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. For this purpose a simple procedure 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 (DGFT) 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
  - (e) Importers/Customs Broker's declaration
  - (f) Letter of Credit, wherever necessary
  - (g) Insurance document
  - (h) Import license, where necessary
  - (i) Industrial License, if required
  - (j) Test report, if necessary
  - (k) Catalogue, technical write up, literature for machineries, spares or chemicals, as applicable
  - (l) Separately split up value of spares, components, machinery
  - (m) 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-reputability of the declaration. A checklist is generated for verification of data by the importer/ Customs Broker. 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/ Customs Broker. No original documents are taken at this stage. Original documents are taken at the time of examination. The importer/Customs Broker 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-a-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. Self-assessment of imported and export goods:**

3.1 Vide Finance Act, 2011, 'Self-Assessment' has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form, as per Section 46 or 50, respectively. Thus, under self-assessment, it is

the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill.

3.2 Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a Bill of Entry electronically to the proper officer except for the cases where it is not feasible to make such entry electronically. While this is not a new requirement, it provides a legal basis for electronic filing. Where it is not feasible to file these documents in the System, the concerned Commissioner can allow filing of Bill of Entry in manual mode by the importer. These Bills of Entry would continue to be regulated by Bill of Entry (Forms) Regulations, 1976. However, this facility should not be allowed in routine and the Commissioner should ensure that manual filing of Bill of Entry is allowed only in genuine and deserving cases. Similarly, on export side also, Section 50 of the Customs Act, 1962 makes it obligatory for exporters to make entry of export goods by presenting a Shipping Bill electronically to the proper officer except for the cases where it is not found feasible to make such entry electronically. In these cases the Commissioner may allow manual filing of Shipping Bill. Again, this authority should be exercised cautiously and only in genuine cases.

3.3 The declaration filed by the importer or exporter may be verified by the proper officer when so interdicted by the Risk Management Systems (RMS). In rare cases, such interdiction may also be made with the approval of the Commissioner or an officer duly authorized by him, not below the rank of Additional Commissioner of Customs, and this will necessarily be done after making a record in the EDI system. On account of interdictions, Bills of Entry may either be taken up for action of review of assessment or for examination of the imported goods or both. If the self-assessment is found incorrect, the duty may be reassessed. In cases where there is no interdiction, there will be no cause for the declaration filed by the importer to be taken up for verification, and such Bills of Entry will be straightaway facilitated for clearance without assessment and examination, on payment of duty, if any.

3.4 The verification of a self-assessed Bill of Entry or Shipping Bill shall be with regard to correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on imported or export goods. Such verification will be done selectively on the basis of the RMS, which not only provides assured facilitation to those importers having a good track record of compliance but ensures that on the basis of certain rules, intervention, etc. high risk consignments are interdicted for detailed verification before clearance. For the purpose of verification, the proper officer may order for examination or testing of the imported or export goods. The proper officer may also require the production of any relevant document or ask the importer or exporter to furnish any relevant information. Thereafter, if the self-assessment of duty is not found to have been done correctly, the proper officer may re-assess the duty. This is without prejudice to any other action that may be warranted under the Customs Act, 1962. On re-assessment of duty, the proper officer shall pass a speaking order, if so desired by the importer, within 15 days of re-assessment. This requirement is expected to arise when the importer or exporter does not agree with re-assessment, which is different from the original self-assessment. There may be situations when the proper officer of Customs finds that verification of self-assessment in terms of Section 17 requires testing / further documents / information, and the goods cannot be re-assessed quickly but are required to be cleared by the importer or exporter on urgent basis. In such cases, provisional assessment may be done in terms of Section 18 of the Customs Act, 1962, once the importer or exporter furnishes security as deemed fit by the proper

officer of Customs for differential duty equal to duty provisionally assessed by him and the duty payable after re-assessment.

- 3.5 One of the salient features of self-assessment is that verification of declarations and assessment done by the importer or exporter, except for cases wherein a speaking order has been passed by the proper officer while re-assessing the duty, can also be done at the premises of the importer or exporter. On Site Post Clearance Audit (OSPCA) has been applied to importers under the Accredited Client Programme (ACP) with effect from 1.10.2011. The Post Clearance Audit at Custom Houses shall continue for other importers.
- 3.6 In cases, where the importer or exporter is not able to determine the duty liability / make self-assessment for any reason, except in cases where examination is requested by the importer under proviso to Section 46(1), a request shall be made to the proper officer for assessment of the same under Section 18(a) of the Customs Act, 1962. In this situation an option is available to the proper officer to resort to provisional assessment of duty by asking the importer / exporter to furnish security as deemed fit for differential duty equal to duty provisionally assessed and duty finally payable after assessment. This provision is to be applied in deserving cases only where importer or exporter is not able to assess the goods for duty for want of certain information / documents etc. and not in a routine manner. As far as possible, steps should be taken to provide guidance to importers/ exporters so that they are able to self-assess the duty. It should, however, be made clear that such guidance is not legally binding.
- 3.7 In both cases where no self-assessment is done and when self-assessment is done but reassessment is required under Section 17, the importer or exporter can opt for provisional assessment of duty by the proper officer of Customs. The difference is that when no self-assessment is done, the provisional assessment shall get converted into final assessment and when self-assessment is done, the provisional assessment shall get converted into re-assessment.
- 3.8 Subsequent to introduction of self-assessment, it was felt that the existing facilitation levels under RMS could be increased as responsibility of filing correct declarations has been shifted to importers and exporters; the idea being to move towards a trust based Customs control while at the same time fine tuning the risk parameters based interdictions through RMS to check against non-compliance. Therefore, consequent to introduction of self-assessment, Board has decided that the facilitation target to be achieved for Bills of Entries would be 80% at Air Cargo Complexes, 70% at Seaports and 60% at ICDs.

[Refer Circulars No. 17/2011-Cus., dated 8-4-2011 and No.39/2011-Cus.,dated 2-9-2011]

- 3.9 For the purpose of proper assessment of duty and to ensure correctness of trade statistics it has been decided that importers/exporters shall mandatorily declare the Standard Unit Quantity Code (UQC), as indicated in the Customs Tariff Act, 1975. It is however instructed that this shall not become a cause for the holdup of export goods or delay in clearances of any goods through the Customs.

[Refer Circular No. 26/2013-Cus. dated 19-7-2013]

- 3.10 To obviate the possibility of mis use of the facility of manual filing and processing of import / export documents, Board has instructed that this facility should not be allowed except in exceptional and genuine cases where the electronic filing and processing of import/export documents is not feasible. Moreover, in terms of Sections 46 and 50 of the Customs Act, 1962, the authority to allow manual filing and processing of documents rests with the Commissioner of Customs only. The Board has noticed that despite this strict instruction, some field formations particularly vulnerable outlying CFSs/ ICDs are still routinely allowing importers/exporters to file the documents manually. The Board has reiterated that the facility of manual filing and processing of import/export documents shall be permitted by the Commissioner of Customs strictly in accordance with the legal provisions, read with Board's instructions on the subject.

[Refer Instruction F.No. 401/81/2011-Cus.III, dated 7-4-2014]

- 3.11 In order to facilitate genuine trade and reduce dwell time, it has been decided that genuine clarification sought by officers from importers / exporters are raised in one go and not in piecemeal manner. Further, the field formation could consider listing of the queries frequently raised in course of assessment and disseminate them through Public notice or sensitize trade about the same so that importers should take preventive action to avoid such queries or to be prepared to reply to such queries.

[ Refer Circular No 22/2015-Cus, dated 3.09.2015]

#### **4. Examination of goods:**

- 4.1 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 Appraisalment. The importer has to request for First Check Appraisalment 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/ Customs Broker 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.
- 4.2 The imported goods can also be examined subsequent to assessment and payment of duty. This is called Second Check Appraisalment. Most of the consignments are cleared on Second Check Appraisalment basis. In this case whole of the consignment is not examined and only those packages which are selected on random basis are examined.
- 4.3 Under the EDI system, the Bill of Entry, after assessment by the appraising group or first appraisalment, 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 Customs Broker 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 appraisalment 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 importer/Customs Broker, 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.
- 4.4 In order to reduce transaction cost, importers may exercise the option to de-stuff goods from foreign containers and keep the same in the CFS / ICD including in empty domestic containers therein, under Customs supervision, for subsequent clearance as per law.

[Refer Instruction F.No.450/95/2012-Cus.IV, dated 20-11-2012]

- 4.5 In order to prevent fraud Commissioners concerned shall develop a proper gate management system where Deputy / Assistant Commissioner of Customs, Docks / Import Shed and Deputy / Assistant Commissioner of Customs, Special Intelligence & Investigation Branch (SIIB) would carry out surprise checks at out gate and verify authenticity of the gate passes issued by the custodian.



Further, Out of Charge orders must be computerized and manual Out of Charge orders should be allowed only in the rarest of rare and genuine cases. Also specimen signature of the officers posted in Docks / Import Shed should be made available at the out gate for verification. Further manual Out of Charge orders (gate passes) booklets; official stationery, stamp etc. should be kept in safe custody. Due care should also be taken to verify the particulars in the Bill of Entry and other important documents.

[Refer Instruction F.No.450/24/2012-Cus.IV, dated 29-10-2012]

## **5. Execution of bonds:**

- 5.1 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 is made under Export Promotion schemes, the importer is required to execute bonds with the Customs authorities for fulfilment of conditions of respective notifications. If the importer fails to fulfil the conditions, he has to pay the duty leviable on those goods. The amount of bond and bank guarantee is determined in terms of the instruction issued by the Board as well the conditions of the relevant notification etc.

## **6. Payment of duty:**

- 6.1 The duty can be paid in the designated banks through TR-6 Challan. 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. Facility of e-payment of duty through more than one authorized bank is also available since 2007 at all major Customs locations.
- 6.2 With effect from 17-9-2012 e-payment of Customs duty is mandatory for importers registered under Accredited Clients Programme and importers paying duty of Rs. 1 lakh or more per Bill of Entry.

[Refer Circulars No.33/2011-Cus., dated 29-7-2011 and No. 24/2012-Cus., dated 5-9-2012]

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

- 7.1 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.

## **8. Prior Entry for Bill of Entry:**

- 8.1 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. This Bill of Entry has 5 copies, the fifth copy being called Advance Noting copy. The importer must 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 not available for Into-Bond Bill of Entry and also during certain special periods.
- 8.2 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 Bill of Entry, the importer does not know 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.

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

- 9.1 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 with the Bill of Entry for warehousing which 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, the purpose of assessing the duty 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.

## **10. Risk Management System in import:**

- 10.1 'Risk Management System' (RMS) has been introduced in Customs locations where the EDI System (ICES) is operational. This 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 transaction costs in order to enhance the competitiveness of Indian businesses, by expediting release of cargo where compliance is high. Thus, an effective RMS strikes an optimal balance between facilitation and enforcement and promotes 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 bringing the Customs processes at par with best international practices.

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

- 10.2 RMS has dispensed with the practice of routine assessment, concurrent audit and examination and the present focus is on quality assessment, examination and Post Clearance Audit of selected Bills of Entry.
- 10.3 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 (appraisement 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 Additional / 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.
- 10.4 Post-Clearance Compliance Verification (PCC) is done to confirm the correctness of the duty assessments. The objective of PCCV is to monitor, maintain and enhance compliance levels, while reducing the dwell time of cargo. The RMS selects the Bills of Entry for audit, after clearance of the goods, and these selected Bills of Entry are directed to the audit officers for scrutiny by the EDI system. In case any possible short levies are noticed, the officers issue a Consultative Letter mentioning the grounds for their view to the importers. 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. The auditors are specifically instructed to scrutinize declarations with reference to data quality and advise the importers 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. Risk Management System in Export**

- 11.1 On similar lines of the RMS in imports, a Risk Management System (RMS) in Export has been introduced with effect from 15-7-2013. The RMS in exports allows low risk consignments to be cleared based on self assessment of the declarations by exporters. This enables the department to enhance the level of facilitation and speed up the process of export clearance. By expediting the clearance of compliant export cargo, the RMS in exports will contribute to reduction in dwell time, thereby achieving the desired objective of reducing the transaction cost in order to make the business internationally competitive. At the same time, the RMS in exports will ensure proper and expeditious implementation of existing control over export goods under the applicable Allied Acts and Rules. It will also provide appropriate control measures for proper and speedy disbursement of drawback and other export incentives.
- 11.2 With the introduction of the RMS in exports, the practice of routine verification of self-assessment and examination of Shipping Bills has been discontinued and the focus is on quality assessment, examination and post clearance audit (PCA) of Shipping Bills selected by the RMS.
- 11.3 Shipping Bills filed electronically in ICES through the Service Centre or the ICEGATE will be processed by RMS through a series of steps/corridors and an electronic output will be produced for the ICES. This output from RMS will determine the flow of the Shipping Bill in ICES i.e. whether the Shipping Bill will be taken up for Customs control (verification of self-assessment or examination or both) or to be given "Let Export Order" directly after payment of Export duty (if any) without any verification of self-assessment or examination. The RMS will also provide instructions for Appraising Officer/Superintendent, Examining Officer/Inspector or the Let Export Order (LEO) Officer, wherever necessary. The decisions communicated by the RMS on the need for verification of self-assessment and/or examination and the appraising and examination instructions communicated by the RMS have to be followed by the field formations. It is possible that in a few cases, the field formations might decide to apply a particular treatment to the Shipping Bill which is at variance with the instructions received for the RMS owing to risks which are not factored in the RMS. Such a course of action shall be taken only with the prior approval of the jurisdictional Commissioner of Customs or an officer authorised by him for this purpose, who shall not be below the rank of Addl./Joint Commissioner of Customs, and after recording the reason for the same. A brief remark on the reasons and particulars of Commissioner's authorization should be made by the officer examining the goods in the departmental comments in the EDI system.
- 11.4 The RMS in export has been launched in two phases. In the first phase the RMS will process the data and provide the output to ICES only up to goods examination stage. In the second phase, the RMS will also process the Shipping Bill data after the Export General Manifest (EGM) is filed electronically and provide output to ICES for selection of Shipping Bills for Drawback scrutiny and Post Clearance Audit (PCA).
- 11.5 With the implementation of export RMS, a Post Clearance Audit (PCA) function has been introduced in respect of exports after the LEO is given for export consignment. The objective of PCA is to monitor, maintain and enhance compliance levels, while reducing the dwell time of cargo. The RMS would select the Shipping Bills for audit, after issue of LEO, and these selected Shipping Bills will be directed to the audit officers for scrutiny by the ICES.
- 11.6 As in the case of Import, the national management of the RMS shall be the responsibility of the Risk Management Division. There will be a single Local Risk Manager (Admin) for a location for both import and export.
- 11.7 The selection of Shipping Bills for verification of Self-assessment and/or examination will be based on the output given by RMS to ICES. However, owing to some technical reasons if the RMS fails to

provide output to ICES or RMS output is not received at ICES end in time, the existing norms of assessment and examination will be applicable.

[Refer Circular No. 23/2013-Cus., dated 24-6-2013]

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

12.1 A Risk Management Division (RMD) in Mumbai has 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), for dealing 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 Committee:**

13.1 A National Risk Management (NRM) Committee headed by DG (Systems) reviews the functioning of the RMS, supervises 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) and Joint Secretary (Customs), CBEC. 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.

[Refer Circulars No. 23/2007-Cus., dated 28-6-2007 and No. 39/2011-Cus., dated 2-9-2011]

#### **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 prescribed by the RMD, with the approval of the Commissioner of Customs.

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

15.1 The Accredited Clients Programme (ACP) grants 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 are advised to 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 and also monitors their levels of compliance, in co-ordination with the DRI/Commissioners of Customs. Where compliance levels fall, the importer is at first informed for self-improvement and in case of persistent non-compliance, the importer may be deregistered under the ACP.

15.4 The eligibility criteria for importers to get ACP status are as follows:

- (i) They should have imported goods valued at Rs. 10 Crores [assessable value] in the previous financial year; or paid more than Rs. 1 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. 1 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 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 / wilful 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 /wilful 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-fulfilment 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.

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

15.6 As a trade facilitation measure, the ACP status of ACP clients which has either been withdrawn or not extended on account of them having been served a show cause notice in terms of the amended para 7(iii) of the Board's Circular dated 24.11.2005 may be restored as follows:

- (i) Restored after 3 months if the entity pays the duty demanded with interest and 25% penalty within 30 days of the Show Cause Notice or if the entity's application is allowed to be proceeded with by the Settlement Commission.
- (ii) Restored after 6 months if the entity pays the duty demanded with interest.

The restoration of the ACP status would be subject to the condition that if another case of the type mentioned in paragraph 7(iii) of the said Circular dated 24.11.2005 is booked within the 3 months

or 6 months period, as the case may be, against the said entity the period of exclusion would be 1 year. If another (or more) case(s) is booked during the 1 year period, the exclusion period would be 3 years. Further, the ACP status would not ordinarily be denied to an entity if, in the category of cases specified above, the Customs/Central Excise duty or Service Tax involved is up to Rs. 50 lakhs and Rs. 25 lakhs, respectively. Also, the outstanding disputes with ACP clients that are pending in adjudications and appeals shall be expeditiously finalized. Furthermore, in order to encourage greater participation in the ACP, the Risk Management Division (RMD) shall *suo moto* identify importers eligible for the ACP and approach them to enroll in the programme on 6-monthly basis.

[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 and No.18/2014- Cus, dated 22-12-2014 ]

## **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 DGFT prior to filing of Shipping Bill. Under the EDI System, IEC number is received online by the Customs System from the DGFT. The exporter is also required to register authorized 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 etc. registered at the Customs Station. For such registration, original documents are required.

## **17. Waiver of GR form:**

- 17.1 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. These exceptions include export of goods valued not more than US \$25,000/- and export of gifts valued up to Rs.5 lakhs.

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

## **18. Arrival of export goods at docks:**

- 17.1. 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.

## **19. Customs examination of export goods:**

- 19.1 After the receipt of the goods in the Docks, the exporter/ Customs Broker 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, ARE-1, 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/ Customs Broker..

## **20. Examination norms:**

- 19.1 The Board has fixed norms for examination of export consignments keeping in view the quantum of incentive, value of export goods, country of destination etc. The category-wise scale of physical examination at the port of export is as follows:

### **A. Factory stuffed export cargo:**

Category of Exports	Scale of Examination
Export goods stuffed and sealed in the presence of 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 tampered with; or (b) there is specific intelligence in which case, permission of Deputy/Assistant Commissioner is required before checking.

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

Category of Exports	Scale of Examination
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 scheme:**

S.No.	Category of exports consignment – Amount of Drawback involved	Scale of Examination	
		Export to sensitive places viz. Dubai, Sharjah, Singapore, Hong Kong and Colombo	Others
(i)	Rs.1 lakh or less.	25%	2%
(ii)	More than Rs.1 lakh.	50%	10%

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

S.No.	Category of exports consignment – FOB value involved	Scale of Examination	
		Export to sensitive places viz. Dubai, Sharjah, Singapore, Hong Kong and Colombo	Others
(i)	Rs.5 lakhs or less.	25%	2%
(ii)	More than Rs.5 lakhs.	50%	10%

**E. Export under Reward schemes – Chapter 3 of FTP:**

S.No.	Category of exports under Free Shipping Bills – FOB value involved	Scale of Examination	
		Export to sensitive places viz. Dubai, Sharjah, Singapore, Hong Kong and Colombo	Others
(i)	Rs.20 lakhs or less.	25%	2%
(ii)	More than Rs.20 lakhs.	50%	10%

20.2 AEO exporters shall be given benefits of reduced percentage of examination, as under:



S.No.	Category of export consignments	Scale of Examination	
		Export to sensitive places viz. Dubai, Sharjah, Singapore, Hong Kong and Colombo	Others
(i)	Where the amount of drawback involved is Rs.5 lakhs or less.	10%	2%
(ii)	Where the amount of drawback involved is more than Rs.5 lakhs.	25%	5%
(iii)	Where the FOB value under EPCG / DEEC is Rs.10 lakhs or less.	10%	2%
(iv)	Where the FOB value under EPCG / DEEC is more than Rs.10 lakhs.	20%	5%

- 20.3 In all cases referred above, in respect of consignments selected for examination, a minimum of two packages with a maximum 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.
- 20.4 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) 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.
- 20.5 After the goods are 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, port etc. such consignment should be subjected to examination.
- 20.6 Notwithstanding the examination norms, any export consignment can be examined by the Customs (even up to 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) would be taken up for checking/examination.
- 20.7 In case export goods are stuffed and sealed in the presence of Customs/Central Excise officers at the factory of manufacture/ICD/CFS/warehouse and any other place where the Commissioner has, by a special order, permitted, it may be ensured that the containers should be bottle sealed or lead sealed. Also, such 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]

- 20.8 If the export is made claiming benefits of Drawback 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.

- 20.9 Exports by EOUs and units in SEZs are governed by examination norms, as applicable for EPCG schemes. However, if the export consignment of EOUs or SEZs units has been sealed by Customs/Central Excise Officer, the norms for factory stuffed cargo will apply.
- 20.10 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]

- 20.11 The Department related Parliamentary Standing Committee on Commerce has emphasized that in order to promote export of Agriculture and Processed Food products, the Customs authorities must be sensitized to accord priority clearance to perishable agro products cargo. Accordingly, export consignments of perishable agricultural goods should not be examined in a routine manner and should be examined only in cases of specific intelligence with prior permission of concerned Assistant Commissioner/Deputy Commissioner of Customs. Such perishable cargo which is taken up for examination should be given Customs clearance on the same day itself. In the event there are contraventions of Customs law, necessary legal action shall be taken but, in this case too, it shall be ensured that the perishable cargo is dealt with in such a manner including grant of provisional release (where permissible) so that it is not unduly held up in ports/airports etc. Further as a trade facilitation measure the facility of 24x7 Customs clearance has been extended to export consignments of perishable agricultural export goods at all air cargo complexes.

[Refer Circular No.12/2013- Cus IV., dated 2-4-2013]

- 20.12 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]

- 20.13 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]

## **21. Factory stuffing permission:**

- 21.1 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 Custom 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 Custom House should circulate the factory stuffing permission to all Custom Houses concerned clearly indicating the name and contact details of the Preventive Officer/Inspector and Superintendent concerned of the Custom 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 Custom House granting the permission, which will, in turn, withdraw the permission, and inform all Custom Houses concerned.

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

**22. Variation between declaration and physical examination:**

22.1 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) along with 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.

**23. Drawl of samples:**

23.1 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 shall be 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.

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

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

24.1 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.

- 24.2 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]

## **25. Amendments:**

- 25.1 Any correction/amendments in the check list generated after filing of declaration can be made at the Service Centre 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 / Deputy 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.

- 25.2 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.

- 25.3 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]

## **26. Drawback claim:**

- 26.1 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 Centre. 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 Centre. The exporters are required to reply to such queries through the Service Centre. The claim will come in queue of the EDI system only after reply to queries/deficiencies is entered in the Service Centre.

- 26.2 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.

26.3 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.

**27. Generation of Shipping Bills:**

27.1 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 and the representative of the Customs Broker on both copies of the Shipping Bill and examination report. The Appraiser thereafter signs and stamps both the copies of the Shipping Bill.

27.2 The Appraiser also signs and stamps the original and duplicate copy of SDF and thereafter forward the Customs copy of Shipping Bill and original copy of the SDF along with the original declarations to Export Department. The exporter copy and the second copy of the SDF are returned to the exporter or his agent.

**28. Export General Manifest:**

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

28.2 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]

**29. Electronic Declarations for Bills of Entry and Shipping Bills:**

29.1 Bill of Entry (Electronic Declaration) Regulations, 2011 and Shipping Bill (Electronic Declaration) Regulations, 2011 are framed in tune with statutory provisions of Sections 17, 18 and 50 of the Customs Act, 1962 to mandate self-assessment by the importer or exporter, as the case may be.

[Refer Notifications No.79/2011-Cus (N.T.) dated 25-11-2011 and No.80/2011-Cus (N.T.) dated 25-11-2011]

**30. 24x7 Customs clearance facility:**

30.1 With effect from 31.12.2014 the facility of 24x7 Customs clearance has been made available for imports covered by ‘facilitated’ Bills of Entry and specified exports viz. factory stuffed containers and goods exported under free Shipping Bills, at the following 18 sea ports:

S.No.	Sea Port	S.No.	Sea Port	S.No.	Sea Port
1.	Chennai	2.	Cochin	3.	Ennore
4.	Gopalpur	5.	JNPT	6.	Kakinada
7.	Kandla	8.	Kolkata	9.	Mumbai
10.	New Mangalore	11.	Marmagoa	12.	Mundra
13.	Okha	14.	Paradeep	15.	Pipavav
16.	Sikka	17.	Tuticorin	18.	Vishakapatnam

30.2 With effect from 31.12.2014 the facility of 24x7 Customs clearance for specified imports viz. goods covered by facilitated Bills of Entry and all exports viz. goods covered by all Shipping Bills will be made available, has been made available at the following 17 air cargo complexes (ACCs):

S.No.	ACC	S.No.	ACC	S.No.	ACC
1.	Ahmedabad	2.	Amritsar	3.	Bangalore
4.	Chennai	5.	Coimbatore	6.	Cochin
7.	Calicut	8.	Delhi	9.	Goa
10.	Hyderabad	11.	Indore	12.	Jaipur
13.	Kolkata	14.	Mumbai	15.	Nashik
16.	Thiruanantapuram	17.	Vishakhapatnam		

[Refer Circulars No. 22/2012-Cus., dated 7-8-2012, No.19/2014- Cus. dated 31-12-2014 and Instruction F.No.450/25/2009-Cus IV, dated 31-5-2013]

### 31. Proper Officers of Customs:

31.1 Various sections of the Customs Act, 1962 refer to “proper officer” of Customs. Accordingly, Board has notified the following proper officers for different sections of the said Act:

S.No.	Designation of the Officers	Functions under the Sections of the Customs Act, 1962
1.	Commissioner of Customs.	(i) Section 33
2.	Additional Commissioner or Joint Commissioner of Customs.	(i) Sub-section (5) of Section 46; and (ii) Section 149.
3.	Deputy Commissioner or Assistant Commissioner of Customs and Central Excise.	(i) Sub-section (5) of Section 17; (ii) Section 18; (iii) Section 21; (iv) Section 22; (v) Section 26A; (vi) Section 28; (vii) Section 28B; (viii) Section 28BA; (ix) Section 30; (x) Sub-section (2) of Section 31; (xi) Section 32; (xii) Proviso to Section 34; (xiii) Section 35; (xiv) Section 42; (xv) Sub-section (3) of Section 45; (xvi) Second Proviso to sub-section (1) of section and sub-section (2) of Section 46; (xvii) Section 48; (xviii) Sub-section (3) of Section 54;

		<ul style="list-style-type: none"> <li>(xix) Section 59;</li> <li>(xx) Section 60;</li> <li>(xxi) Section 61;</li> <li>(xxii) Section 63;</li> <li>(xxiii) Clause (f) of Section 64;</li> <li>(xxiv) Section 67;</li> <li>(xxv) Section 72;</li> <li>(xxvi) Section 73;</li> <li>(xxvii) Section 80;</li> <li>(xxviii) Section 85;</li> <li>(xxix) Section 89;</li> <li>(xxx) Section 97;</li> <li>(xxxi) Sub-section (1A) of Section 110;</li> <li>(xxxii) Section 129A;</li> <li>(xxxiii) Section 129DD;</li> <li>(xxxiv) Section 129E;</li> <li>(xxxv) Section 130D; and</li> <li>(xxxvi) Section 142.</li> </ul>
4.	Deputy Director or Assistant Director in the Directorate General of Revenue Intelligence and Directorate General of Central Excise Intelligence.	<ul style="list-style-type: none"> <li>(i) Sub-section (3) of Section 28AAA</li> <li>(ia) Section 28B; and</li> <li>(ii) Section 72.</li> </ul>
5.	Superintendent of Customs and Central Excise or Appraiser	<ul style="list-style-type: none"> <li>(i) Section 13;</li> <li>(ii) Section 14;</li> <li>(iii) Sub-sections (2), (3), (4) and (6) of Section 17;</li> <li>(iv) Section 19;</li> <li>(v) Section 40;</li> <li>(vi) Section 41;</li> <li>(vii) Clause (b) of sub-section (2) of Section 45;</li> <li>(viii) Sub-sections (1) and (4) of section 46;</li> <li>(ix) Section 47;</li> <li>(x) Section 50;</li> <li>(xi) Section 51;</li> <li>(xii) Section 54;</li> <li>(xiii) Section 62;</li> <li>(xiv) Clause (a) to (e) of Section 64;</li> <li>(xv) Section 68;</li> <li>(xvi) Section 69;</li> <li>(xvii) Section 79;</li> <li>(xviii) Section 83;</li> <li>(xix) Section 86;</li> <li>(xx) Section 92; and</li> <li>(xxi) Section 93.</li> </ul>
6.	Intelligence Officer in the Directorate General of Revenue Intelligence and	<ul style="list-style-type: none"> <li>(i) Section 37;</li> <li>(ii) Section 100;</li> </ul>

	Directorate General of Central Excise Intelligence.	(iii) Section 103; (iv) Section 106; (v) Section 106A; (vi) Sub-sections (1) and (3) of section 110; (vii) Section 144; and (viii) Section 145.
7.	Inspector of Customs and Central Excise or Preventive Officer or Examining Officer.	(i) Sub-section (1) of section 31; (ii) Section 34 excluding proviso to Section; (iii) Section 37; (iv) Section 38; (v) Section 39; (vi) Clause (a) of sub-section (2) of Section 45; (vii) Section 77; (viii) Section 94; (ix) Section 95; (x) Section 100; (xi) Section 103; (xii) Section 106; (xiii) Section 106A; (xiv) Sub-sections (1) and (3) of Section 110; (xv) Section 144; and (xvi) Section 145.

[Refer Notifications No. 40/2012-Cus (NT), dated 2-5-2012 and No. 76/2012 - Cus (N.T.) dated 27-8-2012]

31.2 The following officers have been notified as ‘proper officers’ under section 17 and section 28 of Customs Act, 1962.

<b>S.No.</b>	<b>Designation of the officers</b>
(1)	(2)
1.	Additional Director Generals, Additional Directors or Joint Directors, Deputy Directors or Assistant Directors in the Directorate General of Revenue Intelligence.
2.	Commissioners of Customs (Preventive), Additional Commissioners or Joint Commissioners of Customs (Preventive), Deputy Commissioners or Assistant Commissioners of Customs (Preventive).
3.	Additional Director Generals, Additional Directors or Joint Directors, Deputy Directors or Assistant Directors in the Directorate General of Central Excise Intelligence.
4.	Commissioners of Central Excise, Additional Commissioners or Joint Commissioners of Central Excise, Deputy Commissioners or Assistant Commissioners of Central Excise.

[Refer Notification No. 44/2011-Cus (NT), dated 6-7-2011]



## 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. 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, 2007 and 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

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. 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 levels 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' and any guideline provided by HS Explanatory Notes. In their absence, 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. Therefore, while interpreting the common words used in the statute, giving more than due importance to common dictionary meanings may be misleading, as therein all shades of meaning of a particular word are given. Similarly, meanings assigned in technical dictionaries will have limited application.
- 2.8 For purposes of classification the 'trade meaning' is given due importance unless the Tariff itself requires the terms to be interpreted in a strict technical sense in which case technical dictionaries should be used. If any scientific test is to be performed, the same must 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 the quality of goods, whether prime or defective is not material. There is no prohibition on 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 levied concessional rate of duty or exempted from duty by an exemption notification issued under 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 periodic Conferences of Chief Commissioners/Commissioners of Customs on Tariffs and Allied Matters. An Advance Ruling Authority gives binding tariff advise to applicants.

- 2.11 Permissibility of import and export of goods is governed by the DGFT's ITC(HS) Classification of Import and Export Goods. This nomenclature arranges goods as in the HS but codifies them by ten digit numerical codes for precision in import / export control.

## **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, spare parts, 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.

- 2.6 In view of decision of Hon'ble Supreme Court in the case of Commissioner of Customs, Mumbai vs. M/s. Toyo Engineering India Ltd., 2006(201) ELT 513 SC , the scope of the items eligible for import under the Project Import Regulations 1986, shall cover construction equipments as auxiliary equipment; if essentially required for initial setting up or substantial expansion of registered projects. The construction equipments may be permitted to be transferred to other registered project under CTH 9801, after completion of its intended use, on recommendations of sponsoring authority. The 'Plant Site Verification Certificate' required to be submitted for finalization of project as per Circular No. 14/2006-Cus., dated 17-4-2006 shall incorporate the details of construction equipments imported and used for the project, to ensure proper utilization of goods imported.

[Refer Circular No. 49/2011-Cus. dated 4-11-2011]

### **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 Custom 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 for substantial expansion, giving the installed capacity and proposed addition thereto.
  - (v) Continuity Bond with cash security deposit equivalent to 2% of CIF value of contract sought to be registered subject to the maximum of Rs. 50 lakhs and the balance amount by the bank Guarantee backed by an undertaking to renew the same till finalization 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 In regard to the requirement of registration of the contract (or contracts) and production of the 'original deed of contract', the Board noted that as per Section 10 of the Indian Contract Act, 1872 a valid contract contains certain essential elements viz. (a) it is entered into by free consent of parties competent to contract; (b) there should be lawful consideration; (c) there should be a lawful object; and (d) it is not expressly declared to be void under the statute. It is therefore decided that a purchase order that contains all the essential ingredients of a valid contract must be treated as one under the Indian Contract Act, 1872. Thus, such a purchase order can be accepted as a "deed of contract" for the purpose of Regulation 5 of Project Import Regulations, 1986.

[Refer Circular No. 31/2013-Cus. dated 6-8-2013]

3.5 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/Customs Broker 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-a-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 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 of 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 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. (NT), dated 3-8-2001]

#### 3. Valuation of imported/export goods in general:

- 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; and
  - (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 or 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 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 importing country (Rule 7);



- (iv) Computed Value Method - Based on cost of materials, fabrication and profit in country of production (Rule 8); and
- (v) Fallback Method - Based on earlier 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** are the following charges:

- (i) Commissions and brokerage, except buying commissions;
- (ii) The cost of containers, which are treated as being one with the goods in question for Customs purposes;
- (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
- (v) Engineering, developing, artwork, design work, and plans and sketches undertaken elsewhere than in the importing country and necessary for the production of imported goods;
- (vi) 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;
- (vii) 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;
- (viii) Advance payments;
- (ix) Cost of transportation up to the place of importation including the ship demurrage charges on chartered vessels, lighterage or barge charges;
- (x) Loading, unloading and handling charges associated with transporting the goods; and
- (xi) 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.

[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 of accuracy of the declared value.

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

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

8.1 Section 18 of the Customs Act, 1962 read with the Customs (Provisional Duty Assessment) Regulations, 1963 allow an importer to provisionally clear the imported goods from Customs 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 Customs Valuation Rules, 2007 concerning identical goods and similar goods, respectively provide that the value of the 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.
- 9.3. With effect from 1-1-2013, the functional and supervisory control over the SVBs has been vested with the Directorate General of Valuation (DGOV). DGOV would monitor the functioning of SVBs and be responsible for their quality control.

[Refer Circulars No.11/2001-Cus, dated 23-2-2001 and No. 29/2012-Cus., dated 7-12-2012]

## **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 The Finance Act, 2011 introduced self-assessment under which importers and exporters are mandatorily required to self-assess the duty in terms of Section 17 of the Customs Act, 1962. This self-assessment is subject to verification by the proper officer of the Customs and may lead to reassessment by the proper officer of Customs if it is found to be incorrect. However, in terms of Section 17(1) of the Customs Act, 1962 in case an importer or exporter is not able to make self-assessment he may, request in writing to the proper officer for assessment. Also, in terms of Section 18 of the Customs Act, 1962 in case the proper officer is not able to verify the self-assessment or make re-assessment of duty or he deems it necessary to subject any imported or export goods to any chemical or other tests or where necessary documents have not been furnished or information has not been furnished and the it is necessary to make further enquiry, he may direct that the duty leviable on such goods be assessed provisionally. Customs (Provisional Duty Assessment) Regulations, 2011 have been notified to prescribe conditions for allowing provisional assessment, terms of bond, penal provisions etc. A penalty of upto Rs.50,000 may be imposed on contravention of these Regulations.

#### **2. Bond for provisional assessment:**

2.1 For making provisional assessment the proper officer is required to estimate the duty to be levied i.e. the provisional duty. Thereafter, the importer or the exporter has to execute a bond in an amount equal to the difference between the duty that may be finally assessed or re-assessed and the provisional duty. He shall also deposit with the proper officer such sum not exceeding twenty per cent of the provisional duty, as the proper officer may direct. The terms of the bond include the following:

- (i) The importer or exporter shall pay the deficiency, if any, between the duty finally assessed or re-assessed, as the case may be, and the duty provisionally assessed.
- (ii) Where provisional assessment is allowed pending the production of any document or furnishing of any information, the importer / exporter shall produce the same within one month or within such extended period as the proper officer may allow.

#### **3. Finalization of provisional assessment:**

3.1 The assessments must be finalized expeditiously, well within 6 months. However, in cases involving machinery contracts or large project imports, where imports take place over long period, such finalization may take more time. Here too, effort should be made to finalize 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-I-1978 and  
Circular No. 17/2011-Cus., dated 8-4-2011]

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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 legal provisions that come into play when there is violation of the Customs Act, 1962 or any Allied Acts are as follows:

- (a) “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/ 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, 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. 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 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 select 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 good 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.

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

## **5. Labeling of the goods imported into India:**

- 5.1 DGFT Notification No.44 (RE-2000)/1997-2002 dated 24-11-2000 provides for labeling of the goods imported into India which are covered by the provisions of Standards of Weights & Measures (Packaged Commodities) Rules, 1977. This Notification mandates that compliance of labeling conditions have to be ensured before the import consignment of such commodities are cleared by Customs for home consumption.
- 5.2 In order to redress the issue and to remove the difficulties faced by importers on account of space constraints at CFSs/ Port / ICDs and the nature of goods, etc., the Board has allowed the labeling on imported goods in Bonded warehouses subject to certain procedural conditions. It is clarified that the importers should first ascertain that for such marking / labeling facility, space, is available in warehouse prior to exercising this option. In such cases, importers may file Warehousing Bill of Entry and the Assessing Group will give suitable directions to Dock staff to allow bonding of the goods without labeling and with endorsement on the Warehousing Bill of Entry that verification of compliance of DGFT Notification No.44 (RE-2000)/1997-2002 is to be done prior to de-bonding by Bond Superintendent. The goods will then be labeled in the bonded premises and compliance of said DGFT Notification will be ensured at the time of ex-bonding of the goods, by the Bond Officer, by examining the goods again and endorsing the Examination Report on the Ex-bond Bill of Entry. 100% examination at the time of Ex-bond clearance of goods should be done to ensure compliance of the said DGFT Notification. The Examination Report can be endorsed on hard copy of Ex-bond Bill of Entry where EDI facility is not extended, and on hard copy as well as EDI system where EDI facility is extended to Bonded Warehouses. It is also clarified that this facility is applicable only to goods that cannot be easily labeled in ports / CFS, having regard to their size and other factors such as sensitivity to temperature and dust.
- 5.3 As the activity of labeling and re-labeling including declaration of Retail Sale Price (RSP) on goods amounts to manufacture in terms of section 2(f) of the Central Excise Act, 1944, if the same is carried out on goods warehoused, it would be considered as manufacturing operations having been undertaken in bond/warehouse. Accordingly, the provisions of 'Manufacture and Other Operations in Warehouse Regulations, 1966' would apply on those goods. Importers can, therefore, avail the facility of carrying out labeling in warehouse after following above procedure and the provisions of 'Manufacture and Other Operations in Warehouse Regulations, 1966'.

[Refer Circular No.19/2011-Cus, dated 15-4-2011]

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

- 6.1 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.
- 6.2 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 authorized 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.

- 6.3 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]

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

- 7.1 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. However, cut flowers, garlands, bouquets, fruits and vegetables weighing less than 2 kgs. that are 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.

- 7.2 The Department of Agriculture and Co-operation has issued detailed guidelines for inspection and clearance of plant/plant materials, the basic 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 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 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 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.

- 7.3 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.

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

- 8.1 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.

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

- 9.1 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 labeled 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.

9.2 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.

9.3 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)

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

10.1 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.

10.2 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.

10.3 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.

10.4 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.

10.5 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 this 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.

10.6 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.

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

11.1 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. /), 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 of the Handbook of Procedures (Vol.1) from any of the Inspection and Certification agencies listed in the said Appendix 5 to the effect that the consignment does not contain radioactive contaminated material in any form; and
  - (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:
- (a) Pre-shipment inspection certificate as per the format in Annexure-I to the said Appendix 5 from any Inspection & Certification agencies given in the said Appendix 5 to the effect that:
    - (i) 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.
    - (ii) The imported item(s) is actually a metallic waste/ scrap/ seconds/ defective as per the internationally accepted parameters for such a classification.
  - (b) 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.
  - (c) Import of scrap would take place only through following designated ports and no exceptions is allowed even in case of EOUs and SEZs:

S.No.	Ports	S.No.	Port/ICDs
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 with Risk Management Module (RMM) is operational, 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 identified container 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 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., 5-3-2004, 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]

## **12. International Standards for Phytosanitary Measures (ISPM-15):**

- 12.1 International Standards for Phytosanitary Measures (ISPM) are prescribed as per IPPC convention of FAO to reduce the risk of introduction / or spread of quarantine pest associated with wood packaging material (including dunnage) made of coniferous and non coniferous raw wood, in use in international trade.
- 12.2 DGFT, vide Notification No 54/2009-2014 dated 3-8-2010 has made it mandatory that export of goods including plant and plant products using wood packaging materials such as pallet, dunnage, crating, packing blocks, drums, cases load boards, pellet collars shall be allowed subject to compliance of ISPM-15.
- 12.3 On export side, a large number of consignments are intercepted abroad for non-compliance of ISPM-15 Standards relating to wood packaging materials used for export of materials, as informed by Department of Agriculture and Cooperation. Thus, the Board has decided that export / imported consignment with wood packaging material are to be inspected by Customs and if any export / imported consignment is found without ISPM-15 mark or with doubtful marking, it should be reported to Plant Quarantine Officer / authorities for taking necessary action. It is also clarified that exporters should specifically indicate in the Shipping Bill, the description of packaging material so as to ensure whether any consignment with wooden packaging material warrants mandatory compliance with ISPM-15 standards or not.

- 12.4 Department of Agriculture and Cooperation has informed that all the agencies authorized to provide ISPM Certification on wood packaging material have been duly accredited by Directorate of Plant Protection, Quarantine & Storage. These agencies issue ISPM-15 certification after providing treatment with Methyl Bromide or Forced Hot Air as per prescribed norms. The list of these accredited agencies is available at [www.plantquarantineindia.org](http://www.plantquarantineindia.org).

[Refer Circular No.13/2011-Cus., dated 28-2-2011]

- 12.5 Cases of non-adherence/infringement of prescribed phytosanitary standards have been reported by other Customs administrations especially EU. Ministry of Agriculture has repeatedly expressed concerns over increasing number of such cases and desired remedial action be taken to check export of consignments not meeting required phytosanitary specifications i.e. ISPM-15. Board has reiterated that no export consignments packed with raw or solid wood packaging material that is

found deficient in meeting phytosanitary requirements ISPM-15 shall be allowed clearance.

[Refer Instruction F.No.450/19/2005-CusIV., dated 16-9-2013]

### **13. Export of Leather :-**

- 13.1 In order to put in place a robust system of inspection with presence of officials from CLRI at identified Customs stations to check the unauthorised export of semi finished leather in the guise of finished leather (with intent to evade applicable export duty), Board in consultation with CLE (Council for Leather Exports) has prescribed the following arrangement w.e.f. 15-4-2013:

- (a) Officials of CLRI shall be deployed at Chennai, Mumbai and Kolkata ports and Kanpur and Tughlakabad ICDs and the cost thereof shall be borne by CLE.
- (b) The officials of CLRI shall assist Customs officers in examination of export consignments of leather. Where required, samples shall be drawn by Customs in presence of officials of CLRI. Samples so drawn by Customs shall be sent to CLRI or approved labs for testing.

[Refer Instruction F.No.450/39/2012-CusIV., dated 16-4-2013]

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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. The importer would prefer to warehouse such goods till they are required. 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:
- (a) The industrial development of the proposed area and the need for warehousing of the imported goods shall be assessed.
  - (b) 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.
  - (c) 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.
  - (d) 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.



#### **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:
- (a) Feasibility and financial viability of the warehouse operator, his financial status and his expertise in warehousing field;
  - (b) Past record of the applicant in complying with the provisions of the Customs and Central Excise Laws;
  - (c) 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;
  - (d) 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 Licensing of Private Warehouses.

#### **5. Appointment 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 specialized storing / handling facilities are required and such specialized 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; and
  - (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.
- (c) As a measure of relaxation to the Central/State Government Undertakings, all Central and State Public Sector Undertakings shall be exempt from furnishing Bank guarantee or other form of security for storing sensitive goods in the duty free shops operated by them. The execution of a double duty bond and other requirements would, however, remain.

[Refer Circulars No. 99/95-Cus, dated 20-9-1995, No.20/96-Cus, dated 4-4-1996, No. 13/02-Cus., dated 22-2-2002, No. 34/02-Cus., dated 26-6-2002, No.18/2007-Cus, dated 24-4-2007 and No. 26/2012 dated 10-09-2012]

## **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 As per sub-section 2(ii) of Section 61 of the Customs Act, 1962, where any warehoused goods specified in sub-clause (b) of sub-section (1) of Section 61 remains in a warehouse beyond a period of 90 days, interest shall be payable at such rate as fixed by the Board, on the amount of duty payable at the time of clearance of the goods in accordance with the provision of Section 15 on the warehoused goods for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods. The period of 90 days, under Section 61(2)(ii) of the Customs Act, 1962, would commence from the date of deposit of goods in the warehouse.

[Refer Circular No. 39/2013-Cus., dated 1-10-2013]

12.4 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 2 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 exempt vide Notification No. 67/95-Cus.(NT), 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
- (xi) 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
- (xiii) 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
  - (vi) 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 relation to goods 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 on the following terms:

- (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 terms of 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 in 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 a 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 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 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 in tanks; liquid helium gas in containers; wine, spirit and beer, all 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) Description of goods, nature, number and other relevant particulars mentioned in into-bond Bills of Entry match with 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 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 warehoused goods have not been removed from a warehouse at the expiry of the bonding period;
  - (iii) Where warehoused goods are taken as samples without payment of duty; and
  - (iii) Where any goods 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, /CDs/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 as well as relevant Board's circulars and instructions.
- 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 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 person duly authorized 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 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.
  - > 'TL' - 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 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 will 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 transhipped 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, ARE-1 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 ARE-I form. The copies of Shipping Bill and the ARE-I 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 ARE- 1 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 ARE- 1 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 In order to ensure an efficient Cargo Transfer Facility and to reduce dwell, Board has decided that in case of international transhipped cargo (Foreign to Foreign), for the pre-sorted containers wherein cargo does not require segregation, ramp to ramp or tail to tail transfer of cargo can be effected under preventive supervision on payment of MOT and observance of Cargo Transfer Manifest (CTM) procedure. In these cases, transshipment cargo meant for destination abroad need not be sent to cargo warehouses. In the case of containers other than pre-sorted containers, the existing procedure for transshipment of Cargo (Foreign to Foreign) would continue to apply.

[Refer Circular No.8/2011-Cus, dated 28-1-2011]

- 11.7 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 /CDs/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/CFS/ACC.
- (iv) For proper account 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 transhipped 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.

**15. Movement of imported goods from a port direct to CFS of another Customs station:**

15.1 In the interest of reducing transaction cost and dwell time Board has decided that suitable changes in ICES may be carried out to allow direct movement of imported goods from a gateway port to a CFS of another Customs station directly. This was necessitated since the ICES module at present does not allow generation of Sub Manifest Transhipment Permit (SMTP) to allow such movement of imported goods. Till such time the electronic system is made operational the following procedure has been prescribed for direct movement of imported goods from gateway port to a CFS:

- (i) At the Gateway Port, Customs shall prepare a consolidated list of all SMTP generated CFS-wise for consignments bound for another Customs station/ ICD. This list should be transmitted electronically by the gateway port to the receiving Customs station /ICD.
- (ii) The goods will move from the gateway port direct to the CFS under cover of a bond accepted by the Customs at the gateway port. The carrier will also carry the relevant SMTP in duplicate and hand over the same to the custodian at the CFS.
- (iii) On arrival of the goods at the CFS attached to ICD, the custodian of the CFS shall prepare:
  - (a) A list of goods/container arrival, on daily basis. This list shall *inter alia* cover the detail of SMTP generated at the gateway port, a hard copy whereof is received along with the goods/containers. This list shall be signed by the custodians and shall be endorsed by Customs Officer in the CFS. The custodian of the CFS shall forward the list of goods/container arrival, to ICD on daily basis.
  - (b) A Landing Certificate on the lines of a Container Arrival list shall be signed by custodian.
- (iv) The Custodian of CFS shall forward a copy of Landing Certificate duly endorsed by Customs at receiving end to the Customs at the gateway port for re-crediting the bond executed with Customs.
- (v) On arrival of the goods/container inside the CFS, the custodian along with the surveyor, if any, in presence of the Customs Officer shall verify the correctness of details of consignments and will make an endorsement in the SMTP. The endorsed SMTP shall be forwarded to concerned ICD. With receipt of endorsed SMTP and approval of Customs officer at the ICD, local IGM shall be permitted to be filed at Service Center in case of LCL cargo
- (vi) The Bill of Entry will be filed at the ICD as usual and the goods will be examined and cleared at the CFS.

15.2 This facility shall be extended to CFSs that are at a considerable distance from the ICD, or en-route to an ICD (from the gateway port). Movement of consignments from the gateway ports to CFS adjacent to ICD shall continue to be permitted, as earlier. The furnishing of suitable bond by the custodian of the ICD/CFS with the Customs at the gateway port shall also continue as at present.

[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, No.18/2009-Cus., dated 8-6-2009, No.4/2010-Cus, dated 15-2-2010 and No.22/2013-Cus., dated 24-5-2013]

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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 in relation to 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 The facility of re-working containers is now 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 opened and 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, the exporters get benefited by saving in freight charges, reduction in transit time, better handling and safer delivery of cargo as the activity takes place under the supervision of Indian agencies. The facility also 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/CFSs, 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/CFSs, 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. Further, as a measure of trade facilitation and to enable Indian ports to act as Transshipment Hubs, transshipment facility for imported goods in Less than Full Container Load (LCL) is permitted at approved places under the jurisdiction of identified Custom Houses. Currently, this facility is provided 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 and the details of LCL cargo would be entered in EGM.
- (viii) 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 purpose of international transshipment and 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.
- (ix) 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.
- (x) 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 also ‘imported’ goods.
- (xi) For international transshipment of LCL containers, the Commissioners should adopt consultative approach with the stakeholders/operators to identify suitable premises. Following factors may be considered by the Commissioner in this regard:
  - (a) Location of the premises.
  - (b) Availability of adequate infrastructure - modern handling equipment for loading / unloading of containers from rail flats, chassis, stacking, movement, cargo handling, stuffing/de-stuffing, refrigerated storage facility for perishables etc.
  - (c) Availability of sufficient secured area for segregation/ consolidation of cargo and 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.
- (xii) In line with Boards instructions, Commissioners may also indicate detailed operational procedure, taking into account the requirements, physical movement in carrying goods to the approved place / premises etc. at individual Customs stations.

[Refer Circulars 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 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 Present 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
Appraisers, Superintendent (Customs Preventive) and Superintendent (Central Excise)	85	125	140	180

Air Customs Officers, Examiners, Preventive Officers and Inspectors of Central Excise	75	100	105	145
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 Customs Broker, 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 Customs Broker handles 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.

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## Chapter 13

### Procedure for Less Charge Demand

#### 1. Introduction:

- 1.1 The Customs Act, 1962 mandates filing of correct declaration by importers or exporters in respect of imported / export goods in regard to value, description of goods, classification, exemption notifications having bearing on assessment of Customs duty etc. The Customs duty is determined in terms of Section 15 or section 16 of the Customs Act, 1962 in respect of imported or export goods. If the duty paid / levied is found to be less than the due, the importer or exporter is required to pay the short levied / non levied or short paid / non paid amount of duty. In this regard, the Customs Act, 1962 empowers officers to issue a demand cum Show Cause notice for recovery of amount of duty short levied/ non levied from the importer/exporter.

#### 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(5) 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(4) 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 28AA 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. 'Proper officer' for the Sections 17 and 28 of the Customs Act, 1962:

- 3.1 To address the issue of validity of Show Cause Notices issued prior to 6-7-2011, which were impacted by the judgment of the Hon'ble Supreme Court, in the case of *Syed Aii vs Commissioner and others*, the Customs (Amendment and Validation) Act, 2011 amended Section 28 of the Customs Act, 1962 on 16-9-2011 by inserting the following clause:

"(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the sixth day of July, 2011 shall be deemed to have and always had the power of assessment under section 17 and shall be deemed to have been and always had been the proper officers for the purposes of this section."

The amended Section 28 of the Customs Act, 1962 validates Show Cause Notices issued prior to 6-7-2011 by officers of Customs, which would include officers of Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Central Excise Intelligence (DGCEI) and similarly placed officers by retrospectively recognizing these officers as 'proper officers' for the purpose of Sections 17 and 28 of the said Act. Board has decided that, specified officers of DRI and DGCEI may attend to work relating to adjudication of case where show

cause notices of short levy / non levy of customs duty have been issued under Section 28 of the Customs Act, 1962.

[Refer Circular No.44/2011-Cus, dated 23-9-2011 and No.14/2014-Cus., dated 11-12-2014 ]

- 3.2 As a prospective remedial measure, in terms of Section 2(34) of the Customs Act, 1962, the Board has issued Notification No.44/2011-Customs (N.T.), dated 6-7-2011 by virtue of which officers of DRI, Commissionerates of Customs (Preventive), DGCEI and Central Excise Commissionerates were assigned the functions of the 'proper officer' for the purposes of Sections 17 and 28 of the said Act.
- 3.3. Vide Notification No 60/2015-Customs (N.T.), dated 04.06.2015 the power to appoint common adjudicating authority in cases investigated by DRI upto the level of Commissioner of Customs have been delegated to Principal Director General of Directorate of Revenue Intelligence (DRI) in terms of Section 152 of the Customs Act, 1962. Accordingly, it has been decided that all cases of appointment of common adjudicating authority in respect of cases investigated by DRI will be handled by Principal DG, DRI. In this regard, the Board has prescribed the following guidelines for Principal DG, DRI:
- (a) The following cases initiated by DRI shall be assigned to Additional Director General (Adjudication), DRI:
    - (i) Cases involving duty of Rs.5 crores and above;
    - (ii) Group of cases on identical issues involving aggregate duty of Rs.5 crores or more;
    - (iii) Cases involving seizure value of Rs.5 crores or more;
    - (iv) Cases of over-valuation irrespective of value involved; and
    - (v) Existing DRI cases with erstwhile Commissioner (Adjudication).
  - (b) Cases other than at (a) above involving more than one Customs Commissionerate would be assigned to the jurisdictional Commissioner of Customs on the basis of the maximum duty evaded;
  - (c) Cases other than at (a) above involving a single Customs Commissionerate would be assigned to the jurisdictional Commissioner of Customs;
  - (d) Non-DRI cases pending with erstwhile Commissioner (Adjudication) would be assigned to Additional Director General (Adjudication), DRI;
  - (e) Past DRI cases pending for adjudication with jurisdictional Commissioners of Customs would continue with these officers;
  - (f) Remand cases would be decided by the original adjudicating authority.
- 3.4 All other cases of appointment of common adjudicator would be dealt with by the Board. This would include cases made by Commissionerates or cases made by DRI wherein the adjudicating officer is an officer below the level of Additional Director General (Adjudication), DRI.

[Refer Circular No.18/2015-Cus, dated 9-6-2015 ]

#### **4. Adjudication proceedings:**

- 4.1 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.
- 4.2 Upon receipt of the notice'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.

- 4.3 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(8) 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.
- 4.4. In order to streamline guidelines on monetary limit for adjudication of cases by different grades of Customs Officers, Board decided that cases where SCNs are issued under section 28 of the Customs Act, 1962, these will be adjudicated as per following norms:

<b>Adjudicating Officer</b>	<b>Nature of Cases</b>	<b>Amount of Duty Involved</b>
Commissioner	All cases	Without limit
ADC/JC	All Cases	Upto Rs.50 lakhs
AC/DC	All cases	Upto Rs. 5 lakhs

- 4.5 Further, the proper officer for the issuance of Show Cause Notice and adjudication of cases under the provisions of Rule 16 of the Customs, Central Excise and Service Tax Drawback Rules, 1995 shall be as under:
- (i) In case of simple demand of erroneously paid drawback, the present practice of issuing Show Cause Notice and adjudication of case without any limit by Assistant / Deputy Commissioner of Customs shall continue.
- (ii) In cases involving collusion, wilful misstatement or suppression of facts etc., the adjudication powers will be as under:

<b>Adjudicating Officer</b>	<b>Amount of Drawback</b>
Additional / Joint Commissioner of Customs	Without limit
Deputy / Assistant Commissioner of Customs	Upto Rs.5 lakhs

- 4.6 In case of Export Promotion Schemes i.e. Advance Authorization / DFIA / Reward Schemes etc. the adjudication powers shall be as under:-

<b>Level of Adjudicating Officer</b>	<b>Duty Incentive amount</b>
Commissioner of Customs	Without any limit.
Additional / Joint Commissioner of Customs	Upto Rs.50 lakhs
Deputy / Assistant Commissioner of Customs	Upto Rs.5 lakhs

- 4.7 Notwithstanding the revision of adjudication powers, in all cases where personal hearing has been completed before such revision, orders will be passed by adjudicating authority who held the personal hearing.

[Refer Circular No.24/2011-Cus, dated 31-5-2011]

- 4.8 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.
- 4.9 In other cases such as short landing, the adjudication power will be the same as provided under the Customs Act, 1962 or the rules/regulations made thereunder.
- 4.10 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.
- 4.11 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 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 Refund**

#### **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 one year from the date of payment of duty and interest. Normally, the time limit of 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 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 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 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 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 the 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 reconciliation 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 organizations. These instructions require that status of individual applications/matters should be made available on the organization'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 (v) refund application sanctioned, pending verification by audit (vi) 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(NT), dated 26-5-1995 and No.75/2003-Cus(NT), 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 Customs 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 in order 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 the test report / finalisation of enquiry and final decision in the matter. The Bond executed for provisional release shall contain a clause to this effect,
- (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, instead of clearing the goods on payment of fine and penalty, 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]

2.6 Board has reiterated that special care will have to be taken by field formation to avoid any unwarranted delays in clearance that may lead to possible demurrage liability on Customs. Where for justifiable reasons in certain types of exceptional situations, release of consignments is not considered advisable even on provisional basis, options must be given by sending intimation in writing to the importers / exporters or their agents to keep the goods in warehouses in terms of Section 49 of the Customs Act. It should be made clear that if the facility is not availed and the goods incur any demurrage, the importers/exporters will be wholly responsible for its payment.

[Refer Instruction F.No.450/160/2011-Cus.IV, dated 13-2-2012]

2.7 There can be no justification to hold up export consignments for long periods unless the export goods are prohibited under Customs Act, 1962 or ITC (HS) Policy. Essentially, genuine exports must be facilitated and there should be no delays or hold ups of export goods. Therefore, the Board has reiterated that it shall be the responsibility of Commissioner of Customs concerned to ensure strict compliance of extant instructions in this regard and deviation or lapse shall be proceeded against.

[Refer Circular No. 30/2013- Cus., dated 5-8-2013 ]

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## 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 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, 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 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. Procedural formalities 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 DEEC, EPCG and 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 fulfilment 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 CustomHouse 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/outsorce 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]

### **15. Courier electronic clearance procedure:**

15.1 Clearance of imported goods shall be affected in the following manner:

- (i) The Authorised Courier or his agent shall file with the proper officer, in an electronic form, a manifest for imported goods prior to its arrival viz. Express Cargo Manifest - Import (ECM-I) in Form A;
- (ii) The courier packages containing the imported goods shall not be dealt with in any manner except as may be directed by the Commissioner of Customs and no person shall, except with the permission of proper officer, open any packages.
- (iii) The Authorised Courier or his agent shall make entry of goods imported by him, in an electronic declaration, by presenting to the proper officer the Courier Bill of

Entry-XI (CBE-XI) for documents in Form B or the Courier Bill of Entry-XII (CBE-XII) for free gifts and samples in Form C or the Courier Bill of Entry-XIII (CBE-XIII)

for low value dutiable consignments in Form D or the Courier Bill of Entry-XIV (CBE-XIV) for other dutiable consignments in Form E.

- (iv) The Authorised Courier shall present imported goods for inspection, screening, examination and assessment thereof.
- (v) Imported goods which are not taken clearance within 30 days of arrival, shall be detained by proper officer and shall be sold or disposed of by the person having custody thereof, after notice to the Authorised Courier and to the declared importer, if any, and the charges payable for storage and holding of such goods shall be payable by the Authorised Courier.

15.2 Clearance of export goods shall be done as follows:

- (i) The Authorised Courier or his agent shall, on or after such date as the Board may specify by notification, file in an electronic form, a manifest for export goods before its export with the proper officer viz. Courier Export Manifest (CEM) in Form F.
- (ii) The courier packages containing the export goods shall not be dealt with after presentation of documents to the proper officer in any manner except as may be directed by the Commissioner of Customs and no person shall, except with the permission of proper officer, open any package of export goods, brought into the Customs area, to be loaded on a flight.
- (iii) The Authorized Courier or his agent shall make entry of goods for export, in Courier Shipping Bill-III (CSB-III) for documents in Form G or, as the case may be, in the Courier Shipping Bill-IV (CSB-IV) for goods in Form H, before presenting it to the proper officer.
- (iv) The Authorized Courier shall present the export goods to the proper officer for inspection, screening, examination and assessment thereof.
- (v) Any export goods brought into customs area for export purpose and not exported within 7 days or within such extended period as permitted by the proper officer in case of delay beyond the control of the Authorized Courier and declared exporter, may be detained by the proper officer and sold or disposed off by the custodian, after notice to the concerned Authorized Courier and declared exporter. The charges for storage and handling of such goods shall be paid by such Authorized Courier.

15.3 The Authorized Courier or his agent empowered to deal with the imported/export goods shall be required to pass the examination referred to in the Custom Brokers Licensing Regulations, 2013.

15.4 Regulation 13 of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 provides for suspension or revocation of registration of authorized courier on the basis of grounds specified therein. The following procedure has been prescribed for revoking registration:

- (i) The Commissioner of Customs shall issue a notice in writing to the Authorised Courier stating the grounds on which it is proposed to revoke the registration and requiring the said Authorised Courier to submit, within such time as may be specified in the notice, not being less than 45 days, to the Deputy /Assistant Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Authorised Courier desires to be heard in person by the said Deputy / Assistant Commissioner of Customs.
- (ii) The Commissioner of Customs may, on receipt of the written statement from the Authorised Courier, or where no such statement has been received within the time-limit specified in the notice, direct the Deputy / Assistant Commissioner of Customs to inquire within a period of 3

months, from the order of suspension or from the date of initiation of enquiry, as the case may be, into the grounds which are not admitted by the Authorised Courier.

- (iii) The Deputy / Assistant Commissioner of Customs shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Authorised Courier, for the purpose of ascertaining the correct position.
- (iv) The Authorised Courier shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings. If the Deputy / Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.
- (v) At the conclusion of the inquiry, the Deputy / Assistant Commissioner of Customs shall prepare a report of the inquiry recording his findings.
- (vi) The Commissioner of Customs shall furnish to the Authorised Courier a copy of the report of the Deputy / Assistant Commissioner of Customs and shall require the Authorised Courier to submit, within the specified period not being less than 60 days, any representation that he may wish to make against the findings of the Deputy / Assistant Commissioner of Customs.
- (vii) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Authorised Courier, pass such orders as he deems fit.

[Refer Instruction F.No.450/54/2008-Cus.IV, dated 9-2-2011 and Notification No. 65/2012- Cus (N.T.), dated 26.07.2012]

## **16. KYC and other facilitations**

- 16.1 It has been decided that two documents, one for 'proof of identity' and other for 'proof of address' would be required for KYC verification. However, in case of individuals, if any one document listed in the Board Circular No 9/2010-Cus., dated 8-4-2010 contains both 'proof of identity' and 'proof of addresses', the same shall suffice for the purpose of KYC verification. Board has also expanded the list of documents required for KYC verification by including 'Addhar Card' as a valid document for individuals.
- 16.2 In order to expedite decision making for outsourcing activities by Couriers, the Board has decided that permission mandated under the Courier Imports and Exports (Clearance) Regulations, 1998 and Courier Imports and Exports (Electronic declaration and Processing) Regulations, 2010 should be granted without delay and in any case within 7 days.
- 16.3 In respect of re-export of mis-routed consignments, the Board has decided that such decisions on request for re-export in specified situations should ordinarily be taken within 2 (two) days.

[Refer Circulars No. 9/2010-Cus., dated 8-4-2010 and No.4/2015- Cus., dated 20-1-2015]

- 16.4 Vide Notification No. 62/2015- Cus. (N.T.), dated 17-6-2015, the export of cargo through Courier mode from the airports of Chennai, Mumbai and Delhi under Merchandise Exports from India Scheme (MEIS) upto FOB value upto Rs.25,000/- per consignment has been allowed for the goods listed in Appendix 3C of the Foreign Trade Policy 2015-2020.

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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 Customs duty payable if less than Rs.100/- 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 in terms 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 labelled 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 mis declared 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.

- (I) 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. Drawback can also be availed for export through post but not under other export promotion schemes like Advance Licence, DFRC, EPCG etc. (an exception is made for Chapter 3 schemes of the FTP when exported by post through Delhi FPO). 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 In term of the export made under claim of benefit under Chapter 3 ( Reward Scheme) of FTP, the exporter shall file a Postal Bill of Export along with the documentation requirement enjoined under section 82 of the Customs Act 1962, as prescribed by the postal department (eg. CN23).
- 10.3 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.
- 10.4 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.

- 10.5 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.
- 10.6 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 claim by 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 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 on exports through post is sanctioned in the Foreign Post Office.

#### **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, which is paid by the Customs Officer in the FPO, 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.

#### **13. Export of postal goods under Reward Schemes under Foreign Trade Policy**

- 13.1 Notification Nos. 92/2209, 93/2009, 94/2009 and 95/2009-Cus., all dated 11-9-2009 allow export of goods by post under claim of benefits under Chapter 3 (reward schemes) of the FTP from the Foreign Post Office, New Delhi. The procedure for availing this benefit is contained in Public Notice No. 13/2013 dated 13-8-2013 issued by the Commissioner of Customs (Exports), New Delhi.

[Refer Circular No 29/2013-Cus., dated 5-8-2013]

**14. Re-export of partial consignment not allowed:**

- 14.1 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.
- 14.2 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 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 traveller 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 traveller 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

- 2.5 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.
- 2.6 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.
- 2.7 Importers are trusted to declare correctly and adhere to the undertaking of the limit of yearly value and quantity. Any person suspected to contravene the limit or undertaking deliberately is liable to be investigated, penalized and/or prosecuted.

### **3. Machinery import:**

- 3.1 Machinery that are prototypes of engineering goods, imported either for further manufacture or for use as capital goods for export production or in connection with securing export orders can be imported duty free upto value of Rs.10,000/-. These goods are normally defaced or made un-saleable by punching, cracking, marking with indelible ink etc. The machinery can be cleared by furnishing a Bank Guarantee (or) deposit of the duty payable and an undertaking that these would be re-exported within 9 months of import. For high valued machinery, the importer has to give an undertaking that these 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 scheme:**

- 5.1 Duty free import of samples is permitted under 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 Carnet vide Notification No.157/90-Cus, dated 28-3-1990.
  - (c) Samples of goods manufactured by EOUs can be imported duty free in terms of Notification No.52/2003-Cus, dated 31-3-2003.
  - (d) It has been clarified that bonafide trade samples should be part of export baggage in terms of para 2.31 of the FTP read with para 2.20 of the said FTP and 2.27 of Handbook of Procedures.

[Refer Instruction F.No.495/2/2011-Cus.VI dated 5-4-2011]

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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 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 waste:**

4.1 The disposal of hazardous waste 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 waste are to be categorized as either those that are banned or those that are regulated. The waste in the banned category should be either re-exported, if permissible, or destroyed at the risk, cost and the consequence of the importer. The waste 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 waste 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]

**5. Compliance with restrictions/prohibitions under various laws:**

- 5.1 The disposal of goods, which are subject to restrictions/prohibitions under any law for the time being in force, can only be made in terms of the relevant statutes.

**6. Mechanism for interaction between custodians and Customs:**

- 6.1 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 1st 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) Protection of patents, trademarks and copyrights. [Section 11(2)(n)]; and
- (ii) 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 prohibition of imported goods for the purpose of protecting intellectual property rights as specified under Notification No.51/2010-Customs (N.T.), does not relate to all infringements under the parent IPR Acts but only to those imports that infringe the specific provisions of various parent Acts governing IPR, mentioned in the notification No.51/2010-Customs (N.T.). To illustrate, in case of the Trade Marks Act, 1999, prohibitions against infringement of trade marks on import of goods intended for sale or use in India, that attract the provisions IPR (Imported Goods) Enforcement Rules, 2007 would apply to:

- (i) Imported goods having applied thereto a false trade mark, as specified in section 102 of the Trade Marks Act, 1999; and
- (ii) Imported goods having applied thereto any 'false trade description' within the meaning of definition provided in clause (i), in relation to any of the matters connected to description, statement or other indication direct or indirect of the product but not including those specified sub-clauses (ii) and (iii) of clause (za), of sub-section (1) of Section 2 of the Trade Marks Act, 1999.

2.5 In this context, the issue of permitting import of original/genuine products (not counterfeit or pirated) which are sold/ acquired legally abroad and imported into the country, by persons other than the intellectual property right holder without permission/ authorisation of the IPR holder, known in the trade as 'parallel imports' has been clarified by the Department of Industrial Policy and Promotion (DIP&P), Ministry of Commerce & Industries, which is nodal authority for all matters relating to (i) Trade Marks Act, 1999 (ii) Patents Act, 1970 and (iii) Designs Act, 2000 as follows:

- (i) Section 107A (b) of the Patents Act, 1970 provides that importation of patented products by any person from a person who is duly authorised under the law to produce and sell or

distribute the product shall not be considered as an infringement of patent rights. Hence, in so far as Patents are concerned, Section 107A (b) provides for parallel imports.

- (ii) Section 30(3)(b) of the Trade Marks Act, 1999 provides that where the goods bearing a registered Trade Mark are lawfully acquired, further sale or other dealing in such goods by purchaser or by a person claiming to represent him is not considered an infringement by reason only of the goods having been put on the market under the registered Trade Mark by the proprietor or with his consent. However, such goods should not have been materially altered / impaired after being in the market.
- (iii) In so far as designs are concerned, it is clarified that parallel imports are not allowed as indicated by Section 22 (1)(b) of the Designs Act, 2000.
- (iv) As regards geographical indications, it is stated that there are no identical or similar provisions as in Section 107A(b) of Patents Act, 1970 on parallel imports under the Geographical Indications of Goods (Registration and Protection) Act, 1999. The said Act does not address the issue of parallel import at all. Hence, parallel imports are not covered under this Act.

[Refer Circular No.13/2012-Cus., dated 8-5-2012]

2.6 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;
- (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; and
- (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) At the time of registration but prior to importation, it may be difficult to fix the bond amount corresponding to the value of suspected infringing goods not yet imported. Further, this

would lock in right holders' money in the form of security. Therefore, the right holders may furnish a General Bond without security [Para 3.1 (i)]. The right holder shall also 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. The surety and security shall be on consignment basis and shall be furnished along with the consignment specific bond consequent upon interdiction of the consignment allegedly infringing rights of the right holder.

- 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 An on-line, system driven, centralized bond management module has been implemented as part of the existing Automated Recordation and Targeting System (ARTS). The main objective of this system is to provide 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 rush to different customs formations to execute consignment specific bonds and sureties/securities upon receipt of information about an interdiction of allegedly infringing consignment.
- 3.4 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.
- 3.5 If registration is granted, its validity period, would be indicated and the same shall normally be 5 years (unless the right holder wants it for a lesser period subject to minimum validity for one year).
- 3.6 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 Circulars No.41/2007-Cus., dated 29-10-2007 and No. 10/2011-Cus., dated 24-2-2011]

#### **4. Automated monitoring of imports involving IPR:**

- 4.1 Besides the legal measures 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 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.

[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 30-6-2010 and Circulars No.41/2007-Cus., dated 29-10-2007 and No.10/2011-Cus., dated 24-2-2011]

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## **Chapter 22**

### **Duty Drawback**

#### **1. Drawback on re-export of imported goods**

- 1.1 Duty Drawback on export of duty paid imported goods is in terms of Section 74 of Customs Act, 1962 read with Re-export of Imported Goods (Drawback of Customs Duty) Rules, 1995. The goods are to be entered for export within two years from date of payment of duty on importation thereof. Under certain circumstances this period may be extended by Chief Commissioner of Customs and then by the Board.
- 1.2 Application by exporter is required to be made within 3 months, from the date of export of goods, which may be extended up to 12 months from date of export subject to conditions and fee payment.  
[Refer Circular No.13/2010-Cus., dated 24-6-2010]
- 1.3 A portion of the Customs duty paid at the time of import is given back as duty drawback, subject to certain procedure and conditions including identification of export goods with those imported on duty payment and use criteria. Where the goods are not put into use ninety eight per cent of Duty Drawback is admissible otherwise drawback is granted based on extent of use. Used goods do not get Drawback if exported 18 months after import.  
[Refer Notification No.19-Cus., dated 6-2-1965]
- 1.4 All cases of drawback processing or denial under section 74 are to be handled by way of detailed speaking order, following the principles of natural justice, on the issue of compliance to Rule 5 of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 relating to manner and time of claiming drawback, identification, determination of and extent of use and other attendant aspects. Each such order gets examined by the Commissioner for its legality and propriety.  
[Refer Circular No.35/2013-Cus., dated 5-9-2013]

#### **2. Duty drawback on export of manufactured goods:**

- 2.1 Duty Drawback rebates 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. Duty Drawback is of two types: (i) All Industry Rate and (ii) Brand Rate. The legal framework is provided by Sections 75 and 76 of the Customs Act, 1962 and the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 (Drawback Rules, 1995) issued under the Customs Act, 1962, the Central Excise Act, 1944 and the Finance Act, 1994.
- 2.2 The All Industry Rates (AIR) are notified, generally every year, by the Government in the form of a Drawback Schedule based on the average quantity and value of inputs and duties (both Excise & Customs), and Service Tax on input services, borne by export products. The AIR are essentially average rates based on assessment of average incidence.
- 2.3 AIR are fixed after extensive discussions with stake holders like Export Promotion Councils, Trade Associations, individual exporters so as to obtain relevant data, which includes procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Data is also sought from Central Excise and Customs field formations and information received from Ministries taken into account.
- 2.4 The AIR may be fixed as a percentage of FOB price of export product or as specific rates. Drawback Caps are imposed in most cases to obviate the possibility of misuse.

- 2.5 The scrutiny, sanction and payment of Duty Drawback claims at EDI locations is carried out with the aid of the EDI system which also facilitates payment directly to the exporter's bank account once the EGM has been correctly filed by the airlines / shipping lines, if other conditions are fulfilled.

[Refer Notification No.110/2014-Cus (N.T.), dated 17-11-2014 and Circular No.13/2014-Cus., dated 18-11-2014]

- 2.6 The Brand Rate of Duty Drawback may be fixed in terms of Rules 6 and 7 of the Drawback Rules, 1995 in cases where the export product does not have the AIR of Duty Drawback or the AIR neutralizes less than 4/5th of the duties/tax paid on materials/input services used in the manufacture of export goods. Brand rate is fixed by the Commissionerate of Central Excise having jurisdiction over the manufacturing unit.

- 2.7 An exporter, who has opted /declared at the time of export on the shipping bill his intention to claim the Brand Rate by specifying the figure "9801" as identifier, has to file an application for fixation of the brand rate within 3 months from the date of the 'Let Export' Order which can be extended up to 12 months from LEO subject to conditions and payment of fee as provided in the Drawback Rules, 1995. This application has to be made before the Commissioner of Central Excise having jurisdiction over the manufacturing unit.

[Refer Circular No.13/2010-Cus., dated 24-6-2010 and Circular No. 13/2014-Cus dated 18.11.2014 ]

- 2.8 The application for fixation of brand rate is to include, inter alia, details of materials/ components/ input services used in the manufacture of goods and the duties/taxes paid on such materials/components/input services.

- 2.9 In brand rate of drawback, the exporter is compensated the incidence actually incurred in the export product based on a verification of documents and proof of usage of actual quantity of inputs /services utilized in the manufacture of export product and duties/tax paid thereon.

- 2.10 Five categories of exporters can seek provisional brand rate letters based on their declaration subject to post verification. Other exporters who actually file application for fixation of Brand Rate under rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 may also provisionally seek drawback equivalent to AIR pending verification. A time limit is prescribed for Central Excise Commissionerates to issue such provisional brand rate letters and the final brand rate letters.

[Refer Instruction F.No. 603/01/2011- DBK., dated 11-10-2013 and Circular No. 13/2014- Cus., dated 18-11-2014]

- 2.11 A copy of any brand rate letter issued by Central Excise is to be endorsed to the relevant Customs authority to facilitate payment of brand rate of Drawback to the exporter.

### **3. Procedure for claiming Duty Drawback:**

- 3.1 Either the AIR or the Brand Rate may be claimed on the shipping bill at the time of export and requisite particulars filled in the prescribed format of Shipping Bill/Bill of Export. 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 complete only when accompanied by prescribed documents described 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.

- 3.2 Duty Drawback on goods exported by post is also allowed on following the procedure prescribed under Rule 11 of the Drawback Rules, 1995.



#### **4. Supplementary claims of Duty Drawback:**

4.1 Where any exporter finds that the amount of Duty Drawback under section 75 paid to him is less than what he is entitled to on the basis of the amount or rate of Drawback determined, 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:

4.2 The period of 3 months may be extended up to 18 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 1995.

[Refer Circular No.13/2010-Cus., dated 24-6-2010]

#### **5. Limitations on admissibility of Duty Drawback:**

5.1 The Customs Act, 1962 and the Drawback Rules, 1995 lay down certain limitations and conditions for grant of duty drawback. For example, no duty drawback shall be allowed where the drawback due in respect of any goods is less than Rs.50/- or in respect of any goods the market price of which is less than the amount of drawback due thereon. No amount or rate of drawback shall be determined in respect of any goods, the amount or rate of drawback of which would be less than 1% of FOB value of export thereof except where the amount of drawback per shipment exceeds Rs. 500/-. No drawback is allowed where value of export goods is less than the value of imported material used in their manufacture. In this regard, if necessary, certain minimum value addition over the value of imported materials can also be prescribed by the Government.

5.2 The drawback amount or rate determined under Rule 3 of Drawback Rules 1995 shall not exceed one-third of the market price of the export product.

5.3 In case the Central Government forms an opinion that there is likelihood of export goods being smuggled back into India, the Government may not allow drawback or allow it subject to specified conditions or limitations. Notifications have been issued under Section 76 of the Customs Act, 1962. An example is Notification No. 208-Cus., dated 1-10-1977.

5.4 While prior repatriation of export proceeds is not a pre-requisite for grant of Duty Drawback, the law prescribes that if sale proceeds are not received within the period stipulated by the RBI, the Duty Drawback will be recovered as per procedure laid down in the Drawback Rules, 1995. An exception is where non-realization of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

#### **6. Monitoring of realization of export proceeds:**

6.1 Each Custom House is to have a special cell monitoring realization of export proceeds. EDI locations are also facilitated, via MIS Report of DG (Systems), to retrieve data on exports (made from 1.4.2013 onwards) under drawback scheme whose remittance is outstanding beyond due date. Notices are to be issued for recovery of drawback paid in respect of export consignments where export proceeds remain unrealized within the prescribed period and adjudication as well as further actions are to be accomplished in a methodical and time bound manner by the field formations.

- 6.2 For cases where any notices are returned undelivered as the recipient/address was non-existent, the Commissioners should also report names of relevant exporters to the Regional Authorities of DGFT so that action could be initiated under FT (DR) Act as well and the IE Codes got cancelled for furnishing wrong address.

[Refer Circular No.5/2009-Cus., dated 2-2-2009, Instructions F.No.609/119/2010-DBK, dated 18-1-2011, F.No. 603/01/2011-DBK, dated 11-10-2013 and DG (Systems) letter No.IV(35)/46/2013-Systems dated 25/28.8.2014]

## **7. Certain aspects relating to Duty Drawback:**

- 7.1 While processing Drawback claims, whether under Section 74 or Section 75, wherever any deficiency is noticed in the claim, it is to be communicated to the exporter in a clear unambiguous manner within a period of 10 days, from the date of filing of the claim. Commissioners of Customs are to undertake a periodic review and monitoring of the status of pending drawback claims.

[Refer Circular No.46/2011-Cus., dated 20-10-2011]

- 7.2 The higher rate of AIR is applicable when Cenvat facility has not been availed on any of the inputs or input services used in the manufacture of the export product. If claim is for the higher rate at time of export, the processing at export stage should specifically ensure availability of “Non-availment of Cenvat Certificate”, otherwise the shipping bill needs amendment at export stage to show the claim for lower AIR.

[Refer Instruction No. 609/156/2013-DBK., dated 13-3-2014]

- 7.3 Commissioners are also to ensure that exporters do not avail refund of service tax paid on taxable services which are used as input services in the manufacturing or processing of export goods through any other mechanism while claiming the higher AIR.

[Refer Circular No.19/2006-Cus., dated 13-7-2006]

- 7.4 The field formations are to ensure periodic sample checks and verifications with respect to export declarations accepted for AIR drawback purposes and these are to be regarded as audit checks and their proper record maintained. These include checks on value, present market value, non-availing of Cenvat facility on inputs and input services/reversal of Cenvat credit, declarations that affect the applicability of AIR itself such as whether goods were or were not manufactured or exported in terms of rule 19(2) of Central Excise Rules or by availing rebate on material used in manufacture or processing in terms of rule 18 of Central Excise Rules, verification of actual freight payment certificates when CIF or C&F values are declared, etc. Random checks with respect to debit notes raised by foreign buyers after initial realization by exporter, reduction in invoice value after proceeds are negotiated or realized, etc may also be considered by Commissioners. Detections that indicate lower FOB/realization or other information of relevance when benefits under FTP are also involved should also be intimated to Regional Authority of DGFT for necessary action.

[Refer Circular No.46/2011-Cus., dated 20-10-2011 and Instruction F.No. 603/01/2011-DBK dated 11-10-2013]

- 7.5 Further, by way of audit, the Commissioners are also to exercise special checks, in cases of first time exporters, exporters who have taken large amounts of drawback suddenly, sensitive destinations, sensitive products etc., to ensure there is no misuse of the drawback facility.

- 7.6 Commissioners are to ensure that Internal Audit wings achieve desired diligence levels and a significantly improved performance. In Customs these areas include payment of re-export drawback and cases of manual processing of drawback. In Central excise, the aspects include the determination/fixation of brand rates.

[Refer Instruction F.No. 603/01/2011-DBK., dated 11-10-2013]

- 7.7 Field formations are to monitor levels of EGM pendency to ensure trade facilitation. The mismatch of declaration made in the shipping Bill (item details vis-à-vis drawback details) should be verified to avoid the excess payment of drawback.

[Refer Instruction F.No. 603/01/2011-DBK., dated 31-7-2013]

- 7.8 A time limit is prescribed for Central Excise field formations to issue provisional brand rate letters and the final brand rate letters. The work related to fixation of brand rates should be daily monitored by the Commissioner of Central Excise, and monthly by Chief Commissioners, for ensuring concerted and sustained action for disposing brand rate work.

[Refer Instruction F.No. 603/01/2011- DBK dated 11.10.2013  
and Circular No. 13/2014- Cus dated 18.11.2014]

- 7.9 The brand rate fixation letter issued by Central Excise Commissionerates has to indicate full and comprehensive description/details of the exported goods and other details. The Customs Commissioners are to ensure a receipt and acknowledgement procedure for brand rate letters (issued by Central Excise formations) filed at the Custom Houses.

[Refer Instructions No. 603/01/2011- DBK., dated 31-7-2013 and No. 11-10-2013]

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## **Chapter 23**

### **Export Promotion Schemes**

#### **1 Introduction:**

1.1 The Export Promotion Schemes implemented by CBEC relate to respective Foreign Trade Policies. However, presently the predominant ones are the following broad categories pertaining to FTP 2009-14 (effective till 31.3.2015) and FTP 2015-20 -

- (a) Incentive or Reward schemes under which exporters are granted duty credit in a scrip which is permitted to be utilized in an exemption framework, for debiting certain duties/tax, subject to conditions.
- (b) Duty exemption schemes like Advance Authorisation (AA) and Duty Free Import Authorization (DFIA) which permit duty free import of inputs related to export production.
- (c) Duty remission schemes like the Post export EPCG duty credit scheme. Export Promotion Capital Goods (EPCG) Scheme which permits duty free import of capital goods against an obligation to export goods in a specific time frame

#### **2. Reward /Incentive Schemes:**

2.1 The Served From India Scheme (SFIS), Vishesh Krishi and Gram Udyog Yojana (VKGUY), Agri. Infrastructure Incentive Scrip (AIIS), Focus Market Scheme (FMS), Focus Product Scheme (FPS) and Status Holders Incentive Scrip (SHIS) Schemes of the FTP 2009-14 (effective for exports till 31.3.2015) may be referred at paras 2.1 to 6.3 of the Customs Manual 2014.

2.2 Under the FTP 2015-20, the –

- (a) Merchandise Exports from India Scheme (MEIS) rewards export of notified goods to specified markets listed in Appendix 3B of Appendices & ANF @ 2% or 3% or 5% of certain FOB value of exports. It covers reward on export via post or courier of specified items that are transacted using e-commerce platforms, subject to certain conditions. In order to claim reward under MEIS it is mandatory that exporter declare intent to claim reward at time of export on shipping bills / bills of export that are filed on or after 1.6.2015.
- (b) Service Exports from India Scheme (SEIS) incentivizes export of notified services listed in Appendix 3D of Appendices & ANF by service provider located in India who have a specified minimum net free foreign exchange earnings. Only services rendered in the manner as per Para 9.51(i) and Para 9.51(ii) of the Foreign Trade Policy (FTP) 2015-20 may be eligible. The entitlement is either 3% or 5% of net foreign exchange earned
- (c) Both, MEIS and SEIS scrips are freely transferable and can be used for import of any items except those listed in appendix 3A of Appendices and ANF, or for domestic procurement (without exception for appendix 3A items) or for payment of service tax on procurement of services. The additional customs duty/excise duty/service tax paid in cash or through debit in these scrips may be adjusted as CENVAT Credit or Duty Drawback. Moreover, the basic custom duty paid in cash or through debit in these two scrips may be adjusted as duty drawback.

[Refer Notifications Nos. 24 and 25 /2015-Cus, Nos.20 and 21 /2015-C.E. and Nos.10 and 11 /2015-S.T., all dated 8-4-2015]

#### **3. Certain aspects related to usage of reward duty credit scrips:**

- (a) Board's Circular No. 8/2009-Customs and Instruction No. 603/13/2013-DBK dated 27.05.2014 highlighted the difference between freely transferable scrips meant for all types of goods with certain exceptions and scrips with limited transferability/actual user condition and meant for specified goods. These differences in the nature of scrips issued under the various FTPs and the type of duties or tax that may be debited in a particular scrip are aspects to be kept in view by field formations.

- (b) The scrips being usable only with respect to those goods that are permitted to be imported under the relevant reward scheme pertaining to that scrip, it implies that debit of duty in a scrip, even in the case of discharging duty on already imported goods in cases of export obligation (EO) default, is to be only in respect of goods that are importable under that scrip. Accordingly, scrips like SHIS, AIS or SFIS which, for example, cannot be used for debiting duty on raw materials, cannot also be used for debiting of duty on raw material in cases of EO default. This was brought to notice of field formations vide Board's letter F.No. 605/32/2013-DBK dated 19.12.2013 in connection with use of duty credit scrip for debiting towards customs duties in case of EO defaults under chapter 4 and 5 of the FTP. Similarly, if a scrip can be used in relation to a capital goods 'CG1' but not 'CG2', then it cannot be used to debit duty related to import of 'CG2' in relation to which there is an EO default.
- (c) Scrips issued under FTP 2015-20 can be utilized / debited for payment of customs duties in case of EO defaults for authorizations issued under Chapter 4 and 5 of FTP 2015-20 only. Similar position holds for scrips issued in terms of FTP, 2009-14.
- (d) Scrips cannot be used to discharge penalty or interest which are required to be deposited in cash.
- (e) Clearance of goods from Custom Bonded warehouses utilizing duty credit scrips of SFIS, VKGUY, FMS, FPS, SFIS is allowed as per the same procedure as is prescribed for DEPB scrips. [Refer Circular No. 50/2011-Cus., dated 9-11-2011 read with No.72/2003-Cus and No.68/2000-Cus]. This would also apply to MEIS and SEIS scrips.

#### **4. Verification related to reward duty credit scrips:**

- 4.1 Verification of genuineness of reward scrips is provided for before allowing registration. Further, random verification of the shipping bills or bills of export of goods based on which the reward scrip was issued is prescribed to ascertain the genuineness of the supporting shipping bills. However, the genuineness of shipping bills or bills of export of goods not on Customs EDI (i.e. Manual shipping bills) should invariably be verified while registering the scrip. While Customs can carry out complete verification of scrip where specific intelligence suggests misuse, Also, instructs that scrips issued by the DGFT should normally be accepted unless there is a reason for detailed verification for which the AC / DC is to record the reasons, in writing in file.

[Refer Circulars No. 5/2010-Cus.dated 16-3-2010, No.17/2012-Cus., dated 5-7-2012, No. 14/2015-Cus., dated 20-4-2015 and Instruction No.609/119/2010-DBK., dated 18-1-2011]

#### **5. Advance Authorization Scheme:**

- 5.1 Advance Authorisations (AA) are issued to allow duty free import of inputs that are physically incorporated in the export product (after making normal allowance for wastage) as well as certain items like fuel, oil, catalysts which are consumed in the course of their use to obtain the export product. The raw materials/inputs are allowed in terms of Standard Input-Output Norms (SION) or self-declared norms of exporter. The AA are issued on pre-export or post export basis in accordance with the FTP and procedures in force on the date of issue.
- 5.2 The holder is required to fulfill export obligation (EO) by exporting specified quantity/value of resultant product. The AA and the materials imported are not transferable even after completion of EO.
- 5.3 AA usually have a minimum of 15% value addition. However, as per para 4A2.1 and Appendix 11B of HBP 2009-14 (para 4.61 and Appendix 4D of HBP 2015-20) the value addition for gems and jewellery and for specified goods is less than 15%. In case of Tea, the minimum value addition is

50%. As per Appendix 11 in HBP 2009-14 (4C in HBP 2015-20), higher value addition is prescribed for export for which payment are not received in freely convertible currency.

- 5.4 All Industry Rate (AIR) of Duty Drawback is not admissible with AA. However, Brand Rate of Duty Drawback may be claimed in respect of duty-paid inputs (not specified in the norms) which are used in the export product provided such duty paid inputs have been endorsed by Regional Authority for drawback payment on the AA. This specification ensures value addition norms.
- 5.5 AA are issued for physical exports as well as deemed exports. These are also issued on the basis of annual requirements of exporter, which enables planning manufacturing / exports on a longer term basis. However, self declared norms are not permitted under annual requirement under FTP 2015-20. Advance Authorisation for Annual Requirement is also not available in respect of SION where any item of input appears in Appendix 4-J of FTP 2015-20.
- 5.6 AA are issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer(s) or to sub-contractors in respect of supplies of goods to specified projects provided the name of such sub-contractor appears in the main contract.
- 5.7 AA holders are to file a bond with 100% Bank Guarantee for the duty difference at the time of importing duty free inputs. Certain categories of exporters are conditionally exempt from filing Bank Guarantee in terms of Circular No. 58/2004-Cus. dated 21-10-2004 as amended last by 15/2014-Customs dated 18.12.2014.
- 5.8 Normal validity of an AA is 12 months for making imports but there is provision for RA to consider request of original authorization holder and grant one revalidation for six months from expiry date. For fulfillment of EO, normally a period of 18 months from the date of issue is specified, with certain exceptions of shorter or longer periods.
- 5.9 Under the FTP 2015-20, the import of gold for jewellery sector is only under Advance Authorization on pre import basis with actual user condition.
- 5.10 There are provisions relating to accounting of inputs in the AA schemes. The AA holder is also required to maintain a true and proper account of consumption and utilization of duty free imported/domestically procured goods for a specified minimum period. The AA No./date is to be indicated on the shipping bill/ bill of export or invoice (in case of deemed exports). The imports/exports under AA and their utilization require monitoring. The AA holder is to submit relevant export documents to Regional Authority/DGFT to obtain an Export Obligation Discharge Certificate (EODC). An AA holder is required to deposit Customs duties with interest in case EO is not fulfilled. The Regional Authority informs details of payments to Customs at the port of registration or Commissioner of Central Excise having jurisdiction over the factory of AA holder, as the case may be. The EODC or redemption letter is taken into account by Customs authority at port of registration for purposes of redemption of bond/Bank Guarantee, subject to prescribed checks including intelligence based checks.
- 5.11 Keeping in view nuances of individual variants of Advance Authorization, individual notifications issued by Revenue have certain variations in conditions, inter alia, related to prevention of dual or unintended benefits.

[Refer Notification Nos. 96 and 99/2009-Cus., both dated 11-9-2009 and No.112/2009-Cus., dated 29-9-2009 and Nos.18, 20 and 21/2015-Cus., all dated 1-4-2015]

## **6. AA for export of certain items that are otherwise prohibited for export:**

- 6.1 Certain items that are otherwise prohibited for export may be exported under AA scheme, with conditions stricter than otherwise imposed including the export being allowed only from specified EDI enabled ports subject to pre-import condition under notified SION/prior fixation of norms by Norms Committee, export obligation period being 90 days from import clearance without extensions

and import being subject to non-transfer, including for job work, and actual user condition, and the inapplicability of provisions for regularisation of default, etc.

[Refer Notification Nos. 1/2014-Cus., dated 17-1-2014 and No. 22/2015-Cus., dated 1-4-2015 and Circular No.4/2014-Cus., dated 10-2-2014]

## **7. Duty Free Import Authorisation (DFIA):**

- 7.1 DFIA issued under the FTP 2009-14 are similar to AA in many aspects including requirement of monitoring. However, DFIA has a minimum value addition requirement of 20% and once export obligation is completed, transferability of the authorization and / or material imported against it is permitted. Once the transferability is endorsed, the inputs can be imported/domestically sourced only on payment of additional duty of customs/ central excise duty. The DFIA is issued only where SION are notified. After the annual supplement 2013 to the FTP 2009-14, the exemption from anti-dumping duty and safeguard duty is not available when materials are imported against a DFIA made transferable. In case imported materials are transferred the importer is to pay an amount equal to the anti-dumping and safeguard duty leviable on the material, with interest. These aspects apply subject to specified conditions.
- 7.2 Under the FTP 2015-20, only post-export transferable DFIA with exemption from only the basic customs duty is issued by Regional Authority. Such DFIA is not available for Gems and Jewellery sector or where SION prescribes actual user condition (for example, fuel). The admissibility of brand rate of duty drawback is as per para 4.26 of the FTP.

[Refer Circulars No.11/2009-Cus., dated 25-2-2009 and No.6/2011-Cus dated 18-1-2011 and Notification No.98/2009-Cus dated 11-09-2009 and No.19/2015-Customs dated 1-4-2015]

## **8. EPCG Scheme:**

### **8.1 Under FTP 2015-20, -**

- (a) A Zero duty EPCG scheme applicable to all sectors is available with optional exemption from the additional duty of customs. The EO is equivalent to 6 times of the duty saved amount on the capital goods imported with EO period 6 years (extendable by 2 years) from the date of issue of Authorization. A more favorable dispensation for EO is provided for export of specified green technology products as well as units located in North Eastern States, Sikkim and Jammu and Kashmir. The EO for spares for imported/domestically sourced capital goods is same as that for capital goods.
- (b) The import of Capital goods has to be made within 18 months, with the Regional Authority of DGFT having certain powers to revalidate the validity of import.
- (c) EO of 50% is to be fulfilled in two blocks of 4 years and then 2 years. The RA can grant extension of block-wise period or overall period of fulfillment subject to specified conditions. In the case of manufacturer/merchant/service exporters, the 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. The EO is to be over and above the average level of exports achieved in the preceding three licensing years for the same and similar products. Certain sectors are not required to maintain average level of exports.
- (d) The Authorizations are issued to manufacturer exporters and merchant exporters with or without supporting manufacturer, and service providers and also available to Common Service Provider (CSP). The authorizations specify the value/quantity of the export product to be exported against it.
- (e) The Authorization holder is required to file bond with 100% Bank Guarantee with the Customs prior to commencement of import of capital goods. Certain categories of exporters

get benefit of exemptions from Bank Guarantee in terms of the Circular No. 58/2004-Cus dated 21-10-2004 as amended last by 15/2014-Customs dated 18.12.2014. Normally, the CG imported are subject to actual user condition and the goods imported cannot be transferred or sold, etc till the fulfillment of EO.

- (f) Third party exports are permitted with respect to exported goods manufactured by the authorisation holder and conditions (para 5.04 of FTP 2015-20 read with 5.10 of HBP 2015-20) have been specified to better ensure this aspect.
- (g) Installation Certificates (ICs) for capital goods are permitted to be obtained from jurisdictional Central Excise or independent Chartered Engineer. In the latter case, a registered unit would send copy of IC to the jurisdictional Central Excise office. Capital goods may be installed at supporting manufacturer's premises if prior to such installation the latter's details are endorsed on the authorization by Regional Authority, who would intimate the change to jurisdictional Central Excise offices and the Customs where authorisation is registered in terms of para 5.02 of FTP 2015-20.
- (h) The EPCG Authorization holder is required to indicate the EPCG Authorization No./date on the shipping bill/invoice (in case of deemed exports). After fulfillment of specified EO, relevant documents are to be submitted to Regional Authority for obtaining EODC. This is taken into account by Customs authority at port of registration for purposes of redemption of bond/Bank Guarantee, subject to prescribed checks including intelligence based checks.
- (i) The export obligation is lower by 25% when capital goods are sourced indigenously. This is implemented by Regional Authorities.
- (j) The zero duty EPCG scheme under FTP 2015-20 is not available to exporters, who avail in that year, the benefit of SHIS; the provision is not available that up to 50% of the EO may be fulfilled by export of other goods manufactured or service(s) provided by the importer or his group company or managed hotel; the import of cars, etc. as commercially registered tourist vehicles is not permitted under Zero duty EPCG scheme.
- (k) The EPCG authorisation for annual requirement, the provisions for technological up-gradation and for transfer of EPCG capital goods to group companies in certain cases/sectors are discontinued in FTP 2015-20.

[Refer Notification No.16/2015- Cus., dated 1-4-2015]

## **9. Post Export EPCG Duty Credit Scrip Scheme:**

- 9.1 Under the FTP 2015-20, there is one Post Export EPCG Duty Credit Scrip Scheme. The duty credit in these scrips is a duty remission computed based on the basic customs duty paid on capital goods which had been imported on payment in cash of all applicable duties of customs in cash. Subject to installation and use of the imported capital goods, and other conditions including non-disposal of the capital goods till the date of last export, the duty remission may be granted by the Regional Authority in proportion to export obligation fulfilled within a fixed export obligation period. For this purpose, the export obligation is fixed (over and above average export obligation) at 85% of applicable specific export obligation, computed as if the duty paid imports had taken benefit of duty exemption (i.e. like the EPCG duty exemption scheme). As in the EPCG duty exemption scheme, if it is opted to not take the Cenvat credit of additional duty of customs paid, a lower export obligation would be fixed. There is no provision for extension of export obligation period in this scheme.
- 9.2 The duty remission is envisaged in proportion to export obligation fulfilled within a fixed export obligation period. Unlike the EPCG duty exemption scheme, the block obligation periods or their related proportions of export obligation fulfilment are not pre-defined. More than one duty credit scrip may issue (against the duty paid import of capital goods) based on the progressive fulfilment, during the specified export obligation period, of larger extents of the total export obligation. The meaning of 'export obligation' would apply individually to each duty credit scrip. Further, scrip



issuance is akin to a discharge (or partial discharge) of the export obligation and is a remission by the DGFT of duty collected by the CBEC. Therefore, it is necessary that the Deputy/Assistant Commissioner of Customs satisfies himself of the compliance of the conditions of the notification (including fulfilment of export obligation, the quantum of duty remission in the duty credit scrip, the cumulative duty credits issued against imported duty paid capital goods) before allowing a duty credit scrip, issued under the Scheme, to be registered.

- 9.3 A sequential monitoring is required to be followed. This begins from registration of authorization (for importing capital goods) at the port of registration and is followed by import on payment of full applicable duties of customs in cash, endorsement of import particulars on authorization at time of clearance, making specified endorsements on bill(s) of entry at time of import, ensuring registration or installation/use of all imports under authorization before any scrip issues, registration of scrip at the same port, keeping cumulative record of duty credit scrips issued against an authorization, and making the indicated endorsements on documents at the time of registration. Moreover, the assessment Group which handles the authorization to import capital goods on payment of duty under this variant of the EPCG scheme would need to allow the registration of this duty credit scrip. The genuineness of the post export EPCG duty credit scrip should be verified.
- 9.5 Safeguards are provided in the Revenue notification relating to making endorsements on the documents. The option for not availing Cenvat Credit on capital goods imported under authorization and thereby enjoying a lower export obligation is to be backed by a certification. Jurisdictional Central Excise authority should ensure that certificate on non-availment of Cenvat Credit is issued expeditiously and normally within two weeks but not later than four weeks under all circumstances. Where the goods imported against an authorization are found defective or unfit for use and are re-exported back to the foreign supplier, if claim of duty drawback is made, no duty remission for the duty paid at the time of import on the re-exported goods is to be allowed. Further, after any duty remission in the form of duty credit scrip has been claimed in respect of the duty paid on the goods imported against an authorization, no duty drawback shall be allowed when the goods are re-exported and the export obligation is also not to be re-fixed. Indigenous sourcing of capital goods (referred to as invalidation procedure of import authorization) on payment of duty is not permitted in this scheme.
- 9.6 The post export EPCG duty credit scrip cannot be issued as a refund on the premise that duty was paid but a situation arose where there was no export obligation to be fulfilled. The Commissioners of Customs are also to exercise special checks so as to ensure that there is no misuse of the scheme and a proper record of all such checks is maintained. These shall include random verifications of the address shown on the authorizations (for import of capital goods) during their validity period in at least 10% of authorizations, random verifications of the certificates produced (not issued by central excise authorities) and of the declarations submitted with respect to Condition No. 14(e)(i) of the notification No.17/2015-Customs in at least 10% cases. These verifications should be made through the Commissioners of Central Excise. The central excise authorities should include, in their verification, a check of the periodical utility bills (containing the address) as one of the means enabling verification of installation/ operation/ authorization holder premises. The Commissioners are expected to exercise due diligence to prevent misuse.

[Refer Circular No.10/2013-Cus., dated 6-3-2013]

- 9.7 The notification No.17/2015-Customs dated 1-4-2015 permits imports through debit of the customs duties in the Post Export EPCG Duty Credit Scrip. The Notification No.18/2015-Central Excise dated 1-4-2015 permits domestic procurement through debit of central excise duties. Apart from Drawback or CENVAT Credit of Additional Duty leviable under Section 3 of the CTA, 1975 or excise duty, the importer shall be entitled to avail of the drawback of the duty of Customs leviable under the first schedule to the Customs Tariff Act, 1975 against the amount debited in the Post EPCG Duty Credit scrip.

## **10. Certain general provisions relating to export promotion schemes:**

- 10.1 Imports and exports under the Export Promotion schemes are restricted to the ports, airports, ICDs and LCSs, as specified in the respective Customs duty exemption notifications. However, these notifications empower the Commissioners of Customs 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. In addition, certain Foreign Post Offices or Courier Terminals are included as port of export for rewards on exports of goods.
- 10.2 Facility to execute a common bond for specified export promotion schemes like Advance Authorization/Duty Free Import Authorization and EPCG is permitted to authorization holders, subject to certain conditions.  
[Refer Circular No.11(A)/ 2011-Cus., dated 25-2-2011]
- 10.3 Facility for suo moto payment of customs duty in case of bona fide default in export obligation under the Advance/ EPCG authorisations is provided in procedure prescribed vide Circular No. 11/2015-Customs dated 01.04.2015. The para 4.50 and para 5.23 of HBP 2015-2020 refer to this facility.

## **11. Verification and Monitoring related to AA, DFIA and EPCG scheme:**

- 11.1 The jurisdictional Commissioners of Customs are required to take action to monitor fulfillment of export obligation. Field formations are now also enabled to view in EDI the authorization-wise all India export details which would assist in identifying actionable cases under Advance Authorization and EPCG scheme. Commissioners are to put in place an institutional mechanism for periodical meetings with Regional Authorities to exchange intelligence, check misuse and pursue issues such as EO fulfillment status in cases where EO period has expired in that quarter/ previous quarter so that concerted action can be taken against the defaulters. Further, timely action in all cases of default is required to be initiated to safeguard revenue. The emphasis on timely action to safeguard revenue is evident from CBEC's Comprehensive MIS formats DGI - Cus 11& 11A.
- 11.2 Apart from the prescribed checks in Board's extant instructions, the jurisdictional Commissioners of Customs are also to cause random verification for some of the authorizations issued under EPCG / DFIA / Advance Authorization schemes to check correctness of address on the Authorizations. Such verification is to be preferably through the Central Excise divisions. Similarly, the correctness of installation certificates issued by the Chartered Engineers is required to be verified on a random basis through Central Excise divisions. When address verifications or Installation Certificate verifications are requested by the Customs authorities in respect of EPCG authorizations, the Central Excise authorities should include, in their verification, a check of the periodical utility bills (containing the address) as one of the means enabling verification of installation/operation/ licensee premises.
- 11.3 To rule out fabricated export documents being used to show fulfillment of EO, the genuineness of shipping bills or bills of export not on Customs EDI (i.e. Manual) is to be expeditiously verified while registering a duty credit scrip or post export EPCG duty remission scrip or processing EODC/redemption letters based on document purported to be of Customs non-EDI ports

[Refer Circulars No.5/2010-Cus., dated 16-3-2010, No.25/2012-Cus., dated 6-9-2012, Instruction No.609/119/2010-DBK, dated 18-1-2011 and Circular No.14/2015-Cus., dated 20-4-2015]

## **12. Older valid export promotion schemes:**

- 12.1 Duty Free Credit Entitlement (DFCE) Scheme was for status holders having incremental growth of more than 25% in FOB value of exports subject to a minimum export turnover of Rs.25 Cr, which provided entitlement to duty credit @10% of the incremental growth in exports. The scrip and goods imported were subject to actual user condition. The scheme was implemented by Customs notification No.53/2003-Cus., dated 1-4-2003 and since replaced by Target Plus Scheme.
- 12.2 Target Plus Scheme (TPS) was introduced for the Star Export Houses w.e.f. 1-9-2004 and provided 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 scrip and goods imported are subject to actual user condition. Imports allowed were inputs, capital goods including spares, office equipment, professional equipment and office furniture. The scheme ended on 1-4-2006. The Customs notification was No.32/2005-Cus., dated 8-4-2005.

- 12.3 The Duty Free Replenishment Certificate (DFRC) 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 authorisation 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 authorization and /or material(s) imported against it were freely transferable. The scheme ended on 1-5-2006. The Customs notifications were No.90/2004-Cus., dated 10-9-2004 and No.48/2000-Cus., dated 25-4-2000.
- 12.4 Duty Entitlement Pass Book (DEPB) scheme was a duty remission scheme in operation from 1-4-1997 to 30-9-2011 which provided credit entitlement against exports on the basis of DEPB rates notified by DGFT. The scrip and/or items imported against it were freely transferable. Duty Drawback is not allowed on exports under DEPB scheme. However, if 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, the brand rate of duty drawback is admissible provided CENVAT credit in respect of such duty incidence is not availed. The scheme was implemented vide Notification No.97/2009-Cus., dated 11-9-2009.

[Refer Circular No.39/2001-Cus., dated 6-7-2001]

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## Chapter 24

### Special Economic Zones

#### 1. Introduction:

- 1.1 Special Economic Zone (SEZ) 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 from 10-2-2006. Thus, activities of SEZs and its units are governed by the provisions of the SEZ Act, 2005 and the rules issued there under 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 Special Economic Zone. Development Commissioner has administrative control over the SEZ and 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 is also required to monitor and supervise compliance of conditions subject to which the letter of Approval (LOA) has been issued. Commissioner of Customs or his nominee not below the rank of a joint Commissioner is designated as 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 in such meeting 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 thereby that in the absence of a consensus amongst all the Members present in the meeting, the proposal cannot be carried forward and shall stand referred to the Board of Approval.

[Refer Instruction 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 SEZs 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 State Government within 6 months from the date of 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 SEZ 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 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]

**19. Social & Commercial Infrastructure In Non-Processing Area For Use By DTA entities**

- 19.1 Social and commercial infrastructure located in the Non-Processing Area of an SEZ can be used by SEZ entities as well as DTA entities provided that all duty benefits availed in setting up of such infrastructure has been refunded back by the developer in full as certified by the jurisdictional Development Commissioner.

[Department of Commerce Notification issued vide GSR 5(E) dated 2.1.2015]

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## **Chapter 25**

### **Export Oriented Units**

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

- 1.1 Export Oriented Units (EOU) scheme was introduced vide Ministry of Commerce Resolution dated 31-12-1980. 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 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, bio-technology, 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; and
  - (vi) Exemption from Industrial Licensing for manufacture of items reserved for SSI sector.

#### **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 import) and (ii) Central Excise Notification No. 22/2003-CE., dated 31-3-2003 (for duty free indigenous procurement).

#### **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 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 EOU 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 14-1-C of HBP where a higher value addition shall be required as per the provisions of FTP. 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.
- 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.

- 4.4 Inputs imported or procured duty free are required to be accounted for in accordance with SION. For the items having no SION, consumption of inputs is allowed subject to generation of waste, scrap and remnants upto 2% of input quantity. However, if any item in addition to those given in SION are required as input or where generation of waste, scrap and remnants is beyond 2% of the input quantity, consumption is allowed on the basis of self-declared norms for a period of three months till the jurisdictional Development Commissioner fixes ad hoc norms subject to an undertaking by the unit that the self-declared/ ad hoc norms shall be adjusted in accordance with norms as finally fixed by the Norms Committee in DGFT for the unit. Further, a provision has also been made to consider such cases by the Board of Approval for appropriate decision in case of difficulty in fixation of SION by the Norms Committee. The norms fixed by the Norms Committee shall be applicable to the specific unit.

[Refer Circular No. 12/2008-Cus dated 24-7-2008]

## **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 Administrative control of the EOUs which satisfy the conditions of large taxpayer under Notification No. 20/2006-CE (NT), dated 30-9-2006 has been transferred to the LTUs. In respect of these large taxpayer-EOUs, specific function requiring physical presence of the officers for the purposes as warehousing, sealing or any other work as assigned by LTUs will be dealt with by the Commissioner of Central Excise, who has concurrent jurisdiction over these large taxpayer-EOUs.

[Refer Circulars No. 31/2003-Cus., dated 7-4-2003 and No. 15/2007-Cus., dated 20-3-2007]

- 5.4 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 FTP 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.

- 7.2 Duty free import and procurement of export promotion material like brochures, literatures, pamphlets, hoardings, catalogues and posters of products to the extent of 1.5% of the value of exports of the previous year is also allowed. The export value of supplies of such promotional material shall not be counted towards fulfillment of NFE

and for availing DTA entitlement as specified in para 6.8 of FTP. However, import of such promotional material shall be considered for computation of sum total of all imported goods for arriving at NFE.

[Refer Circular No. 17/2006-Cus dated 1-6-2006]

## **8. Time limit for utilization of imported capital goods and inputs:**

8.1 The period of utilization of goods, including capital goods, procured/ imported by the EOU shall be co-terminus with the validity of LoP (Letter of Permission)

[Notification No. 34/2015-Customs dated 25.5.15 and 30/2015-CE dated 25.5.15]

## **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 EOUs with a clean track record having physical export turnover of goods or services is Rs.10 Crores or above in the preceding financial year.

[Circular No. 19/2007-Cus dated 3.5.2007 amended by 19/2015 dated 9.6.2015]

## **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(N.T.), dated 2-3-1998 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 which have achieved positive NFE and are in existence for the last three years with unblemished track record having export turnover of Rs. 5 Crores or above and have not been issued a show cause notice or a confirmed demand, during the preceding 3 years are exempted from furnishing Bank Guarantee etc. or Surety along with B-17 bond. However, this facility will not be available to the Units where Show Cause Notices have been issued or cases booked on grounds other than procedural violations, under the penal provision of the Customs Act, the Central Excise Act, the Foreign Trade (Development & Regulation) Act, the Foreign Exchange Management Act, the Finance Act, 1994 covering Service Tax or any allied Acts or the rules made thereunder, on account of fraud / collusion / willful mis-statement/ suppression of facts or contravention of any of the provisions thereof.

[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, No.76/99-Cus, dated 17-11-1999, No. 54/2004-Cus, dated 13-10-2004 and No. 36/2011-Cus, dated. 12-8-2011]

## **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 General Manager, RBI concerned.

[Refer RBI Circular No. COEXD.3109/05.62.05/1999-2000, dated 21-2-2000]

- 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.

[Refer 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's 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 by Central Excise law.
- 14.2 EOUs having a status holder certificate under the Foreign Trade Policy are eligible for the Fast Track Clearance Procedure under para 6.38.3 of Hand Book of Procedure (HBP). Units having physical export turnover of Rs. 15 Crores and above in the preceding financial year are allowed to import goods without payment duty on basis of pre-authenticated procurement certificate. The request to issue pre-authenticated procurement certificate will be submitted to the jurisdictional Asstt./Dy. Commissioner of Customs/Central Excise. After examination of the request, the Asstt./Dy. Commissioner of Customs/Central Excise may issue direction to the jurisdictional Superintendent to issue the pre-authenticated procurement certificate to the unit in a booklet form with running serial number calendar year wise. The unit shall ensure that the consignment under clearance under such pre-authenticated procurement certificate is covered by the Bond amount under B-17 Bond.

[Refer Circular No. 17/2006-Cus, dated 1-6-2006]

### **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/ labelling/ 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 and 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. An amount equal to anti dumping duty foregone on the goods at the time of import shall also be paid on the equivalent quantity of goods used for manufacture of any goods which are cleared into DTA or on such quantity of goods which are cleared as such into DTA.

- 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 Supplies of specified items such as accessories like tags, labels, printed bags, stickers, belts, buttons or hangers produced or manufactured in an EOU are allowed without payment of duty to a unit in DTA for use in the manufacture or processing of goods which are exported and thereupon such supplies shall be counted towards fulfillment of positive NFE of EOU.

[Refer Circular No. 12/2008-Cus., dated 24-7-2008]

- 17.8 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. 6-7-2007 the exemption is denied where goods are manufactured out of indigenous goods on which deemed exports benefits have been availed.

[Refer Circular No. 12/2008-Cus., dated 24-7-2008]

- 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 No.19/99-Cus, dated 29-4-1999]

- 19.5 The rate of duties for by-products, rejects, waste etc, cleared in DTA by an EOU are prescribed under Notification No. 23/2003-CE, dated 31-3-2003.

**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. Clearance of samples:**

22.1 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.

22.2 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]

**23. Clearance of Fax/ Laptop Computers outside approved premises:**

23.1 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.

**24. Sale of surplus/ unutilized goods:**

- 24.1 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.
- 24.2 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.
- 24.3 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.

**25. Destruction of flowers/ horticulture products:**

- 25.1 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.
- 25.2 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]

## **26. Sub-contracting:**

26.1 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 and also export therefrom with the permission of Assistant/ Deputy Commissioner of Customs/ Central Excise having jurisdiction over the unit. The intermediate goods so removed to sub-contractor abroad shall be allowed to be cleared under export documents

[Refer Circular No. 12/2008-Cus., dated 24-7-2008]

26.2 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.

26.3 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]

## **27. Temporary removal of goods:**

27.1 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. No.84/2000-Cus., dated 16-4-2000 and No. 17/2003-Cus. dated 24-3-2003]

## **28. Inter-unit transfer:**

28.1 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.

28.2 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.

28.3 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 re-warehousing procedure as the case may be.

## **29. Repair, reconditioning and re-engineering:**

29.1 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.

## **30. Replacement/repair of imported /indigenous goods:**

30.1 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.

30.2 Removal of capital goods by all units irrespective of status within the country for the purpose of test, repair, calibration and refining on the basis of prior intimation to the proper officer subject to maintenance of proper accounts of removal and receipts of goods is also allowed.

[Refer Circular No. 17/2006-Cus, dated 1-6-2006]

## **31. Special provisions relating to Gems and Jewellery EOUs:**

31.1 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.

### **32. Cost Recovery charges:**

- 32.1 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]

### **33. Supervision by Departmental officers:**

- 33.1 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.
- 33.2 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]

### **34. Monitoring of EOUs:**

- 34.1 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.

### **35. Recovery of duty forgone and penal action for abuse/diversion etc.:**

- 35.1 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.

35.2 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.

### **36. De-bonding of goods/ exit from EOU scheme:**

36.1 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.

36.2 Clearance or deboning of capital goods are allowed on payment of duty on the depreciated value thereof and at the rate in force on the date of deboning 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 deboning. 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.

36.3 Clearance/ deboning of capital goods on the depreciated value proportionate to the NFE achieved by the unit which is arrived at after taking into consideration the rate of depreciation allowable on such capital goods is allowed. In case the unit has not achieved positive NFE in the above manner, the duty foregone at the time of import shall be paid on such value of goods in proportion to the non-achieved portion of NFE.

36.4 Clearance or de-bonding of capital goods in the event of Exit from EOU scheme to Export Promotion Capital Goods scheme is also allowed only when EOU has fulfilled positive NFE criteria on the date it wishes to de-bond or migrate to EPCG scheme. Thus, if a unit has not achieved NFE taking into consideration rate of depreciation allowable, it cannot exit to the EPCG scheme.

36.5 A unit is also allowed clearance or de-bonding of capital goods in the event of Exit to Advance Authorization scheme as a one time option provided the unit has fulfilled NFE criteria. Thus, if a unit has not achieved positive NFE taking into consideration rate of depreciation allowable on capital goods, it cannot exit to the Advance Authorization scheme.

[Refer Circular No. 12/2008-Cus., dated 24-7-2008]

36.6 The depreciation of computers and capital goods shall be allowed in straight line method as specified below:

#### **(i) 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%

#### **(ii) For capital goods other than computer and computer peripherals:**

For every quarter in the first year	@ 4%
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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%

- 36.7 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.
- 36.8 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.
- 36.9 Used packing materials such as cardboard boxes, polyethylene bags of a kind unsuitable for repeated use can be cleared without payment of duty.
- 36.10 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.
- 36.11 If the unit has not achieved the export obligation, it is also liable to pay penalty under Foreign Trade (Development and Regulation) Act at the time of exit.
- 36.12 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.

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## Chapter 26

### International Passenger Facilitation

#### 1. Introduction:

- 1.1 Customs is mandated to ensure passengers entering or leaving India 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. 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 Travelers" 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 Customs Baggage Declaration Form 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 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 Customs Baggage Declaration Form such passengers cross the Green Channel without any question being asked by Customs and exit the airport after handing over the Customs Baggage Declaration Form 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 Customs Baggage Declaration Form to the officer on duty at this Channel. In case the Form 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 mis declaring 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.45,000/- are allowed free of duty if carried as accompanied baggage of the passenger. This amount is proportionately reduced to Rs. 17,500/- if stay abroad is of 3 days or less. For children below 10 years, the free allowance is Rs.17,500/- (Rs.3,000/- 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) 100 cigarettes or 25 cigars or 125 gms tobacco.
  - (ii) Alcoholic liquor and 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.
- 3.6 Duty free baggage allowances and entitlements for Indian Residents and Foreigners Residing in India has been disallowed in respect of Flat Panel (LCD/LED/Plasma) Television.

[Refer Notification No. 84/2013-Cus(N.T.), dated 19-8-2013]

### **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, in bonafide baggage upto an aggregate value of Rs.50,000/- in the case of a male passenger or Rs.1 lakh 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	Description of goods	Rate of duty
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Gold	Upto 1 kg.	Gold, in any form in respect of which the benefit of Notification No. 12/2012-Cus., dated 17-3-2012 is availed	10%
Silver	Upto 10 kgs.	Silver, in any form in respect of which the benefit of Notification No. 12/2012-Cus., dated 17-3-2012 is availed	10%

**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	Rs. 8,000/-

[Refer Notification No.77/2011-Cus. (NT), dated 14-11-2011]

**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. five 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 @15%. 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.25000/-.

10.2 A person resident outside India, not being a citizen of Pakistan and Bangladesh and also not a traveller coming from and going to Pakistan and Bangladesh, and visiting India, may bring into India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 25,000 (Rupees twenty five thousand only) while entering only through an airport

[Refer Circular No 3/2015- Customs, dated 16.01.2015]

**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 before 10 years of import of such firearm.;
- (ii) The firearm is subjected to applicable duty; and
- (iii) The passenger has a valid arms licence from the local authorities in India.

11.2 The facility is import of firearm through baggage route under transfer of residence shall be available only once in the lifetime.

- 11.3 Passengers importing a firearm as baggage on transfer of residence are permitted to dispose the same after 10 years of import. The disposal will be to persons legally entitled to possess the firearm. The condition that no disposal can take place till ten years of import may be endorsed on the arms licence of the passenger at the time of granting the facility under transfer of residence.

[Refer Circular No.4/2013-Cus, dated 15-1-2013]

**12. Import of pet animals as baggage:**

- 12.1 Import of domestic pets like dogs, cats, birds etc. (two numbers) is allowed as baggage only by persons transferring their residence to India after two years of continuous stay abroad in terms of Baggage Rules, 1998 subject to production of the required health certificate from the country of origin and examination of said pets by the concerned Quarantine Officer at this end.

- 12.2 Re-import of pets as baggage is allowed subject to establishment of identity of pets by Customs authorities, production of the required health certificate from the country of export and examination of said pets by the concerned Quarantine Officer at this end.

[Refer Circular No.15/2013-Cus, dated 8-4-2013,

Circular No. 25/2013-Cus dated 01.07.2013]

**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 inventoried 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.25,000/-
- 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 authorized 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.
- 17.4 A person resident outside India, not being a citizen of Pakistan and Bangladesh and also not a traveller coming from and going to Pakistan and Bangladesh, and visiting India may take outside

India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs. 25,000 (Rupees twenty five thousand only) while exiting only through an airport.

[Refer Circular No 3/2015- Customs, dated 16.01.2015]

**18. Customs Baggage Declaration Form:**

- 18.1 The Customs Baggage Declaration Regulations, 2013 which is notified to be effective from 1-3-2014 prescribes a Baggage Declaration Form that will be required to be filled up by all incoming passengers. This new Form has been necessitated on account of the BOI/ MHA deciding to dispense with the common Immigration/Customs declaration form.

[Refer Notifications No. 90/2013-Cus(N.T.), dated 29-8-2013 and No.133/2013-Cus(N.T.), dated 30-12-2013 and Circular No. 5/2014- Cus., dated 27-2-2014 ]

**19. Setting up of Help Desk:**

- 19.1 For a renewed emphasis on improving the efficiency of Customs officers as well as their behavior towards international passengers, it has decided that:

- (i) The Chief Commissioners of Customs with international airports in their charge shall ensure that every Customs officer newly posted at the international airports mandatorily undergoes training in the relevant rules and regulations as well as in the manner of dealing with international passengers. The emphasis should be on sensitizing the Customs officers to deal with all arriving passengers and especially international passengers in a polite, professional and pro-active facilitative manner. These training programmes should be repeated on 6-monthly intervals. Since multiple agencies function at international airports, it would also be useful to coordinate interactive sessions involving officials of other agencies so that collectively a good impression is made on international passengers. The Chief Commissioner of Customs should coordinate these training programmes with NACEN, but should also take initiative to organize in-house programmes.
- (ii) Customs should set up a “Help Desk” in a prominent place immediately after immigration in the arrival hall and similarly in the departure hall of international airports. There should also be a signboard to guide the international passengers to the “Help Desk”. Further, the Customs officers(s) manning the “Help Desk” should be properly selected and must have in his/her possession required forms and information to guide international passengers.

[Refer Instruction dated 19-9-2014]

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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 Entries, 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.
- [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 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 28 also]

#### **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]

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## 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/CFSS 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 Board has clarified that custodians already exempted from payment of cost recovery charges under Circular No.27/2004-Cus., dated 6-4-2004 and Para 5.3 of Circular No.13/2009-Cus., dated 23-3-2009 would continue to avail the exemption even after issue of Circular No.4/2011-Cus., dated 10-1-2011.
- 2.9 Commissioner of Customs, subject to his satisfaction, should not insist for residential accommodation for staff from CCSP in cases where concerned facility of CCSP is located in the city area. The underlying idea is to provide for residential facilities for staff deployment at Customs facilities located in far flung and remote areas where it is difficult to have appropriate residential facility and which can not be easily commuted by the officers. Therefore requirement of residential accommodation should not be insisted upon in cases where the location is commutable from the base town/city. Commissioner of Customs concerned should exercise due diligence before enforcing provisions of 5(1)(i)(b) of Notification No.96/2010-Cus(NT)., dated 12-11-2010. The type of residential accommodation to be provided to Customs staff would be determined as per entitlement of the officer of Central Government.
- [Refer Circular No.29/2011-Cus., dated 18-7-2011]
- 2.10 CCSPs are required to have weigh bridges installed at their facilities preferably near the entry/exit gate and all containers must be weighed.
- [Refer Instruction F.No.450/81/2011-Cus.IV, dated 18-8-2011]
- 2.11 In a large number of cases, containers detained by Directorate of Revenue Intelligence (DRI), Special Intelligence & Investigation Branch (SIIB) or Preventive formations are not being released for considerable time and this has caused undue hardship to shipping companies by paying exorbitant demurrage charges. One reason for longer detention can be lack of adequate space for storing such goods in a Customs area. In this regard, Board desires that sufficient space for custody / storage of detained imported / export goods should be provided by Customs Cargo Service Provider (CCSP) as per regulations 5 (1) (o) of the HCCAR, 2009 so that detained goods may be stored after de-stuffing from the containers and empty containers be returned to the concerned Shipping Line. Further, in terms of regulation 6 (1) (l) of the HCCAR, 2009 CCSP shall subject to any other law for the time being in force not charge any rent or demurrage on detained goods. In case containers are

detained / seized under the Customs Act, 1962, the same may be considered for provisional release subject to furnishing of Bond and Bank Guarantee under the Customs Act, 1962.

[Refer Instructions F. No.450/24/2012-Cus.IV, dated 14-3-2012]

2.12 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]

2.13 The Greenfield Airports Policy framed by the Government and 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.

2.14 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]

2.15 In order to ensure security of premises and to prohibit unauthorized access of person in the Customs area all CCSP/ Custodians should provide CCTV/ Video Camera and give video footage of the same to the Customs Officer who shall monitor it regularly.

[Refer Circular No 3/2013-Cus., dated 1-1-2013]

2.16 Cases of lease, gift, sale or subletting or transfer of the premises in any other manner, in a Customs area by major ports may be firstly examined to see whether required permission from the Central Government / Ministry / Cabinet Committee has already been obtained or not. In cases where appropriate authority has already given this permission, then necessary written permission may also be given by the Commissioner for such lease or transfer. On the contrary, if no approval of the Government has been obtained, then appropriate action may be initiated against the erring Custodian under the said Regulations and the Customs Act, 1962. Thus, further permission from the Commissioner of Customs would not be required in respect of PPP projects approved by the Government / PPA Appraisal Committee or Cabinet Committee on Infrastructure.

[Refer Circular No.54/2011-Cus., dated 29-12-2011]

2.17 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. However, no exemption shall be granted in respect of any of the conditions in Regulation 5 where the overall safety and security of the premises are likely to be affected thereby.

- 2.18 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.
- 2.19 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.
- 2.20 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 fulfilment of the conditions of these regulations by such CCSPs.
- 2.21 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 value and loss of revenue etc. In case of CCSP authorized under the Authorised Economic Operator (AEO) Programme, the approval granted may be extended for a period of ten years at a time.

[Refer Instructions F.No.450/105/2008-Cus.IV, dated 25-7-2008]

- 2.22 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 fulfilment of prescribed conditions in Regulation 5 & 6, as applicable, within the specified limits are concerned.
- 2.23 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 are required to necessarily discharge the responsibilities cast upon them in terms of Regulation 5 and 6.
- 2.24 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.
- 2.25 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 are prescribed 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.

2.26 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.

2.27 For the purposes of Regulation 6 (1) of HCCCR , the following officers are notified as Proper Officers:

S.No.	Clause under Regulations 6(1)	Designation of the Proper Officer
1.	a	Inspector of Customs or Preventive Officer or Examining Officer
2.	f	Superintendent of Customs or Appraisers
3.	g, h, k	Deputy Commissioner or Assistant Commissioner of Customs
4.	l	Superintendent of Customs or Appraiser or Inspector of Customs or Preventive Officer or Examining officer

2.28 Regulation 5(1)(iii) of HCCAR, 2009 provides that CCSPs shall provide to the satisfaction of Commissioner of Customs, insurance for an amount equal to the average value of goods likely to be stored in the customs area based on projected capacity and for an amount as Commissioner of Customs may specify having regard to the goods which are already been insured by the importers or exporters. Board has clarified that the amount of insurance to be provided by CCSPs should be equal to the average value of goods likely to be stored in the Customs area for a period of 30 days (based on projected capacity), and for an amount the Commissioner of Customs may specify having regard to the goods already insured by the importers or exporters.

2.29 Regulation 5(3) of HCCAR, 2009 mandates CCSPs shall execute a bond equal to the average amount of duty involved on imported goods and 10% of the value of export goods that is likely to be stored in the customs area during a period of 30 days and furnish a bank guarantee or cash deposit equivalent to ten *percent* of such duty. Board has appreciated that there is justification in increasing the validity period of the bond, which would remove procedural hassles. Therefore, noting that under Regulation 10 of HCCAR, 2009, the new CCSPs are approved initially for 2 years, which is renewed for 5 years at a time, while existing CCSPs are straightaway approved for 5 years, it is clarified that the carrier bond executed by CCSPs i.e. ICDs/CFSs shall have a validity period of 2 years (in case of new CCSP which can be renewed for 5 years) or 5 years (in case of existing CCSP).

2.30 Ministry of Agriculture has raised the issue of temporary ban on Import of Rice and Peanuts from India due to detection of quarantine pest in an import consignment and highlighted that CFSs conducting phytosanitary measures have no designated area for fumigation and separate storage for keeping fumigated/ treated cargo which leads to cross contamination from untreated goods/commodities. Ministry of Agriculture has desired that facilities provided by CFSs should be improved to ensure that treated cargo is adequately sanitized in a separate storage enclosure. Board has therefore decided that all CCSP/Custodians shall provide separate and dedicated storage space for fumigation and post fumigated storage sites to enable Plant Quarantine Authorities to carry out necessary checks for both imported / export goods under the Handling of Cargo in Customs Area Regulations, 2009.

2.31 In order to obviate the situation of compromising cargo integrity on account of sub contracting operations relating to handling of import / export cargo, under no circumstances, CCSPs shall lease, gift, sell or sublet or in any other manner transfer any of the premises in a Customs area; or sub



contract or outsource functions permitted or required to be carried out by him in terms of these regulations without written approval of the jurisdictional Commissioner of Customs. Jurisdictional Commissioners of Customs are required to review the conditions and obligations to be fulfilled by CCSP under HCCAR, 2009 and promptly initiate remedial action in case non compliance is noticed. Cases of violation of regulation 6(2) shall be dealt with sternly according to law.

[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, No.4/2011-Cus., dated 10-1-2011, No. 16/2013- Cus IV, dated 10-4-2013, No.32/2013-Cus., dated 16-8-2013 and No.45/2013-Cus., dated 31-12-2013 and Instruction F.No.450/19/2005-CusIV., dated 23-7-2013]

### 3. Norms for staffing Customs facilities on cost recovery basis:

18.2.1 The facility-wise staffing norms are as follows:

#### (a) ICD/CFS, Sea Port, Air Cargo Complex, Courier Terminal and Diamond Plaza:

Customs Facility	Dy./Asst. Commissioner	Appraiser/ Supdt.	Inspector/ Examiner	UDC/LDC/ STA/TA	Sepoy	Total
ICD/CFS for import & export	1	2 Supdt.	2 Inspector	2 UDC and 2 LDC	4	13
ICD/CFS for only export	1	1 Supdt.	1 Inspector	1 UDC and 1 LDC	2	7
Sea Port	2	4	12	2 STA/TA	12	32
Air Cargo Complex	2	8	12	4 STA/TA	5	31
Courier Terminal	4	9	12	4 STA/TA	8	37
Diamond Plaza	1	2+2	8	2 STA/TA	4	19

(b) **Airports:** Staffing norms are determined on the basis of the Class of the Airport as per the criteria of minimum number of international flights and passengers and envisage 4 shifts at Class A and B Airports and 2 shifts at Class C Airports. The Class of an Airport and its staff requirement are determined as follows:

#### (i) Norms for identifying the Class of an Airport:

Class of Airport	Minimum No. of international flights per annum (incoming and outgoing)	Minimum No. of passengers per annum (incoming and outgoing)
Class A	12,000	10 lakhs
Class B	6,000	5 lakhs
Class C	3,500	3 lakhs

#### (ii) Staffing norms for Airports:

Class of Airport	Staffing Norms				
	Dy./Asst. Commissioner	Superintendent	Inspector	Sepoy	Total

Class A	4	38	78	24	144
Class B	4	29	48	16	97
Class C	-	8	16	4	28

[Refer Circular No.16/2013-Cus., dated 10-4-2013]

**4. Eligibility norms for exemption from cost recovery charges:**

4.1 Cost recovery charges may be waived if the facility fulfils the laid down norms for a consecutive period of two financial years. 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 cost recovery posts are also considered for regularization. In each and every case the waiver of cost recovery charges would be prospective with no claim for past period.

4.2 **ICD/CFS:** The eligibility performance norms for the grant of exemption from cost recovery charges in respect of Customs staff posted at ICDs/CFSs are as follows:

(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
<b>Note:</b> Benchmark 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 **Sea Ports, Air Cargo Complexes, Courier Terminals and Diamond Plaza:** The eligibility performance norms for the grant of exemption from cost recovery charges in respect of Customs staff posted at Sea Ports, Air Cargo Complexes, Courier Terminals and Diamond Plaza are as follows:

Facility	Minimum Annual Volume/Value of Import & Export Cargo	Minimum Annual Number of Documents – Bills of Entry/Shipping Bills
Sea Port	6 Lakhs MTs	3,000
Air Cargo Complex	12,000 MTs	35,000
Courier Terminals	1.5 Lakh Packages	20,000
Diamond Plaza	Rs.15,000 Crores	12,000

**Note:** Both performance norms (cargo and documents) would be reduced by 50% for facilities that handle only import or export cargo.

4.4 **Airports:** Minimum number of international flights is 3500 (both incoming and outgoing) and the minimum number of passengers is 3 lakhs (both incoming and outgoing) in each of the preceding two financial years.

4.5 The conditions for grant of exemption from payment of cost recovery charges for all facilities viz. Sea Ports, Air Cargo Complexes, Courier Terminals, Diamond Plazas and Airports shall be as follows:

- (a) Both performance norms i.e. volume/value and number of documents in case of Sea Ports, Air Cargo Complexes, Courier Terminals, Diamond Plazas and number of international flights and number of passengers in case of Airports must be met in each of the preceding two financial years.
- (b) Exemption from cost recovery charges shall be prospective; and
- (c) No cost recovery charges should be outstanding.

Based upon the aforementioned norms, jurisdictional Commissioners would review the existing facilities and send proposals for waiver of cost recovery charges to DG, HRD, CBEC.

[Refer Circular No.16/2013-Cus., dated 10-4-2013]

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**Chapter 29**  
**Customs Brokers**

**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 Broker 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 Customs Broker licence and the person concerned as the Customs Broker.
- 1.2 Section 146 of the Customs Act, 1962 read with the Customs Brokers Licensing Regulations (CBLR), 2013 governs the legal and procedural aspects of the grant of Customs Broker licence as well as the obligations and responsibilities of a Customs Broker.

**2. Application for Customs Broker licence and eligibility:**

- 2.1 Regulation 4 of CBLR 2013 provides for invitation of applications by Directorate General of Inspection of Customs and Central Excise (DGICCE) in the month of April every year for conducting examination and subsequent grant of license to act as Customs Broker in prescribed Form A of CBLR by publication in two leading national daily newspaper in Hindi and English. The application in Form A shall be made to Commissioner of Customs having jurisdiction over the area where the applicant wants to transact business.
- 2.2 The eligibility condition as per Regulation 5 of CBLR 2013 is that an applicant should be a citizen, a person of sound mind, is not adjudicated as insolvent and confirms financial viability 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 Rs.5 lakhs. Further an individual applicant or in the case applicant is a firm or company its partner or director or an authorized employee shall be a graduate from a recognized university and possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, CA./ MBA/LLB or Diploma in Customs Clearance work from any institute or university recognized by the Government or is having at least two years experience in transacting Customs Broker as G card Holder. The applicant may also be a retired Group A officer from the Indian Customs and Central Excise Services having a minimum of 5 years experience in Group A service. Other conditions that need to be fulfilled by the applicant are:
- 17.1 The applicant has neither been convicted by a competent Court for an offence nor any criminal proceeding is pending against him in any Court of law;
- (ii) The applicant has not been penalized for any offence under the Act, the Central Excise Act and the Finance Act, 1994.

**3. Qualifying examinations:**

- 3.1 Any applicant who satisfies the criteria of Regulations 5 of CBLR 2013 and has applied for grant of licence under Regulation 4 shall be required to appear for the written as well as the oral examination conducted by the Directorate General of Inspection of Customs & Central Excise (DGICCE).
- 3.2 The written examination shall be conducted on specified dates in month of January of each year for which intimation shall be sent individually to applicants in advance before the date of examination. The result of the said examination shall be declared by end May each year. The successful applicant shall be called for an oral examination on specified dates in month of June of each year, the result of which shall be declared in the month of July of each year.

- 3.3. The applicant who fails to clear the oral examination within 2 years from the date of declaration of result of the related written examination, shall be treated as having failed the examination. Further an applicant shall be allowed a maximum period of 7 years from the date of original application within which he shall pass both written and oral examination and no further extension shall be granted.
- 3.4 The examination may include questions on the following:
- (a) preparation of various kinds of Bills of Entry, Shipping Bill and other clearance documents;
  - (b) arrival entry and clearance of vessels;
  - (c) tariff classification and rates of duty;
  - (d) determination of value of imported and export goods;
  - (e) Conversion of currency;
  - (f) Nature and description of documents to be filed with various kinds of Bills of Entry, Shipping Bills and other clearance documents;
  - (g) Procedure for assessment and payment of duty including refund of duty paid;
  - (h) examination goods at Customs Stations;
  - (i) prohibitions on import and export;
  - (j) bonding procedure and clearance from bond;
  - (k) re-importation and conditions for free re-entry;
  - (l) Drawback and export promotion schemes including SEZ scheme;
  - (m) offences under the Act;
  - (n) provisions of the allied Acts including the Indian Explosives Act 1884, Destructive Insects and Pests Act 1914, Dangerous Drugs Act 1930, Drugs and Cosmetics Act 1940, Central Excise Act 1944, Copy Right Act 1957, Trade and Merchandise Marks Act 1958, Arms Act 1959, Patents Act 1970, Narcotics Drugs and Psychotropic Substances Act 1985, Foreign Trade (Development and Regulations) Act, 1992, Foreign Exchange Management Act 1999, Design Act, 2000 and Food Safety and Standard Act, 2006 in so far as they are relevant to Customs clearance of goods;
  - (o) provisions of the Prevention of Corruption Act, 1988;
  - (p) procedure for appeal and revision applications under the Act; and
  - (q) on-line filing of electronic Shipping Bills or Bills of Entry via ICEGATE/ICES.

**4. Bond for grant of licence:**

- 4.1 The Commissioner of Customs shall on payment of Rs.5,000/- grant license to an applicant who has passed the oral examination within two months of date of declaration of the result. Such licensed Customs Broker may work in all Customs stations subject to intimation in Form C to the Commissioner of Customs station where he intends to transact business.
- 4.2 Before granting the licence under the Regulation 7 of CBLR 2013, 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.5 lakhs for carrying out the business as a Customs Broker.

**5. Validity of licence:**

- 5.1 The licence granted under Regulation 7 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 the obligation specified for Customs in CBLR 2013 including absence of instance of any complaints of misconduct. The license can be renewed for a further period of 10 years by Commissioner of Customs, However, a licence granted to a Customs

Broker, authorised under the Authorised Economic Operator Programme vide Circular No. 28/2012-Cus., dated 16-11-2012, shall not require renewal till such time the said authorisation is valid.

5.2 With a view to ensure uniformity in documentation required for the renewal of Customs Brokers License and in the interest of simplification, the Board has prescribed the following supporting documents for the renewal of Customs Brokers licenses under CBLR, 2013:

- (i) Declaration affirming that there is no change in constitution / address of Customs Broker; that there are no time expired / inoperative cards in Forms G/H pending submission to the Department; that accounts are being maintained as per Regulation 16 of CBLR, 2013; that no judicial/quasi-judicial cases are pending against them (if yes, the details and status of each pending case); and that no arrears are payable to the Department.
- (ii) Self-attested copy of Customs Broker Licence in Form B.
- (iii) List of Photo Identity Card holders in Form F/G/H with card number(s) and validity date(s).
- (iv) Self-attested copy of valid membership certificate of Custom Brokers Association (if registered in the Customs station and recognized by Commissioner of Customs).
- (v) Self-attested PAN card copy in the name of Customs Broker (Attested/Notarized), if not given earlier.

5.3 The enhanced security amount would not apply to holders of valid licenses issued under erstwhile regulations i.e. CHALR, 2004 or CHALR, 1984 who seek a renewal. Other conditions prescribed under the CBLR, 2013 will have to be satisfied.

[ Refer Circular No 8/2014-Cus., dated 13-6-2014]

## **6. Obligations of Customs Brokers:**

6.1 Regulation 11 of the CBLR 2013 casts certain obligations on a Customs Broker. Some of the important obligations enjoin the Customs Broker are to :

- (a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as Customs Broker 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 in any manner to which the Customs Broker, as a former employee of the Central Board of Excise and 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 Customs Broker which is sought or may be sought by Commissioner of Customs;
- (k) maintain up to date record such as bill of entry , shipping bill , transshipment application and all correspondences and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemized manner as specified by Deputy / Assistant Commissioner of Customs and keep them current;
- (l) immediately report the loss of license to the Commissioner of Customs;
- (m) discharge duty as a Customs Broker with utmost speed and efficiency;
- (n) Verify antecedents, correctness of IEC code number, identity of his client and functioning of the client at the declared address by using reliable, independent, authentic documents, data and information; and
- (o) Inform any change of postal address, telephone number, e- mail etc. to the Deputy Commissioner / Assistant Commissioner of Customs within 1 month of such change.

## **7. Suspension, revocation of licence or imposition of penalty:**

- 7.1 The Commissioner of Customs may revoke the licence of a Customs Broker and order for forfeiture of part or whole of security, or impose penalty not exceeding Rs.50,000 on him on any of the following grounds:
- (a) failure of to comply with any of the conditions of the bond executed by him;
  - (b) failure to comply with any of the provisions of the regulations;
  - (c) committing any misconduct, which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station;
  - (d) adjudicated as an insolvent;
  - (e) becomes of unsound mind; and
  - (f) has been convicted by a Court for an offence involving moral turpitude.
- 7.2 The Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending or contemplated. In such case, the Commissioner of Customs shall, within 15 days from the date of such suspension, give an opportunity of hearing to the Customs Broker concerned and then pass an order either revoking the suspension or continuing it, within 15 days from the date of hearing.
- 7.3 The Commissioner of Customs shall issue a written notice to the Customs Broker within 90 days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty and require the said Customs Broker to submit within 30 days to a nominated Deputy / Assistant Commissioner of Customs a written defense and also to specify whether the Customs Broker desires a personal hearing by the said Deputy / Assistant Commissioner of Customs. Thereafter, the Commissioner of Customs may direct the Deputy / Assistant Commissioner of Customs to inquire into the grounds which are not admitted by the Customs Broker. At the conclusion of the inquiry, the Deputy / Assistant Commissioner of Customs shall submit the enquiry report within 90 days from the date of issue of the notice.
- 7.4 The Commissioner of Customs shall furnish to the Customs Broker a copy of the enquiry report require him to submit any representation within 30 days. After considering the enquiry report and

the representation, if any, the Commissioner of Customs shall pass orders either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty within 90 days from the date of submission of the enquiry report. Order for revoking the license shall not be passed unless an opportunity is given to the Customs Broker to be heard in person by the Commissioner of Customs. An appeal against the order would lie to the Customs, Central Excise and Service Tax Appellate Tribunal.

- 7.5 Imposition of penalty or any action taken under the CBR 2013 is without prejudice to the action that may be taken against the Customs Broker or his employee under the provisions of the Customs Act, 1962 or any other law for the time being in force.

[Refer Notification No. 65/2013-Cus(N.T.), dated 21-6-2013]

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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 economic security.
- 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. Further, Section 110 of Customs Act, also provides for the proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act. However, the person from whose custody any documents are seized shall be entitled to make copies hereof or take extracts there from in the presence of an officer of customs.
- 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., photographic films, electronic goods, currency (Indian and foreign), liquors, P&P medicines, gold, silver, software, Petroleum products, red sanders, 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, EOU etc. Also liable to confiscation are goods entered for exportation which does 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 wilful 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 transshipped 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 transshipped under the provisions of the Customs Act, 1962 to a penalty not exceeding twice the amount of duty 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 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.5 lakhs by an Assistant/Deputy Commissioner of Customs; and
- (c) Where the value of the goods liable to confiscation does not exceed Rs.50,000, by a Gazetted Officer of Customs lower in rank than an Assistant/Deputy Commissioner of Customs.

9.3 Generally, 'mens rea' 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, an option is to be given as per Section 125 of the Customs Act, 1962 to pay a 'redemption fine', as the adjudicating authority deems fit, in lieu of the confiscation. Prohibited goods shall be confiscated absolutely.

## **10. Arrest:**

10.1 To effectively tackle the menace of smuggling and other serious economic offences including commercial frauds, 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 or 136 of the said Act, can be arrested by a Customs officer authorized 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 arrested person is to be dealt with by the Magistrate, as per 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 Cr.PC.

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 affected 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.
- 10.7 The guidelines for arrest are summed up as follows:
- (i) Offences under the Customs Act, 1962 are either (i) bailable; or (ii) non-bailable. Since arrest takes away the liberty of an individual, the power must be exercised with utmost care and caution in cases where a Commissioner of Customs or Additional Director General has reason to believe on basis of information or suspicion that such person has committed an offence under the Act punishable under the Sections 132 or 133 or 135 or 135A or 136 of the Customs Act, 1962.
  - (ii) Arrest of persons in terms of Section 104(1) of Customs Act, 1962 should be resorted to only where the facts and situations of a particular case demand such action. Persons involved should not be arrested unless the exigencies of certain situations demand their immediate arrest. These situations may include circumstances like ensuring proper investigation, to prevent such person from absconding, cases involving organised smuggling of goods or evasion of Customs duty by way of concealment, masterminds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc. The decision to arrest should be taken in cases which fulfil the requirement of the provisions of Section 104(1) of Customs Act, 1962 and after considering the nature of offence, the role of the person involved and evidence available.
  - (iii) While the Act does not specify any value limits, the powers of arrest may be exercised in respect of an offence, categorized as bailable offence, only in exceptional situations which may include (a) outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under Section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods exceeds Rs. 20 lakhs, (b) in a case related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/concealment of goods/goods covered under Section 123 of Customs Act,

1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods exceeds Rs. 50 lakhs.

- (iv) There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in “*D.K Basu vs. State of W.B.*” [1997(1) SCC 416 (see para 35)].
- (v) Certain modalities that should be complied with at the time of arrest and pursuant to an arrest include (a) female offender should be arrested by or in the presence of woman Customs officers, (b) medical examination of an arrestee should be conducted by a medical officer in the service of Central or State Government and in case such medical officer is not available, by a registered medical practitioner soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case such female medical officer is not available, by a female registered medical practitioner, (c) it shall be the duty of the person having the custody of an arrestee to take reasonable care of the health and safety of the arrestee.
- (vi) A person arrested for a non-bailable offence should be produced before Magistrate without unnecessary delay, as per Section 104(2) of the Customs Act, 1962.
- (vii) Under Section 104(3) of the Customs Act, 1962 an officer of Customs (arresting officer) has the same powers as an officer in charge of a Police Station under the Cr.PC. Thus, a Customs officer (arresting officer) is bound to release a person on bail for offences categorized as bailable under the Customs Act, 1962 and release on bail must be offered to a person arrested in respect of bailable offence and bail bond accepted. If the conditions of the bail are fulfilled, the arrestee shall be released on bail forthwith. The arresting officer may, and shall if such a person is indigent and unable to furnish surety, instead of taking bail from such person, discharge him or her executing a bond without sureties for his appearance as provided under Section 436 of Cr.PC. in cases where the conditions for granting bail are not fulfilled, the arrestee shall be produced before the appropriate Magistrate without unnecessary delay and within 24 hours of arrest.

[Refer Instruction F.No.394/71/97-Cus(AS), dated 22-6-1999 and Circular No. 38/2013- Cus., dated 17-9-2013]

## **11. Punishment for Customs offences:**

- 11.1 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 the 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 for the time being in force 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 provided under the said Act in connection with export of goods.
- 11.2 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 exceeding Rs.50 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.50 lakhs.

II. In any other case, with imprisonment for a term not exceeding 3 years or with fine, or with both.

11.3 If any person convicted of an offence under Section 135(1) (or of 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.

11.4 The offences punishable with imprisonment for a term of less than 3 years or only fine 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.

## 12. Offences by Customs officers:

12.1 The officers of Customs also cannot escape serious action including prosecution action, if they abuse their powers or collude or connive 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 Customs Officer, except in the discharge in good faith of his duty 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.

### **13. Presumption of culpable mental state:**

- 13.1 As per Section 138A of the Customs Act, 1962 in prosecution proceedings there under, 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. 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.

### **14. Cognizability and Bailability:**

- 14.1 Broadly, Cognizable Offences as per Code of Criminal Procedure, 1973 (2 of 1974) are those offences which are punishable with imprisonment for a term of more than three years. Further, as per Cr.PC, the offences punishable with imprisonment for a term of less than 3 years or with fine are covered in the category of non-cognizable offences. However, Section 104 of Customs Act, 1962 stipulates that notwithstanding anything contained in the Cr.PC any offence relating to - (a) Prohibited goods; or (b) Evasion or attempted evasion of duty exceeding fifty lakh rupees shall be cognizable and all other offences under the Act shall be Non-cognizable. Section 104 (6) of the Customs Act, 1962 provides for the categories of offences punishable under Section 135 that are non-bailable and all other offences under this Act shall be bailable as per Section 104 of the Customs Act. The following categories of offences shall be non-bailable:

- (a) evasion or attempted evasion of duty exceeding Rs.50 Lakhs; or
- (b) prohibited goods notified under Section 11 of the Customs Act, 1962 which are also notified under Section 135(1)(i)(C) of the Customs Act, 1962; or
- (c) import or export of any goods which are not declared as per the provisions of the Customs Act, 1962 and the market price of which exceeds Rs.1 Crore; or
- (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty, if the amount of drawback or exemption from duty exceeds Rs.50 Lakhs.

### **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 must thereafter be filed in appropriate Court of law and followed up with a view to get expeditious conviction.

16. **Issue of Summons:**

On issue of summons in Customs matters, the following guidelines have been issued:

- (i) Power to issue summons is generally exercised by Superintendents, though higher officers also issue summons. Summons by Superintendent should also be issued after obtaining prior written permission from an Officer not below the rank of the Assistant Commissioner with the reasons for issue of summons to be reduced in writing.
- (ii) Where for operational reasons it is not possible to obtain such prior written permission oral/telephonic permission from such officer must be obtained and the same should be reduced to writing and intimated to the officers according such permission at the earliest opportunity.
- (iii) In all such cases, where summons are issued, the officer issuing summons submit a report or should record a brief of the proceedings in the case file and submit the same to the officer who has authorized to issue the summons.
- (iv) Further senior management officials such as CEO, CFO General Manager of large Company or PSU should not generally be issued summons at the first instance They should be summoned only when there are indications in the investigation of their involvement in the decision making process which led to revenue of loss.
- (v) An officer who has issued summons for recording of statement in such case where summons are issued to senior functionaries should be available in the office and record the statement as per schedule given in summons. However, if for some operational reason the officer is not available to attend the proceedings as per schedule, this may be informed to the person summoned in advance.

[Reference F.No. 394/05/2015-Cus ( AS) dated 04.02.2015]

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## 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 (Appeal):

- 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 passed by the Commissioner within 3 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 1 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 60 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 60 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 3 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 6 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 129D(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 CESTAT, 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.2lakh 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 3 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:
- (a) 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.
  - (b) 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.
  - (c) 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.

- (d) 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.
- (e) 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.

#### **4. Review of orders passed by Commissioner of Customs and Commissioner of Customs (Appeal) and filing of appeal by Department:**

- 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. Deposit of certain percentage of duty demanded and Penalty imposed before filing Appeal :**

6.1 Under section 129 E, the Tribunal or Commissioner (Appeal) as the case may be shall not entertain any appeal:

- (i) under sub-section (1) of Section 128, unless the appellant has deposited seven and a half percent of duty demanded or penalty imposed or both, in pursuance of a decision or an order passed by an officer of Custom slower in rank than Commissioner of Customs;
- (ii) against the decision or order referred to in clause (a) of sub section(1) of Section 129 A, unless the appellant has deposited seven and a half percent of duty demanded or penalty imposed or both, in pursuance of the decision or order appealed against; and
- (iii) against the decision order referred to in clause (b) of sub section (1) of Section 129A, unless the appellant has deposited ten percent of duty demanded or penalty imposed or both, in pursuance to the decision or order appealed against.

Provided that the amount required to be deposited does not exceed Rs.10 crores.

Provided further that the provisions of this section shall not apply to stay applications and appeal pending before any appellate authority prior to the commencement of Finance ( No2 ) Act , 2014.

6.2 Section 129EE 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.

## **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 formulated the question of law. The High Court may hear any other substantial question of law not formulated by it, 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:
- (a) 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
  - (b) 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 between Central Government Department and PSU/ other Government Departments:**

- 9.1 In cases where disputes arise between two Central Government Departments or a Government Department and Public Sector Undertaking, there is no requirement of obtaining approval of the Committee on Disputes for pursuing litigations. Field formations may pursue their appeals in the respective Tribunals / Courts.

**10. Monetary limits for filing appeals to CESTAT, High Courts 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.5 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.10 lakhs and below. As regards Supreme Court, appeals should not be filed in cases where the duty involved is Rs.25 lakhs or less. However, adverse judgments relating to the following should be contested irrespective of the amount involved:

- (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- (b) Where notification/instruction/order or Circular has been held illegal or ultra vires.
- (c) 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  
Instruction F.No. 390/Misc/163/2010- JC, dated 17.08.2011]

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 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.

11.2 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, 1962.

- 11.3 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 and F.No.390/170/92-JC, dated 13-1-1993]

## **12. Authority for advance Rulings (Central Excise, Customs & Service Tax):**

- 12.1 A scheme of advance ruling (Central Excise, Customs and Service Tax) was incorporated in the Customs Act 1962 by the Finance Act of 1999 for issue of binding rulings in advance, on customs matters. The scheme is intended to provide certainty to intending investors. Statutory changes have been brought out to expand the ambit of authority over a period of time.
- 12.2 Authority for Advance Ruling is a high level quasi-judicial body comprising of retired judges of the Supreme Court of India and two members of additional secretary who have wide experience in technical and legal matters.
- 12.3 Under the scheme of Advance Rulings, the following categories of investors are eligible to apply for a ruling; (a) a non-resident investor setting up a joint venture in India in collaboration with a non-resident or a resident; (b) a resident setting up a joint venture in India in collaboration with a non-resident; (c) a wholly owned subsidiary Indian company of which the holding company is a foreign company; (d) a joint venture in India, that is to say, a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is non-resident having substantial interest in such arrangement (e) A resident falling within any such class or category of persons as the Central Government may be notification in the official gazette specify in this behalf.
- 12.4 Advance Rulings can be sought in respect of the questions/issues on (i) Classification of goods under the Customs Tariff Act, 1975, (ii) Principles of valuation under the Customs Act, 1962, (iii) Applicability of notifications issued under the Customs Act, 1962 and Customs Tariff Act, 1975, (iv) Determination of origin of goods in terms of the rules notified under the Customs Tariff Act, 1975 and matter related thereto.
- 12.5 The process of obtaining an advance ruling is simple, inexpensive and transparent. A fee of Rs. 2500/- has to be deposited through a Demand Draft with each application. Obtaining a ruling is highly expeditious as the Authority is statutorily required to deliver the same within 90 days of receipt of an application. Rulings are pronounced after providing an opportunity of being heard by the Authority and in pursuance of other accepted judicial norms.
- 12.6 Advance Rulings pronounced by Authority are binding on the departmental officers and on the applicant, and hence rule out possibilities of disputes and litigation. Subsequently, Advance Rulings are not appealable either by the department or the applicant, under the Customs laws. An Advance Ruling remains valid unless there is a change in law or the facts on the basis of which the ruling was pronounced.
- 12.7 Advance Rulings would indicate, in advance, the duty liability in respect of an 'activity' viz 'import' or 'export' under the Customs Act.

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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 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. These measures include 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, Customs Brokers is to get 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, Customs Brokers 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 (PGO):** Each Commissionerate has a designated PGO and Public Notices have been issued giving the names and telephone numbers of these officers. These PGO 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 along with 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.
- (f) **Permanent Trade Facilitation Committee (PTFC):** PTFCs having membership of all stakeholders function in each Customs station to resolve local issues. As a trade facilitation measure and with a view to encourage stakeholder participation and provide for expeditious resolution of local issues (without these being escalated to the Department/Board), the Board has instructed the Chief Commissioners to ensure that:
- (i) PTFC are held regularly with minimum of one meeting per month on a pre-decided date.
  - (ii) Minutes of the PTFC meetings are sent to the Board through DG, Directorate General of Export Promotion on issues having all India implication, if any.
  - (iii) Apex trade bodies are allowed to attend the PTFC meetings along with their local constituents, who are members of the PTFC.
  - (iv) Efforts are made to regularly review the membership of the PTFC with the aim of including all stakeholders in the Customs functioning.
  - (v) Chief Commissioners/Commissioners are receptive to meeting local and apex trade bodies even outside the framework of the PTFC.

[ Refer Circular No.42/2013–Cus., dated 25-10-2013]

### **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 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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## Chapter 33

### On-site Post Clearance Audit

#### 1. Introduction:

- 1.1 Customs On-Site Post Clearance Audit (OSPCA) is an initiative based on global best practices and is aimed at creating an environment of increased compliance while allowing the Department the flexibility to increase the facilitation for importers and exporters. OSPCA marks a fundamental shift in the functioning of the Indian Customs since for the first time legal compliance and correct assessment of Customs duties will be verified by the Customs at the premises of importers and exporters.
- 1.2 OSPCA is not to be confused with the 'Post Clearance Compliance Verification (PCCV) that was introduced in 2005 when the Risk Management System was operationalised. PCA, which is done in the Custom Houses, shall continue side by side with OSPCA. To prevent duplication both PCA and OSPCA shall not be done for the same transaction. OSPCA is a broad based audit with focus on systems and procedures even though the short levies of duties, if any, shall continue to be determined on transaction basis. OSPCA allows verification of self-assessment on periodic basis by scrutiny of relevant business records at the importers / exporters premise. Thus, an importer or exporter can benefit from reduced clearance time and can deal with the goods promptly, saving on insurance, warehouse and storage charges. On the other hand, the Customs can do a comprehensive company oriented check to ensure that imports or exports conform to the declarations
- 1.3 OSPCA has requisite legal authority in terms of Sections 17(6) and 157 of the Customs Act, 1962. Section 17(6) of the Customs Act, 1962 empowers the proper officer for verification of correctness of assessment of duty on imported or export goods at the premise of importer or exporter. Further, Section 157 of the said Act empowers the Board to frame regulations on the manner of conducting audit at the premise of the importer or exporter. Other recent supporting legislative changes include enhancing time limit to one year for refund of Customs duty and for demanding Customs duty under Sections 27 and 28 of the Customs Act, 1962 respectively.
- 1.4 OSPCA requires considerable coordination between Commissionerates of Central Excise when multi-locational importers / exporters are to be audited simultaneously. Furthermore, short levies can be demanded only by the Customs Commissionerates of import and this would require coordination between the auditing Commissionerate and the Custom House. Also, DG, Systems, DG, Audit and DG, NACEN are involved in the preparation for OSPCA by exchanging information on importers / exporters, issue of modus operandi circulars etc. as well as training of Auditors. Therefore, Chief Commissioners / Directors General should ensure proper coordination by appointing a Nodal Officer for OSPCA. Needless to state, communication including exchange of document / information by e-mail should be encouraged.
- 1.5 OSPCA has been operationalized w.e.f. 1-10-2011 only for importers registered under the Accredited Client Programme (ACP). It has also been decided that ACP importers shall be subjected to OSPCA once during each financial year. Coverage of OSPCA shall be increased in subsequent phases and the periodicity of audit in respect of other entities prescribed at that stage.
- 1.6 For coordinated and effective OSPCA, the ACP importers have been categorized as under:
  - (a) Those registered with LTU Commissionerates would be audited by the audit wing of LTU concerned;

- (b) Multi Location Units would be audited by the Central Excise Commissionerates with the nodal Commissionerate being the one having jurisdiction over the registered / head office of the ACP importer; and
- (c) Others ACP importers would be audited by the Central Excise Commissionerate having jurisdiction over the head office / registered office of the ACP importer.

1.7 OSPCA is viewed as a trade facilitation measure and one way to do away with avoidable interface with the Department. ACP importers with manufacturing facilities and / or those registered as service providers / recipients with the department would already be undergoing Central Excise and / or Service Tax audit. Therefore, in order to avoid duplication of exercise and reduce interface, OSPCA shall be done simultaneously with Central Excise and Service Tax.

1.8 PCCV or PCA at the respective Custom House of import has been dispensed with for ACP importers subjected to OSPCA.

[Refer Circular No.47/2011-Cus., dated 21-10-2011]

## **2. On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011:**

2.1 On Site Post Clearance Regulations (OSPCA) 2011 prescribe the manner of conducting audit at the premises of importer or exporter. As per the regulations the importer or exporter, shall make available in a timely manner the books of account, records of transaction and other relevant documents maintained by him for a period of five years from the date of import or export, relating to imported or export goods as required by the proper officer. Further, the importer or exporter will also render assistance to the proper officer in the discharge of his official duty and shall in no case refuse or obstruct the proper officer in discharge of official duty. The importer or exporter is required to provide true and correct information to the proper officer.

2.2 Following guidelines are prescribed under the OSPCA Regulations 2011:

- (a) The proper officer shall give at least 15 days advance notice to the importer or exporter and where considered necessary, obtain from the importer or exporter, prior information relating to imported or export goods before conducting audit; visit the premises to gather relevant information relating to imported or export goods.
- (b) The proper officer shall inform the importer or exporter of the objections, if any, before preparing the draft audit report to provide him an opportunity to offer clarifications with supporting documents. Where the importer or exporter is in agreement with the audit findings, in part or in full, he may make voluntary payments of duty due, if any, and the proper officer shall record the same in the audit report.
- (c) The proper officer may, where necessary, inspect the imported or export goods, where such goods are available during the course of audit.
- (d) Samples of imported or export goods in the presence of the importer or exporter and copy of relevant documents to verify the correctness of assessment of duty may be taken by the proper officer.

2.3. Importers or exporters, who contravene any provision of OSPCA Regulations 2011 or abet contravention thereof or fail to comply with any its provisions regulations shall be liable to a penalty which may extend to Rs.50,000.

2.4 Superintendent of Customs and Central Excise or Appraiser has been made 'Proper officer for the purpose of the OSPCA Regulations 2011.

[Refer Notification No 104/2012-Cus( NT),, dated 26-12-2012]

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# Chapter 34

## Authorized Economic Operator (AEO) Programme

### 1. Introduction:

- 1.1 The global trading system is vulnerable to terrorist exploitation while the international trade is an essential element for economic development. Customs plays a unique role in providing increased security to the global trade while facilitating the legitimate flow of goods. Thus, in 2005 the World Customs Organisation (WCO) adopted the SAFE Framework of Standards to secure and facilitate global trade, which includes the concept of an Authorized Economic Operator (AEO) whereby a party engaged in the international movement of goods is approved by Customs as compliant with the supply chain security standards, and given benefits, such as simplified Customs procedures and reduced Customs intervention. The AEO concept is being increasingly adopted by various Customs administrations with the objective of securing the supply chain with resultant benefits for the trading community.
- 1.2 Consistent with the “SAFE Framework” developed by the WCO, the Indian Customs administration has developed an AEO Programme that encompasses various players in the international supply chain such as importers, exporters, warehouse owners, Custom House Agents, cargo forwarders and carriers. The objective of the AEO Programme is to provide businesses with an internationally recognized quality mark which will indicate their secure role in the international supply chain and that their Customs procedures are efficient and compliant. An entity with an AEO status can, therefore, be considered a 'secure' trader and a reliable trading partner.
- 1.3 As aforesaid, the AEO Programme seeks to secure the global supply chain in partnership with business entities that are fully legally compliant and provide with the Customs the confidence to validate their security features. Therefore, it is imperative that participating entities ensure they fulfill this fundamental requirement.

### 2. Benefits of an AEO Programme:

- 2.1 A business authorized by the Customs as an AEO can enjoy benefits flowing from being a more compliant and secure company as well as favourable consideration in any Customs proceedings coupled with better relations with Customs. AEO status will also ensure a low risk score is incorporated into Customs 'Risk Management System' (RMS) and used to determine the frequency of Customs physical and documentary checks. The benefits may also include simplified Customs procedure, declarations, etc. besides faster Customs clearance of consignments of/for AEO status holders.
- 2.2 For the present, the following benefits will accrue to AEO status holders:
  - A. **Importers:**
    - (a) For AEO importers the facilitation shall be higher than for an ACP importer.
    - (b) AEO importers may be given benefit of reduce bank guarantee wherever applicable. In any case, the amount of bank guarantee shall not exceed 5% of the bond amount.
  - B. **Exporters:**
    - (a) AEO exporters shall be given benefits of reduced percentage of examination. At present the examination of export consignment is governed by Circular No. 6/2002-Cus., dated 23-1-2002. In cases where normal examination percentage is prescribed as 10%, for AEO exporters this percentage shall be 5%. In cases of export under claim of drawback / Reward Schemes examination percentage for AEO exporters shall be 10% as against 25% fixed vide

said Circular. Similarly, in case of examination to sensitive destinations, examination of 20% consignments shall be done as against 50% for other exporters. Further the value limit is raised from Rs 1 lakh to Rs 5 lakhs for drawback shipping bills and from Rs 5 lakhs to 10 lakhs in case of EPCG/ DEEC Shipping Bills for AEO exporters.

**C. Logistic Service Providers:**

- (a) AEO logistic service providers are given benefits of waiver of bank guarantee in case of transshipment of goods under Goods Imported (Condition of Transshipment) Regulations, 1995. They shall also be given a facility of executing a running bond.
- (b) AEO logistic service providers shall be given facility of not taking permission on case to case basis in case of transit of goods. In case of international transhipped cargo (Foreign to Foreign), for the pre-sorted containers wherein cargo does not require segregation, ramp to ramp or tail to tail transfer of cargo can be affected without Customs escorts.

**D. Custodians or Terminal Operators:**

- (a) AEO Custodians shall be given benefits of waiver of bank guarantee under Handling of Cargo in Customs Area Regulations, 2009.
- (b) Approval granted to AEO Custodians shall be extended for a period of 10 years at a time in terms of regulation 10(2) of Handling of Cargo in Customs Area Regulations, 2009.

**E. Customs Brokers:**

- (a) AEO Customs Brokers shall be given benefit of extended validity period of Customs Broker licenses. The Licence shall be valid till validity of their AEO authorization. Further, the fee for renewal of a licence shall be exempt.

**F. Warehouse Operators:**

- (a) AEO warehouse operators shall be accorded faster approval for new warehouses.
- (b) AEO warehouse operator shall be given benefits of reduced bank guarantee to the extent of 5% of the duty liability in respect of individual consignments of sensitive goods to be warehoused.
- (c) In case of goods not likely to deteriorate, the Chief Commissioner of Customs may grant extension upto a period of six months at a time in deserving cases.

**3. Criteria for considering application for grant of AEO status:**

3.1 The following criteria is relevant for the grant of AEO status:

- (i) Appropriate record of compliance of Customs and other relevant laws;
- (ii) Satisfactory system of managing commercial and, where appropriate, transport records;
- (iii) Proven financial solvency; and
- (iv) Maintenance of approved security and safety standards.

3.2 Anyone involved in the international supply chain that undertakes Customs related activity in India can apply for AEO status irrespective of size of the business. These include manufactures, exporters, importers, logistic providers, carriers (airlines etc.), freight forwarders, and Customs House Agents.

Others who may qualify include port operators, authorized couriers, stevedores. The list is not exhaustive.

- 3.3 Businesses that are not involved in Customs related work / activities will not be entitled to apply. Thus, in general banks, insurance companies, consultants and the like categories of businesses will not be eligible for AEO status.
- 3.4 Only such entities that can categorically establish their compliance of the legal and security criterion are eligible to apply. Others need not apply for the AEO status till such time they meet the compliance criterion.
- 3.5 The application for AEO status will only cover the legal entity of the applicant and will not automatically apply to a group of companies.
- 3.6 There is no provision to grant AEO status to specific site, division or branch of legal entity of the applicant. The application must cover all the activities and locations of the legal entity involved in the international trade supply chain and the identified criteria will be applied across all those activities and locations.
- 3.7 In order to apply for AEO status the applicant must be established in India. For this purpose, the applicant will be asked to provide evidence which may include:
  - (i) A certificate of registration issued by the Registrar of Companies.
  - (ii) Details of where staff is employed for making supplies of goods and/or services.
  - (iii) Proof that the business has its own accounts.
- 3.8 An AEO status applies only to the legal entity applying for such status in its own capacity and covering its role in the international supply chain. Therefore, AEO status can be granted to a Custom House Agent, but this will not confer similar status on its client importers / exporters who will need to apply separately for that status.

#### **4. Application for AEO status:**

- 4.1 An applicant for grant of AEO status should submit the following:
  - (i) Application for Authorized Economic Operator (AEO) Status
  - (ii) Security plan
  - (iii) Process map
  - (iv) Site plan
  - (v) Self-Assessment Form
- 4.2 The application should be sent to the AEO Programme Manager, Directorate General of Inspection, Customs & Central Excise, 'D' Block, I.P. Bhawan, I.P. Estate, New Delhi – 110002. The AEO Programme Manager is supported by AEO Programme Team comprises the officers from the Directorate General of Inspection and its regional offices.
- 4.3 Each application will be acknowledged and recorded in an AEO Programme database.

#### **5. Return of application:**

- 5.1 If application is incomplete or deficient, the applicant will be suitably informed within 30 days of the receipt.
- 5.2 AEO Programme Manager will **not** process the following applications until these are rectified, as indicated:

- (a) Which is incomplete – This may be resubmitted with the complete information.
- (b) Where the application has not been made by a legal person – This can only be resubmitted by the concerned legal entity.
- (c) Where no responsible person is nominated – This can only be resubmitted when the applicant nominates a responsible person who will be the point of contact for the AEO Programme.
- (d) Where the applicant is subject to bankruptcy proceedings at the time the application is made: This may be resubmitted when the applicant becomes solvent.
- (e) Where a previously granted AEO status has been revoked-This may not be resubmitted until three years after the date of revocation.

## **6. Processing of application:**

- 6.1 On receipt of the complete application and after ensuring the applicant is eligible to apply certain validation tests will be carried out to check that applicant is:
- (i) Able to establish a record of compliance with Customs and other legal provisions.
  - (ii) Able to demonstrate satisfactory systems of managing commercial and, where appropriate, transport records.
  - (iii) Financially solvent.
  - (iv) Able to demonstrate satisfactory systems in respect of security and safety standards.
- 6.2. Once the application has been accepted, the applicant will be suitably informed of this within 30 days. The application will then be passed to the AEO Programme Team which will by prior appointment visit the applicant's premises and carry out an AEO verification and make a recommendation to the AEO Programme Manager.

## **7. Rejection of application:**

- 7.1 Applications will be rejected in cases where the applicant is not eligible for grant of AEO status, or has been convicted of a serious criminal offence linked to the economic activity of his business in the past, or in cases where the deficiency noticed in the application cannot be remedied. The information regarding the rejection of such application will be given to the applicant within 30 days of the receipt of the application.

## **8. Time limit for grant of Certificate of AEO Status:**

- 8.1 Applications meeting the identified criteria will be granted the certificates of AEO status ordinarily within 90 days of receipt of the completed application containing full information. In cases where validation of AEO applications can not be concluded on genuine ground.

## **9. Legal Compliance:**

- 9.1 An applicant must meet certain conditions and ensure compliance with the criteria of grant of AEO status. Thus, an AEO Programme Team will examine applicant's record of compliance over the last three years preceding the date of applicant's application to ensure adherence to Customs, Central Excise and Service Tax laws as well as allied laws that are administered by the Department. Major



violations in respect of any other fiscal law such as relating to Income/Corporate Tax will also be taken into account to confirm the compliance level of the applicant.

- 9.2 Normally, 'technical' or procedural errors, if any, made by an applicant over the past three years in relation to Customs, Central Excise and Service Tax laws that have no significant impact on the revenue or compliance record may not be considered a disqualification for grant of AEO status. This approach would extend to the various allied laws that are administered by the Department. These 'technical' or procedural errors may include the following:
- (i) Any errors that have been voluntarily disclosed;
  - (ii) Any decisions which have been overturned by Courts/Tribunal or departmental review;
  - (iii) Any decisions currently under review; and
  - (iv) Where a penalty is imposed for a minor irregularity.
- 9.3 The company should have business activities for at least 3 years.
- 9.4 AEO Programme Manager will assess whether a serious infringement or repeat infringements of Customs, Central Excise and Service Tax laws has been committed by (a) the applicant, and (b) any other responsible person involved in the running of the business.
- 9.5 An applicant will also need to demonstrate that he has:
- (i) procedures in place to identify and disclose any irregularities or errors to the Customs authorities or, where appropriate, other regulatory bodies.
  - (ii) taken appropriate remedial action when irregularities or errors are identified.
- 9.6 Once an error has been identified, the applicant is expected to take steps to ensure that they do not happen again or, at least, to ensure that they are immediately remedied if they do arise. Failure to take such steps could count against applicant.
- 9.7 Besides assessing the compliance of the business itself, the AEO Programme Team may also look at the previous compliance records of (a) Company Directors; (b) Company Secretary; and (c) Employees directly responsible for the import/export of goods.
- 9.8 Any errors made by third parties acting on applicant's behalf would reflect upon the applicant's compliance. Thus, the applicant should make such third parties aware of the standards that he operates to and that systems are in place to immediately identify any problem.

## **10. Managing commercial / transport records:**

- 10.1 For the purpose of AEO status the applicant must have a satisfactory system of managing commercial and, where appropriate, transport records. Such a system may include the following:
- (i) An accounting system consistent with Generally Accepted Accounting Principles (GAAP) / International Financial Reporting Standards (IFRS) which facilitates audit-based Customs control.
  - (ii) Allowing the AEO Programme Team physical or electronic access to Customs and, where appropriate, transport records.
  - (iii) An administrative set up and documented procedures to control and manage the movement of goods.
  - (iv) Internal controls capable of detecting illegal or irregular transactions.

- (v) Satisfactory procedures for the handling of licences, authorizations and documents connected to export/import.
- (vi) Satisfactory procedures to archive and retrieve records and information, and also for protection against the loss of information.
- (vii) Ensure that employees are made aware of the need to inform the Customs authorities whenever compliance difficulties are discovered and establish contacts for this.
- (viii) Satisfactory procedures for verifying the accuracy of Customs declarations.
- (ix) Appropriate information technology security to protect against unauthorized intrusion.

## **11. Financial solvency:**

- 11.1 An applicant must be financially solvent for the three years preceding the date of application. Solvency would generally be defined as good financial standing that is sufficient to fulfil the commitments of the applicant including ability to pay duties. Thus, the applicant should not be listed currently as insolvent, or in liquidation or bankruptcy and should not have an outstanding claim against any guarantee in the last three years. Further, the applicant should not have delayed in payment of due taxes. Only uncontested and undisputed claims will be treated as outstanding claims for the purpose of this Para.
- 11.2 AEO Programme Team will rely on the applicants annual accounts due in the last three years to establish solvency. In particular, the following will be taken into account:
- (i) Where required, the accounts have been filed with Registrar of Companies within the time limits laid down by law.
  - (ii) Where applicable, audit qualifications or comments in the annual accounts about the continuation of the business as a going concern.
  - (iii) Any contingent liabilities or provisions.
  - (iv) Net current assets are positive.
  - (v) Net assets position and the extent of intangible assets.
- 11.3 It is recognized that in some circumstances a company may have negative net assets. For example, a company may be set up by a parent company for research and development purposes when the liabilities are funded by a loan from the parent or from a financial institution. In these circumstances, negative net assets will not necessarily be seen as an indicator of insolvency but further evidence of solvency will be required such as a Bank letter or in case of sole proprietor or partnership firms, personal assets.
- 11.4 If applicant is a newly established business or have just started trading, his financial solvency will be judged on the basis of records and information. This will include the latest:
- (i) Cash flow figures
  - (ii) Balance sheet.
  - (iii) Profit and loss forecasts approved by directors/partners/sole proprietor.

## **12. Safety and security:**

- 12.1 Internal controls and measures to secure the safety of applicant's business and his supply chain will be considered in addition to any specific legal requirements that may be applicable to the business.
- 12.2 In order to satisfy the requirements of AEO status, the applicant will need to ensure security of import/export cargo, conveyances, premises, etc.

12.3 **Cargo Security:-** In order to ensure Cargo Security following steps should be taken:

- (a) Only properly identified and authorised persons should have access to the cargo.
- (b) Integrity of cargo should be ensured by permanent monitoring or keeping in a safe, locked area.
- (c) All seals must meet the current PAS / ISO 17712 standards for high security seals. In cases it is not possible to procure and use PAS / ISO 17712 seals for air consignments / courier consignments any international seal compatible with standards of PAS / ISO 17712 shall be used. However in case of maritime containerized cargo only PAS / ISO 17712 seals shall be used.
- (d) The integrity of container seals should be checked and appropriate procedure should exist for the fixing of seals.
- (e) Only designated personnel should distribute container seals and safeguard their appropriate and legitimate use.
- (e) When appropriate to the type of cargo container used, a seven-point inspection process is recommended: Front wall, Left side, Right side, Floor, Ceiling/Roof, Inside/outside doors, Outside/undercarriage.
- (g) Appropriate procedures should be laid down on measures to be taken when an unauthorized access or tampering is discovered.
- (h) It should not be possible to deliver goods to an unsupervised area.
- (i) Goods should be uniformly marked or stored in designated areas and procedures should exist to weigh / tally them and compare them against transport documents, purchase/sales orders and Customs papers.
- (j) Internal control procedures should exist when discrepancies and/or irregularities are discovered.

12.4 **Procedural Security:-** In order to ensure procedural security following measures / steps should be taken.

- (i) Security measures should be in place to ensure the integrity and security of processes relevant to the transportation, handling, and storage of cargo in the supply chain.
- (ii) Proper documentation management procedure should be in place to ensure that all documentation used in the clearing of cargo is legible, complete, accurate and protected against the exchange, loss or introduction of erroneous information.
- (iii) Procedure should be in place to ensure that information received from business partners is reported accurately and timely as well as declared in the time limit regulated by Customs.
- (iv) Procedure should be in place to ensure that:
  - (a) Import / Export cargo are reconciled against the information on the bill of lading.
  - (b) The weights, labels, marks and piece count of the import/export cargo are accurately indicated.

- (c) Import/export cargo are verified against purchase/delivery orders.
- (d) Drivers delivering or receiving cargo are positively identified before cargo is received or released.
- (e) All shortages, overages, and other significant discrepancies or anomalies must be resolved and/or investigated appropriately.

12.5 **Conveyance Security:** For conveyance security the applicant seeking authorisation under AEO must:

- (a) ensure, to the extent possible that all conveyances used for the transportation of cargo within the supply chain are capable of being effectively secured.
- (b) ensure, to the extent possible that all operators of conveyances used for transport of cargo are trained to maintain the security of the conveyance and the cargo at all times while in its custody.
- (c) require operators, to report actual or suspicious incident to designated security department staff of both the AEO Programme Team and Customs, as well as to maintain records of these reports, which should be available to Customs.
- (d) ensure that potential places of concealment of illegal goods on conveyances and ensure these are regularly inspected,
- (e) ensure that transporters make sure that conveyance integrity is maintained while the conveyance is en route transporting cargo to export/import points or import/transit containers by utilizing a tracking and monitoring activity log or records.
- (f) ensure that pre determined routes are identified by the dispatcher, and procedures must consist of random route checks along with documenting and verifying the length of time between the loading point/trailer pickup and the delivery destinations.
- (g) ensure that drivers must notify the dispatcher of any route delays due to weather, traffic and/or rerouting.
- (h) ensure that the management of transporters must perform a documented, periodic, and random verification process to ensure the logs are maintained and conveyance tracking and monitoring procedures are being followed and enforced.

12.6 **Premises Security:** In order to ensure premises security following measures steps should be taken.

- (a) Buildings must be secure against unlawful entry.
- (b) External and internal windows, gates and fences must be secured with locking devices or alternative access monitoring or control measures.
- (c) Management or security personnel must control the issuance of locks and keys.
- (d) Adequate internal and external lighting must be provided especially for entrances and exits, cargo handling and storage areas, fence lines and parking areas.
- (e) Gates through which vehicles and/or personnel enter/exit must be manned, monitored or otherwise controlled. Vehicles accessing restricted areas must be parked in approved area and their license plate numbers furnished to Customs upon request.

- (f) Only properly identified and authorized persons, vehicles and goods may be permitted access.
- (g) Access to document or cargo storage areas may be restricted.
- (h) There should be appropriate security systems for theft and/or access control.
- (i) Restricted areas should be clearly identified.
- (j) integrity of structures and systems must be periodically inspected.
- (k) Perimeter fencing should enclose the areas around cargo handling and storage facilities.
- (l) Interior fencing within a cargo handling structure should be used to segregate domestic, international, high value and hazardous cargo.
- (m) All fencing must be regularly inspected for integrity and damage.
- (n) The number of gates should be kept to the minimum necessary for proper access and safety.
- (o) Private passenger vehicles should be prohibited from parking in or adjacent to cargo handling and storage areas.

**12.7 Personnel Security:** In order to ensure personnel security following measures are required.

- (a) All reasonable precautions must be taken when recruiting new staff to verify that they are not previously convicted of security-related, Customs or other criminal offences.
- (b) Periodic background checks must be conducted on employees working in security sensitive positions.
- (c) Employee identification procedures should require all employees to carry proper identification that uniquely identifies the employee and organisation.
- (d) Procedures to identify, record and deal with unauthorized or unidentified persons, such as photo identification and sign-in registers for visitors etc. must be ensured at all points of entry.
- (e) Procedures must be in place to expeditiously remove identification and access to premises and information for employees whose employment is terminated.

**12.8 Business Partner Security:** The following measures are relevant for ensuring business partner security:

- (i) The applicant must have written and verifiable process, including the capability of financial soundness and compliance with the safety requirement set by the contracts as well as the capability of detection and correction of safety defects, for the selection of business partners.
- (ii) For those business partners having AEO certification, the applicant must get those business partners' copies of certification.
- (iii) For non-AEO partners, the applicant must get written confirmation of meeting AEO equivalent security criteria. Such business partners must have one of the following written documents demonstrating their compliance with security criteria:
  - (a) Contractual document
  - (b) A completed self-assessment security questionnaire from the applicant.

- (c) A written statement from the business partner demonstrating their compliance with AEO security criteria.
  - (d) Senior business partner officer attesting to compliance.
  - (e) Documents from the business partners demonstrating their compliance with and equivalent and accredited security program administered by a foreign Customs authority.
- (iv) Periodic reviews of business partner's processes and facilities must be conducted based on risk, and must maintain the security standards required by the applicant.

**12.9 Security Training and Threat Awareness:-** The following measures are relevant for ensuring business partner security:

- (i) The applicant should ensure that:
  - (a) A threat awareness program is established and maintained for employees to foster awareness of the threat at each point in the supply chain.
  - (b) Employees are aware of the procedures the company has in place to address a situation and how to report it.
  - (c) Specific training is offered to assist employees in maintaining cargo integrity, recognizing internal conspiracies and protecting access controls.
- (ii) Supply chain security training of employees must include the following items:
  - (a) Security policy of the company.
  - (b) Potential risk to internal security of the company.
  - (c) Maintaining cargo security.
  - (d) Access control measures of the company.
  - (e) Identifying and reporting suspicious cargo and personnel.
  - (f) Conveyance management and cargo security for conveyance management personnel.
- (iii) Educational methods of security training and keeping records of security training for the checks conducted by the Customs are established.

**13. Pre-certification verification:**

- 13.1. Once the application is accepted and validated by the AEO Programme Manager, within 15 days thereof it will be sent to an AEO Programme Team under intimation to the applicant, for carrying out a pre-certification audit.
- 13.2. The AEO Programme Team will visit the business premises and carry out checks to verify the information provided is accurate. Such visit shall be made on a convenient date after consulting the applicant.
- 13.3. If within 45 days of the date of letter of acceptance of the application, the applicant has not been contacted by the AEO Programme Team than the applicant should contact the AEO Programme Manager immediately.
- 13.4. The AEO Programme Team will examine the size and nature of business, the record keeping system, and strength of internal control system.
- 13.5. The applicant should be prepared to answer questions or provide additional information on all aspect of the application to the visiting AEO Programme Team.
- 13.6. Where appropriate, in addition to the other requirements detailed earlier, the AEO Programme Team will cover the following:
  - (i) Information on Customs matters.

- (ii) Remedial action taken on previous Customs errors, if any.
- (iii) Accounting and logistic systems.
- (iv) Internal controls and procedures.
- (v) Flow of cargo.
- (vi) Use of Customs House Agents.
- (vii) Security of Computers/IT and documents.
- (viii) Financial solvency.
- (ix) Safety and security assessment – premises, cargo, personnel etc.
- (x) Logistic processes.
- (xi) Storage of goods.

- 13.7 The person nominated in the application form as point of contact must ordinarily be available unless unforeseeable situation arises. In addition, individuals responsible for specific business activities such as transport, record keeping and security should be available.
- 13.8 In case several sites of applicant are run in a similar way by standard systems of record keeping and security etc. there will be no need for the AEO Programme Team to audit all of them. However, if the business of the applicant covers a range of activities or different sites have different method of operating, then it may be necessary for more visits to be made.
- 13.9 The duration of visit/verification would depend on the size of business, number of sites, how they operate etc. The AEO Programme Team will give the applicant an estimate of time required, though this may have to be amended once the audit has commenced.
- 13.10 On completion of verification, the AEO Programme Team will prepare their report and make a recommendation to the AEO Programme Manager. The contents of report and recommendation can be seen by applicant who will get the opportunity to sign the same, but this will not be a mandatory requirement.
- 13.11 Where the application is not accepted after the AEO verification, the applicant will be informed suitably within 60 days and advised of the criteria that have not been met and give the applicant time to adapt procedures to remedy the deficiency. If applicant is unable to make the required changes within the specified time limits, the AEO Programme Manager will issue a decision to reject applicant's AEO application, explaining the reasons for rejection. This decision will be subject to the applicant's right of appeal.
- 13.12 In exceptional cases, the AEO audit verification may be stopped by consensus between the applicant and the AEO Programme Manager to enable the applicant to provide additional information or to address minor problems. The period of stoppage will normally not longer than 6 months and applicant will be informed in writing of the date when the AEO verification will recommence and the revised date by which applicant can expect a decision on his application.

#### **14. AEO Certification:**

- 14.1. The AEO Programme Manager will inform the applicant of the outcome of his application, which should ordinarily be done within 90 days of the date on acceptance of the completed application. The period during which the AEO verification is stopped does not count towards the 90 days limit within which the AEO Programme Manager must give the applicant a decision on his application.
- 14.2. If AEO status is granted, the AEO Programme Manager shall send the Certificate of AEO Status to the applicant in hard copy along with an electronic copy. The Certificate shall bear the 'AEO logo' that may be used where it is appropriate to do so for the business, for example, company stationary, signage on vehicles or other publicity materials. The copyright for the logo is owned by the AEO Programme Manager on behalf of the Indian Customs Administration.

- 14.3. Once the applicant has received the Certificate of AEO Status, it will be activated within 10 days from the date of issue. Following this period, the applicant should enter the certificate number on all Customs documentation to indicate their AEO Status.
- 14.4. It is highly recommended that the applicant should keep the Certificate of AEO status at a safe place and not release the Certificate number to anyone unless required to do so for business purposes. Although the AEO status can be advertised by the applicant, the Certificate number should not be part of their advertisement.
- 14.5. The validity of certificate of AEO status shall be for 5 years or as extended by DGICCE.

## **15. Maintaining AEO Status:**

- 15.1. After obtaining AEO status, the AEO status holder should maintain their eligibility by adhering to the appropriate standards.
- 15.2. The holder of a Certificate of AEO Status is required to notify any significant change in business and processes this may affect the AEO status to the AEO Programme Team. These changes may include the following:
  - (i) Change to the legal entity.
  - (ii) Change of business name and/or address.
  - (iii) Change in the nature of business i.e. manufacturer / exporter etc.
  - (iv) Changes to accounting and computer systems.
  - (v) Changes to the senior personnel responsible for Customs matters.
  - (vi) Addition or deletion of locations or branches involved in international supply chain.
- 15.3. The AEO status holder should notify the AEO Programme Team as soon as the change is known or, at least within 14 days of the change taking place.
- 15.4. If the legal entity changes, the AEO status holder needs to reapply for AEO in the name of new legal entity.
- 15.5. If the AEO status holder makes Customs related errors, they must be reported to the local Customs officers as well as the AEO Programme Team. Errors that are voluntarily disclosed will not impact the AEO status provided that the AEO status holder has (a) examined the reasons for the errors; and (b) taken appropriate remedial action to prevent recurrence.

## **16. Review of AEO Status:**

- 16.1. The AEO Programme Team will review AEO status periodically to ensure continued adherence to the conditions and standards of grant of Certificate of AEO Status. Thus, it is recommended that the AEO status holder should continue to re-assess its compliance with the conditions of certification and act upon any identified problems as soon as they arise. To begin with, the frequency of such review will be one year.

## **17. Suspension of AEO Status:**

- 17.1 The AEO Programme Manager may suspend the Certificate of AEO Status in the following cases:
  - (a) Where there is a reasonable belief that an act has been perpetrated that is liable to lead to prosecution and /or is linked to a serious infringement of Customs law.
  - (b) Where non-compliance with the conditions or criteria for the Certificate of AEO Status is detected and no remedial steps have been taken within 30 days thereof.



- 17.2 Ordinarily, prior to any decision to suspend the authorization, the applicant will be contacted and asked to explain why such action should not be taken. Any decision taken in this regard will be subject to right of appeal of the applicant.
- 17.3 An AEO can also request the AEO Programme Manager that his authorization be suspended in case he has detected some irregularities and needs some time to correct the situation. In this case, if necessary, this time period can be extended provided that the AEO Programme Team is satisfied that the difficulties cannot be resolved within a reasonable time.
- 17.4 When the AEO Programme Team is satisfied that the problems affecting certification have been satisfactorily resolved, it will make suitable recommendation to the AEO Programme Manager who will withdraw the suspension under intimation to the AEO status holder and the AEO Programme Team.
- 17.5 On suspension of AEO authorization, the intimation of the same shall be communicated to all Customs formations with immediate effect by AEO Programme Team.

**18. Revocation of AEO Status:**

- 18.1. In following circumstances, the Certificate of AEO Status will be revoked:
- (a) Where the Certificate of AEO Status is already suspended and the AEO holder fails to take the remedial measure to have the suspension withdrawn.
  - (b) Where the AEO status holder has committed serious infringement of Customs law and has no further right to appeal.
  - (c) Where the AEO status holder requests the authorization be revoked.
- 18.2. Prior to any decision to revoke authorization, the applicant will be contacted. Any decision taken in this regard will be subject to right of appeal of applicant. Revocation is applied from the day following the authorization holder being notified.
- 18.3. In case the authorization is revoked, the applicant will not be entitled to reapply for another certificate for a period of three years from the date of revocation.

**19. Right to Appeal:**

- 19.1. In case the Certificate of AEO Status is suspended / revoked, the AEO status holder can, within thirty days of the decision, file an appeal before the Director General of Inspection, New Delhi for review of the said order. The Director General of Inspection, after considering the case of the applicant, shall dispose of the appeal within a period of thirty days.

[Refer Circular No 28/2012- Cus, dated 16-11-2012, Circular No 21/2015- Cus, dated 19.08.2015]

**20. Mutual Recognition Agreement:**

- 20.1 An advantage of having an AEO programme is that a Customs administration can then enter into a Mutual Recognition Agreement (MRA) with other Customs administrations having similar programmes. In this manner the AEOs of one country get recognized by the partner AEO country and get entitled to the same benefits. This facilitates the trade. Thus, exports made by our AEOs to a country with which we have a MRA will get the same benefits as are available to that country's AEOs. Indian Customs administration has so far entered into a MRA with Hong Kong Customs administration and a dialogue has been initiated for having similar MRAs with Customs administrations of other major trading partners.

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