

# Lesson 6

## Customs Law

### Arrival or Departure and Clearance of Imported or Export Goods, Warehousing, Duty Drawback, Baggage and Miscellaneous Provisions

#### LESSON OUTLINE

This lesson is divided into the following parts:

- I Arrival or Departure and Clearance of Imported or Export Goods
- II Warehousing, Duty Drawback, Baggage and Miscellaneous Provisions

#### LEARNING OBJECTIVES

The Custom duty derived its value from the word “custom” under which whenever a merchant entered a Kingdom with his merchandise, he had to give some gift to the king. Subsequently, this custom formalized into the levy of custom duty or tax on goods imported into and exported from the country was organized through various laws during the British period. After Independence the Sea Customs Act 1878, the Land Customs Act, 1924 and other allied enactments were repealed by a consolidating and amending legislation entitled the Customs Act, 1962. Similarly the Indian Customs Act, 1934 was repealed by the Customs Tariff Act, 1975(CTA).

At the end of this lesson, the students will

- Familiar with the provision related to Arrival or Departure and Clearance of Imported or Export Goods
- Familiar with the warehousing, duty drawback and baggage provisions

*As per the Customs Act, 1962 the Central Board of Excise and Customs (the Board) has been given the powers to appoint Customs Ports, Airports and Inland Container Depots (ICD), where the imported goods can be brought in for unloading or loading of export goods. Similarly, 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.*

## CUSTOMS LAW

### PART I: ARRIVAL OR DEPARTURE AND CLEARANCE OF IMPORTED OR EXPORT GOODS

After completion of this part the students will

- Understand the procedure for import and export of goods
- Be familiar with the types of documents used for import and exports
- Have clear understanding of the arrival or departure provisions

### INTRODUCTION

Goods are imported in India or exported from India through sea, air or land. Goods can come through post parcel or as baggage with passengers. Different procedures are there for import and export of goods by different mode of transportation.

The word conveyance is defined in section 2(9), “Conveyance includes a vessel, an aircraft and a vehicle”.

As per section 2(42), the word “Vehicle” means conveyance of any kind used on land and includes a railway vehicle.

Here in this part, the provisions pertaining to import or export of goods through vessel or aircraft are discussed and the import and export of goods through post or as baggage with passenger are discussed in other parts.

This part is divided in three sub-parts namely;-

- I. Provisions relating to conveyances carrying imported or export goods (Section 29 to 43)
- II. Clearance of Imported goods and Export goods (Sections 44 to 51)
- III. Goods in transit (Section 52 to 56)

SECTIONS	CONTENT OF THE SECTIONS
Sections 29-36	Arrival of Ship/ Air Craft and unloading of Imported Goods
Sections 37-38	Powers of The Proper Officer to Board Conveyances and Ask Questions
Sections 39-43	Duties and Responsibilities of Conveyances in Export of Goods
Sections 44-49	Clearance of Imported Goods
Sections 50-51	Clearance of Export Goods
Sections 52- 56	Transit And Transshipment of Goods

### I. PROVISIONS RELATING TO CONVEYANCES CARRYING IMPORTED OR EXPORT GOODS

Chapter VI contains section 29 to 43 prescribing the provisions for arrival or departure of goods by vessel or aircraft. Let's understand some important terms before moving to the main procedure of arrival or departure of goods.

1. **“Customs airport”** means any airport appointed under clause (a) of section 7 to be a customs airport [Section 2(10)].
2. **“Customs area”** means the area of a customs station and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities [Section 2(11)].
3. **“Customs port”** means any port appointed under clause (a) of section 7 to be a customs port and includes a place appointed under clause (aa) of that section to be an inland container depot [Section 2(12)].
4. **“Customs station”** means any customs port, customs airport or land customs station [Section 2(13)].

Section 7 of the Customs Act, 1962 envisages that the unloading/clearance of imported goods and loading/clearance of export goods shall be allowed only at places notified by the Board as Customs ports or Customs airports or Land Customs Stations or Inland Container Depots. At each such Customs ports or airport, the Commissioner of Customs is empowered to approve proper places for the unloading and loading of goods, and specify the limits of such Customs area under section 8 of the Act. It is further provided vide Section 29 *ibid* that the person in charge of the vessel or an aircraft shall not call or land at any place other than a Customs port/airport, except in cases of emergencies.

5. **‘Import’** with its grammatical variations and cognate expressions, means bringing into India from a place outside India [Section 2(23)].
6. **‘Import goods’** means “any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption” [Section 2(25)].
7. **‘Importer’** in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer [Section 2(26)].
8. **‘Import Manifest’** or **‘import report’** means the manifest or report required to be delivered under section 30. [Section 2(24)]
9. **“Person-in-charge”** means, -
  - (a) in relation to a vessel, the master of the vessel;
  - (b) in relation to an aircraft, the commander or pilot-in-charge of the aircraft;
  - (c) in relation to a railway train, the conductor, guard or other person having the chief direction of the train;
  - (d) in relation to any other conveyance, the driver or other person-in-charge of the conveyance; [Section 2(31)]
10. **“Land Customs Station”** means any place appointed under clause (b) of section 7 to be a land customs station [Section 2(29)]

#### **The organisations which play vital roles in the clearance of Import cargo are:**

- (i) **The Steamer Agents/Airline Companies** as the case may be (who are “appointed by the person in charge of a conveyance and who represent to any officer of Customs as an agent, (Section 148) who transport the goods to India, (carriers).

- (ii) **The Port Trust Authorities or International Airport Authorities of India (IAAI)** (in case of air consignments) who are approved by the Principal Commissioner of Customs as Custodians of Imported Cargo, (Section 45) who act as bailees and are responsible for the receipt, storage, custody and delivery of the goods, after the customs formalities are complied with by the Importers.
- (iii) **The Custom House Agents** now renamed as customs brokers, who are licenced by the Principal Commissioner of Customs (Section 45) to carry on business as an agent relating to the entry or departure of a conveyance or the Import or the Export of goods at any customs station. The agents are licensed in accordance with the Custom House Agents (Licensing) Regulations which inter alia provide for:
  - (a) the validity of any such licence, the fees payable therefore;
  - (b) the qualification of persons who may apply for a licence;
  - (c) the qualifications of persons to be employed by a licensee to assist him in his work as an agent;
  - (d) the restrictions and conditions subject to which a licence may be granted.
- (iv) **The Custom Houses** comprising particularly Customs Officers of the Appraising Department, viz., the Deputy Commissioner, Appraisers, Examiners and supporting ministerial staff as well as various other units in the Customs House.

#### PROVISIONS RELATING TO ARRIVAL OR DEPARTURE OF GOODS

##### (1) NOT TO LAND AT ANY PLACE OTHER THAN CUSTOMS PORT OR CUSTOMS AIRPORT (SECTION 29)

The person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land at any place other than a customs port or a customs airport -

- (a) for the first time after arrival in India; or
- (b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft as the case may be, unless permitted by the Board.

However, any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport but the person-in-charge of any such vessel or aircraft –

- (a) shall immediately report the arrival of the vessel or the landing of the aircraft to the nearest customs officer or the officer-in-charge of a police station and shall on demand produce to him the log book belonging to the vessel or the aircraft;
- (b) shall not without the consent of any such officer permit any goods carried in the vessel or the aircraft to be unloaded from, or any of the crew or passengers to depart from the vicinity of, the vessel or the aircraft; and
- (c) shall comply with any directions given by any such officer with respect to any such goods, and no passenger or member of the crew shall, without the consent of any such officer, leave the immediate vicinity of the vessel or the aircraft :

The departure of any crew or passengers shall not be prohibited from the vicinity of, or the removal of goods from, the vessel or aircraft where the departure or removal is necessary for reasons of health,

safety or the preservation of life or property.

## **(2) DELIVERY OF IMPORT MANIFEST (SECTION 30)**

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 electronically (an import report in case of a vehicle), prior to arrival in the case of a vessel and an aircraft or within 12 hours of arrival in case of a vehicle in the prescribed form. The time limit for filing the manifest is extendable on showing sufficient cause, but otherwise a penalty not exceeding `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.

Now, it is mandatory to file Import manifest electronically. However, the commissioner of Customs may in cases where it is not feasible to deliver import manifest by presenting electronically allow the same to be delivered in any other manner.

The forms of the Import Manifest are prescribed in the Import Manifest (Vessels) Regulations, 1971 and Import Manifest (Air Craft) Regulations, 1976, which have been made under Section 157 of the Customs Act, 1962.

In practice the Steamer Agents, acting on behalf of the Master of the Ship, file the Import Manifest in the Import Department of the Customs House before the actual arrival of the ship at the port. This is done to enable the importers to file their documents and complete as much of the Customs formalities as possible, before the arrival of the ship so that, there is no delay in the clearance of the cargo when they are landed. Proviso (a) to Section 30(1) of the Customs Act provides for presentation of Import Manifest even before the arrival of the Steamer.

The Import Manifest is required to be delivered in duplicate in the Import Department with full particulars in respect of the following:

- (i) General declaration (giving information mainly about the vessel, its Master, number of crew, passengers);
- (ii) Cargo declaration;
- (iii) Vessel's Store List; and
- (iv) List of private property in the possession of Master, Officers and Crew.

Separate particulars are required to be furnished in the cargo declaration in respect of:

- (a) Cargo to be landed;
- (b) Same Bottom Cargo - 'Cargo in transit';
- (c) Cargo for transshipment; and
- (d) Unaccompanied Baggage.

The information required to be given with regard to the Cargo to be landed at the Port, includes identifying particulars (marks and numbers) of the packages etc. The Serial Number in the Manifest for a particular consignment is known as the "Line number" of the Manifest. The documents filed for clearance bear this line number for purposes of co-relating the clearance documents with the entry in the Manifest.

Steamer Agents acting on behalf of the master of the vessel are accountable to the department for all the goods mentioned in the Manifest as for import into India (Section 116 of the Customs Act, 1962).

Steamer Agents in this regard file undertaking(s) and also a guarantee to pay any penalty that may be imposed under Section 116, if they do not account for, to the satisfaction of the Assistant Commissioner of Customs, or for their failure to unload any goods or for any deficiency in the unloaded goods.

In regard to Air Consignments, the 'Import Cargo Manifest' is presented in Triplicate or Quadruplicate by the persons concerned immediately on landing of the Aircraft and the cargo as detailed in the Manifest as intended for landing are checked by the Customs Officers (Import Freight Officers of the Preventive formation) and then made over for custody to the International Airports Authority of India (IAAI).

The cargo manifest is then sent to the Customs Appraising Formation (Air Cargo Complex) by the Import Freight Officer.

Now, E-filing of import manifest is mandatory.

### ***Assignment of Import Rotation Number***

On receipt of the Import Manifest in the Import Department of the Customs House and at the Air Cargo Complex as the case may be, it is checked and an import rotation number assigned to the vessel/Aircraft for the particular voyage. The rotation number is the running serial number for each calendar year in respect of the Manifest filed.

### ***Passenger and crew arrival manifest and passenger name record information [Section 30A]***

(1) The person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, shall deliver to the proper officer:

- i. the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and
- ii. the passenger name record information of arriving passengers,

in such form, containing such particulars, in such manner and within such time, as may be prescribed.

(2) Where the passenger and crew arrival manifest or the passenger name record information or any part thereof is not delivered to the proper officer within the prescribed time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or the other person referred to in sub-section (1) shall be liable to such penalty, not exceeding fifty thousand rupees, as may be prescribed.

### ***Insertion of Section 30A in the Customs Act:***

New Section 30A has been introduced to make it obligatory on the person-in-charge of a conveyance that enters India from any place outside India or any other person as may be specified by the Central Government by notification in the Official Gazette, to deliver to the proper officer the passenger and crew arrival manifest before arrival in the case of an aircraft or a vessel and upon arrival in the case of a vehicle; and passenger name record information of arriving passengers in such form, containing such particulars, in such manner and within such time as may be prescribed. The said section also intends to

provide for imposition of a penalty not exceeding Rs. 50,000/- as may be prescribed, in the case of delay in delivering the information.

### **(3) IMPORTED GOODS NOT TO BE UNLOADED FROM VESSEL UNTIL ENTRY INWARDS GRANTED (SECTION 31)**

The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel.

No order under sub-section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it.

Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

### **(4) IMPORTED GOODS NOT TO BE UNLOADED UNLESS MENTIONED IN IMPORT MANIFEST OR IMPORT REPORT (SECTION 32)**

No imported goods required to be mentioned under the regulations in an import manifest or import report shall, except with the permission of the proper officer, be unloaded at any customs station unless they are specified in such manifest or report for being unloaded at that customs station.

### **(5) UNLOADING AND LOADING OF GOODS AT APPROVED PLACES ONLY (SECTION 33)**

Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of section 8 for the unloading or loading of such goods.

### **(6) GOODS NOT TO BE UNLOADED OR LOADED EXCEPT UNDER SUPERVISION OF CUSTOMS OFFICER (SECTION 34)**

Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer.

However, the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

### **(7) RESTRICTIONS ON GOODS BEING WATER-BORNE (SECTION 35)**

No imported goods shall be water-borne for being landed from any vessel and no export goods which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed form.

However, the Board may, by notification in the Official Gazette, give general permission, and the proper officer may in any particular case give special permission, for any goods or any class of goods to be water-borne without being accompanied by a boat-note.

### **(8) RESTRICTIONS ON UNLOADING AND LOADING OF GOODS ON HOLIDAYS, ETC. (SECTION 36)**

No imported goods shall be unloaded from, and no export goods shall be loaded on, any conveyance on any Sunday or on any holiday observed by the Customs Department or on any other day after the

working hours, except after giving the prescribed notice and on payment of the prescribed fees, if any.

However, no fees shall be levied for the unloading and loading of baggage accompanying a passenger or a member of the crew, and mail bags.

#### **(9) POWER TO BOARD CONVEYANCES (SECTION 37)**

The proper officer may, at any time, board any conveyance carrying imported goods or export goods and may remain on such conveyance for such period as he considers necessary.

#### **(10) POWER TO REQUIRE PRODUCTION OF DOCUMENTS AND ASK QUESTIONS (SECTION 38)**

For the purposes of carrying out the provisions of this Act, the proper officer may require the person-in-charge of any conveyance or animal carrying imported goods or export goods to produce any document and to answer any questions and thereupon such person shall produce such documents and answer such questions.

#### **(11) EXPORT GOODS NOT TO BE LOADED ON VESSEL UNTIL ENTRY-OUTWARDS GRANTED (SECTION 39)**

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel.

#### **(12) EXPORT GOODS NOT TO BE LOADED UNLESS DULY PASSED BY PROPER OFFICER (SECTION 40)**

The person-in-charge of a conveyance shall not permit the loading at a customs station -

- (a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;
- (b) of baggage and mail bags, unless their export has been duly permitted by the proper officer.

#### **(13) DELIVERY OF EXPORT MANIFEST OR EXPORT REPORT (SECTION 41)**

The person-in-charge of a conveyance carrying export goods shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, an export manifest electronically and in the case of a vehicle, an export report, in the prescribed form.

The export manifest may be presented in manner other than electronically if it is allowed by Principal Commissioner of customs.

The person delivering the export manifest or export report shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

If the proper officer is satisfied that the export manifest or export report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented.

#### **(14) NO CONVEYANCE TO LEAVE WITHOUT WRITTEN ORDER (SECTION 42)**

The person-in-charge of a conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs



station until a written order to that effect has been given by the proper officer.

No such order shall be given until -

- (a) the person-in-charge of the conveyance has answered the questions put to him under section 38;
- (b) the provisions of section 41 have been complied with;
- (c) the shipping bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;
- (d) all duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;
- (e) the person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;
- (f) in any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, -
  - (i) such goods have been unloaded, or
  - (ii) where the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.

#### **(15) EXEMPTION OF CERTAIN CLASSES OF CONVEYANCES FROM CERTAIN PROVISIONS OF THIS CHAPTER (SECTION 43)**

The provisions of sections 30, 41 and 42 shall not apply to a vehicle which carries no goods other than the luggage of its occupants.

The Central Government may, by notification in the Official Gazette, exempt the following classes of conveyances from all or any of the provisions of this Chapter -

- (a) conveyances belonging to the Government or any foreign Government;
- (b) vessels and aircraft which temporarily enter India by reason of any emergency.

#### **II. CLEARANCES OF IMPORTED GOODS AND EXPORT GOODS (SECTION 44 TO 51)**

Chapter VII contains the provisions pertaining to clearances of imported or export goods under section 44 to 51. As per Section 44, the provisions of this chapter shall not apply (a) Baggage and (b) Goods imported or to be exported by post.

The following terms need to know before moving to the provisions of clearances:

1. "bill of entry" means a bill of entry referred to in section 46 [Section 2(4)]
2. "bill of export" means a bill of export referred to in section 50 [Section 2(5)]
3. "entry" in relation to goods means an entry made in a bill of entry, shipping bill or bill of export

and includes in the case of goods imported or to be exported by post, the entry referred to in section 82 or the entry made under the regulations made under section 84 [Section 2(16)]

## ENTRY OF GOODS ON IMPORTATION (SECTION 46)

**Entry of goods on importation:** (1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting [electronically] to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:

**Provided** that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner:

**Provided** further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented within thirty days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

## BILL OF ENTRY

The Bill of Entry inter alia, has columns for indicating description of goods, value, quantity, marks and numbers, country of origin etc.

### *Kinds of Bills of Entry*

There are three kinds of Bills of Entry viz., (i) Bill of Entry for Home-consumption (White Colour) (ii) Warehousing (into-Bond) Bill of Entry (Yellow Colour) (iii) Bill of Entry for Clearance 'Ex-Bond' (Green Colour).

### *Forms of the Bill of Entry*

The home-consumption Bill of Entry which is printed on white paper is referred to as "white Bill of

Entry", the "into Bond" or "Warehousing Bill of Entry" is printed on yellow paper and "ex-bond" is printed on green paper. Each Bill of Entry has to be filed in quadruplicate. The columns in original are printed in black, in blue in duplicate and in violet in triplicate and in green in quadruplicate.

Circular No. 16/ 2012 Cus dated 13-06-2012 provides for procedure followed for import of Indian vessels and filing of import manifest, Bill of Entry.

Section 29 of the Customs Act, 1962 read with Section 2(22) and 2(25), the term 'imported goods', *inter alia*, includes vessels entering India from any place outside the country (India). These vessels may fall into any of the following category (i) Foreign flag vessels i.e., vessels that have been registered outside India and which carry imported/ exported goods or passengers, during its foreign run (voyage from a port outside India to an Indian port, whether touching any intermediate port in India or not); (ii) Vessel entering India for the first time on arrival in the country, for registration as Indian Flag vessel; (iii) Vessels which are intended for conversion from foreign run to coastal run/ trade (voyage between two or more Indian ports); and (iv) Vessels which are brought into India for breaking up.

*Foreign flag vessels:* These are the vessels that are registered abroad and its entry into the country is for carrying cargo or passengers, as a conveyance. Hence, there is no requirement for filing an IGM, Bill of Entry for foreign flag vessel which is being used as conveyance. However, the requirement for filing an import manifest in the prescribed manner for the goods or passengers which are being carried in the vessel, on its entry into an Indian port in terms of the provisions under Section 30 of the Customs Act needs to be complied with.

*Indian Flag Vessel:* In terms of the provisions of Part-V of the Merchant Shipping Act, 1958, vessels entering into India for the first time, are required to be registered with specified authority of the Mercantile Marine Department as Indian ship, which can then display the national character of the ship as Indian Flag Vessel for the purpose of Customs and other purposes specified in the said Act. Such Indian ship or vessel may be used for foreign run or exclusively for coastal run/ trade. Further, any ship or vessel may be taken outside India or chartered for coastal trade in India, only after obtaining the requisite licence from the Director General of Shipping, under the provisions of Section 406 or 407, respectively, of the said Merchant Shipping Act. Hence, in all such cases the Customs declarations such as IGM, Bill of Entry is required to be filed with jurisdictional Customs authority.

*Vessels for conversion into coastal run:* Any vessel could be used for coastal run/ trade after obtaining requisite clearance from Director General of Shipping and on fulfilment of certain specified conditions under Section 407 of the Merchant Shipping Act, 1958. In case of foreign going vessel, exemption from import duties, including CVD, have been extended vide serial No.462 of notification No.12/2012-Cus. dated 17.03.2012, subject to prescribed conditions, which binds the importer to file fresh Bill of Entry at the time of its conversion for coastal run/ trade and payment of applicable duty on such conversion of vessel for coastal run/ trade. Similarly, excise duty is also payable on vessels which are being used for coastal trade vide serial No.306 of notification No.12/2012-Cus. dated 17.03.2012. Hence, if any Indian Flag vessel which is used for time being as foreign going vessel is converted for use in coastal trade or any vessel which is to be used for coastal trade, there is a need to file a Bill of Entry for payment of applicable duty as CVD.

*Vessels for breaking up:* Vessel and other floating structures intended for breaking up are liable to payment of applicable duty. All vessels for the transport of persons or goods, falling under heading 8901 (excluding those which are imported for breaking up) are fully exempt from payment of import duty under vide serial No.461 of notification No.12/2012-Cus. dated 17.03.2012, subject to the condition that

the importer should file fresh Bill of Entry at the time of its breaking up of the vessel after its importation. Hence, in these cases the importer has to file an IGM and Bill of Entry, claiming the exemption as may be applicable, at the time of initial import and later file fresh Bill of Entry at the time of breaking up of the vessel as per the condition attached to the aforesaid exemption.

In view of the above, it is clarified that in respect of foreign flag vessels, for Indian flag vessels, there is no requirement of filing of IGM and Bill of Entry, since its usage is as conveyance. In respect of Indian flag vessels and vessels for breaking up as explained in para 3.3 and 3.5 above, the importer has to file IGM and Bill of Entry, under the provisions of the Customs Act, 1962. As regards the vessel for conversion into coastal run/ trade as detailed in para 3.4, since the changes in the duty structure for levy of CVD on vessels which are being converted for coastal trade was initially imposed from 1.3.2011, and subsequently retrospective exemption has been provided for the period 1.3.2011 to 16.3.2011 vide clause 129 of the Finance Act, 2012, the requirement for filing IGM and Bill of Entry may be insisted in all such cases w.e.f. 17.03.2012, that is the date from which levy of CVD has come into force.

It is also clarified that all vessels including foreign going vessels for its entry into / exit from the country during its journey as foreign going vessel and the Indian flag vessel / Indian Ship for subsequent use as foreign going vessel would not require filing of IGM and Bill of Entry as conveyance, since the same are not imported goods to be cleared for home consumption.

Accordingly, the field formations may adjudicate the cases involving any violation where the IGM or Bill of Entry in respect of import of vessel were not filed at the time of import, on its first arrival in India or on its conversion into coastal trade and appropriate penal action be taken against the offenders.

The above instructions may be brought to the notice of all the concerned immediately through appropriate Public Notice.

***The following basic documents are to be filed along with the Bill of Entry:***

1. Invoice.
2. Indent and acceptance correspondence pertaining to the Imported goods.
3. Bill of Lading in respect of sea-consignments/Airway Bill in respect of Air Consignments.
4. Letter of credit or Bill of exchange.
5. Insurance policy or Insurance certificate.
6. Import licence (Customs purpose copy).
7. Small Scale Industries Certificate in respect of Imports sought to be covered under Open General Licence (OGL) and Imports subjected to Actual Users (AU) conditions.
8. Catalogue, drawing, write up, analysis certificate as the case may be, in respect of the goods sought to be cleared.
9. Any other connected/relevant document.

**Important Notes:** Bill of Entry submitted under Section 46 for clearance of imported goods and shipping bill submitted for export of goods require to be filed electronically.

## **PROCEDURE OF BILL OF ENTRY UNDER E-FILING [BILL OF ENTRY (ELECTRONIC DECLARATION) REGULATIONS, 2011]**

*Notification No. 79/2011 – Cus (N.T.), Dated 25.11.2011 prescribes the procedure of bill of entry under E-filing [Bill of Entry (Electronic Declaration Regulations), 2011]*

The following terms are defined under this notification as under:

- (a) "authorised person" means an importer or a person authorised by him who has a valid licence under the Customs House Agents Licensing Regulations, 2004;
- (b) "annexure" means annexure to these regulations;
- (c) "bill of entry" means electronic declaration accepted and assigned a unique number by the Indian Customs Electronic Data Interchange System, and includes its print-outs;
- (d) "electronic declaration" means particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System;
- (e) "ICEGATE" means Indian Customs Electronic Data Interchange Gateway, an e-commerce portal of the Central Board of Excise and Customs;
- (f) "service centre" means the place specified by the Commissioner of Customs where the data entry of an electronic declaration, is carried out;

The authorised person may enter the electronic declaration in the Indian Customs Electronic Data Interchange System by himself through ICEGATE or by way of data entry through the service centre by furnishing the prescribed particulars.

The bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration.

After the completion of assessment, the authorised person shall present the original bill of entry (customs copy) and duty-paid challan and supporting import documents to the proper officer of customs for making an order permitting clearance, after examination of the imported goods if so required.

After making an order under regulation 5, the proper officer shall generate duplicate bill of entry (importer's copy) and the triplicate bill of entry (exchange control copy).

The original bill of entry (customs copy) along with supporting import documents shall be retained by the proper officer of customs and after suitable endorsements the duplicate bill of entry (importer's copy) and the triplicate bills of entry (exchange control copy) shall be handed over to the authorized person.

## **RESTRICTIONS ON CUSTODY AND REMOVAL OF IMPORTED GOODS (SECTION 45)**

All imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transshipped.

The person having custody of any imported goods in a customs area -

- (a) shall keep a record of such goods and send a copy thereof to the proper officer;
- (b) shall not permit such goods to be removed from the customs area or otherwise dealt with,

except under and in accordance with the permission in writing of the proper officer.

If any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person, that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.

#### **CLEARANCE OF GOODS FOR HOME CONSUMPTION (SECTION 47)**

Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

**Provided** that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

Sub-section (2) of Section 47 has been amended as follows: The importer shall pay the import duty:

- a) on the date of presentation of the bill of entry in the case of self assessment; or
- b) within one day (excluding holidays) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
- c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf,

and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten per cent but not exceeding thirty-six per cent per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

**Provided** that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

**Provided** further that] where the bill of entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such bill of entry to him shall be deemed to be the date of such commencement for the purpose of this section.

**Provided** also that] if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

This is to provide the manner of payment of duty and interest thereon in the case of self-assessed bills of entry or, as the case may be, assessed, reassessed or provisionally assessed bills of entry.

#### **PROCEDURE IN CASE OF GOODS NOT CLEARED, WAREHOUSED, OR TRANSHIPPED WITHIN THIRTY DAYS AFTER UNLOADING (SECTION 48)**

If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within thirty days from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof.

However, the time period of 30 days shall not be applicable in the following cases:

- (a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;
- (b) arms and ammunition may be sold at such time and place and in such manner as the Central Government may direct.

#### **STORAGE OF IMPORTED GOODS IN WAREHOUSE PENDING CLEARANCE (SECTION 49)**

##### **Storage of imported goods in warehouse pending clearance or removal:**

Where:

- a) in the case of any imported goods, whether dutiable or not, entered for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be cleared within a reasonable time;
- b) in the case of any imported dutiable goods, entered for warehousing, the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied on the application of the importer that the goods cannot be removed for deposit in a warehouse within a reasonable time,

the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse for a period not exceeding thirty days.

Provided that the provisions of Chapter IX shall not apply to goods permitted to be stored in a public warehouse under this section

Provided further that the Principal Commissioner of Customs or Commissioner of Customs may extend the period of storage for a further period not exceeding thirty days at a time

#### **CLEARANCE OF EXPORT GOODS**

While there is very urgent need to promote exports and earn the most needed valuable foreign exchange/it does not necessarily mean that the export goods can be allowed without restriction and/or, without observing any formalities.

Export should be in accordance with rules and regulations to be implemented “at the point of exit” and the authority which can enforce such rules and regulations is the Customs Department. The following are the provisions pertaining to Exports of goods under Customs Act:

#### **ENTRY OF GOODS FOR EXPORTATION (SECTION 50)**

The exporter of any goods shall make entry thereof by presenting electronically to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.

However, the Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner.

The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

- (i) The Customs allow imports/exports only through authorised places along the coast/across the land frontier and by air. For this purpose “customs ports”, “customs Airports”, “land customs stations” are notified by the Central Govt. under Section 7(a), (b) and (c) Customs Act, 1962.
- (ii) The master of the vessel should not permit loading of the cargo before ‘Entry Outwards’ is

granted by the Customs Department and export cargos can be taken on board the vessel or aircraft or a vehicle (for the land route), only under cover of a duly passed Shipping Bill/Bill of export with the permission of the proper (Customs) officer - (vide Sections 39 and 40 of the Customs Act, 1962).

- (iii) In terms of Section 50 of the Customs Act, 1962 a shipping Bill or Bill of Export (in respect of exports through land route) is to be filed by the exporter or his authorised agent, in the prescribed form [prescribed under Shipping Bill and Bill of Export (Form) Regulations 1976 made under Section 157 of the Customs Act, 1962]
- (iv) The Shipping Bill so filed should be assessed. The term “assessment” as defined under Section 2(2) of the Customs Act includes assessment to ‘nil’ duty also. Under Section 18 of the Customs Act, 1962 provisional assessment to duty of goods meant for export is possible under the circumstances indicated in that section. Thereafter the goods shall be examined physically and permitted shipment by means of passing on the shipping bill a 'Let Export' or 'Let Ship' order.
- (v) The 'assessable value' for export as declared in the shipping bill should be in accordance with the provisions of Section 14 of the Customs Act, 1962. (Declared value is subject to verification as to its correctness or otherwise by Customs authorities).
- (vi) For assessing the goods for export to duty and granting an order of 'Let Export' under Section 51 of the Customs Act, the export goods, should not be "prohibited goods" - prohibited for export under the Customs law or prohibited for export under any other law for the time being in force - The Customs Department in pursuance of Section 11(2)(u) of the Customs Act, 1962 is also empowered to prevent the contravention of any other law noticed in the course of export.
- (vii) Power to confiscate the export goods, "attempted to be improperly exported" etc. has been endowed on the Customs Department under Section 113(a) to (l) of the Customs Act, 1962.
- (viii) Under Section 114 of the Customs Act, "penalty for attempt to export goods improperly", on persons concerned could be imposed (in addition to confiscation of the goods), not exceeding five times the value of the goods.
- (ix) It is also provided in Section 127 of the Customs Act, that award of confiscation and penalty by Customs shall not prevent infliction of any punishment by way of prosecution (in deserving deliberate and grave offences) under Section 132 and 135 read with Section 137 of the Customs Act, 1962.

### **CLEARANCE OF GOODS FOR EXPORTATION (SECTION 51)**

Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation.

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.

Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-



paid till the date of its payment at such rate, not below five per cent and not exceeding thirty-six per cent per annum, as may be fixed by the Central Government, by notification in the Official Gazette.”

## **DOCUMENTATION FOR EXPORT**

For effecting shipments, the exporter or his agents should file a shipping bill electronically (Section 50 of the Customs Act), (the quadruplicate copy is filed for purposes of Export promotion). These shipping bills could be filed in the Custom House or Air Cargo Complex, 14 days before the arrival of the loading vessel/aircraft. However, the commissioner of customs may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner. Steamer agents normally file applications in the custom House in advance of 'grant of Entry outwards' of the vessel. In the application they furnish, the particulars of the vessel viz. Name, Nationality, Tonnage, the port for which the vessel will load cargo, the nature of cargo, etc. Immediately on presentation of the application, a number called 'Rotation No.' (Export Manifest No. or Export General Manifest No.) is assigned. After the compliances of the above requirements the exporters or their agents may present the shipping bills for the export of their goods. Subsequently, after arrival of the vessel and when she is about to start loading export cargo, orders for 'Entry Outwards' are given by the Customs Authorities. In terms of Section 39 of the Customs Act, the person in charge of the vessel should not allow loading of cargo before the grant of Entry outwards. The facility afforded to the intending Exporters to file shipping bills immediately after the filing of "Application for Entry outwards" by steamer agents, which is normally done 14 days ahead of the arrival of the vessel, is to enable the exporters to complete all the customs formalities and keep the goods ready for loading.

### **(a) Documents to be filed along with the Shipping Bill**

1. G.R.(Guarantee Remittance)/SDF (Statutory declaration Form, used in e-filing) form in duplicate in respect of exports to all countries except Afghanistan and Pakistan.

Note: To Pakistan and Afghanistan - EP forms in triplicate are to be prepared in lieu of GR forms and are to be filed along with the shipping bill, with the approval of the Reserve Bank of India.

2. Four copies of Export Invoices/ indicating all particulars such as, the number of packages, quantity, unit price, full description of the goods value in total, CIF; FOB or C&F, as the case may be.

3. Packing List.

4. Export Contract; Letter of Credit and all connected correspondence.

5. Inspection/Examination certificates from Agmark grading authorities in respect of agricultural commodities.

6. Pre-shipment and compulsory quality control certificates in respect of goods covered under the compulsory quality control and preshipment inspection scheme (under the Export (Quality Control and Inspection) Act, 1963).

7. ARE-1 or ARE-2 as applicable under Rules 18 or 19, Central Excise Rules, 2002 Forms (Application for Removal of Excisable Goods for Export) in duplicate duly completed in all respects for the export of excisable goods.

8. In regard to 'handicraft exports' items which fall under the category "India items" e.g.. wall hangings/woolen carpets/mirror or bidriware/ etc. should be covered by a certificate issued by All India Handicrafts Board.

9. Garments and Textile for their export, should be validly covered by an "Inspection Certificate" from

the Textile Committee. In addition, for export to USA “visas” should also be endorsed by the Textile Committee in the format “Special Customs Invoice”.

In addition, the exporter should make and subscribe to a declaration at the bottom of the copies of shipping Bills as to the truth of the contents, in terms of Section 50(2) of the Customs Act, 1962 and other laws.

### **(b) Kinds of Shipping Bill**

There are four categories of shipping bills viz. those

- (i) for Free goods;
- (ii) for Dutiable goods, assessable to duty and/or cess;
- (iii) for shipment under claim for drawback (Green Shipping bill); and
- (iv) for shipment from bond i.e., ‘Ex-bond’.

Notification No. 80/2011- Cus (N.T.), Dated 25.11.2011 prescribes the **Shipping Bill (Electronic Declaration) Regulations, 2011**.

These Regulations shall apply to export of goods from all customs stations where the Indian Customs Electronic Data Interchange System is in operation.

The Following terms are defined under this regulation as under:

- (a) "authorised person" means an exporter or a person holding a valid licence under the Custom House Agents Licensing Regulations, 2004 and authorised by such exporter;
- (b) “annexure” means annexure to these regulations;
- (c) "electronic declaration" means particulars relating to the export goods entered in the Indian Customs Electronic Data Interchange System;
- (d) “ICEGATE” means Indian Customs Electronic Data Interchange Gateway, an e-commerce portal of the Central Board of Excise and Customs;
- (e) "service centre" means the place specified by the Commissioner of Customs where the data entry for an electronic declaration, is carried out;
- (f) “shipping bill ” means an electronic declaration accepted and assigned a unique number by the Indian Customs Electronic Data Interchange System, and includes its print-outs;

The authorised person may enter the electronic declaration in the Indian Customs Electronic Data Interchange System by himself through ICEGATE or by way of data entry through the service centre by furnishing the prescribed particulars.

The shipping bill shall be deemed to have been filed and where applicable self assessment of duty completed when, after entry of the electronic declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a number is generated by the Indian Customs Electronic Data Interchange System for the said declaration.

The checklist together with the supporting export documents and challan evidencing payment of duty and/or cess, if any, shall be presented to the proper officer of customs for making an order permitting clearance, for loading of goods for exportation, after examination of the export goods if so required.

After making an order, the proper officer shall generate the original (customs copy), exporter's copy, exchange control copy and the export promotion copy of shipping bills.

The original (customs copy) of the shipping bill and the checklist shall be retained by the proper officer. The exporter's copy exchange control copy and the export promotion copy of shipping bill shall after suitable endorsements be handed over to the authorised person. Transference copies of shipping bill shall be generated wherever necessary.

## **EXPORT GOODS AND TARIFF SCHEDULE**

The goods are properly classified for collection of export duty (under Second Schedule to Customs Tariff Act, 1985 – Export Tariff) and Cess (under Cess schedule) as the case may be, by indicating the rates there against. The Export Tariff is a selective Tariff and contains only 49 items. Articles not covered by any of these 49 items are not leviable to Export duty. Even in respect of these 49 items, the effective rate of duty has to be determined with reference to 'exemption notifications' issued under Section 25 of the Customs Act. Thus, very few items are actually liable to duty on export. The purpose/intention of the Government in having a "selective tariff" on the Export side is not to burden the Export goods with "duty" which would/may render them, not competitive, to whatever little extent, in foreign markets. Export duty is, therefore, levied and collected mostly on items in respect of which India enjoys a sellers market.

Commodities, as enumerated in the Cess Schedule, which forms part of the Customs Tariff (Working Schedule) attract cesses under various enactments (as detailed thereunder). Most of the commodities mentioned in the cess schedule require levy of cess at 1/2% ad-valorem (in addition to Export duty wherever export duty in respect of the commodity is leviable). In respect of some of the commodities "tariff values" are fixed by the Ministry (as indicated in the cess schedule) with effect from the first July of every year. In such cases/ the cess is calculated on the "tariff value" irrespective of the "invoice value".

The assessable value of Export goods leviable to *ad valorem* duties (other than tariff valued items) is always the FAS (Free Alongside) values. In the shipping Bill this is indicated as "Real Value" also. This is derived from the contract value or the price contracted upon for export, between the Indian Exporter and the Foreign buyer. If the contracted price is anything other than FAS, then the value for customs purposes-FAS (the price for delivery at the place of Exportation - Section 14 of the Customs Act, 1962) is arrived at and duty is calculated on the FAS value so arrived at.

## **SHIPMENT (EXPORT) UNDER CLAIM FOR DRAWBACK**

The term 'drawback' is applied to certain amount of duties of customs, sometimes the whole, sometimes only a part, paid back by Government on the exportation of commodities on which they were levied. To entitle goods to drawback, they must be exported to a foreign port, the object of the relief afforded by the drawback being to enable the goods to be disposed of in the foreign market as if they have never been taxed at all.

For Customs purposes "drawback" means the refund of custom duty, service tax and the Central Excise duty that are chargeable/charged on imported and indigeneous materials and services used in the manufacture of goods exported.

From the point of view of "Export Promotion" it is a relief of duty given to exporters, both manufacturer and merchant exporters.

There are two categories of materials which are used in the manufacture of goods exported, namely

imported and indigenous. Consequently, drawback is to be paid in respect of three types of taxes: Import duty, service tax and Excise duty.

The provisions relating to drawback are enumerated in Chapter X, Sections 74 to 76 of the Customs Act, 1962. Of these, Section 75 deals with the payment of “drawback on Imported materials used in the manufacture of goods which are exported”.

Under Section 75(2) of the Customs Act, 1962, the Central Government is empowered to make rules for payment of drawback and such rules provide:

- (a) for the payment of drawback equal to the amount of duty paid on the Imported materials used in the manufacture of goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description of goods either by manufacturers generally or by any particular manufacturer.
- (b) for the production of such certificates documents and other evidence in support of each claim of drawback, as may be necessary etc.

The rules made in this regard, read with Section 37 of the Central Excise Act, 1944 are called “The Customs and Central Excise Duties Drawback Rules, 1995.

#### **CLAIM FOR DRAWBACK — EXPORTERS DECLARATIONS AND DOCUMENTS**

In terms of the above said rules at the time of export of the goods the exporter inter alia shall:

- (i) File a Shipping Bill “under claim for Drawback”. (Green Shipping Bill)
- (ii) State in the above said Shipping Bill, the description quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback and if so at what rate or rates.
- (iii) File the documents as enumerated already and the Customs formalities to be completed for shipment are the same as detailed above in respect of goods shipped under claim for drawback also under cover of a “Green Shipping Bill”.

On completion of shipments the drawback claimed on exports is scrutinised in the drawback department or the drawback unit of the Custom House or Air Cargo Complex and payments are made by cheques drawn in favour of banks as nominated by Exporters.

#### **PROCEDURE FOR EXPORTS THROUGH INLAND CONTAINER DEPOTS**

##### **(i) Introduction**

Shipping is the cheapest way to transport goods. The cost per mile of water borne cargo is half the cost of any other form of long distance transport. Cargo comes in all shapes and sizes.

Each item of cargo must be individually arranged, counted, handled and put on board the ship according to a detailed cargo plan. This involves time and man-power and is costly. Therefore, it is quicker and cheaper to have cargo of a standard shape and size which is easy to handle and stack. Such a cargo type is termed a “Unit load” which in transportation usually means a “container”.

##### **(ii) Evolution**

In response to “Cost cutting” and “time saving” requirements of modern trade “containerisation” has come about in the past decade. This system was introduced in “sea transport” in 1949 when John

Wollan sent a “box” of sports goods across Irish sea. The “white pass and Yukon route” introduced deep sea container traffic from Canada and the world’s first fully integrated container service came into being in 1955. The world’s largest container shipping service was founded in USA-Malcolm Mc Clean Service.

A modified version of ‘containerisation arose in 1968. It is known as “Lighter” aboard ship”- FLASH. In the flash system, lighters are loaded on the shore and floated out to the ship waiting off-shore. The ship lands the lighters on board with its own crane (Gantry crane) and stacks them there high like containers. At the port of arrival the lighters are unloaded and floated to shore. This saved/saves both port costs and cuts time spent waiting for an empty berth.

### **(iii) Conventional cargo ships vis-a-vis container ships**

Conventional cargo ships are not being swept away from the seas by containerisation. Only on certain busy routes as the North Atlantic run/ has the switch over to containers been near complete. Elsewhere, the conventional cargo, ship has maintained its hold. For a small port handling a few thousand tonnes of cargo, it does not make economic sense to instal a container berths handling equipment and road and rail connections. Conventional cargo ships are helped by the fact that not all cargoes will economically containerise. Such cargoes are usually large (logs for instance) or heavy (steel plates). Another requirement in respect of containers is that for “every box” at sea another three are needed on land; one at the port of departure, one at the port of arrival and one being repaired.

### **(iv) What is a Container?**

A container is simply a box. It is no more complex than a truck body, a railway freight van or a ship’s hold. Containers are made of aluminium, steel, fibre glass or plywood for lightness with steel frames to give strength. Standard sizes for containers are 40, 20, or 10 feet long, 8ft. wide and 8ft. in height. Some have open tops or sides for loading special cargo. Liquids are carried in boiler shaped tanks surrounded by rectangular frame work. Other containers are insulated or refrigerated and are constructed according to International standards and inspected by Insurance companies.

### **(v) How are they loaded on the ship**

Container ships are built in vertical cells. The container slips into position in each cell down guide rails. The containers sit on the top of each other in the ship’s hold. Container ships towards insuring loss over board, are designed with distinctive concave low shapes to keep waves clear of the decks.

### **(vi) Handling of containerised cargo in India**

In India, procedures have been drawn up for handling containerised cargo both on the Import and Export side. The Import and Export Cargo containerisation presupposes formation of Inland Container Depots and should have the necessary arrangement and infrastructure of rail and road connections.

Inland Container Depots can be opened or can come up only in places which are appointed places for unloading of Imported goods and the loading of Export goods or any class of such goods by Central Government, by notification in the official gazette as contemplated under Section 7 of the Customs Act, 1962. In the Southern Region, Bangalore, Coimbatore and Anaparte (near Guntur) have been declared as I.C.Ds.

### **(vii) Categories of Containerised Cargo**

Containerised Cargo is divided into two categories viz. Full Container Load (FCL) and Loose Container Load (LCL). By FCL, it is understood that the entire cargo in a particular container belongs to a single consignee of a particular port, place, while LCL denotes container containing several consignments (Break Bulk) belonging to various consignees of a particular port/place.

#### **(viii) Short Shipment Notice**

In the event of the Export goods passed for shipment, not shipped (shut out) or short shipped, Short Export Rules, 1963, framed in exercise of powers conferred on the Central Government, under Section 156 Customs Act, 1962, require information of short shipment non-shipment (shut out) to be given to the customs department before the expiration of 7 days from the date of the departure of the vessel. Failure to comply with this provision entails penalty not exceeding `100/-.

No particular form for intimating short shipment or non-shipment (shut out) of goods has been “prescribed” as “form of Notice” under Short Export Rules. But for the convenience, the trade has been notified to file such notices in Triplicate with the required particulars in Annexures ‘A’ and ‘B’ to this study.

On receipt of Short-shipment/non-shipment (shut out) notices, the Customs Department returns one copy to the Exporters or to their agents duly acknowledging the receipt of the notice; sends one copy to Reserve Bank of India who are policing the repatriation of Export sale proceeds from abroad, as declared on the GR form and the third copy is connected to the relative Shipping Bill in the Export Manifest of the vessel filed by the Steamer agents. One Short shipment/non-shipment notice is required to be filed for each Shipping Bill. Failure to comply with the above requirement, apart from causing inconvenience to the Exporters, in explaining the short realisation of the export sale proceeds to the Reserve Bank of India, at the appropriate time, will render the Exporters and/or their agents liable for penal action under Rule (3) of the Short Export Rules, 1963.

#### **(ix) Amendment application in lieu of Short Shipment Notices**

In the event, the goods covered by a Shipping Bill have been “shut out” in full, the Shippers/Exporters are allowed to amend the ship’s/vessel’s name on the shipping bill, when the new ship had “entered outwards” in the port, and ship the goods. This can be done provided the period allowed under the notice of Short Export Rules, 1963 (viz. 7 days) had not lapsed.

### **PROCEDURE FOR EXPORTS OF CONTAINERISED CARGO FROM INLAND CONTAINER DEPOTS**

The exporters file shipping bills at the I.C.D. The Shipping Bills will be filed in five copies, original, duplicate, triplicate and two transference copies which are in distinct colors for easy identification and handling. The documents that are to be filed along with the shipping bills are as detailed earlier. In addition to the usual information given on the shipping bills the exporters should mention the Port of Exit and the serial number of the containers. Each container will have different marks and numbers.

Classification and assessment will also be completed at the I.C.D, following usual prescribed checks and formalities as detailed already. The original shipping bill will be retained and the other copies handed over to the exporters for completion of examination and other formalities.

The exporters will submit alongwith the shipping bills the set of G.R. forms (original/duplicate). The “Full Export Value” will be verified as usual on the G.R. Form; original copy of G.R. will be detached at the

I.C.D. and will be sent direct to the Reserve Bank of India. The duplicate copy of the G.R. form will be handed over to the exporter alongwith the shipping bills.

The export goods, will be presented to the 'Customs Officer in the "I.C.D. alongwith the Shipping Bills". The examination will be conducted in accordance with the procedure prescribed for examination of export goods after which the goods will be allowed to be "stuffed" into the containers under Customs supervision. The quantity of goods loaded (number of packages etc. shut out) will be recorded on the shipping bill. Once the goods are loaded into the container, the containers will be sealed with "one time lock" containing identification details as supplied by the Railway and record maintained for the same with the I.C.Ds. Simultaneously, with the stuffing of the goods inside the containers, the exporters will prepare in quadruplicate, the invoices and container-wise packing weight specifications indicating inter alia the number of packages (with marks and numbers, if any), description and total quantity, net weight/packed in each container along with the corresponding shipping bill number. The Customs officers will certify these details on the invoice/packing list. Duplicate copy of the shipping bill will be retained in the I.C.D. and triplicate handed over to the exporter.

The two transference copies of the Shipping bills will be placed in a sealed envelope and handed over to the carriers (Railways) who will be responsible for its being carried alongwith the container and its production to the Customs officer at the port of exit.

At the exit Ports the containers will be allowed to be exported under customs (preventive) supervision on checking of the seals without any further examination (examination will only be done if the seals of the containers are found to have been tampered with or on the basis of any information, doubts etc.) The Preventive officer who will be supervising the loading of the containers will suitably endorse the two transference copies of the shipping bills regarding the fact of shipment.

At the Port of Exit, the Steamer Agents will also file the export manifesto in duplicate regarding the containerised cargo in the 'container cell' to the Preventive Department of the respective Custom House. After shipment of the goods, one transference copy of the shipping bill will be returned to the respective I.C.D.

The Export Manifest transference copies of the shipping Bill and the weekly statement received from the Custom House (Exit ports) will be correlated for finalisation of drawback claims/ Closure of export manifest, etc. at the ICD.

### **III. GOODS IN TRANSIT (SECTION 52 TO 56)**

A conveyance / vessel may reach a port but may not unload the goods at that port. It may halt at the port for any other purpose such as repairs, replenishment of supplies, refueling etc. Once the purpose is over, it may start sailing to the destination port. In this case two ports are involved. Halting port (known as transit port) intermediate port and destination port (called as port of clearance). Such a phenomenon of temporary stay at a port other than a destination port is called transit goods. In transit goods same vessel reaches the port of clearance.

In transshipment, the vessel reaching an intermediate port, transfers the goods to another vessel and the second vessel into which the goods are transferred (loaded) from the 1st vessel, carries the goods to the destination port.

*Example: a ship A comes to Mumbai from South Africa and some goods are transhipped (transferred) to some other ship B and the goods are meant to be delivered at Cochin port (destination port) A goes*

*back to South Africa after delivery at Mumbai port and the B reaches Cochin, transshipment took place at Mumbai port.*

In brief, in case of transit goods, same vessel reaches the port of clearance after some halt at an intermediate port, but in transshipment some other vessel carries the goods to the destination port. Thus, in transshipment, at least two vessels are involved. And in the case of both transit and transshipment, the destination port may be Indian Port or Foreign port but the transit/transshipment port is necessarily Indian.

Customs Act, 1962 contains separate provisions for goods in transit in Chapter VIII of the Act. This Chapter consists of Sections 52 to 56. Section 52 of the Act makes it very clear that the provisions of Chapter VIII do not apply to:

- (a) baggage;
- (b) goods imported by post;
- (c) stores.

Sections 53, 54 and 55 also allow for the transit and transshipment of goods in the following circumstances:

- (a) where goods have arrived in India at a land customs station and are intended to be transhipped to another land customs station or to a port or airport outside India;
- (b) where goods have been carried in a conveyance other than a vessel or aircraft; and
- (c) where goods that have arrived at the port or airport on a vessel or aircraft are required to be transhipped to a land customs station.

The details of the provisions of the Chapter are discussed herein below:

#### **TRANSIT OF CERTAIN GOODS WITHOUT PAYMENT OF DUTY (SECTION 53)**

Section 53 of the Act deals with this. Accordingly, any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the conveyance to any place outside India or any Customs station may be allowed to be so transited without payment of duty, subject to such conditions, as may be prescribed.

The provisions of Section 53 are subject to the provisions of Section 11. It should be noted that Section 53 talks about transit of goods in the same conveyance and not transshipment of goods from one conveyance to another. (Section 54 deals with transshipment of goods imported into India, from one land customs station to another land customs station or to a port or airport outside India).

#### **TRANSHIPMENT OF CERTAIN GOODS WITHOUT PAYMENT OF DUTY (SECTION 54)**

Section 54 of the Act provides that where any goods imported into a Customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form. But where the goods are being transhipped under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in the prescribed form.

Section 54(2) provides that where any goods imported into a Customs station are mentioned in the Import Manifest or import report as the case may be, as for transshipment to any place outside India,



such goods may be allowed to be so transhipped without payment of duty. The provisions of Sub-section (2) of Section 54 are subject to the provisions of Section 11.

Sub-section (3) of Section 54 provides that where any goods imported into a Customs station are mentioned in the Import Manifest or import report, as the case may be, as for transhipment:

- (a) to any major port as defined in the Indian Ports Act, 1908 or the Customs Airport at Mumbai, Calcutta, Delhi or Chennai or any other Customs port or Customs airport which the Board may, by Notification in the Official Gazette, specify in this behalf, or
- (b) to any other Customs station and the proper officer is satisfied that the goods are bona fide intended for transhipment to such Customs station, the proper officer may allow the goods to be transhipped without payment of duty subject to such conditions as may be prescribed for the due arrival of such goods at the Customs station to which transhipment is allowed.

#### **LIABILITY OF DUTY ON GOODS TRANSITED UNDER SECTION 53 OR TRANSHIPPED UNDER SECTION 54 (SECTION 55)**

Under Section 55 of the Act, where any goods are allowed to be transitted or transhipped under Sections 53 and 54 respectively, to any Customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules shall so far as may be, apply in relation to such goods.

#### **TRANSPORT OF CERTAIN CLASSES OF GOODS SUBJECT TO PRESCRIBED CONDITIONS (SECTION 56)**

Sometimes imported goods may be transported from one part of the country to another part of the country through a foreign territory because of geographical and other constraints. Under the circumstances, Section 56 provides that imported goods may be transported without payment of duty through any foreign territory subject to the Transportation of Goods (Through Foreign Territory) Regulations, 1965. These regulations contemplate the following procedure. Regulations 3 and 10 of these Regulations are extracted herein below:

**1. Consignor to deliver a Bill:**

- (a) Whenever any goods to which these regulations apply are to be transported, the consignor of the goods shall make entry to that effect by presenting to the proper officer a bill (in duplicate) in the form specified in Appendix C to these Regulations.
- (b) Every such consignor shall, while presenting the bill, make and subscribe to a declaration at the foot thereof as to the truth of its contents.

**2. Permission to load goods, etc.:** No person-in-charge of a vessel shall permit the loading of such goods on a conveyance unless:

- (a) the bill relating to them after approval by, and
- (b) a written permission to load the goods from, proper officer are received by him.

**3. Execution of Bond:** Before any such goods are permitted to be loaded on the conveyance, the consignor or the person-in-charge of the vessel shall be required to execute a bond in such form and with such surety or sufficient security as the proper officer may demand, binding himself in an amount not exceeding the value of the goods.

**4. Duties of the person-in-charge of the conveyance:**

- (1) On receipt of the documents referred to in regulation 4, the person-in-charge of the conveyance shall prepare as many sets of Manifest (in triplicate) in the Form specified in Appendix B to these regulations in respect of such goods as there are customs stations to be passed through on the route.

He shall, immediately, on arrival at an customs station of delivery or re-entry, deliver a set of the manifest along with the bill or bills relating to the goods to the proper officer at the customs station.

- (2) The proper officer shall, after making the necessary checks, make an endorsement on the manifest, retain one copy of the manifest and return the other two copies to the person-in-charge of the conveyance.
- (3) The person-in-charge of the conveyance shall retain one of the two copies for carrier's record and present the other to the proper officer at the loading station.
- (4) The person-in-charge of the conveyance carrying such goods shall not leave the customs station until a written permission has been given by the proper officer after checking the manifest presented to him under the regulation.

**5. Delivery of bills at the destination station:** The person-in-charge of the conveyance shall carry with him on the journey all the bills relating to the goods delivered to him and shall immediately on arrival at any customs station. deliver to the proper officer such of the bills as relate to the goods unloaded at that station.

**6. Clearance of goods:** Such goods, after being unloaded at any customs station, shall not be cleared unless the proper officer gives a written permission that all the goods so unloaded are entered in the bill or bills delivered to him under these Regulations.

**7. Terms of the bond:** The condition of the bond to be executed under Regulation 5 shall be that if the person-in-charge of the conveyance or the consignor produces proof within a time stipulated in the bond or such extended time as the proper officer may permit that the goods have been produced before the proper officer at destination the bond shall be void; and if such proof be not furnished the executor of the instrument shall be liable to pay an amount equal to the export duty leviable on the goods and such penalty as may be adjudged or imposed by the proper officer under the Customs Act, 1962, the Imports and Exports (Control) Act, 1947 (18 of 1947) or the Foreign Exchange Management Act, 1999 and shall also be liable to forfeit the whole amount of the bond.

**8. Execution of general bond:** Notwithstanding anything contained in these Regulations, the proper officer may permit the person-in-charge of the conveyance or the consignor of goods to enter into a general bond in such form and with such surety or security as the proper officer may deem fit, in respect of transport of goods as above said to be effected from time to time”.

**DISTINCTIONS BETWEEN TRANSIT AND TRANSHIPMENT GOODS**

TRANSIT GOODS	TRANSHIPMENT OF GOODS
1. Goods are <i>lying</i> in the ship at an intermediate port.	Goods are <i>transferred</i> at the intermediate port.

2. Only import manifest has to be submitted for entry.	Bill of transshipment/ declaration is also required for transshipment.
3. Transit is allowed in every port normally.	Transshipment is allowed in specified ports only.
4. No supervision is required for transit goods.	Transshipment takes place under the supervision of the proper officer.
5. No additional conditions or formalities are required.	Specific conditions are imposed if the goods are deliverable at Indian port.
6. Only one conveyance is involved in transit of goods and the same carries the goods to the port of clearance.	At least two conveyances are involved in transshipment and the transferee ship reaches the destination port.

### SELF TEST QUESTION

*(These are meant for recapitulation only. Answers to these questions need not to be submitted for evaluation).*

1. Which main documents are required to be prepared for effecting Export of Goods?
2. What is Import manifest? Give the details of its contents.
3. What is a 'Shipping Bill'? How it is prepared and used?
4. What are the kinds of Shipping Bills?
5. What is 'GR' form and how it is obtained?
6. What is the procedure with regard to obtaining of 'Export Trade Licence'?
7. What are the provisions regarding 'Draw back' of duties on Exported goods under Customs Act, 1962?
8. Explain the concept of 'Containerisation' in Import-Export trade and how does it compare with the conventional ships ?
9. How the various customs ports, airports and places are fixed for the purpose of loading/unloading of goods subject to levy of duties of Customs ?
10. Which organisations are involved in clearance of import Cargo ?
11. What is 'Bill of Entry' ? What are the different kinds of 'Bill of Entry' ?
12. What is the procedure of preparation and filing of 'Bill of Entry' ?
13. How are the goods Imported but not cleared by Customs dealt with?
14. What are the provisions in the Customs Act, 1962 with regard to examination of goods before order of clearance?
15. What is "Out of Customs charge" order for delivery of goods?
16. What specific points one should keep in mind in the clearance of imported cargo for home consumption?
17. When are the goods said to be in transit within the meaning of Customs Act, 1962?

18. Distinguish between transit and transshipment of goods.
19. How are the goods in transit treated for the purpose of levying of duties of customs.
20. When does the officer of Customs may permit the transshipment of goods without payment of duty?

#### SUGGESTED READINGS

- (1) Customs Manual — *Taxmann*
- (2) Customs Law Manual — *R.K. Jain*
- (3) Customs Tariff — *R.K. Jain*
- (4) Indirect Taxes Law and Practice — *V.S. Datey*

[illegible]

## CUSTOMS LAW

### PART II: WAREHOUSING, DUTY DRAWBACK, BAGGAGE AND MISCELLANEOUS PROVISIONS

After completion of this part students will be familiar with

- Warehousing provisions
- What are the conditions to be satisfied for warehousing of goods
- The duty drawback provisions
- Baggage provisions and rules thereon
- Provisions pertaining to postal goods
- Goods imported or exported by post and store
- Provisions relating to coastal goods and vessels carrying coastal goods

This part is divided into six sub parts:

- I. Warehousing (Section 57 to 73)
- II. Drawback
- III. Baggage (Section 77 to 81)
- IV. Goods imported or export by Post (Section 82 to 84)
- V. Stores (Section 85 to 90)
- VI. Provisions relating to Coastal goods and Vessels carrying coastal goods (Section 91 to 99)

#### I. WAREHOUSING (SECTION 57 TO 73)

Goods imported from abroad may be cleared straightaway by the Importers by filing the Customs Clearance document, the Bill of Entry for Home Consumption (White Bill of Entry) along with all the documents, such as Invoice, Purchase Contract, Import Licence (Wherever necessary) and all connected and relevant documents. The above requirements for clearance are stipulated in Section 46 of the Customs Act, 1962.

Section 46 of the Customs Act, 1962 provides that importer shall file a Bill of Entry, either for Home consumption or for Warehousing, in the “prescribed form”. Therefore, the importers who do not intend clearing the imported goods for “Home consumption” may choose to “warehouse” the goods (store the goods under Customs control/custody) and clear the same subsequently either wholly or in part, in piecemeal, on payment of Customs duty.

Warehousing is a very useful facility in export import business. Importer can deposit the dutiable goods in a bonded warehouse without payment of duty. This facility is available to traders as well as importers.

*Warehousing facility is availed for the following reasons:*

- (i) *The importer may not require the goods immediately.*
- (ii) *He may intend to clear the goods under advance authorisation scheme without payment of import duty if authorization is not on hand at the time of import then he can deposit first and*

*submit the authorization at the time of clearance.*

- (iii) The importer may not have enough funds to make payment of duty immediately.*
- (iv) He intends to re-export the imported goods after some process/ repacking, repairing etc.*
- (v) He wants to avoid heavy demurrage charges imposed by the port.*
- (vi) Any other reason the importer feels it convenient.*

The prescribed form' referred to in Section 46 of the Customs Act 1962 also includes the Bill of Entry for warehousing. This form is also referred to and understood by the following names:

- (a) "Into Bond" Bill of Entry;
- (b) "Yellow" Bill of Entry;
- (c) "Warehousing" Bill of Entry; and
- (d) "Buff" Bill of Entry.

The term "warehouse" for the purposes of the application of the provisions of the Customs Act, 1962 has been defined under Section 2(43) of the Act, as under:

**"warehouse"** means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A;

Warehouses either "public" or "private", could be "licensed" as above said, only at the places declared by the Central Board of Excise and Customs to be "warehousing stations" by means of notifications in the official gazette. Therefore, warehouses cannot be "licensed" in all places. [Section 9 of the Customs Act, 1962].

In earlier years, the port towns adjacent to the major ports and contiguous areas thereto, which were easily accessible and which could be kept under control of the respective Customs "Warehouse" only was declared as "warehousing stations". For the purpose of convenience, entire cities, talukas, in such cases were generally declared as warehousing stations, generally or for specific purposes.

Consequent upon the increased requirements for adequate warehousing facility, of the trade and industry, now the Government of India's policy in respect of Public (Bonded) warehousing, is to declare selected places, in the areas other than port areas, namely in Inland/Interior areas, as "warehousing stations" under Section 9 of the Customs Act, 1962.

The object behind "licencing of Public (Bonded) warehouses Private (Bonded) warehouses or special warehouses" is to afford a facility to the Importers to deposit the imported goods for the specified period, before they are cleared for home consumption or re-export.

**Chapter IX (Sections 57 to 73) deals with various provisions relating to warehousing of import goods.** These provisions may be broadly divided into the following headings:

1. *Appointment of public warehouses (Section 57).*
2. *Licensing of Private warehouses (Section 58).*
3. *Warehousing bond (Section 59).*
4. *Permission for deposit of goods in a warehouse (Section 60).*
5. *Period for which goods may remain warehoused (Section 61).*

6. *Control over warehoused goods (Section 62).*
7. *Payment of rent and warehouse charges (Section 63).*
8. *Owner's right to deal with warehoused goods (Section 64).*
9. *Manufacture and other operations in relation to goods in a warehouse (Section 65).*
10. *Power to exempt imported materials used in the manufacture of goods in warehouse (Section 66).*
11. *Removal of goods from one warehouse to another (Section 67).*
12. *Clearance of warehoused goods for home consumption (Section 68).*
13. *Clearance of warehoused goods for exportation (Section 69).*
14. *Allowance in case of volatile goods (Section 70).*
15. *Procedure for taking out/removal of goods from warehouse (Sections 71 and 72).*
16. *Cancellation and return of Warehousing bond (Section 73).*

The above provisions, as amended, are explained as under:

### 1. APPOINTMENT OF PUBLIC WAREHOUSES (SECTION 57)

At any warehousing station, the Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed licence public warehouses wherein dutiable goods may be deposited (Section 57). Goods meant for re-export can be warehoused in these warehouses without payment of duty. The scope and functions of the scheme of appointment of public warehouses as well as the procedure to be followed are normally explained in detail through the Commissionerate's trade notices issued from time to time.

The Government of India's policy in respect of Customs Public Bonded Warehousing is mainly to provide adequate warehousing facilities at selected places in the interior keeping in view the requirement of the trade and industry, the proximity to the ports of import and the availability of Customs expertise. Such public bonded warehouse in inland area are generally managed and controlled by the Central Warehousing Corporation.

### 2. LICENSING OF PRIVATE WAREHOUSES (SECTION 58)

At any warehousing station, the Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence private warehouses wherein dutiable goods imported by or on behalf of the licensee may be deposited. [Section 58].

The object of warehousing is to allow the facility to trade of deferring payment of duty on imported goods upto the period permissible under Section 61.

The Finance Act, 2016 has inserted section 58 A in chapter IX of the Customs Act. The objective is provide for a new class of warehouses which require continued physical control and will be licensed for storing goods, as may be specified.

Section 58 A reads as under:

**SECTION 58A. Licensing of Special Warehouses – (1)** The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be



locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

(2) The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).

The Board has issued a notification under sub-section (2) of section 58A (66 / 2016 – Cus (NT) dated 14<sup>th</sup> May 2016) notifying the class of goods to which the provisions shall apply. The Board has also notified Special Warehouse Licensing Regulations, 2016 and the Special Warehouse (Custody and Handling of Goods) Regulations, 2016. Goods which shall be deposited in the special warehouses are as follows:

- Gold, silver, other precious metals & semi-precious metals and articles thereof
- Goods warehoused for the purpose of:
  - Supply to duty free shops in a customs area
  - Supply as store to vessels or aircrafts
  - Supply to foreign privileged persons.

### **CANCELLATION OF LICENCE (SECTION 58B)**

A New section 58B has been inserted by Finance Act, 2016 so as to regulate the process of cancellation of licences which is a necessary concomitant of licencing. The section provides that where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A.

The licensee shall, however, be given a reasonable opportunity of being heard before any licence is cancelled.

The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under section 58B(1).

Where the operation of a warehouse is suspended in the above case, no goods shall be deposited in such warehouse during the period of suspension. Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.

Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, within seven days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.

### **3. WAREHOUSING BOND (SECTION 59)**

Pursuant to the enactment of the Finance Bill 2016, section 59 of the Customs Act, 1962 stands amended consequent to which, an importer is to execute a triple duty bond at the customs station of

import with respect to the goods to be cleared for deposit in a warehouse. The bond will remain valid till the warehoused goods are duly cleared for home consumption or for export from the warehouse and will also cover the movement of goods from the customs station of import to the warehouse or from one warehouse to another as well as for the due accounting of goods while stored in a warehouse.

The amended section 59 reads as under:

The importer of any goods in respect of which a bill of entry for warehousing has been presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself—

- (a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;
- (b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and
- (c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period. [Section 59 (2)].

The importer shall, in addition to the execution of a bond under furnish such security as may be prescribed. [Section 59(3)].

Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse. [Section 59(4)].

Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified. [section 59(5)]

#### **4. PERMISSION FOR DEPOSIT OF GOODS IN A WAREHOUSE (SECTION 60)**

When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse. (Section 60).

Where an order is made the goods shall be deposited in a warehouse in such manner as may be prescribed.

#### ***Procedure towards clearance of imported goods for warehousing needs to be explained in brief at this stage.***

- *Section 46 of the Customs Act, requires an importer (or his agent) (Custom Broker) to file a Bill of Entry either for Home consumption or for Warehousing.*
- *If an importer intends to deposit his consignment in a private or public (bonded) warehouse he will have to file a Bill of Entry for warehousing (yellow in colour) in quadruplicate in the Import Department of the Custom House/or in Air Cargo Complex.*
- *The Bill of Entry is “noted” in the import manifest of the respective vessel or aircraft and returned to the importer or his agent for presentation in the concerned Appraising/assessing Group in the*

Custom House/Air Cargo Complex.

- *The Assessing Officer checks the quantity, value, description etc. of the goods imported and as declared in the Bill of Entry.*
- *He classifies the imported goods in accordance with the Customs Tariff and Central Excise Tariff (for countervailing duty) and indicates the classification and the rates of duties applicable to the goods.*
- *The Bill of Entry so assessed is subject to counter-check by the Group Assistant Commissioner.*
- *After counter check the amount of duty is calculated/quantified and indicated suitably on the Bill of Entry.*
- *In the above process of assessment, the assessing officer also verifies the coverage of the goods by the Import Licence produced, particularly wherever the goods are to be covered by an Import Licence validity. It is pertinent to note that the goods could be permitted to be warehoused only on their Valid Import. Thus, the Import Licence and other connected formalities are also completed.*
- *The Bill of Entry is thereafter returned to the importer.*
- *The importer should execute a bond as required in Section 59 of the Customs Act for thrice the amount of duty leviable/balance on the goods.*
- *Instead of executing bonds for each consignment imported, an importer may also furnish a general bond for a lumpsum covering thrice the amount of duty leviable on goods to be imported by him during a specified period (6 months, one year, etc.).*
- *The bond Department after completing all the required formalities including acceptance of the triple duty bond, will return the warehousing Bill of Entry to the Importer/Customs Broker after stamping the Bill of Entry with an endorsement "returned to the importer". This endorsement on all the copies of the Bill of Entry will also indicate the date on which the Bill of Entry has been returned to the Importer/Customs Broker.*
- *In cases where the Assessing Officer in the Group desires that the goods should be examined or tested before assessment, examination of the goods and verification of fitness for bonding are done by the Docks Air Cargo Appraising Staff.*

Thereafter, the Assessing Officer makes the assessment by indicating the rates of duties applicable to the goods. In such cases the "pass into bond" order is signed by the Preventive Superintendent incharge of the Bonds Department after Assistant Commissioner (Bonds) has accepted the importer's bond for thrice the amount of duty payable.

## **5. PERIOD FOR WHICH GOODS MAY REMAIN WAREHOUSED (SECTION 61)**

Sub section (1) of section 61 provides that any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed,—

- (a) in the case of capital goods intended for use in any hundred per cent export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse;
- (b) in the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under

section 65, till their consumption or clearance from the warehouse; and

- (c) in the case of any other goods, till the expiry of one year

from the date on which the proper officer has made an order section 60(1)

Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time.

Provided further that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse beyond a period of ninety days from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:

Provided that if the Board considers it necessary so to do, in the public interest, it may,—

- (a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;
- (b) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;
- (c) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.

*Explanation.*— For the purposes of this section,—

- (i) “electronic hardware technology park unit” means a unit established under the Electronic Hardware Technology Park Scheme notified by the Government of India;
- (ii) “hundred per cent. export oriented undertaking” has the same meaning as in clause (ii) of *Explanation 2* to sub-section (1) of section 3 of the Central Excise Act, 1944; and
- (iii) “software technology park unit” means a unit established under the Software Technology Park Scheme notified by the Government of India.’

#### **RELEVANT POINTS TO BE NOTED UNDER SECTION 61**

As per Budget 2016, hundred per cent export oriented undertaking or electronic hardware technology park unit or software technology park unit can deposit capital goods or any warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse.

- Interest @ 15% is payable for the goods deposited beyond the permissible period. This is calculated on the amount of duty payable.
- No interest is payable when no duty is finally payable at the time of clearance from the

warehouse [Pratibha Processors, 1996. S.C. and National Steel Industries Ltd. (H.C.) 2002].

- When the permission for extension was not granted, the importer has an option to prefer an appeal before CESTAT.

*CBEC Circular 15/ 2009 Issue: Whether interest for delayed payment on goods cleared from warehouse after the clearance of B/E is payable as per Section 47(2) of the Act.*

**Clarification:** No, Section 47 is applicable for direct clearance of goods from port area. So, interest provisions under section 47 are not applicable for clearance made from warehouse under Section 68.

**Note:** Under Section 47(2), interest is payable if the duty is not paid within 2 working days after the clearance of white B/E submitted for clearance for home consumption.

## **WAREHOUSING—GRANT OF EXTENSION IN THE WAREHOUSING PERIOD UNDER SECTION 61 OF THE CUSTOMS ACT, 1962 AFTER EXPIRY OF THE WAREHOUSING PERIOD**

1. Section 61 of the Customs Act, 1962 lays down the period for which the imported goods can be warehoused. The first proviso to this section provides that the period of warehousing prescribed, on sufficient cause being shown, can be extended for a period not exceeding one year at a time by the Principal Commissioner of Customs or Commissioner of Customs.

2. A doubt has arisen whether extension in the warehousing period can be granted when the application for extension is moved after the expiry of the initial or extended warehousing period. Section 61 of the Customs Act, 1962 is silent on this issue.

3. In order to arrive at a uniform practice in granting such extensions, the matter was examined in consultation with Ministry of Law. Consequently, it was been decided that the importers may be advised to file such applications for extensions in the warehousing period to the proper authority well before the expiry of initial/ extended period of warehousing.

4. However, in cases of exceptional circumstances, the extensions in the warehousing period can be considered and granted even after the expiry of initial/ extended warehousing period. In all such cases, the jurisdictional Chief Commissioner may himself decide the request for extension after taking into consideration the exceptional circumstances, the nature of the commodity, the rate of duties, particularly, whether the same results in loss of revenue to the government, the licensing aspects involved etc. [M.F. (D.R.) Circular No. 12/98-Cus., dated 6.3.1998].

Section 62 relating to physical control over warehoused goods has been omitted by Finance Act, 2016 since the conditions for licensing different categories of warehouses and exercising control over the same have now been provided under sections 57, 58 and 58A. Section 63 relating to payment of rent and warehouse charges has also been omitted in view of the privatization of services, and free market determination of rates, including those by facilities in the public sector.

## **6. OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS (SECTION 64)**

The owner of any warehoused goods may, after warehousing the same,—

- (a) inspect the goods;
- (b) deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- (c) sort the goods; or

(d) show the goods for sale.

(Section 64).

## 7. MANUFACTURE AND OTHER OPERATIONS IN RELATION TO GOODS IN A WAREHOUSE (SECTION 65)

The owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods, with the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed [Section 65(1)].

Where in the course of any operations permissible in relation to any warehoused goods under Sub-section (1) there is any waste or refuse, the following provisions will apply:

- (a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported, provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form;
- (b) if the whole or any part of the goods resulting from such operation 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 waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption [Section 65(2)].

**Treatment of Waste and Scrap: Dutiability of scrap is as follows:**

Final product exported →	Scrap destroyed /exported →	No duty on either.
Final product exported →	Scrap cleared for home consumption →	Pay import duty on scrap as if scrap has been imported.
Final product cleared for home consumption →	Pay import duty on the entire quantity of goods imported. There is no special treatment for scrap.	

## 8. POWER TO EXEMPT IMPORTED MATERIALS USED IN THE MANUFACTURE OF GOODS IN WAREHOUSE (SECTION 66)

Under Section 66, if any imported materials are used in accordance with the provisions of Section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interest of the establishment or development of any domestic industry, it is necessary, so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.

## 9. REMOVAL OF GOODS FROM ONE WAREHOUSE TO ANOTHER (SECTION 67)

The owner of any warehoused goods may with the permission of the proper officer, remove them from one warehouse to another subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted. (Section 67).

Vide Notification No. 67/2016-Customs (N.T.) dated 14 May 2016 the Warehoused Goods (Removal) Regulations, 2016 have been issued in supersession of Warehoused Goods (Removal) Regulations, 1963.

Owner of the goods can make a request by filing a prescribed form, where warehoused goods are to be removed from one warehouse to another, or from a warehouse to a customs station for export.

Transportation of the warehoused goods shall be made under one-time lock affixed by the proper officer or licensee or the bond officer, as the case may be. The owner of the goods shall produce to the bond officer or proper officer, within one month (or extended period as the officer may allow), an acknowledgement stating that the goods have arrived the destined warehouse or customs station of export. In case of failure to file such an acknowledgement, the owner shall be liable to pay full amount of duty on the goods with interest, fine and penalties.

Further, CBEC has also issued the Warehouse (Custody and Handling of Goods) Regulations, 2016 *Vide* Notifications No. 68/2016 – Customs (N.T.) dated 14 May 2016 and the Special Warehouse (Custody and Handling of Goods) Regulations, 2016 *Vide* Notifications No. 69/2016 – Customs (N.T.) dated 14 May 2016 .

These regulations deal with the compliance requirements of storage, transfer and removal of goods from a warehouse. Inter alia they require appointment of a warehouse keeper and state the procedures to be followed in cases of receipt, transfer and removal of goods. The regulations require that goods arriving at the warehouse from a customs station shall be affixed with a one-time-lock (bottle seal) with its serial number endorsed upon the bill of entry for warehousing and the transport document. The warehouse keeper or bond officer, as the case may be, is required to inspect the seal and when it is found intact, permit the goods to be unloaded at the warehouse

CBEC has *Vide Circular No. 17/2016-Customs dated 14 May 2016* instructed its field formations<sup>9</sup> to affix a one-time-lock and endorse the one-time-lock number on the bill of entry when goods are removed from a customs station for deposit into a warehouse. CBEC may exempt any class of goods from any of the provisions of these regulations.

CBEC has 10 *Vide* Notifications No. 70/2016, 71/2016 & 72/2016-Customs (N.T.) dated 14 May 2016 also issued:

- Public Warehouse Licensing Regulations, 2016,
- Private Warehouse Licensing Regulations, 2016 and
- Special Warehouse Licensing Regulations, 2016.

The regulations deal with requirements and procedures for obtaining warehouse licenses. Inter alia, they state that an applicant shall be a citizen of India or an entity incorporated or registered under any law for the time being in force and shall furnish an undertaking and a solvency certificate from a scheduled bank, for an amount of INR 2 crores in the case of public warehouses and for an amount to be specified by the Principal Commissioner / Commissioner of Customs in the case of private / special warehouses

The regulations also provide for a number of conditions to be fulfilled by the applicant, which include providing an all risk insurance policy in favour of the President of India and providing undertakings to pay any duties, interest, penalties and indemnify the Principal Commissioner / Commissioner of Customs from liabilities. Furthermore, the regulations deal with validity and surrender of licenses.

With respect to the special warehousing in the cases of duty free shops / ship stores / airline stores /

diplomatic stores, to enable smooth transition it has been clarified that: Existing public and private warehouse storing goods for above purpose must apply for special warehouse license if they propose to continue to store such goods beyond the transitional period of three months. Existing warehouses engaged in supply of such goods are allowed to continue operations during the transitional period, under customs lock, for a period of three months. Application must be made within one month from 14 May 2016 Timeline for application and grant of the license has been prescribed. It has also been clarified that the duty free shops in the airport should not be treated as warehouse as it is not possible to be under a customs lock.

Duty Free Shop operators store goods in large warehouses in the city and / or in smaller warehouses in and around the precinct of the airport. These warehouses in the city and / or precinct of the airport qualify to be licensed as bonded warehouses as they are capable of being under the lock of customs.

#### **10. CLEARANCE OF WAREHOUSED GOODS FOR HOME CONSUMPTION (SECTION 68)**

Under Section 68, any warehoused goods may be cleared from the warehouse, if:

- (a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
- (b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and;
- (c) an order for clearance of such goods for home consumption has been made by the proper officer.

However that the owner of any warehoused goods may, at any time before an order for clearance of goods for consumption has been made in respect of such goods, relinquish his title to the goods upon payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon.

However that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

In the case of BICCO Lawrie Ltd. 2008 (S.C.) it was held that once assessment of warehoused goods is complete and duty liability is discharged, the goods are no longer warehoused goods even-though they are further retained in the warehouse.

In this case the goods (kerosene) were assessed and duty paid. But the goods were not removed from the warehouse. There was a change in the tariff rate at the time of actual removal and the department demanded the duty as per the increased rate. Held that once assessment was over and duty liability was discharged, no further assessment is necessary and no further liability arises.

#### **11. CLEARANCE OF WAREHOUSED GOODS FOR EXPORT (SECTION 69)**

**Clearance of warehoused goods for exportation** - Any warehoused goods may be exported to a place outside India without payment of import duty if:

- a. a shipping bill or a bill of export has been presented in respect of such goods in the prescribed form;
- b. the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- c. an order for clearance of such goods for exportation has been made by the proper officer.



Notwithstanding anything contained in sub-section (1), 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.

### **Important points**

*Under Section 15(1)(b), the rate of duty applicable to warehoused goods (as and when cleared for home consumption) is the rate of duty prevailing on the date of actual removal of the goods from the warehouse. Hence, the warehouse keeper or Bond Officer endorses the date (or dates) on which the goods are physically removed from the warehouse. If any further duty has become due on account of a change in the rates of duty before such removal, the Bond Clerk who receives the duplicate bill of entry from the warehouse keeper initiates necessary action. More than one clearance of a single warehoused consignment can also be effected by filing different bills of entry (Green Bill of Entry) under Section 68. As far as the rate of exchange (applied for conversion of value declared in foreign currency to Indian currency for collection of duty, on the value) is concerned, the same exchange rate that prevailed and applied for conversion on the date of filing of the warehousing (info-bond) bill of entry by the importer is applicable to all clearances ex-bond.*

### **WAREHOUSED GOODS CLEARED AFTER THE EXPIRY OF WAREHOUSING PERIOD - RELEVANT DATE FOR DETERMINING CUSTOMS DUTY**

The issue has been considered in the light of Hon'ble Supreme Court's judgment (in Civil Appeal No. 4459 of 1989) delivered on August 23rd, 1996 in the case of Kesoram Rayon v. Commissioner of Calcutta, 1996 (86) E.L.T. 464 (S.C.), 1996 (66) ECR 201 (SC) report. In the said judgement the Hon'ble Apex Court has held that goods which are not removed from a warehouse within the permissible or extended period are to be treated as goods. Importer is required to pay the full amount of duty chargeable at the rate applicable on the date of their deemed removal from the warehouse, that is, the date on which the permitted or extended period expired.

In other words, a clear interpretation of the Hon'ble Supreme's Court's judgement is that the date of payment of duty in the case of warehoused goods removed after the expiry of the permissible or extended period would henceforth be the date of expiry of the warehousing period or such other extended period as the case may be and not the date of payment of duty. [CBEC Circular No. 31/97-Cus, dated 14.8.1997].

### **12. ALLOWANCE IN CASE OF VOLATILE GOODS (SECTION 70)**

When any warehoused goods to which this section (Section 70) applies are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant/Deputy Commissioner of Customs may remit the duty on such deficiency [Section 70(1)].

Sub-section (2) of Section 70 lays down that this section applies to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner or their storage, may, by notification in the Official Gazette specify.

*The Government has issued Notification No. 122/63 Cus. dt. 11.5.1963 (as amended), under Sub-section (2), which details such goods namely:*

- (1) aviation fuel, motor spirit, mineral turpentine, acetone, menthol, raw naphtha, vaporising oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride kept in tanks and liquid helium gas kept in containers;*

(2) *wine, spirit and beer, kept in casks,*

*to which the provisions of this section shall apply when they are deposited in a warehouse.*

The above provisions in the Customs Act however does not preclude the application of Sections 22 and 23 to warehoused goods (viz.,) for remission of Customs duty on damaged and deteriorated goods and on lost, destroyed and abandoned goods. When any warehoused goods are damaged at any time before clearance for home consumption on account of an account not due to any wilful act, negligence or default of the owner, proportionate abatement of duty is available to the importer. Similarly when any warehoused goods have been lost or destroyed at any time before clearance for home consumption, remission of duty can be allowed by the Assistant Commissioner.

When all the imported goods warehoused have been cleared for home consumption on payment of duty or exported or otherwise duly accounted for, the bond furnished by the importer under Section 59 is cancelled and returned to the importer.

### **13. PROCEDURE FOR TAKING OUT REMOVAL OF GOODS FROM WAREHOUSE (SECTION 71)**

Section 71 provides that no warehoused goods shall be taken out of a warehouse except on clearance for home consumption or export or for removal to another warehouse or as otherwise provided by this Act.

### **14. GOODS IMPROPERLY REMOVED FROM WAREHOUSE ETC. (SECTION 72)**

Section 72 lays down provisions in respect of goods improperly removed from warehouse etc.

In any of the following cases, that is to say —

- (a) Where any warehoused goods are removed from a warehouse in contravention of Section 71;
- (b) Where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under Section 61 to remain in a warehouse;
- (c) omitted
- (d) Where any goods in respect of which a bond has been executed under Section 59 and which have not been cleared for home consumption or export or are not duly accounted for to the satisfaction of the proper officer;

the proper officer may demand and the owner of such goods forthwith pay the full amount of duty chargeable on account of such goods, together with interest, fine and penalties payable in respect of such goods [Section 72(1)];

If any owner fails to pay amount demanded under Sub-section (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may deem fit.

### **15. CANCELLATION AND RETURN OF WAREHOUSING BOND (SECTION 73)**

Section 73 lays down that when the whole of goods covered by any bond executed under Section 59 have been cleared for home consumption or exported or or transferred 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 as discharged in full and shall on demand deliver it, so cancelled, to the person who had executed or is entitled to receive it.

## 16. CUSTODY AND REMOVAL OF WAREHOUSED GOODS (SECTION 73A)

A new section 73A of the Customs Act is inserted by Finance Act, 2016 to provide for the custody of warehoused goods till their removal would be that of the person who has been granted the warehouse licence (licencee). It is now provided that, if the goods are removed in contravention to the provisions of section 71, licensee would be liable to pay duty, interest, fine and penalty.

### CASE STUDIES

#### SBEC SUGAR LTD. 2011 (S.C.) – ( Warehousing- delayed clearance)

**Facts:** The importer was to remove goods from warehouse on 25-12-1996. Department issued demand notice under Section 72 of Customs Act for removal. The importer filed B/E on 21<sup>st</sup> Jan 1998. The duty was nil by exemption notification at the time of submission of B/E (21<sup>st</sup> Jan 1998.)

**Issue:** What is the relevant date for rate of duty.

**Contentions:** The importer argued that relevant date for rate of duty as per Section 15(1) (b) is date of submission of Green Bill of Entry. Since rate of duty applicable on that date is nil by exemption, no duty is payable.

**Department:** Section 68 and Section 15 are applicable to cases for proper removal of goods. This is a case of improper removal governed by Section 72. Hence, rate of duty applicable shall be the one prevailing at the official due date of removal ie. 25-12- 1996 and not 21<sup>st</sup> Jan 1998. Hence, duty is payable.

**Decision:** The contention of the department is correct and the rate applicable on the deemed (due) date of removal shall be taken for assessment.

#### DECORATIVE LAMINATES (I) PVT. LTD. 2010 (H.C.)–(Remission on warehoused goods)

**Facts:** The goods were deposited in a warehouse and due to lack of demand, extension was sought and granted. Even the extended period was over by 31<sup>st</sup> Dec 2001. Still the goods were not removed. In the meantime the goods were destroyed in the warehouse. Then the importer applied for remission under Section 23 of the Act.

**Held: No remission** under Section 23 of the Customs Act for warehoused goods if they are lost or destroyed in the warehouse after the expiry of warehousing period.

Further held that the benefit of **remission under Section 23 is available only to proper removals.**

#### Illustration

*Bholaram imported certain goods in November, 2015 and an 'into bond' bill of entry was presented on 28th November, 2015. Assessable value was US \$1,00,000. Order permitting the deposit of goods in warehouse for 3 months was issued on 2<sup>nd</sup> December, 2015. Bholaram neither obtained extension of warehousing period nor cleared the goods within the permitted warehousing period of 1<sup>st</sup> March, 2016. Only after a notice was issued under section 72 of the Customs Act, 1962 demanding duty and other charges, Bholaram removed the goods on 15<sup>th</sup> April, 2016.*

*Compute the amount of duty payable by Bholaram while removing the goods from warehouse, assuming that no additional duty or special additional duty is payable. You are supplied with the following information:*

**Lesson 6 ■ Part I – Arrival or Departure and Clearance of Imported or Export Goods**

	28.11.2015	01-03.2016	15.04.2016
Rate of exchange per US \$	'56	'55	'54
Rate of basic customs duty	15%	10%	5%

**Solution:**

Assessable value is	'56,00,000
Add: BCD @ 10%	5,60,000
Add: Cess @3% on BCD	<u>16,800</u>
Total duty payable	<u>576,800</u>

Rate of Exchange: '56; Rate of basic custom duty: 10 %;

**Illustration**

Vipin imported certain goods in December, 2016. An 'into Bond' bill of entry was presented on 14th December, 2016 and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 50,000. The order permitting the deposit of goods in warehouse for four months was issued on 21 December, 2016. Vipin deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period was over on 20th April, 2017.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty, interest and other charges. Vipin cleared the goods on 14th May, 2017. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of following information:

Particulars	14-12-2016	20-04-2017	14-05-2017
Rate of exchange per US \$ (as notified by Central Board of Excise & Customs)	Rs.65.20	Rs.65.40	Rs. 65.50
Basic Customs Duty	15%	10%	12%

No other customs duty is payable except basic customs duty.

**Notes:**

1. Rate of duty as on the deemed date of removal of goods shall be taken, not the actual date of removal. Section 15 is not applicable here because it is a default case under section 72. Hence applicable rate of duty is 10%.
2. Rate of exchange as on the first submission of bill of entry for depositing the goods in a warehouse shall be taken. Hence applicable rate of exchange is Rs.65.20
3. Interest @15% is payable for the period of storage beyond 90 days of clearance order by the customs officer for deposit in a warehouse.

## **II. DUTY DRAWBACK (SECTION 74 TO 76)**

Indirect taxes are taxes on domestic consumption. They are destination based. Goods exported shall be free from local taxes. It is in tune with the slogan 'export goods and services, don't export taxes'. To implement the policy, govt of India introduced export promotion schemes making the exports tax free. Duty Drawback scheme is an export promotion scheme under customs. Sections 74 to 76 deal with duty drawback scheme.

Under the scheme, if import duty paid goods are exported with or without any value addition, the import duties and other taxes paid on such goods at input level are refunded in the form of duty drawback. Duty drawback is basically a refund of import duties. There are two variants of duty drawback scheme under Customs.

1. Re-exportation of duty paid imported goods [Section 74]
2. Export of final products/ processed goods using duty paid imported material [Section 75]

In both the cases, there are three common features.

- (i) There is import of some goods;
- (ii) The imported goods suffered import duty;
- (iii) The same goods in same form or in a different form have been exported.

### **STATUTORY PROVISIONS IN THE CUSTOMS ACT, 1962**

The provisions relating to drawback are enumerated in Chapter X, in Sections 74, 75, 75A and 76 of the Customs Act, 1962. Drawback is allowed subject to conditions mentioned in Sections 74 to 76 and notifications issued thereunder, in respect of duty paid on:

- (a) imported goods, which are re-exported as such (without use),
- (b) imported goods, which are re-exported after use,
- (c) imported material used in the manufacture of goods exported.

### **DRAWBACK ALLOWABLE ON RE-EXPORT OF DUTY PAID GOODS (SECTION 74)**

The elements necessary to consider a claim for Drawback under Section 74 Customs Act, 1962 are:

- (i) The goods on which the drawback is claimed must have been previously imported;
- (ii) Import duty must have been paid on these goods when they were imported;
- (iii) The goods must be entered for re-export within two years from the date of payment of duty. However, it is provided that in any particular case this period of two years may, on sufficient cause being shown, be extended by the Board by such further period it may deem fit;
- (iv) The goods are identified to the satisfaction of the Assistant Commissioner of Customs as the goods that were imported;
- (v) The goods must be actually re-exported to any place out-side India;
- (vi) The goods must be capable of easy identification; and
- (vii) The market price of such goods must not be less than the amount of drawback claimed.

The Central Government has been empowered to make rules for the purpose of carrying out the provisions of Section 74 and, in particular, such rules may:

- (a) provide for the manner in which the identity of goods imported in different consignments which are ordinarily stored together in bulk, may be established;

- (b) specify the goods which shall be deemed to be not capable of being easily identified; and
- (c) provide for the manner and the time within which a claim for payment of drawback is to be filed.”

### **RE-EXPORT OF IMPORTED GOODS (DRAWBACK OF CUSTOMS DUTIES) RULES, 1995**

In exercise of the powers conferred under the amended Rule 74 [under clause (c) of Sub-section (3) of Section 74, above], the Central Government has framed the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. These rules have been issued specifying the procedure for filing a claim in respect of goods exported under a claim for drawback under Section 74 as it had become necessary to prescribe a procedure for filing of a claim in view of Section 75A of the Customs Act which now requires the Government to pay interest at the specified rates in case drawback is not paid to the exporter within one month from the filing of his claim.

#### **Rates of Drawback of Import Duty Admissible under Section 74**

*Two types of cases are covered in the above category. They are:*

- (i) *Imported goods exported as such, without putting into use — the drawback given is 98% of duty paid on import. (The idea behind withholding 2% is to cover administrative expenses).*
- (ii) *Imported goods exported after use.*

If the goods had been used after import and then exported the rate of drawback i.e. the percentage of duty refunded will be according to the period of usage, between the date of clearance for home consumption and the date when the goods are “placed under Customs Control” for exports. The rate of drawback in this case is not fixed and progressively decreases as the period of use increases as enumerated in Customs Notification No. 19 dated 6.2.1965 as amended by Customs Notification No. 45/70 dated 2.5.1970. In satisfying the condition “placed under Customs Control”, it is necessary that the “Shipping Bill” should be filed and the goods “physically brought in to Customs area” for export and placed under the control of Customs.

Customs Notification No. 19 dated 6.2.1965 (as amended) while setting out the rates of drawback, differentiates as between two categories of goods, in the grant of drawback:

- (i) Goods imported by a person for his personal and private use and motor cars; and
- (ii) Other goods

#### **(i) Goods imported by a person for his personal and private use and motor cars:**

The goods imported by a person for his personal and private use, may be exported as “baggage” and he shall make a declaration, (Baggage declaration - the format used for clearance of unaccompanied baggage) which declaration shall be deemed to be an “Entry for Export”.

The drawback rates are calculated, by reducing the Import duty paid by 4%, 3%, 2-1/2% and 2% for use, for each quarter or part thereof during the period of First, Second, Third and Fourth year respectively.

Even though the rates are provided as above, in the notification, for grant of drawback for goods imported for personal and private use, and used for more than 2 years, the Principal Commissioner of Customs could grant extension of time limit (beyond two years) but no drawback is admissible beyond 4 years.

On the category of goods covered by (b) above,

**(ii) Other goods:** *In this case, the percentage of import duty payable as drawback depends on the period of usage of such goods as detailed below:*

**Rate fixed by Government under Section 74(2) by Notification No. 23/2008-Cus., dt. 1.3.2008.**

<b>Period of use</b>	<b>Draw Back Rate</b>
Not more than 3 months	95%
3-6 months	85%
6-9 months	75%
9-12 months	70%
12-15 months	65%
15-18 months	60%
Above 18 months	NIL

**For Motor Vehicles**

<b>Use per quarter during</b>	<b>Percentage of Reduction</b>
1st Year	4%
2nd Year	3%
3rd Year	2.5%
4th Year	2%

For use over 24 months extension of time-limit by the Commissioner is required before grant of drawback. Also drawback shall not be given on the following goods if used after their importation:

- (i) Wearing apparel.
- (ii) Tea-chests.
- (iii) Exposed cinematograph films passed by the Board of Film Censors in India.
- (iv) Unexposed photographic films, paper and plates and X-ray films.

**DRAWBACK ON IMPORTED MATERIALS USED IN THE MANUFACTURE, PROCESSING OR OPERATION OF GOODS WHICH ARE EXPORTED (SECTION 75)**

As distinct from Section 74 of the Customs Act, 1962, Section 75 postulates repayment of a part or whole of the duty paid on materials imported and used in manufacturing of goods which are exported as manufactured items outside India. Section 75 has been amended by the Finance Act, 1995 to permit drawback not only on materials/inputs used in the manufacture but also processed or subjected to any other operation for export of goods from India. The amendment is made to overcome the difficulty caused by the restricted meaning of the word “manufacture” in Section 75(1) of the Customs Act.

Drawback, as the name itself suggests, particularly with reference to Section 75 of the Customs Act, 1962, is a procedure to relieve the export goods of duties borne by goods at various stages of their manufacture, processing or any other operation carrying out on them. Such relief is allowed in respect of duties paid on raw-materials, and components utilised in the manufacture, processing etc. of goods. The wastages involved in the manufacture, processing etc. and the duty incidence(s) on the packing materials used in the Export of the goods are also taken into account. Drawback is allowed not only on duties incurred in the “Direct Imports” of materials or components utilised in the manufacture, processing etc. of Export goods but also on earlier inputs that go into the raw-materials and manufacture, processing etc. of components. Therefore, the rates of drawback are fixed by the

Government on “average basis”, on the basis of the relevant data obtained from the leading manufacturers or the persons carrying out any process or any other operation either for a class of goods or for specific goods. The procedure set out in Section 75 of Customs Act, 1962, as reproduced hereunder, the Customs and Central Excise Duties Drawback Rules, 1995 allow of drawback, of Customs duties and Central Excise duties that are chargeable on imported and indigenous materials respectively, used in the manufacture, processing or any other operation carried out on goods exported under claim for Drawback.

**DRAWBACK ON IMPORTED MATERIALS USED IN THE MANUFACTURE OF GOODS WHICH ARE EXPORTED (SECTION 75)**

- (1) Where it appears to the Central Government that in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India, being goods which have been entered for export and in respect of which an order permitting the clearance and loading thereof for exportation has been made under Section 51 by the proper officer, in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with and subject to the rules made under Sub-section (2).

Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under Sub-section (2), specify, if the export value of such goods or class of goods is less than the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Management Act 1999, such drawback shall except under such circumstances as the central government may, by rules, specify be deemed never to have been allowed and the Central Government may, by rules made under Sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback.

- (1A) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured processed, or on which any operation has been carried out in India and exported outside India, then, the Central Government may, by notification in the Official Gazette, declare that so much of the material as is contained in goods exported shall, for the purpose of Sub-section (1), be deemed to be imported material.
- (2) The Central Government may make rules for the purpose of carrying out the provisions of Sub-section (1) and, in particular, such rules may provide:
- (a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any



operations on the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or other operation and interest if any, payable thereon;

- (aa) for specifying the goods in respect of which no drawback shall be allowed;
- (ab) for specifying the procedure for recovery or adjustment of the amount of any drawback which had been allowed under Sub-section (1) or interest chargeable thereon.
- (b) for the production of such certificates, documents and other evidence in support of each claim of drawback, as may be necessary;
- (c) for requiring the manufacturer or the person carrying on any process or any other operation to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the Assistant Commissioner of Customs to enable such authorised officer to inspect the process of Manufacture, process or any other operations carried out and to verify by actual check or otherwise the statements made in support of the claim for drawback.
- (d) for the manner and the time within which claim for payment of drawback may be filed;
- (3) The power to make rules conferred by Sub-section (2) shall include the power to give drawback with retrospective effect from a date not earlier than the date of changes in the rates of duty on inputs used in export goods.

#### **PAYMENT OF INTEREST ON DRAWBACK (SECTION 75A)**

Section 75A of the Customs Act provide for levy of interest on delayed payment of drawback. Interest at such rate as may be fixed by the Board would be allowed in case payment against a claim for drawback is not made within one\* month of filing the claim in the prescribed manner. Likewise, when a drawback claim has been allowed erroneously, interest at the prescribed rate would be payable if the excess amount is not deposited with the Government within one month of the amount being demanded.

Section 75A reads thus:

- 75A (1) Where any drawback payable to a claimant under Section 74 or Section 75 is not paid within a period of \*one month from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under Section 27A from the date after the expiry of the said period of \*one month till the date of payment of such drawback.
- (2) Where any drawback has been paid erroneously or it becomes otherwise recoverable under the Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay interest. The amount of interest shall be calculated from the date of payment of such drawback to the claimant till the date of recovery of such drawback. [Section 75A(2)].

#### **PROHIBITION AND REGULATION OF DRAWBACK IN CERTAIN CASES (SECTION 76)**

Independent of other conditions which are laid down in Sections 74 and 75 of Customs Act, 1962 and in the Drawback Rules, no drawback will be granted:

- (a) in respect of any goods the market price of which is less than the amount of drawback due thereon; and
- (b) where drawback due on any goods is less than ₹ 50.

Also, if the Central Government is of opinion that specified goods on which drawback is claimed are likely to be smuggled back into India, it may stipulate that drawback be paid subject to certain conditions. There are three notifications in this regard:

Notification 50/63 dt. 1.2.63 as amended by 153/68 dt. 29.10.68 lays down that goods if exported on vessels less than 1,000 tons are likely to be smuggled back into India than export under claim for drawback may be permitted on the following conditions:

- (i) The agent of the vessel executes a bond in a sum equal to the amount of drawback and in such form and manner as the proper officer deems fit. The terms of the bond shall be that if the agent of the vessel produces to the proper officer, within three months or within such extended period as the proper officer may allow, a certificate issued by the Customs authorities at the port of destination that the goods have been landed at the port the bond shall stand discharged; but otherwise a sum equal to the amount of drawback allowed on the goods in respect of which the said certificate is not produced shall stand forfeited. The above bond shall be with such surety or security or both as is required by the Customs.
- (ii) The exporter produces to the proper officer a certificate issued by the Customs Authorities at the port of destination that the goods have been landed at the port or a certificate from the authorised dealer.

*Under Notification 51/1.2.63 the following goods put on board a vessel less than 200 tons for use as stores*

*are not to be given drawback:*

- (i) alcoholic liquors;*
- (ii) cigarettes;*
- (iii) cigars;*
- (iv) pipe tobacco.*

Notification 208/1.10.77 lays down that drawback is not to be allowed on exports to Bhutan, Nepal or by land to Burma, Tibet or Sikiang except on certain conditions given in the said Notification.

#### **CUSTOMS AND CENTRAL EXCISE DUTIES AND SERVICE TAX DRAWBACK RULES, 1995**

The duty drawback scheme is presently administered by the Directorate of Drawback in the Ministry of Finance. Drawback on exports is sanctioned and paid by the concerned Commissioner of Customs or Central Excise incharge of the port/airport/Land Customs Station through which the goods are exported, at the rates determined by the Directorate. These drawback rates are fixed either for a class of products manufactured in the country which are available to all exporters, and known as All-industry Rates or for a product of a particular manufacturer — known as Brand Rate. The rates are reviewed and revised periodically taking due note of variation in consumption pattern of inputs and duties suffered thereon. The Drawback is admissible irrespective of mode of export i.e. whether despatched by Sea, Air, Land Customs Station or Parcel Post.

Pursuant to the amendments made in sections dealing with drawback in the Customs Act and to streamline the existing rules, it was considered necessary to revise the Customs and Excise Duties

Drawback Rules, 1971. Accordingly, Customs and Central Excise Duties Drawback Rules, 1995 were issued in supersession of 1971 Rules.

### **PROCEDURE FOR FIXATION OF ALL-INDUSTRY RATES**

Under Rule 3 of the Drawback Rules, the Central Government determines the rate(s) of drawback in respect of certain classes of goods and notifies the same through public notices. Any exporter of these goods can claim Drawback at All Industry Rates. He is, however unless otherwise specifically provided, debarred from availing these rates as per General Notes laid down in the relevant Public Notice issued annually if he has been otherwise permitted certain concessions e.g. facility of manufacture in Bond, duty free imports under Advance Licensing/Import-Export Pass Book Scheme, facility of exports under Central Excise Rules, etc. (In such cases, for any unrebated customs or central excise duties, facility of Brand Rates is generally provided).

All Industry rates are reviewed by the Government annually, taking due note of Budgetary changes and revised wherever necessary, taking into account the changes in the duty incidence consequent to changes in the rate of Customs or Central Excise Duties and or the variations in the prices of various inputs (where the rates of duties are ad valorem). The revised All Industry Rates are generally made effective from 1st June and are normally kept unchanged for 1 year. If changes in duties on basic inputs of a product at any point of time (after the presentation of Budget) are substantial, the corresponding All industry Rates are reviewed and appropriate change is also effected in between the year. From time to time new products are also added to the list of goods having All Industry Rates.

In determining the All Industry Rates, for a particular class of goods, as per Rule 3(2) of Drawback Rules, the Central Government takes into account the following:

- (i) the average quantity or value of each class or description of the materials from which a particular class of goods are ordinarily produced or manufactured in India;
- (ii) the average quantity or value of the Imported material or excisable materials used for production or manufacture in India;
- (iii) the average amount of duties paid on Imported materials or excisable materials used in the manufacture of the semis, components and intermediate products used in the manufacture;
- (iv) the average amount of duties paid on materials wasted in the manufacturing process and catalytic agents (If such waste or catalytic agent is re-used in any process of manufacture or sold, the average amount of the duties on the waste or catalytic agent re-used/sold shall be deducted);
- (v) the average amount of duties paid on imported materials or excisable materials used for containing or packing the export product; and
- (vi) the average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the exports goods.
- (vii) any other information considered relevant for determining the drawback rate.

### **BRAND RATES**

Where the Central Government has not determined the All Industry rates of drawback in respect of any export product eligible for such drawback (set out in Schedule to the Drawback Rules), or where the rate is not eligible because the manufacturer of the product has availed of certain duty free facilities (like Advance Authorization) but where sufficient duty paid inputs are also used, any manufacturer or exporter of such goods may apply under Rule 6 of the Drawback rules to the Central Government for

the determination of the drawback rate for his product of specified description/characteristics.

### **SPECIAL BRAND RATES**

In case any manufacturer/exporter finds that the All industry rate of drawback for any class of goods is less than four-fifth of the duties paid on the materials or components used in the production/manufacture and packing of same goods being exported by him, he can make an application for fixation of an appropriate amount or rate of drawback (under Rule 7 of the Drawback Rules) for his products of specified description/characteristics. Such rates, wherever determined, are termed as 'Special Brand Rates'.

### **PROVISIONAL RATE OF DRAWBACK**

Exporters have also the facility to apply for fixation of a provisional drawback rate as per provisions of Rule 6(2)(a) of Drawback Rules, in cases where they have already applied for fixation of brand rates/special brand rates of their products whose finalisation is pending. The payment at provisional rates is, however, subject to execution of a suitable bond (with surety/security) by the Exporter with the concerned Custom House. On finalisation of the rate, the differential amount is appropriately adjusted.

### **MINIMUM RATE OF DRAWBACK**

As per Rule 8 of the Drawback Rules, for any export product where the duties paid on inputs work out to less than 1% of F.O.B. value thereof (except where the amount of drawback per shipment exceeds rupees Five hundred), no Drawback rate (All-industry Rate or Brand Rate) is determined. However, this condition of minimum 1% of F.O.B. value will not be applicable in case exports are made by post and exports are made in discharge of obligation against Advance authorization issued under Duty Exemption Scheme. Thus, in case of exports made by post and exports under Duty Exemption Scheme, drawback shall be payable in all cases wherever the amount of drawback is more than `50/-, the minimum limit specified statutorily in Section 76 of the Customs Act.

Further, under sub-rule (2), of Rule 8 it is provided that no amount or rate of drawback shall be determined in respect of any goods or class of goods under Rule 6 or Rule 7, as the case may be, if the export value of each of such goods or class of goods in the bill of export or shipping bill is less than the value of the imported materials used in the manufacture of such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture of such goods or class of goods as Central Government may, by notification in the Official Gazette, specify in this behalf.

An 'Explanation' added to Sub-rule (2) provides that "Export Value" in relation to any export goods means the value thereof, determined in accordance with the provisions of Sub-section (1) of Section 14 of the Customs Act, 1962.

Customs, Central Excise Duties, Service Tax Drawback Rules, 1995, students may refer to the latest Customs Law Manual.

In *U.O.I. v. Rajindra Dyeing and Printing Mills, 2005 (180) ELT 433 (SC)* it was held that export is complete when goods cross territorial waters of India. If ship sinks within territorial waters, export is not complete and DDBK not payable.

**ILLUSTRATION:** ZXY Ltd. has exported following goods to JAPAN. Compute the duty drawback admissible under Section 75 of the Customs Act, 1962 in each of the following cases:

Products	FOB value of Exported Goods Amount In Rs.	Market Price of goods Amount in Rs.	Duty drawback rate
1	5,00,000	390,000	30% OF FOB
2	7,00,000	7,60,000	2.50% OF FOB
3	75,000	60,000	0.7% OF FOB
4	3,00,000	3,50,000	1.50% OF FOB

Note:

- (1) Imported value of Product 2 is Rs. 8,00,000
- (2) Product 4 is manufactured out of inputs for which no duty has been paid
- (3) Working notes should be stated clearly

Solution:

Products	FOB value of Exported Goods Amount In Rs	Market Price of goods Amount in Rs	Duty drawback rate	Amount of Duty Drawback	Eligible Amount of Duty Drawback
1	5,00,000	390,000	30% OF FOB	150,000	130,000
2	7,00,000	7,60,000	2.50% OF FOB	nil	nil
3	75,000	60,000	0.7% OF FOB	525	525
4	3,00,000	3,50,000	1.50% OF FOB	nil	nil

Notes:

Product 1: Maximum DBK is 1/3 of market price. (Rule 8A of DBK Rules)

Product 2: Value of export goods (FOB) is less than value of imported goods

Product 3: Minimum amount of drawback is 1% of FOB or above Rs. 500 per shipment. (Rule8)

Product 4: No duty paid, no DBK can be claimed

### III. BAGGAGE (SECTION 77 TO 81)

Chapter XI of the Customs Act, 1962 contains special provisions regarding baggage, goods imported or exported by post and stores. This Chapter is divided into three Parts,

- Part I deals with baggage (Sections 77 to 81),
- Part II deals with goods imported or exported by post (Sections 82, 83 and 84), and
- Part III deals with Stores (Sections 85 to 90).

These provisions are discussed herein below:

#### DECLARATION BY OWNER OF BAGGAGE [SECTION 77]

Section 77 provides that the owner of any baggage shall for the purpose of clearing it make a declaration of its contents to the proper officer.

The word 'baggage' is a comprehensive term which means luggage of a passenger accompanied or unaccompanied and comprises of the trunks or bags and the personal belongings of the passenger contained therein. It is in this comprehensive sense that the term "baggage" has been used in Sections 77 and 80 of the Customs Act. Thus, 'baggage' has been given a larger and ordinary meaning. (*Union of India v. Khalil Kecherim*, 1970 Cri. L.J. 417).

*Section 2(3) of the Customs Act defines baggage as including unaccompanied baggage but excluding motor vehicle.*

### **DETERMINATION OF RATE OF DUTY AND TARIFF VALUATION IN RESPECT OF BAGGAGE [SECTION 78]**

According to Section 78 of the Customs Act, 1962, the rate of duty and tariff-valuation, if any, applicable to baggage shall be the rate and valuation in force on the date on which a declaration is made in respect of such baggage under Section 77.

### **BONA-FIDE BAGGAGE EXEMPT FROM DUTY [SECTION 79]**

Section 79(1) provides that the proper officer may, subject to any rules made under Sub-section (2) pass free of duty —

- (a) Any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in use for such minimum period as may be specified in the rules.
- (b) Any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona-fide gift or souvenir.

Provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules [Section 79(1)].

The Central Government may make rules for the purpose of carrying out the provisions of this section and in particular, such rules may specify -

- (a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of Sub-section (1).
- (b) the maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty under clause (b) of Sub-section (1).
- (c) the conditions (to be fulfilled before or after clearance), subject to which any baggage may be passed free of duty. [Section 79(2)].

Section 79(3) lays down that different rules may be made under Sub-section (2) for different classes of persons.

In the Act a distinction has been made between 'baggage' and 'bona-fide baggage' which is exempt from customs duty and in respect of which the proper officer has been empowered to pass free of duty any article which is in the baggage of a passenger and which has souvenir. Therefore, any article in the baggage of a passenger, even though it may be 'goods' within the meaning of Section 2(22) of the Act, will be allowed to be imported free of duty, if it is passed under Section 79 of the Act.

The Government of India in the Ministry of Finance, Department of Revenue and Excise has in exercise of powers conferred by Sub-section (2) of Section 79 framed the Baggage Rules, 1998, the Tourist Baggage Rules, 1998 and the Transfer of Residence Rules, 1978. The text of these rules is given in Annexure 1 to this Study.

### **TEMPORARY DETENTION OF BAGGAGE [SECTION 80]**

Section 80 of the Customs Act, provides that, where the baggage of a passenger contains any article

which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India.

## **REGULATION IN RESPECT OF BAGGAGE [SECTION 81]**

Baggage is exempt from CVD. Section 81 lays down that the Board may make regulations:

- (a) providing for the manner of declaring the contents of any baggage;
- (b) providing for the custody, examination, assessment to duty and clearance of baggage;
- (c) providing for the transit or transshipment of baggage from one customs station to another or to a place outside India.

The Government of India, Department of Revenue and Excise has framed Baggage Rules, 2016;( vide notification No.30/2016 - Customs (N. T.) dated 1st March, 2016. ;

- (1) Baggage includes unaccompanied baggage but does not include motor vehicles [section 2(3)].

Baggage includes all dutiable articles imported by passenger or crew but does not include motor vehicles, alcoholic drinks (beyond limits) and goods imported through courier.

- (2) Duty free allowances generally allowed to the Indian resident or foreigner residing in India:

The new Baggage Rules [as amended by Baggage (Amendment) Rules, 2016 vide Notification No. 43/2016-Customs (N.T.) dated 31st March, 2016 ] have come into force on the 1st day of April, 2016.

**Definitions. –** (1) In these rules, unless the context otherwise requires, -

- (i) “Annexure” means Annexure appended to these rules;
- (ii) “family” includes all persons who are residing in the same house and form part of the same domestic establishment;
- (iii) “infant” means a child not more than two years of age;
- (iv) “resident” means a person holding a valid passport issued under the Passports Act, 1967 (15 of 1967) and normally residing in India;
- (v) “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;
- (vi) “personal effects” means things required for satisfying daily necessities but does not include jewellery.

(2) Words and expression used and not defined in these rules but defined in the Customs Act, 1962 (52 of 1962) shall have the same meaning respectively assigned to them in the said Act.

**Passenger arriving from countries other than Nepal, Bhutan or Myanmar.**-An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these

are carried on the person or in the accompanied baggage of the passenger:

Provided that a tourist of Indian origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure- I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.

Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger."

**Passenger arriving from Nepal, Bhutan or Myanmar.**-An Indian resident or a foreigner residing in India or a tourist, not being an infant arriving from Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure -I up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

Provided that where the passenger is an infant, only used personal effects shall be allowed duty free:

Provided further that where the passenger is arriving by land, only used personal effects shall be allowed duty free.

Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger."

**Jewellery.**- A passenger residing abroad for more than one year, on return to India, shall be allowed clearance free of duty in his bona fide baggage of jewellery upto a weight, of twenty grams with a value cap of fifty thousand rupees if brought by a gentleman passenger, or forty grams with a value cap of one lakh rupees if brought by a lady passenger.

**Transfer of residence.**- (1) A person, who is engaged in a profession abroad, or is transferring his residence to India, shall, on return, be allowed clearance free of duty in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bonafide baggage to the extent mentioned in column (2) of the Appendix below, subject to the conditions, if any, mentioned in the corresponding entry in column (3) of the said Appendix.

(2) The conditions mentioned in column (3) of the said Appendix may be relaxed to the extent mentioned in column (4) of the said Appendix.

**APPENDIX**

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
From three months upto six months	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of sixty thousand rupees.	Indian passenger	-



Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
From six months upto one year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value of one lakh rupees.	Indian passenger	-
Minimum stay of one year during the preceding two years.	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of two lakh rupees.	The Indian passenger should not have availed this concession in the preceding three years.	-
Minimum stay of two years or more.	Personal and house household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of five lakh rupees.	<p>(i) Minimum stay of two years abroad, immediately preceding the date of his arrival on transfer of residence;</p> <p>(ii) Total stay in India on short visit during the two preceding years should not exceed six months; and</p> <p>(iii) Passenger has not availed this concession in the preceding three years.</p>	<p>(a) For condition (i), shortfall of upto two months in stay abroad can be condoned by Deputy Commissioner of Customs or Assistant Commissioner of Customs if the early return is on account of :-            (i) terminal leave or vacation being availed of by the passenger; or            (ii) any other special circumstances for reasons to be recorded in writing.</p> <p>(b) For condition (ii), the Principal Commissioner of Customs or Commissioner of Customs may condone short visits in excess of six months in special circumstances for reasons to be recorded in writing.</p> <p>No relaxation."</p>

**Currency.** - The import and export of currency under these rules shall be governed in accordance with the provisions of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015, and the notifications issued thereunder.

**Provisions regarding unaccompanied baggage.** - (1) These rules shall apply to unaccompanied baggage except where they have been specifically excluded:

Provided that the said unaccompanied baggage had been in the possession, abroad, of the passenger and is dispatched within one month of his arrival in India or within such further period as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow:

Provided further that the said unaccompanied baggage may land in India upto two months before the arrival of the passenger or within such period, not exceeding one year, as the Deputy Commissioner of Customs or Assistant Commissioner of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of two months due to circumstances beyond his control, such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangements in the country or countries concerned or any other reasons, which necessitated a change in the travel schedule of the passenger.

**Application of these rules to members of the crew.** - (1) These rules shall also apply to the members of the crew engaged in a foreign going conveyance for importation of their baggage at the time of final pay off on termination of their engagement.

(2) Notwithstanding anything contained in sub-rule (1), a member of crew of a vessel or an aircraft other than those referred to in sub-rule(1), shall be allowed to bring articles like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of one thousand and five hundred rupees.

**ANNEXURE-I**  
**(See rule 3, 4 and 6)**

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/ Plasma) television.

**ANNEXURE II**  
**(See rule 6)**

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.
4. Domestic refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:-
  - (a) television receiver;
  - (b) sound recording or reproducing apparatus;
  - (c) video reproducing apparatus.
7. Cinematographic films of 35mm and above.
8. Gold or Silver, in any form, other than ornaments.

**ANNEXURE III**  
**(See rule 6)**

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Disc player.
3. Music System.
4. Air-Conditioner.
5. Microwave Oven.

6. Word Processing Machine.
7. Fax Machine.
8. Portable Photocopying Machine.
9. Washing Machine.
10. Electrical or Liquefied Petroleum Gas Cooking Range
11. Personal Computer (Desktop Computer)
12. Laptop Computer (Note book Computer)
13. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

**ILLUSTRATION:** Mr. Ravindra an Indian, went to China on 05-04-2017. The following details of baggage are submitted by him to the Customs authorities on return to India on 20-07-2017.

- (a) 2 Music systems each worth Rs 20,000.
- (b) Jewellery brought by Mr. Ravindra worth Rs 35,000. (15 Grams)
- (C) Anew laptop worth 50,000
- (d) liquor 2 litres worth Rs. 5,000

Write a brief note on his eligibility with regard to duty free baggage allowances as per the Baggage Rules, 2016.

**SOLUTION:** Mr. Ravindra is not eligible for exemption from jewellery as he did not stay abroad over one year. Music systems are dutiable but covered under General free allowance of Rs. 50,000.

Music systems:	40,000	
Jewellery	35,000	
Liquor	5,000	(liquor is dutiable baggage upto two litres)
Total	80,000	
Less GFA	50,000	
Dutiable baggage:	30,000	
Duty @ 36.05%=	Rs. 10,815	

Notes: Under Baggage Rules, 2016, GFA has been increased to 50,000 even for a visit to China. Lap top is non dutiable for persons of 18 years and above.

#### IV. GOODS IMPORTED OR EXPORTED BY POST [SECTION 83 TO 84]

As already stated, Sections 83 to 84 deal with goods imported or exported by post. These provisions are discussed herein below:

##### ***(b) Rate of Duty and Tariff Valuation in respect of Goods Imported or Exported by Post [Section 83]***

Section 83(1) lays down that the rate of duty and tariff value, if any, applicable to any goods imported by post shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon, provided that if such goods are imported by a vessel and the list of the goods containing the particulars was presented before the date of the arrival of the vessel, it shall be deemed to have been presented on the date of such arrival.

Section 83(2) lays down that 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.

***(c) Regulations Regarding Goods Imported or to be Exported by Post [Section 84]***

Regulations regarding goods imported or to be exported by post. - The Board may make regulations providing for:

- a. the form and manner in which an entry may be made in respect of goods imported or to be exported by post;
- b. the examination, assessment to duty, and clearance of goods imported or to be exported by post;
- c. the transit or transshipment of goods imported by post, from one customs station to another or to a place outside India.

## V. STORES [SECTION 85 TO 90]

Sections 85 to 90 deal with Stores i.e. goods which are supplied as Stores to the vessels or aircrafts. These provisions are as follows:

***(a) Stores may be allowed to be warehoused without assessment to duty [Section 85]***

Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircraft without payment of import duty under this Chapter (i.e. Chapter XI) the proper officer may permit the goods to be warehoused without the goods being assessed to duty (Section 85).

***(b) Transit and Transshipment of stores***

Any stores imported in a vessel or aircraft may without payment of duty, remain on board such vessel or aircraft while it is in India. [Section 86(1)].

Any stores imported in a vessel or aircraft may with the permission of proper officer be transferred to any vessel or aircraft as stores for consumption therein as provided in Section 87 or Section 90 [Section 86(2)].

In exercise of the powers conferred under Section 86, the Central Board of Revenue has made the Imported Stores (Retention on Board) Regulations, 1963 According to these regulations, any imported stores on board a vessel arriving from a foreign port or an aircraft arriving from a foreign airport may remain on board such vessel or aircraft without payment of import duty leviable thereon during the period such vessel or aircraft is not a foreign-going vessel or aircraft, subject to the condition that where such stores are consumable stores:

- (a) in the case of alcoholic liquor, cigarettes, cigars and pipe tobacco, such stores are kept under Customs seal:
- (b) in the case of consumable stores other than those specified in clause (a) such of other stores are likewise kept under Customs seal.

Provided that if the proper officer is satisfied that it is not practicable so to do, he may, after taking inventory of such stores, allow them to remain on board without being put under Customs seal. Where any stores have been kept under Customs Seal, such seal shall not be broken until the vessel or aircraft becomes a foreign-going vessel or aircraft.

***(c) Imported Stores may be Consumed on Board a Foreign going Vessel or Aircraft [Section 87]***

Any imported stores on board a vessel or aircraft (other than stores to which Section 90 applies) may without payment of duty be consumed thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft. (Section 87).

The Central Board of Excise and Customs has made the Bonded Aircraft Stores (Procedure) Regulations, 1965 which provide for the following:

• ***Warehousing of goods for use as stores***

- (1) Where any imported goods for use in a foreign-going aircraft are to be entered for warehousing under Section 85 of the Act, an application in Form I shall be made to the Assistant Commissioner of Customs.
- (2) Every such application shall be deemed to be the Bill of Entry in relation to the goods supplied specified in that application for the purpose of Section 46 of the Act.
- (3) On receipt of an application under Sub-regulation (1), the Assistant Commissioner of Customs may permit the goods specified in that application to be warehoused without the goods being assessed to duty.

• ***Clearance of Warehoused Goods for Supply as Stores in a Foreign going Aircraft***

- (1) Where goods permitted to be warehoused under sub-regulation (3) of regulation 3 (above) are to be cleared for use as stores in a foreign-going aircraft, an application shall be, made to the Assistant Commissioner of Customs in Form II.
- (2) Every such application shall be deemed to be the shipping bill in relation to the goods specified in that application for the purpose of Section 50 of the Act.
- (3) On receipt of an application under Sub-regulation (1) the Assistant Commissioner of Customs may permit the clearance of the warehoused goods specified in that application for being taken on board the foreign-going aircraft as stores in accordance with the provisions of Section 69 of the Act as applied to stores by Section 88 of the said Act.

***(d) Application of Section 69 of Chapter X to Stores [Section 88]***

Section 88 provides that provisions of Section 69 and Chapter X shall apply to stores (other than those to which Section 90 applies) as they apply to other goods, subject to the modifications that:

- (a) for the words, “exported to any place outside India” or the word “exported” wherever they occur, the words “taken on board any foreign-going vessel or aircraft as stores” shall be substituted.
- (b) in the case of drawback on fuel and lubricating oil taken on board any foreign-going aircraft as stores. Sub-section (1) of Section 74 shall have effect as if for the words “ninety-eight per cent” the words “the whole” were substituted.

***(e) Stores to be Free of Export Duty [Section 89]***

Goods produced or manufactured in India and required as stores on any foreign-going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine having regard to the size of the vessel or aircraft, the number of passengers and crew and the length of the voyage or journey on which the vessel or aircraft is about to depart (Section 89).

***(f) Concession in respect of imported stores for the Navy [Section 90]***

Section 90(1) provides that, imported stores specified in Sub-section (3) may without payment of duty be consumed on board a ship of the Indian Navy.

Section 90(2) lays down that the provisions of Section 69 and Chapter X shall apply to stores specified in Sub-section (3) as they apply to other goods, subject to modification that:

- (a) for the words “exported to any place outside India” or the word “exported” wherever they occur, the words “taken on board a ship of the Navy” shall be substituted.
- (b) for the words, “ninety-eight per cent” in Sub-section (1) of Section 74, the words “the whole” shall be substituted.

The stores referred to in Sub-sections (1) and (2) are the following:

- (a) Stores for the use of a ship of the Indian Navy;
- (b) Stores supplied free by the Government for the use of the crew of a ship of the Indian Navy in accordance with their conditions of service [Section 90(3)].

## VI. PROVISIONS RELATING TO COASTAL GOODS AND VESSELS CARRYING COASTAL GOODS [SECTION 91 TO 99]

Chapter XII deals with provisions relating to coastal goods and vessels carrying coastal goods. These provisions do not apply to baggage and stores (Section 91).

The important provisions relating to coastal goods and vessels carrying coastal goods are given below:

### ***(a) Entry of Coastal Goods [Section 92]***

The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a Bill of Coastal Goods in the prescribed form. [Section 92(1)]. The Bill of Coastal Goods (Form) Regulations, 1976 have prescribed the Form for purposes of this Section.

Every such consignor while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

### ***(b) Coastal Goods not to be Loaded until Bill relating thereto is passed [Section 93]***

Section 93 lays down that the master of a vessel shall not permit the loading of any Coastal goods on the vessel until a bill relating to such goods presented under Section 92 has been passed by the proper officer and has been delivered to the master by the consignor.

### ***(c) Clearance of Coastal Goods at Destination [Section 94]***

Section 94 lays down that the master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under Section 93 and shall immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of the port all bills relating to the goods which are to be unloaded at the port. Section 94(1) provides that where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him under Sub-section (1).

### ***(d) Master of a coastal vessel to carry an advice book [Section 95]***

Section 95 lays down that the master of every vessel carrying coastal goods shall be supplied with a book to be called the advice book. The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port. The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at

each port of call, deliver it to the proper officer at that port for his inspection.

***(e) Loading and Unloading of Coastal Goods at Customs Port or Coastal Port Only [Section 96]***

As per Section 96, no coastal goods shall be loaded on, or unloaded from any vessel at any port other than a customs port or a coastal port appointed under Section 7 for the loading of such goods.

***(f) No Coastal Vessel to Leave Without Written Order [Section 97]***

Section 97 provides that, the master of a vessel which has brought or loaded any coastal goods at a customs port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer.

No such order shall be given until:

- (a) the master of the vessel has answered the question put to him under Section 38;
- (b) all charges and penalties due in respect of that vessel or from the master thereof have been paid or the payment secured by such guarantee or deposit such amount as the proper officer may direct.
- (c) the master of the vessel has satisfied the proper officer that no penalty is leviable on him under Section 116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct.
- (d) the provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with. [Section 97(2)].

***(g) Application of certain provisions of this Act to coastal goods, etc. [Section 98]***

Section 98 provides that Sections 33, 34, 36 shall, so far as may be apply to coastal goods as they apply to imported goods. Sections 37 and 38 shall, so far as may be, apply to vessels carrying coastal goods as they apply to vessels carrying imported goods or export goods.

The Central Government may by notification in the Official Gazette, direct that all or any of the other provisions of Chapter V and provisions of Section 45 shall apply to coastal goods subject to such exceptions and modifications as may be specified in the notification.

***(h) Power to make rules in respect of coastal goods and coastal vessels [Section 99]***

Section 99 empowers the Central Government to make rules for:

- (a) Preventing the taking out of India of any coastal goods the export of which is dutiable or prohibited under this Act or any other law for the time being in force.
- (b) Preventing in the case of a vessel carrying coastal goods as well as imported or export goods, the substitution of imported or export goods by coastal goods.

## SELF TEST QUESTIONS

*(These are meant for recapitulation only. Answers to these questions need not to be submitted for evaluation).*

1. Explain the advantages of keeping goods in a warehouse?
2. What is warehousing period? Whether any interest is payable on warehoused goods? Discuss.
3. What do you understand by the term 'Duty Drawback'?

4. What is minimum and maximum drawback under Section 75 of the Customs Act?
5. What are the essential elements required for entitlement of 'drawback' on re-export of imported goods?
6. What are the rates of Drawback under Section 75 of the Act ?
7. Distinguish between duty drawback under sections 74 and 75?
8. What is temporary detention of Baggage under Section 80 of the Customs Act?
9. What do you mean by stores? When 100% of duty is refunded as a duty drawback on stores?
10. What are 'Public' (Bonded) Warehouses and 'Private' (Bonded) Warehouses?
11. What are the provisions regarding appointment of Public (Bonded) Warehouses and Licensing of Private (Bonded) Warehouses under the Customs Act, 1962?
12. What is the relevant date for rate of duty in case of goods imported or exported by post?

#### **SUGGESTED READINGS**

- (1) Customs Law Manual — *R. K. Jain*
- (2) Indirect Taxes—Law and Practice — *V. S. Datey*