

# Customs Manual 2018



**Central Board of Indirect Taxes & Customs**

**(Updated till 31.12.2018)**



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## Overview of Customs Functions

### 1. Introduction

- 1.1 Central Board of Indirect Taxes and Customs (CBIC or the Board), Department of Revenue, Ministry of Finance, Government of India deals with the formulation of policy concerning levy and collection of Customs, Goods and Service Tax (GST) and Central Excise duties, prevention of smuggling and administration of matters relating to Customs, Goods and Service Tax (GST), Central Excise, and Narcotics to the extent under CBIC's purview. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Customs Preventive Commissionerates, Central Goods and Service Tax (CGST) Commissionerates and the Central Revenues Control Laboratory.
- 1.2 The important Customs related functions include the following:
  - (a) Collection of Customs duties on imports and exports as per the Customs Act, 1962 and the Customs Tariff Act, 1975;
  - (b) Enforcement of various provisions of the Customs Act, 1962 governing imports and exports of cargo, baggage, postal articles and arrival and departure of vessels, aircrafts etc.;
  - (c) Discharge of agency functions and enforcing prohibitions and restrictions on imports and exports under various legal enactments;
  - (d) Prevention of smuggling including interdiction of narcotics drug trafficking; and
  - (e) International passenger clearance.
- 1.3 Customs functions cover substantial areas of activities involving international passengers, general public, importers, exporters, traders, custodians, manufacturers, carriers, port and airport authorities, postal authorities and various other government and semi-government agencies, banks etc.
- 1.4 Customs is continuously rationalizing and modernizing its procedures through adoption of EDI and global best practices. Also, as a member of the World Customs Organization, Indian Customs has adopted various International Customs Conventions and procedures including the Revised Kyoto Convention, Harmonized Classification System, GATT based valuation etc.

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

- 2.1 Entry No. 83 of List 1 to Schedule VII of the Constitution empowers the Union Government to legislate and collect duties on imports and exports. Accordingly, the Customs Act, 1962, effective from 1-2-1963 provides vide its Section 12 for the levy of duties on goods imported into or exported from India. The items and the rates of duties leviable thereon are specified in two Schedules to the Customs Tariff Act, 1975. The First Schedule specifies the various

import items in systematic and well considered categories, in accordance with an international scheme of classification of internationally traded goods known as “Harmonized System of Commodity Classification” and specifies the rates of import duties thereon, as prescribed by the legislature. The duties on imported items are usually levied either on specific or ad-valorem basis, but in few cases specific-cum-ad-valorem duties are also levied. The Second Schedule incorporates items that are subject to exports duties and the rates of duties thereof.

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

### **3 . Ease of Doing Business**

- 3.1 Board has initiated numerous measures to facilitate the Customs clearance process and reduce transaction costs. The objective is to make the Customs clearance process in India a world class experience by reducing dwell time of cargo, which in turn improves the competitiveness of businesses. Some of these measures are presently work in progress and their present importance is in the fact that these highlight the approach of the Board towards ensuring the ease of doing business.
- 3.2 Single Window: An Indian Customs Single Window Project has begun with the establishment of an appropriate administrative structure in the form of an inter-ministerial Steering Group that is chaired by Member (Customs), CBIC, a Project Management Group in CBIC and Project Management Units in the Ministries. With the introduction of Single Window, an electronic online message exchange between the Food Safety and Standards Authority of India (FSSAI) and the Department of Plant Protection, Quarantine and Storage (PQIS) with the Customs has started, which enables reducing the dwell time considerably. Under this online message exchange system for import goods there is seamless online exchange in real time of the Customs Bill of Entry (Import declaration) with these agencies and Release Order (RO) from both the agencies will be received by the Customs in electronic message format. The salient features of this online message exchange system are as under:
- (i) Indian Customs EDI (ICES) would transmit “BE message” to the FSSAI and PQIS on completion of assessment of the relevant Bills of Entry (Bs/E) by the Customs ICES application after entry-inward of the consignment. The BE message would be provided to FSSAI/PQIS for all Bs/E falling under the identified Custom Tariff Heads (CTHs), as per list made available by the respective agencies.
  - (ii) The Customs officers would be able to access the details of the Bs/E referred by the ICES to FSSAI/PQIS.
  - (iii) The importers would track the status of the Bs/E on ICEGATE (<https://www.icegate.gov.in>).

- (iv) The receipt of the Bs/E message shall be acknowledged by the FSSAI/PQIS through a receipt message to the ICES.
- (v) On processing of the Bs/E message by the FSSAI/PQIS, these agencies would electronically transmit an RO, concerning each item of the Bs/E. From the Customs side, Out of Charge (OOC) will not be allowed in the system till the RO is received from the agency concerned for all the items. There are 6 types of ROs which may be provided by the FSSAI/PQIS to the ICES, as follows:
  - (a) Release – goods can be released by the Customs.
  - (b) Destruction – goods to be destructed by the Customs.
  - (c) Deportation – goods to be exported back to the Country of Origin.
  - (d) No Objection Certificate (NOC)– goods can be released by the Customs.
  - (e) NCC (Non-compliance Certificate) – non-rectifiable defects observed in the goods.
  - (f) Product Out of scope – goods are out of scope for FSSAI/PQIS.
- (vi) In case, the Release Order falls under types (b), (c) and (e) above, the OOC would not be allowed in the ICES. Details of such consignments will be entered by the Customs Assessing Officer in the closure of B/E menu after all processes are complete.
- (vii) On receipt of RO online, the Customs ICES shall integrate the data in the ICES database, which shall be available to the Customs officers concerned.
- (viii) The other formalities under the Customs Act, 1962 such as duty payment, goods registration, examination would continue during the time interval between transmission of Bs/E message from ICES to the receipt of RO message from FSSAI/PQIS. During this period the samples of the goods under consideration may also be taken for testing purposes.
- (ix) In terms of Board’s Circular No.3/2011-Cus., dated 6-1-2011 import consignments that have been tested on previous five consecutive occasions and found in order may not be referred to FSSAI. Under single window project, the electronic monitoring and waiver of shipments which are eligible for waiver from FSSAI testing are being effected without human interference.
- (x) Since, the electronically received RO in regard to Bs/E referred to FSSAI/PQIS shall be accepted by the Customs for clearance of the imported foods items/plant materials, the Customs shall not insist on a physical copy of the RO from these agencies.

[Circular 09/2015- Customs dated 31.03.2015]

3.2.2 SWIFT in Exports have been extended on export side for online referral to WCCB to all Customs EDI locations for smooth online clearance.

[Refer Circular No.9/ 2015–Cus., dated 13-4-2015, Circular no. 31/2017-Customs dated 25.07.2018]

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

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

[Refer Circular No 13/2015–Cus., dated 13-4-2015; Circular No. 44/2016-Cus dated 22.09.2016. For more details of CCFC, please refer Chapter 32.]

3.4 IGM / SMTP: Taking into account the requirement of Customs as well the fact that an electronic version of IGM is already available, Board has decided that the number of hard copies of IGM to be submitted by shipping lines / steamer agents at a Customs House shall be restricted to 2 (two) only. Further, the steamer agent has the option to (a) give a continuity bond and (b) merge the guarantee with the continuity bond, which would reduce the number of required documents to 1 (one) only and the periodicity (of submission) would also get reduced drastically. Also, it is decided that only 1 (one) copy of SMTP would be sufficient for the Customs at ICDs. Finally, no separate permission is required from jurisdictional Customs in case of change of mode of transshipment under the Goods Imported (Conditions of Transshipment) Regulations, 1995. However, the carrier is required to intimate the change to the jurisdictional Commissioner of Customs who will ensure the bond covers both modes of transport.

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

3.5 Reduction of documents: The Board has decided that in case an importer/exporter submits a commercial invoice cum packing list that contain all necessary data fields / information otherwise contained separately in these document, a separate packing list would not be

insisted upon by Customs. However, the option to do so is with the importer/exporter. As a result, the documents ordinarily required by the Customs stand reduced to only 3 viz. Bill of Entry or Shipping Bill, commercial invoice cum packing list and Bill of Lading or Airway Bill.

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

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

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

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

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

- 3.7 Digital Signature: The Board has decided that with effect from 1-4-2015 importers, exporters, customs brokers, shipping lines, airlines or their agents shall have the facility to use Digital Signature Certificate for filing Customs process documents viz. Bills of Entry, Shipping Bills, IGM (General Declaration and Cargo Declaration), EGM (General Declaration), CGM through Remote EDI System (RES). Besides ACP, all importers, exporters using services of Customs Brokers for formalities under Customs Act, 1962, shipping lines and air lines are required to file customs documents under digital signature certificates mandatorily with effect from 01.01.2016.

[Refer Circular No.10/2015–Cus., dated 31-3-2015 and Circular 26/2015- Customs dated 23.10.2015]

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

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

- 3.9 E-Sanchit: The CBIC has introduced ‘eSanchit’ for paperless transaction. The importers are now required to upload the required documents online through [www.icegate.gov.in](http://www.icegate.gov.in) while filling the Bill of Entry instead of submitting the physical papers. Reply to queries raised by Customs Officers can be submitted online by uploading the documents. Physical presence of paper or person for assessment related works have been done away with. CBIC is embarking on a project to bring all Participating Government Agencies(PGAs) under eSanchit wherein PGAs who issues Licenses, Permits, Certificates and Other Authorizations (LPCOs) would upload the documents themselves doing away with uploading of such document by the beneficiary (importer/ exporter) themselves. Importers/ Exporters, Customs Brokers and other beneficiaries are required to register on ICEGATE for this purpose.

[Refer Circular 35/2018- Customs dated 01.10.2018]

3.10 Electronic Closure of Manifest: With the submission of supporting documents online, the manifest department of Customs Houses will not receive hard copies of dockets. Officers shall rely on the electronic records maintained on ICES.

3.11 Request for re-testing of sample made within a specified time by the importer or agent may be granted by the Additional Commissioner or Joint Commissioner of Customs as a trade facilitation measure. For uniformity in procedure at the various field formations, Board has issued detailed guidelines for retesting of samples.

[Refer Circular No. 29/2017- Customs dated 17.07.2017]

3.12 For list of identified laboratories where field formations may directly forward samples of certain goods where CRCL labs are not equipped refer Circular no. 43/2017- Customs dated 16.11.2017, 11/2018- Customs dated 17.05.2018 and No. 28/2018- Customs dated 30.08.2018

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

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

4.2 In terms of the Customs Act, 1962, the Board is given the powers to appoint Customs ports, airports and Inland Container Depots (ICD) where alone the imported goods can be unloaded or export goods loaded. Similar powers have been given to the Board to notify places as Land Customs Stations (LCS) for clearance of goods imported or exported by land or by inland water. Thus, various airports, ports, ICDs and LCSs have been notified across the country and also routes have been specified for carrying out trade with neighboring countries like Nepal.

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

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

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

5.1 In regard to all imported goods unloaded in a Customs area, the Commissioner of Customs is



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

- 5.2 Various port trusts and other authorities in the public and private sectors handle the import and export cargo when kept in their custody at various ports, international airports/ ICDs. The cargo handling and custody at the international airports is generally entrusted to International Airport Authority of India (IAAI), but there is an increasing trend of the IAAI leasing such facility to private sector or even of direct entry of private sector in this area. Also, new ICDs are being opened at various places in the interior of the country as a facilitation measure with the result that Customs clearances of both imported and export cargo from these places has expanded substantially in recent years.
- 5.3 Maximum import and export cargo is handled at different sea ports and there is a trend towards containerized cargo movement; increasing part of import cargo landed at some ports like Nhava Sheva is also transshipped to interior ICDs for final clearance by importers at their door steps. Security arrangements ensure there is no pilferage/ theft of the cargo and arrangements of loading and unloading of cargo at different berths in various docks, their movement to different places including container yards/ storage godowns etc., are arranged by the port authorities.
- 5.4 Customs authorities are given appropriate office place and requisite facilities in the dock area as well as in international cargo complexes/ICDs etc., to discharge their functions in relation to imports and exports such as supervision of loading/unloading of goods from vessels/crafts etc., supervision of stuffing or de-stuffing of containers, inspection and examination of goods which are imported/presented for exportation before Customs clearance formalities etc. For this purpose and in order to provide comprehensive guidelines for custodians / Cargo Service Providers (CCSP) for handling, receipt, storage and transportation of cargo in a Customs area, the Board has framed the Handling of Cargo in Customs Areas Regulations, 2009.

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

- 6.1 To regulate and have effective control on imports and exports the Customs Act, 1962 enjoins certain liabilities on the carriers. Thus, they have to bring in the cargo imported into the country for unloading only at notified ports/airports/Land Customs Stations; furnish detailed

information to Customs about goods brought in for unloading at that particular port/ international airport as also those which would be carried further to other ports/airports. Declaration of such cargo has to be made in an Import General Manifest(IGM) prior to arrival of the vessel/aircraft at the Customs station. In the case of imports through Land Customs Stations the person in charge of the vehicle has to give similar import report within 12 hours of its arrival. Since the cargo clearance formalities are linked generally with the availability of information about cargo being brought by a vessel for unloading at any port, provisions is also made for prior filing of an IGM if all details of relevant cargo for any port are available even before the vessel arrives. The final IGM can be filed after arrival of the vessel.

- 6.2 Unless, the IGM is furnished in the prescribed form, no unloading of cargo can be undertaken from any vessels/aircrafts/vehicles in normal circumstances. After the IGM is duly delivered the unloading takes place under the supervision of the Preventive Officers of Customs. The law prohibits unloading of any goods at a Customs station, which are not mentioned in the IGM/import report. Similarly, there are restrictions on loading for export such that no vessel/ aircraft can begin loading goods for export unless intimation is given to Customs and its permission for loading obtained - what is also called "Entry Outward" of the vessel. Loading of cargo on vessels, aircrafts etc. is checked and supervised by Preventive Customs Officers who ensure that cargo loaded has discharged the prescribed Customs formalities such as payment of duties or cess, where leviable, any other formalities enjoined by the law, and authorization for exports is duly given by the proper officer as a part of Customs clearance formalities.
- 6.3 The person in charge of the vessel/aircraft is required to furnish details of all the goods loaded on a vessel/aircraft in a prescribed form, which is termed 'Export General Manifest' (EGM). The person in charge of a vehicle must furnish a similar report called Export Report". The EGM/ Export Report is to be furnished before the vessel/aircraft/ vehicle departs and is essentially taken as the proof of shipment/export.

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

- 7.1 No vessel/aircraft can leave a Customs station unless a written order for port clearance is given by the proper officer of Customs. This permission for departure is given subject to the satisfaction of the proper officer that all the prescribed formalities have been fulfilled, duties/ penalties etc., have been paid or secured.
- 7.2 The Preventive Officers of Customs are authorized to board the vessels/aircrafts to take suitable declarations, crew property list etc., and to check whether there are any goods which are not declared for unloading at a particular Customs station in the IGM with intention to smuggle them without following the prescribed formalities and payment of duties. A thorough examination and checking of the vessels/aircrafts - known as rummaging - is also undertaken on selective basis taking due note of the past history of the vessels, the port/airport from which these are arriving, the intelligence report etc.
- 7.3 The Preventive Officers of Customs also keep a very careful vigil for checking any illegal activities and develop intelligence to guard against any possible attempts of unauthorized removals from the docks, unloading of un-manifested cargo etc.

## 8. Customs clearance of cargo:

- 8.1 Before any imported goods can be cleared for home consumption in the country or for warehousing for subsequent Customs clearances as and when needed etc., the importers have to comply with prescribed Customs clearance formalities. Essentially, these involve presentation of certain documents along with a prescribed application normally termed “Bill of Entry” , which gives essential particulars in relation to imported goods, country of origin, particulars of vessel/aircraft etc. seeking clearance of goods for home consumption/warehousing etc. The importer either himself handles the import clearance documents or appoints Customs Brokers, who are trained and experienced in Customs clearance work and are licensed by Customs for such work in terms of the Customs Broker Licensing Regulations, 2018.
- 8.2 The import clearance documentation, presentation, and processing is handled in the Custom Houses by Appraising staff trained in assessment matters. After a tally has been made with related IGM to ensure the goods sought for clearance have arrived and declared in the particular IGM of the vessel/aircraft mentioned in the Bill of Entry (or even where the prior manifest is filed) the scrutiny of documents - manually or through EDI system is taken up. The main function of the Appraising staff in the Custom Houses is the careful scrutiny of the Bill of Entry and related particulars / information with a view to checking the import permissibility in terms of the Foreign Trade Policy and any other laws regulating import and to determine value, classification and duties leviable on the goods on import - (Basic, Additional, Anti-dumping, Safeguards etc.). Permissibility of various benefits of duty free clearances under different schemes or applicability of any exemption notification benefits is also checked and decided.
- 8.3 Normally, the import declarations made are scrutinized without prior examination of the goods with reference to documents made available and other information about the values/ classification available with Customs and duties chargeable on the goods are assessed and paid up by the importer or his authorized representative. It is only at the time of clearance of the goods from the custody of the port trusts/international airport authority or other custodians that these are examined on percentage basis by separate staff posted in the premises where the goods are stored pending Customs clearance. These officers undertake checking of nature of goods, valuation and other part of declaration, or draw samples as may be ordered by the Appraising officers of the Custom House/Air Cargo Complexes/ICDs. If no discrepancies in relation to the nature of goods, quantity, value etc., are observed at the time of examination of the cargo, ‘Out of Customs Charge’ orders are issued, and thereafter goods can be cleared after discharging any other fees/charges etc., of the custodians.
- 8.4 At times, for determining the duty liability and permissibility of import it may become necessary to examine the goods. Such goods are examined after filing of Bill of Entry and other documents and based upon the report of the examining staff, duties etc. are assessed and if there is no prohibition etc., the goods are taken clearance from the custodian without the need for further examination.
- 8.5 Where disputes arise in the matter of classification/valuation or any violations of any provisions of law are observed, where the goods cannot be allowed clearance finally without further investigations and following adjudication proceedings, the law provide for provisional clearances subject to suitable bond/security. Only where the goods are of prohibited nature

or in certain other exceptional cases, where provisional release is not considered advisable, the final decision may be taken after results of enquiries etc. are known and adjudication proceedings completed, where necessary.

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

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

- 9.1 Unscrupulous elements do attempt to evade the duties leviable and bypass various prohibitions/ restrictions in relation to imports by attempting to bring the goods into the country from places other than the notified ports/airports/Land Customs Stations without reporting or presenting the goods to customs. Similar attempts are made to unauthorizedly take goods out of the country. This is essentially termed as “smuggling” and Customs officers have very important role in ensuring that they detect any such attempts of smuggling into or out of the country and take appropriate action both against the goods as well as against the persons involved.
- 9.2 The Customs Act, 1962 provides for strict penalties in relation to the goods/persons involved in smuggling and other violations of the legal provisions. These include seizure/ confiscation (including absolute confiscation) of the offending goods and fines and penalties on the persons involved in the offence as well as those abetting the offence. The law also empowers Customs officers to carry out searches, arrests and prosecution of persons involved in smuggling and serious commercial frauds and evasion of duties or misuse of export incentives by fraudulent practices (mis-declaration of nature, and value of the goods or suppression of quantities etc.).
- 9.3 Whereas the Customs Act, 1962 provides for deterrent penal provisions for violations, due process of law has to be followed before action is taken against offending goods or persons/ conveyance etc. involved. The Customs officers act as quasi-judicial authorities and the liabilities for duty evaded or sought to be evaded, fines, penalties etc., are adjudged by giving the persons concerned due notice (or Show Cause Notice) of contemplated action against including the gist of the charges and their basis and providing opportunity for representation as well as personal hearing.
- 9.4 In grave offence cases, the Customs Act, 1962 provides for prosecution with imprisonment upto maximum of 7 years. This involves criminal proceedings in a Court of law, after sanction for prosecution is given by the competent Customs officer.
- 9.5 Guidelines for launching of prosecution in relation to offences punishable under Customs Act, 1962 has been prescribed in Circular No. 27/2015- Customs dated 23.10.2018 amended by

Circular No. 46/2017- Customs dated 04.10.2018 and Circular No. 07/2017- Customs dated 06.03.2017.

## **10. Appellate remedies:**

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

## **11. Passenger processing:**

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

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

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

12.2 Imports/exports through couriers are governed by the Courier Imports and Exports (Clearance) Regulations, 1998 and the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. These Regulations facilitate such goods in terms of quick Customs clearance, after discharge of duties, if any, for delivery to the consignees. At few places dedicated Courier terminals manned by Customs officers (akin to Air Cargo Complexes) are established to handle courier cargo.

## **13. Citizen Charter:**

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

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## Arrival of Conveyances and Related Procedures

### 1. Introduction:

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

### 2. Conveyance to call only at notified Customs port/airport:

2.1 Section 7 of the Customs Act, 1962 envisages that unloading of imported goods and loading 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 or Air Freight Stations. At each such customs station, the Principal Commissioner of Customs or the Commissioner of Customs is empowered to approve proper places for the unloading and loading of goods, and specify the limits of such Customs area. It is further provided vide Section 29 ibid that the person in charge of a vessel or an aircraft shall not call or land at any place other than a customs port or a airport without approval of the Board, except, subject to certain conditions when compelled by accident, stress of weather or other unavoidable cause to call or land.

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

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

### 4. Delivery of Arrival Manifest or Import Manifest or Import Report:

4.1 In accordance with section 30 of the Customs Act, 1962 the person in charge (Master /Agent) of a vessel or an aircraft or a vehicle carrying imported goods or export goods has to deliver an import manifest (an import report in case of a vehicle), in electronic form, prior to arrival in the case of a vessel and an aircraft or within 12 hours of arrival in case of a vehicle in the prescribed form. The person-in-charge or any other person who causes delay and the proper officer is satisfied that there was no sufficient cause for such delay, shall be liable to a penalty not exceeding Rs.50,000/-. A person delivering the import manifest or import report has to declare the truthfulness of its contents.

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

5.1 In terms of the Import Manifest (Vessels) Regulations, 1971 and Import Manifest (Aircrafts)

Regulations, 1976, any person who delivers the import manifest for a vessel or an aircraft to the proper officer under Section 30 of the Customs Act, 1962 is required to be registered with Customs.

- 5.2 In order to ensure that the Import Manifest for vessel or aircraft is filed prior to arrival of vessel or aircraft, the following procedure has been formulated:
- i. The person responsible for filing of the Import Manifest, both at Master as well as House-level details, shall register with the Customs in advance. The application for registration shall be made to the jurisdictional Commissioner in Form V or Form VI, as the case may be, of the said Regulations. The application should be accompanied by an undertaking to file the manifest details as required.
  - ii. Airlines/Steamer Agents/Shipping Lines/Consol Agents (including 'any other person' notified as per Section 30 of the Customs Act, 1962) are assigned business category codes as AL, SA, SL and CN, respectively. For the purpose of registration of Airlines/Steamer Agents/Shipping Lines, the existing Airline Code or Steamer Agents Code or Shipping Lines Code already allotted to them shall be used for filing manifest and same shall be their registration number. As regards consol agents, their registration number shall be of 12 digits (10-digit Income Tax PAN, followed by business category code, i.e. CN). A sample of registration number of a consol agent will look like AAACK8719PCN.
  - iii. Airlines/Steamer Agents/Shipping Lines/Consol Agents are required to submit the information as per the prescribed Annexure "A", which is a system compliant form that contains information prescribed as per the Form V and Form VI of the Import Manifest (Aircraft) Regulations, 1976 and Import Manifest (Vessels) Regulations, 1971 respectively, to the respective Commissioners, where they are operating, for capturing the details in the EDI System.
  - iv. In the case of chartered flights where the consol agents themselves are entrusted with the responsibility of filing both Master as well as House-level details, the consol agents will have to be registered with the Customs as airline agent and will be allotted an ad-hoc/temporary code (accepted by system), as per existing format for each such flight.
  - v. Access to the system for filing IGM details will be allowed after the receipt of the applications, in the Annexure "A" along with a self-declaration of the correctness of the particulars, by the jurisdictional Commissioner. The verification of details will be done subsequently and for this the applicant will mention in Annexure "A" the name of the Commissionerate i.e. "Port/Airport/ICD of verification" where their details would be verified. In the case of any discrepancies observed at the time of verification the registered party would be debarred from filing IGM. The concerned Commissionerate after the verification will send the registration number along with the name of the registered entity to webmaster of [www.cbic.gov.in](http://www.cbic.gov.in) who in turn will post the details on the website for the information of all stakeholders. Verification of the declaration will be done only by the "Port/Airport/ICD of verification" mentioned in Annexure "A" and no other port etc. will be required to do further verification. In case of doubt, they may refer the same to the Commissioner of "Port/Airport/ICD of verification".

- vi. The responsibility for filing the import manifest with Master level details shall rest with the person in-charge of the vessel or aircraft or their agent while the House level details shall be filed by “any other person” specified under Section 30 of the Customs Act, 1962. In case the “any other person” is not registered under the said Regulations, then, the responsibility to file House level details shall also rest with the person in-charge of the vessel or aircraft or their agent. The shipping lines or airlines should, therefore, ensure that the person authorized to issue delivery orders in respect of goods carried by them, are duly registered with Customs. Failure to file the IGM in advance will invite action as per Section 30(1) of the Customs Act, 1962.
  - vii. At Customs stations having operational Indian Customs EDI (ICES) system, the IGM shall be filed through electronic mode. At other i.e. non-EDI Customs stations, the hard copies of IGM shall be required to be filed manually, in advance as per the Section 30 of Customs Act, 1962. Where ICES is operational but some Bills of Entry are filed manually, hard copy of IGM will have to be filed but late filing of hard copy will not be considered as non-filing or late filing of IGM, provided that the soft copy is filed in time.
  - viii. In the case of vessels, where the voyage from the last port of call exceeds 4 days, the IGM shall be filed at least 48 hours before the entry inward of such vessels. In the case of short haul voyages, i.e., where the voyage from the last port of call is less than 4 days, the IGM is required to be filed 10 hours before entry inward of the vessel.
  - ix. In the case of long haul flights i.e. flight time of at least 3 hours from the last airport, the IGM shall be filed within 2 hours before the arrival of the aircraft and for short haul flights, before the arrival of the aircraft. Further, flights in domestic sector, which carry transshipped imported goods from one Indian airport to another airport in India, would be treated as short haul flight for the purpose of filing IGM under Section 30 of the Customs Act, 1962.
  - x. The vessel’s stores list and list of private property in possession of the Master, officer and crew etc. should contain the quantity of store on board at the time of departure from the last port of call and estimated quantity likely to be consumed till the grant of entry inward.
  - xi. At the time of registration, the requirement stipulated in the para 5 of Form V and Form VI of the Import Manifest (Aircraft) Regulations, 1976 and Import Manifest (Vessel) Regulations, 1971 respectively.
- 5.3 In supersession of Import Manifest (Vessels) Regulations, 1971, Export Manifest (Vessels) Regulations, 1976 and Transportation of Goods (Through Foreign Territory) Regulations, 1965, new regulations, Sea Cargo Manifest and Transshipment Regulations, 2018 have been notified and these regulations shall come into force with effect from the 1<sup>st</sup> March, 2019 and the accordingly the procedure prescribed therein shall be followed.

[Refer Circulars No.110/2003-Cus, dated 22-12-2003, No. 15/2004-Cus, dated 16-2-2004 and No. 30/2004-Cus, dated 16-4-2004 Not. No.108/2016-Customs (N.T.) dated 11.08.2016 & Not. No. 38/2018-Customs(N.T.) dated 11.05.2018]



## 6. Amendments of IGM:

6.1 Section 30(3) of the Customs Act, 1962 read with Levy of Fee (Customs Documents) Regulations, 1970) allows the proper officer to permit an IGM to be amended or supplemented, on payment of prescribed fees, if he is satisfied that there is no fraudulent intention. Further, Board has placed all amendments in two broad categories - Major and Minor:

a) Major Amendments:

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

(b) Minor Amendments:

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

6.2 The need for adjudication will arise only in cases where there are major amendments involving fraudulent intention or substantial revenue implication. Further it is possible that in certain special situations such as mother/daughter vessel operation for lighter age on account of shortage of draft, congestion of port, natural calamity, the final quantity of goods covered by the IGM would be known only after completion of such lighter age operation, requiring

amendment in quantity originally declared at the time of filing IGM. These exceptional situations need to be taken care so that penal action is not initiated mechanically.

- 6.3 Amendment of IGM after the arrival of vessel or aircraft would not be treated as late filing. However, the veracity of the amendment would be examined by the Assistant/ Deputy Commissioner of Customs for the purpose of invoking penal provisions under Section 116 of the Customs Act, 1962.
- 6.4 Procedure for disposal of amendment applications within specified time limits have been prescribed by the Board. All minor amendments are expected to be approved on the same day while all major amendments are expected to be generally approved within 24 hours of submission of complete application.

[Refer Circulars No. 13/2005-Cus, dated 11-3-2005 and No. 44/2005-Cus., dated 24-11-2005, Circular No. 14/2017- Customs dated 11.04.2018; Please refer para 23 of Chapter 3 regarding approval related to amendmemts.]

## **7. Penal liability:**

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

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

- 8.1 Exclusion from IGMs of items originally manifested is permitted only on the basis of an application from the person filing the IGM and on production of the documentary evidence of short shipment of goods. Further, prescribed fee will have to be paid for the amendment, if permitted.
- 8.2 Exclusions or amendments of items in the IGM involving reduction in number of packages or weight thereof is allowed on an application from the person filing the IGM and on the basis of connected documentary evidence. Such excisions or amendments will only be allowed if investigation proves that the excess quantity was originally shown in error. In the absence of such proof, the application will be dealt with by the Manifest Clearance Section at the time of closure of the manifest file.
- 8.3 Applications for the exclusion or amendments of items for which Bills of Entry have been noted will be dealt with by the Manifest Clearance Section if made within two months of the arrival of the vessel.
- 8.4 In respect of a vessel, an IGM shall, in addition, consist of an application for grant of Entry Inwards.

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

- 9.1 The various IGM forms are designed according to IMO-FAL Convention. The forms have to be filed in prescribed sizes alongwith the following declarations:
  - (i) Deck Cargo declaration/certificate.

- ii) Last port clearance copy.
- (iii) Amendment application (when relevant).
- (iv) Income Tax Certificate in case of export cargo.
- (v) Nil export cargo certificate.
- (vi) Port Trust “No Demand” certificate.
- (vii) Immigration certificate.
- (viii) Application for sign on/sign off of crew (when relevant).
- (ix) Application for crew baggage checking when they sign on (when relevant).

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

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

- 10.1 In case of sea cargo the shipping lines are required to submit the electronic version of the IGM through the EDI Service Centre or through internet at ICEGATE, containing all the details and particulars. It is to be ensured that all the particulars and details of the IGM are correct and that details of House Bill of Lading are also incorporated in case of consol cargo.
- 10.2 In case of air cargo the airlines are required to file IGM in prescribed format through electronic mode. The IGMs should contain all details and particulars, including the details of the Master Airway Bills and the House Airway Bills in the case of consol cargo. The airlines are also required to furnish the additional information, namely, the ULD numbers for use by the custodians.

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

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

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

- 12.1 On arrival of the vessel, the shipping line needs to approach the Preventive Officer for granting Entry Inwards. Before making the application, the shipping line has to make payment of the Light House dues, as may be applicable.
- 12.2 Section 31 of the Customs Act, 1962 requires that the Master of the vessel shall not permit unloading of any imported goods until an order is given by the proper officer granting Entry Inwards to such vessel. Normally, Entry Inwards is granted only after the IGM is delivered. The date of Entry Inwards is crucial for determining the rate of duty in case of filing of prior Bill of Entry, as provided in Section 15 of the Customs Act, 1962. However, unloading of items like

accompanied baggage, mail bags, animals, perishables and hazardous goods are exempt from this stipulation.

12.3 No imported goods are to be unloaded unless specified in the IGM/Import Report for being unloaded at that Customs station and such unloading shall only be at places provided therefor. Further, imported goods shall not be unloaded except under the supervision of the proper officer. Similarly, for unloading imported goods on a Sunday or on any holiday, prior notice shall be given and prescribed fees paid.

12.4 Board has clarified that unloading of liquid bulk cargo from the ship to the bonded storage tanks through pipe lines is allowed under the provisions of Section 33 of Customs Act, 1962 subject to the conditions that the premises where the goods are received through pipe lines is a bonded warehouse under Section 58 or 59 of Customs Act, 1962; permission of the proper officer is obtained for unloading prior to discharge of such cargo; and other requirements under the Customs Act, 1962 are fulfilled. If the bonded tanks are located outside the jurisdiction of the Commissioner in charge of port permission may be granted subject to concurrence of Commissioner in whose jurisdiction the bonded tanks are located, and other safeguards as necessary.

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

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

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

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

13.2 Under Section 116 of the Customs Act, 1962, penalty may be imposed on the person in-charge of vessel if there is failure to account for all goods loaded in the vessel for importation into

India or transhipped under the provisions of Customs Act and these are not unloaded at the place of destination in India or if the quantity unloaded is short of the quantity to be unloaded at particular destination. Penalty may be waived if failure to unload or deficiency in unloading is accounted for to the satisfaction of competent officer. Thus, if there is any shortage, which is not satisfactorily accounted for, the person in-charge of the vessel will be liable to penalty, which may be twice the duty payable on the import goods not accounted for.

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

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## Procedure for Clearance of Imported and Export Goods

### 1. Introduction:

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

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

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

2.2 For goods which are offloaded at a port/airport for clearance, the importers have the option to clear the goods for home consumption after payment of duties leviable or to clear them for warehousing without immediate discharge of the duties leviable in terms of the warehousing provisions of the Customs Act, 1962. For the purpose of clearance of imported goods, every

importer is required to file, in terms of the Section 46 *ibid*, a Bill of Entry for home consumption or warehousing, as the case may be, in the form prescribed under the relevant regulations. In cases where it is not feasible to make entry electronically on the customs automated system, Principal Commissioner of Customs or Commissioner of Customs, allow an entry in any other manner.

- 2.3** Foreign Trade Policy provides that Importer-Export Code (IEC) number, a 10-character alphanumeric allotted to a person by the Directorate General of Foreign Trade (DGFT) is mandatory for undertaking any export/import activities. However, exempt categories and corresponding permanent IEC numbers are provided in Para 2.07 of Handbook of Procedures issued by DGFT.
- 2.4** For clearance of goods through the EDI system, the importer is required to file a cargo declaration having prescribed particulars required for processing of the Bill of Entry for Customs clearance.
- 2.5** Under the EDI system, the importer by himself or through his authorized customs broker may file the declarations in electronic format through the service centre or ICEGATE. Facility of uploading scanned documents along with the declaration for filing a bill of Entry, is also available through 'e-Sanchit' programme.
- 2.6** eSANCHIT has been extended to all ICES locations on PAN India basis for all types of exports under ICES.

[Refer Circular No. 40/2017- Customs dated 13.10.2017, Circular No. 29/2018- Customs dated 30.08.2018, Circular 43/2018- Customs dated 08.11. 2018]

### **3. Self-assessment of imported and export goods:**

- 3.1** Section 17 of the Customs Act, 1962 provides that an importer entering any imported goods under section 46 or an exporter entering any export goods under section 50 shall self-assess the duty. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, etc. in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill.
- 3.2** The declaration filed by the importer or exporter may be verified by the proper officer when so interdicted by the Risk Management Systems (RMS). Such verification will be done selectively on the basis of the RMS, which not only provides assured facilitation to those importers having a good track record of compliance but ensures that on the basis of certain rules, intervention, etc., high risk consignments are interdicted for detailed verification before clearance. On the basis of interdictions under RMS, Bills of Entry may either be taken up for verification of assessment or for examination of the imported goods or both. If the self-assessment is found incorrect, the duty may be reassessed. In cases where there is no interdiction by RMS or non existence of any other factor, there will be no cause for the declaration filed by the importer to be taken up for verification, and such Bills of Entry will straightaway be facilitated for clearance without assessment and examination, on payment of applicable duty, if any.
- 3.3** The verification of a self-assessed Bill of Entry or Shipping Bill, which are interdicted by the RMS, shall be with regard to correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of imported

or export goods. For the purpose of verification, the proper officer may order for examination or testing of the imported or export goods. The proper officer may also require production of any relevant document or ask the importer or exporter to furnish any other relevant information. Thereafter, if the self-assessment is not found to have been done correctly, the proper officer may re-assess the duty. This is without prejudice to any other action that may be warranted under the Customs Act, 1962. On re-assessment, contrary to the self-assessment done by the importer or exporter, the proper officer shall pass a speaking order, if so desired by the importer or exporter, within 15 days from the date of re-assessment of bill of entry or shipping bill. When verification of self-assessment in terms of Section 17 requires testing / further documents / information, and the goods cannot be re-assessed quickly however, the importer or the exporter requires the goods to be cleared on urgent basis. In such cases, provisional assessment may be done in terms of Section 18 of the Customs Act, 1962, once the importer or exporter, as the case may be, furnishes such security as deemed fit by the proper officer of Customs for payment of deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

- 3.4** In cases, where the importer or exporter is not able to determine the duty liability or make self-assessment for any reason, except in cases where examination is requested by the importer under proviso to Section 46(1), a request shall be made to the proper officer for provisional assessment of duty under Section 18 (1)(a) of the Customs Act, 1962. In such a situation an option is available to the proper officer to resort to provisional assessment of duty by asking the importer / exporter to furnish security as deemed fit for payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed, as the case may be, and the duty provisionally assessed.
- 3.5** For the purpose of proper assessment of duty and to ensure correctness of trade statistics, importers/exporters should mandatorily declare the Standard Unit Quantity Code (UQC), as indicated in the Customs Tariff Act, 1975.

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

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

- 4.1** The imported goods, which are interdicted for examination by the RMS, are required to be examined for verification of correctness of description/declaration given in the Bill of Entry and related documents. The imported goods may also be examined prior to assessment in cases where the importer does not have complete information with him at the time of import and requests for examination of the goods before assessing the duty liability or, where the proper officer, on reasonable belief feels that the goods should be examined before assessment, giving reasons for the same. Wherever required, samples are drawn in the examination area for chemical analysis, verification or any other purposes.
- 4.2** After assessment by the appraising group or for cases where examination is carried out before assessment, bill of entry needs to be presented for registration for examination of imported goods in the import shed. The proper officer of customs examines the goods along with requisite documents. The shipments, found in order are given clearance order by the proper officer of customs in the Import Shed.



**5. Execution of bonds:**

5.1 For availing partial or complete exemption from duties under different schemes and notifications, execution of end use/ provisional duty bonds with Bank Guarantee or other surety may be required, in the prescribed forms. The amount of bond and bank guarantee is determined in terms of the instructions issued by the Board or conditions of the relevant notification or provisions of the Customs Act, 1962 or rules/regulations made there under.

**6. Payment of duty:**

6.1 The duty can be paid in the designated banks through TR-6 Challan. Facility of e- payment of duty through multiple banks is also available since 2007 at all major Customs locations.

6.2 With effect from 17-9-2012, e-payment of Customs duty is mandatory for importers registered under Accredited Clients Programme/Authorised Economic Operator scheme and importers paying duty of Rs. 1 lakh or more per Bill of Entry.

6.3 Customs Notification No. 134/2016-Customs (N.T) & 135/2016-Customs (N.T.) dated 2<sup>nd</sup> November, 2016 allowed Importers certified under Authorized Economic Operator Programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of duty of Customs. The Deferred Payment of Import Duty Rules were notified vide Notification no. 28/2017-Customs(N.T.) dated 31<sup>st</sup> March, 2018

[Refer Circulars No.33/2011-Cus., dated 29-7-2011 and No. 24/2012-Cus., dated 5-9-2012, Circular 52/2016- Customs dated 15.11.2017]

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

7.1 Bonafide mistakes noticed after submission of documents, may be rectified by way of amendment to the Bill of Entry with the approval of Deputy/Assistant Commissioner. Levy of Fees (Customs Documents) Amendment Regulations, 2017, issued vide Notification No. 36/2017-Customs (N.T.) dated 11.04.2017, provides a number of amendments which can be allowed on payment of amount mentioned therein.

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

8.1 For faster clearance of the goods, Section 46 of the Customs Act, 1962 allows filing of Bill of Entry prior to arrival of goods. This Bill of Entry is valid if vessel/aircraft carrying the goods arrives within 30 days from the date of presentation of Bill of Entry.

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

8.3 The Bill of Entry is required to be filed before the end of 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.

- 8.4 Wherein the Bill of Entry is not filed within the time specified in Para 8.3 above and the proper officer of customs is satisfied that there is no sufficient cause for such delay, the importer shall be liable to pay charges for the late presentation of Bill of Entry at the rate of rupees five thousand per day for initial three days of the default and at the rate of rupees ten thousand per day for each day of default thereafter.

[Refer: Notification 26/2017-Cutoms(N.T.) dated 31.03.2017]

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

- 9.1 A separate form of Bill of Entry is used for clearance of goods for warehousing. All documents, as are required to be filed with a Bill of Entry for home consumption are also required with the Bill of Entry for Warehousing which is assessed in the same manner and duty payable is determined. However, since duty is not required to be paid at the time of warehousing, the purpose of assessing the duty at this stage is only to secure the duty by way of execution of Bond. The duty is paid at the time of ex-bond clearance of goods for which an Ex-Bond Bill of Entry is filed. In terms of Section 15 of the Customs Act, 1962, the rate of duty applicable to imported goods cleared from a warehouse is the rate in- force on the date of filing of Ex-Bond Bill of Entry.

[ Circular no. 22/2016-Customs dated 31.05.2016]

**10. Risk Management System in Import:**

- 10.1 “Risk Management System” (RMS) is one of the most significant steps in the ongoing Business Process Re-engineering of the Customs Department. RMS is based on the realization that ever-increasing volumes and complexity of international trade and the deteriorating global security scenario present formidable challenges to Customs and the traditional approach of scrutinizing every document and examining every consignment will simply not work. Also, there is a need to reduce the dwell time of cargo at ports/airports and also the transaction costs in order to enhance the competitiveness of Indian businesses, by expediting release of cargo where compliance level is high. Thus, an effective RMS strikes an optimal balance between facilitation and enforcement and promotes a culture of compliance. RMS is also expected to improve the management of the Department’s resources by enhancing efficiency and effectiveness in meeting stakeholder expectations and bringing the Customs processes at par with best international practices.

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

- 10.2** RMS has dispensed with the practice of routine assessment, concurrent audit and the present focus is on quality assessment, examination and Post Clearance Audit of selected Bills of Entry/ Themes/Auditees.
- 10.3** Bills of Entry and IGMs filed electronically in ICES through the Service Centre or the ICEGATE are transmitted by ICES to the RMS. The RMS processes the data through a series of steps and produces an electronic output for the ICES. This output determines whether a particular Bill of Entry will be taken-up for appraisalment or examination or both or be cleared after payment of duty without assessment and examination. Also, where necessary, RMS provides instructions for Appraising Officer, Examining Officer or the Out-of-Charge Officer. It needs to be noted that

the appraising and examination instructions communicated by the RMS have to be necessarily followed by the proper officer. It is, however, possible that in a few cases the proper officer might decide to apply a particular treatment to the Bill of Entry which is at variance with the instruction received from the RMS. This may happen due to risks which are not factored in the RMS. Such a course of action shall however be taken only with the prior approval of the jurisdictional Commissioner of Customs or an officer not below the rank of Additional / Joint Commissioner of Customs, authorized by him for this purpose, after recording the reasons for the same. A brief remark on the reasons and the particulars of Commissioner's authorization should be made by the officer examining the goods in the departmental comments section of the electronic Bill of Entry in the EDI system.

**10.4** Post-Clearance Audit (PCA) of the bill of entry selected under the Risk Management System is done to confirm the correctness of the declaration/assessment of the bill of entry. The objective of PCA is to monitor, maintain and enhance compliance levels, while reducing the dwell time of cargo. The RMS selects the Bills of Entry for audit, after clearance of the goods, and these selected Bills of Entry are directed to the audit officers for scrutiny by the EDI system. In case any possible short levies are noticed, the officers issue a Consultative Letter mentioning the grounds of possible short levy and invites views of the importers for justification of declaration made by them. This is intended to give the importers an opportunity to voluntarily comply and pay the duty difference if they agree with the department's point of view. In case there is no agreement, the formal processes of demand notices, adjudication etc. would follow. The auditors are specifically instructed to scrutinize declarations with reference to data quality and advise the importers suitably where the quality of their declarations is found deficient.

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

11.1 On similar lines of the RMS in imports, a Risk Management System (RMS) in Export has been introduced with effect from 15-7-2013. The RMS in exports allows low risk consignments to be cleared based on self-assessment of the declarations by exporters. This enables the department to enhance the level of facilitation and speed up the process of export clearance. By expediting the clearance of compliant export cargo, the RMS in exports will contribute to reduction in dwell time, thereby achieving the desired objective of reducing the transaction cost in order to make the business internationally competitive. At the same time, the RMS in exports will ensure proper and expeditious implementation of existing control over export goods under the applicable Allied Acts and Rules. It will also provide appropriate control measures for proper and speedy disbursement of drawback and other export incentives.

11.2 With the introduction of the RMS in exports, the practice of routine verification of self-assessment and examination of Shipping Bills has been discontinued and the focus is on quality assessment, examination and Post Clearance Audit (PCA) of Shipping Bills selected by the RMS.

11.3 Shipping Bills filed electronically in ICES through the Service Centre or the ICEGATE will be processed by RMS through a series of steps/corridors and an electronic output will be produced for the ICES. This output from RMS will determine the flow of the Shipping Bill in ICES i.e. whether the Shipping Bill will be taken up for verification of self-assessment or examination or both or to be given "Let Export Order" directly after payment of Export duty (if any) without any verification of self-assessment or examination. The RMS will also provide instructions for

Appraising Officer/Superintendent, Examining Officer/Inspector or the Let Export Order (LEO) Officer, wherever necessary. It is possible that in a few cases, the concerned officer may decide to apply a particular treatment to the Shipping Bill which is at variance with the instructions received for the RMS owing to risks which are not factored in the RMS. Such a course of action shall be taken only with the prior approval of the jurisdictional Commissioner of Customs or an officer not below the rank of Additional/Joint Commissioner of Customs, authorized by him for this purpose, after recording the reason for the same. A brief remark on the reasons and particulars of Commissioner's authorization should be made by the officer examining the goods in the departmental comments of the electronic shipping bill in the EDI system.

- 11.4 With the implementation of export RMS, a Post Clearance Audit (PCA) function has been introduced in respect of exports after the LEO is given for export consignment. The objective of PCA is to monitor, maintain and enhance compliance levels, while reducing the dwell time of cargo. The RMS would select the Shipping Bills for audit, after issue of LEO, and these selected Shipping Bills will be directed to the audit officers for scrutiny.
- 11.5 The selection of Shipping Bills for verification of Self-assessment and/or examination will be based on the output given by RMS to ICES. However, owing to some technical reasons if the RMS fails to provide output to ICES or RMS output is not received at ICES end, in time, the existing norms of assessment and examination will be applicable.

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

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

- 12.1 A Risk Management Division (RMD) in Mumbai under Directorate General of Analytics and Risk Management has the following charter of functions:
- (i) The RMD has the overall responsibility for designing, implementing and managing RMS using various risk parameters and risk management tools to address risks facing Customs, i.e., the potential for non-compliance with Customs and allied laws and security regulations, including risks associated with the potential failure to facilitate international trade.
  - (ii) The RMD on the basis of perceived risks, suggests assessment and examination in respect of consignments or facilitate the bill of entry or shipping bill, as the case may be.
  - (iii) The RMD is responsible for collecting and collating information and developing an intelligence database to effectively implement the Risk Management System and also carry out effective risk assessment, risk evaluation and risk mitigation techniques. It will update and maintain risk parameters in relation to the trade, commodities and all stakeholders associated or involved with the supply chain logistics.
  - (iv) The RMD will closely interact with all Custom Houses, Directorate of Revenue Intelligence (DRI) and Directorate of Valuation (DOV) to enable it to effectively address national risks. The RMD shall also work in close coordination with Directorate General of Audit (DG Audit). The local risks will be largely addressed by RMD in co-operation with the Custom Houses. Further, the RMD will also closely interact with DOV on all matters pertaining to

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

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

### **13. National Risk Management Committee:**

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

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

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

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

14.1 A Local Risk Management (LRM) Committee headed by Commissioner of Customs has been constituted in each Custom House / Air Cargo Complex / ICD, where RMS is operationalised. The LRM Committee comprises the Additional / Joint Commissioner in charge of Special Investigation and Intelligence Branch (SIIB), who is designated as the Local Risk Manager and includes the Additional / Joint Commissioner in charge of Audit and a nominee, not below the rank of a Deputy Director from the regional / zonal unit of the DRI, and a nominee, not below the rank of Deputy Director from the Directorate of Valuation, if any. The LRM Committee meets once every month and some of its functions are as follows:

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

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

## **15. Authorized Economic Operator scheme:**

- 15.1 The earlier Accredited Clients Programme (ACP)/Authorized Economic Operator (AEO) scheme granted assured facilitation to importers who have demonstrated capacity and willingness to comply with the laws administered by the Customs. The earlier existing ACP and AEO programmes were merged into the new AEO programme vide Circular No. 33/2016-Customs dated 22-7-2016. For the economic operators other than importers and the exporters, the new programme offers only one tier of certification (i.e. AEO-LO) whereas for the importers and the exporters, there are three tiers of certification (i.e. AEO-T1, AEO-T2 and AEO-T3).
- 15.2 Considering the likely volume of cargo imported by the “Authorized Economic Operator”, Custom Houses are advised to create separately earmarked facility/counters for providing Customs clearance service to them. Commissioners of Customs are also required to work with the Custodians for earmarking separate storage space, handling facility and expeditious clearance procedures for these clients.
- 15.3 The RMD maintains the list of AEOs centrally in the RMS and also monitors their levels of compliance, in co-ordination with the DRI/Commissioners of Customs. Where compliance levels fall, the importer is at first informed for self-improvement and in case of persistent non-compliance, the importer may be deregistered under the AEO.
- 15.4 The new combined three tier AEO programme enhance the scope of these programmes so as to provide further benefits to the entities who have demonstrated strong internal control system and willingness to comply with the laws administered by the Central Board of Indirect Taxes and Customs. Benefits besides lowered risk ratings on RMS includes simplified Customs procedure, declarations, etc. besides faster Customs clearance of consignments of/for AEO status holders The features and details of the revised programme are available in CBIC Circular No. 33/2016-Customs dated 22.07.2016.

[Refer, and Circular No. 33/2016-Customs dated 22.07.2016, & Circular No. 03/2018-Cus., dated 17.01.2018&26/2018-Cus., dated 10.08.2018. For more details please refer Chapter 34.]

**16. Export procedure - Shipping Bill:**

- 16.1 For clearance of export goods, the exporter has to obtain an Importer- Export Code (IEC) number from the DGFT prior to filing of Shipping Bill. Under the EDI System, IEC number is received online by the Customs System from the DGFT. The exporter is also required to register authorized foreign exchange dealer code (through which export proceeds are expected to be realized) and open a current account in the designated bank for credit of Drawback incentive, if any.
- 16.2 All the exporters intending to export under the export promotion scheme need to get their licenses etc. registered at the Customs Station. For such registration, original documents are required.

**17. Waiver of GR form:**

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

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

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

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

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

- 19.1 After the receipt of the goods in the customs area, the exporter/ customs broker may contact the Customs Officer designated for the purpose, and present the check list with the endorsement of custodian and other declarations along with all original documents such as, Invoice and Packing list, ARE-1, etc. The Customs Officer may verify the packages of the goods actually received and enter the same into the system and thereafter mark the Electronic Shipping Bill, handing over all original documents to the Dock Appraiser who assigns a Customs Officer to carry out examination of goods, if required under the Risk management System and indicate the officers' name and the packages to be examined, if any, on the check list and return it to the exporter/ Customs Broker.

**20. Examination norms:**

- 20.1 The Board has been fixing norms for examination of export consignments and such norms depend upon the quantum of incentive, value of export goods, country of destination etc. The instructions under the Risk Management System and examination order by the Appraising Groups follow the norms framed in this regard.
- 20.2 After presentation of goods for registration to Customs and determination of action as to

whether or not to examine the goods, no amendments request in the normal course should be entertained. However, in case an exporter still wishes to change any of the critical parameters resulting in change of value, Drawback, port etc. such consignment should be subjected to examination to rule out malafide in the request of the exporter.

- 20.3 Notwithstanding the examination norms, any export consignment can be examined by the Customs (even up to 100%), if there is any specific intelligence in respect of the such consignment. Further, to test the compliance by trade, once in three months a higher percentage of consignments (say for example, all the first 50 consignments or a batch of consecutive 100 consignments presented for examination in a particular day) would be taken up for examination. Out of the consignments selected for examination a minimum of two packages with a maximum of 5% of packages (subject to a maximum of 20 packages) would be taken up for checking/examination.
- 20.4 In case export goods are stuffed and sealed in the presence of Customs/Central Excise officers at the factory of manufacture/ICD/CFS/warehouse and any other place where the Commissioner has, by a special order, permitted, it may be ensured that the containers should be bottle sealed or lead sealed. Also, such consignments shall be accompanied by an examination report in the prescribed form. In case of export through bonded trucks, the truck should be similarly bottle sealed or lead sealed. In case of export by ordinary truck/other means, all the packages are required to be lead sealed.

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

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

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

## **21. Drawal of samples:**

- 21.1 The representative sample from the consignment is drawn in accordance with the orders of the proper officer.
- 21.2 If considered necessary, the Assistant / Deputy Commissioner, may order sample to be drawn for purposes other than testing such as for visual inspection and verification of description, market value inquiry, etc.

## **22. Stuffing / loading of goods in containers:**

- 22.1 In case of container cargo the stuffing of container at Dock is done under Preventive supervision. Further, loading of both containerized and bulk cargo is to be done under Preventive supervision. The Customs Preventive Officer supervising the loading of container and general cargo into the vessel may give "Shipped on Board" endorsement on the Exporters copy of the Shipping Bill.
- 22.2 Palletization of cargo is done after grant of Let Export Order (LEO). Thus, there is no need for



a separate permission for palletization from Customs. However, the permission for loading in the aircraft/vessel is to be obtained.

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

### **23. Amendments:**

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

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

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

[Refer para 6 in Chapter 2 on types of Amendments]

### **24. Drawback claim:**

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

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

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

[ For more details on duty drawback Scheme, please refer Chapter 22]

**25. Export General Manifest:**

- 25.1 All the shipping lines/agents need to furnish the Export General Manifests, Shipping Bill-wise, to the Customs electronically before departure of the conveyance.
- 25.2 Apart from lodging the EGM electronically the shipping lines need to continue to file manual EGMs along with the exporter copy of the Shipping Bills in the Export Department where they would be entered in a register. The shipping lines may obtain acknowledgement indicating the date and time at which the EGMs were received by the Export Department.

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

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

- 26.1 Bill of Entry (Electronic Declaration) Regulations, 2011 and Shipping Bill (Electronic Declaration) Regulations, 2011 as amended have been framed in exercise of powers conferred under section 157 read with section 46 and section 50 of the Customs Act, 1962 to mandate self-assessment by the importer or exporter, as the case may be.

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

**27. 24x7 Customs clearance facility:**

- 27.1 With effect from 31.12.2014 the facility of 24x7 Customs clearance had been made available for specified imports viz. goods covered by “facilitated” Bills of Entry and specified exports viz. factory stuffed containers and goods exported under free Shipping Bills, at the 18 sea ports and the facility of 24x7 Customs clearance for specified imports viz. goods covered by facilitated Bills of Entry and all exports viz. goods covered by all Shipping Bills had also been made available at the 17 air cargo complexes (ACCs). Lately, it has been decided to extend the facility of 24x7 Customs clearance for specified imports viz. goods covered by facilitated Bills of Entry and specified exports viz. reefer containers with perishable/temperature sensitive export goods sealed in the presence of Customs officials as per Circular no. 13/2018-Cus. Dated 30.05.2018 and goods exported under free Shipping Bills. Presently 24x7 Customs clearance facility is available at 20 sea ports and 17 Air Cargo Complexes.

[Refer Circulars No. 19/2014- Cus. dated 31-12-2014, 01/2016 dated 06.01.2016 and 31/2018 dated 05.09.2018]

**28. Sealing of Export Goods: electronic sealing facility**

- 28.1 Board has laid down a simplified procedure for stuffing and sealing of export goods by introducing self-sealing subject to certain conditions.
- 28.2 Exporter shall inform the details of the premises whether a factory or a warehouse or any other

place where container stuffing is to be carried out to the jurisdictional officer atleast 15 days before first planned movement of a consignment from his factory premises for consideration of grant of permission by the jurisdictional Commissioner.

- 28.3 Customs formation granting the self sealing permission shall circulate the permission along with GSTIN of the exporter to all Customs Houses/Station concerned. Principal Commissioners/ Commissioners would also communicate to RMD the IEC of the exporters newly granted permission for self-sealing; exporters already operating under self-sealing procedure, exporters permitted factory stuffing facility, AEOs.
- 28.4 Exporter shall seal container with tamper-proof electronic seal of standard specification before leaving the premises. The physical serial number of the electronic seal shall be declared by the exporter at the time of filing integrated online Shipping Bill. Prior to sealing the container, exporter shall feed data such as name of exporter, IEC, GSTIN, description of goods, tax invoice number, name of authorized signatory (for affixing the e-seal) and Shipping number in the electronic seal.
- 28.5 Exporter shall procure the RFID seals from vendors conforming to the standards specified by the Board.
- 28.6 All consignments in self-seal containers shall be subject to risk based criteria and intelligence, if any, for inspection/ examination at the port of export. At the port/ ICD, Customs officers would verify the integrity of the seals to check for any sign of tampering enroute.

[ Refer Circular no. 26/2017- Customs dated 01.07.2017, Circular no. 36/2017- Customs dated 28.08.2017, Circular no. 37/2017- Customs dated 20.09.2017, Circular no. 41/2017- Customs dated 30.10.2017, Circular no. 44/2017- Customs dated 18.11.2017, Circular no. 51/2017- Customs dated 21.12.2017]

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## Classification of Goods

### 1. Introduction:

- 1.1 Import and export of goods are required to be assessed to duty which may include an assessment of nil duty. For this purpose, it is necessary to determine the classification of the goods, which basically means the categorization of the goods in a specific heading of the Schedules to the Customs Tariff Act, 1975.
- 1.2 Classification of imported/export goods is governed by the Customs Tariff Act, 1975 which contains two Schedules. The First Schedule specifies the nomenclature that is based on the Harmonized Commodity Description and Coding System generally referred to as “Harmonized System” or simply “HS”, developed by the World Customs Organization (WCO) which is applied uniformly by more than 137 countries the world over. The Second Schedule contains description of goods chargeable to export duty. As the nomenclature also specifies the Customs duty rates (Tariff), it is called the “Indian Customs Tariff” or “Tariff Schedule”.

### 2. Methodology of classification:

- 2.1 In the Tariff Schedule, commodities/products are arranged in a fixed pattern with the duty rates specified against each of them. The pattern of arrangement of goods in the Tariff is in increasing degree of manufacture of commodities/products in the sequence of natural products, raw materials; semi finished goods and fully finished goods/article / machinery, etc. The Indian Customs Tariff has 21 Sections and 98 Chapters. Section is a group consisting of a number of Chapters which codify a particular class of goods. The Section notes explain the scope of chapters / headings, etc. The Chapters consist of chapter notes, brief description of commodities arranged at four digit, six digit and eight digit levels. Every four-digit code is called a “heading” and every six digit code is called a “subheading” and 8-digit code is called a “Tariff Item”.
- 2.2 The Harmonized System (HS) provides commodity/product codes and description up to 4-digit (Heading) and 6-digit (Sub-heading) levels only and member countries of WCO are allowed to extend the codes up to any level subject to the condition that nothing changes at the 4-digit or 6-digit levels. India has developed 8-digit level classification to indicate specific statistical codes for indigenous products and also to monitor the trade volumes.
- 2.3 The HS is amended periodically in a review cycle of 4/6 years, taking note of the trade flow, technological progress, etc. After the HS came into effect on 1.1.1988, it was amended in 1992, 1996, 2002, 2007, 2012 and 2017. Member countries including India are under obligation in terms of International Convention on Harmonized System to amend their Tariff Schedules in alignment with HS. Therefore, the classification of some commodities/products may change over a period of time. Those involved in the negotiation of international commercial arrangements, multilateral tariff agreements etc. should refer to correlation tables showing the transposition of sub-headings from older version to the newer and the newer to the older version of the HS.

- 2.4 For purposes of uniform interpretation of the HS, the WCO has published detailed Explanatory Notes to various headings/subheadings. This forms the basis for interpreting the HS. The WCO, in its various committees discusses the classification of individual products and gives classification opinion on them. Such information, though not binding in nature provides a useful guideline for classifying goods.
- 2.5 The process of arriving at a particular heading/subheading code, either at four digit, six digit or eight digit level for a commodity in the Tariff Schedule is called “classification”. The titles of Sections, Chapters and Sub-chapters are provided for ease of reference only. For legal purposes the texts of the Section Notes, Chapter Notes, Subheading Notes, Supplementary Notes, Headings, Subheadings, and the General Rules for Interpretation of Import Tariff (GIR) should be relied upon to determine the classification of an item. Classification helps in determining the rate of duty leviable. The Indian Customs Tariff provides specific headings for goods imported under Project Import Scheme, goods imported by post and goods imported as baggage in Chapter 98 under which they will be classified straightaway even though they may be covered elsewhere.
- 2.6 The GIR is a set of 6 rules for classification of goods in the Tariff Schedule. These rules have to be applied sequentially. Rule 1 gives precedence to the Section notes/Chapter notes while classifying a product. Rule 2(a) applies to goods imported in incomplete / finished condition and assembled / unassembled condition. Rule 2(b) is applicable to ‘mixtures’ and ‘composite goods’. Goods which cannot be classified by application of Rule 2(b), will be classified by application of Rule 3 i.e. by application of “most specific description” as per Rule 3(a) or by ascertaining the “essential character” of the article as per Rule 3(b) or by taking into consideration the heading that occurs last in the numerical order as per Rule 3(c). Rule 4 states that goods which cannot be classified by application of the preceding rules may be classified under the heading appropriate to the goods to which they are most akin. Rule 5 applies to packing materials / articles in which the goods are carried. Rule 6 is applied to arrive at the appropriate subheading within a heading and for that purpose the provisions of Rules 1 to 5 apply mutatis mutandis on the understanding that subheadings at the same levels are comparable. For the purpose of Rule 6, the relative Section and Chapter Notes also apply unless the context otherwise requires.
- 2.7 While classifying goods, the foremost consideration is the “statutory definition” and any guideline provided by HS Explanatory Notes. In their absence, the cardinal principle would be the way goods are known in “common parlance”. Many times statutes contain definitions and meanings of only a restricted number of words, expressions or phrases. Therefore, while interpreting the common words used in the statute, giving more than due importance to common dictionary meanings may be misleading, as therein all shades of meaning of a particular word are given. Similarly, meanings assigned in technical dictionaries will have limited application.
- 2.8 For purposes of classification the “trade meaning” is given due importance unless the Tariff itself requires the terms to be interpreted in a strict technical sense in which case technical dictionaries should be used. If any scientific test is to be performed, the same must be carried out as prescribed to arrive at the classification of goods. The common dictionary meaning of technical words should not be accepted in such cases since normally, the common parlance

understanding is indicative of the functional character of the goods. Further, in matters of classification the quality of goods, whether prime or defective is not material. There is no prohibition on revising the classification once decided. However, revision should be only done for good and sufficient reasons. In case of difficulty in understanding the scope of the headings / subheadings, reference should invariably be made to supplementary texts like the Explanatory Notes to the HS.

- 2.9 The rate of duty specified in the Tariff Schedule is called “Tariff rate of duty”. Goods which are not levied concessional rate of duty or exempted from duty by an exemption notification issued under the Customs Act, 1962 are levied the Tariff rate of duty. The Export Tariff Schedule mentions only the commodities on which export tariff is levied. Likewise, the Central Excise Tariff prescribed Excise duties against each subheading, which is relevant for the purpose of computing the Additional Duty of Customs. Goods which are prescribed ‘nil’ rates of duty in the Tariff are those goods which are levied to ‘free’ rates of duty. The rates of Integrated GST, which is to be levied on the imported goods, are also aligned at 4 digit level of Tariff Schedule.
- 2.10 Board issues Tariff Advices in the form of circulars/instructions to ensure uniformity in classification of goods at an All India level. Such issues also get discussed and resolved in the periodic Conferences of Chief Commissioners/Commissioners of Customs on Tariffs and Allied Matters. An Advance Ruling Authority gives binding tariff advice to applicants.
- 2.11 Permissibility of import and export of goods is governed by the DGFT’s ITC(HS) Classification of Import and Export Goods. This nomenclature arranges goods as in the HS to regulate the Foreign Trade Policy and collating the statistical analysis of the imports and exports of the country.

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

### 1. Introduction:

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

### 2. Project imports:

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

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

2.3 The different projects to which heading 9801 applies are; irrigation project, power project, mining project, oil/mineral exploration projects, etc. Such an assessment is also available for an industrial plants used in the process of manufacture of a commodity. The Central Government can also notify projects in public interest keeping in view the economic development of the country to which this facility will apply. Thus, a number of notifications have been issued notifying a large number of projects for assessment under Tariff Heading 9801. However, this benefit is not available to hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops. This benefit is also not available to a single or composite machine.

2.4 Goods that can be imported under Project Import Scheme are machinery, prime movers, instruments, apparatus, appliances, control gear, transmission equipment, auxiliary equipment,

equipment required for research and development purposes, equipment for testing and quality control, components, raw materials for the manufacture of these items, etc. In addition, spare parts, consumables up to 10% of the assessable value of goods can also be imported under Project Import.

- 2.5 The purposes for which such goods can be imported under the Project Import Scheme are for “initial setting up” or for “substantial expansion” of a unit of the project. The “unit” is any self-contained portion of the project having an independent function in the project. A project would fall under the category of “substantial expansion” if the installed capacity of the unit is increased by not less than 25%, as per the Project Import Regulations, 1986.
- 2.6 The scope of the items eligible for import under the Project Import Regulations 1986, shall cover construction equipment as auxiliary equipment; if essentially required for initial setting up or substantial expansion of registered projects. The construction equipment may be permitted to be transferred to other registered project under CTH 9801, after completion of its intended use, on recommendations of sponsoring authority. The “Plant Site Verification Certificate” required to be submitted for finalization of project as per Circular No. 14/2006-Cus., dated 17-4-2006 shall incorporate the details of construction equipment imported and used for the project, to ensure proper utilization of goods imported.

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

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

- 3.1 In terms of Regulation 4 of the Project Import Regulations, 1986 (PIR), the basic requirement for availing the benefit of assessment under Tariff Heading No. 98.01 is that the importer should have entered into one or more contracts with the suppliers of the goods for setting up a project. Such contracts should be registered, prior to clearance, in the Custom House through which the goods are expected to be imported. The importer shall apply for such registration in writing to the proper officer of Customs.
- 3.2 Regulation 5 provides in the manner of registering contracts, which is as follows:
  - (i) Before any order is made by the proper officer of Customs permitting the clearance of the goods for home consumption;
  - (ii) In the case of goods cleared for home consumption without payment of duty subject to re-export in respect of fairs, exhibitions, demonstrations, seminars, congresses and conferences, duly sponsored or approved by the Government of India or Trade fair Authority of India, as the case may be, before the date of payment of duty.
- 3.3 To expedite registration, the importers are advised to submit the following documents alongwith the application for registration:
  - (i) Original deed of contract together with true copy thereof.
  - (ii) Industrial License and letter of intent, SSI Certificate granted by the appropriate authority with a copy thereof.
  - (iii) Original Import licence, if any, with a list of items showing the dimensions, specifications,



quantity, quality, value of each item duly attested by the Licensing Authority and a copy thereof.

- (iv) Recommendatory letter for duty concession from the concerned Sponsoring Authority, showing the description, quantity, specification, quality, dimension of each item and indicating whether the recommendatory letter is for initial set-up for substantial expansion, giving the installed capacity and proposed addition thereto.
  - (v) Continuity Bond with cash security deposit equivalent to 2% of CIF value of contract sought to be registered subject to the maximum of Rs. 50 lakhs and the balance amount by the bank Guarantee backed by an undertaking to renew the same till finalization of the contract. The said Continuity Bond should be made out for an amount equal to the CIF value of the contract sought to be registered.
  - (vi) Write up, drawings, catalogues and literature of the items under import.
  - (vii) Process flow chart, plant layout, drawings showing the arrangement of imported machines along with an attested copy of the Project Report submitted to the Sponsoring authorities, Financial Institution, etc.
  - (viii) Two attested copies of foreign collaboration agreement, technical agreement, know-how, basic/detailed engineering agreement, equipment supply agreement, service agreement, or any other agreement with foreign collaborators/suppliers/ persons including the details of payment actually made or to be made.
  - (ix) Such other particulars, as may be considered necessary by proper officer for the purpose of assessment under Heading No. 9801.
- 3.4 In regard to the requirement of registration of the contract (or contracts) and production of the “original deed of contract”, the Board noted that as per Section 10 of the Indian Contract Act, 1872 a valid contract contains certain essential elements viz. (a) it is entered into by free consent of parties competent to contract; (b) there should be lawful consideration; (c) there should be a lawful object; and (d) it is not expressly declared to be void under the statute. It is therefore decided that a purchase order that contains all the essential ingredients of a valid contract must be treated as one under the Indian Contract Act, 1872. Thus, such a purchase order can be accepted as a “deed of contract” for the purpose of Regulation 5 of Project Import Regulations, 1986.

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

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

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

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

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

- 5.1 Under Regulation 7 of the PIR, 1986 the importer is required to submit, within three months from the date of clearance of the last consignment or within such extended time as the proper officer may allow, the following documents for the purpose of finalization of the assessment:
  - (i) A reconciliation statement i.e. a statement showing the description, quantity and value of goods imported along with a certificate from a registered Chartered Engineer certifying the installation of each of the imported items of machinery;
  - (ii) Copies of the Bills of Entry, invoices, and the final payment certificate is insisted upon only in cases where the contract provides that the amount of the transaction will be finally settled after completion of the supplies.
- 5.2 To ensure that the imported goods have actually been used for the projects for which these were imported, plant site verification may be done in cases where value of the project contract exceeds Rs.1 crore. In other cases, plant site verification is normally done selectively.
- 5.3 In the normal course, after submission of the reconciliation statement and other documents by the importers, the provisional assessments are finalized within a period of three months where plant site verification is not required and within six months where plant site verification is required. In cases where a demand has been issued and confirmed on such finalization and importer has not paid the duty demanded, steps are taken as per law to realise the amount.

## **6. Baggage:**

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

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

- 7.1 All goods imported by Post or Air for personal use are classifiable under a single Tariff Heading 9804 and levied to duty accordingly. This heading has been sub-divided into two subheadings, one applicable to drugs and medicines and the other, to the balance of items so imported.

Such goods will however be governed by the FTP as far their importability is concerned. Motor vehicles, alcoholic drinks and goods imported through courier service can, however, not be classified under this heading. Goods imported under an import license or a customs clearance permit will however not be classified under this tariff heading.

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## Customs Valuation

### 1. Introduction:

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

### 2. Tariff value:

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

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

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

3.1 Section 2(41) of the Customs Act, 1962 defines ‘Value’ in relation to any goods to mean the value thereof determined in accordance with the provisions of Section 14(1) of the Act *ibid*. In turn, Section 14(1) of the Act *ibid* states that the value of the imported goods and export goods shall be “the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf”. It is also provided that in the case of imported goods such transaction value shall include “in addition...any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.”

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

- (i) The circumstances in which the buyer and the seller shall be deemed to be related;

- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case; and
  - (iii) The manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.
- 3.3 The price paid or payable shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under Section 46, or a Shipping Bill or Bill of Export, as the case may be, is presented under Section 50 of the Customs Act, 1962.
- 3.4 When compared to the earlier provisions Section 14(1), the present provisions have discarded the concept of “deemed value” and adopted the concept of ‘transaction value’. Also, the present Section 14 contains therein provisions for specific rules to be made for determination of value and also for specific additions to value on account of cost and services. Some provisions deleted from the earlier Section 14 include:
- (i) Reference to such or like goods. Thus, the value (transaction value) shall be the price actually paid or payable for the goods under consideration.
  - (ii) The reference to price of the goods ordinarily sold or offered for sale.
  - (iii) The price of the goods when sold for export to India is to be considered and not the price in the course of international trade.
- 3.5 As provided in Section 14(1), the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007 and the Custom Valuation (Determination of Value of Export Goods) Rules, 2007 have been framed for valuation of imported goods and export goods, respectively.
- 3.6 The provisions of Section 14(1) and the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007 are based on the provisions of Article VII of GATT and the Agreement on implementation of Article VII of GATT. The methods of valuation prescribed therein are of a hierarchical (sequential) order.
- 3.7 The importer is required to truthfully declare the value in the import declaration and also provide a copy of the invoice and file a valuation declaration in the prescribed form to facilitate correct and expeditious determination of value for assessment purposes.

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

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

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

- 5.1 Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

states that subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with the provisions of its Rule 10.

- 5.2 The price actually paid or payable is the total payment made or to be made by the buyer to the seller or for the benefit of the seller for the imported goods. It includes all payments made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller.
- 5.3 If objective and quantifiable data do not exist with regard to the valuation factors, if the valuation conditions are not fulfilled, or if Customs authorities have doubts concerning the truth or accuracy of the declared value in terms of Rule 12 of the said Valuation Rules, 2007 the valuation has to be carried out by other methods in the following hierarchical order:
- (i) Comparative Value Method - Comparison with transaction value of identical goods (Rule 4);
  - (ii) Comparative Value Method - Comparison with transaction value of similar goods (Rule 5);
  - (iii) Deductive Value Method - Based on sale price in importing country (Rule 7);
  - (iv) Computed Value Method - Based on cost of materials, fabrication and profit in country of production (Rule 8); and
  - (v) Fallback Method - Based on earlier methods with greater flexibility (Rule 9).

## **6. Valuation factors:**

- 6.1 Valuation factors are the various elements which must be taken into account by addition (factors by addition) to the extent these are not already included in the price actually paid or payable or by deduction (factors by deduction) from the total price incurred in determining the Customs value, for assessment purposes.
- 6.2 Factors by addition are the following charges:
- (i) Commissions and brokerage, except buying commissions;
  - (ii) The cost of containers, which are treated as being one with the goods in question for Customs purposes;
  - (iii) The cost of packing whether for labour or materials;
  - (iv) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:
    - (a) Material, components, parts and similar items incorporated in the imported goods;
    - (b) Tools, dies, moulds and similar items used in the production of the imported goods;
    - (c) Materials consumed in the imported goods; and

- (v) Engineering, developing, artwork, design work, and plans and sketches undertaken elsewhere than in the importing country and necessary for the production of the imported goods;
- (vi) Royalties and license fees related to imported goods being valued that the buyer must pay either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- (vii) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;
- (viii) Advance payments;
- (ix) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation wherein the cost of transportation includes ship demurrage charges on chartered vessels, lighterage and barge charges; and
- (x) The cost of insurance to the place of importation.
- (xi) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable. {This sub-clause is not included in the draft text but is a part of Rule 10 (1) (e)}

Wherein the “place of importation” means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse.

[Refer Notification No. 91/2017-Cus(N.T.)dated 26.09.2017 and Circular No. 39/2017 dated 26<sup>th</sup> September, 2017]

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

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

- 6.4 Factors by deduction are the following charges provided they are separately declared in the commercial invoices:
- (i) Interest charges for deferred payment;
  - (ii) Post-importation charges (e.g. inland transportation charges, installation or erection charges, etc.); and
  - (iii) Duties and taxes payable in the importing country.

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

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

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

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

7.3 The interpretative notes are specified in the schedule of the said valuation rules and are to be applied for interpretation of the rules.

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

8.1 Section 18 of the Customs Act, 1962 allows an importer to provisionally clear the imported goods from Customs pending final determination of value by giving a guarantee in the form of surety, security deposit or bank guarantee. Rules 4(1)(a) and 5(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 concerning identical goods and similar goods, respectively provide that the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962, shall not be the basis for determining the value of any other goods.

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



- 9.1 Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 enumerates the persons who shall be deemed to be “related”. It has been made clear by Explanation II thereto that the sole agent, sole distributor or sole concessionaire shall be deemed to be related only if they fall within the criteria of this sub-rule. Further, Rule 3(3) provides that where buyer and seller are related, the transaction value can be accepted if the examination of circumstances of the sale of the imported goods indicate that the relationship did not influence the price or if the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the test values namely transaction value of identical/similar goods, in sales to unrelated buyers in India, deductive value for identical/similar goods or computed value for identical/similar goods ascertained at or about the same time can be used.
- 9.2 In related party transactions, the importer is required to fill a questionnaire and furnish a list of documents so that it can be ascertained whether the said case requires investigation by SVB or not. The proper officer shall examine the information provided by the importer in terms of Rule 3(3)(b) of the CVR, 2007 and shall submit the findings to the Commissioner for a decision as to whether the case is fit for being referred to the SVB for investigation. The Commissioner shall after due consideration of the preliminary findings, take a considered view whether:
- (a) the matter be referred to the SVB for further investigations and the goods be provisionally assessed to duty in terms of section 18 of the Customs Act, 1962, or
  - (b) the transaction does not merit investigation by the SVB and that assessment be finalized on the basis of enquiries to be conducted by the proper officer in terms of Rules 4 to 9 of the CVR 2007, or
  - (c) the transaction be assessed in terms of Rule 3 of the CVR 2007.
- 9.3 In cases, where the Commissioner concerned finds it fit that the transaction requires investigation to be conducted by SVB, the Investigations are carried out by Special Valuation Branches (SVB) located presently in the major Custom Houses at Bengaluru, Mumbai, Kolkata, Chennai and Delhi. As and when imports requiring investigation by SVBs are noticed at any customs formation, the concerned Commissionerate shall after following the laid down procedure, transfer all records to the jurisdictional SVBs for investigations.
- 9.4 With effect from 09.02.2016, the functional and supervisory control over the SVBs has been divested from DGOV and the same has been vested with the jurisdictional Chief Commissioner/ Principal Commissioner/ Commissioner. DGOV will continue to support the SVBs by issuing advisories on legal issues & guidance notes. DGOV shall also qualitatively monitor investigation orders issued by SVBs.
- 9.5 The provision of taking Extra Duty Deposit @ 1% of declared assessable value for four months, during which he is supposed to submit requisite documents and information to SVBs, has been withdrawn and in order to reduce the transaction cost it has been mandated that no security in the form of EDD shall be obtained from the importer. However, if the importer fails to provide the documents and information required for SVB inquiries, within 60 days of such requisition, security deposit at a rate of 5% of the declared assessable value shall be imposed by the Commissioner for a period not exceeding the next three months.

- 9.6 Only cases with significant revenue implications are taken up for SVB investigations. The following cases are not to be taken up for SVB investigations:
- (a) Import of samples and prototype from related sellers
  - (b) Imports from related sellers where duty chargeable (including additional duty of customs etc.) is unconditionally fully exempt or NIL.
  - (c) Any transaction where the value of imported goods is less than Rs.1 Lac but cumulatively these transactions do not exceed Rs 25 lac in any financial year.
- 9.7 Apart from investigation of transactions involving related parties, cases involving possible additions to declared transaction value also need to be examined to determine whether SVB investigations are necessary. Accordingly, transactions where any payments are sought to be made which are in the nature of instances given below shall also be examined with respect to the need for SVB investigations:
- (i) 'royalty' and 'license fee' under Rule 10 (1)(c) of CVR, 2007, or
  - (ii) where the value of any part of proceeds of any subsequent resale, disposal or use of imported goods accrues to the seller i.e. Rule 10 (1)(d) of CVR, 2007 or
  - (iii) Where any other payments are made or are contemplated to be made in future by buyer to seller as a condition of sale of imported goods etc. Rule 10 (1)(e) of CVR, 2007.

[Refer Circulars No.11/2001-Cus, dated 23-2-2001 and Circular No. 5/2016 dated 09.02.2016]

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

- 10.1 The provisions of Section 14(1) of the Customs Act, 1962 specifically cover the valuation of export goods. Also, the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 have been framed to provide a sound legal basis for the valuation of export goods and check deliberate overvaluation of export goods and mis-utilization of value based export incentive schemes.
- 10.2 Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules 2007 that are framed in a format similar to the said Valuation Rules, 2007 for the imported goods emphasizes for acceptance of the transaction value, which is the primary basis for valuation of export goods. In cases where the transaction value is not accepted, the valuation shall be done by application of Rules 4 to 6 sequentially. As per Rule 7, exporter has to file Export Value Declaration relating to the value. Also, the value of the export goods declared by the exporter can be rejected under Rule 8.
- 10.3 Wherever there are doubts about the declared value of export goods and an investigation/enquiry is being undertaken to determine whether or not the Declared Value should be accepted, the export consignments should not be ordinarily detained. Due process envisaged under Rule 8, for rejection of declared value and consequent re-determination of value may be undertaken by applying valuation Rules sequentially.

10.4 The explanation to Section 14 provides for the determination of rate of exchange for the conversion of Indian currency into foreign currency and foreign currency into Indian currency which will be used by the assessing officer to arrive at the value of exported and imported goods respectively. Currently, such values are notified for 20 currencies. For the purpose of valuation of goods, “foreign currency” and “Indian currency” have the same meanings assigned to them in terms of clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999) respectively.

**11. Rights of appeal:**

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

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## Provisional Assessment

### 1. Introduction:

1.1 The Finance Act, 2011 introduced self-assessment under which importers and exporters are mandatorily required to self-assess the duty in terms of Section 17 of the Customs Act, 1962. This self-assessment is subject to verification by the proper officer of the Customs and may lead to reassessment by the proper officer of Customs if it is found to be incorrect. However, in terms of Section 17(1) of the Customs Act, 1962 in case an importer or exporter is not able to make self-assessment, he may, request in writing to the proper officer for assessment. Also, in terms of Section 18 of the Customs Act, 1962, in case, the proper officer is not able to verify the self-assessment or make re- assessment of duty or he deems it necessary to subject any imported or export goods to any chemical or other tests or where necessary documents have not been produced or information has not been furnished and it is necessary to make further enquiry, he may direct that the duty leviable on such goods be assessed provisionally.

### 2. Conditions for provisional assessment:

2.1 For making provisional assessment the proper officer is required to estimate the duty to be levied i.e. the provisional duty. Wherever, duty is to be assessed provisionally, in terms of section 18, the importer or exporter shall:

- (a) for the purposes of undertaking to pay on demand the deficiency, if any, between the duty as may be finally assessed or re-assessed and the duty provisionally assessed, execute a bond, in the prescribed formand;
- (b) furnish such security for the payment of duty deficiency as prescribed.

2.2 The security to be obtained shall be in the form of bank guarantee or a cash deposit, as convenient to the importer.

### 3. Finalization of provisional assessment:

3.1 The assessments should be finalized expeditiously. Customs (Finalisation of Provisional Assessment) Regulations, 2018, have been notified on 14.8.2018 to prescribe the timelines and manner for finalization of provisional assessments. However, in cases involving project imports, assessments should be finalized as per Project Import Regulations, 1986 as amended.

[Refer Clarification issued vide F. No. 353/91/74-Cus dated 28.01.1977; Instructions F.No.511/7/77-Cus.VI, dated 9-I-1978; Project Import Regulations, 1986; Circular No.38/2016 dated 22.08.2016; Customs (Finalisation of Provisional Assessment) Regulations, 2018; [Customs (Provisional Duty Assessment) Regulations, 2011, rescinded by Notification No. 113/2016-Cus(N.T.) dated 22.08.2016]

## Import / Export Restrictions and Prohibitions

### 1. Introduction

1.1 Deliberate evasion of duty or violation of prohibition/restriction imposed upon import of export of specified goods invites penal action under the Customs Act, 1962 or any of the allied legislations that are enforced by the Customs in terms of the said Act. Thus, importers and exporters and other connected with international trade require to be well conversant with the provisions of Customs Act, 1962, the Foreign Trade Policy, as well as other relevant allied Acts and make sure that before any imports are effected or export planned, they are aware of any prohibition/restrictions and requirements subject to which alone goods can be imported/exported.

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

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

- (a) “Prohibited Goods” are defined in Section 2(33) of the Customs Act, 1962 as meaning “any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force”. Thus, a prohibition under any other law can be enforced under the Customs Act, 1962. For instance, under Sections 3 and 5 of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government can make provisions for prohibiting, restricting or otherwise regulating the import of export of the goods, which finds reflected in the Foreign Trade Policy, laid down by the DGFT, Department of Commerce. Some of the goods are absolutely prohibited for import and export whereas some goods can be imported or exported against a licence and/or subject to certain restrictions. One example is provided by Notification No.44(RE-2000)1997-2002, dated 24.11.2000 in terms of which all packaged products which are subject to provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, when produced/packed/sold in domestic market, shall be subject to compliance of all the provisions of the said Rules, when imported into India. Thus, all such packaged commodities imported into India shall carry the name and address of the importer, net quantity in terms of standard unit of weights measures, month and year of packing and maximum retail sale price including other taxes, local or otherwise. In case any of the conditions is not fulfilled, the import of packaged products shall be held as prohibited, rendering such goods liable to confiscation. Another example is that certain products are required to comply with the mandatory Indian Quality Standards (IQS) and for this purpose exporters of these products to India are required to register themselves with Bureau of Indian Standards (BIS). Non-fulfillment of the above requirement shall render such goods prohibited for import. Action on such goods and persons involved can be taken under the Customs Act, 1962.

- (b) Under Section 11 of the Customs Act, 1962 the Central Government has the power to issue notification under which export or import of any goods can be declared as prohibited. The prohibition can either be absolute or conditional. The specified purposes for which a notification under Section 11 can be issued are maintenance of the security of India, prevention and shortage of goods in the country, conservation of foreign exchange, safeguarding balance of payments etc.
- (c) Section 111(d) and Section 113(d) of the Customs Act, 1962 provide that any goods which are imported or attempted to be imported and exported or attempted to be exported, contrary to any prohibition imposed by or under the said Act or any other law for the time being in force shall be liable to confiscation.
- (d) Section 112 of the Customs Act, 1962 provides for penalty for improper importation and Section 114 of the said Act provides for penalty for attempt to export goods improperly. In respect of prohibited goods the adjudicating Officer may impose penalty upto five times the value of the goods. It is, therefore, absolutely necessary for the trade to know what are the prohibitions or restrictions in force before they contemplate to import or export any goods.

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

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

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

- 4.1 As per the Prevention of Food Adulteration Act, 1954 (PFA), any product not fulfilling the statutory provisions is not allowed to be imported into the country. Likewise, there are several rules, regulations, orders, notifications, etc. issued by the Government, laying down procedures as to how the imports of above products are to be dealt with. Further, the Food Safety and Standards Authority Act, 2006 (FSSA) seeks to replace many of the existing legislations including the PFA Act relating to import of edible items. The FSSAI has been established to lay down standards and regulate/monitor the manufacturing, import, processing, distribution and sale of food. The FSSAI has taken over PHO functions at select ports with the stipulation that the existing rule and procedures will continue to be followed without any change till FSSAI regulations are notified. Thus, FSSAI has replaced PHO with its authorized officers at select ports in terms of Section 47 (5) of the FSSA Act, 2006.

#### **4.2 Operationalisation of SWIFT**

- 1. Board Circular Nos. 03/2016-Customs dated 03.02.2016 and 10/2016-Customs dated

15.03.2016 were issued for operationalization of the Interface for Facilitation of Trade (SWIFT) from 01st April, 2016 at all EDI locations throughout India.

2. Instruction No. 10/2018-Customs dated 29.05.2018 was issued for clearance of food consignments by Customs officers at locations where FSSAI has provided delegation.
3. In SWIFT, the system automatically refers food-related consignments to the Food Safety & Standards Authority of India (FSSAI) through a message exchange system established between ICEGATE and the Food Import Clearance System (FICS) operated by FSSAI. This automatic reference of imported food consignments is done in locations where FSSAI has its offices. For the remaining Customs EDI locations, the system generates instructions directing that Customs 'Authorized Officers' may clear the consignment (wherever, such 'Authorized Officer' are present) and in other locations where 'Authorized Officers' are not present, the consignments were to be referred to Port Health officer for an NOC.
4. As of now, FSSAI has offices in 6 cities covering 21 ICES locations. For Customs locations where FSSAI does not have officers, FSSAI had issued order No. 1- 1371/FSSAI/Imports/2015 dated 29th March 2016 delegating authority to Customs officers to perform the functions of an 'Authorized Officer' under food safety laws. FSSAI has now issued order No. 1-1371/FSSAI/Imports/2015 (Part-7) dated 2nd May, 2018 notifying Customs officer as 'Authorized officers' under food safety laws. This order is in supersession of all previous notifications/ orders with regard to authorizing Customs officials to handle food import clearance. This order is also available at <http://www.fssai.gov.in/home/imports/orderguidelines.html>.
5. In respect of the above notified locations, Commissioners of Customs are requested to suitably guide the officers responsible for clearance of food consignments. There should not be any Customs location which is not covered either by FSSAI officials or by the 'Authorized Officers' of Customs. Therefore, Commissioners of Customs are also required to identify Customs locations, in their jurisdiction which are not notified under the said order and bring the same to the notice of the CBIC/ Single window.
6. FSSAI has also issued a list of accredited laboratories for the testing of all food-related consignments vide order F. No. 12012/02/2017-QA dated 1st August, 2017. This list can be accessed at <http://www.fssai.gov.in/home/food-testing/Orders---Notice.html>. Prior to clearance, the Customs officers posted in the shed should record in the system the acceptance or rejection of the consignments as part of the examination report as this would help in carrying out risk analysis.

[refer Circular Nos. 03/2016-customs dated 03.02.2016 ,No. 10/2016-customs dated 15.03.2016 and Instruction No.10/2018 dated 29.05.2018]

- 4.3 PFA/FSSAI lay down detailed guidelines for examination and testing of food items prior to Customs clearance. It is, thus, provided that the Customs shall undertake the following general checks and if the product does not satisfy these requirements, clearance shall not be allowed:
  - (i) All consignments of high risk food items, as listed in DGFT Policy Circular No. 37(RE-2003)/2002-2007 dated 14.06.2004 (as may be modified from time to time), shall be

referred to Authorised Representative of FSSAI or PHOs, as the case may be, for testing and clearance shall be allowed only after receipt of the test report as per the instructions contained in the Customs Circular No. 58/ 2001-Cus., dated 25-10-2001.

- (ii) All consignments of perishable items like fruits, vegetables, meat, fish, cheese, etc., will continue to be handled in terms of the guidelines contained in Para 2.3 of the Board's Circular No.58/2001-Customs dated 25-10-2001.
  - (iii) In respect of food items not covered under (a) and (b) above, the following procedure would be adopted in addition to the general checks prescribed under Para 2.1 of the Circular No. 58/2001-Cus dated 25-10-2001 (amended by Circular No. 03/2011-Cus):
    - (a) Samples would be drawn from the first five consecutive consignments of each food item, imported by a particular importer and referred to Authorised Representative of FSSAI or PHOs, as the case may be, for testing to ascertain the quality and health safety standards of the consignments.
    - (b) In the event of the samples conforming to the prescribed standards, the Customs would switch to a system of checking 5% - 20% of the consignments of these food items on a random basis, for checking conformity to the prescribed standards. The selection of food items for random checking and testing would be done by the Customs taking into consideration factors like the nature of the food products, its source of origin as well as track record of the importers as well as information received from FSSAI from time to time.
    - (c) In case, a sample drawn from a food item in a particular consignment fails to meet the prescribed standards, the Customs would place the import of the said consignment on alert, discontinue random checking for import of such food items and revert to the procedure of compulsory checking. The system of random sampling for import of such food items would be restored only if the test results of the samples drawn from the 5 consecutive consignments re-establish that the food items are in conformity with the prescribed standards.
- 4.4 The 'general checks' include checking the condition of the hold in which the products were transported to see whether they meet the requirements of storage, as per the nature of the product, and does not in any way cause deterioration or contamination of the products. Also, physical/ visual appearance in terms of possible damage - whether it is swollen or bulged in appearance; and also for rodent/insect contamination or presence of filth, dirt etc. should be checked. Finally, it should be checked that the product meets the labelling requirements under the Prevention of Food Adulteration Rules and the Packaged Commodities Rules. This includes ensuring that the label is written not only in any foreign language, but also in English. The details of ingredients in descending order, date of manufacture, batch no., best before date etc. are mandatory requirements. All products will also have to indicate details of best before on all food packages.
- 4.5 Authorised Officers of FSSAI will ascertain that for the imported pre-packaged good items, the language and other major requirements of the label like mention of best before date, nutrition



information etc. should comply the labeling provisions under PFA Rules, failing which sample may not be drawn from such consignment for testing.

- 4.6 Introduction of SWIFT has automatically integrated the RMS CCR instructions in the systems and the system automatically refers food-related consignments to the Food Safety & Standards Authority of India (FSSAI) through a message exchange system established between ICEGATE and the Food Import Clearance System (FICS) operated by FSSAI.

[Refer Circular Nos. 03/2016-customs dated 03.02.2016 ,No. 10/2016-customs dated 15.03.2016 and Instruction No.10/2018 dated 29.05.2018]

- 4.7 As per Para 13 of Chapter IA (General Notes Regarding Import Policy) of the ITC (HS) Classification of Export and Import items, import of all such edible/ food products, domestic sale and manufacture which are governed by PFA Act, 1954 shall also be subject to the condition that at the time of importation, the products are having a valid shelf life of not less than 60% of the original shelf life. Shelf life of the product is to be calculated based on the declaration given on the label of the product, regarding its date of manufacture and the due date for expiry. Therefore, Customs shall ensure that this condition is complied with before allowing clearance of such consignments.

- 4.8 At certain ports / airports / ICDs / CFSs where Port Health Officers (PHO) under PFA, 1954 or Authorised officers under FSS Act, 2006 are not available, the samples will be drawn by Customs and these may be got tested from the nearest Central Food Laboratory or a laboratory authorized for such testing by DGHS or FSSAI. As a measure of trade facilitation, while the CRCL labs are being upgraded, the Board identified laboratories where field formations may directly forward samples of certain goods to outside laboratories. However, field formations shall first ensure with their respective laboratories that the testing facilities for any particular items listed in the relevant Circulars are not available with them before forwarding such samples to outside Laboratory(s).

[Refer Circulars No.58/2001-Cus., dated 15-6-2001, No.43/2005-Cus., dated 24-11-2005, No.3/2011-Cus., dated 6-1-2011, Circular no. 43/2017- Customs dated 16.11.2017, 11/2018- Customs dated 17.05.2018 and No. 28/2018- Customs dated 30.08.2018.]

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

- 5.1 DGFT Notification No.44 (RE-2000)/1997-2002 dated 24-11-2000 provides for labeling of the goods imported into India which are covered by the provisions of Standards of Weights & Measures (Packaged Commodities) Rules, 1977. This Notification mandates that compliance of labeling conditions have to be ensured before the import consignment of such commodities are cleared by Customs for home consumption.
- 5.2 In order to redress the issue and to remove the difficulties faced by importers on account of space constraints at CFSs/ Port / ICDs and the nature of goods, etc., the Board has allowed the labeling on imported goods in Bonded warehouses subject to certain procedural conditions. It is clarified that the importers should first ascertain that for such marking / labeling facility, space, is available in warehouse prior to exercising this option. In such cases, importers may file Warehousing Bill of Entry and the Assessing Group will give suitable directions to Dock staff

to allow bonding of the goods without labeling and with endorsement on the Warehousing Bill of Entry that verification of compliance of DGFT Notification No.44 (RE-2000)/1997-2002 is to be done prior to de-bonding by Bond Superintendent. The goods will then be labeled in the bonded premises and compliance of said DGFT Notification will be ensured at the time of ex-bonding of the goods, by the Bond Officer, by examining the goods again and endorsing the Examination Report on the Ex-bond Bill of Entry. 100% examination at the time of Ex-bond clearance of goods should be done to ensure compliance of the said DGFT Notification. The Examination Report can be endorsed on hard copy of Ex-bond Bill of Entry where EDI facility is not extended, and on hard copy as well as EDI system where EDI facility is extended to Bonded Warehouses. It is also clarified that this facility is applicable only to goods that cannot be easily labeled in ports / CFS, having regard to their size and other factors such as sensitivity to temperature and dust.

- 5.3 As the activity of labeling and re-labeling including declaration of Retail Sale Price (RSP) on goods amounts to manufacture in terms of section 2(f) of the Central Excise Act, 1944, if the same is carried out on goods warehoused, it would be considered as manufacturing operations having been undertaken in bond/warehouse. Accordingly, the provisions of „Manufacture and Other Operations in Warehouse Regulations, 1966“ would apply on those goods. Importers can, therefore, avail the facility of carrying out labeling in warehouse after following above procedure and the provisions of „Manufacture and Other Operations in Warehouse Regulations, 1966“.

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

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

- 6.1 The import of livestock and livestock products is regulated by the Livestock Importation Act, 1898. The objective of this Act and the notifications/orders issued therein is to regulate the import of livestock products in such a manner that these imports do not adversely affect the country's human and animal health population.
- 6.2 The livestock products are allowed to be imported into India only through the sea ports or airports located at Delhi, Mumbai, Kolkata and Chennai, where the Animal Quarantine and Certification Services Stations are located. In addition, import of perishable fish items, exclusively meant for human consumption but excluding seed material for breeding or rearing purposes, is allowed at Petrapole, District North 24 Parganas, West Bengal, through land route. On arrival at the port/seaport, the livestock product is required to be inspected by the officer in-charge of the Animal Quarantine and Certification Services Station or any other veterinary officer duly authorized by the Department of Animal Husbandry and Dairying. After inspection and testing, wherever required, quarantine clearance is accorded by the concerned quarantine or veterinary authority for the entry of the livestock product into India. If required in public interest, the quarantine or veterinary authority may also order the destruction of the livestock product or its return to the country of origin. The Customs will have to ensure that the livestock products are granted clearance for home consumption only after necessary permission is granted by the quarantine or veterinary authorities.
- 6.3 Wherever any disinfection or any other treatment is considered necessary in respect of

any livestock product, it is the importer who has to arrange the same at his cost under the supervision of a duly authorized quarantine or veterinary officer.

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

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

- 7.1 Import of plants and plant materials into the country is regulated under the Destructive Insects & Pests (DIP) Act, 1914 and PFS Order, 1989 and Plant Quarantine (Regulation of Import into India) Order, 2003. As per the requirements of these enactments, subject to exemptions, as may be applicable, no consignment shall be imported even for consumption unless it is accompanied by an Import Permit and an Official Phytosanitary Certificate. However, cut flowers, garlands, bouquets, fruits and vegetables weighing less than 2 kgs. that are imported for personal consumption is allowed without a Phytosanitary Certificate or an Import Permit. Likewise, the requirement of Import Permit is relaxed for import of (a) mushroom spawn culture by EOUs and (b) tissue culture materials of any plant origin and flower seeds.
- 7.2 The Department of Agriculture and Co-operation has issued detailed guidelines for inspection and clearance of plant/plant materials, the basic features of which are as follows:
- (i) Registration of application: The importer or his authorized representative is required to file an application at the Plant Quarantine Station in respect of each consignment immediately upon arrival at the port. In case of perishable consignments, such application can be filed in advance to enable the Plant Quarantine authorities to organize inspection/testing on priority. Alongwith application for registration, copies of documents namely, import permit, phyto- sanitary certificate issued at the country of origin, copy of bill of entry, invoice, packing list and fumigation certificate, etc. are required to be submitted. The Plant Quarantine Officer shall register the application and the assessed inspection fee is required to be paid by the importer or his agent. No such application is required to be filed in the case of import of plant and plant materials through passenger baggage and post parcels.
  - (ii) Sampling/inspection/fumigation of consignments: The importer or his agent is required to arrange for inspection/sampling of the consignment. In the event of live insect infestation having been noticed, the importer or his agent shall arrange for fumigation of consignment by an approved pest control operator at his own cost under the supervision of the Plant Quarantine officer.
  - (iii) Release/detention of consignments: A release order is issued to Customs, if a consignment on inspection is found to be free from pests. However, in case it is found infested with live pests, the same is permitted clearance only after fumigation and re-inspection. The detention order is issued, if the consignment is imported in contravention of the PQ Regulations, for arranging deportation failing which the same shall be destroyed at the cost of importer under the supervision of the Plant Quarantine Officer, in presence of Customs Officers after giving due notice in advance i.e. for perishable plant material 24-

48 hours and 7 days for other plant material. The Customs will ensure that plant/plant material (primary agricultural products) are granted clearance for home consumption only after necessary permission is granted by the concerned Plant and Quarantine Officer.

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

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

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

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

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

- 9.1 In terms of Rule 133 of the Drugs and Cosmetics Rules, 1945, no cosmetics shall be imported into India except through the points of entry specified in Rule 43A of the said Rules. Further, under Schedule "D" to the said Rules read with Rule 43, an exemption is provided to certain categories of substances from the restrictions under Chapter III of the Drugs and Cosmetics Act, 1940 relating to import of drugs and cosmetics. Further, the Drugs Controller General of India (DCGI) has clarified that under Schedule "D" to the said Rules, an exemption has been

provided for substances not intended for medical use from the provisions of Chapter III of the Drugs and Cosmetics Act and Rules made thereunder. The Act provides for separate definition for 'cosmetic' and „drug“ under Sub-Section 3(aaa) and 3(b), respectively. Hence, the phrase „substances not intended for medical use“ would only relate to substances which would otherwise fall under the definition of the term „drug“ under Section 3(b) of the Act, but are being imported not for medicinal use or for some other purposes or are of commercial quality and are being labeled indicating that they are not for medicinal use. Accordingly, DCGI had clarified that this exemption does not extend to other categories of products defined under the Act including cosmetics. For the purpose of import of cosmetics, provision of Rule 133 therefore remains applicable.

- 9.2 The points of entry specifically mentioned in Rule 43A are Chennai, Kolkata, Mumbai, NhavaSheva, Cochin, Kandla, Delhi, Ahmedabad, Hyderabad and Ferozepur Cantonment, Amritsar, Ranaghat, Bongaon and Mohiassan Railways Stations.
- 9.3 As per rule 43A of the Drugs and Cosmetics Rules, 1945, drugs can be only imported into India through specified places. Accordingly, import of drugs at any other place may not be permitted. Further, whenever in doubt, field formations may seek necessary clarification about the generic name versus chemical name of medicines before clearance. The specified places are:
- (i) Ferozepore Cantonment and Amritsar Railway Stations (for drugs imported by rail across the frontier with Pakistan)
  - (ii) Bongaon, Mohiassan and Ranaghat Railways Stations (for drugs imported by rail across the frontier with Bangladesh)
  - (iii) Raxaul (for drugs imported by road and railway lines connecting Raxaul in India and Birganj in Nepal)
  - (iv) Chennai, Cochin, Kandla, Kolkata, Mumbai and NhavaSheva (for drugs imported by sea)
  - (v) Ahmedabad, Chennai, Delhi, Hyderabad, Kolkata and Mumbai (for drugs imported by airports)
- 9.4 Import consignments of Electronic Nicotine Delivery Systems(ENDS) including e-Cigarettes, Heat- Not- Burn devices, Vape, e-Sheesha, e- Nicotine Flavoured Hookah, and the like devices/ products may be referred to Assistant/ Deputy Drugs Controller for checking compliance.

[ Refer Circular No. 46/ 2018- Customs dated 27.11.2018]

- 9.5 The MoH&FW vide Cigarettes and other Tobacco Products (Packaging and Labelling) Second Amendment Rules, 2018 notified by G.S.R. 331 (E) dated 03.04.2018 has specified a new set of health warnings w.e.f.01.09.2018. In addition to the existing statutory requirements, compliance of the amendments in health warning specifications prescribed by the COTP Amendment Rules, 2018 are to be ensured before clearance of import consignments or disposal of seized/confiscated tobacco products, including Cigarettes.

[Refer Circular 20/2018-Customs dated 20.06.2018, Circular No. 09/2017-Customs dated 29.03.2017, Circular No. 27/2017-Customs dated 05.07.2017Instructions vide F. No. 450/160/2009-Cus.IV dated 29.12.2009]

- 9.6 Single Window Project - Simplification of procedure in SWIFT for clearance of consignments related to drugs & cosmetics: Several items falling under different Customs Tariff Heads which have been mapped are chemicals and not drugs. These are being routed for ADC's clearance by virtue of the Customs Tariff Heads under which they are declared, and the ADC's office routinely declares them as "out of scope". In this regard, a list of such items have been prepared and published on the ICEGATE website as part of PGA Exemption Category (PEC). Importers of such goods should identify their items on this PEC list and include them as part of the Integrated Declaration in order to avoid unnecessary references to the ADC. The PEC will be duly updated after holding consultations in the Working Group and with the approval of the concerned PGAs (DCGI - in case of drugs and cosmetics items).

[Refer circular 28/2016 dated 14.06.2016]

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

- 10.1 As per Chapter 1A of General Notes regarding Import Policy (ITC (HS) Classification of Export and Import Items, Schedule I, imports of Hazardous Waste into India shall be subject to the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Further, notwithstanding anything contained in ITC (HS) Classifications of Export and Import Items, import of hazardous waste or substances containing or contaminated with such hazardous wastes as specified in Schedule 8 of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 shall be prohibited.
- 10.2 Wastes arising out of the operation from ships beyond five kilometres of the relevant baseline as covered under the provisions of the Merchant Shipping Act, 1958 (44 of 1958) and the rules made thereunder and as amended from time to time; The utilisation of waste oil/sludge derived from the normal course of a ship's operation as a resource or after pre-processing either for co-processing or for any other use, including within the premises of the generator (if it is not part of process), shall be carried out only after obtaining authorisation from the State Pollution Control Board in respect of waste on the basis of standard operating procedures or guidelines provided by the Central Pollution Control. Such waste oil/sludge will conform to the definition in Schedule IV of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016
- 10.3 Import of Hazardous Chemicals permitted is permitted in accordance with the provisions of the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989 (as amended) made under the Environment (Protection) Act, 1986). Besides other conditions mentioned in the Rules, the importer shall, before 30 days but not later than the date of import, furnish the details specified in Rule 18 to the Authority specified in Schedule 5 of the said Rules.
- 10.4 Import of products, equipments containing Ozone Depleting Substances (ODS) will be subject to Rule 10 of the Ozone Depleting Substances Rules, 2000. In terms of these Rules no person shall import or cause to import any product specified in column (2) of Schedule VII, which was made with or contains Ozone Depleting Substances specified in column (3), unless a license is obtained from the Directorate General of Foreign Trade.
- 10.5 Import of Genetically Modified Food, Feed, Genetically Modified Organism (GMOs) and Living Modified Organisms (LMOs) will be subject to the following conditions :

- i. The import of GMOs / LMOs for the purpose of (i) R & D; (ii) food; (iii) feed; (iv) processing in bulk; and (v) for environment release will be governed by the provisions of the Environment Protection Act, 1986 and Rules 1989.
  - ii. The import of any food, feed, raw or processed or any ingredient of food, food additives or any food product that contains GM material and is being used either for industrial production, environmental release, or field application will be allowed only with the approval of the Genetic Engineering Approval Committee (GEAC).
  - iii. Institutes / Companies who wish to import Genetically Modified material for R&D purposes will submit their proposal to the Review Committee for Genetic Modification (RCGM) under the Department of Bio-Technology. In case the Companies / Institutes use this Genetically Modified material for commercial purposes approval of GEAC is also required.
  - iv. At the time of import all consignments containing products which have been subjected to Genetic Modification will carry a declaration stating that the product is Genetically Modified. In case a consignment does not carry such a declaration and is later found to contain Genetically Modified material, the importer is liable to penal action under the Foreign Trade (Development and Regulation) Act, 1992.
- 10.6 As per Chapter 1A of General Notes regarding Import Policy (ITC (HS) Classification of Export and Import Items, Schedule I, import of textile and textile articles is permitted subject to the condition that they shall not contain any of the hazardous dyes whose handling, production, carriage or use is prohibited by the Government of India under the provisions of Section 6(d)(2) of the Environment (Protection) Act, 1986 read with the relevant rule(s) framed thereunder. For this purpose, the import consignments shall be accompanied by a pre-shipment certificate from a textile testing laboratory accredited to the National Accreditation Agency of the Country of Origin. In cases where such certificates are not available, the consignment will be cleared after getting a sample of the imported consignment tested and certified from any of the agencies indicated in Public Notice No. 12 (RE-2001)/1997-2002, dated 3-5-2001. The sampling will be based on the following parameters:
- (i) At least 25% of samples are drawn for testing.
  - (ii) While drawing the samples, Customs will ensure that majority samples are drawn from consignments originating from countries where there is no legal prohibition on the use of harmful hazardous dyes.
  - (iii) The test report will be valid for a period of 6 months in cases where the textile/ textile articles of the same specification/quality are imported and the importer, supplier and the country of origin are the same.

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

- 11.1 In terms of the relevant provisions of the Foreign Trade Policy, the following procedure is prescribed for clearance of imported metal scrap.
- (i) Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap containing

radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

- (ii) In view of Circular No. 48/2016-Customs Import of metallic waste and scrap (both ferrous and non-ferrous) of certain categories, listed in Para 2.54 of Handbook of Procedures (2015-2020) in shredded form shall be permitted through all ports of India without any pre-shipment certificate as per the existing practice.

[Refer Circular No.48/2016 dated 26.10.2016 and Circular No.53/2016-Customs dated 18.11.2016]

- (iii) Import of metallic waste, scrap (both ferrous and non-ferrous), Para 2.54 of Handbook of Procedures (2015-2020), in unshredded compressed and loose form shall be subject to the guidelines issued by the Director General of Foreign Trade, Ministry of Commerce and Industry, Government of India under Public Notice No. 38/2015-2020 dated 06.10.2016 (followed by a Corrigendum by way of a Public Notice No. 40/2015-2020 dated 25.10.2016) and as per the following procedure:

(a) The consignments of un-shredded, compressed or loose scrap shall be cleared only through those EDI ports where Risk Management Module is operational. These consignments will be subjected to documentary or physical check on the basis of selection done by Risk Management System.

(b) All the designated sea ports as specified in the DGFT Public Notice No. 38/2015-2020 dated 06.10.2016 are expected to install and operationalize Radiation Portal Monitors and Container Scanners by 31.03.2017 and till such time, the consignments of un-shredded, compressed or loose scrap shall be subjected to scanning based on risk assessment at those ports where such facilities for scanning are currently existing.

(c) Depending upon the congestion at the Port/ICD, the availability of manpower and the antecedents of the importer, the concerned Principal Commissioner/Commissioner of Customs or Principal Commissioner/Commissioner of Central Excise, as the case may be, may permit the importer to remove the sealed container at his own risk and cost to his factory premises under re-warehousing procedure. This would be subject to conditions specified in (a) & (b). The importer shall furnish the following documents to the Customs at the time of clearance of goods:

(a) Pre-shipment inspection certificate as per the format in Annexure-I to the said Appendix 5 from any Inspection & Certification agencies given in the said Appendix 5 to the effect that:

(i) The consignment does not contain any type of arms, ammunition, mines, shells, cartridges, radioactive contaminated or any other explosive material in any form either used or otherwise.

(ii) The imported item(s) is actually a metallic waste/ scrap/ seconds/ defective as per the internationally accepted parameters for such a classification.



- (b) Copy of the contract between the importer and the exporter stipulating that the consignment does not contain any type of arms, ammunition, mines, shells, cartridges, radioactive contaminated, or any other explosive material in any form either used or otherwise.
- (c) Import of scrap would take place only through following designated ports and no exception is allowed even in case of EOUs and SEZs:

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

- (iv) Import of other kinds of metallic waste and scrap will be allowed in terms of conditions of ITC (HS). Further, import from Hodaideh, Yemen and Bandar Abbas, Iran will be in shredded form only.
- (v) In respect of metal scrap in unshredded, compressed or loose form accompanied by a pre-shipment inspection certificate, examination will be 25% of the containers in respect of manufacturer-importers and 50% in respect of traders, for each import consignment, subject to examination of a minimum of one container. The container selected will be examined 100%. Where EDI with Risk Management Module (RMM) is operational, the percentage of examination will be determined by the RMM.
- (vi) Imported metal scrap in unshredded, compressed or loose form not accompanied by the prescribed pre-shipment inspection certificate will be subject to 100% examination apart from stringent penal action for violation of provisions of the FTP. The examination may be done in the presence of police authorities, if considered necessary by the Commissioner, at the risk and cost of the importer.
- (vii) For scrap imported in shredded form examination may be limited to 10% of the consignment subject to examination of minimum one container. The identified container should be examined 100%.
- (viii) In respect of metal scrap consignments meant for EOUs and SEZ units the existing procedure is relevant subject to 100% examination at the premises of the EOU or the SEZ unit, in the presence of police authorities, if considered necessary by the proper officer.
- (ix) It will be the responsibility of the shipping line to ensure that every consignment of metal

scrap in unshredded, compressed or loose form is accompanied by such a pre-shipment inspection certificate before it is loaded on the ship. Failure to observe this precaution would invite penal action for abetment regarding irregular import of metal scrap.

[Refer Circulars No. 43/2001-Cus., dated 6-8-2001, No.58/2001-Cus.,dated 25-10-2001, No.21/2003-Cus., dated 28-3- 2003, No.23/2004-Cus., 5-3-2004, No.39/2004-Cus., dated 3-6-2004, No.60/2004-Cus., dated 26-10-2004, No.40/2005-Cus., dated 3-10-2005, No.48/2005-Cus., dated 28-11-2005, No.28/2006-Cus., dated 6-11-2006, No.13/2007-Cus., dated 2-3-2007, No.2/2010-Cus., dated 9-2-2010, and No.8/2010-Cus., dated 26-3-2010, No.48/2016 dated 26.1.2016 and Instructions F.No.450/80/2000-Cus.IV, dated 24-7-2000, F.No.450/132/2004-Cus.IV, dated 4-1-2005, F.No.450/122/2005-Cus-IV, dated 13-10-2005, F.No.450/08/2007-Cus.IV, dated 22-1-2007, and F.No.450/19/2005-Cus.IV, dated 2-4-2009]

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

- 12.1 International Standards for Phytosanitary Measures (ISPM) are prescribed as per IPPC convention of FAO to reduce the risk of introduction / or spread of quarantine pest associated with wood packaging material (including dunnage) made of coniferous and non coniferous raw wood, in use in international trade.
- 12.2 DGFT, vide Notification No 54/2009-2014 dated 3-8-2010 has made it mandatory that export of goods including plant and plant products using wood packaging materials such as pallet, dunnage, crating, packing blocks, drums, cases load boards, pellet collars shall be allowed subject to compliance of ISPM-15.
- 12.3 On export side, a large number of consignments are intercepted abroad for non- compliance of ISPM-15 Standards relating to wood packaging materials used for export of materials, as informed by Department of Agriculture and Cooperation. Thus, the Board has decided that export / imported consignment with wood packaging material are to be inspected by Customs and if any export / imported consignment is found without ISPM-15 mark or with doubtful marking, it should be reported to Plant Quarantine Officer / authorities for taking necessary action. It is also clarified that exporters should specifically indicate in the Shipping Bill, the description of packaging material so as to ensure whether any consignment with wooden packaging material warrants mandatory compliance with ISPM-15 standards or not.
- 12.4 Department of Agriculture and Cooperation has informed that all the agencies authorized to provide ISPM Certification on wood packaging material have been duly accredited by Directorate of Plant Protection, Quarantine & Storage. These agencies issue ISPM-15 certification after providing treatment with Methyl Bromide or Forced Hot Air as per prescribed norms. The list of these accredited agencies is available at [www.plantquarantineindia.org](http://www.plantquarantineindia.org).

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

- 12.5 Cases of non-adherence/infringement of prescribed phytosanitary standards have been reported by other Customs administrations especially EU. Ministry of Agriculture has repeatedly expressed concerns over increasing number of such cases and desired remedial action be

taken to check export of consignments not meeting required phytosanitary specifications i.e. ISPM-15. Board has reiterated that no export consignments packed with raw or solid wood packaging material that is found deficient in meeting phytosanitary requirements ISPM-15 shall be allowed clearance.

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

### **13. Export of Leather**

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

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

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

### **14. Compliance of mandatory Indian Quality Standards (IQS)**

14.1 Under Notification no. 44 (RE-2000)/1997-2002 issued by the Ministry of Commerce, the import of certain products require to comply with the mandatory Indian Quality Standards (IQS). Exporters of these products to India are required to register themselves with Bureau of Indian Standards (BIS). Non-fulfillment of the above requirement shall render such goods prohibited for import.

### **15. Compliance of provisions of the Steel and Steel Products (Quality Control) Order 2012**

15.1 Import of Steel and Steel Products in contravention of the Steel and Steel Products (Quality Control) Order, 2012 and Steel and Steel Products (Quality Control) Second Order, 2012 as amended shall not be allowed. Field formations should ensure that the provisions are strictly complied with and import of sub standard and steel products in contravention of aforementioned Orders are not permitted.

[Refer Circular No. 08/2015- Customs dated 24.03.2018]

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## Warehousing

### 1. Introduction:

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

### 2. Legal provisions:

**2.1** The facility of warehousing of the imported goods in Custom Bonded Warehouses, without payment of Customs duty is permitted in terms of Chapter IX of the Customs Act, 1962.

### 3. Appointment of Public Warehouses:

**3.1** Section 57 of the Customs Act, 1962 provides that the Principal Commissioner of Customs or Commissioner of Customs may subject to such conditions as may be prescribed licence a public warehouse where dutiable goods may be deposited.

**3.2** All the applications for licensing of Public Warehouses shall be carefully scrutinized and due consideration shall be given to the following criterion for their appointment: –

- (a) is a citizen of India or is an entity incorporated or registered under any law for the time being in force;
- (b) submits an undertaking to comply with such terms and conditions as may be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be;
- (c) furnishes a solvency certificate from a scheduled bank for a sum of two crore rupees: Provided that the condition of furnishing a solvency certificate shall not be applicable to an undertaking of the Central Government or State Government or Union territory or to ports notified under the Major Port Trusts Act, 1963 (38 of 1963);

[Refer Not. No. 70 /2016- Customs (N.T.) dated 14th May, 2016]

### 4. Appointment of Private Warehouses:

**4.1** As per Section 58 of the Customs Act, 1962, The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a

private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

#### 4.2 The main conditions for granting Private Bonded Warehouse licences are:

Where, after inspection of the premises, evaluation of compliance to the conditions under regulation 3 and conducting such enquiries as may be necessary, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, is satisfied that licence may be granted, he shall require the applicant to,-

- (a) provide an all risk insurance policy, that includes natural calamities, riots, fire, theft, skilful pilferage and commercial crime, in favour of the President of India, for a sum equivalent to the amount of duty involved on the dutiable goods proposed to be stored in the private warehouse at any point of time;
- (b) provide an undertaking binding himself to pay any duties, interest, fine and penalties payable in respect of warehoused goods under sub-section (3) of section 73A or under the Warehouse (Custody and Handling of Goods) Regulations, 2016;
- (c) provide an undertaking indemnifying the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, from any liability arising on account of loss suffered in respect of warehoused goods due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, delivery, storage, despatch or handling; and
- (d) appoint a person who has sufficient experience in warehousing operations and customs procedures as warehouse keeper.

[Refer Not. No. . 71 /2016- Customs (N.T.) dated 14th May, 2016]

### 5. Appointment of Special Warehouses:

5.1 As per Section 58A of the Customs Act, 1962 the Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence 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.

5.2 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) of Section 58A of Customs Act 1962.]

[Refer Notification No. 72 /2016 - Customs (N.T.) dated 14th May, 2016]

### 6. Cancellation of License:

6.1 Section 58B of the Customs Act, 1962 provides that

- (1) 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: Provided that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.

- (2) 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 sub-section (1).
- (3) Where the operation of a warehouse is suspended under sub-section (2), 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.

- (4) 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.

## **7. Warehousing Bond:**

### **7.1 Section 59 of the Customs Act, 1962 provides that—**

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.

### **7.2 For the purposes of sub-section (1), 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.**

### **7.3 The importer shall, in addition to the execution of a bond under sub-section (1) or sub-section (2), furnish such security as may be prescribed.**

### **7.4 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.**

7.5 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 in sub-section (1) or sub-section (2) and furnish security as specified under sub-section (3).

**8. Permission for removal of goods for deposit in warehouse.**

8.1 Section 60 of the Customs Act, 1962 provides that—

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.

Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

8.2 Where an order is made under sub-section (1), the goods shall be deposited in a warehouse in such manner as may be prescribed.

**9. Period for which goods may remain warehoused:**

9.1 As per section 61 of the Customs Act, 1962,

(1) 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 under sub-section (1) of section 60

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.

**10. Extension of warehousing period:**

10.1 Section 61 of the Customs Act, 1962 provides 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.

**11. Interest for storage beyond permissible period:**

**11.1** As per Section 61(2) of the Customs Act, 1962 provides that in the event where any warehoused goods specified in clause (c) of sub-section (1) of Section 61 of Customs Act 1962 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.

**12. Waiver of interest:**

12.1 Section 61(2) of the Customs Act, 1962 provides 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.

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

13.1 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.

**14. Transfer of goods from one warehouse to another:**

14.1 A licensee shall allow transfer of warehoused goods to another warehouse with the permission of the bond officer under section 67 on the Form for transfer of goods from a warehouse. Where an owner of the warehoused goods produces the Form for transfer of goods from a warehouse bearing the orders of the bond officer, the licensee shall,-

- (a) allow removal of the goods and their loading onto the means of transport;
- (b) affix a one-time-lock to the means of transport;
- (c) endorse the number of the one-time-lock on the Form for transfer of goods from a warehouse and retain a copy thereof;
- (d) endorse the number of the one-time-lock on the transport document and retain a copy thereof;



- (e) take into record the removal of the goods; and
- (f) cause to be delivered, copies of the retained documents to the bond officer.

14.2 Upon receipt of goods from another warehouse, a licensee shall –

- (a) verify the one-time-lock on the means of transport carrying the goods to the warehouse;
- (b) inform the bond officer immediately if the one-time-lock is not found intact, and refuse the unloading of the goods;
- (c) allow unloading, provided the one-time-lock is found intact, and verify the quantity of goods received by reconciling with the Form for transfer of goods from a warehouse bearing the orders of the bond officer;
- (d) report any discrepancy in the quantity of goods to the bond officer within twenty four hours;
- (e) endorse the Form for transfer of goods from a warehouse with quantity received and retain a copy thereof;
- (f) acknowledge the receipt of the goods by endorsing the transportation document presented by the carrier of the goods and retain a copy thereof;
- (g) take into record the goods received; and
- (h) cause to be delivered, copies of the retained documents to the bond officer and to the warehouse keeper of the warehouse from where the goods have been received.

**15. Clearance of warehoused goods for home consumption:**

15.1 Any warehoused goods may be cleared from the warehouse for home consumption, 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 :

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided further that the owner of any warehoused goods may, at any time before an order for clearance of goods for home 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:

Provided also 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.

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

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

15.4 A licensee shall not allow goods to be removed from the warehouse for home consumption, unless the bond officer permits the removal of the goods.

(2) Upon the owner of the goods producing an order made by the proper officer under section 68, the bond officer shall permit removal of the goods and the licensee shall, –

(a) deliver the quantity of goods as mentioned in the bill of entry for home consumption to the owner of the goods and retain a copy of the bill of entry; and

(b) take into record the goods removed.

## **16. Clearance of warehoused goods for Export:**

16.1 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 or the form as prescribed under section 84 has been presented in respect of such goods;

(b) the export duty, fine and penalties payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for export has been made by the proper officer.

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

Upon the bond officer permitting the removal of the goods from the warehouse, the licensee shall, in the presence of the bond officer, cause the goods to be loaded onto the means of transport and affix a one-time-lock to the means of transport.

16.2 Warehoused goods shall be allowed to be re-exported on the following terms:

(a) On re-export, the exporter realizes full foreign exchange spent on import in freely convertible foreign currency, if the goods were imported on payment in freely convertible foreign currency; and

(b) The import in the first instance was not un-authorized or in contravention of the FTP.

- 16.3 It shall be ensured that due to re-export from the bonded warehouses there is no net loss of foreign exchange i.e. value of the goods at the time of re-export shall not be less than the foreign exchange paid at the time of their import. Moreover, if the goods were imported by payment in freely convertible currency, the re-export shall not be allowed against Indian Rupees.
- 16.4 Section 69 of the Customs Act, 1962 provides that if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification. In terms of Section 69 of the Customs Act, 1962, the following notifications have been issued:
- (i) Notification No.45-Cus, dated 13-2-1963 provides that the warehoused goods shall not be exported to Bhutan, Nepal, Burma, Sikang, Tibet or Sinkiang, However, the warehoused goods can be exported to Nepal in the following circumstances:
    - (a) If goods are exported against an irrevocable letter of credit in freely convertible currency;
    - (b) If goods are exported for supplies to projects financed by any UN Agency or IBRD Association or ADB or any other multilateral agency of the like nature and for which payments are received in freely convertible currency; and
    - (c) If the specified capital goods are supplied against a global tender invited by HMG of Nepal for which payment is received in Indian Rupees. These goods can be exported only from Jogbani or Raxaul LCS on production of bank certifies of receipt of the payment in freely convertible currency or Indian Rupees, as the case may be.
  - (ii) As per Notification No.46-Cus, dated 1-2-1963, export of warehoused goods without payment of import duty in a vessel of capacity less than 1000 tons gross is permitted subject to the condition that the exporter or agent of the vessel executes a bond for an amount equal to the import duty leviable on such goods backed by surety or security and produces a certificate within 3 months from the Customs authorities at port of destination that the goods have been landed at the port of destination.
  - (iii) Notification No.47-Cus, dated 1-2-1963 bans export of warehoused (a) Alcoholic liquors, (b) Cigarettes, (c) Cigars, and (d) Pipe Tobacco without payment of import duty as stores on board a vessel of capacity less than 200 tons gross.

## 17. Allowance in case of volatile warehoused goods:

- 17.1 Section 70 of the Customs Act, 1962 provides that when any warehoused goods at the time of delivery from a warehouse are found to be deficient in quantity on account of natural loss, the Assistant/Deputy Commissioner of Customs may remit the duty on such deficiency.
- 17.2 Notification No. 3.2016 -Customs (N.T.) dated 11.01.2016 issued under Section 70 (20) of the said Act specifies the goods on which duty may be remitted on account of natural loss, having regard to the volatility of the goods and the manner of their storage, . These goods are:

- (i) aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naphtha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks;
- (ii) wine, spirit and beer, kept in casks:
- (iii) liquid helium gas kept in containers; and
- (iv) crude stored in caverns.

**18. Maintenance of records in relation to warehoused goods:**

18.1 A licensee shall, -

- (a) bills or bills of export or any other documents evidencing the receipt or removal of goods into or from the warehouse and copies of the bonds executed under section 59.

18.2 The records and accounts required to be maintained under sub- regulation (1) shall be kept updated and accurate and preserved for a minimum period of five years from the date of removal of goods from the warehouse and shall be made available for inspection by the bond officer or any other officer authorised under the Act.

18.3 A licensee shall also preserve updated digital copies of the records specified under sub-regulation (1) at a place other than the warehouse to prevent loss of records due to natural calamities, fire, theft, skilful pilferage or computer malfunction.

18.4 A licensee shall file with the bond officer a monthly return of the receipt, storage, operations and removal of the goods in the warehouse, within ten days after the close of the month to which such return relates.

18.5 Where the period specified in section 61 for warehousing of goods is expiring in a particular month, the licensee shall furnish such information to the bond officer on or before the 10th day of the month immediately preceding the month of such expiry

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

19.1 In any of the following cases, that is to say, -

- (i) where any warehoused goods are removed from a warehouse in contravention of section 71;
- (ii) 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;
- (iii) 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 are not duly accounted for to the satisfaction of the proper officer,.

19.2 The proper officer may demand, and the owner of such goods shall 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.

19.3 If any owner fails to pay any 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.

**20. Cancellation and return of warehousing bond:**

20.1 When the whole of the goods covered by any bond executed under section 59 have been cleared for home consumption or exported or transferred or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

**21. Manufacture and other operations in relation to goods in a warehouse:**

21.1 Section 65 of the Customs Act, 1962 provides for manufacturing as well as carrying out other operations in a bonded warehouse. Under section 65, the Board has prescribed "Manufacture and Other Operations in Warehouse Regulations, 1966". These regulations provide for an application seeking permission under section 65, conditions of the bond to be executed by the licensee, maintenance of accounts, conduct of special audit and cancellation / suspension of permission etc. The form of application to be filed by an applicant before the jurisdictional Principal Commissioner / Commissioner of Customs, the form of accounts and the bond to be executed to be maintained by a unit operating under section 65 is prescribed under Circular 38/2018-Customs dated 18.10.2018.

21.2. If the resultant product manufactured or worked upon in a bonded warehouse is exported, the licensee shall have to file a shipping bill and follow the procedure prescribed under the Warehoused Goods (Removal) Regulations 2016 for transport of goods from the warehouse to the customs station of export. A GST invoice shall also be issued for such removal. In such a case, no duty is required to be paid in respect of the imported goods contained in the resultant product as per the provisions of section 69 of the Customs Act.

21.3 If the resultant product whether emerging out of manufacturing or other operations in the warehouse) is cleared for domestic consumption, such a transaction squarely falls within the ambit of "supply" under Section 7 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the, "CGST Act"). It would therefore be taxable in terms of section 9 of the CGST Act, 2017 or section 5 of the Integrated Goods and Services Tax Act, 2017 depending upon the supply being intra-state or inter-state. The resultant product will thus be supplied from the warehouse under the cover of GST invoice on the payment of appropriate GST and compensation cess, if any. As regards import duties payable on the imported goods contained in so much of the resultant products are concerned, same shall be paid at the time of supply of the resultant product from the warehouse for which the licensee shall have to file an ex-bond Bill of entry and such transactions shall be duly reflected in the accounts prescribed under Annexure B.

21.4. It may be noted that units operating under section 65 read with section 58 of the Customs Act, are entitled to import capital goods, machinery, inputs etc. by following the provisions under Ch IX. In so far as domestic procurement is concerned, applicable rates of taxes shall be

payable and exemptions, if any, can also be availed. By virtue of simply being a unit operating under section 65, they shall not be entitled to procure goods domestically, without payment of taxes. The records in respect of such domestically procured goods shall be indicated in the form for accounts as prescribed.

- 21.5 Since the warehouse operating under section 65 also functions as a warehouse licensed under section 58, the licensees can import goods and clear them as such, under section 68 or section 69 of the Act, on payment of duties, along with interest as per sub-section (2) of section 61 of the Act. The licensees shall also be required to maintain to submit monthly returns in "Form B" as prescribed under Circular No. 25/2016-Cus dated 8<sup>th</sup> June 2016 for such purposes.

Notifications and Circulars for reference:

Sl.No	Notification/ Circular No. and date	Subject
1	Notification 66/2016-Customs (N.T.) dated 14.05.2016	Goods notified under section 58 A
2	Notification 67/2016-Customs (N.T.) dated 14.05.2016	Warehoused Goods (Removal) Regulations, 2016
3	Notification 68/2016-Customs (N.T.) dated 14.05.2016	Warehouse (Custody and Handling of Goods) Regulations, 2016
4	Notification 69/2016/2016-Customs (N.T.) dated 14.05.2016	Special Warehouse (Custody and Handling of Goods) Regulations 2016
5	Notification 70/2016-Customs (N.T.) dated 14.05.2016	Public Warehouse Licencing Regulations, 2016
6	Notification 71/2016-Customs (N.T.) dated 14.05.2016	Private Warehouse Licencing Regulations, 2016
7	Notification 72/2016-Customs (N.T.) dated 14.05.2016	Special Warehouse Licencing Regulations, 2016
8	Circular No.17 / 2016-Customs dated 14.05.2016	Amendment to Ch. IX of the Customs Act, 1962 – removal of goods from a customs station - instructions regarding affixation of one-time-lock - reg.
9	Circular No.18 / 2016-Customs dated 14.05.2016	Amendment to Ch. IX of the Customs Act, 1962 – Bond required to be filed under section 59 - reg.
10	D.O.F.No.484/03/2015-LC (Vol. II) New Delhi, dated 14.5.2016	D.O letter of Commissioner Customs on changes in warehousing through the Finance Act 2016.
11	Circular 19/2016-Customs dated 20.05.2016	Allotment of Warehouse Code for Customs Bonded Warehouses.
12	Circular 20/2016-Customs dated 20.05.2016	Amendment to Ch. IX of the Customs Act, 1962 – Insertion of Section 58A – clarification regarding transitional provisions relating to Duty Free Shops/Ship stores/Airline Stores/Diplomatic Stores – reg.

13	Circular 21/2016 Customs dated 31.05.2016	Security under section 59 (3) of the Customs Act.
14	Circular No. 22 /2016 – Customs dated 31.05.2016	Procedure regarding filing of ex-bond bill of entry.
15	Circular No. 23/2016 – Customs dated 01.06.2016	Manner of payment of interest on warehoused goods.
16	Circular No. 24 /2016 – Customs dated 02.06.2016	Requirement of Solvency Certificate for the purposes of Private Warehouse Licensing Regulations 2016.
17	Circular No 25 /2016- Customs dated 08.06.2016	Maintenance of records in relation to warehoused goods in electronic form, filing of Returns and acknowledgement of receipt of goods.
18	Circular No. 26/ 2016 – Customs dated 09.06.2016	Form of application for a Licence under Public Warehousing Licensing Regulations, 2016 / Private Warehousing Regulations, 2016 / Special Warehousing Regulations, 2016.
19	Circular No. 27/2016- Customs dated 10.06.2016; Circular No. 23/2018- Customs dated 23.07.2018	Procedure to be followed by nominated agencies importing gold/silver/platinum under the scheme for 'Export Against Supply by Nominated Agencies'.
20	Circular 31/2016- Customs dated 06.07.2016	Sale of goods at Duty Free Shops in Indian Currency
21	Circular No 32/2016- Customs Dated 13th July 2016	Procedure regarding Duty Free Shops
22	Circular 50/2017- Customs dated 18.12.2017	Sale of goods and display of prices at duty free shops in Indian currency – amendment of circular 31/2016 - Customs dated 6th July 2016
23	Notification 155/1966- Customs (N.T) dated 30.07.1966.	Manufacture and Other Operations in Warehouse Regulations, 1966
24	Circular 38/2018- Customs dated 18.10.2018 and Circular No. 53/2018- Customs dated 28.12.2018.	Procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouses under section 65 of the Customs Act
25	Circular 19/2018- Customs dated 18.06.2018 as amended vide Circular 39/2018- Customs dated 23.10.2018 and further amended by Circular 41/2018- Customs dated 30.10.2018	Electronic sealing-deposit in and removal of goods from Customs Bonded warehouse.

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## Transshipment of Cargo

### 1. Introduction:

- 1.1 A number of ports, airports, Inland Container Depots (ICD), Container Freight Stations (CFS) having Customs clearance facilities have been developed in the country to reduce congestion at the gateway ports/airports and to allow importers and exporters to take Customs clearance of imported and export goods at their door steps. The objectives of bringing the Customs facility to door step of importing community and decongesting the gateway ports/ airports requires the movement of imported cargo or export cargo between a port/airport and other ports/airports, /CDs/CFSs in India or a port/airport abroad.
- 1.2 As per the Customs Act, 1962 duty becomes payable immediately after imported goods are landed at a port or airport. To avoid payment of duty at the port of landing in cases where goods are to be carried to another port/airport or ICD/CFS or to a port/ airport abroad, the Customs Act, 1962 provides a facility of transshipment of cargo without payment of duty. The goods can be transshipped from one port/airport to another port/airport/ICD/CFS either by vessel, air, rail or road or by combination of more than one such mode of transport.
- 1.3 The procedure for transshipment provided in Section 54 of the Customs Act, 1962 is applicable for imported cargo only. The imported cargo unloaded at a port is allowed to be transshipped to another port/ICD/CFS or a port abroad, if the cargo is mentioned in the import manifest for such transshipment. In regard to export cargo cleared from a port/ACC or ICD/CFS and exported through some gateway port/airport, a similar procedure is being followed to allow carriage of Customs cleared export cargo from port/airport/ICD/CFSs to another port/airport.

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

- 2.1 The transshipment procedure of imported cargo is governed by Section 54 of the Customs Act, 1962 read with Goods Imported (Conditions of Transshipment) Regulations, 1995 as well as relevant Board's circulars and instructions.
- 2.2 Transshipment Permit is the permission granted by the Customs, at the port/airport of unloading of imported goods, to shipping agents for carriage of goods to another port/ airport/ICD/CFS in India. The shipping agent submits an application along-with transshipment forms (5 copies), sub-manifest and a copy of IGM to the Customs. The Customs scrutinizes the details furnished by the shipping agents in the application for transshipment. In case, the documents are in order and there is no alert notice against the shipping agent, permission for transshipment is granted.
- 2.3 To ensure that imported cargo, on which duty has not been paid, are not pilfered en-route to another port/airport/ICD/CFS and reach safely, a bond with bank guarantee is executed by the carrier engaged for the transshipment of the goods. The quantum of bank guarantee for transshipment to be furnished by different categories of carriers is as below:



- (a) The carriers in public sector (Central/State Government Undertakings) are exempt.
  - (b) All carriers (shipping lines/ICDs/CFSS/other carriers) of containerized cargo handling more than 1000 TEUs as import containers in a financial year, are exempt, irrespective of the fact whether movement is by road or coastal shipping or rail. Further, request of carriers having annual transshipment volume below the limit of 1000 TEUs, but having good track record may be considered for exemption from BG on merit by the jurisdictional Commissioners of Customs.
  - (c) The custodians of ICDs/CFSS operating as carriers of transshipment cargo between gateway ports and their ICDs/CFSS shall in their terms and conditions of their bank guarantees executed with Customs for custodianship of ICDs/CFSS cover safety and security of cargo being transshipped by them. The details of such bank guarantee shall be informed to the Commissioner of Customs having jurisdiction over the gateway port. The custodians of ICDs/CFSS shall be allowed to transship the cargo against the said bank guarantee and they will not be required to execute a separate bank guarantee for transshipment.
  - (d) The remaining carriers are required to furnish bank guarantee @ 15% of the bond amount.
- 2.4 The terms of the bond is that if the carrier produces a certificate from Customs of the destination port/airport/ICD/CFS for safe arrival of goods there, the bond stands discharged. In case such certificate is not produced within a month or within such extended period as the proper officer of Customs may allow, an amount equal to the value, or as the case may be, the market price of the imported goods is forfeited.
- 2.5 The bond value should be equal to the value of the goods. However, considering the difficulties of shipping agents in producing documents for determination of value of the goods sought to be transshipped, the bond value is determined on the basis of notional value of the goods, which is an average value of cargo per container transshipped in the past.
- 2.6 To avoid multiplicity of bonds, the carriers are allowed to execute a running mother bond instead of individual bonds. The value of mother bond can be arrived on the basis of the average number of containers carried per trip, the average time taken for submission of proof of safe landing of containers at the destination ICDs/CFSS, frequency of such transshipment as well as notional value of cargo per container. As mother bond is a running bond, its amount may be high. If a running bank guarantee @ 15% of total bond amount is taken, it may block huge sum of money. To avoid blockage of money of carriers, an option has been given to furnish either a running bank guarantee or individual bank guarantee for each transshipment, the latter being released as soon as the landing certificates from destination Customs are produced.
- 2.7 The bond or mother bond and bank guarantee are debited at the time of transshipment of import/export containers at the port of origin, and credited on receipt of proof of safe landing of containers at the port/ICD/CFS of destination. Further EDI system has a 'bond module' which will be fully utilized once 'message exchange facility' is operationalised between two ports. In an online environment, bond re-credit is done automatically in the EDI system on

receipt of electronic message between Gateway port and destination port or between two Customs stations.

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

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

- 2.9 After issuance of transshipment permit and execution of bonds, containers are sealed with 'one time bottle seal' by the Customs. In case, containers are already sealed with 'one time bottle seal' by the shipping agents, there is no requirement of sealing again by the Customs. In such cases, shipping agents are required to inform the serial number of seals to Customs, which is just verified by the Customs.
- 2.10 After sealing and/or checking of seals by Customs, containers are moved from the gateway port and carried by the shipping agents to destination port/ICD/CFS by vessels, rail or road. Transshipment formalities in all these modes are similar.
- 2.11 To optimize the capacity utilisation of vessels, Indian flag foreign going vessels operating in routes covering more than one Indian port to a port outside India and vice versa, have been allowed to carry coastal containers alongwith imported/export cargo between two Indian ports. Further, coastal vessels have also been allowed to carry coastal containers along-with imported/export cargo between two Indian ports. However, to guard against the possibility of replacement of transshipment goods with domestic containerised cargo, some safeguards have been prescribed. All the transshipment containers as well as domestic containers are required to be sealed by 'one time bottle seal' at the port of loading. The domestic containers are required to be suitably painted with bold letters 'For Coastal Carriage only' for their identification. Carriers are also required to file a manifest for domestic containers. Provisions of sections 30 & 41 of the Customs Act, 1962 have been made applicable to Coastal vessels loading or unloading coastal goods at EXIM berths. The Master of the vessel or his agent shall submit the following:

- (a) a coastal arrival manifest for the goods which are unloaded or meant to be carried forward to other destination ports
- (b) coastal departure manifest for the goods loaded including goods on board for other destinations

The arrival and departure coastal manifests shall be prepared in duplicate. The original shall be submitted to the proper officer and duplicate would be retained by the Master of the vessel or his agent. The arrival manifest is to be submitted before the arrival of the vessel and the departure manifest is to be submitted before the departure of the vessel. There shall be no examination of the coastal goods, the container shall be sealed with tamper proof one time bottle seal and then the same can be loaded on to

the vessel. Non-containerised cargo shall also be allowed to be loaded on to the vessel provided it is clearly marked on the packing 'For Coastal Carriage Only' to make it easily identifiable. The preventive officers with the prior approval of Additional Commissioner/ Joint Commissioner (preventive wing) may from time to time carry out random checks so as to ensure that no export goods or imported goods are inadvertently or by intention loaded onto such coastal vessels.

[Refer Circular No. 14/2016- Customs dated 27.04.2016]

- 2.12 At the destination, carrier is required to present the sealed cover containing a copy of transshipment permit to Customs. The Customs checks the particular of containers, seals etc. with reference to transshipment permit. The carrier is required to obtain a certificate regarding landing of container from the Customs.
- 2.13 In case, the seals are found to be broken at the time of examination of containers by the Customs, a survey of contents of the containers is conducted in presence of Customs officer, carrier, importer or his representative and representative of insurance company. Shortage if any, noticed is recorded and is signed by all those present. The carriers are required to pay the duty for pilferage in terms of the condition of bond executed by them with the Customs at the port of loading. This is apart from other action which can be taken under Section 116 of the Customs Act, 1962.
- 2.14 The carriers have to obtain the landing certificates of containers from the Customs at the destination port/ICD/CFS and submit the same to the Customs at the originating port. The Customs reconciles its record and closes IGMs on the basis of these certificates.
- 2.15 After safe landing of containers at the destination port/ICD/CFS, the importers or their authorised agents are required to follow all Customs formalities such as filing of Bill of Entry, assessment, examination of goods etc., for clearance of the goods.

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

- 3.1 As the containers themselves are liable to duty, Customs duty exemption is provided vide Notification No.104/94-Cus, dated 16-3-1994 which, inter-alia, facilitates them being taken out of the port without duty payment subject to execution of bond. The shipping agents are required to file this bond with the container cell of the Custom House, binding themselves to re-export containers within six months of their import into India. The period of six months may be extended by the Deputy/Assistant Commissioner of Customs for a further period of three months and thereafter by the Commissioner of periods not exceeding six months at one time, in terms of the said Notification.
- 3.2 The procedure for clearance of containers imported temporarily is as follows:
  - (a) The nature of bond should be "continuity bond".
  - (b) No Bank Guarantee / Security is required is furnished alongwith the bond.
  - (c) Bond should be executed by shipping line, Non Vessel Owning Common Carrier (NVOCC), Steamer agents or their authorised representatives.

- (d) The bond amount should cover only the duty element of the imported containers and not the cargo it is carrying.
- (e) The validity period of the bond should be for a year, extendable till further such period as requested by the person executing the bond.
- (f) Till module for automatic matching of imported and export containers within permissible time is rolled out at all Customs ports, the process of monitoring of period of temporary importation would be done manually.

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

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

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

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

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

> 'LC' - Local Cargo: This refers to the port code where cargo is delivered. It is the same as the port of arrival.

> 'TC' - Transshipment Cargo: This refers to international cargo and the port of destination shall be the port code where transshipment cargo is destined to or delivered.

> 'TL' - Transshipment to ICD: This is the local cargo where the cargo meant for

transshipment to hinterland port i.e. ICD. The port of destination is the port code of the ICD.

> In electronic manifest message, there is a field to specify that whether the cargo is FCL or LCL or 'EMPTY'. This field is called 'Container Status'. The line and the sub-line numbers provide the inter-linkage between the cargo details and the container details.

- (iv) The unloading of ITP containers at gateway port would be in presence of Customs Officers and the containers would be taken to approved place / premises under Customs escort. Custodian of such premises would provide a segregated secure space for ITP containers.
- (v) Customs Officers would examine the seal of the ITP containers and if found tampered, such container should be immediately resealed with the Customs seal 77 in the presence of the custodian / shipping agent and same should be recorded. Such containers will be examined 100% by the Customs Officers and findings recorded thereof and put up to the Assistant/Deputy Commissioner of Customs in charge for further action.
- (vi) LCL cargo meant for a foreign port outside India would be de-stuffed in the presence of Customs Officer and stored in a secured area as provided by custodian. LCL cargo may contain consignments meant for transshipment to any port outside India (foreign port) as well as consignments for home consumption or transshipment to ICDs. This would necessitate segregation of the two types of cargo at the time of de-stuffing and moving them to respective storage areas under Customs escort. Till such time, sufficient precaution should be taken to avoid duplication / mixing up or manipulation of cargo meant for transshipment / home consumption.
- (vii) Whenever the LCL cargo are required to be exported to foreign destination, The re-stuffing of such LCL cargo meant for the foreign port along with the export cargo and its sealing would be done under the supervision of a Customs officer.
- (viii) The details of LCL cargo would be entered in Export General Manifest (EGM).
- (ix) Custodian would maintain the record of ITP LCL cargo, both loaded and unloaded, and submit a monthly summary to Customs. He shall execute a general bond for an amount equal to the approximate value of goods expected to be imported in 30 days for the purpose of international transshipment. In such bond, custodian should undertake to export transshipment cargo within 30 days or within extended period as Commissioner may allow and follow all the relevant Acts, Rules and Regulations in force.
- (x) Custodian would be responsible for safe handling of the LCL cargo and ensure that there is no intermixing of ITP LCL cargo with other cargo lying with the custodian.
- (xi) International transshipment of cargo needs to be effected within 30 days of Entry Inward of the importing ship. The provisions of Section 48 relating to the procedure in case of goods not transshipped within 30 days after unloading shall apply to the goods meant for transshipment as these are covered under the scope of "imported goods".
- (xii) The permission for transshipment would not be given to cargo having arms, ammunition,

explosives and other cargo considered as constituting a threat to the security/safety and integrity of the country and other goods attracting prohibition under Section 11 of the Customs Act, 1962. However goods 'restricted' as per the FTP may be permitted for transshipment to destination abroad. Further, transshipment shall not be allowed to any port destination, in respect of which any order or prohibition is in force for the time being. Commissioners may also prescribe any additional safeguard for securing safe transshipment.

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

- (a) Location of the premises.
- (b) Availability of adequate infrastructure - modern handling equipment for loading, unloading of containers from rail flats, chassis, their stacking, movement, cargo handling, stuffing/de-stuffing, refrigerated storage facility for perishable cargo etc.
- (c) Availability of sufficient secured area for segregation / consolidation of cargo and for its safe handling.
- (d) The premises need to be connected with Custom House on EDI to handle the transshipment in ICES.
- (e) Experience of custodian in handling import export matters and working knowledge of Customs Act, rules and regulations.
- (f) Logistics arrangements including constraints, if any, in movement of containers between approved place / premises and port.

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

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

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

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

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

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

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

- 7.1 The transshipment of containerized cargo from one port to an inland port or ICD/CFS is automated where the EDI system (ICES) is operational. This involves exchange of messages for Transshipment of Cargo electronically among Customs, Port authorities, ICDs and Shipping Agents. The implementation of this module is a significant step in the ongoing Business Process Re-engineering initiatives of the department and will reduce the congestion and dwell-time of cargo at the ports and contribute to reduction in transaction costs of imports.
- 7.2 In the automated Transshipment Module, the requirement of an application by the carrier is done away with and the SMTP (Sub manifest Transshipment Permit) portion of the IGM itself is treated as a request for transshipment. Carriers are not required to separately file an application for this purpose. They will however be required to indicate 79 the code of the transporter undertaking the transshipment (e.g. CONCOR) in a specific field in the IGM. The ICES system allows transshipment of those containers against whom the port of destination is indicated as ports other than the port of discharge.
- 7.3 The transshipment permit information is sent to the carrier, the transporter undertaking the transshipment, custodian of the gateway port, and the ICES system at the destination ICD. Transshipment permit can also be printed by the carrier in his office or in the custom house.
- 7.4 The transshipment permit transmitted to the recipient port/ ICD/ CFS is automatically converted into an IGM and the Shipping Lines is not be required to file any fresh IGM in respect of such containers.
- 7.5 The transporter performing the transshipment activity will be required to electronically submit a container arrival report to the ICES system at the destination ICD/ CFS in a specified format. The container arrival report will be matched with transshipment message received from the Gateway Port and a 'landing certificate' message will be generated by the inland port/ICD/CFS which will be transmitted to the Gateway port for closure of IGM Lines.

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

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

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

- (a) The exporters are required to bring their goods meant for exports to the Port/ICD/ CFS and file six copies of Shipping Bill with all necessary documents like GR form/SDF, AR-4 Form, Certificate issued by Export Promotion Councils, etc. In addition to the usual information given in the Shipping Bill, the exporter is required to mention the gateway port of export along-with the serial number(s) of the container(s). The Shipping Bill is assessed as usual, the goods examined, samples drawn, and if required, inspection carried out by other agencies to check compliance with provisions of various Allied Acts before export is permitted.
- (b) The examination order is given on the duplicate and two transference copies of the Shipping Bill i.e. on all three copies. After examination of the goods, container is sealed by the Customs with 'one time bottle seal'. The duplicate copy of Shipping Bill is retained at the ICD/CFS/port and the transference copies forwarded to the gateway port. The E.P. copy of Shipping Bill is required to be suitably endorsed/stamped by the Customs officer to the effect that the goods are to be transhipped at the gateway port mentioned on the Shipping Bill for their destination outside India.
- (c) The goods cleared for export at the port/ICD/CFS are allowed to be carried to the gateway port subject to the conditions of execution of bond similar to that provided for transshipment of import goods under relevant Regulations, and if export goods are manifested for the final destination through the gateway port. The FOB value of goods is to be debited from the continuity bond executed by the custodians. The carriers/ custodians transporting the goods are to be handed over the transference copies of Shipping Bill in a sealed cover.
- (d) The containers are allowed to be carried from a port/ICD/CFS to the gateway port by vessel or rail or road or by combination of two or more of these modes of transport.
- (e) The Drawback, if any, is required to be paid to the exporters as soon as the Shipping Bill is passed and goods are shipped at the originating port/ICD/CFS subject to the condition that the necessary bond has been executed by the Steamer 80 Agent/carrier to bring back and submit the proof of export to the Customs within 90 days.
- (f) At the gateway port, the containers are normally allowed to be exported under Customs supervision after checking the seals. In case seals are intact and documents are in order, no further examination of goods is undertaken. The Preventive Officer supervising the export of container, endorses the fact of shipment in both the transference copies of the Shipping Bill. Steamer agent has to file EGM in duplicate.
- (g) One copy of transference Shipping Bill along with a copy of EGM is sent back to the originating port/ICD/CFS.
- (h) At the originating port/ICD/CFS, export manifest and transference copy of Shipping Bill, received from the gateway port, are co-related with the duplicate copy of the Shipping



Bill and other relevant documents for closure of export manifest and cancellation of bond.

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

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

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

**10. Export of cargo in containers & closed bodied trucks from ICDs/CFSS through LCSs:**

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

- (i) The exporters are required to bring their goods meant for export to ICD/CFSS, and to file a Shipping Bill on EDI. The Shipping Bill shall be assessed as per EDI/RMS procedures. Three copies of Shipping Bill shall be printed (including one transference copy) The original of the Shipping Bill shall be retained by the ICD which one copy (transference copy) shall be carried with the cargo by the driver in a sealed envelope to the LCS of exit. The triplicate copy shall be retained by the exporter. The goods to be exported shall be stuffed in a closed body truck or container, as is convenient to the exporter, and sealed with ECTS seal. The ECTS seal number shall be recorded in all copies of the Shipping bill. The Custodian shall be responsible for obtaining the ECTS seals from the Management Service Provider (MSP) managing the transit project for Nepal cargo for this purpose.
- (ii) At the LCS, the transference copy of the Shipping Bill shall be submitted by the driver to the proper officer of Customs. The Customs officer shall verify the trip report through the ECTS web application and where no alert of any unauthorized resealing is found, he shall record the same in the transference copy of the Shipping Bill and put his name, signature, date and retain the same in the LCS for record. The officer shall remove the ECTS e-seal and allow the movement of the container/ closed body truck as the case may be, across the border for export. Simultaneously, the originating ICD/ CFSS shall view the same trip report on the ECTS web application and where no alert of any unauthorized unsealing is found, he shall take a print of the same and attach it with the original Shipping Bill along with his name, signature and date.
- (iii) In case the trip report indicates any unauthorized un-sealing, the matter shall be brought to the notice of the Deputy/ Assistant Commissioner of Customs and such container/ truck shall be subjected to 100% examination. If any deviation from the Shipping Bill or invoice is detected during examination, adjudication proceedings may be initiated. The Assistant/ deputy Commissioner of Customs at the originating ICDs/CFSS may take appropriate action under the Customs Act including raising a demand on the Custodian,

equal to the export duty, Drawback, and/or any other export incentives, in respect of the export goods, in addition to any other action that is required to be taken against the exporter. The matter shall also be reported to the jurisdictional Commissioner of GST for recovery of Taxes.

[Refer Circulars no 52/2017-Customs dated 17.09.2018 and 32/2018-Customs dated 17.09.2018]

## **11. Procedure for movement of goods under TIR Carnets-**

- 11.1 The TIR Carnet opened in the country of departure serves as a Customs control document in the countries of departure, transit and destination. It also serves as proof of the existence of an international guarantee for the goods transported under the Carnet. The Federation of Indian Chambers of Commerce and Industry (FICCI) has been appointed by CBIC as the NGA for issuance of Carnets under the Convention in India. The NGAs in each Contracting Party to the Convention constitute a guarantee chain linking all TIR countries with the International Road Transport Union (IRU), a non-governmental organization in Geneva, Switzerland, at the apex of the guarantee chain. The presentation of a valid TIR Carnet bearing the names, stamps and signatures from IRU and those of the issuing association and duly filled-in by the transport operator is the proof of the existence and validity of the guarantee.
- 11.2. The National Guaranteeing association shall fix the period of validity of the TIR Carnet by specifying a final date of validity after which the Carnet may not be presented for acceptance at the Customs office of departure. However, if the carnet has been accepted by the Customs office of departure on or before the final date of validity, the Carnet shall remain valid until the termination of the TIR operation at the Customs office of destination.
- 11.3 The TIR carnet is available in 4,6,14 and 20 vouchers and each TIR operation (between two customs station) requires the use of one pair of vouchers (1 white, 1 green). Step by step guidance on how to fill the TIR carnet is available at the IRU website ([www.iru.org](http://www.iru.org)). The TIR carnet serves as a guarantee for the customs duties and taxes in transit and as the Customs transit declaration. Thus, where India is the country of departure or the country of destination, a shipping bill or bill of entry, as the case may be, is also required to be filed for import or export of consignments under the cover of a TIR carnet.
- 11.4 The procedure at the Customs office of Departure is as follows:
- (i) At the Customs office of departure, the Customs authorities shall check the cargo on the basis of information contained in the TIR Carnet completed by the transport operator. The Customs authorities shall then seal the load compartment, report it in the TIR Carnet, keep one sheet (white voucher) and fill-in the corresponding counterfoil. The TIR Carnet will then be handed back to the transport operator.
  - (ii) When crossing the outgoing border of the country, Customs authorities shall check the seals, detach a second sheet (green voucher) from the TIR Carnet and fill-in the corresponding counterfoil.
  - (iii) The filled-in counterfoils by Customs provide evidence to the transport operator that the TIR operation in that country has been terminated.

- (iv) The outgoing Customs office (i.e. that at the border) shall send the detached sheet (green voucher) to the office of departure within 7 days of the departure of the goods. The latter shall compare the received sheet with the one it initially retained. If there are no objections and no reservations by the outgoing office, the TIR operation may be discharged by Customs authorities in that country.
- (v) If the sheet, detached by the outgoing office, contains reservations or if it does not reach the Customs office of departure or if Customs authorities have any other reason to question the proper application of the TIR operation, an internal inquiry will be started. The transport operator and the NGA shall be informed that the termination of the TIR operation has been certified with reservations or has not taken place at all or that other reasons have led to doubts about the proper application of the TIR operation and that they are requested to provide explanations. If a satisfactory reply is not received, the Customs authorities shall apply the provisions of the TIR Convention and national legislation to determine the taxes and duties due to Customs.
- (vi) If after sufficient effort, the Customs authorities are unable to collect the duties payable from the carnet holder, the Customs authorities shall claim the amount so payable from the NGA within the timelines stipulated in the Convention.

11.5. The procedure at the Customs office of Transit and country of destination:

- (i) The incoming Customs office of transit checks the seals and withdraws one sheet from the TIR Carnet, and the outgoing office proceeds likewise. Both sheets are compared for a final control and the TIR operation can be discharged or, in the case of irregularities, submitted to the procedure outlined above.
- (ii) In the country of destination, if the incoming border office also is the office of destination, it fills-in the TIR Carnet, retains two sheets and becomes responsible for the goods to be transferred to another Customs procedure (warehousing, import clearance, etc.) in that country. If the cargo has to be carried to another Customs office in the same country, the incoming office acts like an incoming border office, and the next office inside the country becomes that of final destination.

11.6 No TIR Carnet can be issued/ accepted for movement of alcohol and tobacco in India.

11.7 Where a TIR operation has not been discharged, the competent customs authorities shall:

- (a) notify the TIR Carnet holder at his address indicated in the TIR Carnet of the non-discharge;
- (b) notify the guaranteeing association of the non-discharge. The competent authorities shall notify the guaranteeing association with a maximum period of one year from the date of acceptance of the TIR Carnet by those authorities or two years when the certificate of termination of the TIR operation was falsified or obtained in an improper or fraudulent manner.
- (c) The guaranteeing association shall pay the amounts claimed within a period of three months from the date when a claim for payment is made against it.

11.8 TIR is being introduced in a phased manner in India. The Customs Stations in India authorized for use of TIR shall be: –

<b>Ports</b>	<b>Inland Container Depots (ICDs)</b>
1. Nhava Sheva	1. Tughlakabad
2. Mundra	2. Patparganj
3. Kolkata	3. Dadri
4. Chennai	4. Ahmedabad
5. Cochin	5. Hyderabad
6. Visakhapatnam	6. Pune
7. Krishnapatnam	7. Durgapur

11.9 For the above purpose, authorization has to be accorded to –

- (i) operators who can apply, obtain and use the TIR for movement of cargo;
- (ii) containers that would be deployed in TIR operations, conforming to the standards laid down in the convention.

11.10. The customs officer at the port of departure shall affix the one-time customs seal and make necessary endorsements in the TIR carnet and affix the official stamp of the Custom House.

11.11 In cases where an examination is conducted by customs in the course of a journey and it is required to break seals and/or remove identifying marks, they shall affix and record the new seals and/or identifying marks on the vouchers of the TIR Carnet used in their country, on the corresponding counterfoils and on the vouchers remaining in the TIR Carnet.

11.12 Heavy or bulky goods, if the authorities at the Customs office of departure so decide, be carried by means of non-sealed container.

[Refer Circular no. 48/2018 dated 03.12.2018]

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

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

12.2 Transshipment of cargo from a gateway airport to an inland airport:

- (i) On arrival of flight, the transshipment cargo should be segregated in custodian's premises.
- (ii) For transshipment of cargo, the carrier/ console agent is required to file an application for transshipment of cargo, consigned to another airport as indicated in HAWB. Cargo Transfer Manifest (CTM) prepared by the carrier/consol agent, as the case may be, shall itself be treated as application for transshipment. Separate CTMs may be prepared destination-wise. Such transshipment should be approved by the Proper Officer.

- (iii) The cargo mentioned in the CTM needs to be escorted by the Preventive Officer from the warehouse of the custodian to the warehouse of receiving airlines which acknowledges the same. The concerned airlines/custodian warehouse should have double locking arrangement, one key of which will be with the airlines/ custodian and the other with Customs, for storage of transshipment cargo. No physical examination needs to be conducted, except on specific intelligence, for allowing transshipment and only marks and numbers of cargo need to be verified.
- (iv) The receiving airlines should prepare its cargo manifest and transshipment be allowed under Customs supervision. The value of transshipped cargo should be debited from the Transshipment Bond.
- (v) Customs at destination airport will acknowledge the receipt of the cargo and send back the acknowledgement manifest through the carrier. The carrier should produce such acknowledgement at the originating airport within 10 days of transshipment. On the basis of such acknowledgement the Transshipment Bond would be re-credited.
- (vi) The usual procedure for Customs clearance of cargo shall be adopted at the destination airport.

#### 12.3 International transshipped cargo (Foreign to Foreign):

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

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

- (i) Shipping Bill shall be filed at the originating Customs station and "Let Export Order" should be given by the Customs at the same station. Transshipment Permit (TP) should be prepared by the airlines/ carrier and approved by the proper officer. TP should be sent alongwith the cargo and Transshipment Bond shall be debited for the value of cargo.
- (ii) On arrival at the gateway airport, the cargo should be taken to the warehouse of the domestic airlines/custodian in a clearly identified area. The warehouse should have double locking arrangement, one key of which will be with the airlines/ custodian and the other with Customs. The Customs officers in charge of warehouse should verify the details of the packages with the TP, Airway Bill, etc. The domestic airlines may prepare the CTM airlines-wise which shall be certified by the Export Freight Officer (EFO).
- (iii) Cargo should be shifted to the transshipment warehouse in the export terminal of custodian and acknowledgement obtained. No examination of such cargo should normally be done at gateway airport, except on credible intelligence or information.

- (iv) When the aircraft is ready for loading, the airlines should seek permission from the EFO for loading. The load plan prepared by the airlines should be signed by the Airlines, EFO and the custodian.
- (v) Cargo should be loaded in the aircraft under Customs supervision.
- (vi) Copy of manifest signed by the EFO and Airway Bill alongwith copy of Shipping Bill should be sent by the airlines to the originating station within 30 days of transshipment. Transshipment Bond shall be re-credited at originating airport.
- (vii) In case the transshipment is by bonded truck, the marks and numbers of the packages shall be verified with the details in the transshipment permission and the bonded truck sealed with bottle seal in the presence of the Preventive Officer.
- (viii) If transshipment of cargo is also desired at some intermediate Customs airport, carrier/ airlines should give advance intimation to intermediary airport. Customs at intermediary airport would supervise the movement of cargo and endorse the same on Transshipment Permit. The concerned airlines/custodian warehouse should have double locking arrangement, one key of which will be with the Airlines / custodian and the other with Customs, for storage of transshipment cargo. The loading of such cargo again would be under the supervision of Customs Officer.

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

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

12.6 In order to ensure an efficient Cargo Transfer Facility and to reduce dwell, Board has decided that in case of international transhipped cargo (Foreign to Foreign), for the pre-sorted containers wherein cargo does not require segregation, ramp to ramp or tail to tail transfer of cargo can be effected under preventive supervision on payment of MOT and observance of Cargo Transfer Manifest (CTM) procedure. In these cases, transshipment cargo meant for destination abroad need not be sent to cargo warehouses. In the case of containers other than pre-sorted containers, the existing procedure for transshipment of Cargo (Foreign to Foreign) would continue to apply.

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

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

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

### **13. Bonded trucking facility:**

13.1 With a view to supplement the existing facility and provide adequate flexibility to the trade in the choice of modes of transport, movement of imported cargo in containers / trucks has been

allowed between airports/ACCs and airports/ACCs/CFSS/ICDs as per the following procedure:

- (i) On the basis of the request made by the trade and in terms of Section 45(1) of the Customs Act, 1962 the Commissioner of Customs will appoint the airlines or their duly approved agents or the custodians of gateway airport/ACCs or the custodians of destination /CDs/CFSS/airports/ACCs as the custodian of all cargoes to be transshipped under bonded cargo trucking facility from airport/ ACCs to ICDs/CFSS/airports/ACCs in hinterland by road. The permit will be valid for one year from the date of issue initially and shall be renewed every three years subsequently.
- (ii) Transshipment of imported cargo is governed by the provisions of Chapter VIII of the Customs Act, 1962 and the Goods Imported (Conditions of Transshipment) Regulations, 1995.
- (iii) The imported cargo should be manifested for transshipment. In respect of consol cargo where the Master Airway Bill does not show the final destination, the airlines filing transshipment application should keep a copy of both Master Airway Bill and House Airway Bill to indicate that the particular consignment sought for transshipment is for an inland Customs airport/ICD/CFSS/ACC.
- (iv) For proper account of cargo the custodian should execute a suitable running bond with a bank guarantee for an amount approved by Commissioner of Customs concerned. The amount will be debited from this bond when the transshipment cargo is taken by the custodian and it will be credited when the proof of handing over of the cargo to Customs at final destination is produced. The custodian will be responsible for any shortage or pilferage of the cargo.
- (v) The custodian will submit a list of trucks together with registration numbers to be used for movement of each transshipment cargo. The trucks so deployed for transport should be specially secured to avoid pilferage of cargo and have provision of affixing of Customs "Bottle Seals".
- (vi) The airlines/custodian should have a transshipment warehouse within the Airport Apron area so that the goods on unloading can be shifted to the transshipment warehouse without having to be moved outside the Airport area. The concerned airlines/custodian warehouse should have double locking arrangement, one key of which will be with the airlines/custodian and the other with Customs, for storage of transshipment cargo. Preventive Officers will be posted at the airlines/custodian warehouse on cost recovery basis.
- (vii) If the airlines/custodian does not have a transshipment warehouse, the import cargo for transshipment duly passed with transshipment application will be received by them from the Airport Authority of India's (AAI) custody to their make-up area specially earmarked for the purpose of palletisation/containerisation on the same day under Customs supervision and if for any reason the goods cannot be transshipped immediately, the same should be handed over to AAI.
- (viii) The custodian appointed and deciding to transship the cargo will present transshipment

application (5 copies) alongwith the copy of Airway Bill (both Master Airway Bill and House Airway Bill, wherever applicable) to the Customs Officer in charge of transshipment clearance. The original transshipment copy must be affixed with Rs.20 stamp as T.P fees. The transshipment application should contain details such as (a) name and address of the importer; (b) name and address of the exporter; (c) country of origin; (d) airport of destination; (e) flight no. and date; (f) IGM no. and date; (g) description of goods; (h) value of the goods; (i) No. of packages; (j) weight gross/net; and (k) details of container/ palletised vehicle on which the cargo consignment is to be carried.

(ix) After scrutiny of T.P. application the T.P. Officer will issue Customs Bottle Seal and hand it over to the Customs Officer supervising the loading of the cargo in container/truck. The T.P. Officer will mention S.No. of Customs Bottle Seal on all copies of transshipment application.

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

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

(xi) Original copy of T.P. application will be forwarded to the Import Freight Officer (IFO) of Customs at the airport/ACC/CFS of destination. Duplicate copy will be retained by T.P. Officer. Triplicate copy of T.P. application will be handed over to the airlines/custodian. The Quadruplicate copy will remain with the Customs Officer posted in the airlines/ custodian warehouse and supervising the loading of cargo. The Quintuplicate copy will be sent in sealed cover alongwith the truck/container to IFO of Customs at the airport/ ACC/CFS/ICD of destination who will retain it after verification of cargo.

(xii) The IFO of Customs at the airport/ACC/CFS/ICD of destination will check the Customs Bottle Seal and description of packages as per T.P. copy and tally the packages with the copies of the manifest received to ensure that the packages are in good condition. The safety and security of the packages is the responsibility of the custodian and in case of any damage at the time of in transit, it should be clearly indicated in all copies of manifest and attested by custodian. The IFO at the airport/ACC/CFS/ICD of destination after receiving the cargo shall under his name and signature give a suitable endorsement on the original T.P. copy, as given below, and retain the T.P. copy sent with the truck for record.

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



- (xiii) The endorsed original T.P. copy will be presented by the airlines/custodian as evidence of handling over of the cargo to the transshipment officer at the ACC/ airport from where the transshipment permission was granted. On receiving such endorsed T. P. copy the transshipment officer will close the entry in the register.
  - (xiv) The airlines/custodian shall make necessary arrangements at the airport/ACC/ ICD/CFS of destination to remove the cargo and deposit the same with custodians appointed under Section 45 of the Customs Act, 1962, under Customs supervision.
  - (xv) The airlines/custodian shall produce the evidence of handling over of the cargo at the inland airport/ACC/CFS/ICD of destination within 30 days from the dispatch of goods / failing which suitable action will be taken.
  - (xvi) The airlines/custodian will be required to bear the expenditure on cost recovery basis over the preventive staff to be provided exclusively for this purpose.
- 13.2 The movement of unaccompanied baggage from airports/ACCs to ICDs/CFSs/ Airports/ACCs shall be allowed by the bonded trucks.
- 13.3 The procedure of bonded trucking facility is available for movement of imported cargo both by containers and trucks.

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

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

- 14.1 Air India, Indian Airlines and private domestic private airlines are permitted to carry domestic cargo between domestic airports on their international flights subject to the fulfillment of the following conditions:
- (i) Separate space shall be assigned by the airlines or custodian in the cargo complex/ area of the airport for receipt and storage of domestic cargo till these are delivered or dispatched.
  - (ii) Domestic cargo will be received by the airlines in the designated area during the normal working hours of Customs at the respective airport.
  - (iii) The containers/Unit Load Devices (ULDs) used to carry the domestic or international cargo shall be clearly marked or coloured or strapped, for identification, distinction at the time of loading/ unloading, transportation.
  - (iv) Domestic tags shall be prepared for identification of the domestic cargo with separate colour coding.
  - (v) Loading or unloading of domestic cargo in any international flight/ aircraft shall be carried under the supervision of Customs officers.
  - (vi) Domestic and international cargo will be loaded separately, and shall be carried in hold area onboard the aircraft distinctly identifying these cargoes.
  - (vii) On arrival of the domestic cargo, at the destination airport, the airlines shall make necessary arrangements to deliver the domestic cargo.

- (viii) In respect of transshipment of international cargo, airlines shall be required to execute necessary bond and bank guarantee unless exempted on account of fulfilling the specified threshold limit of annual transshipment volume. In addition, prescribed transshipment procedure shall be strictly adhered to. Accordingly, no separate bond or bank guarantee shall be required in respect of domestic cargo.
- (ix) In case of any violation of the prescribed conditions or any other regulations providing for the manner in which the imported goods/ export goods shall be received, stored, delivered or otherwise handled in a Customs area, necessary action may be taken against the person including withdrawal of the facility and imposition of penalty under the Handling of Cargo in Customs Areas Regulations, 2009.

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

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

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

- (i) The courier company must be registered with Customs.
- (ii) The packages/bags of domestic courier should be clearly and identifiably differentiated from the International Courier bags/packets by printing in bold "DOMESTIC COURIER".
- (iii) The domestic courier bags should be kept in separate pallets and should be stored in the separately marked domestic bins/containers on the aircraft.
- (iv) At the place of embarkation the domestic courier company will submit "goods declaration", indicating the number of bags, number of packages in bags, content of packages, to the on board courier or person in-charge of the aircraft with a copy to the Escort Officer of Customs.
- (v) At the place of disembarkation/ arrival, the cargo manifest will be filed by person in-charge of the aircraft or on-board courier, as the case may be, with the proper officer of Customs. In case, on board courier is not accompanying the courier consignment, the responsibility to file the cargo manifest with the proper officer of Customs will vest with the person in charge of the aircraft.
- (vi) The copy of the declaration submitted to escort officer of Customs will be handed over by the Escort Officer to the Customs Officer at the disembarking airport, for carrying out the checks and verifications, if so required.
- (vii) If the courier consignment is accompanied by "on board courier"; they will not be allowed to carry any courier bags on board the aircraft as hand baggage.

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

16.1 In the interest of reducing transaction cost and dwell time Board has decided that suitable

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

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

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

[Refer Circulars No.47/96-Cus, dated 16-9-1996, No.57/98-Cus, dated 4-8-1998, No. 31/99-Cus, dated 27-5-1999, No.69/99-Cus, dated 6-10-1999, No.34/2000-Cus, dated

3-5- 2000, No.56/2000-Cus, dated 5-7-2000, No.61/2000-Cus, dated 13-7-2000, No.75/2001-Cus, dated 5-12-2001, No.78/2001-Cus, dated 7-12-2001, No.15/2002-Cus, dated 25-2-2002, No.18/2002-Cus, dated 13-3-2002, No.46/2002-Cus, dated 29-7-2002, No.90/2002-Cus, dated 19-12-2002, No. 61/2003-Cus, dated 18-7-2003, No.87/2003-Cus, dated 6-10-2003, No.52/2004-Cus, dated 7-10-2004, No.45/2005-Cus, dated 24-11-2005, No.46/2005-Cus, dated 24-11-2005, No.47/2005-Cus, dated 24-11-2005, No.24/2006-Cus, dated 25-8-2006, No.6/2007-Cus, dated 22-1-2007, No.14/2007-Cus, dated 16-3-2007, No.31/2005-Cus, dated 25-7-2007, No.18/2009-Cus., dated 8-6-2009, No.4/2010-Cus, dated 15-2-2010 and No.22/2013-Cus., dated 24-5-2013]

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## Consolidation of Cargo

### 1. Introduction:

- 1.1 With the development of a number of ICDs/CFSs in the hinterland, importers and exporters have the option to either get their import/export consignments cleared at the gateway ports or any nearby ICD/CFS. The export goods cleared by Customs at an ICD/CFS are sent in sealed containers to gateway port where these containers are normally allowed to be exported without further examination of the goods. Similarly, imported cargo meant for any ICD/CFS is allowed to be transhipped in sealed containers from the gateway ports to such ICDs/CFSs and all Customs formalities in relation to clearance of cargo are completed by the importers at ICD/CFS.
- 1.2 Export containers sealed at the ICD/CFS were earlier not allowed to be re-opened for consolidation at the gateway port, which led to shifting this activity to international hub ports e.g. Dubai, Singapore and Colombo. Similarly, import containers with LCL cargoes used to be brought to hub ports, where shipping lines used to consolidate the cargo and stuff in containers destination wise. There was thus a demand from exporters, importers, shipping lines, agents and consolidators to allow the re-working of containers at the gateway ports to avoid the extra expenditure incurred for undertaking the same job at the foreign hub ports.
- 1.3 The facility of re-working containers is now allowed at the gateway ports. Shipping lines can take containers stuffed with LCL export cargo, irrespective of destination, from ICD/CFS to a gateway port, where these can be opened and re-worked with cargo received from different ICDs/CFSs and stuffed in containers, destination-wise. Similarly, LCL import cargo brought at any gateway port can be re-worked and consolidated in containers ICD-wise. With this facility, the exporters get benefited by saving in freight charges, reduction in transit time, better handling and safer delivery of cargo as the activity takes place under the supervision of Indian agencies. The facility also reduces freight charges for imported LCL cargo as it helps in optimum utilization of container capacity. It also helps in attracting business for Indian ports and developing them as transshipment hubs.

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

- 2.1 Broadly, the procedure for consolidation of import cargo at the gateway ports is as follows:
  - (i) On arrival of the LCL cargo meant for ICDs/CFSs, at the gateway port the concerned shipping line files the IGM with the Customs;
  - (ii) The de-stuffing and consolidation of the LCL cargo ICD/CFS-wise is to be done at the earmarked space under Customs supervision and surveyors of the custodians;
  - (iii) After consolidation of LCL cargo (ICD/CFS-wise), the custodian at the gateway port shall prepare a tally list showing details of the import consignments, the previous container number, IGM No. and the details of the new container. The shipping line has to then file sub-IGMs for all LCL (Import) cargo IGM-wise;

- (iv) After acceptance of sub-IGM by Customs, the LCL cargo ICD/CFS-wise is allowed to be re-stuffed in empty containers. The containers so re-stuffed are sealed by the custodian as per the procedure. The details of the new bottle seal should be indicated in the sub-IGM;
- (v) For transshipment of re-stuffed LCL cargo in new containers to different ICDs/ CFSs, the concerned shipping line is to follow the procedure laid down in the Goods Imported (Conditions of Transshipment) Regulations, 1995; and
- (vi) After completion of Customs formalities and clearance of LCL cargo at the respective ICDs/CFSs, a copy of the sub-IGM is to be sent back to Customs authorities at the gateway port for confirmation/closure of IGM.

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

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

- (i) LCL cargo brought to an ICD/CFS is subject to routine documentation, assessment and examination by Customs. After examination and clearance of LCL cargo at the ICD/CFS, the packages opened for Customs examination are sealed by Customs. The shipping line is required to use identification mark on each package, clearly indicating serial number of package, description of goods, total number of packages covered under that particular shipping bill, exporters identity and their own codified identity;
- (ii) After completion of Customs formalities, the packages are handed over to the custodians along with two transference copies of Shipping Bill, certified copies of invoice, packing list, Bill of Lading and other documents;
- (iii) The custodian consolidates the cargo irrespective of shipping line and destination and stuffs these in containers. After sealing of such containers in presence of Customs, containers are carried to the gateway port or a CFS near gateway port by the custodian;
- (iv) At the gateway port, the documents are handed over to Customs and the containers are opened in presence of Customs. The cargo is handed over to shipping lines/ their agents/MTOs/consolidators, etc., who re-work the cargoes received from different ICDs as well as cargo cleared for export at the gateway port or CFSs near the gateway port and re-stuff the cargo in containers destination-wise in presence of Customs;
- (v) The custodians of the gateway port or CFS near gateway port have to maintain a tally sheet container-wise indicating details of the export consignments, the previous container number, Shipping Bill number, AR-4 number and the details of new containers in which goods are re-stuffed;
- (vi) The container number in which such cargoes are stuffed is to be indicated by the Customs Officer on both the transference copies of Shipping Bill and AR-4. One copy of Shipping Bill is retained by the Customs at the gateway port and other copy of Shipping Bill is returned to the originating ICD/CFS;
- (vii) The LCL cargo cleared by Customs at the ICD/CFS is normally not to be examined again by Customs at the gateway port or at the CFS where LCL cargo is being consolidated; and

(viii) The Drawback is to be paid at the inland ICDs/CFSs immediately after the clearance of LCL cargo by Customs without waiting for actual shipment of cargo from the gateway port.

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

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

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

4.1 As per Section 54(2) of the Customs Act, 1962 transshipment of imported goods to any place outside India, referred as 'International transshipment', is allowed except in respect of goods prohibited under Section 11 of the said Act. Accordingly, international transshipment of imported goods in Full Container Load (FCL) is permitted. Further, as a measure of trade facilitation and to enable Indian ports to act as Transshipment Hubs, transshipment facility for imported goods in Less than Full Container Load (LCL) is permitted at approved places under the jurisdiction of identified Custom Houses. Currently, this facility is provided at Chennai, Cochin, Nhava Sheva, and Tuticorin.

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

- (i) The application for international transshipment of FCL cargo can be made by master of the vessel or his authorized agent, Non-Vessel Operating Common Carrier (NVOCC) or any other person duly authorized in this behalf by the foreign supplier;
- (ii) No goods for international transshipment should be unloaded from the vessel until the permission for the same has been given by the Assistant/Deputy Commissioner of Customs authorized in this behalf by the Commissioner of Customs, on the basis of manifested details in IGM;
- (iii) The ITP container details such as container number, broad description of goods etc. shall be mentioned in the IGM. In the electronic manifest, there are fields for specifying (a) Port of destination, and (b) 'cargo movement' code. For cargo movement, there are three codes, which need to be filled correctly with proper port of destination, as follows:
  - (a) 'LC' - Local Cargo: This refers to the port code where cargo is delivered. It is the same as the port of arrival.
  - (b) 'TC' - Transshipment Cargo: It refers to international cargo and the port of destination shall be the port code where transshipment cargo is destined to or delivered.
  - (c) 'TI' - Transshipment to ICD: This is the local cargo meant for transshipment to hinterland port i.e. ICD. The port of destination is the port code of the ICD.

- (d) There is a field 'Container Status' to specify whether the cargo is FCL or LCL or 'Empty'. The line and the sub-line numbers provide the inter-linkage between the cargo details and the container details.
- (iv) The unloading of such ITP containers at gateway port would be in presence of Customs Officers. The containers would be taken to approved place / premises under Customs escort. Custodian of such premises would provide a segregated secure space for ITP containers.
- (v) Customs Officers would examine the seal of the ITP Containers and in case of it tampering, such container should be immediately resealed with the Customs seal in the presence of the custodian/shipping agent and same should be recorded. Such containers will be examined 100% by the Customs Officers and findings recorded thereof and put up to the Assistant/Deputy Commissioner in charge for further action.
- (vi) LCL cargo meant for a foreign port outside India would be de-stuffed in the presence of Customs Officer and stored in a secured area as provided by custodian. LCL cargo may contain consignments meant for transshipment to any port outside India as well as consignments for home consumption or transshipment to ICDs. This would necessitate segregation of the two types of cargo at the time of de-stuffing and moving them to respective storage areas under Customs escort. Till such time, sufficient precaution should be taken to avoid duplication/mixing up or manipulation of cargo meant for transshipment/home-consumption.
- (vii) Whenever the LCL cargo are required to be exported to foreign destination, The re-stuffing of such LCL cargo meant for the foreign port along with the export cargo would be done under the supervision of a Customs officer. Further, container would be sealed in presence of a Customs Officer and the details of LCL cargo would be entered in EGM.
- (viii) Custodian would maintain the record of ITP LCL cargo, both loaded and unloaded, and submit a monthly summary to Customs. He shall execute a general bond for an amount equal to the approximate value of goods expected to be imported in 30 days for purpose of international transshipment and undertake to export transshipment cargo within 30 days or within extended period as Commissioner may allow and follow all the relevant Acts, Rules and Regulations in force.
- (ix) Custodian would be responsible for safe handling of the LCL cargo and ensure that there is no intermixing of ITP LCL cargo with other cargo.
- (x) International transshipment of cargo needs to be effected within 30 days of 'Entry Inward' of the importing ship. The permission for transshipment would not be given to cargo having arms, ammunition, explosives and other cargo considered as constituting a threat to the security/safety and integrity of the country and other goods attracting prohibition under Section 11 of the Customs Act, 1962. However goods which are „restricted“ as per the FTP may be permitted for transshipment to destination abroad. Further, transshipment shall not be allowed to any port / destination, in respect of which any order or prohibition is in force for the time being. Commissioners may also prescribe any additional safeguard for securing safe transshipment. The provisions of Section 48



relating to the procedure in case of goods not transshipped within 30 days after unloading shall apply to the goods meant for transshipment as these are also 'imported' goods.

- (xi) For international transshipment of LCL containers, the Commissioners should adopt consultative approach with the stakeholders/operators to identify suitable premises. Following factors may be considered by the Commissioner in this regard:
- (a) Location of the premises.
  - (b) Availability of adequate infrastructure - modern handling equipment for loading / unloading of containers from rail flats, chassis, stacking, movement, cargo handling, stuffing/de-stuffing, refrigerated storage facility for perishables etc.
  - (c) Availability of sufficient secured area for segregation/ consolidation of cargo and its safe handling.
  - (d) The premises need to be connected with Custom House on EDI to handle the transshipment in ICES.
  - (e) Experience of custodian in handling import export matters and working knowledge of Customs Act, rules and regulations.
  - (f) Logistics arrangements including constraints, if any, in movement of containers between approved place/premises and port.
- (xii) In line with Boards instructions, Commissioners may also indicate detailed operational procedure, taking into account the requirements, physical movement in carrying goods to the approved place / premises etc. at individual Customs stations.

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

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## Merchant Overtime Fee

### 1. Introduction:

- 1.1 At times, the trade requests for Customs clearance facilities or for Customs supervision of loading/unloading of vessels, stuffing, de-stuffing of containers, examination of cargo etc. beyond normal working hours of Customs or on holidays. Sometimes requests are received for posting of officers to supervise activities like stuffing, de-stuffing of containers etc., at a factory or place beyond the Customs area. Normally, the trade is required to plan its activities requiring Customs supervision or presence during working hours on working days and within the Customs area. However, in certain cases, e.g. in case of perishable cargo, life saving drugs or other consignments required urgently which has landed at an airport after working hours or on holidays, the importer may require immediate clearance. Considering the difficulties of the trade, the services of Customs, after normal working hours or on holidays within the Customs area or at any time at a place beyond Customs area, are provided on payment of overtime fee.
- 1.2 The overtime fee (also referred as MOT fee) is collected in terms of Section 36 of the Customs Act, 1962 which allows unloading/loading of imported/export cargo from/on a vessel beyond working hours on a working day or on holidays only on payment of a prescribed fees and the Customs (Fees for Rendering Services by Customs Officers) Regulations, 1998 which prescribes the rates and the manner for collection of such fee.

### 2. Levy of overtime fee:

- 2.1 The overtime fee is levied for services rendered by the Customs officers to trade beyond normal working hours or on holidays. If the service is rendered at a place that is not their normal place of work or at a place beyond the Customs area, overtime is levied even during the normal working hours. The term „service” means any function performed by the Customs officer under the Customs Act, 1962 and it includes:
  - (a) Examination of the goods and related functions,
  - (b) Loading and unloading of goods whether generally or specifically,
  - (c) Escorting goods from one Customs area to the other, and
  - (d) Any other Customs work authorised by the Commissioner of Customs.
- 2.2 The term ‘working hours’ means the duty hours prescribed by the jurisdictional Commissioner of Customs for normal Customs work. Where different working hours have been prescribed by the Commissioner of Customs for different items of Customs work or for different places within his jurisdiction, such working hours are to be considered as ‘working hours’ for the purpose of levy of overtime fee.
- 2.3 Present rates of overtime fee for rendering services by the Custom officers are as follows:

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

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

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

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

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

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

### 4. Expansion of 24X7 Customs clearance and clarification of levy of MOT charge in CFS attached to 24X7 ports.

4.1 As a trade facilitation measure CBIC has amended the Customs (Fees for Rendering Services by Customs Officers) Regulations, 1998 and no fee shall be leviable in location where the working hours in respect of clearance of cargo in Customs Ports or Customs Airport has been prescribed as 24 hours on all day.

[Refer Circular 04/2017-Customs dated 16.02.2017 & The Customs (Fees for Rendering Services by Customs Officers) Amendment Regulations, 2016.

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## Procedure for Less Charge Demand

### 1. Introduction:

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

### 2. Legal provisions:

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

2.2 Section 28(5) of the Customs Act, 1962 provides that the importer or the exporter or the agent or employee of the importer or exporter, to whom a notice is served under the Section 28(4) of the said Act pays the duty in full or in part as may be accepted by him, and the interest payable thereon under Section 28AA of the said Act and penalty equal to 25% of the duty specified in the notice or the duty so accepted by such person within 30 days of the receipt of the notice. In such case if such person has paid the duty in full together with interest and penalty, the proceedings in respect of such person and other persons to whom notice is served shall, without prejudice to the provisions of Sections 135, 135A and 140 of the said Act, be deemed to be conclusive as to the matters stated therein.

### 3. 'Proper officer' for the Sections 17 and 28 of the Customs Act, 1962:

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

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

and always had been the proper officers for the purposes of this section.”

The amended Section 28 of the Customs Act, 1962 validates Show Cause Notices issued prior to 6-7-2011 by officers of Customs, which would include officers of Commissionerates of Customs (Preventive), Directorate General of Revenue Intelligence (DRI), Directorate General of Goods Service Tax Intelligence (DGSTI) and similarly placed officers by retrospectively recognizing these officers as „proper officers’ for the purpose of Sections 17 and 28 of the said Act. Board has decided that, specified officers of DRI and DGSTI may attend to work relating to adjudication of case where show 96 cause notices of short levy / non levy of customs duty have been issued under Section 28 of the Customs Act, 1962.

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

- 3.2 As a prospective remedial measure, in terms of Section 2(34) of the Customs Act, 1962, the Board has issued Notification No.44/2011-Customs (N.T.), dated 6-7-2011 by virtue of which officers of DRI, Commissionerates of Customs (Preventive), DGSTI and Central Tax Commissionerates were assigned the functions of the ‘proper officer’ for the purposes of Sections 17 and 28 of the said Act.
- 3.3. Vide Notification No 60/2015-Customs (N.T.), dated 04.06.2015 the power to appoint common adjudicating authority in cases investigated by DRI upto the level of Commissioner of Customs have been delegated to Principal Director General of Directorate of Revenue Intelligence (DRI) in terms of Section 152 of the Customs Act, 1962. Accordingly, it has been decided that all cases of appointment of common adjudicating authority in respect of cases investigated by DRI will be handled by Principal DG, DRI. In this regard, Board has prescribed:
- (a) the following cases investigated by DRI shall be assigned to Additional Director General (Adjudication), DRI:
    - (i) Cases involving duty of Rs. 5 Crores and above;
    - (ii) Group of cases on identical issues involving aggregate duty of Rs. 5 crore and more;
    - (iii) Cases involving seizure value of Rs 25 Crore or more;
    - (iv) Cases involving wrong availment of export incentives where the export incentives wrongly availed is Rs 5 Crore or more;
    - (v) Group of case on identical issues involving wrong availment of export incentives aggregating to Rs 5 Crore or more;
    - (vi) Cases of overvaluation of import where overvaluation is Rs 25 Crore or more; and
    - (vii) DRI case pending with erstwhile Commissioner (Adjudication).
  - (b) In cases investigated by DRI other than in (a) above the basis of appointment of common adjudicating authority shall be maximum duty evaded/ export incentive wrongly availed / amount of overvaluation of cases.

- (c) In respect of non DRI cases, appointment of common adjudication authority shall continue to be made by Board under section 4 and section 5 of Customs Act. This will include:
  - (i) Cases made by Commissionerate;
  - (ii) Non DRI cases pending with erstwhile Commissioner (Adjudication).
- (d) Past DRI cases pending for adjudication with jurisdictional Commissioners of Customs would continue with these officers;
- (e) Remand cases would be decided by the original adjudicating authority.

3.4 All other cases of appointment of common adjudicator would be dealt with by the Board. This would include cases made by Commissionerates or cases made by DRI wherein the adjudicating officer is an officer below the level of Additional Director General (Adjudication), DRI.

[Refer Circular No.18/2015-Cus, dated 9-6-2015 amended by Circular no. 30/2015-Customs dated 04.12.2018]

**4. Adjudication proceedings:**

- 4.1 Show Cause Notice for demand of duty under Section 28 of the Customs Act, 1962 can be issued by respective adjudicating officers depending upon the powers of adjudication.
- 4.2 Upon receipt of the notice’s reply to a demand notice the matter is examined in detail and the noticee is offered an opportunity of ‘personal hearing’ to explain his case before the adjudicating authority. After the personal hearing the adjudicating authority shall examine the material placed before him and the relevant legal provisions and come to a conclusion. Generally, the issues involved are mis-declaration of the description of the goods resulting in wrong classification and levy of lesser duty, misdeclaration of value, quantity and weight having a bearing on duty, calculation error 97 resulting in short levy of duty, non-inclusion of certain components of value in the assessable value etc.
- 4.3 The adjudicating authority is required to take an independent decision as an quasijudicial authority and pass appropriate orders either determining the amount of short levy in terms of Section 28(8) of the Customs Act, 1962 or dropping the proceedings where it is found that there is no short levy. In either case an appealable order is to be issued by the adjudicating authority. The duties, fines and penalties imposed, if any, are required to be paid immediately, unless the party files an appeal and obtains a stay from the competent authority.
- 4.4. In order to streamline guidelines on monetary limit for adjudication of cases by different grades of Customs Officers, Board decided that cases where SCNs are issued under section 28 of the Customs Act, 1962, these will be adjudicated as per following norms:

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

4.5 Further, the proper officer for the issuance of Show Cause Notice and adjudication of cases under the provisions of Rule 16 of the Customs, Central Excise and Service Tax Drawback Rules, 1995 shall be as under:

- (i) In case of simple demand of erroneously paid drawback, the present practice of issuing Show Cause Notice and adjudication of case without any limit by Assistant / Deputy Commissioner of Customs shall continue.
- (ii) In cases involving collusion, wilful misstatement or suppression of facts etc., the adjudication powers will be as under:

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

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

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

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

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

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

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

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

4.11 The confirmed demands are enforced and recoveries effected in accordance with the provisions of Section 142 of Customs Act, 1962. Where it is not possible to recover the amount by adjusting against any money which the Department owes to such persons, or by detaining and selling any goods belonging to such persons which are under the control of the Department,

action is initiated to recover Government dues through the District Collector as if it were an arrears of land revenue. Powers are also vested with Customs for attaching/detaining and selling movable or immovable property belonging to or under control of such person.

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

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## Customs Refund

### 1. Introduction:

1.1 On import or export of goods, at times duty may not be required to be paid or be paid in excess of what was actually leviable. Such non-leviable/excess payment may be due to lack of information on the part of importer/ exporter or non-submission of documents required for claim of lower value or rate of duty. Sometimes, such non-leviable/excess payment of duty may be due to re-import, return back of goods to the exporter, relinquishment of title by the importer, shortage/short landing, pilferage of goods or even incorrect assessment of duty by Customs. In such cases, refund of excess amount of duty paid can be claimed by the importer or exporter. If any excess interest has been paid by the importer/exporter on the amount of duty paid in excess, its refund can also be claimed.

### 2. Legal provisions:

2.1 Section 26 of the Customs Act, 1962 deals with the Refund of export duty in certain cases. - Where on the exportation of any goods any duty has been paid, such duty shall be refunded to the person by whom or on whose behalf it was paid, if -

- (a) the goods are returned to such person otherwise than by way of re-sale;
- (b) the goods are re-imported within one year from the date of exportation; and
- (c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

Where on the importation of any goods capable of being easily identified as such imported goods, any duty has been paid on clearance of such goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if-

- (a) the goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specification;

- (b) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;
- (c) the importer does not claim drawback under any other provisions of this Act; and
- (d) (i) the goods are exported; or  
(ii) the importer relinquishes his title to the goods and abandons them to customs; or

- (iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed and within a period not exceeding thirty days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Principal Commissioner of Customs or Commissioner of Customs for a period not exceeding three months:

Provided further that nothing contained in this section shall apply to the goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

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

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

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

- 3.1 In terms of Section 27 of the Customs Act, 1962 an application for refund is required to be filed within one year from the date of payment of duty and interest. Normally, the time limit of one year is computed from the date of payment of duty, however, in following situations, such time limit is computed differently:
  - (a) In case of goods which are exempt from payment of duty by an ad-hoc exemption order issued under Section 25(2) of the Customs Act, 1962 the limitation of one year is to be computed from the date of issue of such order;
  - (b) Where duty becomes refundable as a consequence of judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year is to be computed from the date of such judgment, decree, order or direction.
  - (c) Where any duty is paid provisionally under Section 18 of the Customs Act, 1962 the limitation of one year is to be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment; and
  - (d) The date of payment of any duty and interest in relation to a person, other than the importer shall be, the date of purchase of goods' by such person.
- 3.2 The limitation of one year for claiming refund does not apply where any duty and interest has been paid under protest.

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

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

on by him to any other person, and the refund has not been obtained already.

- 4.2 Where on scrutiny, the application is found to be complete in all respects the Customs issues an acknowledgement in the prescribed Form. However, in case the application is found to be incomplete, the Customs will return the same to the applicant, pointing out the deficiency. The applicant has to then re-submit the application after making good the deficiency.
- 4.3 The application of refund found to be complete in all respects by Customs, is processed to see if the whole or any part of the duty and interest paid by the applicant is refundable. In case, the whole or any part of the duty and interest is found to be refundable, an order for refund is passed. However, in view of the provisions of unjust enrichment enshrined in the Customs Act, the amount found refundable has to be transferred to the Consumer Welfare Fund except in the following situations when it is to be paid to the applicant:
  - (a) If the importer has not passed on the incidence of such duty and interest to any other person;
  - (b) If such duty and interest was paid in respect of imports made by an individual for his personal use;
  - (c) If the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;
  - (d) If amount found refundable relates to export duty paid on goods which were returned to exporter as specified in Section 26 of the Customs Act, 1962;
  - (e) If amount relates to Drawback of duty payable under Sections 74 and 75 of the Customs Act, 1962; and
  - (f) If the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.
  - (g) If the duty was paid in excess by the importer before an order permitting clearance of goods for home consumption is made where such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry or the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

## **5. Unjust enrichment:**

- 5.1 In terms of Section 27(2) of the Customs Act, 1962 the concerned Assistant/Deputy Commissioner of Customs has to examine the facts of the case and the material placed before him in order to determine whether the amount claimed by an applicant is refundable to him or not. Further, the Assistant/Deputy Commissioner of Customs should go through the details of audited balance sheet and other related financial records, certificate of the Chartered Accountant etc., submitted by the applicant in order to decide whether the applicant had not passed on the incidence of the duty and interest thereon, if any, to any other person. The Order-in-Original passed by the Assistant/Deputy Commissioner of Customs on the refund application should be a speaking order providing specific details including the relevant financial records that are relied upon to arrive at a conclusion whether the burden of duty or interest, as the case may be, has been passed on or not. Refund orders issued in a routine and casual manner thereby sanctioning the amount but crediting the same to the Consumer Welfare

Fund without going through the factual details of the case and the due process as provided in the first proviso cannot be considered as a complete and speaking order.

**6. Interest on delayed refund:**

- 6.1 The Customs has to finalize refund claims immediately after receipt of the refund application in proper form along with all the documents. In case, any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund, interest that is currently fixed @ 6% is to be paid to the applicant. The interest is to be paid for the period from the date immediately after the expiry of 3 months from the date of receipt of such application till the date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.
- 6.2 Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal or by the Court, as the case may be is deemed to be an order for the purpose of payment of interest on delayed refund.
- 6.3 The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.

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

- 7.1 The procedure to ensure expeditious disposal of Customs duty refund applications and to enhance transparency in refund disbursement is as follows:
  - (a) Receipt and acknowledgement of all refund applications: All refund applications made under Section 27 of the Customs Act, 1962 whether by post or courier or personal delivery, shall be received by the department and a simple receipt of having received the "refund application" shall be issued immediately. The receipt should make it clear that the application has not been scrutinized for its completeness. These applications are required to be scrutinized for their completeness within 10 working days of their receipt, for giving acknowledgement by the Proper Officer as per the Customs Refund Application (Form) Regulations, 1995. Hence, if any deficiency is found in the application or any document is required by the department, the same shall be informed at this stage of initial scrutiny itself within 10 working days of the initial receipt. This will avoid any chance for raising repeated queries to the applicant, in a piece-meal manner and bring certainty in dealing with refund applications.
  - (b) Processing of refund applications and their disposal: Application found complete in all respects after scrutiny, shall be processed on first-come-first served basis. If refund is due, an order for refund is required to be passed in terms of Section 27(2) of the Customs Act, 1962 or where the claim for refund is found liable to be rejected, as the case may be, a speaking order shall be passed giving complete reasons for the order. Further, the order should indicate that the aspect of unjust enrichment has been examined based on the applicable guidelines. The order should also contain the findings of adjudicating authority

on the documents produced in support of the claim and the basis for determining the amount as either refundable to the claimant or payable to the Consumer Welfare Fund or the claim not being admissible.

- (c) Issue of cheque: Where the refund application is admitted, whether in part or in full, and claimant is eligible for refund, the Assistant/Deputy Commissioner of Customs may ensure that payment is made to the party within 3 days of the order passed after due audit, if any. In all such cases refund amount shall be paid to the applicant by a cheque drawn on the authorised bank with which the sanctioning authority maintains account. After the cheque is signed, it shall either be delivered to the claimant or his authorised representative personally or sent to him by Registered Post, Acknowledgement Due at Government cost, on the basis of pre-receipt already obtained from the claimant.
- (d) Audit: Pre-audit of refund claims (other than those to be post-audited) will be conducted by the Assistant/Deputy Commissioner (Audit), in the Commissionerate Headquarters Office. Thereafter, the Assistant/Deputy Commissioner of Group/ Division will pass an order-in-original in respect of the claim. Thereafter, the orders- in-original passed in this regard shall be subjected to review by the Commissioner concerned. The applications of refund of amount below Rs.50,000/- may be post- audited on the basis of the random selection by Assistant/Deputy Commissioner (Audit). The selection can be made in such a way that 25% of the refund applications are post-audited. The applications of refund for amount between Rs.50,000/- and Rs. 5 lakhs should be compulsorily post-audited. This audit system is aimed at checking improper sanction and payment of refunds. However, this does not dispense with the verification of the refund vouchers and the re- conciliation of refunds, which shall be done by the Chief Account Officers. It may be ensured that where pre-audit is involved, the same is completed at the earliest so that the disposal of refund applications is not unduly delayed.
- (e) CVC's instructions: Under authority of Section 8(1)(h) of the CVC Act, 2003 Central Vigilance Commission (CVC) has issued instructions to bring about greater transparency and accountability in the discharge of regulatory, enforcement and other public dealings of the Government organizations. These instructions require that status of individual applications/matters should be made available on the organization's website and updated from time to time so that the applicants are duly informed about the status of their applications. It is further stated that the manual records maintained for various purposes may continue. In pursuance of CVC's instructions, all Commissioners of Customs shall establish a mechanism for maintenance of a comprehensive database in their respective website, indicating the receipt, acknowledgement, action taken for disposal (either payment or rejection) of refund applications and those pending at the end of the month. The details of refund application such as name of the claimant, file number, date of application, amount of refund claimed, date of its acknowledgement shall be indicated in chronological order by the date of its receipt. The applications may be serially numbered for each year and shall be shown in a single list indicating their respective status distinctly. The illustrative status that could be mentioned for easy understanding of any applicant may include the following: (i) refund application received but pending for scrutiny and acknowledgement (ii) refund application acknowledged for

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

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

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

## 8. IGST REFUND

- 8.1. IGST Refund module for exports is operational in ICES since 10.10.2017. As per Rule 96 of the CGST Rules 2017, dealing with refund of IGST paid on goods exported out of India, the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India, once both the export general manifest (EGM) and valid return in Form GSTR-3 or Form GSTR- 3B, as the case may be, has been filed. Rule 96 further stated that the information on GSTR 1 shall then be transmitted electronically to Customs and the System designated by Customs shall process the refund claim.
- 8.2. The IGST refund module has been designed in line with the above rule and has an inbuilt mechanism to automatically grant refund after validating the Shipping Bill data available in ICES against the GST Returns data transmitted by GSTN. The matching between the two data sources is done at Invoice level and if the necessary matching is successful, ICES shall process the claim for refund and the relevant amount of IGST paid with respect to each Shipping Bill or Bill of export shall be electronically credited to the exporter's bank account as mentioned with the Customs authorities.
- 8.3. Pre-requisites and precautions required to be taken by exporters for successful processing of refund claims:

- (i) file GSTR 3B with taxable value for export and IGST paid against exports indicated in appropriate fields.
- (ii) file GSTR 1 or Table 6A for the exports made with correct details such as Invoice number, Taxable value, IGST paid, Shipping Bill number, Shipping Date and Port Code.
- (iii) ensuring aggregate IGST paid amount claimed in GSTR 1 or Table 6A is not greater than the IGST paid amount indicated in Table 3.1(b) of GSTR 3B of the corresponding month
- (iv) use Table 9 of GSTR 1 of the following month to amend the records of previous month so as to take care of issues mentioned in paras (ii) and (iii) above.

#### 8.4 Ensuring hassle free processing of refund claims:

- a) Jurisdictional officers at gateway port may initiate swift penal action against shipping lines/ agents who fail to file either regular or supplementary EGMs electronically for cargo originating from ICDs.
- b) Jurisdictional officers in ICDs should ensure filing of local EGM i.e. train or truck summary, as the case maybe, immediately after cargo leaves the port, liaising with the jurisdictional officers at the port for incorporation of Shipping Bills pertaining to the cargo originating in ICDs, in the EGMs filed at gateway port by the Shipping lines/agents and rectification of errors in local and gateway EGM, wherever necessary.
- c) Jurisdictional officers at gateway port should strictly monitor the EGM pendency and error reports available in ICES and get the EGM errors resolved in an expeditious manner by asking the Shipping lines/ agents to file requisite amendments and approving those amendments on ICES. Errors in shipping bill or in local EGM(i.e. truck or train summary), the remedial action has to be taken by jurisdictional officer in ICD.

#### 8.5 As an **interim measure** for those cases where the records have not been transmitted by GSTN to Customs EDI system, to overcome the problem of refund blockage, subject to undertakings/ submission of CA certificates by the exporters and post refund audit scrutiny, the following procedure shall be followed:

##### A. Cases where there is no short payment:

- (i) The Customs policy wing would prepare a list of exporters whose cumulative IGST amount paid against exports and interstate domestic outward supplies, for the period July' 2017 to March' 2018 mentioned in GSTR-3B is greater than or equal to the cumulative IGST amount indicated in GSTR-1 for the same period. Customs policy wing shall send this list to GSTN.
- (ii) GSTN shall send a confirmatory e-mail to these exporters regarding the transmission of records to Customs EDI system.
- (iii) The exporters whose refunds are processed/ sanctioned would be required to submit a certificate from Chartered Accountant before 31st October, 2018 to the Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid

on exports of goods for the period July' 2017 to March' 2018. In case there are exports from multiple ports, the exporter is at liberty to choose any of the ports of export for submission of the said certificate.

- (iv) A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/ State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15th November 2018.
- (v) Non submission of CA certificate shall affect the future IGST refunds of the exporter
- (vi) The list of exporters whose refunds have been processed as above shall be sent to DG (Audit)/ DG (GST) by the Board.

**B. Cases where there is short payment:**

- (i) In cases where there is a short payment of IGST i.e. cumulative IGST amount paid against exports and interstate domestic outward supplies together, for the period of July' 2017 to March' 2018 mentioned in GSTR-3B is less than the cumulative IGST amount indicated in GSTR-1 for the same period, the Customs policy wing would send the list of such exporters to the GSTN and all the Chief Commissioner of Customs.
- (ii) e-mails shall be sent by GSTN to each exporter referred in para (i) above so as to inform the exporter that their records are held up due to short payment of IGST. The e--mail shall also advise the exporters to observe the procedure under this circular. (iii) The exporters would have to make the payment of IGST equal to the short payment in GSTR 3B of subsequent months so as to ensure that the total IGST refund being claimed in the Shipping Bill/GSTR-1(Table 6A) is paid. The proof of payment shall be submitted to Assistant/Deputy Commissioner of Customs in charge of port from where the exports were made. In case there are exports from multiple ports, the exporter is at liberty to choose any of the ports of export.
- (iv) Where the aggregate IGST refund amount for the said period is upto Rs. 10 lacs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST payment to the concerned Customs office at the port of export. However, where the aggregate IGST refund amount for the said period is more than Rs. 10 lacs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST to the concerned Customs office at the port of export along with a certificate from chartered Account that the shortfall amount has been liquidated.
- (v) The exporter would give an undertaking they would return the refund amount in case it is found to be not due to them at a later date.
- (vi) The Customs zones shall compile the list of exporters (GSTIN only), who have come forward to claim refund after making requisite payment of IGST towards short paid amount and complied with other prescribed requirements.
- (vii) The compiled list may be forwarded to Customs policy wing, DG (Audit) and DG (GST). Customs policy wing shall forward the said list of GSTINs to GSTN. On receipt



of the list of exporters from Customs policy wing, GSTN shall transmit the records of those exporters to Customs EDI system.

- (viii) The exporters whose refunds are processed/ sanctioned as above would be required to submit another certificate from Chartered Accountant/ Cost Accountant before 31st October, 2018 to the same Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018. A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/ State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15th November 2018.
  - (ix) Non submission of CA certificate shall affect the future IGST refunds of the exporter. Post refund audit 4.
- C. The exporters would be subjected to a post refund audit under the GST law. DG (Audit) shall include the above referred GSTINs for conducting Audit under the GST law. The inclusion of IGST refund aspects in Audit Plan of those units may be ensured by DG (Audit). In case, departmental Audit detects excess refunds to the exporters under this procedure, the details of such detections may be communicated to the concerned GST formations for appropriate action.
- D. DG (GST) shall send the list of exporters to jurisdictional GST officers (both Centre / State) informing that these exporters have taken benefit of the procedure prescribed in this circular. The jurisdictional GST formations shall also verify the payment particulars at their end

[Refer Rule 96 of the CGST Rules 2017, Circular 42/2017- Customs dated 7<sup>th</sup> November, 2017, Circular 5/2018- Customs dated 23<sup>rd</sup> February, 2018, Circular 6/2018- Customs dated 16<sup>th</sup> March, 2018, Circular 12/2018-Customs dated 29<sup>th</sup> May, 2018, Circular 33/2018- Customs dated 19.09.2018, Circular 37/2018-Customs dated 09.10.2018, Circular 40/2018-Customs dated 24.10.2018 ]

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

### 1. Introduction:

- 1.1 Normally, the goods liable for confiscation under the Customs Act, 1962 are seized by the Customs. However, in some cases where seizure is not practicable, it may become necessary to detain the goods for investigation. The provisions for detention of goods are contained in Section 110 of the Customs Act, 1962. The goods are detained for various reasons and at the instance of various agencies of the Department, such as the Directorate of Revenue intelligence, the Directorate of Central Excise Intelligence, Narcotics Control Bureau and Directorate of Enforcement and even other agencies, like the Central Bureau of Investigation. Once order for detention of goods is served to the owner of the goods, he cannot remove, part with, or otherwise deal with the goods except with the prior permission of the proper officer of the Customs. During investigation and subsequent adjudication proceedings, if the contravention of provisions of the Customs Act, 1962 and other allied laws is established, action is taken against the importers/ offending goods as provided in the law. In other cases, the charges are dropped at initial stages or at the appeal stage.
- 1.2 In respect of goods detained at the port/airport/ICD/CFS/LCS etc, the custodians of goods demand their dues for storing the goods (i.e. the warehousing charges) from the importers/ exporters. Likewise the shipping lines demand container detention charges for the period the goods are kept in their custody. When the goods are detained for a long period, the warehousing/demurrage charges and container detention charges become high. In cases where the charges against the importers or exporters are dropped, the Customs usually issues detention certificates for the period when goods were under detention. The custodians normally remit the detention/demurrage charges wholly or partially on the basis of detention certificates issued and recommendation made by the Customs. However, it is not obligatory, as held in some recent Court judgments that custodians must waive the rentals payable to them.
- 1.3 The Apex Court examined the matter of quantum of demurrage and payment of demurrage in the cases of International Airport Authority of India vs. Grand Slam International [1995 (77) ELT 753 SC] and Trustees of Port of Madras vs. Nagavedu Lungi & Co., [1995 (80) ELT 241 SC] and held that detention charges and warehousing charges are payable to the custodians and shall be paid by the exporter or the importer even where the Customs detention has been finally held as improper/illegal.

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

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

- 2.2 Goods are not to be detained on simple valuation or classification disputes. If it becomes necessary to detain the goods for investigation of any serious suspected fraud etc., the importer/exporter must be intimated in writing that he may shift the goods to a bonded warehouse under Section 49 of the Customs Act, 1962, with a clear indication that if he does not avail of this facility and the goods incur demurrage, etc., he would have to bear the demurrage and other charges levied by the custodian/other agencies.
- 2.3. Seized imported goods shall be released provisionally, upon request of the owner of the seized goods, subject to executing a Bond for the full value / estimated value of the seized goods.
- 2.4. In addition to the Bond, a Bank Guarantee or security Deposit to cover –
- The entire amount of duty/differential duty leviable on the seized goods;
  - Amount of fine that may be levied in lieu of confiscation under Section 125 of the Act;
  - Amount of penalties that may be levied under the Act as applicable at the time of adjudication.
  - The competent authority may increase or decrease the amount of Security Deposit.
- 2.5 The adjudicating authority, specifying the reason, may deny provisional release of any goods which are liable to confiscation under Section 111 or 113 or as defined as “ Prohibited Goods under section 2(33)”. (Malabar Diamond Gallery Private Limited v. Addl. Director General. DRI, Chennai).
- 2.6 Distinction between Provisional Assessment & Provisional Release:
- The Hon’ble Madras High Court, in the above case, held that although the import of gold was not prohibited, if the import was in violation of the Conditions attached to such import amounts to smuggling and that a prayer for release could be refused.
- Further, the Hon’ble Delhi High Court in Mala Petrochemical & Polymers Vs. The Addl. Director General, DRI &Anr, held that the power under Section 110A of the Act involves exercise of discretion & the scope of judicial review if the discretion has been rightly exercised, that treatment of all types of wrongful imports on an equal footing might result in miscarriage of justice, hence the said Section leaves some margin to the Customs in the exercise of their discretion.
- 2.7 The Bond shall contain an undertaking that the importer shall pay the duty, fine and or penalty as the case may be adjudged by the Adjudicating Authority.
- 2.8 Further, where security is furnished by way of Bank Guarantee, the Bank Guarantee should contain a clause binding the issuing Bank to keep it renewed valid till final adjudication of the case. In the case of non-renewal of guarantee, the guaranteed amount be credited to the Government account by the Bank on its own.
- 2.9 Where Provisional Release of seized goods shall not be allowed –
- Goods prohibited under the Customs Act, 1962 or any other Acts

- Goods that don't fulfill the statutory compliance requirements in terms of any Act, Rule or Regulatory etc.
- Goods specified under Section 123 of the Act.
- For reasons in the interest of Public.

(Refer circular 35/2017 dated 16.08.2017)

**3. Guidelines for provisional release of seized imported goods pending adjudication under Section 110A of the Customs Act, 1962.**

3.1 The provisional clearance should be allowed as a rule and not as an exception. Provisional release may not be resorted to in the cases mentioned below but here too option for storage in warehouses under Section 49 of the Customs Act, 1962 should be provided to the importers (goods can be allowed entry into the country only after the laid down quality standards etc. are satisfied):

- (i) Goods prohibited for import/export;
- (ii) Imports not complying with the specifications/conditions/requirements of various Orders/Acts (e.g. Livestock Importation Act, 1898, Prevention of Food Adulteration Act, 1954, etc.); and
- (iii) Where gross fraudulent practices are noticed and release of the goods may seriously jeopardize further investigations as also interests of the revenue.

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

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

- (a) In case the export goods are found to be mis-declared in terms of quantity, value and description and are seized for being liable to confiscation under the Customs Act, 1962, the same may be ordered to be released provisionally on execution of a Bond of an amount equivalent to the value of goods along with furnishing an appropriate security in order to cover the redemption fine and penalty.
- (b) In case the export goods are either suspected to be prohibited or found to be prohibited in terms of the Customs Act, 1962 or ITC (HS), the same should be seized and appropriate action for confiscation and penalty initiated.
- (c) In case the export goods are suspected of mis-declaration or where declaration is to be confirmed and further enquiry / confirmatory test or expert opinion is required (as in case of chemicals or textiles materials), the goods should be allowed exportation provisionally. The exporters in these cases are required to execute a Bond of an amount equal to the value of goods and furnish appropriate security in order to cover the redemption fine and penalty in case goods are found to be liable to confiscation. In case

exports are made under any Export Promotion / Reward Schemes, the finalization of export incentives should be done only after receipt of the test report / finalisation of enquiry and final decision in the matter. The Bond executed for provisional release shall contain a clause to this effect,

- (d) Export goods detained for purpose of tests etc. must be dealt with on priority and the export allowed expeditiously unless the prohibited nature of goods is confirmed. Continued detention of any export goods in excess of 3 days must be brought to the notice of the Commissioner of Customs, who will safeguard the interest of the genuine exporters as well as the revenue.

- 3.4 Wherever in adjudication proceedings, the parties have been allowed to clear the goods on payment of redemption fine and penalty and parties, instead of clearing the goods on payment of fine and penalty, prefer an appeal, they will have to pay demurrage/ detention charges, etc. even if they succeed in appeal, as the liability has arisen due to their filing appeal and not clearing the goods for which option was available.
- 3.5 The Departmental officers will be held accountable for cases where detention of goods have been ordered on insufficient and weak grounds resulting in unconditional release of detained goods in adjudication stage itself, where importers have to suffer avoidable demurrage charges/loss by pilferage etc.

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

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

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

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

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

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## Import and Export through Courier

### 1. Introduction:

- 1.1 Imports and exports through courier are becoming increasingly popular. At present, the courier clearances are allowed both under manual mode as well as electronic mode. The courier clearances under the manual mode are governed by Courier Imports and Exports (Clearance) Regulations, 1998, and courier clearance under electronic mode are governed by Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010. The courier goods are cleared through a fast track basis on observance of simple formalities by courier companies. Examination of parcels is kept to the minimum and clearance is allowed on the basis of selective scrutiny of documents. The duty, where leviable, is paid by the courier company on behalf of importers/exporters before taking delivery of the parcels.
- 1.2 The facility of imports and exports through courier mode is allowed only to those courier companies which are registered by the Customs. These courier companies are called “Authorized Couriers”. The courier parcels are normally carried by passenger/ cargo aircrafts. In the case of clearance through Land Customs Stations (LCS), other mode of transport is used. Both of them are allowed to file the Courier Import Manifest.
- 1.3 At present, the facility of courier clearance under the manual mode is available at Customs airports in Mumbai, Delhi, Chennai, Calcutta, Bangalore, Hyderabad, Ahmedabad, Jaipur, Trivandrum, Cochin, Coimbatore, Calicut and Tiruchirapalli and Land Customs Stations at Petrapole and Gojadanga. The courier clearances under the electronic mode of Customs clearance is made operational at Delhi, Mumbai and Bangalore airports.
- 1.4 The scheme of Customs clearance of imports and exports by courier mode introduces certain procedural relaxation. Such imports and exports shall, however, continue to be governed by the applicable provisions of the FTP or any other law, for the time being in force.

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

- 2.1 Except for certain excluded categories, all goods are allowed to be imported through the courier mode. The exclusion of certain categories of goods is based upon the fact that these broadly require specific conditions to be fulfilled under any other Act or rule or regulation such as testing of samples etc. on reference to the relevant authorities or experts before their clearance. In these cases, due to additional compliance requirements, the assessment and clearance takes time. These goods, therefore, do not fit into the scheme, which envisages Customs clearance on a fast track basis. Further, air terminals and LCS are not equipped to handle certain goods. Thus, in general the following categories of goods are not allowed import through the courier mode:
  - (a) Precious and semi precious cargo;
  - (b) Animals and plants;

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

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

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

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

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

3.2 Vide Notification No. 68/2018- Cus. (N.T.), dated 03-08-2018 , the export of cargo through Courier mode under Merchandise Exports from India Scheme (MEIS) upto FOB value upto Rs.5,00,000/ - per consignment has been allowed for the goods listed in Appendix 3C of the Foreign Trade Policy 2015-2020 .

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

4.1 Import of gems and jewellery including samples thereof by EOUs or SEZ units is allowed through courier. Likewise, export of cut and polished diamond, gems and jewellery under any scheme of FTP from EOUs, SEZs or DTA is allowed through courier subject to the condition that the value of each export consignment under such export does not exceed Rs.20lakhs.

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

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

- (a) Documents that include any message, information or data recorded on paper, cards or photographs having no commercial value, and which do not attract any duty or subject to any prohibition/restriction on their import or export;
- (b) Samples - any bonafide commercial samples and prototypes of goods supplied free of charge of a value not exceeding Rs.50,000/- for exports and Rs.10,000/- for imports which are not subject to any prohibition or restriction on their import or export and which does not involve transfer of foreign exchange.

- (c) Free gifts - any bonafide gifts of articles for personal use of a value not exceeding rupees 25,000/- for a consignment in case of exports and Rs.10,000/- for imports which are not subject to any prohibition or restriction on their import or export and which do not involve transfer of foreign exchange.
  - (d) Low value dutiable or commercial goods - goods having a declared value of upto Rs.1,00,000/-; and
  - (e) Dutiable or commercial goods - goods having a declared value of more than Rs.1,00,000/-.
- 5.2 Different Customs declaration forms have been prescribed under the Courier Regulations for manual mode and electronic mode. Under the manual mode, simplified Bills of Entry have been specified, as mentioned below, for the clearance of goods. The goods are assessed to duty on merits like any other imported goods, and exemption, wherever available, is allowed to such imports when claimed.
- a) Courier Bill of Entry-III for documents,
  - b) Courier Bill of Entry-IV for samples and free gifts, and
  - c) Courier Bill of Entry-V for commercial shipments upto a declared value of Rs. one lakh.
- 5.3 The courier regulations for the manual mode stipulate that for certain categories of imports, a regular Bill of Entry prescribed in the Bill of Entry (Forms) Regulations, 1976 is to be filed. These include, (a) goods imported under EOU scheme; (b) goods imported under DEEC and EPCG schemes; (c) goods imported against the license issued under the Foreign Trade (Development and Regulation), Act, 1992; (d) goods imported by a related person defined under the Customs Valuation Rules, 1988, (e) goods in respect of which the proper officer directs filing of a Bill of Entry; and (f) goods having a declared value of more than Rs. One lakh.
- 5.4 Under the courier Regulations for the electronic mode the forms prescribed for filing Customs declarations are:
- a) Courier Bill of Entry-XI (CBE-XI) for documents in Form B,
  - b) Courier Bill of Entry-XII (CBE-XII) for free gifts and samples in Form C,
  - c) Courier Bill of Entry-XIII (CBE-XIII) for low value dutiable consignments in Form D, and
  - d) Courier Bill of Entry-XIV (CBE-XIV) for other dutiable consignments in Form E for import consignments.

## **6. Procedural formalities for clearance of export goods:**

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



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

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

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

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

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

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

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

**8. Transshipment of goods:**

8.1 The facility of transshipment between two Customs stations is available under courier mode as per the provisions of the Customs Act, 1962, Goods Imported (Conditions of Transshipment) Regulations, 1995 and other instructions. Many times consignments imported through courier mode may also need to be transferred to cargo terminal of the same airport for clearance purposes. Such transfer is akin to local movement of cargo from one custom area of the Customs station to another custom area of the same station and is covered by local procedure evolved by the jurisdictional Commissioner of Customs.

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

**9. Disposal of uncleared goods:**

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

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

**10. Registration of Authorised Courier:**

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

10.2 The person applying for registration should be financially viable and in support thereof he is required to produce a certificate issued by a scheduled bank or such other proof evidencing possession of assets of a value not less than Rs. 25 lakhs. Further, he will have to execute a bond with a security of Rs.10 lakhs for registration at Mumbai, Calcutta, Delhi and Chennai. At other airports and LCS, the security deposit is kept at Rs. 5 lakh. The security can be in cash or in the form of postal security or National Savings Certificate or Bank Guarantee. A condition of registration is that the applicant agrees to pay the duty, if any, not levied or short levied with interest, if applicable, on any goods taken clearance by the Authorised Courier.

10.3 An Authorised Courier registered at one Customs station is allowed to transact business at more than one airport or LCS subject to giving of intimation in the prescribed form. However, separate bond and security will have to be furnished at each airport and LCS.

10.4 Existing Authorised Couriers who are registered or transacting business in terms of Regulation 12 of the Courier Imports and Exports (Clearance) Regulations 1998 at locations where automated clearance facilities become operational shall be eligible to file declarations under

the electronic mode without any requirement for fresh appointment or fresh intimation, subject to the fulfilment of other conditions or requirements imposed under courier Regulations for the electronic mode. In short, once a person is registered as an Authorized Courier, he can file declarations under both the modes subject to compliance of other requirements of the respective Regulations.

## **11 Obligation of Authorised Courier:**

11.1 A number of obligations are cast on the Authorised Courier. These include obtaining an authorization from the consignees for clearance of import or export goods (except import goods having a declared value of Rs.10,000 or less, where the authorization may be obtained at the time of delivery of the consignments to consignee). Some of the important obligations are as follows:

- a) File declarations, for clearance of imported or export goods, through a person who has passed the examination referred to in Regulation 8 or 19 of the Custom House Agents Licensing Regulations, 2004 and who are duly authorised under Section 146 of the Act;
- b) Advise his client to comply with the provisions of the Customs Act, 1962 and rules and regulations made there-under;
- c) Verify the antecedent, correctness of Importer Exporter Code (IEC), identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information;
- d) Exercise due diligence in furnishing information to the Customs in relation to clearance of import or export goods;
- e) Not withhold any information communicated to him by Customs relating to assessment and clearance of import/export goods from a client;
- f) Not withhold any information relating to assessment and clearance of import/ export goods from the assessing officer and not attempting to influence the conduct of any officer of Customs in any matter by the use of threat, false accusation, duress or offer of any special inducement etc.; and
- g) Maintain records and accounts prescribed by the Customs and abide by all the provisions of the Act and the rules, regulations, notifications and orders issued there under.

11.2 The obligation on the Authorized Courier to verify the antecedents, identity of his client and the functioning of his client in the declared address by using reliable, independent, authentic documents, data or information is based upon the increasing number of offences involving various modus-operandi such as fraud and duty evasion by bogus IEC holders etc. In this regard, the detailed guidelines on the list of documents to be verified and obtained from the client/ customer are laid down. It is obligatory for the client/ customer to furnish to the Authorised Courier any two of the listed documents. However, there is no requirement for the client/ customer to furnish a photograph separately to the Authorised Courier.

[Refer Circular No.9/2010-Cus, dated 8-4-2010]

## **12 Outsourcing/Sub-letting:**

12.1 (CCSP) under the Handling of Cargo in Customs Areas Regulations, 2009, a provision is made prescribing the requirement of prior permission of Customs if the Authorised Courier wants to sub-let/outsourcing any of the components in the door-to-door supply chain. This is necessary since an Authorized Courier is defined as one, who, in relation to import or export of goods, is a person engaged in the international transportation of goods for export and imports on door-to-door delivery basis, and is registered in this behalf by the jurisdictional Commissioner. Also, the basic reason for expeditious clearance facilities being extended is that Authorized Couriers have in place verifiable and secure work processes on a global basis backed by an elaborate IT infrastructure for knowledge and information management. These companies have their own in-house mechanisms to guard against use of express supply chain by unscrupulous elements. Therefore, any unauthorized sub-letting or outsourcing of any of the components in the door-to-door supply chain may defeat the very purpose behind facility of expeditious clearance. Hence, the Commissioners of Customs should review the facilities available with the Authorised Couriers appointed under their charge to ensure compliance. Further, while allowing, any sub-letting or outsourcing due care should be taken to ensure that it does not go against the very purpose behind facility of expeditious clearance.

## **13 De-registration and forfeiture of security:**

13.1 The registration of an Authorised courier can be revoked by the Commissioner and his security can be forfeited on grounds of his failure to comply with the conditions of the bond, the provisions of regulations and misconduct. Revocation of registration can be made only after a notice is issued to the Authorised Courier and he is given an opportunity to present his case in writing as well as opportunity of being heard in the matter. In cases where an inquiry needs to be conducted to establish prima facie the grounds against the Authorised Courier, the Commissioner of Customs can, pending such inquiry, suspend the registration. An Authorised Courier, if aggrieved by the order of the Commissioner, may represent to the Chief Commissioner within 60 days of communication of the impugned order.

[Refer Courier Imports and Exports (Clearance) Regulations, 1988, Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010, Circulars No.56/95-Cus, dated 30-5-1995, No.85/98-Cus, dated 13-11-1998, No.23/2006-Cus, dated 25-8-2006, No.31/2007-Cus, dated 29-8-2007 and No.33/2010-Cus, dated 7-9-2010]

## **14 Courier electronic clearance procedure:**

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

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

- (iii) The Authorised Courier or his agent shall make entry of goods imported by him, in an electronic declaration, by presenting to the proper officer the Courier Bill of Entry-XI (CBE-XI) for documents in Form B or the Courier Bill of Entry-XII (CBE-XII) for free gifts and samples in Form C or the Courier Bill of Entry-XIII (CBE-XIII) for low value dutiable consignments in Form D or the Courier Bill of Entry-XIV (CBE-XIV) for other dutiable consignments in Form E.
- (iv) The Authorised Courier shall present imported goods for inspection, screening, examination and assessment thereof.
- (v) Imported goods which are not taken clearance within 30 days of arrival, shall be detained by proper officer and shall be sold or disposed of by the person having custody thereof, after notice to the Authorised Courier and to the declared importer, if any, and the charges payable for storage and holding of such goods shall be payable by the Authorised Courier.

**14.2** Clearance of export goods shall be done as follows:

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

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

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

- (i) The Commissioner of Customs shall issue a notice in writing to the Authorised Courier stating the grounds on which it is proposed to revoke the registration and requiring the said Authorised Courier to submit, within such time as may be specified in the notice, not being less than 45 days, to the Deputy /Assistant Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the Authorised Courier desires to be heard in person by the said Deputy / Assistant Commissioner of Customs.
- (ii) The Commissioner of Customs may, on receipt of the written statement from the Authorised Courier, or where no such statement has been received within the time-limit specified in the notice, direct the Deputy/Assistant Commissioner of Customs to inquire within a period of 3 months, from the order of suspension or from the date of initiation of enquiry, as the case may be, into the grounds which are not admitted by the Authorised Courier.
- (iii) The Deputy / Assistant Commissioner of Customs shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Authorised Courier, for the purpose of ascertaining the correct position.
- (iv) The Authorised Courier shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings. If the Deputy / Assistant Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.
- (v) At the conclusion of the inquiry, the Deputy / Assistant Commissioner of Customs shall prepare a report of the inquiry recording his findings.
- (vi) The Commissioner of Customs shall furnish to the Authorised Courier a copy of the report of the Deputy / Assistant Commissioner of Customs and shall require the Authorised Courier to submit, within the specified period not being less than 60 days, any representation that he may wish to make against the findings of the Deputy / Assistant Commissioner of Customs.
- (vii) The Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Authorised Courier, pass such orders as he deems fit.

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

## **15. KYC and other facilitations:**

- 15.1 It has been decided that two documents, one for 'proof of identity' and other for 'proof of address' would be required for KYC verification. However, in case of individuals, if any one document listed in the Board Circular No 9/2010-Cus., dated 8-4-2010 contains both 'proof of identity' and 'proof of addresses', the same shall suffice for the purpose of KYC verification. Board has also expanded the list of documents required for KYC verification by including

'Aadhaar Card' as a valid document for individuals. If individuals may possess proof of identity in the form of prescribed document but their address of present stay is not mentioned in the proof of identity, for such cases, it was decided that proof of identity collected by the representative of the authorized courier at the time of delivery of such consignments to an individual consignee along with recording of address of the place where such consignments would be delivered to the consignee by the authorized courier companies would suffice for KYC verification. In order to bring in more clarity, in this regard, either Aadhaar card or Passport or PAN card or Voter-ID card shall suffice for KYC verification however recording of address of place of delivery would continue.

- 15.2 In the case of import or export through courier by a firm, company, institution, registered under the GST laws, GSTIN shall suffice as document for the purpose of KYC verification. In case the firm, company or institution is not registered under GST laws, Unique Identification Number(UIN) or PAN shall serve as the document for KYC verification.

[Refer Circular No. 7/2015-Customs dated 12.02.2015, Circular No.13/2016-Customs dated 26.04.2016, Circular No.02/2018-Customs dated 12.01.2018 refers].

- 15.3 In order to expedite decision making for outsourcing activities by Couriers, the Board has decided that permission mandated under the Courier Imports and Exports (Clearance) Regulations, 1998 and Courier Imports and Exports (Electronic declaration and Processing) Regulations, 2010 should be granted without delay and in any case within 7 days.

[Refer Circular No. 59/2016- Customs dated 02.12.2016]

- 15.4 In respect of re-export of mis-routed consignments, the Board has decided that such decisions on request for re- export in specified situations should ordinarily be taken within 2 (two) days.

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

- 15.5 Vide Notification No. 69/2018- Cus. (N.T.), dated 03-08-2018 , the export of cargo through Courier mode under Merchandise Exports from India Scheme (MEIS) upto FOB value upto Rs.5,00,000/ - per consignment has been allowed for the goods listed in Appendix 3C of the Foreign Trade Policy 2015-2020 .

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## Import and Export through Post

### 1. Introduction:

1.1 The facility for import and export of goods by Post Parcels is provided by the Postal Department at its Foreign Post Offices and all the post offices. Customs facilities for examination, assessment, clearances are available at these post Offices. However, parcels for export will be opened and examined if required by the Customs at the jurisdictional Postal Department of the Zone as per Notification No. 31/2017-Customs (N.T.) dated 31.03.2017.

### 2. Legal Provisions:

2.1 Goods exempted from prohibition under the Foreign Trade (Development and Regulation) Act, 1992 can be imported through posts and are to be classified under the respective Chapter Headings of the Customs Tariff Act, 1975 and the applicable rate of duty is charged on all the goods imported by post. Further, goods again any import licence or customs clearance permit can also be imported through Post. All goods including alcoholic drinks imported through courier can also be imported through posts excepting motor vehicles.

2.2 All goods imported or exported by posts are governed by Section 83 and 84 of the Customs Act 1962, excepting Postal Parcels and letter packets.

2.3 In respect of import any through post necessary bill of entry needs to be filed either by the importer, postal authorities or the Customs Broker containing the details like description, quantity and value of the goods alongwith the manifest. Further, in respect of exports the procedures stipulated in Exports by Post Regulations 2018 issued vide Notification No. 48/2018-Customs (N.T.)

2.4 The relevant date for rate of duty and tariff value, if any, applicable in respect of imports through post is the date on which the postal authorities file the relevant Bill of Entry to the Proper Officer of Customs along with the list containing details of the goods for assessment.

2.5 If the post parcels come through a vessel and the said Bill of Entry is filed by the postal authorities is before arrival of the vessel, the rate of duty and tariff value applicable shall be as on the date of arrival of the vessel i.e. Entry Inward of the vessel.

2.6 In respect of export goods, the relevant date for rate of duty and tariff value, if any, applicable, is the date on which the exporter delivers the goods to postal authorities for exportation and files the documents prescribed under Notification. No. 48/2018-Customs (N.T.) dated 04.16.2018.

### 3. Clearance of Letter Mail Articles:

3.1 Letter Mail Articles are generally cleared by the Customs at the time of their presentation by elimination through scanning unless they appear to contain contraband or dutiable articles. In such cases, the Letter Mail is subjected to further examination at the Foreign Post Offices or



sub-Foreign Post Offices, as the case may be.

#### **4. Importability of dutiable items through post:**

- 4.1 Import of dutiable goods by letter, packet or parcel posts is permitted subject to filling of bill of entry indicating that the letter/packet may be opened for Customs examination. Dutiable goods may also be imported by post if Customs is satisfied that the details of nature, weight and value of the contents in declaration as above are correctly stated.

[Notification No.78-Cus, dated 2-4-1938]

- 4.2 Items intended for personal use, which are exempt from the prohibitions under the FTP or the Customs Act, 1962, can be imported by postal channel on payment of appropriate duties under Tariff Heading 9804 of the Customs Tariff Act, 1975.
- 4.3 Customs duty payable if less than Rs.1000/- is exempt.

[Refer Notification No. 21/02-Cus, dated 1-3-2002]

#### **5. Import of gifts through post:**

- 5.1 Bonafide gifts up to a value limit as prescribed by the Government of India when imported by post, are exempt from Basic and Additional Customs duties.(Notification No.171/93-Cus, dated 16-9- 1993). Further, only those items can be imported as gifts, which are not prohibited for importation under Foreign Trade (Development and Regulation) Act, 1992.
- 5.2 The sender of the gift may not necessarily be residing in the country from where the goods have been dispatched and any person abroad can send the gifts to relatives, business associates, friends, companies and acquaintances. The gifts should be for bonafide personal use only. The purpose of this stipulation is that the person receives the gift genuinely free and the payment is not made for it through some other means. The quantity and frequency of the gifts should not give rise to the belief that it is used as a route to transfer money. The gifts can be received by individuals, societies, institutions, like schools and colleges and even corporate bodies.
- 5.3 For calculating the value limit prescribed the Government of India in case of imports of gifts, postal charges or the airfreight is not taken into consideration. The value is taken as original value of the goods in the country from where the goods have been dispatched.
- 5.4 If the value of the gifts received is more than the prescribed limit the receiver has to pay Customs duty on the whole consignment, even if the goods were received free, unsolicited. In addition, at the discretion of the Assistant/ Deputy Commissioner, if the goods are restricted for import, the receiver has a liability for penalty for such import, even if the goods have been sent unsolicited. The restricted goods are also liable to confiscation and receiver has to pay redemption fine in lieu of confiscation in addition to duty and penalty. Certain prohibited goods like narcotic drugs, arms, ammunition, obscene films/printed material etc. are liable to absolute confiscation and the receiver is liable for penal action, even if the goods have been sent unsolicited.
- 5.5 Customs duty is chargeable on gifts assessed over the prescribed limit by the Customs. In case of post parcel, the customs department shall assesses the duty payable and the postal

department collects the assessed duty from the receiver of the gift and subsequently deposits it with the customs.

**6. Import of samples through post:**

- 6.1 Bonafide commercial samples and prototypes imported by post are exempted from Customs duty, subject to the value limit prescribed by the Government provided that the samples are supplied free of cost.
- 6.2 Importers having IEC code number can import commercial samples through post without payment of duty upto a value of Rs.100,000/- or 15 units in number within a period of 12 months. The goods so imported shall be clearly marked as "Samples". The importer is required to furnish a declaration to the effect that the samples are solely for the purpose of being shown to the exporters for securing or executing export orders. The importer is also required to undertake that if declaration is found to be false, he will pay appropriate duty on the goods imported as commercial samples. [Notification No.154/94-Cus", dated 13-7-1994]

**7. Import of Indian and Foreign Currencies by Post:**

- 7.1 Under the provisions of Foreign Exchange Management Act, 1999, no person may bring or send into India any foreign exchange or Indian currency except with special or general permission of the RBI. Import of Indian currency notes and coins by post is not permitted.
- 7.2 To reduce pendency and to avoid delay in clearance of mail articles, Customs may allow import of both Indian and foreign currencies received by residents by post, provided the value does not exceed Rs.5,000/-, subject to the following conditions:
  - (a) Approval is granted by Assistant/ Deputy Commissioner of Customs;
  - (b) A detailed record should be maintained of the exemptions granted;
  - (c) Record of the name and addresses of the remitter and addressee in India should be maintained; and (d) Where a spurt is noticed in the number of covers received over a time, the matter may be reported to the concerned Regional Office of RBI.
- 7.3 Parcels/packets containing foreign/Indian currency, etc., in excess of Rs.5,000/- shall be detained and adjudicated on merits and released on the basis of "No Objection Certificate" from the RBI. [Refer Circular No.16/2002-Cus, dated 5-3-2002]
- 7.4 There is a general permission given to Authorised Dealers to import currency notes from their overseas branches/correspondents for meeting their normal banking requirements. In view of this, no specific clearance is required from RBI for such imports.

[Refer Circular No.60/02-Cus, dated 13-9-2002 read with Annexure V to RBI's AD (MA Series) Circular No.11, dated 16-5-2000]

**8. Procedure in case of postal imports:**

- 8.1 Rules Regarding Postal Parcels and Letter Packets from Foreign Ports in/out of India prescribe procedure for landing and clearing at notified ports/airports/ LCSs of parcels and packets forwarded by foreign mails or passenger vessels or airliners. The procedure broadly is as under:

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- (a) The boxes or bags containing the parcels shall be labelled as “Postal Parcel”, “Parcel Post”, “Parcel Mail”, “Letter Mail” and will be allowed to pass at specified the Foreign Parcel Department of the Foreign Post Offices and Sub Foreign Post Offices.
- (b) On receipt of the parcel mail, the Postmaster hands over to the Customs the following documents:
- (i) A memo showing the total number of parcels received from each country of origin;
  - (ii) Eliminate the parcels which are letters, documents in consultation with the Customs Department.
  - (iii) File the Bills of entry in the prescribed forms along with the senders’ declarations and any other relevant documents that may be required for the examination, assessment etc. by the Customs Department;
  - (iv) The relative Customs Declarations and dispatch notes (if any); and
- (c) On receipt of the documents, the Customs Appraiser shall scrutinize the particulars given in the memo and identify the parcels to be detained for examination either for want of necessary particulars or defective description or suspected misdeclaration or undervaluation of contents. The remaining parcels are to be assessed for duty by scrutinising the Bill of entry, as the case may be. For this purpose, the Appraisers are generally guided by the particulars given in the Bill of entry or Customs declarations and dispatch notes (if any). When any invoice, document or information is required to ascertain the real value, quantity or description of the contents of a parcel, the addressee may be called upon by way of a notice to produce or furnish such invoice, document and information.
- (d) Whenever necessary, the values from the declarations are considered as per the Bill of entry and after conversion into Indian Currency at the ruling rates of exchange, the amount of duty is calculated and entered.
- (e) Duty is calculated at the rate and valuation in force on the date that the postal authorities present a list of such goods or date of filing the Bill of entry with the Customs. In case the parcels are brought through a vessel and postal authorities present list of goods before arrival of the vessel, the rate of duty and tariff value shall be the date on which Inward Entry is granted to the vessel.
- (f) All parcels marked for detention are to be detained by the Postmaster and the rest of the parcels which have been eliminated by the Customs will go forward for delivery to the addressee on payment of the duty marked on each parcel.
- (g) The detained parcels are submitted together with the Bill of entry to the Customs and after examining the details of contents of value in the Bills of entry Customs Appraiser clears the bill.
- (h) In the case of receipt of letter mail bags, the Postmaster gets the bags opened which is scrutinized under the supervision of the Customs with a view to identify packets containing dutiable articles. Those parcels containing non dutiable goods are eliminated

and the dutiable packets are to be detained and presented in due course to the Customs Appraiser with a bill of entry for the purpose of assessment. The Customs Appraiser will assess the amount of duty against each item.

- (i) All parcels or packets required to be opened for Customs examination are opened, and after examination, closed by the Post Office officials and are then sealed with a distinctive seal. The parcels or packets shall remain throughout in the custody of the Post Office officials. (The Rules and regulations prescribed under Notn No. 26/2009- Cus (N.T.) for the handling of goods in customs areas will be applicable to the postal department.
- (j) If on examination the contents of any parcel or packet are found mis declared or the value understated or consisting of prohibited goods, such parcels or packets must be detained. The Postmaster shall follow the instructions stipulated in Notification No. 26/2009-Customs (N.T.) dated 17.03.2019 and shall not allow such parcels or packets to go forward without the Customs' orders. Adjudication proceedings shall be initiated in such cases by the competent officer and the parcels released only after payment of fine and penalty, if any, levied by the adjudicator.
- (k) The duties as assessed by the Customs Appraiser in the Bill of entry shall be recovered by the Post Office from the addressees at the time of delivery of the goods to the importers. The credit for the total amount of duty certified by the Customs Appraiser at the end of each bill is given by the Post Office to the Customs Department in accordance with the procedure settled between the two Departments.
- (l) The Bill of entries or the letter mail bills on which assessment is made remain in the custody of the Post Office, but the duplicates copies are kept in the Customs Department for dealing with claims for refunds, etc.

## **9. Legal provisions and exemptions in case of postal exports:**

- 9.1 Goods which are not prohibited or restricted for export as per FTP can be exported by post through any of the post offices and will be subjected to examination at the specified Foreign Post Offices or Sub-Foreign Post Offices or Export Extension Counters. Drawback can also be availed for export through post and also through other export promotion schemes like Advance Licence, DFRC, EPCG etc. Commercial samples, prototypes of goods and free gifts may also be exported by the post.
- 9.2 The rate of duty and tariff value, if any, applicable to any goods exported by post shall be the rate and valuation in force on the date on which the exporter delivers such goods to the Postal Authorities for exportation.
- 9.3 Bonafide commercial samples and prototype of goods supplied free of charge of a value not exceeding Rs.50,000/- which are not subject to any prohibition or restriction for export under FTP and which do not involve transfer of foreign exchange, may be exported through post.
- 9.4 Bonafide gifts of articles for personal use of a value not exceeding Rs.25,000/- which are not subject to any prohibition or restriction on their export under FTP and which do not involve transfer of foreign exchange, may be exported through post.

- 9.5 Export by post of Indian and foreign currency, bank drafts, cheques, National Saving Certificates and such other negotiable instruments is not allowed unless accompanied by a valid permit issued by the RBI, except in cases where such negotiable instruments are issued by an authorised dealer in foreign exchange in India.
- 9.6 Indian currency notes of Rs.500/- and Rs.1000/- denominations are prohibited by Government of Nepal. Therefore, the Indian currency notes of Rs.500/- and Rs.1000/- denominations shall not be allowed for export to Nepal.
- 9.7 Prohibitions/restrictions under the FTP and the Customs Act, 1962 apply on the export of various articles by post. Some of these articles are viz. arms and ammunitions, explosives, inflammable material, intoxicants, obscene literature, certain crude and dangerous drugs, antiquities, narcotic drugs etc.
- 9.8 Export of purchases made by the foreign tourists is allowed through post subject to proof that the payment has been made in foreign exchange.

#### **10. Procedure in case of postal exports:**

- 10.1 All goods exported by post are required to be accompanied by the Declarations filed in the prescribed form as stipulated under Notification No. 48/2018-Cus (N.T.) dated 04.06.2018.
- 10.2 In terms of the exports made under claim of benefit under Chapter 3 (Reward Scheme) of FTP, the exporter shall file a Form prescribed under Notification No. 48/2018 –Customs (N.T.) dated 04.06.2018.
- 10.3 All exports by post, where the value exceeding Rs.50/- and where payment has to be received, must be declared on the exchange control form viz. P.P. form. When the postal article is covered by a certificate issued by the RBI (with or without limit) or by an authorised dealer in foreign exchange that the export does not involve any transaction in foreign exchange upto Rs. 500/-, the declaration in a P.P. form is not necessary.
- 10.4 All the letters and parcels before being produced by the postal authorities to Customs officer in the Foreign Post Office should ensure that prohibited goods like narcotic drugs, foreign exchange, currency etc. is not being sent through the parcel. The suspected parcels are to be presented to the Customs department which can be detained and handed over to the postal authorities for action as stipulated in Notn No. 26/2009-Cus (N.T.) dated 17.03.2009.
- 10.5 The detained parcels are opened by Customs officer in presence of the postal authorities and if same do not contain any prohibited or restricted goods and there is no mis-declaration of value the parcels are re-packed and handed over to postal authorities for export.
- 10.6 If the detained parcels contain restricted or prohibited goods or mis-declared goods with intention to avail inadmissible export benefits, the case is investigated and adjudication proceedings are initiated.

#### **11. Procedure for claiming Drawback on exports through post:**

- 11.1 The exporters claiming any export benefits for the goods exported through post as prescribed in the Rules shall label the outer packing of the consignment and the exporter shall deliver to

postal authorities a claim in the prescribed Annexure. The date of receipt of claim by proper officer of Customs shall be the relevant date for filing of claim under the Customs Act, 1962.

11.2 In case the claim is incomplete, a deficiency memo shall be issued within 15 days and if exporter complies within 30 days, an acknowledgement shall be issued. The date of issue of acknowledgement shall be taken as date of filing the claim for the purpose under the Customs Act, 1962.

11.3 Drawback on exports through post is sanctioned by the respective Foreign Post Office.

## **12. Drawback in respect of goods re-exported through post:**

12.1 The goods imported on payment of duty may also be re-exported through post and applicable rate of Drawback under Section 74 of the Customs Act, 1962 claimed. The Drawback of the duty paid at the time of import is permissible subject to the fulfilment of the conditions of Section 74 of the Customs Act, 1962 and Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. The Proper Officer of Customs at Foreign Post Office shall be satisfied about the identity of the goods being re-exported and if the same cannot be established, no Drawback would be payable.

12.2 The procedure to be followed for claim of Drawback on goods re-exported through post, which is paid by the Customs Officer in the FPO, is as follows:

- (i) Rule 3 of Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 requires the outer packing of the parcel to carry the words "Drawback Export" and exporter shall give a claim as per Annexure I to said Rules in quadruplicate to the Postal authorities. The date of receipt of aforesaid Annexure I by Customs from Postal authorities shall be the date of receipt of the claim for the purposes of Section 74 of the Customs Act, 1962 and exporter shall be informed.
- (ii) If claim is incomplete, a deficiency memo shall be issued within 15 days and if claim is again filed by exporter after complying with the deficiencies within 30 days, the receipt shall be acknowledged and this date shall be treated as date of filing the claim for the purposes of Section 74 of the Customs Act, 1962

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

13.1 Notification Nos. 92/2209, 93/2009, 94/2009 and 95/2009-Cus., all dated 11-9-2009 allow export of goods by post under claim of benefits under Chapter 3 (reward schemes) of the FTP from the Foreign Post Offices nominated under Notn No. 31/2017 (Cus) (N.T.). The procedure for availing this benefit is contained in Public Notice No. 13/2013 dated 13- 8-2013 issued by the Commissioner of Customs (Exports), New Delhi. [Refer Circular No 29/2013-Cus., dated 5-8-2013]

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

14.1 If the addressee takes delivery of parcels on payment of duty and then wishes to return to the sender, they can do so only under claim for Drawback after observing the prescribed procedure.

14.2 Permitting an addressee to open a parcel and take the delivery of part contents on payment of duty and repack the balance of the contents for re-export without payment of duty thereon is not authorised and is irregular.

**15. Procedure for e-commerce exports through Post:**

15.1 Any exporter holding a valid Importer-Exporter Code will be permitted to export goods by filing a Postal Bill of Export (PBE) in the form prescribed under Export by Post Regulations, 2018.

15.2 Every PBE-I(for e-commerce exports) shall be filed in duplicate and shall cover only one consignor. There will be no limitations on the number of postal shipments which can be effected under a single Postal Bill of Export-I. Invoices should be attached by the exporter with the PBE-I. Importer shall in addition file postal label or declaration as per CN22/CN23 which has a column 'sale of goods'.

15.3 PBE along with goods shall be presented to Customs at the Foreign Post Office. Upon completion of processing of PBE, the goods shall be presented to the Postal department, who will acknowledge receipt of the shipment on the PBE and affix the tracking number of each shipment on the same. Upon affixation of the tracking number by the postal authorities, the PBE shall be brought back to the proper officer for grant of 'Let Export Order'. Original PBE will be retained by Customs and the duplicate PBE will be handed over to the exporter or his Customs broker.

[Refer Circular No. 14/2018- Customs dated 25.07.2018,  
Circular No. 18/2018- Customs dated 13.06.2018]

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## Import of Samples

### 1. Introduction:

- 1.1 In international trade it is often necessary to send samples of goods manufactured in one country to another country for being shown or demonstrated for customer appreciation and familiarization and for soliciting orders. Samples are imported by the trade, industry, individuals, companies, associations, research institutes or laboratories. These are brought by representatives of foreign manufacturers as a part of their personal baggage or through port or by courier.
- 1.2 Commercial samples are basically specimens of goods that may be imported by the traders or representatives of manufacturers abroad, to know its characteristics and usage and to assess its marketability in India. Samples include consumer goods, consumer durables, prototypes of engineering goods or even high value equipment, machineries (including agricultural machinery) and their accessories

### 2. Legal provisions:

- 2.1 India is a signatory to a 1952 Geneva Convention to facilitate the Importation of commercial samples and advertising materials. The notifications issued in this regard enable duty free import of genuine commercial samples into the country for smooth flow of trade. It is, however, not to be used as a means to avoid paying Customs duty through repeated imports of samples in smaller lots.
- 2.2 Goods prohibited under Foreign Trade (Development and Regulation) Act, 1992 are not allowed to be imported as samples e.g. wild animals, wild birds and parts of wild animals and birds, ivory, arms and ammunitions, and narcotic drugs.
- 2.3 Bonafide trade samples can be imported provided these have been supplied free of charge. For duty free clearance the value of individual sample should not exceed Rs.5,000/- and aggregate value should not exceed Rs.3,00,000/- per year or 50 units of samples in a year. However, the prototypes of engineering goods can be imported even if the value is more than Rs.5,000/-. Such prototypes can be imported upto a value of Rs.10,000/- without payment of duty as long as the goods are rendered useless as merchandise by a suitable process. In case the value exceeds Rs.10,000/-, the said goods have to be re-exported within a period of 9 months or such extended period as the Assistant/Deputy Commissioner of Customs may allow. The high valued samples are cleared after depositing duty with Customs and giving an undertaking for their re-export within nine months. The deposited duty is refunded when the machinery is exported back. However, if more than one product is being imported into the India, the value limit is increased proportionately. Similarly, if the samples are consigned to more than one consignee, by any foreign company, and are sent at the same time through the same port/ airport, it shall not be charged to duty if the value limit of Rs.5,000/- per unit is adhered to. The consignments meant for distribution to different parties in India can also be imported together



for convenience of transport, if the packets are clearly marked and addressed to different persons in India.

- 2.4 A commercial traveller of foreign country is eligible to carry bonafide samples if the value of each of the item is not more than Rs.5,000/- per unit. He is also not required to produce the IEC code at the time of clearance of these goods. The traveller must declare that these goods are meant for securing export order or guidance of exporters, and that the total value does not exceed Rs.3,00,000/- per item during the 12 month

period and that he has not imported more than 50 units of the said goods within the last 12 months. He also undertakes that he would not sell these goods and if he sells he will pay the duty leviable on those goods.

- 2.5 The value of Rs.5,000/- is the value of the goods in the country of dispatch excluding local refundable taxes like VAT. In case of free samples of Rs.5,000/-, its value does not include freight or courier charges. If value is above Rs.5000/-, the freight and insurance charges would be added to calculate the duty payable.
- 2.6 Importers are trusted to declare correctly and adhere to the undertaking of the limit of yearly value and quantity. Any person suspected to contravene the limit or undertaking deliberately is liable to be investigated, penalized and/or prosecuted.

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

- 3.1 Machinery that are prototypes of engineering goods, imported either for further manufacture or for use as capital goods for export production or in connection with securing export orders can be imported duty free upto value of Rs.10,000/-. These goods are normally defaced or made un-saleable by punching, cracking, marking with indelible ink etc. The machinery can be cleared by furnishing a Bank Guarantee (or) deposit of the duty payable and an undertaking that these would be re-exported within 9 months of import. For high valued machinery, the importer has to give an undertaking that these are utilised for the purpose of demonstration at the place(s) which is declared. The Customs authority may also seal the machinery during its journey from the port of importation to the place of demonstration and it is unsealed only at the place of operation or place of demonstration

### **4. Failure to re-export:**

- 4.1 The samples have to be re-exported within 9 months. However, the Assistant/Deputy Commissioner of Customs, may under special circumstances extend the period of 9 months for a further reasonable period.

[Refer Notification No. 154/1994-Cus dated 13.07.1994]

### **5. Import of samples under other scheme:**

- 5.1 Duty free import of samples is permitted under following provisions/schemes:
- (a) Goods intended for display or use at an specified event, goods intended for use in connection with the display of goods and certain other items can be imported duty free subject to the compliance of conditions of Notification No. 08/2016-Cus dated

05.02.2016.

- (b) Sample can be imported for Government of India sponsored events viz. trade and industry fairs under Carnet vide Notification No.157/90-Cus, dated 28-3- 1990 as amended.
- (c) Samples of goods manufactured by EOUs can be imported duty free in terms of Notification No.52/2003-Cus, dated 31-3-2003.
- (d) It has been clarified that bonafide trade samples should be part of export baggage in terms of para 2.31 of the FTP read with para 2.20 of the said FTP and 2.27 of Handbook of Procedures.

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

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## Re-importation and Re-exportation of Goods

### 1. Introduction:

1.1 Sometimes, indigenously manufactured goods, when exported, are returned back for various reasons including cancellation of export order or after exhibition/display etc., or after use in particular project/contract and completion of the contract etc. (such as machinery). Similarly imported goods which may have discharged duties at the time of original importation have also to be often sent out for repair, reconditioning etc. Private, personal imported property may also have to be sent abroad for repair within the warranty period and returned. There are also goods that may have to be sent for special processes like electroplating, polishing or coating and re-imported. Thus, specific legal provisions permit the facility of re-import and re-export of goods.

### 2. Re-importation of indigenously manufactured/imported goods:

2.1 Under Section 12 of the Custom Act, 1962 import duties of Customs are leviable on all import goods, and no distinction is made whether the goods being imported had discharged duties earlier are being re-imported after exportation for particular purposes. Similarly, even if goods are indigenously manufactured which had been exported earlier under various export incentive schemes or duty drawback claim or even without any export incentive claim, when these are re-imported they attract the Customs duty leviable on like import goods (as the duty is on the act of importation) unless an exemption notification is issued.

2.2 To avoid incidence of double duty on re-imported goods such when sent abroad for repairs, certain relief from duty has been provided. Similarly, where the goods are indigenously manufactured, they should bear the Central Excise or GST duties, as applicable, which may not have been discharged at the time of exportation. Further, the exporters should not retain any benefits obtained as an export incentive if the goods are re-imported.

2.3 The salient elements of the duty exemption governing the re-imported goods are as follows:

- (i) On re-import of indigenously manufactured goods under duty Drawback/claim of refund of integrated tax paid, export under bond or under other claim of export incentives, essentially the duties equivalent to the export incentives etc. availed have to be paid, on re- importation. Thus, if the goods were exported on payment of GST, without claiming any rebate, and without claiming any export incentives such as Drawback or benefits of the duty exemption schemes, EPCG schemes, and where the indigenously manufactured goods are being returned then no Customs duties are leviable. Further, when the indigenously manufactured goods are exported for repair and returned without claiming any benefits, duty is to be paid on a value comprising fair cost of repairs including cost of materials used in repairs, insurance and freight charges both ways. Similarly, in case of re-import of cut and polished precious and semi-precious stones exported for treatment abroad as referred to in Paragraph 4A.20.1 of the Foreign Trade Policy, duty is to be paid

on a value comprising of the fair cost of treatment carried out including cost of materials used in such treatment, insurance and freight charges, both ways. Basically the benefit is available if the Assistant/Deputy Commissioner of Customs is satisfied that the goods are the same which were exported earlier and certain other conditions as laid down in the relevant notification are fulfilled.

[Refer Notification No.45/2017-Cus, dated 30.06.2017]

- (ii) Similar duty exemption provisions in case of re-import of the goods falling within the Fourth Schedule to the Central Excise Act, 1944 (1 of 1944) are contained in Notification No.47/2017-Cus, dated 30.06.2017.
- (iii) Goods manufactured in India or parts thereof that are re-imported for repairs or reconditioning or reprocessing/refining/remaking etc. are exempt from duty subject to the condition that the re-importation takes place within a specified period; the goods are re-exported within six months of re-importation; the Assistant/Deputy Commissioner of Customs is satisfied as regards the identity of the goods; and certain other conditions ensuring re-export including execution of bonds are fulfilled.

[Refer Notification No.158/95-Cus, dated 14-11-1995  
as amended vide Notification 43/2017-Cus dated 30.06.2017]

- (iv) Re-imported private personal property, which was imported earlier but exported out for any alteration, renovation, repair free of charge etc. is exempt from duty subject to the condition that the goods are repaired on free of charge basis in accordance with the terms of warranty given by the manufacturers and in accordance with the established trade practice and Drawback or other incentives have not been availed. However, certain Custom duties equivalent to the cost of alterations/renovations/additions/repairs, if any, are payable.

[Refer Notification No.174/66-Cus. dated 24-9-1966]  
as amended vide Notification 44/2017-Cus dated 30.06.2017]

### **3. Re-exportation of imported goods:**

- 3.1 There are often occasions where imported goods may have to be re-exported such as when the import goods are found defective after Customs clearance or are not found as per specifications or requirements. Various machinery items imported for use in certain projects or otherwise are also often to be re-exported by the original owner. Re-exports can be made by sea, air, baggage or post.
- 3.2 Section 74 of the Customs Act, 1962 provides for grant of Drawback @98% of the Customs duties paid at the time of importation, if the goods are re-exported by the importer, subject to certain conditions. The re-export is to be made within a maximum period of two years from the date of payment of duty on importation (which period can be extended on sufficient grounds being shown) and goods have to be identified with the earlier import documents and duty payment to the satisfaction of the Assistant/Deputy Commissioner of Customs at the time of export. If such goods are used after importation, Drawback is granted on a proportionate basis but if such goods are re-exported after more than 18 months of import 'nil' Drawback is

admissible. Further, no Drawback of the import duty paid is permissible for specific categories of goods such as wearing apparel, tea chests, exposed cinematographic films passed by Film Censor Board, unexposed photographic films, paper and plates and x-ray films. Also, in respect of motor vehicles imported for personal and private use the Drawback is calculated by reducing the import duty paid according to the laid down percentage for use for each quarter or part thereof, but upto maximum of four years. Further Circular 21/2017-Cus dated 30.06.2017 has been issued post introduction of GST in this regard.

[Refer Notification No.19/65-Cus, dated 6-2-1965 and  
Re-export of imported Goods(Drawback of Customs Duties)Rules 2017]

- 3.3 Section 26A of the Customs Act, 1962 allows refund of import duty if the imported goods are found defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods. One of the conditions for claiming refund is that the goods should not have been worked, repaired or used after the importation except where such use was indispensable to discover the defects or non- conformity with the specifications. Another condition is that the goods are either exported without claiming Drawback or abandoned to Customs or destroyed or rendered commercially valueless in the presence of the Proper Officer within a period of 30 days from the date on which the Proper Officer makes an order for the clearance of imported goods for home consumption. The period of 30 days can be extended by the jurisdictional Commissioner of Customs on sufficient cause being shown. However, no refund shall be available in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before-use period.

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## Disposal of Unclaimed/Uncleared Cargo

### 1. Introduction:

- 1.1 Imported goods are allowed to be cleared for home consumption by the Customs, if there are no restrictions or prohibitions, assessment formalities have been completed, and duty leviable has been paid. However, it is often the case that the importer files the Bill of Entry but does not clear the goods due to various reasons such as financial problems, lack of demand for the goods, etc. Such goods are called 'uncleared goods'. In some cases, the importer does not even come forward to file the Bill of Entry for clearance of goods. Such goods are known as 'unclaimed goods'.
- 1.2 In terms of the provisions of the Customs Act, 1962, the duty is leviable on imported goods, regardless of whether they are cleared by the importers or not. Similarly, dues of other agencies, such as, carriers and custodians for carriage and storage of goods respectively, may also arise. Where the importers do not come forward to make payment of such dues, the Customs duty and other dues can be recovered by selling the unclaimed/uncleared goods.

### 2. Legal provisions:

- 2.1 As per Section 48 of the Customs Act, 1962, if any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within 30 days from the date of unloading thereof at a port, such goods can be disposed of by the custodian. The Act, however, stipulates that the goods can be sold only after a notice is issued to the importer and the permission from Customs is obtained. The provisions relating to manner of disposal of unclaimed/uncleared goods and apportionment of sale proceeds thereof are contained in Sections 48 and 150 of the Customs Act, 1962.

### 3. Procedure for sale of unclaimed/uncleared goods:

- 3.1 The Board has laid down a comprehensive procedure for disposal of unclaimed/uncleared goods. The procedure for disposal of cargo which are unloaded at a Customs Station after being brought from outside India on or after 01.04.2018 and which fall in the category of 'unclaimed/ un-cleared' in terms of section 48 of the Customs Act, 1962 is as follows:
  - (i) The concerned custodian of the Customs Station shall prepare a list of cargo lying unclaimed/ un-cleared in the bonded area of the Customs Station for more than 30 days from the date of arrival of such cargo in the Customs Station. This list shall be sent to the jurisdictional Commissioner of Customs to intimate as to whether listed goods/cargo can be taken up for disposal through public auction. The list will contain the following details:
    - (a) Bill of Lading No. and date
    - (b) Container number

- (c) Description of goods
- (d) Weight
- (e) Name of the consignor (exporter) and consignee (importer).

These details will be furnished as per the information available from the IGM message of ICEGATE.

- (ii) The custodian shall simultaneously update the list with importer's name and address. In those cases, where the address of the importer is not mentioned in the IGM message from ICEGATE, a notice shall be sent to the respective Shipping Line requesting them to give address of the importer/consignee within one week of receipt of the notice.

The Shipping Line will be obliged to respond with the relevant details within 7 days of receipt of letter from the custodian. The Shipping line will also be requested by the custodian to contact the importer and ask him to clear the cargo from the concerned Customs Station.

- (iii) Jurisdictional Commissioner of each customs station shall issue instructions to the officers and staff posted at the station to ensure that details of all goods/shipments which are put on hold for investigation or otherwise by DRI/Preventive/SIIB or any other agency are furnished to the Disposal branch of the customs station and the concerned custodian immediately, under proper receipt and acknowledgement. This will ensure that the Disposal branch and custodian are at all times aware of the goods/shipments/containers for which 'No Objection Certificate' from the concerned agency would be required before initiating disposal process.

- (iv) From the said list, Customs will segregate shipments which are disputed/stayed shipments required to be retained for investigation/adjudication/court procedure etc. Customs shall also segregate shipments containing motor vehicles or other goods requiring Licence/Permission/ Certification from DGFT or any other Department. Customs will furnish to the custodian within 10 days of the receipt of the said list, the details of shipments not to be included in the auction process. Customs shall also choose 10% shipments from the list of shipments segregated for inclusion for the auction process for which detailed inventory shall be made in their presence for sample check. This will be conveyed to the concerned custodian along with the list of shipments/containers which are required to be retained.

- (v) (a) Based on the intimation received from Customs, the concerned custodian will issue a notice to importer under Section 48 of the Customs Act 1962 advising him to clear the goods within 10 days from the date of issue of the notice failing which the goods will be placed in public auction. Notice will be sent to the importer on the address as given in IGM message available with the custodians, or the address ascertained from the shipping lines in terms of the para 3 (ii) above.

(b) A copy of the notice issued to the importer under section 48 of the Customs Act, 1962 shall also be affixed on the notice board of the Customs Station.

- (vi) The concerned custodian, in the next 20 days shall prepare a detailed inventory of the shipments which are not required to be retained by Customs for any purpose. In doing so, they will associate the Customs in 10% of the consignments for which Customs has already intimated that inventory has to be drawn in their presence for sample check.
- (vii) Within 7 days of drawing up of inventory, the concerned custodian shall approach the jurisdictional Customs authorities along with the said inventory seeking No Objection Certificate (NOC) in respect of all containers which are to be taken up for auction through the e-auction/tender. The inventory should have a detailed description of the items, to enable Customs to easily identify the regulatory requirements in respect of the consignments mentioned in the inventory and it shall clearly indicate variation in description of goods with respect to description of goods mentioned in the list already forwarded as per para 3 (i), above.
- (viii) Customs shall examine the list and within 15 days of receipt of such request, intimate to the custodian, details of the listed shipments which can straight way be taken up for auction as they do not require any regulatory clearances (NOC from FSSAI, Drug Controller, BIS etc.), or do not need any chemical analysis to identify the contents and fitness for consumption/usage. The consignments for which such unconditional NOCs are issued by Customs, shall be taken up for auction by e-auction through MSTC to ensure maximum outreach and participation. In order to ensure quick and regular turnover, the concerned custodian shall attempt to hold at least one auction each month. In case the list is incomplete and does not have the complete details for Customs to clearly pinpoint the regulatory requirements, Customs shall indicate the deficiencies in the list, within this period of 15 days.
- (ix) In case regulatory clearances from agencies other than Customs are required such as NOC from FSSAI, Drug Controller, BIS etc., or samples of the consignment are required to be chemically analysed to identify the contents and fitness for consumption/ usage, Customs shall identify such requirement and intimate to the concerned custodian within 15 days of the receipt of complete list. The concerned custodian will then approach the jurisdictional Customs officer for assistance in obtaining the said regulatory clearance. If in this process, chemical analysis is required, Customs shall draw the samples and forward the same to the respective agency for testing. The required testing fees or such other charges required to be paid to the concerned agency, shall be paid directly by the concerned custodian to the said agency. The concerned agency will be required to submit the test reports within 15 days of receipt of the samples.
- (x) NOC for such consignments shall be issued by Customs only after receipt of the required clearance/result of chemical analysis from the concerned agency, without which the concerned custodian shall not put the said consignment for auction.
- (xi) In case the result of chemical analysis, or report from FSSAI, Drug Controller, Plant Quarantine etc. indicate that the sample is not fit for consumption/usage, Customs shall inform the concerned custodian about the need for destruction of the same and the concerned custodian shall arrange to destroy the same at their expense, after obtaining the requisite environmental and other clearances as per law. Date of the proposed



destruction shall be intimated to Customs at least 15 days in advance, to enable the representative of the Customs to witness the same, should the need for the same be felt.

- (xii) The value of the shipment/lot included in the auction list shall be fixed in next 7 days by a panel of Govt. approved valuers appointed by the concerned custodian which shall include an expert on the product line without involvement of the local Customs authorities. The values assessed by the approved valuers appointed by the custodians shall form the "reserve price".
- (xiii) The concerned custodian shall fix a date immediately after assessment of value of such shipment/lot, for holding the auction/tender and communicate such date to the jurisdictional Commissioner of Customs and the Assistant/Deputy Commissioner, Disposal branch of the Customs Station. The Assistant/ Deputy Commissioner shall nominate, if necessary, an officer not below the rank of Superintendent/Appraiser to witness the auction/tender. Customs shall not withdraw any consignment at the last moment from the auction/tender except with the written approval of the jurisdictional Commissioner of Customs.
- (xiv) The shipment/ lot in respect of which NOC has been given by Customs, shall be taken up for auction. All bids of value equal to or more than the reserve price, or those up to 5% less than the reserve price, shall be treated as successful bids for sale of goods. Remaining shipments/ lots of the list shall again be taken up for second auction against the same reserve price. In case, shipments or lots, where bids are not received up to the reserve price, shall again be taken up for third auction against the same reserve price. Unsuccessful shipments/ lots of third auction, in respect of which three auctions have already taken place, shall be considered for fourth auction against the reserve price fixed before the first auction of such shipments/lots, however, in the fourth auction such shipments/lots are to be necessarily sold for the highest bid regardless of the reserve price fixed. In the event of the shipments/ lots not being disposed of in the first auction, subsequent auction/ tender should be conducted in a time bound manner and such shipments/lots should be taken up in the next auction. Custodian shall furnish shipment/ lot wise bids received in respect of each auction to the jurisdictional Commissioner of Customs for approval. Further, if these goods remain unsold and pass into the category of landed-more than one-year prior, the concerned custodian can sell the same following the independent procedure as detailed in para 3 of CBIC Circular No. 50/2005-Cus. dated 01.12.2005 without any reference to Customs, and adjusting the number of auctions/ tenders to which the lot was already subjected to against the prescribed number of four such auctions/ tender. However, even for such goods the requisite NOC from Customs will be obtained by the concerned custodian following the procedure laid down in paras above.
- (xv) After the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods as per Section 46 of the Customs Act 1962 read with Un-Cleared Goods (Bill of Entry) Regulations, 1972 (Regulation 2 & 3).
- (xvi) (a) The proper officer of Customs shall assess the goods to duty in accordance with the

extant law within 15 days of filing of the Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.

2) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues. 4. The above procedure shall be applicable to cargo, which are unloaded at a Customs Station after being brought from outside India on or after 01.04.2018 and which fall in the category of 'unclaimed/ un-cleared' in terms of section 48 of the Customs Act, 1962. It would also be applicable to all unclaimed/un-cleared goods brought from outside India before 01.04.2018 (unclaimed/ un-cleared for a period not exceeding one year) in respect of which: (a) auction process has not started yet; or (b) list of cargo proposed for auction has been sent to Customs by the custodian but Customs has not yet provided the necessary information as referred in the para 3 (i) and 3 (iv) above.

- 3.2 The above procedure is also be applicable to all unclaimed/un-cleared goods brought from outside India before 01.04.2018 (unclaimed/ un-cleared for a period not exceeding one year) in respect of which:
- (a) auction process has not started yet; or
  - (b) list of cargo proposed for auction has been sent to Customs by the custodian but Customs has not yet provided the necessary information as referred in the para 3 (i) and 3 (iv) above
- 3.3 The sale proceeds of the auction shall be disbursed as per Section 150 of the Customs Act 1962.
- 3.4 In case the entire process of auction is not concluded within 180 days of the commencement of auction, the custodian shall inform the bidder about further extended time which may be required to conclude the auction process. Where ever, the bidder indicates his unwillingness to wait further, his successful bid will be cancelled and the earnest money, if any deposited with the custodian by the bidder will be returned to the bidder under intimation to Customs. Otherwise, the auction process shall be concluded within the extended time conveyed to the bidder.
- 3.5 Wherever, any amount of earnest money is deposited by the bidder with the custodian, the same shall be refunded to the bidder within one week of announcement of auction results where the bid fails to succeed in the auction.

[Refer Circular No.50/2005-Cus, dated 1-12-2005, Circular No. 52/2005-Cus, dated 09.12.2005 & Circular No. 49/2018- Customs dated 03.12.2018]

#### **4. Disposal of hazardous waste:**

- 4.1 The disposal of hazardous waste is to be carried out in accordance with the directions dated 14-10-2003 of the Hon'ble Supreme Court in WP No. 657/95. Basically, the Apex Court has directed that such waste are to be categorized as either those that are banned or those that are regulated. The waste in the banned category should be either re-exported, if permissible, or destroyed at the risk, cost and the consequence of the importer. The waste in the regulated category are permitted for recycling and reprocessing within the permissible parameters by

specified authorized persons having the requisite facilities under the rules. Disposal of hazardous and other waste regulated by the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, shall be in accordance with the provisions of the said rules. In case of illegal import of the hazardous or other waste, the importer shall re-export the waste in question at his cost within a period of ninety days from the date of its arrival into India and its implementation will be ensured by the concerned Port and the Custom authority. In case of disposal of such waste by the Port and Custom authorities, they shall do so in accordance with these rules with the permission of the Pollution Control Board of the State where the Port exists. In case of illegal import of hazardous or other waste, where the importer is not traceable then the waste either can be sold by the Customs authority to any user having authorisation under rules from the concerned State Pollution Control Board or can be sent to authorised treatment, storage and disposal facility.

[Refer Circular No.31/2004-Cus, dated 26-4-2004]

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

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

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

6.1 There would be a formal mechanism for interaction and a quarterly meeting between the custodians and Customs to review the pendency of uncleared cargo and to reconcile/update the status of pending consignments by matching the pendency with the custodian with the figures of uncleared consignments as per Customs records.

[Refer Circulars No.31/2004-Cus, dated 26-4-2004, No.50/2005-Cus, dated 1-12-2005, No.52/2005-Cus, dated 10-12-2005, No.11/2006-Cus, dated 16-2-2006 and Instruction F.No.450/97/2010-Cus.IV, dated 22-7-2010].

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## Intellectual Property Rights

### 1. Introduction:

1.1 India is a signatory to the WTO Treaty on Trade Related Aspects of Intellectual Property Rights (TRIPS), which was brought into force on 1st January, 1995. Articles 51 to 60 of TRIPS [Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization] relate to border measures (i.e. measures required to be taken for providing protection against infringement of IPRs at the border).

### 2. Legal provisions:

2.1 Copyright Act, 1957, the Trade Marks Act, 1999, the Designs Act, 2000 and the Geographical Indications of Goods (Registration and Protection) Act, 1999 have provisions prohibiting import of goods infringing Intellectual Property Rights under the respective Acts.

2.2 Central Government has been empowered under Section 11 of the Customs Act, 1962 to issue notifications for prohibiting either absolutely or subject to such conditions as may be specified in the notification, the import or export of goods of any specified description. Section 11(2) of the said Act details the purpose for which such a notification may be issued by the Central Government which, inter-alia, covers the following purpose:

- (i) Protection of patents, trademarks and copyrights. [Section 11(2)(n)]; and
- (ii) Prevention of the contravention of any law for the time being in force [Section 11(2)(u)].

2.3 Notification No.51/2010-Cus.(NT), dated 30.06.2010 as amended vide Notification No. 57/2018-Customs(N.T.) dated 22.06.2018 prohibits import of goods infringing specified provisions of Trademarks Act, Copyrights Act, Designs Act, and Geographical Indications Act subject to following the procedure prescribed under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (IPR Rules) issued under Notification No. 47/ 2007-Cus.(NT), dated 08.05.2007 as amended vide notification No. 56/2018-Customs(N.T.) dated 22.06.2018. Goods in transit through India are excluded from its coverage and only goods intended for sale or use in India would be covered under the notification.

2.4 The prohibition of imported goods for the purpose of protecting intellectual property rights as specified under Notification No.51/2010-Customs (N.T.) dated 30.06.2010, does not relate to all infringements under the parent IPR Acts but only to those imports that infringe the specific provisions of various parent Acts governing IPR, mentioned in the notification No.51/2010-Customs (N.T.) dated 30.06.2010, as amended vide Notification No. 57/2018-Cus (N.T.) dated 22.06.2018. To illustrate, in case of the Trade Marks Act, 1999, prohibitions against infringement of trade marks on import of goods intended for sale or use in India, that attract the provisions IPR (Imported Goods) Enforcement Rules, 2007 would apply to:

- (i) Imported goods having applied thereto a false trade mark, as specified in section 102 of the Trade Marks Act, 1999; and

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

2.5 In this context, the issue of permitting import of original/genuine products (not counterfeit or pirated) which are sold/ acquired legally abroad and imported into the country, by persons other than the intellectual property right holder without permission/ authorisation of the IPR holder, known in the trade as 'parallel imports' has been clarified by the Department of Industrial Policy and Promotion (DIP&P), Ministry of Commerce & Industries, which is nodal authority for all matters relating to (i) Trade Marks Act, 1999 and (ii) Designs Act, 2000. CBIC's circular No. 13/2012-Cus., dated 08.05.2012 may please be referred.

2.6 The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 provide a procedure to be followed by the right holders and Customs officers to prohibit importation of goods infringing Intellectual Property Rights and the action to be taken, by the right holders and Customs Officers, after suspension of release of the infringing goods. These Rules provide for, inter alia:

- (i) Notice to be given by a right holder in writing to the Commissioner of Customs or any Customs Officer authorised by Commissioner requesting for suspension of release of imported goods suspected to be infringing intellectual property rights;
- (ii) Notice to be accompanied by fees of Rs.2,000/-;
- (iii) Within 15 days or extended period additional information to be supplied by the right holder to Deputy/Assistant Commissioner, if missing from the format;
- (iv) Right holder to inform Customs, when his IPR ceases to be valid;
- (v) Time limit for right holders to join proceedings;
- (vi) A single point for registration of the right holder;
- (vii) Adequate protection to the rightful importer and for indemnifying Customs;
- (viii) Suo-moto action by Customs;
- (ix) Disposal of the confiscated goods; and
- (x) Goods of non-commercial nature contained in personal baggage or sent in small consignments meant for personal use would not attract prohibition.

### **3. Conditions for registration:**

3.1 The grant of registration shall be subject to following conditions, namely:

- (i) The right holder or his authorised representative shall execute a bond with the Commissioner of Customs for such amount with such surety and security as deemed appropriate by the Commissioner, undertaking to protect the importer, consignee and

the owner of the goods and the competent authorities against all liabilities and to bear the costs towards destruction, demurrage and detention charges incurred till the time of destruction or disposal, as the case may be;

- (ii) The right holder shall execute an indemnity bond with the Commissioner of Customs indemnifying the Customs authorities against all liabilities and expenses on account of suspension of the release of allegedly infringing goods.
  - (iii) At the time of registration but prior to importation, it may be difficult to fix the bond amount corresponding to the value of suspected infringing goods not yet imported. Further, this would lock in right holders' money in the form of security. Therefore, the right holders may furnish a General Bond without security [Para 3.1 (i)]. The right holder shall also undertake to execute Consignment Specific Bond with the jurisdictional Commissioner of Customs at the port of interdiction within three days from the date of interdiction of any allegedly infringing imported consignment. The surety and security shall be on consignment basis and shall be furnished along with the consignment specific bond consequent upon interdiction of the consignment allegedly infringing rights of the right holder.
- 3.2 The bond amount equal to 110% of the value of goods and security of 25% of the bond value is required to be furnished by the right holder.
- 3.3 An on-line, system driven, centralized bond management module has been implemented as part of the existing Automated Recordation and Targeting System (ARTS). The main objective of this system is to provide for a single centralized bond and surety/security account that can be used at all ports in India, so that the IPR holders do not have to rush to different customs formations to execute consignment specific bonds and sureties/securities upon receipt of information about an interdiction of allegedly infringing consignment.
- 3.4 The Commissioner shall notify the applicant within 30 days of receipt of notice or from the date of expiry of extended period whether the notice has been registered or rejected.
- 3.5 If registration is granted, its validity period would be indicated and the same shall minimum for one year (unless the right holder requests it for shorter period).
- 3.6 After the grant of the registration of the notice by the Commissioner, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962.

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

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

- 4.1 Besides the legal measures to check import of counterfeit and pirated goods, an automated system facilitates genuine trade and targeting of infringing goods more effectively. Such a mechanism also integrates the Custom clearance procedures with the IPR regime.
- 4.2 A software module called Automatic Recordation & Targeting System (ARTS) has been developed with the following objectives:

- (i) Effective implementation of the IPR (Imported Goods) Enforcement Rules, 2007;
  - (ii) Integration of IPR enforcement with Customs clearance procedure;
  - (iii) Web-based on-line recordation;
  - (iv) Providing a platform for right holders to record their rights with Customs;
  - (v) Enabling National targeting of suspect consignments;
  - (vi) Creation of a centralized national database containing useful information for enforcement;
  - (vii) Providing access to National data for the Customs field officers; and
  - (viii) Trade facilitation.
- 4.3 ARTS has provision for recording and targeting of Trade Marks, Copyright, Designs and Geographical Indications. ARTS seeks to integrate IPR enforcement with the Customs clearance procedure being done using the Risk management System (RMS). The consignments suspected to be infringing the rights of the IPR holders are interdicted through the RMS.

[Refer Notifications No. 47/2007-Cus (N.T), dated 8-5-2007, No. 49/2007-Cus (N.T), dated 8-5-2007, No.51/2010-Cus (N.T), dated 30-6-2010 and No. 57/2018-Cus(N.T.) dated 22.06.2018 and Circulars No.41/2007-Cus., dated 29-10-2007 and No.10/2011-Cus., dated 24-2-2011] .

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## Duty Drawback

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

- 1.1 Duty Drawback on export of duty paid imported goods is allowed in terms of Section 74 of Customs Act, 1962 read with Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. The goods are to be entered for export within two years from date of payment of duty on importation thereof. Under certain circumstances this period may be extended upto one year by the Principal Chief Commissioner/Chief Commissioner of Customs and beyond that by the Board.

[Refer Notification No.33/94-Cus(N.T.) dated 01.07.1994]

- 1.2 Application by exporter is required to be made within 3 months from the date on which an order permitting clearance and loading of goods for exportation is made by the proper officer. This period may be extended up to 12 months from such date of order subject to conditions and fee payment.

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

- 1.3 A portion of the Customs duty paid at the time of import is given back as duty drawback, subject to certain procedure and conditions including identification of export goods with those imported on duty payment and their usage. Where the goods are not put into use, ninety eight per cent of Duty Drawback is admissible. Otherwise drawback is granted based on period of use. Used goods do not get Drawback if exported 18 months after import.

[Refer Notification No.19-Cus., dated 6-2-1965]

- 1.4 On the issues of compliance to Rules, 1995 relating to manner and time of claiming drawback, identification, determination of and extent of use and other attendant aspects, all cases of drawback processing or denial are to be handled by way of detailed speaking order, following the principles of natural justice. Each such order is examined by the Commissioner for its legality and propriety.

[Refer Circular No.35/2013-Cus., dated 5-9-2013]

- 1.5 The examination report on shipping bill for re-export must be recorded separately in a self-contained and explicit manner on each of the two aspects of identity and use. The examination report should not be made of phrases that are cryptic, generalised or sweeping in nature such as 'as per declaration', 'in as such condition', 'found in order', 'found as declared', 'goods are same' etc.

[Refer Circular No.16/2016-Cus., dated 09.05.2016]

- 1.6 In order to prevent dual benefit while sanctioning drawback under Section 74 of the Customs Act, 1962, it may be ensured that a certificate duly signed by the Central/State/UT GST officer,



having jurisdiction over the exporter is obtained, that no credit of integrated tax /compensation cess paid on imported goods has been availed or no refund of such credit or integrated tax paid on re-exported goods has been claimed.

[Refer Circular No.21/2017-Cus., dated 30.06.2017]

- 1.7 The Pay and Accounts Office(PAO) under Chief Controller of Accounts, CBIC does the accounting and reconciliation of drawback payments after the receipt of monthly account from the concerned Commissionerates or Customs Houses.

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

- 2.1 Duty Drawback rebates Customs and Central Excise duties chargeable on any imported materials or excisable materials used in the manufacture of goods exported. The composite rates of Duty Drawback comprising incidence of Customs and Central Excise duties and Service Tax have been discontinued w.e.f. 1.10.2017. Drawback is now limited to incidence of duties of Customs on inputs used and remnant Central Excise Duty on specified petroleum products used for generation of captive power for manufacture or processing of export goods. Duty Drawback is of two types: (i) All Industry Rate and (ii) Brand Rate. The legal framework is provided by Sections 75, 75A and 76 of the Customs Act, 1962. Customs and Central Excise Duties Drawback Rules, 2017 (Drawback Rules, 2017) (earlier The Customs, Central Excise duties and Service Tax Drawback Rules, 1995) have been issued under the Customs Act, 1962 and the Central Excise Act, 1944.
- 2.2 The All Industry Rates (AIR) are notified, generally every year, by the Government in the form of a Drawback Schedule based on the average quantity and value of inputs and duties (both Customs&Central Excise) borne by export products. The AIRs are essentially average rates based on assessment of average incidence. These AIRs are recommended by a Drawback Committee which is set up by the Government.
- 2.3 AIR are fixed after extensive discussions with stakeholders like Export Promotion Councils, Trade Associations, individual exporters so as to obtain relevant data, which includes procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Data is also sought from Customs and Central Excise field formations and Ministries which is taken into account.
- 2.4 The AIR may be fixed as a percentage of FOB price of export product or as specific rates. Drawback Caps are imposed in cases to obviate the possibility of misuse. All claims of duty drawback are filed with reference to the tariff items and description of goods given in the Schedule. The rates of drawback specified in the Schedule are not applicable to export of commodity or product manufactured or exported, among others, in discharge of export obligation under Advance Authorisation or Duty free Import Authorisation issued under Duty Exemption Scheme of relevant Foreign Trade Policy; by a licensed hundred per cent Export Oriented Unit; by units situated in Free Trade Zone, Export Processing Zone or Special Economic Zone, etc. However in case of exports in discharge of export obligation under Special Advance Authorization scheme of DGFT, rates of drawback specified in the Schedule shall apply subject to certain restrictions and modifications.

[Refer Notification No.89/2017-Cus (N.T.), dated 21.09.2017]

- 2.5 The tariff items and description of goods in the Schedule are aligned with the tariff items and description of goods in the First Schedule of Customs Tariff Act, 1975 at four digit level only. The description of goods given at six or eight digits in the Schedule are in several case may not be aligned with the description of goods given in the First Schedule to Customs tariff Act, 1975. The general rules for interpretation of First Schedule to Customs Tariff Act, 1975 apply, mutatis mutandis, for classifying the export goods listed in the Schedule.

[Refer Notification No.89/2017-Cus (N.T.), dated 21.09.2017]

- 2.6 The scrutiny, sanction and payment of Duty Drawback claims at EDI locations is carried out through the EDI system which also facilitates payment directly to the exporter's bank account, if other conditions are fulfilled.
- 2.7 The Brand Rate of Duty Drawback may be fixed in terms of Rules 6 and 7 of the Drawback Rules, 2017 in cases where the export product does not have the AIR of Duty Drawback or the AIR neutralizes less than eighty per cent. of the duties paid on the materials or components used in the production or manufacture of the export goods. Brand rate is fixed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export.
- 2.8 An exporter intending to claim Brand rate of Drawback, has to file an application for fixation of the brand rate within 3 months from the date of Let Export Order which can be extended up to 12 months from LEO subject to conditions and payment of fee as provided in the Drawback Rules, 2017. This application has to be made before the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export.

[Refer Drawback Rules, 2017 and Circular No. 38/2017-Cus dated 22.09.2017]

- 2.9 The application for fixation of Brand rate is to include, inter alia, the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.
- 2.10 In Brand rate of drawback, the exporter is compensated the incidence of Customs and Central Excise duties actually incurred in the export product based on verification of documents and proof of usage of actual quantity of materials or components utilized in the manufacture of export product and duties/tax paid thereon.
- 2.11 Exporters who file application for fixation of Brand Rate under Rule 6 of the Drawback Rules, 2017 may also apply to the Principal Commissioner of Customs or Commissioner of Customs for provisional drawback to be granted to him pending determination of amount or rate of drawback. Similarly, exporters claiming Brand rate of duty drawback under rule 7 of the Drawback Rules, 2017 shall be paid a provisional drawback amount, as may be specified by the Central Government, by the proper officer of Customs. He may also apply to the Principal Commissioner of Customs or Commissioner of Customs for further provisional drawback.

[Refer Rules 6 and 7 of drawback Rules, 2017]

- 2.12 A time limit of 15 days is prescribed for Customs Commissionerates to issue such provisional

Brand rate letters in case of revised simplified procedure and 25 days for final Brand rate letters in the case of normal procedure. The work related to fixation of brand rates should be regularly monitored by the Commissioner of Customs, and by Chief Commissioners, for ensuring concerted and sustained action for disposing Brand rate work. The Brand rate fixation letter issued by Customs Commissionerates has to indicate full and comprehensive description/ details of the exported goods and other details.

[Refer Circular No. 14/2003-Cus dated 06.03.2003, D.O. letter No. 609/110/2005-DBK dated 26.08.2005 and Instructions No. 603/01/2011- DBK dated 31-7-2013 and dated 11.10.2013].

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

3.1 AIR or the Brand Rate may be claimed on the shipping bill at the time of export and requisite particulars filled in the prescribed format of Shipping Bill/Bill of Export. In case of exports under electronic Shipping Bill, the Shipping Bill itself is treated as the claim for Drawback. In case of manual export, triplicate copy of the Shipping Bill is treated as claim for Drawback. The claim is complete only when accompanied by prescribed documents described in the Drawback Rules 2017. If the requisite documents are not furnished or there is any deficiency, the claim may be returned for furnishing requisite information/documents. The export shipment, however, will not be stopped for this reason.

[Refer Rule 14 of Drawback Rules, 2017]

3.2 Duty Drawback on goods exported by post is also allowed on following the procedure prescribed under Rule 12 of the Drawback Rules, 2017.

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

4.1 Where any exporter finds that the amount of Duty Drawback paid to him under section 75 is less than what he is entitled to on the basis of the amount or rate of Drawback determined, he may prefer a supplementary claim. This claim has to be filed within 3 months of the relevant date, which is fixed as follows: (i) where the rate of Duty Drawback is determined or revised under Rules 3 or 4 of the Drawback Rules, 2017 from the date of publication of such rate in the Official Gazette; (ii) where the rate of Duty Drawback is determined or revised upward under Rules 6 or 7 of the Drawback Rules, 2017, from the date of communicating the said rate to the person concerned; and (iii), in all other cases, from the date of payment or settlement of the original Duty Drawback claim by the proper officer:

4.2 The period of 3 months for filing a supplementary claim may be extended up to 18 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 2017.

[Refer Rule 16 of Drawback Rules, 2017]

4.3 In cases where the drawback claim was made zero-zero without following the normal procedure or principles of natural justice, the Commissioners are required to redress the problem where the exporter's have produced the documents/ replied to queries.

[Refer Instruction F. No. 609/14/2014-DBK dated 30.06.2016]

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

5.1 The Customs Act, 1962 and the Drawback Rules, 2017 lay down certain limitations and conditions for grant of duty drawback. No duty drawback shall be allowed where:

- (i) The duty drawback amount due in respect of any goods is less than Rs.50/- (Section 76, *ibid.*),
- (ii) In respect of any goods the market price is less than the amount of drawback due there on (Section 76 *ibid.*),
- (iii) Where value of export goods is less than the value of imported material used in their manufacture. In this regard, if necessary, certain minimum value addition over the value of imported materials can also be prescribed by the Government (Section 75 *ibid.*) and
- (iv) The drawback amount or rate determined under Rule 3 of Drawback Rules 2017 does not exceed one-third of the market price of the export product (Rule 9 of Drawback Rules, 2017).

5.2 In case the Central Government forms an opinion that there is likelihood of export goods being smuggled back into India, the Government may not allow drawback or allow it subject to specified conditions or limitations. Notifications have been issued under Section 76 of the Customs Act, 1962.

[Notification No. 208-Cus., dated 1-10-1977]

5.3 While prior repatriation of export proceeds is not a pre-requisite for grant of Duty Drawback, the law prescribes that if sale proceeds are not received within the period stipulated by the RBI, the Duty Drawback will be recovered as per procedure laid down in the Drawback Rules, 2017. An exception is made where non-realization of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non-recovery of sale proceeds from the buyer.

[Refer Rule 18 of Drawback Rules, 2017]

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

6.1 Each Custom House is to have a special cell monitoring realization of export proceeds. EDI locations are also facilitated, via RBI-BRC module under ICES, to retrieve data on exports (made from 1.4.2014 onwards) under Drawback scheme whose remittance is outstanding beyond due date. Notices are to be issued for recovery of drawback paid in respect of export consignments where export proceeds remain unrealized within the prescribed period. Adjudication as well as further actions are to be taken in a methodical and time bound manner by the field formations.

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

[Refer Circular No.5/2009-Cus., dated 2-2-2009, Instructions F.No.609/119/2010-DBK, dated 18-1-2011, F.No. 603/01/2011-DBK, dated 11-10-2013, DG (Systems) letter No.IV(35)/46/2013-Systems dated 25/28.8.2014 and Instruction F.NO. 609/59/2012-DBK dated 27.11.2015]

**7. Other aspects relating to Duty Drawback:**

- 7.1 The Citizen Charter provides for remission of Drawback within 7 working days of filing of manifest in the case of electronic processing of declarations or filing of a paper claim in the case of manual processing.
- 7.2 While processing Drawback claims, whether under Section 74 or Section 75, wherever any deficiency is noticed in the claim, it is to be communicated to the exporter in a clear unambiguous manner within a period of 10 days, from the date of filing of the claim. Commissioners of Customs are to undertake a periodic review and monitoring of the status of pending drawback claims.

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

- 7.3 The field formations are to ensure periodic sample checks and verifications with respect to export declarations accepted for AIR drawback purposes and these are to be regarded as audit checks and their proper record maintained. These include checks on value, present market value, verification of actual freight payment certificates when CIF or C&F values are declared, declarations that affect the applicability of AIR itself etc. In the pre- GST era, these declarations included whether goods were or were not manufactured or exported in terms of rule 19(2) of Central Excise Rules or by availing rebate on material used in manufacture or processing in terms of rule 18 of Central Excise Rules. In the post –GST era (transition period of July to September 2017), the declarations were to be given w. r. t. the availment of input tax credit of CGST or IGST on the export goods or inputs or input services used in the manufacture of export product, refund of IGST paid on the export goods or carrying forward of CENVAT credit on export product or on inputs or input services used in the manufacture of export product. Random checks with respect to debit notes raised by foreign buyers after initial realization by exporter, reduction in invoice value after proceeds are negotiated or realized, etc may also be considered by Commissioners. Detections that indicate lower FOB/realization or other information of relevance when benefits under FTP are also involved should also be intimated to Regional Authority of DGFT for necessary action.

[Refer Circular No.46/2011-Cus., dated 20-10-2011, Instruction F.No. 603/01/2011-DBK dated 11-10-2013 and Circular no. 32/2017- Customs dated 27.07.2017]

- 7.4 Further, by way of audit, the Commissioners are also to exercise special checks, in cases of first time exporters, exporters who have taken large amounts of drawback suddenly, sensitive destinations, sensitive products etc., to ensure there is no misuse of the drawback facility.
- 7.5 Commissioners are to ensure that Internal Audit wings achieve desired diligence levels and a significantly improved performance. In Customs these areas include payment of re-export drawback and cases of manual processing of drawback.

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

- 7.6 Field formations are to monitor levels of pendency of EGM not filed, EGM filed in error and no filing of stuffing reports to ensure trade facilitation. The mismatch of declaration made in the Shipping Bill (item details vis-à-vis drawback details) should be verified to avoid the excess payment of drawback on this account.

[Refer Instruction F.No. 603/01/2011-DBK., dated 26.06.2012]

- 7.7 Board has issued an 8 point comprehensive action plan for implementation of Duty Drawback Scheme vide D.O. letter No. F. No. 609/41/2018-DBK dated 27.09.2018. The main action points are briefly as follows:

- (i) EGM to be filed by various stakeholders within a week of let export order,
- (ii) EGM errors should not exceed 1% of total shipping bills,
- (iii) Queries should be resolved well within a month's time and number of queries should be monitored at senior level,
- (iv) Drawback claims must be cleared on a daily basis and scrolls generated by major Customs stations at least twice a week and by others once every week or more,
- (v) Percentage of shipping bills scrolled out within seven days should increase to 75% in the current FY and taken further in next FY,
- (vi) All efforts should be made to reduce the percentage of shipping bills scrolled out beyond thirty days to nil,
- (vii) Focus on disposal of application for Brand rate fixation so that no application remains pending beyond one month at the end of this FY,
- (viii) Timely issuance of SCNs in cases of non- reconciliation of sale proceeds and time bound disposal of SCNs.

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## Export Promotion Schemes

### 1. Introduction:

1.1 The Export Promotion Schemes implemented by CBIC relate to those provided in respective Foreign Trade Policies issued from time to time. Presently the broad categories of schemes pertaining to FTP 2009-14 (effective till 31.3.2015) and FTP 2015-20 are as below:-

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

### 2. Reward /Incentive Schemes:

2.1 The provisions of Reward/Incentive Schemes of FTP 2009-14 (effective for exports till 31.03.2015) viz. Served From India Scheme (SFIS), Vishesh Krishi and Gram Udyog Yojana (VKGUY), Agri. Infrastructure Incentive Scrip (AIIS), Focus Market Scheme (FMS), Focus Product Scheme (FPS) and Status Holders Incentive Scrip (SHIS) Schemes have been dealt at paras 2 to 7 of Chapter 23 of the Customs Manual 2014.

2.2 Under the FTP 2015-20, –

- (a) Merchandise Exports from India (MEIS) Scheme rewards export of notified goods listed in Appendix 3B of Handbook of Procedures generally @ 2% or 3% or 5% or 7% or 10% of certain FOB value of exports. It includes reward on export via foreign post offices or international courier terminals of specified items that are transacted using e-commerce platforms, subject to value limit of Rs. 5 lakh per consignment. In order to claim reward under MEIS, it is mandatory that exporter declares intent to claim reward at the time of export on shipping bills / bills of export that are filed on or after 1.6.2015.
- (b) Service Exports from India (SEIS) Scheme incentivizes export of notified services listed in Appendix 3D of Handbook of Procedures by service provider located in India who have specified minimum net free foreign exchange earnings in preceding financial year. Only services rendered in the manner as per Para 9.51(i) and Para 9.51(ii) of the Foreign Trade Policy (FTP) 2015-20 are eligible. The entitlement is either 3% or 5% or 7% of net foreign exchange earned.

- (c) Under these two schemes, based on FOB value of exports/net foreign exchange earnings, DGFT issues duty credit scrips viz. MEIS & SEIS scrips. Both, MEIS and SEIS scrips are freely transferable and can be used for payment of Basic Customs Duty (BCD) on import of any item except those listed in Appendix 3A of Foreign Trade Procedures, or for domestic procurement of items that continue to be subject to Central Excise duties in GST regime. Basic Customs duty paid through debit under these scrips is allowed to be adjusted as Duty Drawback. Additional Customs duty/ post GST remnant excise duty paid through debit in these scrips is also allowed to be adjusted as CENVAT Credit or Duty Drawback.

[Refer Notifications Nos. 24 and 25 /2015-Customs, Nos.20 and 21 /2015-C.E., all dated 8-4-2015]

- (d) Duty Credit Scrips issued under FTP 2015-20 can also be utilized / debited for payment of Customs duties in case of EO defaults for authorizations issued under Chapter 4 and 5 of FTP 2015-20. However, Duty Credit Scrips cannot be used to discharge penalty or interest which are required to be deposited in cash.

[Refer Circular No. 11/2015-Customs dated 01.04.2015]

- (e) Clearance of goods from Customs Bonded warehouses using MEIS and SEIS duty credit scrips for duty payment is allowed as per the same procedure as is prescribed for DEPB scrips.

[Refer Para 3.11 of Foreign Trade Procedure 2015-20 and Circular No. 68/2000 dated 18.8.2000 and 72/2003-Cus dated 11.8.2003].

### 2.3 Verification related to duty credit scrips:

Where export of goods under specific shipping bills/bills of export (not filed electronically in Customs EDI) shown in annexure/condition sheet of the reward duty credit scrip is involved, the backing shipping bills need to be verified for genuineness. However, if the shipping bills were filed electronically in Customs EDI but scrip was not received simultaneously online through electronic transmission from DGFT, such verification of genuineness of shipping bills shall be restricted to not more than 5% randomly selected scrips for which EDI shipping bill details (irrespective of port of export) shall be viewed in-house using the role '*enq\_cntry*' in ICES v. 1.5, without seeking documents from exporter. The Custom Houses need not verify genuineness of shipping bills when the reward scrip has been simultaneously received online through electronic transmission from DGFT. Customs can also carry out complete verification of scrip only where specific intelligence suggests misuse or requirement of an investigation.

[Refer Circulars No. 5/2010-Cus. dated 16-3-2010, No.17/2012-Cus., dated 5-7-2012, No. 14/2015-Cus. dated 20-4-2015, 12/2016-Cus dated 28-3-2016 and Instruction No.609/119/2010-DBK., dated 18-1-2011]

## 3. Advance Authorization Scheme:

- 3.1 Advance Authorisations (AA) are issued to allow duty free import of inputs that are physically incorporated in the export product (after making normal allowance for wastage) as well as certain items like fuel, oil, catalysts which are consumed in the course of their use to obtain



the export product. The raw materials/inputs are allowed in terms of Standard Input-Output Norms (SION) or self-declared norms of exporter. The AA are issued on pre-export or post export basis in accordance with the FTP and procedures in force on the date of issue.

- 3.2 AA are issued for physical exports as well as deemed exports. The holder is required to fulfil export obligation (EO) by exporting specified quantity/value of resultant product. The AA and the materials imported are not transferable even after completion of EO.
- 3.3 AA usually have a minimum of 15% value addition (except for Gems and Jewellery Sector) as prescribed under para 4.09 of FTP. The value addition for gems and jewellery and for specified goods is less than 15% as prescribed in Para 4.61 of Handbook of Procedures. In case of Tea, the minimum value addition is 50%. As per Appendix 11 in HBP 2009-14 (Appendix 4C in HBP 2015-20), higher value addition is prescribed for export for which payment are not received in freely convertible currency.
- 3.4 Normally, All Industry Rate (AIR) of Duty Drawback is not admissible with AA. However, a new scheme called Special Advance Authorisation for export of articles of apparels and clothing accessories of Chapters 61 & 62 of ITC (HS) is introduced w.e.f. 01.09.2016, wherein exporters are eligible for claiming AIR of Duty Drawback for non-fabric inputs on the exports and the value of any other input (non-fabric inputs) on which drawback is claimed or intended to be claimed shall be more or equal to 22% value of export realized. Further, Brand Rate of Duty Drawback may be claimed in respect of duty-paid inputs (not specified in the norms) which are used in the export product provided such duty paid inputs have been endorsed by RA for drawback payment on the AA. This specification ensures value addition norms.

[Refer Circular No. 37/2016 dated 13.08.2016 & DGFT Not. No. 21/2015-20 dated. 11.08.2016]

- 3.5 AA are also issued on the basis of annual requirements of exporter, which enables planning for manufacturing / exports on a longer term basis. However, self-declared norms are not permitted under annual requirement under FTP 2015-20. Advance Authorisation for Annual Requirement is also not available in respect of SION where any item of input appears in Appendix 4-J of FTP 2015-20.

[Refer Notifications Nos. 20/2015-Customs & 21/2015-Customs both dated 01.04.2015]

- 3.6 Certain items that are otherwise prohibited for export may be exported under AA scheme, with conditions stricter than otherwise imposed including the export being allowed only from specified EDI enabled ports, subject to pre-import condition under notified SION/prior fixation of norms by Norms Committee, export obligation period being 90 days from import clearance without extensions and import being subject to non-transfer, including for job work and actual user condition, and the inapplicability of provisions for regularisation of default, etc.

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

- 3.7 AA are issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer(s) or to sub-contractors in respect of supplies of goods to specified projects provided the name of such sub-contractor appears in the main contract.

- 3.8 The AA holders are required to file a bond with 100% Bank Guarantee for the duty difference with the Customs at the time of importing duty free inputs. Certain categories of exporters are conditionally exempt from filing Bank Guarantee in terms of CBIC Circular No. 58/2004-Cus dated 21-10-2004 as amended last by Circular No. 15/2014-Cus dated 18.12.2014. In case AA holder exports first by using imported inputs/indigenously procured inputs, he can seek waiver of Bond condition from DGFT in terms of Para 4.47 of HBP 2015-20.
- 3.9 Validity of an AA for making imports is 12 months but there is provision for RA to consider request of original authorization holder and grant one revalidation for six months from expiry date as prescribed in Para 4.41 of Handbook of Procedure, 2015-20. For fulfilment of EO, normally a period of 18 months from the date of issue is specified, with certain exceptions of shorter or longer periods as prescribed in Para 4.42 of Handbook of Procedure 2015-20.
- 3.10 Under the FTP 2015-20, the exporters of gems and jewellery can import/procure duty free inputs for manufacture of export product under various schemes viz. (i) Advance Procurement / Replenishment of Precious Metals from Nominated Agencies; (ii) Replenishment Authorization for Gems; (iii) Replenishment Authorization for Consumables and (iv) Advance Authorization for precious Metals. Import of gold for jewellery sector under Advance Authorization is on pre-import basis with actual user condition.

(Refer Para 4.31 to Para 4.53 of FTP 2015-20)

- 3.11 Keeping in view nuances of individual variants of Advance Authorization, individual notifications issued by Revenue have certain variations in conditions, inter alia, related to prevention of dual or unintended benefits.

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

- 3.12 After introduction of GST, imports are liable to levy of IGST and Compensation Cess. However w.e.f. 13.10.2017, imports under AA are exempted from IGST and Compensation Cess. Such exemption is available only for physical exports and is subject to pre-import condition.

[Refer Notification No.18/2015-Cus dated 1-4-2015 as amended by Notification No. 79/2017-Cus. Dated 13.10.2017 & DGFT Notification No. 33/2015-20 dated 13.10.2017.

- 3.13 Domestic supplies to holder of AA are treated as deemed export under Section 147 of CGST Act, 2017. Supplier or recipient of such supplies is eligible for refund of GST paid on such supplies.

[Refer Notification No. 47/2017-Central Tax dated 18-10-2017 & Notification No. 48/2017-Central Tax dated 18-10-2017].

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

- 4.1 DFIA issued under the FTP 2009-14 are similar to AA in many aspects including requirement of monitoring. However, DFIA has a minimum value addition requirement of 20% and once export obligation is completed, transferability of the authorization and / or material imported against it is permitted. The DFIA is issued only where SION are notified. After the annual supplement 2013 to

the FTP 2009-14, the exemption from antidumping duty and safeguard duty is not available when materials are imported against a DFIA made transferable. In case imported materials are transferred, the importer is to pay an amount equal to the anti-dumping and safeguard duty leviable on the material, with interest. These aspects apply subject to specified conditions.

- 4.2 Under the FTP 2015-20, only post-export transferable DFIA with exemption from only Basic Customs duty is issued by RA. Such DFIA is not available for Gems and Jewellery sector or where SION prescribes actual user condition (for example, fuel). The admissibility of brand rate of duty drawback is as per para 4.26 of the FTP. For transferrable DFIA, prior to registration it is to be verified that the details of the exports given along with the DFIA match the record of exports and is genuine. If any discrepancy is found it need to be first referred to the RA.

(Source: Circular No. 12/2016) [Refer Circulars No.11/2009-Cus., dated 25-2-2009 and No.6/2011-Cus dated 18-1-2011 and Notification No.98/2009-Cus dated 11-09-2009 and No.19/2015-Customs dated 1-4-2015]

## 5. EPCG Scheme:

5.1 Under FTP 2015-20, -

- (a) Zero duty EPCG scheme allows import of capital goods (except those specified in negative list in Appendix 5F of Handbook of Procedure). The Export Obligation is equivalent to 6 times of the duties/taxes and cess saved on the capital goods imported with EO period of 6 years (extendable by 2 years) from the date of issue of Authorization. A more favourable dispensation for EO is provided for export of specified green technology products as well as units located in North Eastern States, Sikkim and Jammu and Kashmir. The EO for spares for imported/domestically sourced capital goods is same as that for capital goods.
- (b) The import of capital goods has to be made within 18 months from the date of issue of the Authorisation.
- (c) EO is to be fulfilled in two blocks i.e. 4 years and 2 years wherein 50% EO is to be fulfilled in the respective blocks. The RA can grant extension of block-wise period or overall period of fulfilment subject to specified conditions. In the case of manufacturer/merchant/service exporters, the EO is required to be fulfilled by exporting goods manufactured or capable of being manufactured or services rendered by the use of capital goods imported under the scheme. The EO is to be over and above the average level of exports achieved in the preceding three licensing years for the same and similar products. Certain sectors as specified in Para 5.13 of the Handbook of Procedure 2015-20 are not required to maintain average level of exports.
- (d) The Authorizations are issued to manufacturer exporters and merchant exporters with or without supporting manufacturer, and service providers and also available to Common Service Provider (CSP). The authorizations specify the value/quantity of the export product to be exported against it.
- (e) The Authorization holder is required to file bond with 100% Bank Guarantee with the Customs prior to commencement of import of capital goods. Certain categories

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

- (f) Third party exports are permitted with respect to exported goods manufactured by the authorisation holder and conditions have been specified to ensure this aspect.

(Refer para 5.04 of FTP 2015-20 read with 5.10 of HBP 2015-20).

- (g) Installation Certificates (ICs) for capital goods are permitted to be obtained from jurisdictional Customs Authority or independent Chartered Engineer at authorization holder's option. In the latter case, the authorization holder would send copy of IC to the jurisdictional Customs office. Capital goods may be installed at supporting manufacturer's premises if prior to such installation the latter's details are endorsed on the authorization by RA, who would intimate the change to jurisdictional Customs office and the Customs location where authorisation is registered in terms of para 5.02 of FTP 2015-20.
- (h) The EPCG Authorization holder is required to indicate the EPCG Authorization No./date on the shipping bill/invoice (in case of deemed exports). After fulfilment of specified EO, relevant documents are to be submitted to RA for obtaining EODC. This is taken into account by Customs authority at port of registration for purposes of redemption of bond/Bank Guarantee, subject to prescribed checks including intelligence based checks.
- (i) The export obligation is lower by 25% when capital goods are sourced indigenously. This is implemented by RA.
- (j) The EPCG authorisation for annual requirement, the provisions for technological upgradation and for transfer of EPCG capital goods to group companies in certain cases/sectors are discontinued in FTP 2015-20.

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

- 5.2 After introduction of GST, imports are liable to levy of IGST and Compensation Cess. W.e.f. 13.10.2017, imports under EPCG by all sectors are exempted from IGST and Compensation Cess. This exemption is optional for the EPCG holder. Such exemption is available only for physical exports.

[Notification No.16/2015-Cus dated 1-4-2015 as amended by Notification No. 79/2017-Cus. Dated 13.10.2017 & DGFT Notification No. 33/2015-20 dated 13.10.2017]

- 5.3 Domestic supplies to holder of EPCG are treated as deemed export under Section 147 of CGST Act, 2017. Supplier or recipient of such supplies is eligible for refund of GST paid on such supply.

[Notification No. 47/2017-Central Tax dated 18-10-2017 & Notification No. 48/2017-Central Tax dated 18-10-2017]

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

- 6.1 Post Export EPCG Duty Credit Scrip is available to exporters who intend to import capital goods

on full payment of applicable duties in cash and choose to opt for this scheme. Basic Customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrip(s), similar to those issued under Chapter 3 of FTP. Upon initial application by an exporter, RA shall issue a post export EPCG authorisation specifying "Not for imports" on the body of the authorisation and specify average EO if any. Specific EO shall be 85% of the applicable specific EO as mentioned in the authorisation. EO period shall commence from the authorisation issue date. Installation and use of the imported capital goods and other conditions including non-disposal of the capital goods till the date of last export shall be applicable to this authorisation. Further, all provisions of the erstwhile EPCG Scheme shall apply insofar as these are not inconsistent with this scheme.

- 6.2 Upon completion of the specific as well as average EO mentioned in the authorisation, RA shall issue a freely transferable duty credit scrip equivalent to the proportionate EO fulfilled based on Basic Customs duty paid. The said scrip shall be produced before the proper officer of Customs at the time of import for debit of applicable duties leviable on the imported goods. The validity of the scrip shall be 18 months from the date of issue and the said scrip has to be valid at the date of import for debits.

[Refer notification No.17/2015-Customs dated 1-4-2015]

## **7. General provisions relating to Export Promotion Schemes:**

- 7.1 Imports and exports under the Export Promotion schemes are permitted at the ports, airports, ICDs and LCSs, as specified in the respective Customs duty exemption notifications. However, these notifications empower the Commissioners of Customs to permit export/import under these schemes from any other place which has not been notified, on case to case basis by making suitable arrangements at such places. In addition, international courier terminals and foreign post offices, as notified are included as port of export for rewards on exports of goods subject to value limit of Rs. 5 lakh per consignment.

[Refer DGFT Notification No. 22/2015-20 dated 26.07.2018 and Customs Notification No. 24/2015-Cus dated 8.4.2015 as amended vide Notification No. 63/2018-Cus dated 18.09.2018]

- 7.2 Facility to execute a common bond for specified export promotion schemes like Advance Authorization/Duty Free Import Authorization and EPCG is permitted to authorization holders, subject to certain conditions.

[Refer Circular No.11(A)/ 2011-Cus., dated 25-2-2011]

- 7.3 Facility for suomoto payment of Customs duty in case of bona fide default in export obligation under the Advance/ EPCG authorisations is provided in procedure prescribed vide Circular No. 11/2015-Customs dated 01.04.2015. Para 4.50 and para 5.23 of HBP 2015-2020 refer to this facility.

## **8. Verification and Monitoring related to AA, DFIA, EPCG and Post Export EPCG authorizations:**

- 8.1 The AA holder is required to maintain a true and proper account of consumption and utilization of duty free imported/domestically procured goods for a specified minimum period. The AA No./date is to be indicated on the shipping bill/ bill of export or invoice (in case of deemed

exports). The imports/exports under AA and their utilization require monitoring. The AA holder is to submit relevant export documents to RA to obtain an Export Obligation Discharge Certificate (EODC). An AA holder is required to deposit Customs duties with interest in case EO is not fulfilled. The RA informs details of payments to Customs at the port of registration or Commissioner of Customs having jurisdiction over the factory of AA holder, as the case may be. The EODC or redemption letter is taken into account by Customs authority at port of registration for purposes of redemption of Bond/Bank Guarantee, subject to prescribed checks including intelligence based checks.

- 8.2 The jurisdictional Commissioners of Customs are required to take action to monitor fulfilment of export obligation. Field formations are now also enabled to view in EDI the authorization-wise all India export details which would assist in identifying actionable cases under Advance Authorization and EPCG scheme. Commissioners are to put in place an institutional mechanism for periodical meetings with RA to exchange intelligence, check misuse and pursue issues such as EO fulfilment status in cases where EO period has expired in that quarter/ previous quarter so that concerted action can be taken against the defaulters. In case of defaulters, the field formation may issue simple notice to the Authorisation holder for submission of proof of discharge of export obligation. In case, where the Authorization holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by DGFT. Further, timely action taken in all cases of default is required to be initiated to safeguard revenue. The action to safeguard revenue is monitored through CBIC's Comprehensive MIS formats DGI - Cus 11& 11A. All field formations are required to update this data on regular basis.

[Source: Circular 16/2017 Dated 02.05.2017]

- 8.3 Apart from the checks prescribed in Board's extant instructions, the jurisdictional Commissioners of Customs are also to cause random verification for some of the authorizations issued under EPCG/ DFIA/ Advance Authorization schemes to check correctness of address on the Authorizations. The correctness of installation certificates issued by the Chartered Engineers is required to be verified on a random basis and has been restricted to 5% cases. When address verification or Installation Certificate verification is requested by the Customs authorities in respect of EPCG authorizations, the authorities should include in their verification, a check of the periodical utility bills (containing the address) as one of the means enabling verification of installation/operation/ licensee premises. Wherever aforesaid checks are prescribed, the verification shall be carried out through the jurisdictional Customs authorities.

[Source: Inst. issued vide F.No. 605/71/2015-DBK dated 14.10.2016]

- 8.4 To rule out fabricated export documents used to show fulfilment of EO, the genuineness of shipping bills or bills of export not on Customs EDI (i.e. manual) is to be expeditiously verified while registering a duty credit scrip or post export EPCG duty credit scrip or processing EODC/ redemption letters based on document purported to be of Customs non-EDI ports

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

**9. Older Export Promotion Schemes:**

Target Plus Scheme (TPS) was introduced for the Star Export Houses w.e.f. 1-9-2004 and provided rewards in the form of duty free credit based on incremental export performance. Initially, the entitlement was 5% to 15% of the incremental growth in exports. W.e.f. 1-4-2005, it was reduced to 5%. The scrip and goods imported are subject to actual user condition. Imports allowed were inputs, capital goods including spares, office equipment, professional equipment and office furniture. The scheme ended on 1-4-2006. The reduction in rate of entitlement and exclusion of certain products retrospectively from the Target Plus Scheme has been set aside by Hon'ble Supreme Court vide judgment dated 27.10.2015. In terms of the aforesaid judgment, DGFT is in the process of issuing Target Plus duty credit scrips.

[Notification was No.32/2005-Cus., dated 8-4-2005 as amended]

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## Special Economic Zones

### 1. Introduction:

- 1.1 Special Economic Zone (SEZ) scheme was announced in April, 2000 with a view to provide an internationally competitive environment for exports. The objectives of Special Economic Zones include making available goods and services free of taxes and duties supported by integrated infrastructure for export production, expeditious and single window approval mechanism and a package of incentives to attract foreign and domestic investments for promoting export-led growth.
- 1.2 Earlier, the policy relating to the Special Economic Zones was contained in the Foreign Trade Policy and incentives and other facilities offered to the Special Economic Zone developer/co-developer and units were implemented through various notifications and circulars issued by the concerned Ministries/Department. However, in order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, a Central Act for Special Economic Zones was found to be necessary. Accordingly, the SEZ Act, 2005 was enacted, which was given effect to from 10-2-2006. Thus, activities of SEZs and its units are governed by the provisions of the SEZ Act, 2005 and the rules issued there under viz. SEZ Rules, 2006. SEZ Scheme is administered by the Department of Commerce under Ministry of Commerce & Industry.
- 1.3 The Central Government, while notifying any area as a Special Economic Zone or an additional area to be included in the Special Economic Zone and discharging its functions under this Act, is to be guided by the following criteria, namely:
  - (a) Generation of additional economic activity;
  - (b) Promotion of exports of goods and services;
  - (c) Promotion of investment from domestic and foreign sources;
  - (d) Creation of employment opportunities;
  - (e) Development of infrastructure facilities.
  - (f) maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.
- 1.4 SEZs may be set up for manufacturing of goods or rendering services or both and may be multi-product, sector specific, or Free Trade and Warehousing Zone. In terms of Section 53 of the SEZ Act, SEZs are deemed to be a territory outside the Customs territory of India for the purpose of undertaking the authorised operations and goods/ services entering it (from DTA) are treated as exports.
- 1.5 19 SEZs were established / notified before the enactment of the SEZ Act, 2005. Of which, seven



SEZs were established by Central Government and rest by State Governments and private sector, which are as follows:

- (a) Central Government SEZs: Kandla SEZ (Gujarat), SEEPZ-SEZ (Maharashtra), Noida SEZ (U.P.), Madras SEZ (Tamil Nadu), Cochin SEZ (Kerala), Falta SEZ (West Bengal), Visakhapatnam (AP).
- (b) State Government & Private Sector SEZs: Surat SEZ (Gujarat), Jaipur SEZ (Rajasthan), Indore SEZ (Madhya Pradesh), Jodhpur SEZ (Rajasthan), Moradabad SEZ, Manikanchan SEZ (West Bengal), Mahindra City (Chennai Tamil Nadu), Mahindra City (Chennai, Tamil Nadu), Mahindra City (Chennai, Tamil Nadu), Salt Lake Electronic City (Kolkata), Surat Apparel SEZ, Nokia SEZ (Chennai).

## **2. Board of Approvals**

- 2.1 As per Section 8 of the SEZ Act, the Board of Approval (BOA) is to be chaired by an officer not below the rank of Additional Secretary in the Department of Commerce and includes Member (Customs), CBEC as its member. Presently, the BOA meetings are chaired by Commerce Secretary. The BOA approves proposals for establishing SEZs and providing infrastructure facilities. Its functions include approving authorized operations of Developer/ Co-developer.

## **3. Unit Approval Committee:**

- 3.1 As per Section 13 of the SEZ Act, a Unit Approval Committee is to be notified for each SEZ, within six months from the date of establishment of such Special Economic Zone. Development Commissioner has administrative control over the SEZ and chairs the Unit Approval Committee.
- 3.2 The Unit Approval Committees are, inter-alia, expected to accord approval to the procurement of goods and services by SEZ units indigenously or through imports. The Committees is also required to monitor and supervise compliance of conditions subject to which the letter of Approval (LOA) has been issued. Commissioner of Customs or his nominee not below the rank of a joint Commissioner is designated as an ex-officio member of the UAC. However, meetings of the Approval Committee must be attended by the Jurisdictional Commissioner of Customs or Central Excise and never go unrepresented as decisions taken in such meeting have serious revenue implications. It should also be ensured that the view point of revenue is conveyed effectively in each such meeting and that such views are duly reflected in the minutes of these meetings.
- 3.3 The decisions of the Approval Committee are by a 'general consensus' implying thereby that in the absence of a consensus amongst all the Members present in the meeting, the proposal cannot be carried forward and shall stand referred to the Board of Approval.

## **4. Establishment of SEZs:**

- 4.1 The SEZs can be set up either jointly or severally - by the Central Government, State Government, or any person as per Section 3 of the SEZ Act. Such person or body or authority is termed as developer/co-developer of the SEZ in terms of Section 2(g) of the SEZ Act. A Co-developer is a person who is allowed to provide any infrastructure facility in the SEZ in

accordance with an agreement with the developer and as approved by the Board of Approval. The State Government is required to forward the proposals received under section 3 of SEZ Act for setting up of a SEZ to the Board of Approval alongwith its recommendations, within forty-five days of receipt of such proposal and where the Board approves a proposal received directly under Section 3(3) of the SEZ Act, the person is required to obtain concurrence of State Government within 6 months from the date of approval.

- 4.2 The BOA may approve as such or modify and approve a proposal for establishment of a Special Economic Zone, in accordance with the provisions of Section 3(8) of the SEZ Act subject to the requirements of minimum area of land and other terms and conditions indicated in Rule 5(2) of the SEZ Rules.

## **5. Setting up of SEZ unit:**

- 5.1 As per Section 15 of the SEZ Act, any person, who intends to set up a Unit for manufacture of goods or rendering services in a Special Economic Zone, may submit a proposal to the Development Commissioner concerned. On receipt of the proposal, the Development Commissioner is required to submit the same to the Approval Committee for its approval. The Approval Committee may approve or approve with modification or reject a proposal placed before it within fifteen days of its receipt as per conditions prescribes in Rule 18 of SEZ Rules.

- 5.2 As per Rule 19 of the SEZ Rules, the Letter of Approval shall be valid for one year within which period the Unit shall commence production or service or trading or Free Trade and Warehousing activity and the Unit shall intimate date of commencement of production or activity to Development Commissioner. On receipt of a request from the entrepreneur, further extension can be granted by the Development Commissioner for a further period not exceeding two years. The Development Commissioner may grant further extension of one year subject to the condition that two-thirds of activities including construction, relating to the setting up of the Unit is complete. If the unit has not commenced production or service activity within the validity period or the extended validity period, the Letter of Approval shall be deemed to have been lapsed with effect from the date on which its validity expired. The Letter of Approval shall be valid for five years from the date of commencement of production or service activity and it shall be construed as a license for all purposes related to authorized operations, and, after the completion of five years from the date of commencement of production, the Development Commissioner may, at the request of the Unit, extend validity of the Letter of Approval for a further period of five years.

## **6. Monitoring of activities of SEZ units:**

- 6.1 As per Rules 15 and 54 of the SEZ Rules, the performance of the Unit is to be monitored by the Approval Committee. If Approval Committee comes to the conclusion that a Unit has not achieved positive Net Foreign Exchange Earning or failed to abide by any of the terms and conditions of the Letter of Approval or Bond-cum-Legal Undertaking, without prejudice to the action that may be taken under any other law for the time being in force, the said Unit shall be liable for penal action under the provisions of the Foreign Trade (Development and Regulation) Act, 1992.

**7. Net Foreign Exchange Earnings:**

- 7.1 SEZ units shall achieve positive Net Foreign Exchange Earnings (NFE), which is calculated cumulatively for a period of 5 years from the commencement of production, subject to conditions prescribed in terms of Rule 53 of the SEZ Rules.

**8. Import and procurement:**

- 8.1 A SEZ unit or Developer/co-developer may import or- procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park unit or Bio-technology Park unit, various types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) and subject to condition prescribed under Rule 26 of the SEZ Rules.
- 8.2 As per Rule 30 the SEZ Rules, The Domestic Tariff Area supplier supplying goods or services to a unit or Developer shall clear the goods or services, as in case of zero-rated supply as per provisions of section 16 of IGST Act, 2017(13 of 2017) either under bond or undertaking or under any other refund procedure permitted under Goods and Service Tax laws or Central Excise laws, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by an manufacturer or supplier.
- (i) Goods(or services) procured by unit or developer, on which (GST) exemption has been availed but without any availment of export entitlement, shall be allowed admission into SEZ on the basis of documents referred to in above rule.
- (ii) The goods procured by a unit or developer under claim of export entitlement shall be allowed admission into SEZ on the basis of documents referred above and a bill of export filed by the supplier or on his behalf by the unit or developer which is assessed by authorized officer before arrival of the goods.

A copy of the documents referred to above rule or copy of Bill of Export as the case may be, with an endorsement by authorized officer that goods have been admitted in full into SEZ shall be treated as proof of export and a copy with such endorsement shall also be forwarded by unit or developer to the GST or the Central Excise officer having jurisdiction over the DTA supplier within forty-five days failing which the GST or Central Excise officer shall raise demand of tax or duty against the DTA supplier.

**9. Exports:**

- 9.1 As per Rule 45 of the SEZ Rules, a unit may export goods or services as per the terms and conditions of Letter of Approval including agro-products, partly processed goods, sub-assemblies and components except prohibited items under the Import Trade Control (Harmonized System) Classification of Export and Import Items and the Unit may also export by-products, rejects, waste scrap arising out of the manufacturing process.

**10. Sub-contracting:**

10.1 As per rule 41 of the SEZ Rules, a unit may sub-contract a part of its production or any production process, to a unit in the Domestic Tariff Area or in a Special Economic Zone or Export Oriented Unit or a unit in Electronic Hardware Technology Park unit or Software Technology Park unit or Bio-technology Park unit with prior permission of the Specified Officer to be given on an annual basis. No permission is necessary if subcontracting is done through units in same SEZ but both the supplying and receiving units should maintain proper account of goods involved in the sub-contracting. A Developer/co-developer on their behalf their contractor, may also temporarily remove the goods, procured or imported duty free by them for their authorized operations, to a place in the Domestic Tariff Area or a unit in the same or another Special Economic Zone or Export Oriented Unit or a unit in Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, for sub-contracting a process, with prior permission of and subject to such conditions as may be prescribed by the Approval Committee.

**11. Sub-contracting for DTA unit for export:**

11.1 A Unit may on the basis of annual permission from the Specified Officer undertake sub-contracting for export on behalf of a Domestic Tariff Area exporter subject to conditions prescribed in Rule 43 of the SEZ Rules.

11.2 As per Rule 47(2) of the SEZ Rules, scrap or dust or sweepings of gold or silver or platinum may be sent to Government of India Mint or Private Mint from a Unit and returned in standard bars in accordance with the procedure specified by Customs authorities or may be sold in the Domestic Tariff Area on payment of duty on the gold or silver or platinum content in the said scrap.

**12. DTA sale:**

12.1 A Unit may sell goods and services including rejects, wastes, scraps, remnants, broken diamonds, by-products arising during the manufacturing process or 111 connection therewith, in the Domestic Tariff Area on payment of applicable Customs Duties under Section 30 of the SEZ Act and subject to fulfillment of condition laid down in the SEZ Rules.

**13. Valuation of goods cleared into DTA:**

13.1 As per Rule 48 of the SEZ Rules, valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India. If goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods and shall be subject to such procedure and conditions as applicable in the case of normal re-import of goods from outside India.

**14. Temporary removal of goods into the DTA:**

14.1 As per Rule 50 of the SEZ Rules, the SEZ units can remove the goods from the Zone into the DT A temporarily without payment of duty for the purpose of inter-alia display, export promotion,

exhibition job work, test, repair, refining, calibration or subject to conditions as prescribed. If a unit fails to bring back the goods into SEZ within the prescribed period, the unit is liable to pay applicable duty on such goods.

**15. Duty remission on destruction of goods:**

15.1 As per Rule 39 of the SEZ Rules, after advance intimation to the Specified Officer, a Unit may destroy, without payment of duty, goods including capital goods, procured from Domestic Tariff Area or goods imported or goods manufactured/produced by the Unit including rejects, waste, scrap subject to prior environmental clearance if any required for such destruction. Where it is not possible to destroy goods within the Special Economic Zone, destruction of goods shall be carried out, outside the Special Economic Zone with the permission of Specified Officer and in the presence of the Authorized Officer. However, destruction of precious metals, diamond, precious stones and semi-precious stones IS not allowed. The officers supervising destruction are required to ensure that goods are destroyed fully rendering them unfit for further use and give certificate to that effect. The Unit shall be required to pay back the drawback and Duty Exemption Pass Book credit availed in of case goods procured from Domestic Tariff Area are destroyed due to natural calamities.

**16. Exit of units:**

16.1 As per Rule 74 of the SEZ rules, the Unit may opt out of Special Economic Zone with the approval of the Development Commissioner and such exit shall be subject to payment of applicable duties and taxes on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock and if the unit has not achieved positive Net Foreign Exchange, the exit shall be subject to penalty that may be imposed under the Foreign Trade (Development and Regulation) Act, 1992. The unit opting out of SEZ shall execute a legal undertaking in Form L.

16.2 In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gem and other materials available for manufacture of jewellery is required to be handed over to an agency nominated by the Central Government at a price to be determined by that agency.

16.3 Development Commissioner can permit a Unit, as one time option to exit from Special Economic Zone on payment of duty on capital goods under the prevailing Export Promotion Capital Goods Scheme under the Foreign Trade Policy subject to the Unit satisfying the eligibility criteria under that Scheme.

**17. Drawback on supplies made to SEZs:**

17.1 Section 26(d) of the SEZ Act provides that every Developer and entrepreneur is entitled to Drawback of duties on goods brought from the DT A into an SEZ. The triplicate copy of the assessed Bill of Export is to be treated as the Drawback claim and processed in the Customs section (Specified Officer) of the Special Economic Zone. Dy./Asstt. Commissioner of Customs posted on deputation at the SEZ being the Dy./ Asstt. Commissioner of Customs at the Customs Station of export could sanction such Drawback claims. Thus, Drawback claim in respect of such supplies are not to be processed or sanctioned by the Customs and Central Excise formations.

- 17.2 Drawback can also be claimed by the DTA supplier on the basis of the disclaimer issued by the SEZ Unit Developer. In such cases, the Commissionerate of Customs and Central Excise/ Central GST having jurisdiction over the DT A unit would sanction the Drawback. The jurisdictional Commissioner of Customs in consultation with the Pay and Accounts Officer shall make arrangements for issue of authorization and drawback cheque books.
- 17.3 The office of Principal CCA has issued instructions regarding banking arrangements for payment of refund / Drawback cheques and accounting procedure to be followed in that regard. Accordingly, the PAOs are issuing cheque books to each Customs & Central Excise/Central GST formations for payment of refund / Drawback claims and the same cheque book can be used for making refunds and payment of Drawback. The cheque issuing officer is required to submit separate list of payment for Central Excise (0038) and Customs (0037) to their jurisdictional PAO.

**18. Other administrative guidelines:**

- 18.1 The Customs/Central Excise/Central GST Officers nominated to the Approval Committee of SEZs should ensure that the decisions taken at the Committee are within the provisions of law and should be made keeping in mind the revenue implications of such decisions.
- 18.2 The Customs/Central Excise/Central GST Officers are advised to conduct verification of credentials of the entrepreneurs proposing to set-up SEZ units and provide inputs on past history to the Committee for taking appropriate decision.
- (i) While granting assent to the approval, the representatives of DOR should ensure whether the particular process to be carried out by the unit constitutes manufacture or not in terms of Section 2 (r) of the SEZ Act.
  - (ii) The Committee approves the import or procurement of goods from the DTA in the SEZ for carrying on the authorized operations by a developer. It should be ensured that the authorized operations are covered under the provisions of SEZ Act and Rules. Activities like Housing, etc, should only be allowed in phases of 20 of approval at a time and commensurate with the needs of SEZs. In case of activities like setting up of hospitals, hotels and other such social infrastructure, no duty free material is permitted for operation and maintenance of such facilities.
  - (iii) Any activity outside the SEZ cannot be allowed as Authorized Operation.
  - (iv) No tax benefits would be available for measures taken to establish contiguity.
  - (v) Field formations (Range/Divisions) should follow the specified procedure laid down for movement of goods from SEZ to DT A and from DT A to SEZ.
  - (vi) No unit should be allowed to start functioning till the walls and specified entry/exit points and the offices of the Development Commissioner (including the Customs officers posted under him) are in place. Only one entry/exit gate should be permitted in view of security and revenue loss concerns.

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

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

## **20. Advantage**

20.1 Being in a SEZ can be advantageous to a certain extent when it comes to taxes. Any supply of goods or services or both to a Special Economic Zone developer/unit will be considered to be a zero-rated supply. That means these supplies will attract Zero tax rate under GST. In other words, supplies into SEZ are exempt from GST and are considered as exports.

Therefore, the suppliers supplying goods to SEZs can:

- (a) Supply under bond or LUT without payment of IGST and claim credit of ITC; or
- (b) Supply on payment of IGST and claim refund of taxes paid.

Any supply of goods or services or both to or by an SEZ developer/unit to DTA are chargeable to duties of customs under the Customs Tariff Act, 1975 as leviable on such goods when import into the country( refer Section 30 of the SEZ Act, 2005).

## **21. E-Way Bill and SEZ**

21.1 Under GST, transporters should carry an E-Way Bill when moving goods from one place to another if the value of these goods are more than Rs. 50,000. SEZ supplies are treated how the other inter-state supplies are treated. The SEZ units or developers will have to follow the same EWB procedures as the others in the same industry follow.

21.2 In case of supplies from SEZ to a DTA or any other place, the registered person who facilitates the movement of goods shall be responsible for the generation of e-Way bill.

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## Export Oriented Units

### 1. Introduction:

- 1.1 Export Oriented Units (EOU) scheme was introduced vide Ministry of Commerce Resolution dated 31-12-1980. The purpose of the scheme was basically to boost exports by creating additional production capacity. It was introduced as a complementary scheme to the Free Trade Zones/ Export Processing Zone (EPZ) Scheme introduced in the sixties, which had not attracted many units due to locational restrictions. The exporters showed willingness to set up units with long term commitment to exports under Customs bond operations provided they had the freedom to locate them in places of their choice and given most of the benefits as provided to units set up in the Zones.
- 1.2 The EOUs are governed by the provisions of Chapter 6 of the Foreign Trade Policy (FTP) and its procedures, as contained in the Handbook of Procedure (HBP). Provisions of the said Chapter 6 and its procedures have also been made applicable to the Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs). Hence the scheme is for EOU/STP/EHTP/BTP and is referred in common parlance as EOU scheme.
- 1.3 Over the years, the EOU Scheme has undergone various changes and its scope has also expanded substantially as compared to the initial Scheme, which was basically for manufacturing sector with certain minimum value addition in terms of export earnings. Presently, the units undertaking to export their entire production of goods are allowed to be set up as an EOU. These units may be engaged in the manufacture, services, development of software, repair, remaking, reconditioning, re-engineering including making of gold/silver/platinum jewellery and articles thereof, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry, sericulture and granites. The EOUs can export all products/ services except prohibited items of exports in ITC (HS).
- 1.4 Some benefits that are extended to the EOUs to impart to them a competitive edge to compete in export market are, as follows:
  - (i) EOUs are allowed to import raw materials/ capital goods duty free, including IGST and Compensation cess (up to 31.3.2019), and also allowed to procure excisable goods without payment of duty indigenously;
  - (ii) Reimbursement of Central Sales Tax (CST);
  - (iii) CENVAT credit of excise duty/ITC of GST on the goods and service and refund thereof;
  - (iv) Fast track clearance facilities; and
  - (v) Exemption from Industrial Licensing for manufacture of items reserved for SSI sector.
  - (vi) The DTA supplier or recipient EOU can avail refund of GST paid on supplies to EOUs.



## 2. Customs and Central Excise exemptions:

- 2.1 EOUs/EHTPs/STPs are entitled to import duty free (including exemption from IGST & cess up to 31.03.2019) raw materials, capital goods and office equipment etc. vide Customs Notification No. 52/2003- Cus., dated 31-3-2003 and procure indigenous excisable goods duty free vide Central Excise Notification No. 22/2003-CE., dated 31-3-2003.

## 3. Setting up of an EOU:

- 3.1 Projects having a minimum investment of Rs. 1 Crore and above in building, plant and machinery are usually considered for establishment under EOU Scheme. Minimum investment criteria is to be fulfilled at the time of commencement of production by the unit. The minimum investment criterion does not apply for certain sectors like Electronic Hardware Technology Park unit, Software Technology Park unit, Handicrafts, Agriculture and Aquaculture. Setting up of trading units is not permitted under EOU scheme.
- 3.2 EOUs are normally permitted to be set up by a Unit Approval Committee headed by the Development Commissioner. Jurisdictional Commissioner of Central Excise & Customs is a member of the said committee. Proposals for setting up EOUs requiring industrial license also require clearance by the Board of Approval (BOA) and Department of Industrial Policy and Promotion (DIPP). 100% foreign direct investment (FDI) is permitted through Automatic Route.
- 3.3 For setting up of an EOU, three copies of the application in the prescribed form (ANF-6A) are required to be submitted to the Development Commissioner. In certain cases, approval of the Board of Approval (BOA) is required. Applications for setting up of Electronic Hardware Technology Park/ Software Technology Park units are submitted to the officer designated by the Department of Information Technology for this purpose. After approval of the application and issuance of Letter of Permission, the applicant is required to execute a legal undertaking (Appendix-6E) with the Development Commissioner/ Designated Officer concerned within the prescribed time period. On execution of legal undertaking, a Green Card is issued to the unit.
- 3.4 On approval for setting up an EOU by Unit Approval Committee, a Letter of Permission (LOP/LOI) is issued by the jurisdictional Development Commissioner. It mentions inter-alia the capacity and items of manufacture and export, capital goods permitted to be imported/ procured. Thereafter, the unit has to execute a legal undertaking with the Development Commissioner. The LOP/ LOI issued is construed as a license for all purposes. After obtaining the LOP and execution of legal undertaking, the unit is required to execute a general purpose B-17 bond with the jurisdictional Assistant/Deputy Commissioner of Customs and Central Excise. This bond was notified vide Notification No. 6/98- Central Excise (N.T.), dated 02.03.1998 under the erstwhile Central Excise Rules, 1944. A revised B-17 (General Surety/Security) bond updated with references to GSTIN, present FTP provisions and Notification No. 52/2003- Customs dated 31.03.2003 etc., has been notified under the present Rules 7, 9, 21 and 22 of the Central Excise Rules, 2017. This new bond will be applicable to the new EOUs. The existing EOUs shall continue with the earlier B-17 bond already executed by them so that there is no disruption in their working. Also, all relevant instructions applicable for the old B-17 bond will be mutatis mutandis applicable to the new B-17 bond.

[ Refer Circular 50/2018- Customs dated 06.12.2018]

#### **4. Import/ procurement and warehousing:**

- 4.1 Under the EOU scheme, the units are allowed to import or procure from bonded warehouses in DTA/ International exhibitions in India, without payment of duty all types of goods including capital goods, raw materials, components, packing materials, consumables, spares and various other specified categories of equipments including material handling equipments, required for export production or in connection therewith. However, the goods prohibited for import are not permitted. In the case of EOUs engaged in agriculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry, sericulture and granite quarrying, only specified categories of goods mentioned in the relevant notification are permitted duty-free import. Indigenous excisable goods specified in Notification no. 22/2003-CE dated 31.03.2003 can be procured duty free.
- 4.2 The Customs exemption Notification No. 52/03-Cus. (for imports) and Central Excise exemption Notification No. 22/03-CE, both dated 31-3-2003 prescribe several conditions to be fulfilled by the beneficiaries keeping in view the objective of the EOU scheme and to prevent abuse.. EOU are also provide various flexibilities in the matter of taking out the materials for jobwork, inter-unit transfer. The EOU/ EHTP/ STPI/ BTP are required to be positive net foreign exchange earner except for sector specific provision of Appendix 6 B of FTP where a higher value addition shall be required as per the provisions of FTP. NFE earnings is calculated cumulatively in blocks of 5 years from the commencement of commercial production according to a prescribed formula as per para 6.10 of HBP.
- 4.3 The EOUs are licensed to manufacture goods within the premises for the purpose of export. The period of LOP is initially for five years after the unit has commenced production, which is extendable to another five years by the Development Commissioner. On completion of the LOP period, it is for the unit to decide whether to continue under, or to opt out, of the scheme.
- 4.4 Inputs imported or procured duty free are required to be accounted for in accordance with SION. For the items having no SION, consumption of inputs is allowed subject to generation of waste, scrap and remnants up to 2% of input quantity. However, if any item in addition to those given in SION are required as input or where generation of waste, scrap and remnants is beyond 2% of the input quantity, consumption is allowed on the basis of self-declared norms for a period of three months till the jurisdictional Development Commissioner fixes ad hoc norms subject to an undertaking by the unit that the self-declared/ ad hoc norms shall be adjusted in accordance with norms as finally fixed by the Norms Committee in DGFT for the unit. Further, a provision has also been made to consider such cases by the Board of Approval for appropriate decision in case of difficulty in fixation of SION by the Norms Committee. The norms fixed by the Norms Committee shall be applicable to the specific unit.

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

#### **5. Monitoring and administrative control:**

- 5.1 The EOUs basically function under the administrative control of the Development Commissioner of the Special Economic Zones, whose jurisdiction has been notified by the Ministry of Commerce. In all, there are seven Development Commissioners at Mumbai, Gandhidham, Chennai, Cochin, Visakhapatnam, Noida and Kolkata, who supervise the functioning of the

EOUs. The Development Commissioners of the SEZs are the Licensing Authorities in respect of units under the EOU scheme, as per specified territorial jurisdiction as indicated in the FTP.

- 5.2 The provisions of the Customs and Central Excise law in respect of the EOUs are administered by the Commissioners of Customs and Central Excise, who work under the control of Central Board of Indirect Taxes & Customs. The work relating to the EOUs located in port cities/towns or within the municipal limits of port cities/towns, which was earlier transferred to the jurisdictional Commissioner of Central Excise, will continue to be handled by jurisdictional Commissioner of Customs & Central Excise..

[Refer Circular Nos. 72/2000-Cus, dated 31-8-2000, No.87/2000-Cus, dated 2-11-2000 and No. 932/22/2010-CX, dated 4-8-2010]

- 5.3 On the policy front, all decisions relating to the EOUs are taken by the Board of Approvals (BOA), set up under the Department of Commerce. The BOA is chaired by the Secretary, Ministry of Commerce. In the case of units engaged in manufacture of electronic hardware and software, the policy decisions are taken by the Inter Ministerial Standing Committee (IMSC) set up under the Department of Information Technology and the same are implemented through its Designated Officers. CBIC representative is a member of both the BOA/IMSC. The availability of any benefit under Customs or Central Excise Acts or the notifications issued thereunder has, however, to be determined by the Commissioner of Central Excise and Customs having jurisdiction over the unit. Appropriate inter-ministerial liaison is maintained for ensuring uniformity as far as possible in the FTP provisions and the provisions built in the relevant Customs and Central Excise notifications.

## 6. Customs bonding:

- 6.1 The premises of EOU were earlier required to be approved as a Customs bonded warehouse under the warehousing provisions of the Customs Act. The manufacturing and other operations were carried out under customs bond and the unit bears appropriate charges for officers on cost recovery basis. In case of units in Aquaculture, Horticulture, Floriculture, Granite quarrying etc exemption from bonding was given for administrative reasons with certain other safeguards being put in place to check that duty free benefits where availed are not abused. The EOUs are required to execute a multipurpose bond with surety/ security with jurisdictional Central Excise and Customs officers.

[Refer Circular No. 15/95-Cus., dated 23-2-1995]

- 6.2 Recognizing the potential role of these units in the Make in India initiative and as a measure of improving the ease of doing business, it has been decided to do away with the need to comply with warehousing provisions by these units. For this purpose, notification 44/2016 – Customs dated 29th July 2016 has been issued (effective from 13th August 2016) amending the principal notification 52/2003-Customs dated 31st March 2003. As a consequence, these units shall stand de-licensed as warehouses under Customs Act, 1962, with effect from 13th August, 2016. However EOUs are still required to execute a multipurpose bond with surety / security with jurisdictional Customs and Central Excise officers.

[Refer Circular No.35/2016-Customs dated, the 29th July 2016]

## **7. Items allowed duty free imports/procurement:**

7.1 Under the EOU scheme, the units are allowed to import without payment of duty, all types of goods including capital goods, raw materials, components, packing material, consumables, spares and various other specified categories of equipments like material handling equipments, UPSs, quality assurance equipments, captive power plants, central air conditioning equipments, security systems, pollution control equipments, modular furniture and parts thereof etc. and also procure indigenous excisable goods without payment central excise duty required for the production/ job-work and other operations in terms of letter of permission (LOP). All goods other than prohibited goods are allowed to be imported by an EOU/STP/EHTP. The specified activities for setting up an EOU/STP/EHTP are as follows:

- (i) Manufacture of articles for export or for being used in connection with the production or packaging or job work for export of goods or services by export oriented undertaking;
- (ii) Manufacture or development of software, data entry and conversion, data processing, data analysis and control data management or call center services for export by Software Technology Park (STP) unit, or a unit in Software Technology Park Complex under the export oriented scheme;
- (iii) Manufacture and development of electronics hardware or electronics hardware and software in an integrated manner for export by an Electronic Hardware Technology Park (EHTP) unit or a unit in Electronic Hardware Technology Park Complex under the export oriented scheme; production, manufacture or packaging of articles by export oriented undertaking in horticulture, agriculture and animal husbandry sector;
- (iv) Use in aqua-culture farm in connection with operational requirements of such aquaculture farm and export of aquaculture products so produced by export oriented undertaking in aquaculture sector;
- (v) Quarrying of granite by export oriented undertaking engaged in processing and manufacture or production of articles of granite for export;
- (vi) Manufacture of gems and jewellery and export thereof by EOUs in the Special Export Oriented Complex, Jhandewalan and EOUs in gems and jewellery sector.

7.2 Duty free import and procurement of export promotion material like brochures, literatures, pamphlets, hoardings, catalogues and posters of products to the extent of 1.5% of the value of exports of the previous year is also allowed. The export value of supplies of such promotional material shall not be counted towards fulfilment of NFE and for availing DTA entitlement as specified in para 6.8 of FTP. However, import of such promotional material shall be considered for computation of sum total of all imported goods for arriving at NFE.

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

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

8.1 The period of utilization of goods, including capital goods, procured/ imported by the EOU

shall be co-terminus with the validity of LoP (Letter of Permission)

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

## 9. Manufacture in bond:

9.1 EOUs used to be private bonded warehouse under provisions of Section 58 of the Customs Act, 1962. To undertake manufacturing or other operations in the warehouse in relation to warehoused goods, the required permission was granted under Section 65 of the Customs Act, 1962, read with "Manufacture and Other Operations in Warehouse Regulations, 1966". The mandatory warehousing has now been done away with w.e.f. 29.07.2016 and EOUs are required to follow the procedure prescribed under Rule 5 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 for which Notification no. 52/2003-Customs dated 31st March, 2003 has been amended by Notification No. 59/2017-Customs dated 30th June, 2017. The degree of supervision of the Departmental officers on movement of raw materials, components, finished goods and manufacturing process and accounting in an EOU is aimed at providing operational flexibility, easing restrictions and removing practical difficulties faced by EOUs. Accordingly, the manufacture is now allowed without any physical supervision of the Central Excise and Customs authorities, locking of the warehouse premises, control over the issue and return of imported goods. Further, all movements from and to the units like clearance of raw materials/ components to the job worker's premises, return of goods from the job worker's premises, clearance to other EOUs, export and sale into DTA can be made by the manufacturer subject to recording of each transaction in the records prescribed by the Board/Commissioners or their private records approved by the Commissioner.

[Refer Circular No. 88/98-Cus, dated 2-12-1998]

9.2 Exports by EOUs are allowed on self-sealing and self-certification basis.

9.3 The EOUs were allowed self-bonding/self-warehousing without the requirement of physical verification of goods by officers of Customs and Central Excise for both imported as well as indigenously procured goods. This relaxation was available to EOUs with a clean track record having physical export turnover of goods or services is Rs.10 Crores or above in the preceding financial year.

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

9.4 With the removal of mandatory warehousing, EOUs stand delicensed as warehouses under Customs Act, 1962, with effect from 13th August, 2016. EOUs are no longer required to maintain warehoused goods register. Instead the records of receipt, storage, processing and removal of goods is required to be maintained in a prescribed form in digital manner. The requirement of sending re-warehousing certificates has also been dispensed with for all EOUs. Instead, upon receipt of goods in the unit, copy of relevant bill of entry shall be provided to the jurisdictional office who shall reconcile the imports with intimation provided under Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

[Refer Circular No.35/2016-Customs dated, the 29th July 2016 and Circular No.29/2017-Customs dated 17th July 2017]

**10. B-17 Bond:**

- 10.1 Import/procurement of goods by an EOU for use in manufacture or in connection with production or packaging of goods for export is exempted from payment of customs and central excise duties. EOUs execute a general purpose B-17 bond along with surety or security covering the duty foregone on imported goods. This bond is prescribed under Notification No. 6/98-CE(N.T.), dated 2-3-1998 as General Bond to be executed by the EOUs for provisional assessment of goods to Central Excise duty, for export of goods and for accounting/disposal of excisable goods procured without payment of duty. This bond also takes care of the interest of revenue against risks arising out of goods lost in transit, goods taken into Domestic Tariff Area for job work/ repair/ display etc but not brought back. Basically the B-17 bond is an „all purpose“ bond covering liabilities of the EOU both under Customs and Central Excise Acts. However, it does not cover the differential duty amount against advance DTA sale for which a separate bond is to be executed.
- 10.2 The B-17 bond is executed with the jurisdictional Assistant/Deputy Commissioner of Central Excise and Customs, as the case may be. The bond is taken for an amount equivalent to 25% of the duty forgone on the sanctioned requirement of capital goods plus the duty forgone on raw materials required for three months. Surety or security equivalent to 5% of the bond amount in the form of bank guarantee or cash deposit or any other mode of security recognized by the Government is required to be given by the EOUs. In the case of surety, a letter from the person standing surety duly certified by a Chartered Accountant for solvency is also required to be submitted.
- 10.3 Units which have achieved positive NFE and are in existence for the last three years with unblemished track record having export turnover of Rs. 5 Crores or above and have not been issued a show cause notice or a confirmed demand, during the preceding 3 years are exempted from furnishing Bank Guarantee etc. or Surety along with B-17 bond. However, this facility will not be available to the Units where Show Cause Notices have been issued or cases booked on grounds other than procedural violations, under the penal provision of the Customs Act, the Central Excise Act, the Foreign Trade (Development & Regulation) Act, the Foreign Exchange Management Act, the Finance Act, 1994 covering Service Tax or any allied Acts or the rules made thereunder, on account of fraud / collusion / wilful mis-statement/ suppression of facts or contravention of any of the provisions thereof.

[Refer Circulars No. 14/98-Cus, dated 10-3-1998, No. 42/98-Cus, dated 19-6-1998, No.66/98-Cus, dated 15-9-1998, No.76/99-Cus, dated 17-11-1999, No. 54/2004-Cus, dated 13-10-2004 and No. 36/2011-Cus, dated. 12-8-2011]

- 10.4 The B-17 bond, being a general purpose running bond will serve the requirement of continuity bond to be submitted under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, and therefore EOU/STP/EHTP units are not required to submit separate continuity bond.

The waiver of bank guarantee/ surety to EOUs would continue to be governed by various circulars issued from time to time by CBIC with regard to B-17 bonds executed by EOUs and will not be guided by the Circular no. 48/2017-Customs dated 08.12.2017 which governs the

general importers and not the EOUs.

[Refer Circular No. 29/2017-Customs dated 17.07.2017 & Circular no. 27/2018-Customs dated 14.08.2018]

## **11. Monitoring of export performance / foreign exchange realization:**

- 11.1 The EOUs basically function under the administrative control of the Development Commissioner of the SEZ as per the jurisdiction notified by the Ministry of Commerce. The Development Commissioner is the licensing authority in respect of EOU. In respect of STP / EHTP units, the designated officer (Director) of the Ministry of Communication and Information Technology is the licensing authority. These authorities are also responsible for monitoring the export performance of the units in terms of Para 6.12 of HBP read with Appendix 6F of FTP.
- 11.2 The concept of NFEP and EP has been replaced with Net Foreign Exchange Earning (NFE) from 2003-04. Further, duty liability is fixed in proportion to shortfall in NFE. Now the unit has to achieve a positive NFE i.e. their foreign exchange earning has to be more than the foreign exchange outflow. The NFE is calculated cumulatively in the block of 5 years. If the unit is not NFE positive, Development Commissioner is required to inform the Customs authorities for recovery of the proportionate duty. This provision is not only more equitable but also prevents a unit to become unviable on account of huge demand without taking into account the exports performance achieved.
- 11.3 The Development Commissioner is responsible for monitoring foreign exchange realization/remittances of EOUs in coordination with the General Manager, RBI concerned.

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

- 11.4 The Unit Approval Committee headed by the Development Commissioner is responsible for monitoring the performance of EOUs.

## **12. Import and export procedures:**

- 12.1 With regard to clearance of import cargo, the EOUs are placed in a special category, eligible for fast track clearance through the Customs on the strength of procurement certificate issued by the jurisdictional Assistant/Deputy Commissioner. Generally, the EOU cargo is not examined at the gateway port/airport and in case of loose cargo, marks and numbers on the packages are verified. As for sealed containers, the seal number and container number are verified with the Bill of Lading. If the seal is found intact, the container is allowed clearance. The imported cargo so cleared and brought into the unit's premises were earlier used to be examined by the jurisdictional Central Excise and Customs officials. After examination (percentage check only), the goods were allowed to be used for export production. Re-warehousing certificate was to be submitted to the Assistant/Deputy Commissioner in charge of the port of import within 90 days of the issue of procurement certificate.
- 12.2 On the export side, the units having status of a Super Star Trading House, Star Trading House, Trading House, and Export House are allowed the facility of self-sealing of their export containers.

[Refer Circulars No. 63/97-Cus, dated 21-11-1997, No.14/98-Cus, dated 10-3-1998 and No.90/98-Cus, dated 8-12-1998]

12.3 Post GST, the EOUs are required to follow Rule 5 of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 instead of erstwhile procedure of Procurement Certificates. The EOUs are required to provide information in duplicate regarding estimated quantity and value of goods to be imported to Jurisdictional DC/AC of Customs. EOU is also required to submit one set of the said information to DC/AC of Customs at the Custom Station of importation who shall allow the benefit of exemption notification to the importer on the basis of said information provided to him.

[Refer Circular no. 29/2017-Customs dated 17.7.2017, Circular No. 25/2017- Customs dated 30.06.2017 and Circular no. 10/2018-Customs dated 24.4.2018]

### **13. Goods imported / exported and found defective:**

13.1 Subject to grant of GR waiver by the RBI, the EOUs are allowed to make free replacement of the goods exported by them earlier and found defective, damaged or otherwise unfit by the overseas buyer. However, such defective, damaged or otherwise unfit for use goods are required to be brought back subsequently, to the country. The units are also allowed to re-import part consignment/full consignment in case of failure of the foreign buyer to take delivery.

13.2 The EOUs are also allowed to receive free replacement of the goods imported and found defective, damaged or otherwise unfit for use prior to re-export of the same. However, such damaged, defective goods are required to be re-exported subsequently. In case the supplier of such goods does not insist for re-exportation, such goods are required to be either destroyed or cleared into DTA on payment of full Customs duty.

[Refer Circular 60/99-Cus, dated 10-9-1999]

### **14. Procurement of indigenous goods under CT-3 procedure:**

14.1 The EOUs earlier were required to procure excisable goods from DTA without payment of Central Excise duty on strength of CT-3, which was issued by the Superintendent of Central Excise in charge of the EOU. Such goods were required to be brought directly from the manufacturer/ warehouse into the unit's premises under A.R.E.-3 procedure. To avoid separate permission every time, the EOUs were issued pre-authenticated CT-3 in booklet form and against such pre-authenticated CT-3. Now, supplies to EOUs by a registered person have been made to be treated as deemed export supplies under Section 147 of CGST Act for which Notification No. 48/2017-Central Tax dated 18.10.2017 has been issued. The EOUs are allowed to procure capital goods, raw materials, consumables etc. on payment of GST by following the procedure as prescribed in Circular no 14/14/2017-GST dated 06.11.2017. As per this procedure, recipient EOU has to give prior intimation of goods to be procured in a prescribed form to registered supplier as well as jurisdictional GST officers of supplier as well as of EOU. The supplies will then be made under the tax invoice. After receipt of goods at EOU, tax invoice will be endorsed by EOU, a copy of which will be given to all to whom original intimation of procurement was given. Goods procured from DTA and found to be defective can be returned



to the manufacturer as prescribed by Central Excise law/GST law.

#### **15. DTA sale:**

- 15.1 The goods manufactured by EOU, , are allowed to be sold in Domestic Tariff Area (DTA) upon fulfilment of certain conditions in terms of Para 6.8(a) of the FTP read with Para 6.14 and Appendix 6Gof the HBP.
- 15.2 The EOUs (other than gems & jewellery units) are allowed to sell goods (including rejects, scrap, waste, remnants and by-products) in DTAon payment of applicable central excise duty or applicable GST alongwith reversal of Basic Customs Duty on inputs used in finished goods (including by-products, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods) if they are NFE positive. Gems and Jewellery units may sell up to 10% of FOB value of export of preceding year subject to fulfilment of positive NFE.
- 15.3 For a newly set up unit, Advance DTA sale is also allowed on the basis of the projection of export in the first year. For pharmaceutical units, advance DTA sale is allowed on the basis of the projection of export in the first two years. The advance DTA sale is to be adjusted within two years from the date of commencement of production by an EOU. However, in case of pharmaceutical units, this period for adjustments is three years. For this purpose, a separate bond is to be executed with the Assistant/ Deputy Commissioner to cover the difference of duty paid on the advance DTA sale and the duty payable on such goods.
- 15.4 The DTA sale facility not available for certain products namely, pepper & pepper products, marbleand such other items as are notified from time to time. This facility is also not available to units engaged in the activities of packaging/ labelling/ segregation/ refrigeration/ compacting/ micronisation/ pulverization/ granulation/ conversion of monohydrate form of chemical to anhydrous form or vice versa.
- 15.5 DTA sale of pepper & pepper products and marble is not allowed even on payment of full duty.
- 15.6 Specified supplies of goods in DTA as provided in Para 6.09 of FTP and are counted for fulfilment of positive NFE, are also allowed on payment of applicable duties/taxesleviable on these goods.

#### **16. Valuation of goods sold in DTA:**

- 16.1 Section 3 of the Central Excise Act, 1944, provides that the valuation of goods manufactured in the EOU and cleared into DTA is to be done in accordance with the provisions of the Customs law. Thus, when the invoice price of the goods under assessment is in the nature of transaction value, such invoice value can be accepted.

[Refer Circulars No.23/84-CX-6, dated 29-5-1984 and No. 330/46/97-CX dated 20-8-1997 and Instruction F.No. 268/35/92-CX-8, dated 17-8-1994]

#### **17. Duty liability on DTA clearances/sales:**

- 17.1 In terms of proviso to Section 3(1) of the Central Excise Act, 1944, duty payable on goods falling under Fourth schedule to the Central Excise Act' 1944cleared in DTA is equal to the aggregate of the Customs duties which would be leviable under the Customs Act, 1962 or under any

other law for the time being in force, on like goods produced or manufactured outside India, if imported into India. The value for payment of duty (after granting applicable depreciation on capital goods) is arrived at in accordance with the provisions of the Customs Act, as if these are imported goods. In case of clearance of goods under GST, DTA sale will be on payment of applicable GST alongwith reversal of Basic Customs Duty foregone on inputs used in finished goods (including by-products, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods) and applicable cesses. An amount equal to anti dumping duty foregone on the goods at the time of import shall also be paid on the equivalent quantity of goods used for manufacture of any goods which are cleared into DTA or on such quantity of goods which are cleared as such into DTA.

17.2 On fulfillment of positive NFE, the EOUs other than Gem and Jewellery units can sell goods including rejects, waste, scrap, remnants, by-products and services in DTA. However, Gem and Jewellery units may sell upto 10% of FOB value of export of the preceding year in DTA, subject to fulfillment of positive NFE. The words “FOB value of exports” refers to physical exports only. Therefore, the value of deemed exports made by the unit is not considered while determining the FOB value of exports.

17.3 Sales made to a unit in SEZ is also taken into account for purpose of arriving at FOB value of export by EOU provided payment for such sales are made from Foreign Exchange Account of SEZ unit. Sale to DTA would also be subject to mandatory requirement of registration of pharmaceutical products (including bulk drugs). An amount equal to Anti Dumping duty under section 9A of the Customs Tariff Act, 1975 leviable at the time of import, shall be payable on the goods used for the purpose of manufacture or processing of the goods cleared into DTA from the unit.

17.4 For services, including software units, sale in DTA in any mode, including on line data communication, is also permissible up to 50% of FOB value of exports and/ or 50% of foreign exchange earned, where payment of such services is received in foreign exchange.

17.5 In case of new EOUs, advance DTA sale are allowed not exceeding 50% of its estimated exports for first year, except pharmaceutical units where this will be based on its estimated exports for first two years.

17.6 Supplies of specified items such as accessories like tags, labels, printed bags, stickers, belts, buttons or hangers produced or manufactured in an EOU are allowed on payment of GST to a unit in DTA for use in the manufacture or processing of goods which are exported and thereupon such supplies shall be counted towards fulfillment of positive NFE of EOU.

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

17.7 The concessional rate of duties for goods falling under Fourth Schedule to the Central Excise Act' 1944 sold in DTA by an EOU are prescribed under Notification No. 23/2003-CE, dated 31-3-2003.

## **18. Goods manufactured from indigenous materials in EOUs:**

18.1 Excisable Goods manufactured out of wholly indigenous excisable inputs are allowed clearance into DTA on payment of only Central Excise duty.

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

18.1.1 The indigenous goods supplied to the EOUs/EPZ/SEZ/EHTP/STP units after availing the deemed export benefits are to be treated as 'imported goods' and accordingly, duty as applicable to the imported goods is liable to be paid. Once the goods are treated as imported goods and applicable Customs Duty is paid at the time of their transfer/sale back into DTA or exit, there is no requirement of refund of the deemed export benefits availed on such goods or for the production of a certificate from the Development Commissioner regarding refund or nonavailment of deemed export benefits at the time of clearance of such goods or exit.

18.1.2 Alternatively, the EOU/STP/EHTP units would also be allowed to clear the domestically procured goods or on exit, on payment of Excise Duty as per Notification No. 22/2003-CE dated 31.03.2003 only on production of certificate from Development Commissioner to the effect that deemed export benefits have been paid back or not availed, as the case may be, as envisaged in Circular No.74/2001-Cus dated 04.12.2001.

[Refer: Circular No.13/2017-Cus F. No. DGEP/FTP/07/2015(Part-I) Date:10.04.2017.]

18.2 Where goods are either non-excisable or are leviable to nil rate of import duty, no exemption in respect of inputs utilized for manufacture of such goods is allowed. An EOU is required to pay back the duty foregone on the inputs used in manufacture of goods cleared in DTA on which no duty is leviable.

## **19. Clearance of by-products, rejects, waste, scrap, remnants, non-excisable goods, etc.:**

19.1 Scrap/ waste/ remnants arising out of production process or in connection therewith are allowed to be sold in DTA, as per SION notified by Directorate General of Foreign Trade (under Duty Exemption Scheme), on payment of concessional duties/GST as applicable. Such sales of scrap/ waste/ remnants shall not be subject to achievement of positive NFE. In respect of items not covered by SION norms, Development Commissioner may fix ad-hoc norms for a period of six months and within this period, norm should be fixed by Norms Committee and ad-hoc norms will continue till such time. Sale of waste/ scrap/ remnants by units not entitled to DTA sale, or sales beyond DTA sale entitlement, shall be on payment of full duties. Scrap/ waste/ remnants may also be exported. However, no duties/ taxes on scrap/ waste/ remnants are charged, in case same are destroyed with permission of Central Excise & Customs authorities.

19.2 The DTA clearance of by-products and rejects is not allowed to the EOUs, which have failed to achieve the positive NFE.

19.3 DTA clearance of goods manufactured by the EOUs which are not excisable the duty on inputs and consumables etc. procured/ imported duty free under exemption notifications, which have gone into production of such non- excisable goods cleared into DTA, is recovered, besides payment of GST.

19.4 In case of Gems and Jewellery EOUs and EHTP/STP units, scrap, dust or sweepings of gold/ silver/ platinum generated in the unit is allowed to be forwarded to the Government Mint or Private Mint for conversion into standard gold bars and return thereof to the unit subject to the observance of procedure laid down by the Commissioner of Central Excise & Customs. The

said dust, scrap or sweepings are also allowed clearance into DTA on payment of applicable customs duty on the gold/ silver/ platinum content in the said scrap, dust or sweepings. Samples of the sweepings/ dust are taken at the time of clearance and sent to mint for assaying. The assessment is finalized when the reports are received from the mint.

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

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

## **20. Special concessions for certain waste products and other goods:**

20.1 Gems and Jewellery units may sell jewellery upto 10% of FOB value of exports of the preceding year in DTA, subject to fulfilment of positive NFE. In respect of sale of plain jewellery, studded jewellery, EOU shall pay duty and taxes as applicable to sale from nominated agencies.

## **21. Reimbursement of Central Sales Tax (CST) / Drawback:**

21.1 Supplies from DTA to EOUs are regarded as “deemed exports” and considered for discharge of any export obligation on the supplier. For such supplies, the DTA supplier (or the EOU if the DTA supplier gives a disclaimer) is eligible for the following benefits:

- (i) Supply of goods against Advance Authorisation/ Advance Authorisation for annual requirement / DFIA;
- (ii) Deemed Export Drawback;
- (iii) Exemption from terminal excise duty where supplies are made against ICB. In other cases, refund of terminal excise duty.

21.2 Goods manufactured in India and supplied to EOU are eligible for reimbursement of CST.

21.3 All the above benefits are administered and disbursed by the Development Commissioner/ Regional Authority of DGFT under the Ministry of Commerce.

## **22. Clearance of samples:**

22.1 EOUs may on basis of records maintained by them, and on prior intimation to jurisdictional Central Excise and Customs authority:

- (i) Supply or sell samples in DTA for display/ market promotion on payment of applicable duties/taxes.
- (ii) Remove samples without payment Central Excise of duty, on furnishing a suitable undertaking to jurisdictional Central Excise and Customs authorities for bringing back samples within a stipulated period.
- (iii) Export free samples, without any limit, including samples made in wax moulds, silver mould and rubber moulds through all permissible mode of export including through courier agencies/ post. For statutory requirement of Stability & Retention sample with manufacturer, an EOU may re-import without payment of duty, those samples, which were exported by it, under intimation to Custom Authorities, and FOB value of such

samples shall not be counted for NFE purpose and other export benefits, if any.

(iv) Send samples to other EOUs for display on returnable basis within a period of 30 days.

22.2 EOUs are allowed to send samples abroad through the courier. The packages containing such samples are sealed in the presence of the departmental officer and are handed over to the representative of the courier company authorised by the Commissioner of Central Excise & Customs for presentation to the Customs at the port of export. These sealed samples are not normally examined again before "let export" is given if the seals are found intact and not tampered. The representative of the courier company later hands over the proof of export to the jurisdictional Assistant/ Deputy Commissioner.

[Refer Circulars No.22/98-Cus dated 27-3-1998; and No.52/99-Cus, dated 20-8-1999]

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

23.1 EOUs may:

- (i) Install one fax machine at a place of choice, outside the premises of unit, subject to intimation of its location to concerned Customs Central Excise authorities.
- (ii) Temporarily take out of premises of unit, duty free laptop computers and video projection systems for working upon by authorized employees.
- (iii) Install personal computers not exceeding two in number, imported/ procured duty free in their registered / administrative office subject to CBEC guidelines.
- (iv) For IT and IT enabled services, persons authorized by software units may access facility installed in EOU/EHTP/STP/BTP unit through communication links.

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

24.1 EOUs are allowed to sell surplus/unutilized goods and services, imported or procured duty free, into DTA on payment of duty but for exemption, in case the unit is unable, for valid reasons, to utilize the goods. The permission for such DTA sale is given by the jurisdictional Assistant / Deputy Commissioner of Central Excise and Customs.

24.2 Unutilized goods and services may also be transferred to another EOU/EHTP/STP/BTP/ SEZ unit or exported. Such transfer to another such unit would be treated as import for receiving unit.

24.3 The inter unit transfer would be on invoice on payment of applicable GST taxes. However, such transfer would be without payment of custom duty. The supplier unit will endorse on such documents the amount of custom duty, availed as exemption, if any, on the goods intended to be transferred. The recipient unit would be responsible for paying such basic customs duty, as is obligated under Notification no. 52/2003-Cus dated 31-3-2003 (as amended), when the finished goods made out of such goods or such goods are cleared in DTA.

[Refer Circular no.29/2017-Customs dated 17.7.2017]

24.4 Obsolete/ surplus capital goods and spares can either be exported, transferred to another EOU/EHTP/STP/BTP/SEZ unit or disposed of in the DTA on payment of applicable duties. The

benefit of depreciation, as applicable, will be available in case of disposal in DTA only when the unit has achieved positive NFE. Duty is not charged in case of obsolete/ surplus capital goods, consumables, spares, goods manufactured, processed or packaged and scrap, waste, remnants are destroyed within the unit after intimation to Central Excise & Customs authorities or destroyed outside unit with the permission of Central Excise & Customs authorities.

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

25.1 Flowers, vegetables and agricultural products have a very short shelf life and are prone to malformation, injury, damage, infection etc. These products cannot be preserved for a longer period. There are circumstances (especially in case of floriculture units) when the EOUs do not find the goods exportable/marketable for various reasons such as malformation, injury, damage, infection by pest and diseases etc. and the units have to resort to forced destruction of flowers, vegetables etc. In such cases, duty is not charged from the EOUs.

25.2 At times, the flowers and floriculture products deposited in the warehouse of the airlines at the international airports for the purpose of exports are not exported owing to various reasons, such as, delay in flights, cancellation of flights etc. In such cases, the units are allowed to sell such flowers and floriculture products in DTA on payment of applicable duty/taxes. For such DTA sales, the unit must have DTA sale entitlement under the scheme. The unit is required to obtain permission from the concerned Development Commissioner for such DTA sale and shall clear the goods on payment of duty assessed by the concerned Assistant Commissioner / Deputy Commissioner in charge of the cargo. The DTA sale is allowed against documents as are used for DTA sale by EOUs in the manner as if the goods cleared from the unit itself.

[Refer Circular No.31/2001-Cus., dated 24-5-2001]

**26. Sub-contracting:**

26.1 EOUs, including Gems and Jewellery units, are allowed to sub-contract their production process to DTA. These units may also sub-contract upto 50% of the overall production of previous year in value terms for job work in DTA. For this, permission is to be obtained from the Central Excise authorities. Sub-contracting of both production and production process are also allowed to be undertaken through another EOU or SEZ unit on the basis of records maintained by the unit. The units are also allowed to sub-contract part of the production process abroad and also export therefrom with the permission of Assistant/ Deputy Commissioner of Customs/ Central Excise having jurisdiction over the unit. The intermediate goods so removed to sub- contractor abroad shall be allowed to be cleared under export documents

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

26.2 To help utilize the idle capacity, an EOU can undertake job work for export, on behalf of DTA exporter, provided the goods are exported directly from EOU's premises and export documents are prepared jointly in the name of DTA/EOU. For such exports, the DTA unit is entitled for refund of duty paid on the inputs by way of Brand rate of duty Drawback.

26.3 Sub-contracting by EOU Gems and Jewellery units through other EOUs, or SEZ units, or units in DTA shall be subject to following conditions:-

- (i) Goods, finished or semi finished, including studded jewellery, taken out for sub-contracting shall be brought back to the EOU within 90 days.
- (ii) No cut and polished diamonds, precious and semiprecious stones (except precious, semi-precious and synthetic stones having zero duty) shall be allowed to be taken out for sub-contracting.
- (iii) Receive plain gold/ silver/ platinum jewellery from DTA/ EOU/ SEZ units in exchange of equivalent quantity of gold/ silver/ platinum, as the case may be, contained in said jewellery.
- (iv) EOUs shall be eligible for wastage as applicable as per para 4.60 of HBP for sub-contracting and against exchange.
- (v) DTA unit undertaking job work or supplying jewellery against exchange of gold/ silver/ platinum shall not be entitled to deemed export benefits.

[Refer Circulars No. 65/2002-Cus. dated 7-10-2002 and No. 26/2003-Cus dated 1-4-2003]

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

27.1 The EOUs, STP, EHTP units engaged in development of software are allowed to remove imported laptop computers and video projection system out of the premises temporarily without payment of duty subject to following the prescribed procedures.

[Refer Circulars No.17/98-Cus dated 16-3-1998. No.84/2000-Cus., dated 16-4-2000 and No. 17/2003-Cus.dated 24-3-2003]

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

28.1 Inter-unit transfer of manufactured and capital goods from one EOU unit to another EOU/SEZ unit is permitted in terms of Para 6.13 of the FTP. Sale of unutilized goods is also allowed from one EOU to another EOU/SEZ unit in terms of Para 6.15 of FTP. Inter-unit transfer of the raw material is not allowed in normal course. However, where a unit proves that it is not able to utilize the raw material, same can also be allowed to be transferred.

28.2 Inter-unit transfer is allowed without payment of duty. Goods supplied by one unit to another unit are treated as imported goods for the receiving unit in terms of Para 6.13(c) of the FTP. Further the value of goods obtained from another EOU is to be included in the import value for fulfilment of NFE in terms of Para 6.10 of the HBP. Further, such supplies are also counted towards FE earning provided these are permissible in terms of Para 6.15 of the HBP. However the applicable GST shall be payable.

28.3 Capital goods and goods manufactured, produced, processed, or packaged in an EOU can be taken to another EOU/ SEZ unit without payment of duty under the cover of the usual commercial documents, such as, invoice & delivery challan for manufacture and export there from or for use within the unit after giving intimation to the proper officer. Both the units have to keep account of such removal and receipt. Upon receipt of goods, copies of documents shall be provided to the jurisdictional office of the sending and receiving unit by way of intimation. However the applicable GST shall be payable.

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

29.1 EOU/EHTP/STP/BTP units may be set up with approval of BOA to carry out reconditioning, repair, remaking, testing, calibration, quality improvement, up-gradation of technology and re-engineering activities for export in foreign currency. Provisions of paras 6.8, 6.9, 6.10, 6.13, 6.14 of the FTP and para 6.28 of the HBP shall not, however, apply to such activities. In other words the unit undertaking these activities are not permitted sale in DTA and some other benefits.

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

30.1 EOUs may send capital goods abroad for repair with permission of Customs authorities. Any foreign exchange payment for this purpose will also be allowed. However, no permission will be required for sending capital goods for repair within the country.

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

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

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

31.1 The EOUs in Gems and Jewellery sector are allowed certain special facilities as mentioned below, with prior permission of Assistant/ Deputy Commissioner of Central Excise and Customs.

- (i) An authorized person of the EOU can import gold in primary form, upto 10 Kgs in a financial year through personal carriage, as per guidelines prescribed by RBI and DOR;
- (ii) The items of gems and jewellery to be taken out temporarily into DTA without payment of duty for the purpose of display and to be returned thereafter;
- (iii) Personal carriage of gold/ silver/ platinum jewellery, cut & polished diamonds, semi-precious stones, beads and articles as samples upto US\$ 1 million for export promotion tours and temporary display/ sale abroad with the approval of development Commissioner subject to the condition that the exporter would bring back the goods or repatriate sale proceeds within 45 days from the date of departure through normal banking channel and that the unit shall declare personal carriage of such samples to Customs while leaving country and obtain necessary endorsement;
- (iv) Export of jewellery including branded jewellery for display and sale in the permitted shops setup abroad, or in the showroom of their distributors or agents provided that items not sold abroad within 180 days, shall be re- imported within next 45 days;
- (v) Gems and jewellery manufactured in the EOUs situated in the municipal limits of Calcutta, Chennai, Delhi and Mumbai and sold to a foreign-bound passenger are allowed to be transferred to the retail outlets or showrooms set up in the departure lounge or Customs warehouse at international airports for being handed over to the said passenger for the purpose of export.



- (vi) Removal of moulds, tools, patterns, and drawings into the DTA for jobwork without payment of duty and to be returned to the unit thereafter.

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

32.1 Cost recovery charges are the amount recoverable from the EOU on account of the expenses incurred by the Government for the posting of Central Excise & Customs staff at its premises to supervise their operations. The cost of posts created for EOUs has been determined at an amount equivalent to the actual salary and emoluments of the staff deployed i.e. the average pay and allowances including D.A., H.R.A etc. The EOUs pay in advance the cost recovery charges determined for the entire year. Generally, one Central Excise and Customs officer supervises the functioning of four to five units and the cost recovery charges are shared amongst them.

[Refer Instructions F.No.305/105/85-FTT, dated 10-6-1986 and  
F. No. 11018/63/87-Ad IV, dated 11-1-1988]

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

33.1 In terms of the Manufacture and Other Operations in Warehouse Regulations, 1966 operational flexibility is provided to EOUs and they do not need to carry out manufacturing operations under physical supervision of Central Excise and Customs officers and are also exempt from locking of the warehouse, control over the issue of imported goods etc. by these officers. All the movements from and to the EOU like clearance of raw materials/ component to the job workers premises, return of goods from the job-workers' premises, clearance to other EOUs, export and sale in DTA are allowed to be made by the EOU subject to maintenance of the records.

33.2 In absence of physical control greater stress is given on proper maintenance of prescribed records & accounts and non-maintenance of the accounts by the units is viewed seriously. The officers incharge of EOUs are required to scrutinize/examine the accounts/ records and transactions of the EOU at least once a month and ensure that all movements of goods are recorded in the proper register. The Chief Commissioner is empowered to order special audit of the EOU by Cost Accountant nominated in this regard. Cost audit is employed as a tool to check the correctness of raw materials, quantity used, finished goods produced or other such situation.

[Refer Circular No.88/98-Cus, dated 2-12-1998]

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

34.1 In terms of **6 F of Appendices and ANFs**, the performance of EOUs is to be reviewed by the Unit Approval Committee (UAC) of the SEZ headed by the Development Commissioner which consists of Commissioner of Central Excise and Customs or his nominee as one of the members. The purpose of review is to ensure that the performance of EOUs is effectively monitored and action is taken against the units which have contravened the provisions of the FTP/HBP and the Customs Law/ Procedures. Besides, such monitoring gives an opportunity to the Government to discuss and help resolve the problems/ difficulties being faced by the EOUs. The idea is to remove all bottlenecks in export promotion efforts while not jeopardizing the interests of revenue.

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

- 35.1 EOUs are required to achieve positive NFE as stipulated in the FTP and in case of failure to do so, the duty forgone under the EOU scheme along with interest is recoverable from the units. Further, the duty is recoverable from the units in case of non receipt of imported/ indigenously procured goods in the factory premises after import/ procurement, loss of goods in transit, non accountal of imported/ indigenously procured goods, unauthorized DTA sale, clandestine removal etc. Duty can also be demanded in case of failure to utilize duty free imported/ indigenously procured goods including capital goods within the prescribed time limit. The duty is also recoverable on goods removed for job work/ display/ testing/ quality testing, but not received back in the unit within the specified period of time.
- 35.2 Apart from recovery of duty forgone, the law also provides for taking penal action where any EOU is found to have indulged into any fraudulent activities eg. clandestine removal of production into DTA without payment of duties, diversion of duty free materials in transit to the unit after customs clearance or after receipt etc., not only the offending goods can be seized and confiscated, but even units penalized heavily/ prosecuted.

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

- 36.1 An EOU can clear any capital goods to any other place in India or de-bond in accordance with FTP with the permission of the Development Commissioner and on payment of duty,taxes and cess but for exemptionon the depreciated value.
- 36.2 Clearance or deboning of capital goods are allowed on payment of duty but for exemptionon the depreciated value thereof, if the unit has fulfilled the positive NFE criteria taking into consideration the depreciation allowable on the capital goods at the time of clearance or deboning. In case of failure to achieve the said positive NFE, the depreciation shall be allowed on the value of capital goods in the same proportion as the achieved portion of NFE.
- 36.3 Clearance/ deboning of capital goods on the depreciated value proportionate to the NFE achieved by the unit which is arrived at after taking into consideration the rate of depreciation allowable on such capital goods is allowed. In case the unit has not achieved positive NFE in the above manner, the duty foregone at the time of import shall be paid on such value of goods in proportion to the non-achieved portion of NFE.
- 36.4 Clearance or de-bonding of capital goods in the event of Exit from EOU scheme to Export Promotion Capital Goods scheme is also allowed only when EOU has fulfilled positive NFE criteria on the date it wishes to de-bond or migrate to EPCG scheme. Thus, if a unit has not achieved NFE taking into consideration rate of depreciation allowable, it cannot exit to the EPCG scheme.
- 36.5 A unit is also allowed clearance or de-bonding of capital goods in the event of Exit to Advance Authorization scheme as a one time option provided the unit has fulfilled NFE criteria. Thus, if a unit has not achieved positive NFE taking into consideration rate of depreciation allowable on capital goods, it cannot exit to the Advance Authorization scheme.

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

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

(i) **For computer and computer peripherals:**

For every quarter in the first year	@ 10%
For every quarter in the second year	@ 8%
For every quarter in the third year	@ 5%
For every quarter in the fourth and fifth year	@ 1%.

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

For every quarter in the first year	@ 4%
For every quarter in the second year	@ 3%
For every quarter in the third year	@ 3%
For every quarter in the fourth and fifth year	@ 2.5 %
and thereafter for every quarter	@ 2%

36.7 For the purpose of computing rate of depreciation for any part of a quarter, a full such quarter is taken into account. There is no upper limit for such depreciation and depreciation upto 100% could be allowed.

36.8 Raw materials, semi-finished and finished goods including empty cones, containers suitable of repeated use lying in stock at the time of de-bonding can also be cleared on payment of duty but for exemption

36.9 Used packing materials such as cardboard boxes, polyethylene bags of a kind unsuitable for repeated use can be cleared without payment of duty.

36.10 As per para 6.18(e) of FTP and 6K of Appendices and ANFs, an EOU can opt out of the scheme after taking approval of the Development Commissioner. Such exit is permitted subject to payment of the duties and the industrial policy in force at the time of exit. The Development Commissioner first gives permission for „in-principle” de-bonding, then unit is required to pay all pending Customs/ Central Excise duties to obtain no-dues certificate from Central Excise & Customs authorities. Thereafter the Development Commissioner permits final de-bonding.

36.11 If the unit has not achieved the export obligation, it is also liable to pay penalty under Foreign Trade (Development and Regulation) Act at the time of exit.

36.12 After obtaining in principle de-bonding order, the unit is required to assess the duty liability by itself and submit such details to jurisdictional Customs/ Central Excise authority. The Assistant/ Deputy Commissioner of Central Excise and Customs is required to confirm the duty liability within 15 days of the receipt of the details of assessment from the unit and issue ‘No-dues Certificate’ to the unit. In case of any discrepancy, it has to be conveyed to the unit within 15 days.

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## International Passenger Facilitation

### 1. Introduction:

- 1.1 Customs is mandated to ensure passengers entering or leaving India carry on person/handbag or accompanied baggage, goods in accordance with the permissible quantity/value and legal provisions and do not attempt to smuggle prohibited or banned or sensitive goods. Also, all passengers including businessmen, trade delegations, professionals expect speedy Customs clearance. Thus, Customs officials at the airports have a challenging role of ensuring quick clearance and passenger facilitation, as well as enforcing the Customs Act, 1962 and various allied laws that protect the interests of society/economy/revenue.
- 1.2 Over the time Indian Customs have aligned its procedures in tune with the best international practices in terms of duty free baggage allowances and other facilities and procedures. Steps have also been taken to educate general public and incoming and outgoing passengers of the extant Customs rules and regulations. In this direction Customs prominently display the relevant provisions/baggage allowances and list of prohibited/restricted items (endangered species or articles made from flora and fauna such as ivory, musk, reptile skins, furs, shahtoosh, antiques, satellite phones, etc.) at all international airports, with the “dos and don’ts” for benefit of passengers. A booklet on “Customs Guide to Travelers” is also brought out periodically and circulated at airports as well as to our Embassies/Consulates abroad. Passenger related Customs information is also made available on the CBIC’s web-site [www.cbic.gov.in](http://www.cbic.gov.in).

### 2. Clearance of arriving passengers:

- 2.1 Airlines generally provide the Customs Baggage Declaration Form to the passengers in the aircraft itself. All passengers who come to India and have anything to declare or are carrying dutiable or prohibited goods must fill up the same clearly mentioning the quantity and value of goods brought.  
  
On landing, the passenger takes delivery of baggage, if any, from the conveyer belt and approaches the Customs where the passenger exercises the option of seeking clearance through the Green Channel or through the Red Channel.
- 2.2 The Green Channel or Walk Through Channel applies to passengers who have nothing to declare and are carrying dutiable goods within the prescribed free allowance. On the basis of their Oral Declaration/Declaration on Customs Baggage Declaration Form such passengers cross the Green Channel without any question being asked by Customs and exit the airport after handing over the Customs Baggage Declaration Form to the Customs Officer/Sepoy at the exit.
- 2.3 The Red Channel is meant for passengers who have something to declare or are carrying goods in excess of the duty free allowance. The passenger hands over Customs Baggage Declaration Form to the officer on duty at this Channel. In case the Form is incomplete the Customs Officer

helps record the Oral Declaration (O.D) of the passenger and thereafter countersigns/stamps the same, after taking the passenger's signature. In order to identify the frequent "short visit" passengers the Customs Officer also scrutinizes the passport/other travel documents of the passengers. The declaration of goods and their values is generally accepted and duty assessed. On payment of applicable duty the passenger is allowed clearance.

- 2.4 Any passenger found walking through the Green Channel with dutiable/prohibited goods or found mis declaring the quantity, description or value of dutiable goods at the "RedChannel" (the baggage is examined where misdeclaration is suspected), is liable to strict penal action including arrest/prosecution apart from seizure/confiscation of the offending goods depending upon gravity of violation detected. In case the passenger brings any goods in baggage that are essentially for commerce and not for personal use, or imports goods in commercial quantity, these goods become liable to confiscation and the passenger liable to strict penal action. Only bonafide baggage items for personal use or use by members of his family are allowed to be imported as baggage. In case of frequent "short visit" passengers and repeat offenders, the Customs officers would impose higher levels of fines and penalties and for deterrent effect even consider prosecution in a Court of law.

[Refer Circular No. 08/2016-Customs dated 08.03.2018]

### 3. Duty free allowances and entitlements for Indian Residents and Foreigners Residing in India:

- 3.1 The duty free entitlement of passengers "Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant" includes articles in his bona fide baggage i.e. used personal effects (excluding required for satisfying the daily necessities of life, and travel souvenirs.

In addition, articles other than those mentioned in Annexure I of the Baggage Rules, 2016 valued at up to Rs. 50,000/- are allowed free of duty if carried as accompanied baggage of such passenger. However, a tourist of foreign origin is allowed articles other than those mentioned in Annexure I valued at up to Rs. 15,000/- free of duty if carried as accompanied baggage.

Passengers i.e. an Indian resident or a foreigner residing in India or a tourist, not being an infant arriving from Nepal, Bhutan and Myanmar, by routes other than by land, the free allowance for articles other than those mentioned in Annexure I is Rs. 15,000/- and for such passengers arriving by land, only used personal effects shall be allowed duty free.

An infant passenger (child not more than two years of age) shall be allowed only personal effects duty free.

The free allowance of a passenger shall not be allowed to pool with the free allowance of any other passenger.

- 3.2 In addition to the above, such passengers are allowed the following quantities of tobacco products and alcohols within the aforesaid duty free allowances:
- (i) 100 cigarettes sticks or 25 cigars or 125 gms tobacco.
  - (ii) Alcoholic liquor and wines upto 2 litre.

- 3.3 The items that are not allowed free of duty include firearms, cartridges of firearms, cigarettes/ cigars/ tobacco or alcoholic liquor and wines that is in excess of what is allowed within the free allowance, gold or silver, in any form (other than ornaments) unless specified otherwise.
- 3.4 The bonafide baggage items that are in excess of the duty free allowance can be cleared on payment of a uniform rate of Customs duty that is currently @35%+ Cess, as applicable, except for items like liquor, cigarette etc. that are charged to a higher rate of duty as applicable to imports other than as baggage.
- 3.5 Duty free baggage allowances and entitlements for Indian Residents and Foreigners Residing in India has been disallowed in respect of Flat Panel (LCD/LED/Plasma) Television.

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

**4. Import of jewellery/gold/silver:**

An Indian passenger who has been residing abroad for over 1 year is allowed to bring jewellery, free of duty, in bonafide baggage upto a weight of twenty grams with a value cap of Rs.50,000/- in the case of a male passenger or forty grams with a value cap of Rs.1 lakh in the case of a lady passenger.

**5. Allowances and entitlements on Transfer of Residence (TR):**

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) subject to the conditions, if any, as mentioned in column (3) and the relaxation to the extent mentioned in column 4 of the below given Appendix.

**APPENDIX**

<b>Duration of stay abroad</b>	<b>Articles allowed free of duty</b>	<b>Conditions</b>	<b>Relaxation</b>
(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	-
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 / Assistant Commissioner of Customs if the early return is on account of :-</p> <ul style="list-style-type: none"> <li>➤ terminal leave or vacation being availed of by the passenger; or</li> <li>➤ any other special circumstances for reasons to be recorded in writing.</li> </ul> <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>

I. ANNEXURE-I to Baggage Rules 2016 (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.

**II. ANNEXURE II to Baggage Rules 2016 (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.

**III. ANNEXURE III to Baggage Rules 2016(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.

**6. Import of baggage of deceased person:**

- 6.1 In terms of Notification No.21/2002-Cus, dated 1-3-2002 used, bonafide personal and household articles of a deceased person are allowed free of duty subject to the condition that a certificate from the concerned Indian Embassy / High Commission is produced regarding the ownership of the goods by the deceased person.



**7. Import of unaccompanied baggage:**

- 7.1 The unaccompanied baggage is required to have been in the possession abroad of the passenger and dispatched within 1 month of his/her arrival in India or within such further period as the Deputy/Assistant Commissioner of Customs may allow. The unaccompanied baggage may land in India upto 2 months before arrival of the passenger or within such period, not exceeding 1 year, as may be permitted by the Deputy/Assistant Commissioner of Customs by recording the reasons if he is satisfied that the passenger was prevented from arriving in India within the period of 2 months due to circumstances beyond his control which necessitated a change in the travel schedule of the passenger.
- 7.2 No free allowance is admissible in respect of unaccompanied baggage, which is charged the normal baggage rate of duty (35% ad valorem + GST+ Cess, at present).

**8. Import of foreign exchange/currency:**

- 8.1 Any person can bring into India foreign exchange without any limit. However, declaration of foreign exchange/currency is required to be made in the prescribed Currency Declaration Form in the following cases:
- (a) Where the value of foreign currency notes exceeds US\$ 5000/- or equivalent; and
  - (b) Where the aggregate value of foreign exchange (in the form of currency notes, bank notes, traveler cheques etc.) exceeds US\$10,000/- or its equivalent.

**9. Import of Indian currency:**

- 9.1 The import of Indian currency is prohibited, however, passengers i.e. any person resident in India who are returning from a visit abroad (other than from Nepal and Bhutan) may bring Indian currency not exceeding Rs.25000/-.
- 9.2 A person resident outside India, not being a citizen of Pakistan and Bangladesh and also not a traveller coming from and going to Pakistan and Bangladesh, and visiting India, may bring notes of Government of India and Reserve Bank of India notes up to an 25,000 (Rupees twenty five thousand only) while entering only through an airport

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

**10. Import of fire arms as baggage:**

- 10.1 Import of firearms is strictly prohibited. Import of cartridges in excess of 50 is also prohibited. However, in the case of persons transferring their residence (as per conditions specified in the rules) to India for a minimum period of 1 year, one firearm of permissible bore can be allowed to be imported subject to the conditions that:
- (i) The firearm was in possession and use abroad by the passenger for a minimum period of 1 year and also subject to the condition that such firearm, after clearance, shall not be sold, loaned, transferred or otherwise parted with before 10 years of import of such firearm;
  - (ii) The firearm is subjected to applicable duty; and

(iii) The passenger has a valid arms licence from the local authorities in India.

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

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

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

#### **11. Import of pet animals as baggage:**

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

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

[Refer Circular No.15/2013-Cus, dated 8-4-2013, Circular No. 25/2013-Cus dated 01.07.2013]

#### **12. Detained baggage:**

12.1 There may be occasions when the passenger is not in a position to clear his baggage for any reason e.g. inability to pay the Customs duty demanded. In such a situation, the passenger may request the Customs to detain his baggage either for re-export at the time of his departure from India or for clearance subsequently on payment of duty. The detained baggage would be examined and its full details inventoried before being taken in the custody of Customs.

#### **13. Mishandled baggage:**

13.1 There are numerous occasions when passenger baggage gets lost or mishandled by the Airlines. In all such cases the passenger is required to obtain a certificate to that effect from the airlines and get it countersigned by Customs indicating specifically the unutilized portion of the free allowance. This would enable the passenger to avail the unutilised portion of the duty free allowance when his baggage is delivered by the airlines.

#### **14. Clearance of departing passengers:**

14.1 On the departure side, the principal task of Customs is enforcement related. These include checks to prevent narcotic drug trafficking, smuggling of other sensitive items such as Indian including foreign currency, wild life products, antiques etc. Customs also plays an important role in facilitating the re-import of the high valued articles including jewelry, being carried out of the country by issuing to the departing passengers a re-export certificate.

**15. Export of gold jewellery as baggage:**

15.1 There is no value limit on the export of gold jewellery by a passenger through the medium of baggage so long as it constitutes the bonafide baggage of the passenger

**16. Export of currency:**

16.1 Export of Indian currency is strictly prohibited. However, Indian residents going abroad are allowed to carry Indian currency not exceeding Rs.25,000/-

16.2 Indians going abroad are permitted to take with them foreign currency without any limit so long as the same has been purchased from an authorized foreign exchange dealer

16.3 Tourists while leaving India are allowed to take with them foreign currency not exceeding the amount brought in by them at the time of their arrival in India.

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

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

**17. Customs Baggage Declaration Form:**

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

[Refer Notifications No. 90/2013-Cus(N.T.), dated 29-8-2013, No.133/2013-Cus(N.T.), dated 30-12-2013, No. 30/2016- Customs (N.T.), dated the 01.03.2016, No. 31/2016-Customs dated 01-03-2016, No. 43/2016- Customs dated 31.03.2016 and Circular No. 5/2014- Cus., dated 27-2-2014 ]

**18. Application of Baggage 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.

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

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

- (i) The Chief Commissioners of Customs with international airports in their charge shall ensure that every Customs officer newly posted at the international airports mandatorily

undergoes training in the relevant rules and regulations as well as in the manner of dealing with international passengers. The emphasis should be on sensitizing the Customs officers to deal with all arriving passengers and especially international passengers in a polite, professional and pro-active facilitative manner. These training programmes should be repeated on 6-monthly intervals. Since multiple agencies function at international airports, it would also be useful to coordinate interactive sessions involving officials of other agencies so that collectively a good impression is made on international passengers. The Chief Commissioner of Customs should coordinate these training programmes with NACEN, but should also take initiative to organize in-house programmes.

- (ii) Customs should set up a “Help Desk” in a prominent place immediately after immigration in the arrival hall and similarly in the departure hall of international airports. There should also be a signboard to guide the international passengers to the “Help Desk”. Further, the Customs officers(s) manning the “Help Desk” should be properly selected and must have in his/her possession required forms and information to guide international passengers.

[Refer Instruction dated 19-9-2014]

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## Setting up of ICDs/CFSs

### 1. Introduction:

- 1.1 With the liberalization of the economy, widespread industrialization, enhanced economic growth, development of multi-modal transport system, a need was felt to develop Inland Container Depots (ICDs) or Container Freight Stations (CFSs) that function like a dry port and offer common user Customs clearance facilities at the doorstep of importers and exporters.
- 1.2 An ICD/CFS may be defined as: *“A common user facility with public authority status equipped with fixed installations and offering services for handling and temporary storage of import/export laden and empty containers carried under Customs transit by any applicable mode of transport placed under Customs control. All the activities related to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, take place from such stations.”*
- 1.3 An Inter-Ministerial Committee (IMC) under the chairmanship of the Additional Secretary (Infrastructure), Ministry of Commerce comprising representatives of various concerned Ministries/Departments including Department of Revenue considers the proposals for setting up of new ICDs/CFSs at different centres in the country and monitors their progress. The work relating to processing of applications for setting up ICDs/ CFS will now be under the Department of Revenue after the Inter-Ministerial Committee was denotified by the Government in April, 2018.

### 2. Distinction between ICD & CFS:

- 2.1 An ICD is a “self contained Customs station” like a port or air cargo unit where filing of Customs manifests, Bills of Entrys, Shipping Bills and other declarations, assessment and all the activities related to clearance of goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export, transshipment, etc., take place. An ICD would have its own automated system with a separate station code [such as INTKD 6, INSNF6 etc.] being allotted by Directorate General of Systems and with in-built capacity to enter examination reports and enable assessment of documents, processing of manifest, amendments, etc.
- 2.2 A CFS is only a Customs area located in the jurisdiction of a Commissioner of Customs exercising control over a specified Customs port, airport, LCS/ICD. A CFS cannot have an independent existence and has to be linked to a Customs station within the jurisdiction of the Commissioner of Customs. It is an extension of a Customs station set up with the main objective of decongesting the ports. In a CFS only a part of the Customs processes mainly the examination of goods is normally carried out by Customs besides stuffing/destuffing of containers and aggregation/segregation of cargo. Thus, Custom’s functions relating to processing of manifest, import/export declarations and assessment of Bill of Entry/Shipping Bill are performed in the Custom House/Custom Office that exercises jurisdiction over the parent port/airport/ICD/LCS to which

the said CFS is attached. In the case of Customs Stations having facility of automated processing of documents, terminals are provided at such CFSs for recording the result of examination, etc. In some CFSs, extension Service Centers are available for filing documents, amendments etc. However, the assessment of the documents etc. is carried out centrally.

- 2.3 An ICD may also have a number of CFSs attached to it within the jurisdiction of the Commissioner of Customs just as in the case of a port.

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

- 2.4 A standalone Customs clearance facility in an inland Commissionerate cannot be approved by the Commissioner as a CFS, if there is no ICD/port within its jurisdiction to which the said CFS can be attached. Such a facility can, however, be notified as an ICD i.e., as an independent Customs station with provision for filing and assessment of documents and examination of goods. A Customs clearance facility could be established as a CFS at a port city for examination of imported/export goods, since the CFS would fall under the jurisdiction of Commissioner of Customs, having jurisdiction over the Customs port with which the CFS would be attached. Further, in a port city such as Chennai or Mumbai, it may be possible to develop an ICD within the territorial jurisdiction of the concerned Customs Commissionerate in addition to existing CFSs. Such an ICD should be capable of providing full-fledged Customs services, independent EDI system, and all procedures meant for transshipment of cargo have to be followed for movement of goods from the port of import to the ICD. Further, such an ICD would function as an independent Customs Station in all respects and would not be attached to any other port or airport. Thus, in respect of proposals for setting up of ICD/CFS from prospective operators it has to be examined whether the proposed facility is required to be approved as an ICD or CFS.
- 2.5 Movement of goods from a port/airport/LCS to an ICD is in the nature of movement from one Customs station to another, governed by Goods Imported (Condition of Transshipment) Regulations, 1995. On the other hand, movement of goods from a port/airport/LCS or an ICD to a CFS is akin to local movement from a Customs area of the Customs station to another Customs area of the same station, covered by local procedure evolved by the Commissioner of Customs and covered by bonds, bank guarantee, etc. Further, the person undertaking the transshipment would be required to follow the prescribed procedure.
- 2.6 Goods intended for transshipment from the Customs station of first arrival shall be allowed to be unloaded/loaded in a Customs area, approved by the jurisdictional Commissioner of Customs, within the same Customs station. Movement of goods directly from a Customs station to a CFS of another Customs station shall not be permitted, since manifest is required to be filed only at a Customs station. In exceptional cases, such as strike or disruption resulting in congestion at some ports, the direct movement of goods to a CFS of another Customs station can be permitted only with approval of the Board, after waiver of Sub-Manifest Transshipment Procedure (SMTP).

[Refer Circulars No.79/2001-Cus., dated 7-12-2001 and No.46/2005-Cus., dated 24-11-2005]

### **3. Posting of Customs officers on cost recovery basis:**

- 3.1 For the purpose of Customs clearance at the ICDs/CFSs, Customs staff is provided on cost

recovery basis by issue of a sanction order by the Administrative Wing of the Board. The custodians are required to pay @ 185% of total salary of officers actually posted at the ICD/CFS.

- 3.2 Cost recovery posts of ICDs/CFSs that have been in operation for two consecutive years with following performance benchmark for past two years will be considered for regularization. However, the waiver of cost recovery charges would be prospective with no claim for past period.

(i) No. of containers handled by ICD	7200 TEUs per annum
(ii) No. of containers handled by CFS	1200 TEUs per annum
(iii) No. of B/E processed by ICDs / CFSs	7200 per annum for ICDs and 1200 for CFSs.
(iv) Bench mark at (i) to (iii) shall be reduced by 50% for these ICDs / CFSs exclusively dealing with exports as per staffing norms.	

[Refer Instruction F.No.434/17/2004-Cus-IV, dated 12-9-2005]

- 3.3 Normally, at an ICD/CFS having both import and export functions the staff allocation is 13 (1 Assistant/Deputy Commissioner, 2 Appraisers, 2 Inspectors, 2 UDCs, 2 LDCs, 4 Sepoys) and at ICD/CFS having only export it is 7 (1 Assistant/Deputy Commissioner, 1 Appraiser, 1 Inspector, 1 UDC, 1 LDC, 2 Sepoys).
- 3.4 In the initial stages of operations of an ICD/CFS, due to less volume of trade, full strength of the officers may not be required. In such a situation, if the custodian requests, the Commissioner of Customs may, after due consideration post less than the sanctioned strength of officers. Gradually, when the business picks up at the ICD, the full contingent of staff may be posted. The Commissioner of Customs would accept the deposit of advance cost recovery charges for 3 months for the number of staff actually posted in an ICD/CFS.

[Refer Circulars No. 52/97-Cus dated 17-10-1997, No.80/98-Cus dated 26-10-1998, No.27/2004-Cus., dated 6-4-2004, No.13/2009-Cus., dated 23-3-2009, No.18/2009-Cus., dated 8-6-2009, and No.21/2009-Cus., dated 4-8-2009]

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## Customs Cargo Service Providers

### 1. Introduction:

- 1.1 The Public Accounts Committee (PAC) in its 27th Report (2005-06) recommended formulating appropriate legal provisions and guidelines to control the activities of custodians. In pursuance of these recommendations, the Government inserted a new Section 141(2) to the Customs Act, 1962 and thereafter under its authority framed the Handling of Cargo in Customs Areas Regulations, 2009 (HCCR, 2009).
- 1.2 The HCCR, 2009 provide for the manner in which the imported goods/ export goods shall be received, stored, delivered or otherwise handled in a Customs area. The regulations also prescribe the responsibilities of persons engaged in the aforesaid activities.

### 2. Salient features of the HCCR, 2009:

- 2.1 The HCCR, 2009 apply to all “Customs Cargo Service Providers” (CCSPs), who are persons operating in a Customs area and engaged in the handling of import/export goods. These include the custodians of imported/export goods and those handling such goods and all persons working on their behalf such as fork lift or material handling equipment operators, etc. Consolidators/ break bulk agents and other persons handling imported/export goods in any capacity in a Customs area are also covered.
- 2.2 The HCCR, 2009 indicate various responsibilities and conditions for different kinds of CCSPs. The conditions prescribed under its Regulation 5 apply to the CCSPs who desire to be approved as custodians of imported/export cargo and thus handle goods in Customs areas. These conditions shall not apply to persons who only provide certain services on their own or on behalf of the custodians.
- 2.3 Responsibilities prescribed in Regulation 6 of the HCCR, 2009 apply to both custodians and persons who provide various services, though certain responsibilities specifically apply to one or the other category. For example, the responsibility for safety and security, pilferage of goods under their custody, disposal of uncleared, unclaimed or abandoned goods within the prescribed time limit, payment of cost recovery charges of the Customs officers posted in the facility are applicable to an approved custodian who handled imported or export goods. On the other hand, responsibilities for publishing or display of the schedule of charges for the activities undertaken in respect of imported/ export goods shall apply to both categories of persons. These responsibilities are aimed at expeditious clearance of goods, reduction of dwell time, transaction cost and safeguarding revenue.
- 2.4 As specified in Regulation 3 of the HCCR, 2009, these regulations shall apply to handling of imported goods and export goods in Customs area specified under Section 8 of the Customs Act, 1962. This would cover all Customs facilities such as ports, airports, ICDs/CFs and LCSs. Also, imported goods would cover goods under transshipment and all goods held under the



custody of CCSP. However, these regulations do not apply to Customs bonded warehouse or to the warehoused goods covered by Chapter IX of the Customs Act, 1962.

- 2.5 Major ports notified under the Major Port Trusts Act, 1963 and airports notified under the Airports Authority of India Act, 1994 will continue to be authorized to function as custodians under their respective Acts and these regulations shall not impact their approval as a custodian. Thus, in terms of Section 45 of the Customs Act, 1962, the Port Trusts of the notified major ports and the Airports Authority of India shall not be required to make an application under Regulation 4 or 9 of the HCCR, 2009 for approval or renewal under these regulations. However, they would be required to discharge the responsibilities cast upon them as specified in its Regulation 6.
- 2.6 Regulation 5 of the HCCAR, 2009 provides the conditions to be fulfilled by an applicant who wishes to be appointed as a custodian of the imported/ export goods in a Customs area. This contains an exhaustive list of infrastructure and operational requirements for efficient handling of imported or export goods, though sufficient discretion is provided for the Commissioner of Customs to decide on the nature of infrastructure and equipments required. The requirement may vary between Customs areas at different places in the country. The Commissioner of Customs can also specify general standards or requirements such as height of boundary wall, quantum and specifications of material handling and other equipments etc., to ensure the facilities are adequate for effective and efficient handling of cargo.
- 2.7 Under Regulation 5(1) of the HCCAR, 2009, the infrastructure required to be provided by the custodian shall include the civil and electrical infrastructure including properly air-conditioned office space, cabins with proper furniture, power backup facilities, hardware, networking and secure connectivity to Customs data centres for Customs officers and service centres specified by Customs. Facilities required for secure exchange of electronic information between the custodian and Customs shall also be provided. In addition, the custodian would undertake site preparation including civil works, electrical works, electrical fittings, air-conditioning, etc. and provide DG Set for power back up and link to the Customs EDI server. The networking, communication equipments, UPS, computers/personal computers/thin clients, servers, printers and other computer peripherals as may be specified by the Directorate General of Systems shall also be provided by the custodian.
- 2.8 Board has clarified that custodians already exempted from payment of cost recovery charges under Circular No.27/2004-Cus., dated 6-4-2004 and Para 5.3 of Circular No.13/2009-Cus., dated 23-3-2009 would continue to avail the exemption even after issue of Circular No.4/2011-Cus., dated 10-1-2011.
- 2.9 Commissioner of Customs, subject to his satisfaction, should not insist for residential accommodation for staff from CCSP in cases where concerned facility of CCSP is located in the city area. The underlying idea is to provide for residential facilities for staff deployment at Customs facilities located in far flung and remote areas where it is difficult to have appropriate residential facility and which can not be easily commuted by the officers. Therefore, requirement of residential accommodation should not be insisted upon in cases where the location is commutable from the base town/city. Commissioner of Customs concerned should exercise due diligence before enforcing provisions of 5(1)(i)(b) of Notification No.96/2010-Cus(NT),

dated 12-11-2010. The type of residential accommodation to be provided to Customs staff would be determined as per entitlement of the officer of Central Government.

[Refer Circular No.29/2011-Cus., dated 18-7-2011]

- 2.10 CCSPs are required to have weigh bridges installed at their facilities preferably near the entry/exit gate and all containers must be weighed.

[Refer Instruction F.No.450/81/2011-Cus.IV, dated 18-8-2011]

- 2.11 In a large number of cases, containers detained by Directorate of Revenue Intelligence (DRI), Special Intelligence & Investigation Branch (SIIB) or Preventive formations are not being released for considerable time and this has caused undue hardship to shipping companies by paying exorbitant demurrage charges. One reason for longer detention can be lack of adequate space for storing such goods in a Customs area. In this regard, Board desires that sufficient space for custody / storage of detained imported / export goods should be provided by Customs Cargo Service Provider (CCSP) as per regulations 5 (1) (o) of the HCCAR, 2009 so that detained goods may be stored after de-stuffing from the containers and empty containers be returned to the concerned Shipping Line. Further, in terms of regulation 6 (1) (I) of the HCCAR, 2009 CCSP shall subject to any other law for the time being in force not charge any rent or demurrage on detained goods. In case containers are detained / seized under the Customs Act, 1962, the same may be considered for provisional release subject to furnishing of Bond and Bank Guarantee under the Customs Act, 1962.

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

- 2.12 Regulation 5(2) of the HCCAR, 2009 requires the custodian to pay cost recovery charges in respect of the Customs officers deployed at the ICD/CFS/port/airport etc., unless exempted by a specific order or a circular or instructions issued by the Ministry of Finance. Presently, payment of cost recovery charges in respect of ports and airports has been exempted for three categories of custodians, as follows:

- (i) Custodians notified under Section 45 of the Customs Act, 1962 prior to 26-6-2002 and there is no change in custodianship or area after 26-6-2002;
- (ii) Custodians notified prior to 26-6-2002 but part or whole of the same premises is transferred (on lease or otherwise) to new custodian on or after 26-6-2002 (e.g. AAI, custodian of Mumbai Air Cargo Complex prior to 26-6-2002 later transferred part custodianship to Air India); and
- (iii) Custodians notified prior to 26-6-2002 but premises extended after 26-6-2002 under the same custodianship.

[Refer Circular No.27/2004-Cus., dated 6-4-2004]

- 2.13 The Greenfield Airports Policy framed by the Government and notified by the Ministry of Civil Aviation specifies that the applicant for setting up of a greenfield airport will obtain clearance from the Department of Revenue for provision of Custom services and the cost of providing these services will be borne by the Airport Company.

2.14 Regulation 6(1)(m) of the HCCaR, 2009 deals with disposal of imported or export goods lying unclaimed, uncleared or abandoned in ICDs/CFSs/Customs areas by the CCSP who is holding custody of the such goods. Proper and timely disposal of unclaimed, uncleared or abandoned goods is to be ensured.

[Refer Circular No.50/2005-Cus., dated 1-12-2005]

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

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

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

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

2.17 The power to exempt the conditions required to be fulfilled by CCSPs is provided under Regulation 7 of the HCCAR, 2009 to the Commissioner of Customs. For example, the requirement of sufficient facilities for installation of scanning equipment may not be an immediate requirement in respect of ICD/CFS who have established their operations as new custodian. However, when this requirement becomes a necessity, then these conditions may have to be fulfilled by such custodian at that point of time. Hence, the Commissioner of Customs needs to examine individual cases where exemptions are sought to be given to the custodian and record the reasons in writing before providing exemptions. However, no exemption shall be granted in respect of any of the conditions in Regulation 5 where the overall safety and security of the premises are likely to be affected thereby.

2.18 In order to overcome situations where clearances of imported/ export goods are getting affected by congestion at a particular Customs facility (e.g. CFS), it has been provided that the Commissioner of Customs may consider regulating the entry of goods in that particular CFS for a temporary period, say, 15 days, in terms of Regulation 7(2) of the HCCAR, 2009. In such cases, the Commissioner of Customs may not allow any import/ export cargo to be received and handled in the facility or may allow such reduced quantity as considered sufficient for being handled efficiently for such temporary period till the congestion is cleared and the delay in clearance of goods is sorted out.

2.19 In terms of Regulation 9 of the HCCAR, 2009, at the time of submission of applications for acquiring custody and handling of imported/export goods, the applicant shall provide complete

details of the facility such as extent of the area, equipment, infrastructure etc. for receiving, unloading/loading, stacking, storage, delivery of imported/ export goods including the map. Further, the projected capacity of the cargo or container proposed to be handled at the premises, would form the basis for determining the adequacy of the infrastructural facilities and bond or bank guarantee, wherever applicable. For example, in respect of containers, the volume in terms of Twenty feet Equivalent Units (TEUs) may be ascertained. As regards X-Ray scanning equipment, the custodians are expected to provide for suitable land and other site requirements, but the actual scanning equipments would be installed by the Customs department subject to conditions as may be prescribed.

- 2.20 Only such CCSPs who wish to be appointed as custodian of imported/ export goods need to take approval as specified in Regulation 10 of the HCCAR, 2009. CCSPs who either operate on behalf of the custodian or with his permission, do not require any approval. However, custodian will be responsible for fulfilment of the conditions of these regulations by such CCSPs.
- 2.21 The procedure for approval of appointment, renewal, suspension or revocation of CCSP as per Regulations 10 to 13 of the HCCAR, 2009 is based upon transparency and objectivity. Cases involving outright transfer of custodianship, leasing of premises without informing Customs, subletting, sub-contracting, outsourcing, gift or lease of any of the services of CFS/ICD have to be dealt by the jurisdictional Commissioner of Customs. In case of violations of the conditions or obligations prescribed under the regulations, necessary action may be taken against the erring CCSP including imposition of penalty. Further, action would need be initiated against the CCSP, wherever lack of infrastructure facilities is noticed leading to deterioration in services or damage of imported or export goods, loss of value and loss of revenue etc. In case of CCSP authorized under the Authorised Economic Operator (AEO) Programme, the approval granted may be extended for a period of ten years at a time.

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

- 2.22 All the CCSPs are required to publish a schedule of charges associated with various services in relation to imported or export goods in the Customs area and its display at prominent places including webpage or website of the CCSP. It has also been clarified that no exemption is available to existing custodians / CCSPs in so far as the provisions of facilities and fulfilment of prescribed conditions in Regulation 5 & 6, as applicable, within the specified limits are concerned.
- 2.23 Custodians under the Major Port Trusts Act, 1963, and Airports Authority of India Act, 1994 shall not be required to make an application under Regulation 4 or 9 for approval or renewal under these regulations, but they are required to necessarily discharge the responsibilities cast upon them in terms of Regulation 5 and 6.
- 2.24 The CCSP will also undertake to indemnify the Commissioner of Customs from any liability arising on account of damages caused or loss suffered on imported or export goods, due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, storage, delivery, dispatch or otherwise handling by furnishing an indemnity bond.
- 2.25 No relaxation or exemption from requirements on safety and security of premises shall be allowed by the Commissioner of Customs to the custodians or CCSPs in terms of provisions of

Regulation 7 of HCCAR, 2009. also keeping in view the paramount importance of overall safety and security of imported / export goods, detailed guidelines are prescribed to ensure that all concerned persons ensure that suitable arrangements are put in place for safety and security of premises relating to imported or export goods.

2.26 The HCCAR, 2009 provide for levy of penalty in case the CCSP contravenes any of the provisions of the regulations or fails to comply with the regulations. However, these provisions do not impact the past proceedings against the custodian, if any, where necessary action has been initiated against erring custodians.

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

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

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

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

2.30 Ministry of Agriculture has raised the issue of temporary ban on Import of Rice and Peanuts from India due to detection of quarantine pest in an import consignment and highlighted that CFSs conducting phytosanitary measures have no designated area for fumigation and separate storage for keeping fumigated/ treated cargo which leads to cross contamination from untreated goods/commodities. Ministry of Agriculture has desired that facilities provided

by CFSs should be improved to ensure that treated cargo is adequately sanitized in a separate storage enclosure. Board has therefore decided that all CCSP/Custodians shall provide separate and dedicated storage space for fumigation and post fumigated storage sites to enable Plant Quarantine Authorities to carry out necessary checks for both imported / export goods under the Handling of Cargo in Customs Area Regulations, 2009.

- 2.31 In order to obviate the situation of compromising cargo integrity on account of sub-contracting operations relating to handling of import / export cargo, under no circumstances, CCSPs shall lease, gift, sell or sublet or in any other manner transfer any of the premises in a Customs area; or sub contract or outsource functions permitted or required to be carried out by him in terms of these regulations without written approval of the jurisdictional Commissioner of Customs. Jurisdictional Commissioners of Customs are required to review the conditions and obligations to be fulfilled by CCSP under HCCAR, 2009 and promptly initiate remedial action in case non-compliance is noticed. Cases of violation of regulation 6(2) shall be dealt with sternly according to law.
- 2.33 CBEC has prescribed comprehensive guidelines on safety and security of premises where imported or export goods are loaded, unloaded, handled or stored. Pursuant to the decision of the High Court in the Writ Petition No. 3651/2011, a joint Technical Committee comprising of Members from MoEF, Ministry of Shipping, CBEC, Port Trust, etc., was constituted to give recommendations on the distance(s) to be maintained between the hazardous cargo and the general cargo in the customs area on one hand and between the hazardous cargo and the administrative building on the other. Based on the recommendations, Board has accordingly prescribed the distance to be maintained between hazardous cargo including explosives and general cargo or administrative building in a Customs area.

[Refer Circulars No. 52/97-Cus., dated 17-10-1997, No.80/98-Cus., dated 26-10-1998, No.27/2004-Cus., dated 6-4-2004, No.13/2009-Cus., dated 23-3-2009, No.18/2009-Cus., dated 8-6-2009, No.21/2009-Cus., dated 4-8-2009, No.4/2011-Cus., dated 10-1-2011, No. 16/2013- Cus IV, dated 10-4-2013, No.32/2013-Cus., dated 16-8-2013 and No.45/2013-Cus., dated 31-12-2013 and Instruction F.No.450/19/2005-CusIV., dated 23-7-2013, Circular 42/2016-Customs dated 31.08.2016, Circular 40/2016-Customs dated 26.08.2016]

- 2.34 As part of Government's initiatives for improving "Ease of Doing Business", it has emerged that introduction of electronic messaging for issue of Delivery Order instead of a paper based Delivery Order will result in considerable simplification in the Customs Clearance process, and can demonstrably reduce transaction costs and time taken in the clearance of Cargo. To implement the electronic Delivery Order System, as a prerequisite, the Custodian should have the technical capability to implement an electronic messaging system for the receipt of electronic Delivery Order. Apart from the above prerequisites, it will facilitate trade if Shipping Lines, Airlines and Consol Agents can adopt a system of electronic invoicing of all charges along with the facility to conclude the payment process using e-Payment facilities. In respect of some categories of imports, namely - unaccompanied baggage, Direct Delivery, and one-time individual importers, the Shipping Line/ Airline may retain manual (i.e. paper copy) of the Delivery Order, if desired. Further, if for technical reasons, in case of any failure of the system of electronic transfer of Delivery Order, the concerned Shipping Line/ Airline or Consol

Agent may issue manual Delivery Order, as a purely temporary measure, in order to avoid any difficulty or delay in clearance of imported goods.

[Refer Circular No.24/2015-Customs dated 14.10.2015]

- 2.35 Board has decided to extend 24x7 customs clearance to all bills of entry and not just facilitated bills of entry. It has amended the Customs (Fees for Rendering Services by the Customs Officers) Regulations, 1998 to provide that at 24x7 customs ports, CFSs attached to it and airports, no fee i.e. merchant overtime fee (MOT) shall be collected in lieu of the services rendered by the customs officers. Thus, as on date no MOT charges are required to be collected in respect of the services provided by the customs officers at 24x7 customs ports and airports.

[Refer Circular No.04/2017-Customs dated 16.02.2017]

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

- 3.1 The facility-wise staffing norms are as follows:

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

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

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

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

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

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

Class of Airport	Staffing Norms				
	Dy./Asst. Commissioner	Superintendent	Inspector	Sepoy	Total
Class A	4	38	78	24	144
Class B	4	29	48	16	97
Class C	-	8	16	4	28

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

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

- 4.1 Cost recovery charges may be waived if the facility fulfils the laid down norms for a consecutive period of two financial years. Specific orders in individual cases for grant of exemption from the payment of cost recovery charges are issued by Ad.IV Section of the Board. The cost recovery posts are also considered for regularization. In each and every case the waiver of cost recovery charges would be prospective with no claim for past period.
- 4.2 **ICD/CFS:** The eligibility performance norms for the grant of exemption from cost recovery charges in respect of Customs staff posted at ICDs/CFSs are as follows:

(i) No. of containers handled by ICD	7200 TEUs per annum
(ii) No. of containers handled by CFS	1200 TEUs per annum
(iii) No. of B/E processed by ICDs / CFSs	7200 per annum for ICDs and 1200 for CFSs
<b>Note:</b> Benchmark at (i) to (iii) shall be reduced by 50% for these ICDs / CFSs exclusively dealing with exports as per staffing norms.	

[Refer Instruction F.No.434/17/2004-Cus-IV, dated 12-9-2005]

- 4.3 **Sea Ports, Air Cargo Complexes, Courier Terminals and Diamond Plaza:** The eligibility performance norms for the grant of exemption from cost recovery charges in respect of Customs staff posted at Sea Ports, Air Cargo Complexes, Courier Terminals and Diamond Plaza are as follows:

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

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

- 4.4 **Airports:** Minimum number of international flights is 3500 (both incoming and outgoing) and



the minimum number of passengers is 3 lakhs (both incoming and outgoing) in each of the preceding two financial years.

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

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

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

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

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## Customs Brokers

### 1. Introduction:

- 1.1 Section 146 of the Customs Act, 1962 states that no person shall carry on business as an agent relating to entry or departure of a conveyance or the import or export of goods at any Customs station unless such person holds a licence granted in this behalf in accordance with regulations made in this regard by the Board. Thus, any person desirous to carry on business as a Customs Broker relating to entry or departure of a conveyance or import or export of goods at any Customs station is required to obtain a licence, which is referred to as the Customs Broker licence and the person concerned as the Customs Broker.
- 1.2 Section 146 of the Customs Act, 1962 read with the Customs Brokers Licensing Regulations (CBLR), 2018 governs the legal and procedural aspects of the grant of Customs Broker licence as well as the obligations and responsibilities of a Customs Broker.

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

- 2.1 Regulation 4 of CBLR 2018 provides for invitation of applications by Directorate General of Performance Management (DGPM) in the month of April every year for conducting examination and subsequent grant of license to act as Customs Broker in prescribed Form A of CBLR by publication in two leading national daily newspaper in Hindi and English. The application in Form A along with a fee of five hundred rupees shall be made to Principal Commissioner of Customs or Commissioner of Customs, having jurisdiction over the area where the applicant wants to transact business.
- 2.2 The eligibility condition as per Regulation 5 of CBLR 2018 is that the applicant should be a citizen of India, a person of sound mind, is not adjudicated as insolvent holds an Aadhaar number, holds a valid PAN card and confirms financial viability by a certificate issued by a scheduled bank or such other proof acceptable to the Principal Commissioner of Customs or Commissioner of Customs evidencing possession of assets of value of not less than Rs.5 lakhs. Further an individual applicant or in case the applicant is a firm, its partner or in the case of a company, its director or an authorized employee who may handle the Customs work, shall be a graduate from a recognized university and possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, CA/CS/MBA/LLM/ACMA/FCMA or Diploma in Customs Clearance work from any Institutes or University recognised by the Government or having at least two years' experience in transacting Customs Broker work as G-Card holder. The applicant may also be a retired Group A officer from the Indian Revenue Service (Customs and Central Excise) having a minimum of 5 years experience in Group A service. Other conditions that need to be fulfilled by the applicant are:
  - (i) The applicant has neither been convicted by a competent Court for an offence nor any criminal proceeding is pending against him in any Court of law;

- (ii) The applicant has not been penalised for any offence under the Act, the Central Excise Act, 1944 (1 of 1944), the Finance Act, 1994(32 of 1994), the Central Goods and Services Act, 2017 (12 of 2017) and Integrated Goods and Services Tax Act, 2017 (13 of 2017).

### **3. Qualifying examinations:**

- 3.1 Any applicant who satisfies the criteria of Regulations 5 of CBLR 2013 and has applied for grant of licence under Regulation 4 shall be required to appear for the written as well as the oral examination conducted by the Directorate General of Performance Management.
- 3.2 The written examination shall be conducted on specified dates in month of January of each year for which intimation shall be sent individually to applicants in advance before the date of examination. The result of the said examination shall be declared by end of May each year. The successful applicant shall be called for an oral examination on specified dates in month of June of each year, the result of which shall be declared in the month of July of each year.
- 3.3. The applicant shall be required to clear both the written examination as well as corresponding oral examination. An attempt at the written exam shall be deemed to be an attempt and notwithstanding the disqualification/ cancellation of application, the fact of appearance of the applicant at the examination will count as an attempt. Further, an applicant shall be allowed a maximum of six attempts to clear the examination.
- 3.4 The examination may include questions on the following:
  - (a) preparation of various kinds of bills of entry, bills of export, shipping bills, and other clearance documents;
  - (b) arrival entry and clearance of vessels;
  - (c) tariff classification and rates of duty;
  - (d) determination of value of imported and export goods;
  - (e) conversion of currency;
  - (f) nature and description of documents to be filed with various kinds of bills of entry, shipping bills and other clearance documents;
  - (g) procedure for assessment and payment of duty including refund of duty paid;
  - (h) examination of goods at Customs Stations;
  - (i) prohibitions on import and export;
  - (j) bonding procedure and clearance from bond;
  - (k) re-importation and conditions for free re-entry;
  - (l) drawback and export promotion schemes including the Special Economic Zone scheme;
  - (m) offences under the Act;
  - (n) provisions of the allied Acts including the Central Goods and Services Act, 2017 (12

of 2017) and section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Indian Explosives Act, 1884 (4 of 1884), the Destructive Insects and Pests Act 1914 (2 of 1914), the Dangerous Drugs Act, 1930 (2 of 1930), the Drugs and Cosmetics Act, 1940 (23 of 1940), the Central Excise Act, 1944 (1 of 1944), the Copy Right Act, 1957 (14 of 1957), the Trade and Merchandise Marks Act 1958 (43 of 1958), the Arms Act 1959 (54 of 1959), the Patents Act, 1970 (39 of 1970), the Narcotics Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Environment (Protection) Act, 1986 (29 of 1986), the Foreign Trade (Development and Regulations) Act, 1992 (22 of 1992), the Foreign Exchange Management Act, 1999 (42 of 1999), the Design Act, 2000 (16 of 2000) and the Food Safety and Standard Act, 2006 (No. 34 of 2006) and other laws for the time being in force applicable to EXIM trade and the rules and regulations made under these Acts in so far as they are relevant to clearance of goods through Customs;

- (o) provisions of the Prevention of Corruption Act, 1988 (49 of 1998);
- (p) procedure for appeal and revision applications under the Act; and
- (q) online filing of electronic bills of entry and shipping bills vide the Indian Customs and Central Excise Electronic Commerce or Electronic data interchange gateway (ICEGATE) and Indian Customs Electronic data Interchange System (ICES).
- (r) knowledge of regulations, rules, notifications, etc. under the Customs Act and other Allied Acts.

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

- 4.1 The Commissioner of Customs shall, on payment of Rs.5,000/- within two months of the declaration of the results of the oral examination, grant license to an applicant within one month of the payment of the said fee. Such licensed Customs Broker may work in all Customs stations subject to intimation in Form C to the Principal Commissioner or Commissioner of Customs station where he intends to transact business.
- 4.2 Before granting the licence under the Regulation 7 of CBLR 2018, the Principal Commissioner or Commissioner of Customs shall require the applicant to enter into a bond prescribed in this regard for due observance of these regulations and shall also require to furnish a bank guarantee, or a postal security or National Saving Certificate or a fixed deposit receipt issued by a nationalised bank, in the name of the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, for an amount of Rs.5 lakhs for carrying out the business as a Customs Broker.

#### **5. Validity of licence:**

- 5.1 The licence granted under Regulation 7 shall be valid for a period of 10 years from the date of issue and shall be renewed from time to time if the performance of the licensee is found to be satisfactory with reference, *inter alia*, to the obligation specified for Customs in CBLR 2018 including absence of instance of any complaints of misconduct. The license can be renewed for a further period of 10 years by Principal Commissioner or Commissioner of Customs on payment of a fee of Rs.15,000/-. In case, the Customs Broker fails to submit the application for renewal before the expiry of the validity of the license, the Principal Commissioner or Commissioner of Customs may after satisfying himself to the genuineness of the reasons of

delay, renew the license upon payment of two thousand rupees as late fee by the Customs broker in addition to the fee for renewal within one month of the date of receipt of application. However, a licence granted to a Customs Broker, authorised under the Authorised Economic Operator Programme vide Circular No. 28/2012-Cus., dated 16-11-2012, shall not require renewal till such time the said authorisation is valid.

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

6.1 Regulation 11 of the CBLR 2018 casts certain obligations on a Customs Broker. Some of the important obligations enjoin the Customs Broker are to:

- (a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as Customs Broker and produce such authorisation whenever required by the Assistant/Deputy Commissioner of Customs;
- (b) transact business in the Customs Station either personally or through an employee duly approved by the Assistant/Deputy Commissioner of Customs;
- (c) not represent a client in any manner to which the Customs Broker, as a former employee of the Central Board of Indirect taxes and Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;
- (d) advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Assistant/Deputy Commissioner of Customs;
- (e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;
- (f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner of Customs, from a client who is entitled to such information;
- (g) promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of the clearance of cargo or baggage on behalf of the client;
- (h) not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by the proper officer;
- (i) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;
- (j) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by Principal Commissioner of Customs or Commissioner of Customs;

- (k) maintain up to date record such as bill of entry , shipping bill , transhipment application and all correspondences and other papers relating to his business as Customs Broker and also accounts including financial transactions in an orderly and itemized manner as specified by Deputy / Assistant Commissioner of Customs;
- (l) immediately report the loss of license to the Principal Commissioner of Customs or Commissioner of Customs;
- (m) discharge duty as a Customs Broker with utmost speed and efficiency and without any delay;
- (n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;
- (o) Inform any change of postal address, telephone number, e- mail etc. to the Deputy Commissioner / Assistant Commissioner of Customs within 1 month of such change.
- (p) maintain all records and accounts that are required to be maintained under CBLR, 2018 and preserve for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose; and
- (q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

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

- 7.1 The Principal Commissioner or Commissioner of Customs may revoke the licence of a Customs Broker and order for forfeiture of part or whole of security, or impose penalty not exceeding Rs.50,000 on him on any of the following grounds:
- (a) failure of to comply with any of the conditions of the bond executed by him;
  - (b) failure to comply with any of the provisions of the regulations;
  - (c) committing any misconduct, which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station;
  - (d) adjudicated as an insolvent;
  - (e) becomes of unsound mind; and
  - (f) has been convicted by a competent court for an offence involving moral turpitude or otherwise..
- 7.2 The Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the licence of a Customs Broker where an enquiry against such agent is pending or contemplated. In such case, the Principal Commissioner or Commissioner of Customs shall, within 15 days from the date of such suspension, give an opportunity of hearing to the Customs Broker concerned and then pass an order either revoking the suspension or continuing it, within 15 days from the date of hearing.

- 7.3 The Principal Commissioner or Commissioner of Customs shall issue a written notice to the Customs Broker within 90 days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the licence or impose penalty and require the said Customs Broker to submit within 30 days to a nominated Deputy / Assistant Commissioner of Customs a written statement of defense and also to specify in the said statement whether the Customs Broker desires a personal hearing by the said Deputy / Assistant Commissioner of Customs. Thereafter, the Commissioner of Customs may direct the Deputy / Assistant Commissioner of Customs to inquire into the grounds which are not admitted by the Customs Broker. At the conclusion of the inquiry, the Deputy / Assistant Commissioner of Customs shall submit the enquiry report within 90 days from the date of issue of the notice.
- 7.4 The Principal Commissioner or Commissioner of Customs shall furnish to the Customs Broker a copy of the enquiry report require him to submit any representation within 30 days. After considering the enquiry report and the representation, if any, the Principal Commissioner or Commissioner of Customs shall pass orders either revoking the suspension of the license or revoking the licence of the Customs Broker or imposing penalty within 90 days from the date of submission of the enquiry report. Order for revoking the license shall not be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner or Commissioner of Customs. An appeal against the order would lie to the Customs, Central Excise and Service Tax Appellate Tribunal.
- 7.5 Imposition of penalty or any action taken under the CBLR 2018 is without prejudice to the action that may be taken against the Customs Broker or his employee under the provisions of the Customs Act, 1962 or any other law for the time being in force.

[Refer Notification No. 41/2018-Cus(N.T.), dated 14-05-2018]

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## Offences and Penal Provisions

### 1. Introduction:

- 1.1 Persons involved in import or export activity in violation of prohibitions or restrictions in vogue or with the intent to evade duties or fraudulently claim export incentives are liable for strict penal action under the Customs Act, 1962. The offending goods can be confiscated and heavy fines and penalties imposed on the persons concerned. In fact, sensitive goods like narcotics, FICN, arms and ammunitions, etc. are absolutely confiscated. There are also provisions for arrests and prosecution to deter smuggling or commercial fraud, which seriously affects the economic security.
- 1.2 In the context of penal provisions under the Customs Act, 1962 the term “smuggling” has vast connotations and means “any act or omission which will render such goods liable for confiscation under Sections 111 or 113 of the said Act.
- 1.3 In general terms, the word “penalty” means punishment under the law, i.e., such punishment as is provided in penal laws. It also means the sum payable as a punishment for a default. The Customs Act, 1962 contains specific provisions for imposition of penalty in case of contraventions of the legal stipulations.

### 2. Seizure of offending goods:

- 2.1 In terms of Section 110 of the Customs Act, 1962 an officer of Customs can seize any goods, if he has reason to believe that the goods are liable to confiscation under the said Act. If it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. The proper officer may also seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under the said Act. The person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts there from in the presence of an officer of customs.
- 2.2 The person from whom the goods are seized is issued Show Cause Notice, usually within 6 months, otherwise the goods shall be returned to the person from whose possession they were seized. However, Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend the time period to further period, for issue of Show Cause Notice, for a period not exceeding 6 months and inform the person from whom such goods were seized before the expiry of the period so specified. Further, where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply. Further, Section 110 of Customs Act, also provides for the proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act. However, the person from whose custody any documents are seized shall be entitled to make copies hereof or take extracts there from in the presence of an officer of customs.



- 2.3 In case the seized goods are perishable or hazardous in nature or prone to depreciate in value over time or for reasons of constraints in space, or for any other relevant consideration, the Central Government can specify the goods or class of goods by notification such goods which shall as soon as may be after seizure be disposed by the proper officer before the conclusion of the proceedings in such manner as determined by the Central Government after following the procedure specified.

### **3. Confiscation of seized goods:**

- 3.1 The word “confiscation” implies appropriation consequential to seizure. The essence and the concept of confiscation is that after confiscation, the property of the confiscated goods vests with the Central government.
- 3.2 The adjudicating authority makes the decision regarding confiscation of goods. The specific/ different categories of violations under which the import or export goods are liable to confiscation, are enumerated in Section 111 and 113 of the Customs Act. In general, any goods imported which are unloaded or attempted to be unloaded at any place other than appointed under clause (a) of section 7 for the unloading of such goods; or any goods imported through any routes other than notified under clause (c) of Section 7 of the Customs Act, 1962; also the goods which are imported or attempted to be imported or brought into Indian customs waters, contrary to any prohibition imposed by or under Customs Act, 1962 or any other law for the time being in force; also any dutiable or prohibited goods attempted to be cleared by way of concealment, undeclared in arrival manifest or import manifest, mis-declaration in quantity, description or value etc. are liable to be confiscated. The imported or export goods are also liable to confiscation if there is an intention to evade Customs duty or to fraudulently avail the exemption / benefits available subject to any condition or under various export promotion schemes, such as Drawback, EOU etc. Also liable to confiscation are goods entered for exportation which does not correspond in respect of value or in any material particular with the entry made or in the case of baggage with the declarations made under Section 77 of the Customs Act, 1962.
- 3.3 Smuggled goods may be confiscated even if its form has been changed. In case the smuggled goods are mixed with other goods in such manner that the smuggled goods cannot be separated from such other goods, then the whole of goods are liable to be confiscated as per Section 120 of the Customs Act, 1962.

### **4. Confiscation of conveyances/packages etc.:**

- 4.1 In addition to confiscation of goods, the conveyances, i.e., any vessel or any aircraft which is or has been within Indian customs waters / in India or any vehicle, which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods shall be liable to confiscation; also any conveyance or animal used, as a means of transport/ or in the carriage, in the smuggling of any goods shall be liable to confiscation; also any conveyance from which any warehouse goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper officer are liable to confiscation as per Section 115 of the Customs Act, 1962.

- 4.2 As per Section 118 of the Customs Act, 1962, in case where any goods imported in a package are liable to confiscation, the package and any other goods imported in that package shall also be liable to confiscation; Also in case where any goods are brought in a package within the limits of customs area for the purpose of exportation and are liable to confiscation, the package and any other goods contained therein shall also be liable to confiscation.
- 4.3 The goods used for concealing smuggled goods are liable to confiscation as per Section 119 of the Customs Act, 1962. [in this section “goods” do not include a conveyance used as a means of transport.]
- 4.4 Where any smuggled goods are sold by a person having knowledge or reason to believe that the goods are smuggled goods, the sale proceeds thereof shall be liable to confiscation as per Section 121 of the Customs Act, 1962.

**5. Penalties in respect of improper importation of goods:**

- 5.1 In terms of Section 112 of the Customs Act, 1962 any person, who, in relation to any goods, does or omits to do any act which act or omission would renders such goods liable to confiscation under Section 111 or abets the doing or omission of such an act, or, acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalties as follows:-
  - (i) In the case of goods in respect of which any prohibition is in force under the Customs Act, 1962 or any other law for the time being in force, to a penalty not exceeding the value of the goods or Rs.5,000/-, whichever is the greater;
  - (ii) In the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent (10%) of the duty sought to be evaded or Rs.5,000/-, whichever is higher; provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order, the amount of penalty liable to be paid by such person under this section shall be 25% of the penalty so determined.
  - (iii) In the case of goods in respect of which the value declared is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or Rs.5, 000/-, whichever is the greater;
  - (iv) In the case of goods falling both under (i) and (iii) above, i.e goods in respect of which any prohibition is in force and the value stated / declared is higher than the value thereof, to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or Rs.5,000/-, whichever is the highest; and
  - (v) In the case of goods falling both under clauses (ii) and (iii) above, to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or Rs.5,000/-, whichever is the highest.

**6. Penalties in respect of improper exportation of goods:**

- 6.1 In terms of Section 114 of the Customs act, 1962 any person, who, in relation to any goods, does or omits to do any act which act or omission would renders such goods liable to confiscation under Section 113, or abets the doing or omission of such an act, shall be liable to penalties as follows:
- (i) In the case of goods in respect of which any prohibition is in force under Customs Act, 1962 or any other law for the time being in force, to a penalty not exceeding three times the value of the goods as declared by the exporter or the value as determined under the Customs Act, 1962 , whichever is the greater;
  - (ii) In the case of dutiable goods, other than prohibited goods, to a penalty not exceeding ten percent (10%) of the duty sought to be evaded on such goods or Rs.5,000/-, whichever is higher; PROVIDED that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order, the amount of penalty liable to be paid by such person under this section shall be 25% of the penalty so determined.
  - (iii) In the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under the Customs Act, 1962, whichever is the greater.

## **7. Mandatory penalty in certain cases:**

- 7.1 Section 114A of the Customs Act, 1962 deals with imposition of mandatory penalty in certain cases. Thus, in cases where the duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under Section 28(8) of the Customs Act, 1962 shall also be liable to pay a penalty equal to the duty or interest so determined. If such duty or interest, as the case may be, as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within 30 days from the date of communication of the order, the amount of penalty liable to be paid by such person under this section shall be 25% of the duty or interest, as the case may be, so determined. Further if the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso.
- 7.2 If the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate tribunal or, as the case may be, the Court, then for the purpose of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account. The duty or interest determined to be payable is increased by the Commissioner (Appeals), The Appellate tribunal or, as the case may be, the Court, then, the benefit of reduced penalty shall be available under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon, and 25% of the consequential increase in penalty have also been paid within 30 days of the communication of the order by which such increase in the duty or interest takes effect. If penalty has been levied under section 114A, no penalty shall be levied under Sections 112 or 114 of the said Act.

Any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

**8. Other penalties:**

- 8.1 If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of the Customs Act, 1962, then in terms of Section 114AA of the said act, such person shall be liable to a penalty not exceeding five times the value of goods.
- 8.2 In terms of Section 116 of the Customs Act, 1962 if any goods loaded in a conveyance for importation into India, or any goods transhipped under the provisions of the said Act or coastal goods carried in a conveyance, are not unloaded at their place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and, if the failure to unload or the deficiency is not accounted for to the satisfaction of the Assistant/ Deputy Commissioner of Customs, the person-in-charge of the conveyance shall be liable:
- (i) In the case of goods loaded in a conveyance for importation into India or goods transhipped under the provisions of the Customs Act, 1962 to a penalty not exceeding twice the amount of duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been imported;
  - (ii) In the case of coastal goods, to a penalty not exceeding twice the amount of export duty that would have been chargeable on the goods not unloaded or the deficient goods, as the case may be, had such goods been exported.
- 8.3 Any person who contravenes any provision of the Customs Act, 1962 or abets any such contravention or who fails to comply with any provision of this Act, with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding Rs.1 lakh.

**9. Adjudication of confiscations and penalties:**

- 9.1 The Customs Act, 1962 enjoins quasi-judicial proceedings to be followed before any penalties are imposed and any confiscation action etc., initiated against any offending goods. Apart from issuing Show Cause Notice under Section 124 of the said Act, the persons concerned are required to be given opportunity of representation in writing and personal hearing in the matter. The notice and the representation may be at the request of the person concerned be made oral. Besides issue of notice under section 124, the proper officer may issue a supplementary notice under circumstances or manner prescribed by the Board. The adjudication authority is then required to pass final order taking due note of all evidences brought on record.
- 9.2 As per Section 122 of the Customs Act 1962, in every case, in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged:-
- (a) Without limit, by a Principal Commissioner of Customs or Commissioner of Customs or a Joint Commissioner of Customs;

(b) up to such limit by such officers, as the Board may, by notification, specify.

Board Notification 50/2018- Customs (N.T.) dated 8<sup>th</sup> June, 2018 specified the limits as below:

**Table**

<b>Sl. No.</b>	<b>Customs Officer</b>	<b>Value of goods liable for confiscation</b>
(1)	(2)	(3)
(1)	Assistant Commissioner of Customs or Deputy Commissioner of Customs	Above rupees one lakh but not exceeding rupees ten lakhs
(2)	A Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs or Deputy Commissioner of Customs	Not exceeding rupees one lakh

9.3 Generally, 'mens rea' is not required to be proof for the imposition of penalty under the provisions of the Customs Act. The amount of penalty depends on the gravity of the offence and is to act as a deterrent for the future.

9.4 Section 125 of the Customs Act, 1962 provides for option to pay fine in lieu of confiscation. The proviso to section 125 states that redemption fine shall not exceed the market price of the goods confiscated. This is the maximum penalty which can be levied. As per section 126 of the Customs Act, 1962 when any goods are confiscated, such goods shall thereupon vest in the Central Government. The officer adjudging confiscation shall take and hold possession of the confiscated goods.

Whenever the confiscation of goods is authorized as per the sub-section (1) of section 125, of the Customs Act, 1962, the adjudicating authority MAY in the case of any goods where the importation or exportation is prohibited under this Act or under any other law for the time being in force, and SHALL, in the case any other goods, give to the owner of the goods (or from whose possession or custody such goods have been seized), an option to pay in lieu of confiscation such fine as the said officer / authority thinks fit.

If the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of section 28 in respect of the goods which are not prohibited or restricted, the provisions of this section (redemption fine) shall not apply.

Without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

9.5 Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods.

9.6 As per sub-section (3) of section 125 of the Customs Act, 1962, where the fine imposed under sub-section (1) is not paid within a period of 120 days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

## 10. Arrest:

- 10.1 To effectively tackle the menace of smuggling and other serious economic offences including commercial frauds, apart from penal action in Departmental adjudication, the Customs Act, 1962 provides for criminal prosecution in a Court of law. Prosecution action can also be taken for providing false documents/declaration to the Customs and for obstructing Customs officers in their work.
- 10.2 As provided under section 104(1), If an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs has reason to believe that any person in India or within the Indian customs waters has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. Also, every arrested person arrested under sub-section (1) shall, has to be taken without unnecessary delay to the nearest Magistrate. Further, the arrested person is to be dealt with by the Magistrate, as per the provisions of the Code of Criminal Procedure, 1898. The power to remand an arrested person to judicial custody vests in the Magistrate by virtue of Section 165 of the Cr.PC.
- 10.3 Though under Section 104 of the Customs Act, 1962 Principal Commissioner of Customs or Commissioner of Customs are empowered to delegate to an officer of Customs by general or special order, powers of arrest of persons guilty of offence punishable under Section 135 of the said Act, extreme circumspection and care is to be exercised at senior level in exercising these powers and ordering arrests. Arrest should be resorted to only in cases of sufficient grave nature.
- 10.4 Persons involved in Customs related offence cases who may be liable to prosecution should not be arrested in routine unless exigencies of certain situations demand their immediate arrest. At times, prior to prosecution, arrests (s) may be necessary to ensure proper investigations and penal action against the persons (s), as otherwise the person involved in the offence may hamper investigations or disappear from the scene/area – such as in cases involving outright smuggling by Sea/Air/Land route.
- 10.5 In all commercial fraud cases in relation to regular imports or exports, before arresting any person(s) the Principal Commissioner of Customs or Commissioner of Customs concerned should be approached by the Investigating Officer and the Principal Commissioner of Customs or Commissioner of Customs should be personally satisfied that there are sufficient grounds warranting arrest of the person(s). These grounds/reasons should also be recorded by the concerned Principal Commissioner of Customs or Commissioner of Customs in writing on file before the arrest is ordered and effected by the proper officer.
- 10.6 As far as possible, in other than commercial fraud cases warranting prosecution under Section 135 of the said Act, where arrest is considered necessary prior clearance and approval for arrest may be taken from Principal Commissioner of Customs or Commissioner of Customs. However, there could be situations, for example in outright smuggling cases in remote areas (and sometimes even in town seizure or international passenger clearance offence cases) where it may not be administratively possible to get prior permission of concerned Principal Commissioner of Customs or Commissioner of Customs before effecting arrest. In such cases,

the decision to arrest a person in accordance with the guidelines - taking due note of the offence against the person which has come to light in investigations carried out, should be taken at the minimum level of the concerned Assistant Commissioner/Assistant Director – recording the reasons in writing. Further, in such cases, the concerned Assistant Commissioner/Assistant Director or other higher officer (lower than Principal Commissioner of Customs or Commissioner of Customs) who has ordered arrest, should immediately after arrest furnish a report incorporating reasons for arrest, to the jurisdictional Principal Commissioner of Customs or Commissioner of Customs and his satisfaction for the arrest made should also be kept on record in writing.

10.7 The guidelines for arrest are summed up as follows:

- i. Offences under the Customs Act, 1962 are either (i) bailable; or (ii) non-bailable. Since arrest takes away the liberty of an individual, the power must be exercised with utmost care and caution in cases where a Commissioner of Customs or Additional Director General has reason to believe on basis of information or suspicion that such person has committed an offence under the Act punishable under the Sections 132 or 133 or 135 or 135A or 136 of the Customs Act, 1962.
- ii. Arrest of persons in terms of Section 104(1) of Customs Act, 1962 should be resorted to only where the facts and situations of a particular case demand such action. Persons involved should not be arrested unless the exigencies of certain situations demand their immediate arrest. These situations may include circumstances like ensuring proper investigation, to prevent such person from absconding, cases involving organised smuggling of goods or evasion of Customs duty by way of concealment, masterminds or key operators effecting proxy/ benami imports/exports in the name of dummy or non-existent persons/IECs, etc. The decision to arrest should be taken in cases which fulfil the requirement of the provisions of Section 104(1) of Customs Act, 1962 and after considering the nature of offence, the role of the person involved and evidence available.
- iii. While the Act does not specify any value limits, the powers of arrest may be exercised in respect of an offence, categorized as bailable offence, only in exceptional situations which may include
  - (a) Cases involving unauthorised importation in baggage/ cases under Transfer of Residence Rules, where the CIF value of the goods involved is Rs. 20,00,000/- (Rupees Twenty Lakh) or more;
  - (b) Cases of outright smuggling of high value goods such as precious metal, restricted items or prohibited items or goods notified under section 123 of the Customs Act, 1962 or offence involving foreign currency where the value of offending goods is Rs. 20,00,000/- (Rupees Twenty Lakh) or more;
  - (c) In a case related to importation of trade goods (i.e. appraising cases) involving wilful mis-declaration in description of goods/concealment of goods/goods covered under section 123 of Customs Act, 1962 with a view to import restricted or prohibited items and where the CIF value of the offending goods is Rs. 1,00,00,000/- (Rupees one crore) or more;

- (d) Fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act, 1962, if the amount of drawback or exemption from duty is Rs. 1,00,00,000/- (Rupees One Crore) or more. In cases related to exportation of trade goods (i.e. appraising cases) involving (i) wilful mis-declaration in value / description ; (ii) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962, where FOB value of the offending goods is Rs. 1,00,00,000/- (Rupees One Crore) or more.
- (e) The above criteria of value mentioned in sub para 2.3 (a) to 2.3 (d) would not apply in cases involving offences relating to items i.e. FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, arrest, if required, on the basis of facts and circumstances of the case, may be considered irrespective of value of offending goods involved.”
- iv. There is no prescribed format for arrest memo but an arrest memo must be in compliance with the directions in “*D.K Basu vs. State of W.B.*” [1997(1) SCC 416 (see para 35)].
- v. Certain modalities that should be complied with at the time of arrest and pursuant to an arrest include (a) female offender should be arrested by or in the presence of woman Customs officers, (b) medical examination of an arrestee should be conducted by a medical officer in the service of Central or State Government and in case such medical officer is not available, by a registered medical practitioner soon after the arrest is made. If an arrested person is a female then such an examination shall be made only by, or under supervision of a female medical officer, and in case such female medical officer is not available, by a female registered medical practitioner, (c) it shall be the duty of the person having the custody of an arrestee to take reasonable care of the health and safety of the arrestee.
- vi. A person arrested for a non-bailable offence should be produced before Magistrate without unnecessary delay, as per Section 104(2) of the Customs Act, 1962.
- vii. Under Section 104(3) of the Customs Act, 1962 an officer of Customs (arresting officer) has the same powers as an officer in charge of a Police Station under the Cr.PC. Thus, a Customs officer (arresting officer) is bound to release a person on bail for offences categorized as bailable under the Customs Act, 1962 and release on bail must be offered to a person arrested in respect of bailable offence and bail bond accepted. If the conditions of the bail are fulfilled, the arrestee shall be released on bail forthwith. The arresting officer may, and shall if such a person is indigent and unable to furnish surety, instead of taking bail from such person, discharge him or her executing a bond without sureties for his appearance as provided under Section 436 of Cr.PC. in cases where the conditions for granting bail are not fulfilled, the arrestee shall be produced before the appropriate Magistrate without unnecessary delay and within 24 hours of arrest.

[Refer Instruction F.No.394/71/97-Cus(AS), dated 22-6-1999 and Circular No. 38/2013-Cus., dated 17-9-2013, Circular 28/2015- Customs dated 23.10.2015]

## 11. Punishment for Customs offences:



- 11.1 Section 135(1) of the Customs Act, 1962 provides for imprisonment for a maximum term of 7 years and with fine to any person who is, in the context of any goods which he knows or has reason to believe are liable to confiscation under Sections 111 or 113 of the said Act: Involved, in relation to the goods, or Anyway knowingly concerned in mis-declaration of value, or In any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under the said Act or any other law for the time being in force with respect to such goods, or Acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods, or Attempts to export any goods, or Fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under the said Act in connection with export of goods.
- 11.2 Section 135 provides the following punishments to the person held liable for offences mentioned therein:
- I. Imprisonment for a term not exceeding 7 years (and in any case ordinarily not less than 1 year) in the case of an offence relating to:
    - a) Any goods the market price of which exceeds Rs.1 crore; or
    - b) The evasion or attempted evasion of duty exceeding Rs.50 lakhs; or
    - c) Such categories of prohibited goods as the Central Government may, by notification, specify; or
    - d) Fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to above, if the amount of drawback or exemption from duty exceeds Rs.50 lakhs.
  - II. In any other case, with imprisonment for a term not exceeding 3 years or with fine, or with both.
- 11.3 Section 135(2) of the Customs Act, 1962 provides that, if any person convicted of an offence under Section 135(1) or under Section 136(1) (which applies to Custom Officers) is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to 7 years and with fine.
- 11.4 The offences punishable with imprisonment for a term of less than 3 years or only fine are as follows:
- a) Section 132 of the Customs Act 1962: If a person makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, he shall be punishable with imprisonment for a term which may extend to 2 years, or with fine, or with both.
  - b) Section 133 of the Customs Act 1962: If any person intentionally obstructs any officer of Customs in the exercise of any powers conferred under this Act, such person shall be

punishable with imprisonment for a term, which extend to 2 years, or with fine, or with both.

- c) Section 134 of the Customs Act 1962: If any person resists or refuses to allow a radiologist to screen or to take X-Ray picture of his body in accordance with an order made by a Magistrate under Section 103 of the said Act, or resists or refuses to allow suitable action being taken on the advice and under the supervision of a registered medical practitioner for bringing out goods liable to confiscation secreted inside his body, he shall be punishable with imprisonment for a term which may extend to 6 months, or with fine, or with both.
- d) Section 135 of the Customs Act 1962: In all offences under the Customs Act other than those mentioned under “non-bailable or cognizable offences” above, the punishment for imprisonment may extend to a term of three years, or with fine, or with both. However, under Section 135(1) (i) of the said Act, in the absence of special and adequate reasons to the contrary to be recorded in the judgment or the court, such imprisonment shall not be for less than 1 year.
- e) Section 135A of the Customs Act 1962: If a person makes preparation to export any goods in contravention of the provisions of this Act, and from the circumstances of the case, it may be reasonable inferred that if not prevented by circumstances independent of his will, he is determined to carry out his intention to commit the offence, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

## **12. Offences by Customs officers:**

12.1 The officers of Customs also cannot escape serious action including prosecution action, if they abuse their powers or collude or connive with tax evaders. In the following cases, prosecution proceeding against a Custom officer may be initiated under Section 136 of the Customs Act, 1962:

- (1) If any officer of customs enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing, whereby any fraudulent export is effected or any duty of customs leviable on any goods, or any prohibition for the time being in force under this Act or any other law for the time being in force with respect to any goods is or may be evaded, he shall be punishable with imprisonment for a term which may extend to [three years], or with fine, or with both.
- (2) In cases of vexatious search,-
  - (a) if any officer of customs, requires any person to be searched for goods liable to confiscation or any document relating thereto, without having reason to believe that he has such goods or documents secreted about his person, the said Customs Officer may be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.1, 000/-, or with both; or
  - (b) if any officer of customs, arrests any person without having reason to believe that

he has been guilty of an offence punishable under Section 135 of the said Act, he may be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.1,000/-, or with both; or

- (c) if any officer of customs, searches or authorizes any other officer of customs to search any place without having reason to believe that any goods, documents, or things of the nature referred to in Section 105 of the said Act are secreted in that place, he may be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.1,000/-, or with both.
- (3) If any Customs Officer, except in the discharge in good faith of his duty as such officer or in compliance with any requisition made under any law for the time being in force, discloses any particulars learnt by him in his official capacity in respect of any goods, he may be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs.1,000/- or with both.

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

13.1 As per Section 138A of the Customs Act, 1962 in prosecution proceedings there under, the culpability (guilty conscience or mensrea ) on the part of the accused person shall be presumed and it will be for the accused to prove that he had no deliberation with respect of alleged offence. The presumption of culpable mental state is drawn under this provision that presumption includes intention, motive, knowledge, belief as well as reason to believe. The presumption could be deemed as rebutted only if the proof is beyond reasonable doubt not merely when its existence is established by a preponderance of probability.

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

14.1 As per subsection (1) of section 137 of the Customs Act, 1962, no court shall take cognizance of any offence under section 132, section 133, section 134 or section 135 or section 135A, except with the previous sanction of the Principal Commissioner of Custom or Commissioner of Customs.

14.2 Further as per subsection (2) of section 137 of the Customs Act, 1962, no court shall take cognizance of any offence under section 136, -

- (a) where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Commissioner of Customs or Deputy Commissioner of Customs, except with the previous sanction of the Central Government;
- (b) where the offence is alleged to have been committed by an officer of customs lower in rank than Assistant Commissioner of Customs or Deputy Commissioner of Customs' except with the previous sanction of the Principal Commissioner of Customs or Commissioner of Customs.

14.3 Subsection (3) of section 137 of the Customs Act, 1962 states that, any offence under Chapter XVI, either before or after the institution of prosecution, be compounded by the Principal Chief Commissioner of Customs or Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount and in such

manner of compounding as may be specified by rules. Nothing contained in this sub-section shall apply to-

- (a) a person who has been allowed to compound once in respect of any offence under sections 135 and 135A;
- (b) a person who has been accused of committing an offence under the Customs Act, 1962, which is also an offence under any of the following Acts, namely:-
  - (i) the Narcotic Drugs and Psychotropic Substances Act, 1985(61 of 1985);
  - (ii) the Chemical Weapons Convention Act, 2000 (34 of 2000);
  - (iii) the Arms Act, 1959 (54 of 1959);
  - (iv) the Wild Life (Protection) Act, 1972 (53 of 1972);
- (c) a person involved in smuggling of goods falling under any of the following, namely:-
  - (i) goods specified in the list of Special Chemicals, Organisms, Materials, Equipment and Technology in Appendix 3 to Schedule 2 (Export Policy) of ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);
  - (ii) goods which are specified as prohibited items for import and export in the ITC (HS) Classification of Export and Import Items of the Foreign Trade Policy, as amended from time to time, issued under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);
  - (iii) any other goods or documents, which are likely to affect friendly relations with a foreign State or are derogatory to national honour;
- (d) a person who has been allowed to compound once in respect of any offence under this Chapter for goods of value exceeding rupees one crore;
- (e) a person who has been convicted under this Act on or after the 30th day of December, 2005.]

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

However, sub-section (4) of section 104 of the Customs Act, 1962 states that, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence relating to —

- (a) prohibited goods; or
- (b) evasion or attempted evasion of duty exceeding fifty lakh rupees, shall be cognizable.

Further, sub-section (5) of section 104 of the Customs Act, 1962 states that, Save as otherwise provided in sub-section (4), all other offences under the Act shall be non-cognizable.

Section 104 (6) of the Customs Act, 1962 provides for the categories of offences punishable under Section 135 that are non-bailable and all other offences under this Act shall be bailable as per Section 104 of the Customs Act. The following categories of offences shall be non-bailable:

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

## 15. Prosecution:

15.1 No prosecution proceedings can be launched in a Court of Law against any person under the Customs Act, 1962 and no cognizance of any offence under Sections 132, 133, 134, 135 and 135A of the said Act can be taken by any Court, except with the previous sanction of concerned Commissioner of Customs. Thus, based upon the results of investigations and evidence brought on record, Commissioners of Customs shall sanction prosecution only after being satisfied that there are sufficient reasons justifying the same. Criminal complaint must thereafter be filed in appropriate Court of law and followed up with a view to get expeditious conviction.

## 16. Issue of Summons:

16.1 Power to summon persons to give evidence and produce documents in Customs Act flows through section 108 of the Customs Act, 1962 which prescribes as follows:

Any Gazetted Officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.

- (2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.
- (3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:

- (4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

16.2 On issue of summons in Customs matters, the following guidelines have been issued by Central Board of Indirect Taxes and Customs:

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

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

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## Appeal, Review and Settlement of Cases

### 1. Introduction

1.1 Like any other taxation statute, the Customs Act contains detailed provisions for judicial review, for resolution of disputes, by way of appeals and review. The various appellate authorities are Commissioner (Appeal), Revision Authority, Customs Excise and Service Tax Appellate Tribunal (CESTAT), High Court and the Supreme Court. Any appeal by the department, before any appellate authority, is filed only after following a procedure of review of orders as prescribed in the Customs Act. Beside the route of appeals, an alternative dispute resolution mechanism has also been provided by way of the settlement of cases by the Settlement Commission. These provisions are contained in Chapter XV and XIVA respectively of the Customs Act, 1962.

### 2. Appeal to Commissioner (Appeals):

- 2.1 The power of adjudication of cases is bestowed on all officers of the rank of Superintendent/ Appraiser and above as per specified monetary limits and other criterion. Thus, the first stage of appeal against any decision or order passed under Customs Act, 1962, by any officer below the rank of Principal Commissioner or Commissioner of Customs lies with the Commissioner (Appeals), within 60 days from the date of the communication to him of such decision or order, in terms of Section 128 (appeal by any person aggrieved by such order) or Section 129 (D)(4) [Departments appeal on review of order], as the case may be, of the Customs Act, 1962.
- 2.2 The procedure of filing of appeal by Department against the order/decision of officers below the rank of Commissioner is that every such adjudication order is reviewed, for legality and propriety of such order, by the Commissioner of Customs, under Section 129D(2) of the said Act. If on review, the adjudication order/decision is not found to be legal and proper, the Commissioner may direct any officer subordinate, by an order, to file an appeal to Commissioner (Appeals). The said order shall be passed by the Commissioner within 3 months from the date of communication of adjudication order and in pursuance of such order, an appeal would be filed to Commissioner (Appeals) within a period of 1 month from the date of issue of said order by the Commissioner.
- 2.3 The limitation period for filing of appeal to Commissioner (Appeal) is 60 days from the date of communication of order being appealed against. However, Commissioner (Appeals) may allow a further period of thirty days for filing of appeal provided he is satisfied that appellant was prevented by sufficient cause from presenting the appeal within the period of 60 days.
- 2.4 The procedure for filing of appeal before Commissioner (Appeals) is that the appeal is required to be filed in a Form No. CA-1 [under Section 128 of the said Act] and Form CA-2 [under Section 129D(4) of the said Act], as prescribed under rule 3 and rule 4, respectively, of the Customs (Appeals) Rules, 1982. Once (Appeal) is filed, The Commissioner (Appeals) shall give opportunity to the appellant to be heard. Commissioner (Appeals), on being shown sufficient cause, can give adjournment from hearing upto 3 times. The Commissioner (Appeals), may

allow any grounds of appeal not specified in the appeal filed, provided he is satisfied that omission thereof was not willful or unreasonable.

2.5 The Commissioner (Appeals), wherever possible, would hear and decide every appeal within a period of 6 months from the date of filing of appeal, shall pass an order as he thinks just and proper,-

- (a) confirming, modifying or annulling the decision or order appealed against; or
- (b) referring the matter back to the adjudicating authority with directions for fresh adjudication or decision, as the case may be, in the following cases, namely:—
  - (i) where an order or decision has been passed without following the principles of natural justice; or
  - (ii) where no order or decision has been passed after re-assessment under section 17; or
  - (iii) where an order of refund under section 27 has been issued by crediting the amount to Fund without recording any finding on the evidence produced by the applicant.]

[Substituted by the Finance Act, 2018 (Act 13 of 2018), dt. 29-3-2018.]

PROVIDED that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

PROVIDED FURTHER that where the Commissioner (Appeals) is of opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 28 to show cause against the proposed order.

2.6 The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority Principal Chief Commissioner of Customs or Chief Commissioner of Customs and the Principal Commissioner of Customs or Commissioner of Customs.

[The relevant provisions contained in Sections 128 and 128A of the Customs Act and the Customs (Appeals) Rules, 1982.]

### **3. Appeal to CESTAT:**

- 3.1 The Customs Excise and Service Tax Appellate Tribunal (CESTAT) has been constituted by the Central Government under Section 129(1) of the said Act.
- 3.2 In terms of Sections 129A(1) (appeal by any person aggrieved by such decision or order) or Section 129D(4) [departments appeal on review of order of Commissioner of Customs, by the



Committee of Chief Commissioner] of the said Act any person may file appeal to CESTAT, if aggrieved by:

- (a) a decision or order passed by the Principal Commissioner of Customs or Commissioner of Customs as an adjudicating authority; or
  - (b) an order passed by the Commissioner (Appeals) under section 128A.
- 3.3 Appeal cannot be filed before CESTAT and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b), if the matter relates to:
- (i) import or export of goods as baggage;
  - (ii) import goods loaded in a conveyance for importation into India, but which are not unloaded, not landed or short landed at place of destination;
  - (iii) payment of drawback as provided in chapter X, and the rules made thereunder.
- 3.4 The CESTAT may refuse to admit an appeal in respect of an order where
- (i) the value of goods that have been confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 125; or
  - (ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty, value of goods for the purpose of assessment, difference in duty involved or the duty involved, is in issue or is one of the points in issue; or
  - (iii) the amount of fine or penalty determined by such order, does not exceed two lakh rupees.
- 3.5 In terms of Sections 129A(2), the Committee of Commissioners of Customs may, if it is of opinion that an order passed by the Commissioner (Appeals) under section 128A, is not legal or proper, direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order. PROVIDED that where the Committee of Principal Commissioners of Customs or Commissioners of Customs differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Principal Chief Commissioner of Customs or Chief Commissioner of Customs who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.
- 3.6 The limitation period for filing of appeal to CESTAT is 3 months from the date of communication of order being appealed against. The Tribunal may admit appeal after the expiry of this period if it is satisfied that there was sufficient cause for not presenting it within the limitation period.
- 3.7 In accordance with Sections 129A, 129B and 129C of the Customs Act, 1962 read with the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982, the procedure for filing of appeal before CESTAT and disposal thereof is as follows:
- (a) The appeal is required to be filed in a Form No. CA 3 [Section 129A(1) of the said Act] and Form CA-5 [Section 129 D(4) of the said Act], prescribed under rule 6(1) and rule 7,

respectively, of the Customs (Appeals) Rules, 1982.

- (b) On receipt of notice of appeal the respondent may file a memorandum of cross objection within 45 days of receipt of notice [Section 129A(4) of the said Act]. The memorandum of cross examination is required to be filed in Form CA 4, prescribed under rule 6 (2) of the Customs (Appeals) Rules, 1982. In the memorandum of cross objections, the respondent can agitate against any part of the order appealed against and such cross objections are disposed of by the Tribunal as if it were an appeal. Rules 15 and 15A of the CESTAT (Procedure) Rules, 1982 allow filing of reply to such appeal within a month by the respondent, and rejoinder to the reply within a month by the appellant.
- (c) The CESTAT shall give opportunity to the appellant to be heard, and on being shown sufficient cause, can give adjournment from hearing. In terms of proviso to Section 129B(1A) of the said Act, no such adjournment shall be granted more than three times to a party during hearing of the appeal. After hearing the case, CESTAT, pass such orders thereon as it thinks fit, confirming, annulling or modifying the decision or order appealed against or may refer / remand the case back to the authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision.
- (d) The CESTAT may, at any time within six months from the date of the order, amend its order to rectify any mistake apparent from the record that is brought to its notice by the Principal Commissioner of Customs or Commissioner of Customs or the other party to the appeal. PROVIDED that an amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the other party shall not be made unless the Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.
- (e) A prescribed fee is required to be paid for filing of appeal or rectification of mistake (ROM) or for restoration of appeal. The fee prescribed at present is (i) Rs 1000, where amount of duty, interest and penalty is upto Rs 5 lakh; (ii) Rs 5000, where amount of duty, interest and penalty is between Rs 5 lakh to Rs 50 lakh; (iii) Rs 10000, where amount of duty, interest and penalty is more than Rs 50 lakh; (iv) Rs 500 for any other purposes, including ROM or restoration of appeal. However, no fee is payable in case of appeal or ROM or restoration of appeal application by department.
- (f) The Appellate Tribunal, wherever possible, would hear and decide every appeal within a period of three years from the date of filing of appeal,

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

- 4.1 The process of review of the order of Principal Commissioner of Customs or Commissioner of Customs and Commissioner of Customs (Appeals), by the Department is prescribed in Section 129 D(1) and Section 129A(2) of the Customs Act, respectively.
- 4.2 As prescribed in section 129D(1) of the Customs Act, 1962, the Committee of Principal Chief Commissioner of Customs or Chief Commissioner of Customs may call for and examine the

records of any proceedings in which Principal Commissioner of Customs or Commissioner of Customs has passed any decision or order as an adjudicating authority, for satisfying itself as to the legality or propriety of any such decision or order. The Committee of Principal Chief Commissioners of Customs or Chief Commissioner of Customs, that consists of two, one of them being Jurisdictional Chief Commissioners, wherein, may direct, by an order, the Commissioner to file an appeal to the Appellate Tribunal. In case the Committee differs in its opinion as to the legality or propriety of the decision or order it shall make a reference to the Board, and the Board will examine such order, and if it is of the view that order is not legal and proper, may, by order, direct the concerned Commissioner to appeal to the Tribunal.

- 4.3 As prescribed in section 129D(2) of the Customs Act, 1962, the Principal Commissioner of Customs or Commissioner of Customs may call for and examine the record of any proceedings in which an adjudicating authority subordinate to him has passed any decision or order under Customs Act for the purpose of satisfying himself as to the legality or propriety of any such decision or order and may, by order, direct such authority or any officer of customs subordinate to him to apply to the Commissioner (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Principal Commissioner of Customs or Commissioner of Customs in his order.
- 4.4 Every order under sub-section (1) or sub-section (2) has to be passed within three months from date of communication of the decision or order of the adjudicating authority; PROVIDED that the Board may, on sufficient cause being shown, extend the said period by another thirty days. An appeal would be filed by the adjudicating authority or any officer of customs authorized in this behalf makes an application to the Appellate Tribunal or the Commissioner (Appeals) within a period of one month from the date of communication of the order under the said sub-sections.
- 4.5 The Committee of Chief Commissioners is notified by the Board under Section 129A(1B) of the said Act vide Notification No. 39/2005-Cus.(NT), dated 13-5-2005.
- 4.6 In terms of Sections 129A(2), the Committee of Commissioners of Customs may, if it is of opinion that an order passed by the Commissioner (Appeals) under section 128A, is not legal or proper, direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order. PROVIDED that where the Committee of Principal Commissioners of Customs or Commissioners of Customs differs in its opinion regarding the appeal against the order of the Commissioner (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Principal Chief Commissioner of Customs or Chief Commissioner of Customs who shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner (Appeals) is not legal or proper, direct the proper officer to appeal to the Appellate Tribunal against such order.
- 4.5 The Committee of Commissioners is notified by the Board under Section 129A(2) of the said Act vide Notification No. 40/2005-Cus.(NT), dated 13-5-2005.

## **5. Revision Application:**

- 5.1 The Central Government may, on the application of any person aggrieved by the order of Commissioner or Commissioner (Appeals), in cases of baggage, Drawback and short-landing/

not landing of goods, annul or modify such orders as prescribed under Section 129DD of the Customs Act, 1962. However, the Central Government may refuse to admit an application in respect of an order where the differential duty or fine or penalty involved determined by such order does not exceed Rs.5,000/-.

- 5.2 The filing of an application for Revision by Central Government need to be made within three months from the date of communication to the applicant of order against which the application is being made. The Central Government may allow a further period of three months, if it is satisfied that there was sufficient cause for not presenting it within the limitation period.
- 5.3 In terms of Sections 129A and 129DD of the Customs Act, 1962 and the Customs (Appeals) Rules, 1982 the Revision Application is required to be filed in a Form No. CA 8, prescribed under Rules 8A and 8B of the said Rules. The fee prescribed is
  - (a) Rs.200/-, where the amount of duty and interest demanded, fine or penalty levied is upto Rs.1 lakh;
  - (b) Rs.1,000/-, where the amount of duty and interest demanded, fine or penalty levied is more than Rs.1 lakh. However, no fee is to be paid in case Revision Application is filed by the Department.

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

- 6.1 Under section 129 E, the Tribunal or Commissioner (Appeals) as the case may be shall not entertain any appeal:
  - (i) under sub-section (1) of Section 128, unless the appellant has deposited seven and a half percent of the duty demanded or penalty imposed or both, in dispute, in pursuance of a decision or an order passed by an officer of Customs lower in rank than Principal Commissioner of Customs or Commissioner of Customs;
  - (ii) against the decision or order referred to in clause (a) of sub section(1) of Section 129 A, unless the appellant has deposited seven and a half percent of the duty demanded or penalty imposed or both, in dispute, in pursuance of the decision or order appealed against;
  - (iii) against the decision or order referred to in clause (b) of sub section (1) of Section 129A, unless the appellant has deposited ten percent of the duty demanded or penalty imposed or both, in dispute, in pursuance to the decision or order appealed against.

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

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

- 6.2 Section 129EE prescribes that if the pre-deposit made by the party under Section 129E is required to be refunded consequent upon the order of the Appellate Authority, the interest shall be paid to the appellant at such rate, not below five percent and not exceeding thirty six percent per annum as is for the time being fixed by the Central Governmnet, bu notification

in the Official Gazette, on such amount from the date of payment of amount till, the date of refund of such amount.

## **7. Appeal to High Court:**

- 7.1 Against any order passed in appeal by the Appellate Tribunal (CESTAT), on or after 1-7-2003, which is not relating to determination of rate of duty or value of goods for the purposes of assessment, appeal lies to the High Court if the High Court is satisfied that the case involves a substantial question of law. However, where the issue involved relates to determination of rate of duty or value for the purpose of assessment, [and order passed by the Appellate Tribunal before the establishment of the National Tax Tribunal] appeal lies to Supreme Court.
- 7.2 The limitation period for filing of appeal to High Court is one hundred and eighty days from the date when the order being appealed against was received by the Principal Commissioner of Customs or Commissioner of Customs or the other party. The High Court may admit appeal after the expiry of this period if it is satisfied that there was sufficient cause for not presenting it within the limitation period.
- 7.3 If appeal is filed by the other party, it need to be accompanied by a fee of Rs. 200.
- 7.4 Where High Court is satisfied that question of law is involved, it shall formulated the question of law. The High Court may hear any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. The High Court may determine any issue that has not been determined by the Appellate Tribunal or has been wrongly determined by the Appellate Tribunal.
- 7.5 Sub-section (7) of section 130 and section 130C (1) and (2) provides that, when an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges. Further, subsection (8) of the section provides, where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.
- 7.5 The Code of Civil procedure, 1908 applies to the Appeal so filed to the High Court except as otherwise provided in the said Act.
- 7.6 In respect of order passed by CESTAT prior to 1-7-2003, Section 130A of the Customs Act, 1962 provides that within 180 days of receipt of order of Tribunal passed under Section 129B of the said Act, a person could have filed an application if the order of the Tribunal does not relate to determination of any question having relation to the rate of duty of Customs or the valuation of goods for purposes of assessment.

[Refer Circular No. 935/25/2010-CX, dated 21-9-2010]

## **8. Appeal to Supreme Court:**

- 8.1 Under Section 130E of the Customs Act, 1962 an appeal lies to the Supreme Court from:

- (a) Any judgment of the High Court delivered –
    - (i) in an appeal made under Section 130; or
    - (ii) a reference made under section 130 by the Appellate Tribunal before 1-7-2003;
    - (iii) on a reference made under section 130A, provided the High Court certifies, on its own motion or on an oral application made by the party aggrieved, to be a fit case for appeal to Supreme Court; or
  - (b) any order passed [before the establishment of the National Tax Tribunal] by the Appellate Authority relating, among other things, to the determination of any question having a relation to the rate of duty of Customs or to the value of goods for purposes of assessment.
- 8.2 The time limit for filing civil appeal before the Supreme Court is 60 days from the date of receipt of order.
- 8.3 Normally no application is made by the aggrieved party before the High Court, to certify that case is fit for filing of appeal before the Supreme Court. Therefore in such cases, the aggrieved party can agitate the order / judgment of the High Court before the Supreme Court by way of filing a Special Leave Petition under Article 136 of the Constitution of India. The limitation for filing of SLP is 90 days from the date of the High Court's order. The time taken by the Court from the date of filing of application for certified copy of the order till the copy is ready for delivery is excluded from the computation of the period of limitation.
- 8.4 The proposal for filing of SLP and Civil Appeal are examined and processed in the Board, on receipt of proposals from field formations duly approved by the Chief Commissioner.

[Refer Circular No. 935/25/2010-CX, dated 21-9-2010]

**9. Disputes between Central Government Department and PSU/ other Government Departments:**

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

[Refer Instruction F.No.390/R/262/09-JC, dated 24-3-2011]

**10. Monetary limits for filing appeals to CESTAT, High Courts and Supreme Court:**

- 10.1 In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994 and Section 131BA of the Customs Act, 1962 and in partial modification of earlier Instruction dated 17.12.2015 from F No 390/Misc/163/2010-JC and in accordance with the National Litigation Policy that is aimed at reducing Government litigation and also expedite the dispute resolution process, so that Government becomes an "efficient" and "responsible" litigant, in revenue matters appeal shall not be filed if the amount involved is not significant. Hence, appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs.20 lakh and below. Similarly in the case of High Courts appeals should not be filed in cases where the

duty involved or total revenue including fine or penalty is Rs.50 lakhs and below. As regards Supreme Court, appeals should not be filed in cases where the duty involved is Rs.1Crore or less. Also in exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994 the Central Board of Indirect Taxes introduced a monetary limit of **Rs 2,50,000/-** below which appeal shall not be filed with the Commissioner (Appeals). However, adverse judgments relating to the following should be contested irrespective of the amount involved:

- (a) Where the constitutional validity of the provisions of an Act or Rule is under challenge.
- (b) Where notification/instruction/order or Circular has been held illegal or ultra vires.
- (c) Where audit objection on the issue involved in a case has been accepted by the Department.

[Refer Instruction F No. 390/Misc/390/2017-JC, dated 15-5-2018, Instruction dt. 11-7-2017]

- 10.2 In such cases wherever it is decided not to file appeal, such cases shall not have any precedent value. In such cases, it should specifically be record that “even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit prescribed by the Board.” Further, in such cases, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same assessee or in case of any other assessees, if the amount involved exceeds the monetary limits.

[Refer Instruction F No. 390/170/92-JC, dated 13-1-1993 and F.No. 390/Misc./163/2010-JC, dated 20-10-2010]

## **11. Settlement of Cases/ Settlement Commission:**

- 11.1 Chapter XIV-A of Customs Act, 1962 provides an alternative channel for resolution of dispute for assesseees without prolonged litigation in adjudication/appeals/revisions etc. by constituting “Settlement Commission” under section 32 of the Central Excise Act, 1944 (1 of 1944). Presently, four Benches of the Settlement Commission function at Delhi, Mumbai, Chennai and Kolkata. Provisions relating to Settlement Commission are contained in Sections 127A to 127N of the Customs Act, 1962 In terms of Section 127B of the Customs Act, 1962, any importer, exporter or any other person, may file an application before the Settlement Commission to have the case settled, before adjudication of case. The application need to be in such manner as may be specified by rules, and containing a full and true disclosure of his duty liability which has not been disclosed before the proper officer, the manner in which such liability has been incurred, the additional amount of customs duty accepted to be payable by him or such other particulars like admission of short levy on account of misclassification, undervaluation or inapplicability of exemption notification. It is also specified that no application can be made unless the appellant has filed a Bill of Entry, or a Shipping Bill, or a bill of export, or made a baggage declaration, or a label or declaration imported or exported through post or courier and in relation to such document or documents, a Show Cause Notice has been issued to him by the Proper Officer. Provided the additional amount of duty accepted by the applicant in his application exceeds Rs.3 lakhs. Provided further the applicant has paid the additional amount of customs duty accepted by him along with interest due under section

28AA. Provided further that no application shall be entertained by the Settlement Commission in cases which are pending in the Appellate Tribunal or in any Court. Similarly, the matters relating to interpretation of classification of the goods under the Customs Tariff Act, 1975, cannot be applied before the Commission. Also no application shall be made in relation to goods to which Section 123 of the Act applies or to goods in relation to which any offence under the Narcotics Drugs and Psychotropic Substances Act, 1985 has been committed.

- 11.2 The application made under sub-section (1) for settlement of cases shall be accompanied by fees specified by rules and an application once made under sub-section (1) shall not be allowed to be withdrawn by the applicant.
- 11.3 Sub-section (5) of section 127B prescribes that any person other than an applicant referred to in sub-section (1), may also make an application to the Settlement Commission in respect of a show cause notice issued to him in a case relating to the applicant which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority.

[Inserted by Finance Act, 2017 (7 of 2017), dt. 31-3-2017.]

- 11.4 The procedure prescribed for the Settlement Commissions essentially requires examination of the application for its acceptability, payment of additional duty admitted by the applicant, calling and examination of records from jurisdictional the Commissioner of Customs or Principal Additional Director General of Revenue Intelligence or Additional Director General of Revenue Intelligence, getting further enquiries/investigations caused from Commissioner of Customs or Commissioner (Investigation) attached to Settlement Commission, giving opportunity for detailed submission to the applicant and passing order by the Commission. <sup>1</sup>[The settlement Commission may at any time within three months from the date of passing of the order under sub-section (5), may amend such order to rectify any error apparent on the face of record, either suo moyu or when such error is brought to its notice by the jurisdictional Principal Commissioener of Customs or Commissioner of Customs of Customs or the applicant, PROVIDED that no amendment which has the effect of enhancing the liability of the applicant shall be made without given notice for such intention to the applicant and the jurisdictional Principal Commissioener of Customs or Commissioner of Customs of Customs and given them a reasonable opportunity of being heard.]

[Inserted by Finance Act, 2017 (7 of 2017), dt. 31-3-2017.]

- 11.5 The amount of settlement ordered by the Settlement Commission, shall not be less than the duty liability admitted by the applicant under section 127B while filing for settlement application. Where any duty, interest, fine and penalty payable in pursuance of an order under, is not paid by the applicant within thirty days of receipt of the order of Settlement Commission, such unpaid amount along with interest shall be recoverable in accordance with the provision of Section 142 of the Customs Act, 1962.
- 11.6 Section 127D of the Customs Act, 1962 prescribes that, where, during the pendency of any proceedings before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in such manner as prescribed by the rules.



- 11.7 The Settlement Commission have all the powers which are vested in an officer of the Customs under the Act or the rules made thereunder. Also, where, an application made has been allowed to be proceeded with under section 127C, the Settlement Commission shall, until an order is passed have, exclusive jurisdiction to exercise the powers and perform the functions of any officer of Customs or Central Excise Officer under the said Acts.
- 11.8 Any proceedings before the Settlement Commission shall be deemed to be a judicial proceedings and every order passed by the Settlement Commission under Section 127J of the Customs Act, 1962 is conclusive in respect of the matters stated therein and no matter covered by such order, save as otherwise provided in chapter XIV-A, be reopened in any proceeding under the Customs Act, 1962 or under any other law for the time being in force. The Settlement Commission can consider immunity from prosecution proceedings if the applicant cooperates with the Commission in the proceedings before it and makes full and true disclosure of his duty liability. Even grant of immunity, whole or part, from imposition of penalty, fine and interest may also be considered.

[Refer Circulars No. 935/25/2010-CX, dated 21-9-2010, No. 27/27/94-CX, dated 2-3-1994, No.156/67/95-CX, dated 17-11-1995, No.515/11/2000-CX, dated 18-2-2000 and No.578/15/2001-CX, dated 20-6-2001 and Instructions F.No. 390/Misc./163/2010-JC, dated 20-10-2010 and F.No.390/170/92-JC, dated 13-1-1993]

## **12. Customs Authority for advance Rulings :**

- 12.1 A scheme of advance rulings was incorporated in Chapter V-B of the Customs Act 1962 by the Finance Act of 1999 for issue of binding rulings in advance, on customs matters. Vide section 28E, the scheme is intended to provide certainty to intending investors. Statutory changes have been brought out to expand the ambit of authority over a period of time.
- 12.2 Section 28E states that, “advance ruling” means a written decision on any of the questions referred to in section 28H raised by the applicant in his application in respect of any goods prior to its importation or exportation;
- 12.2 Customs Authority for Advance Ruling means the Customs Authority for Advance Rulings appointed by the Board under section 28EA who shall be of the rank of Principal Commissioner of Customs or Commissioner of Customs.
- 12.3 Section 28F prescribes that there shall be Authority for advance rulings. - constituted under section 245-O of the Income-tax Act, 1961 and that shall be the Appellate Authority for deciding appeal under this Chapter and the said Appellate Authority shall exercise the jurisdiction, powers and authority conferred on it by or under this Act. Provided that the Member from the Indian Revenue Service (Customs and Central Excise), who is qualified to be a Member of the Board, shall be the revenue Member of the Appellate Authority for the purposes of this Act.
- 12.4 Under the scheme section 28H states the procedure for application:
- (1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

- (2) The question on which the advance ruling is sought shall be in respect of, -
  - (a) classification of goods under the Customs Tariff Act, 1975 (51 of 1975);
  - (b) applicability of a notification issued under sub-section (1) of section 25, having a bearing on the rate of duty;
  - (c) the principles to be adopted for the purposes of determination of value of the goods under the provisions of this Act.
  - (d) applicability of notifications issued in respect of tax or duties under this Act or the Customs Tariff Act, 1975 or any tax or duty chargeable under any other law for the time being in force in the same manner as duty of customs leviable under this Act or the Customs Tariff Act;
  - (e) determination of origin of the goods in terms of the rules notified under the Customs Tariff Act, 1975 (51 of 1975) and matters relating thereto.
  - (f) any other matter as the Central Government may, by notification, specify.
- (3) The application shall be made in quadruplicate and be accompanied by a fee of ten thousand rupees.
- (4) An applicant may withdraw his application within thirty days from the date of the application.
- (5) The applicant may be represented by any person resident in India who is authorised in this behalf.

12.5 As prescribed in section 28I, on receipt of an application, the Authority shall call for relevant records, examine the application and the records called for, and by order, either allow or reject the application. PROVIDED that the Authority shall not allow the application where the question raised in the application is already pending in the applicant's case before any officer of customs, the Appellate Tribunal or any Court or the same as in a matter already decided by the Appellate Tribunal or any Court. Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard and that where the application is rejected, reasons for such rejection shall be given in the order.

12.6 Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application. On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

12.7 The Authority shall pronounce its advance ruling in writing within three months of the receipt of application

12.8 Section 28J states the Applicability of advance ruling. –

- (1) The advance ruling pronounced by the Authority under section 28-I shall be binding only -
  - (a) on the applicant who had sought it;
  - (b) in respect of any matter referred to in sub-section (2) of section 28H;
  - (c) on the Principal Commissioner of Customs or Commissioner of Customs, and the customs authorities subordinate to him, in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

12.8 Section 28K states that Advance ruling to be void in certain circumstances

- (1) Where the Authority finds, on a representation made to it by the Principal Commissioner of Customs or Commissioner of Customs or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 28-I has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act shall apply to the applicant as if such advance ruling had never been made.
- (2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Principal Commissioner of Customs or Commissioner of Customs.

12.9 Section 28KA provides for Appeal in cases of Advance Rulings, which states that -

- (1) Any officer authorised by the Board, by notification, or the applicant may file an appeal to the Appellate Authority against any ruling or order passed by the Authority, within sixty days from the date of the communication of such ruling or order, in such form and manner as may be prescribed:

Provided that where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period so specified, it may allow a further period of thirty days for filing such appeal.

- (2) The provisions of sections 28-I and 28J shall, mutatis mutandis, apply to the appeal under this section.

12.10 Section 28L of the Customs Act, 1962 defines the Powers of Authority or Appellate Authority -

- (1) The Authority or Appellate Authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).
- (2) The Authority or Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority or Appellate Authority shall be deemed to be a judicial proceeding within the meaning of sections

193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

[Substituted/ inserted by Finance Act, 2017 (Act 7 of 2017) dt. 31-3-2017; Finance Act, 2018 (Act 13 of 2018) dt. 29-3-2018.]

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## Grievance Redressal

### 1. Introduction:

1.1 The Citizen's Charter of the Department envisions that the Customs & Central Excise officers shall carry out their assigned tasks with integrity and judiciousness; courtesy and understanding; objectivity and transparency; promptness and efficiency. The officers are committed to providing every possible assistance to the public and trade in implementation of the Customs policies and procedures. The Department has also taken numerous other measures to ensure that complaint(s)/grievance(s) are minimized and where received, these are attended to promptly. These measures include a grievance redressal mechanism for both cargo clearance and passenger clearance in the field formations of Customs.

### 2. Grievance redressal related to cargo clearance:

2.1 The clearance of cargo at ports, air cargo complexes, ICDs and CFSs involves interaction of the trade with the Customs officials, which often results in complaints of harassment, corruption, and delays. Thus, to redress these grievances the focus has been to simplify procedures, enhance transparency, sensitize the Departmental officers to their responsibilities, and expand use of EDI in Customs clearance procedures. Some specific measures for facilitation and handling complaints/grievances of trade and industry are as follows:

- (a) Management Information System (MIS): A major area of concern for the importers, exporters, Customs Brokers is to get information regarding clearance of their consignments, which has been significantly resolved with the introduction of EDI (Electronic Data Interchange) at all major Custom Houses. In all major Custom Houses, a "Tele Enquiry System" allows exporters, importers etc. to dial the assigned numbers and ascertain the status of the Bills of Entry/Shipping Bills or Drawback claim. This system can also be used on fax mode. Further, supervisory officers of Customs can monitor the delays in clearance at any stage. The system also generates a daily report of all pending Bills of Entry, Shipping Bills, Drawback claims along with the date of receipt and the level at which the document is pending. For this purpose the System Manager looks after all EDI related problems and holds regular meetings with the Remote EDI (RES) users, Customs Brokers representatives, NIC, CMC and other agencies that support the EDI system.
- (b) Accessibility of Senior Officers: The Chief Commissioner/Commissioners of Customs earmark time on all working days during which any person having any grievances is free to meet the officer without prior appointment. These meetings ensure timely and prompt remedial measures.
- (c) Public Grievance Officer (PGO): Each Commissionerate has a designated PGO and Public Notices have been issued giving the names and telephone numbers of these officers. These PGO may be approached by the trade and public if their grievance is not being redressed by the dealing officer or his supervisor.

- (d) Public Grievance Committee (PGC): A PGC is constituted in each Customs Commissionerate, consisting of representatives of trade and industry, Custom House Agents, representatives of Custodians, such as AAI, CONCOR, Banks, Export Promotion Agencies, such as the Garments Exporters Association, Handicraft Export Association, and Chambers of Commerce etc. The PGC meets once in a month to address grievances relating to Customs functioning. In case grievances relate to other agencies such as the Wildlife, NIC or CMC, their representatives are also invited for these meetings.
- (e) Watch Dog Committee: A Watchdog Committee has been constituted under the chairmanship of the Chief Commissioner of Customs, which meets once in two months. Leading association of trade and industry and other agencies that interact with Customs are included in this Committee along with the senior officers of Customs to ensure meaningful dialogue. This Committee takes note of various procedural delays or problems in general being faced in Customs clearance of export/import cargo or grant of various incentives. Feedback from trade and industry is used for necessary review of procedures and taking measures to remove the difficulties of importers/exporters.
- (f) Permanent Trade Facilitation Committee (PTFC): PTFCs having membership of all stakeholders function in each Customs station to resolve local issues. As a trade facilitation measure and with a view to encourage stakeholder participation and provide for expeditious resolution of local issues (without these being escalated to the Department/Board), the Board has instructed the Chief Commissioners to ensure that:
  - (i) PTFC are held regularly with minimum of one meeting per month on a pre-decided date.
  - (ii) Minutes of the PTFC meetings are sent to the Board through DG, Directorate General of Export Promotion on issues having all India implication, if any.
  - (iii) Apex trade bodies are allowed to attend the PTFC meetings along with their local constituents, who are members of the PTFC.
  - (iv) Efforts are made to regularly review the membership of the PTFC with the aim of including all stakeholders in the Customs functioning.
  - (v) Chief Commissioners/Commissioners are receptive to meeting local and apex trade bodies even outside the framework of the PTFC.

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

### **3. Grievance redressal and facilitation measures for passengers:**

- 3.1 At international airports more than 90% of the passengers that have nothing to declare walk through the Green Channel without interaction with Customs. Even otherwise, the Air Customs Officers have been sensitized to show due courtesy and exemplary conduct towards all passengers. However, in case any passenger still has a grievance there are a number of illuminated boards installed by Customs in the arrival/departure halls and in the immigration area advising them to approach the PRO (Customs) for help. Senior officers of the rank of Assistant/Deputy Commissioners of Customs are also available round the clock and can be

directly approached by passengers for redressal of their grievances.

- 3.2 The Notices displayed prominently at the airports also invite the public to lodge any complaint with the Commissioner of Customs or the CVC.
- 3.3 An Airport Facilitation Committee has been constituted to look into the complaints of the passengers at the international airports. This Committee includes representatives of various agencies working at the airport like IAAI, Customs, Immigration, and Police etc. and meets once a month.

#### **4. Setting up of 'Customs Clearance Facilitation Committee' (CCFC):**

- 4.1 The Government has in recent times taken a number of measures to create an environment for ease of doing business and trade facilitation. The measures include the simplification of Customs procedures, reduction of documents, message exchange between Government agencies engaged in Customs clearance, and use of digital signature for electronic submission of Customs process documents. Continuing in this direction, it has been decided with the approval of the Cabinet Secretary to establish a high-level administrative body at each seaport and airport with the responsibility of ensuring expeditious Customs clearance of imported and export goods.
- 4.2. In this regard it is seen that in terms of the Customs Act, 1962 read with the relevant rules and regulations, imported and export goods are subjected to certain legal and procedural formalities before being permitted clearance by Customs. These requirements include the submission of prescribed documents and adherence to laid down procedures before an appropriate legal order is given by the Customs officer permitting the importer/exporter to clear the goods for the intended purpose. If provisions of other Allied Acts are attracted in respect of the imported/export goods, permission to clear the goods is given by the Customs only after getting the suitable clearance/response/NOC from the Government Department/agency concerned. Some of the major Departments/agencies that are involved in Customs clearance process are as follows:
  - (i) Food Safety and Standards Authority of India (FSSAI)/Port Health Officer (PHO)
  - (ii) Plant Quarantine Authorities
  - (iii) Animal Quarantine Authorities
  - (iv) Drug Controller of India (CDSO)
  - (v) Textile Commissioner
  - (vi) Wild Life Authorities
- 4.3. In addition, the Port Trusts/Airport Authority/Custodians and Railways play a critical role in the Customs clearance process by providing the required infrastructure and facilities. Other local agencies concerned with logistics, manpower etc. which operate in the seaports and airports also facilitate the Customs clearance process.
- 4.4 Since the aforementioned regulatory agencies are critical contributors to the Customs

clearance process of imported and export goods, a delay in receipt of a clearance from one regulatory agency holds up the Customs clearance of the said goods. Lack of adequate infrastructure in the seaport or airport or testing laboratories etc. also contribute to delay in the clearance of imported and export goods. Any other deficiency on account of other stakeholders also enhances the dwell time of cargo as well as the overall turnaround time of carriers. Another important reason for the delay is the improper coordination or absence of efficient coordination amongst Government agencies and other stakeholders involved in the Customs clearance process. Therefore, a view has emerged that these deficiencies can be best removed by institutionalizing at each seaport and airport an administrative mechanism with responsibility of expeditious Customs clearance of imported and export goods and for resolving related trade grievances in a time bound manner.

4.5 Accordingly, the Board vide Circular No. 13/ 2015-Customs dated 13-4-2015 has decided to set up a Customs Clearance Facilitation Committee (CCFC) at every major Customs seaport and airport with immediate effect. The CCFC would be headed by the Chief Commissioner of Customs/Commissioner of Customs in charge of the seaport and airport concerned. Its membership would include the senior-most functionary of the following departments/agencies/stakeholder at the particular seaport/airport:

- (i) Food Safety Standards Authority of India/Port Health Officer (PHO)
- (ii) Plant Quarantine Authorities
- (iii) Animal Quarantine Authorities
- (iv) Drug Controller of India (CDSO)
- (v) Textile Committee
- (vi) Port Trust / Airport Authority of India / Custodians
- (vii) Wild Life Authorities
- (viii) Railways/CONCOR
- (ix) Pollution Control Board
- (x) Any other Department / Agency / stakeholder to be co-opted on need basis.

4.6 **Terms of Reference** for the CCFC are as follows:

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



- (v) Resolving grievances of members of the trade and industry in regard to clearance process of imported and export goods.

The CCFC shall meet once a week or more frequently, if considered necessary by the chair. The CCFC shall be headed by the Chief Commissioners of Customs/Customs and Central Excise at the place of headquarters of these officers. At other places it would be headed by the Commissioners of Customs/Customs and Central Excise in charge of the seaport/airport. Chief Commissioners of Customs/Customs and Central Excise are also required to periodically review the working of the CCFC and its impact on reducing delays in the Customs clearance time of imported and export goods and in resolving related trade grievances.

[Ref: **Circular No. 13/ 2015-Customs dated 13-4-2015**]

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**1. Introduction:**

- 1.1 Central Board of Indirect Taxes and Customs (CBIC), In exercise of the powers conferred by clause (k) of section 157, read with section 99A and clause (ii) of sub-section (2) of section 158, of the Customs Act, 1962 (52 of 1962) and in supersession of the On-site Post Clearance Audit at the Premises of Importers and Exporters Regulation, 2011, has notified the Customs Audit Regulations, 2018, vide Notification No. 45/2018-Customs (N.T.) dated 24th May 2018.

[Notification No. 45/2018-Customs (N.T.) dt. 24th May 2018.]

- 1.2 A new Chapter XII A with heading 'AUDIT' was introduced in Customs Act, 1962, after Section 99. A new Section 99A (under Chapter XII A) has been introduced to provide a statutory framework for the procedure for conducting post clearance audit.

**Section 99A:** the proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed. Explanation of said Section 99A defines "auditee" as under:

**Explanation.** —For the purposes of this section, "auditee" means a person who is subject to an audit under this section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.

It means, scope of auditee has been enlarged significantly by aforesaid definition.

[Inserted by Finance Act, 2018 (Act No. 13 of 2018), dt. 29-3-2018.]

- 1.3 A new clause (k) has been inserted in section 157 of the Customs Act [vide Finance Act, 2018 (Act No. 13 of 2018)] to enable the Board to frame regulations in accordance with the new section 99A of the said Act.

Clause (k) of section 157 reads as:

(k) the manner of conducting audit;

[Inserted by Finance Act, 2018 (Act No. 13 of 2018), dt. 29-3-2018.]

- 1.4 Customs Audit Regulations, 2018 has been issued in terms of power conferred by Clause (k) of section 157 and the same is in accordance with global best practices, which is aimed at creating an environment of increased compliance while allowing the Department the flexibility to increase the facilitation for importers and exporters. Customs Audit Regulations, 2018 mark a fundamental shift in the functioning of the Indian Customs since the legal compliance and correct assessment of Customs duties will be verified by the Customs at the premises of importers and exporters. The earlier 'On-site Post Clearance Audit at the Premises of Importers

and Exporters Regulations, 2011' (OSPCA regulation) was applicable in relation to imported / export goods that were cleared after the enactment of the Finance Bill, 2011 i.e. 08.04.2011. The said OSPCA regulation, empowered the proper officer for verification of correctness of assessment of duty on imported or export goods at the premise of importer or exporter and also prescribed the manner of conducting audit.

- 1.5 As per Customs Audit Regulations, 2018, "audit" includes examination or verification of declaration, record, entry, document, import or export licence, authorisation, scrip, certificate, permission etc., books of account, test or analysis reports, and any other document relating to imported goods or export goods or dutiable goods, and may include inspection of sample and goods, if such sample or goods are available and where necessary, drawl of samples. Further, for the purpose of the section 99A, "auditee" means a person who is subject to an audit under the section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods. Further, "premises" includes the registered office, branch office, warehouse, factory, or any other premises at which, imported goods or export goods or dutiable goods or books of account or records of transaction or other related documents, in relation to the said goods are ordinarily kept, for any purpose by an auditee.

## **2. Customs Audit Regulations, 2018:**

- 2.1 Customs Audit Regulations, 2018 prescribes the methodology of Selection for Audit which states that the selection of auditee or the selection of import declarations or export declarations, as the case may be, for the purposes of audit shall primarily be based on risk evaluation through appropriate selectivity criteria. Thus, "risk based selection" is at the core of Customs Audit.
- 2.2 Customs Audit Regulations, 2018 also prescribe the manner of conducting audit at the premises of importer or exporter. It also stipulates the responsibilities and compliance on the part of auditee.

## **3. Auditee to preserve and make available relevant documents.-**

- 3.1 The auditee shall preserve and on request by the proper officer make available in a timely manner, for the purposes of audit, true and correct information, records including electronic records, documents or accounts maintained in compliance of the provisions of the Act, rule or regulations, made there under or any other law for the time being in force, maintained for a minimum period of five years in relation to imported goods or export goods or dutiable goods.
- 3.2 The auditee shall render assistance to the proper officer and his team of officers in the discharge of their official duty and shall in no case refuse or obstruct the proper officer or his team of officers in discharge of their official duty.

## **4. Manner of conducting audit –**

- 4.1 Following guidelines are prescribed under the Customs Audit Regulations, 2018:
  - (1) The proper officer may conduct audit either in his office or in certain cases at the premises of an auditee.

- (2) The proper officer may, where considered necessary, request the auditee to furnish documents, information or record including electronic record, as may be relevant to audit.
- (3) The proper officer shall give not less than fifteen days advance notice to the auditee to conduct audit at the premises of the auditee.
- (4) The proper officer may, where considered necessary, inspect the imported goods or export goods or dutiable goods at the premises of the auditee or request the auditee to produce sample, if available, with him.
- (5) The proper officer shall inform the auditee of the objections, if any, before preparing the audit report to provide him an opportunity to offer clarifications with supporting documents.
- (6) Where the auditee is in agreement with the audit findings, he may make voluntary payments of duty, interest or other sums, due, if any, in part or in full and the proper officer shall record the same in the audit report.
- (7) Where the proper office has asked the auditee to furnish information, document, record or sample for the purposes of audit, it shall be mandatory for the proper officer to inform outcome of such audit to the auditee.
- (8) The proper officer shall complete audit in cases where it is conducted at the premises of the auditee within thirty days from the date of starting of the audit. The jurisdictional Commissioner of Customs may extend the period of completion of audit from thirty days to sixty days, by an order in writing.

## **5. Assistance of professionals.**

- 5.1 If the proper officer, having regard to the nature and complexity of the audit, is of the opinion that the audit has to be done with the assistance of a professional like Chartered Accountant, Cost Accountant, an expert in the field of computer sciences or information technology etc., may do so, with the previous approval of the Principal Commissioner/Commissioner of Customs.

## **6. Penalty.**

- 6.1 Any auditee, who contravenes any provision of these regulations or abets such contravention or fails to comply with any provision of these regulations with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand Indian rupees."

## **7. Officers of Customs Audit**

- 7.1 The Board vide Notification No. 39/2018-Customs (N.T.) dated 11<sup>th</sup> May, 2018 has appointed officers of Customs of specified ranks as officers of Customs Audit for the purpose of carrying out audit under section 99A of the Customs Act, 1962. The specified officers have also been empowered under Section 17 and Section 28 of the Customs Act, 1962 vide Notification No. 40/2018-Cus (NT) dated the 11<sup>th</sup> May, 2018 which shall enable them to issue necessary show cause notices based on the findings of audit.

[Refer Notification No 39/2018-Cus( NT)., dated 11-05-2018 &

Notification No 40/2018-Cus( NT)., dated 11-05-2018]

8. The Customs Audit Manual 2018 explains in details the principles, methodology and procedure for conducting three types of customs audit i.e Transaction based audit (TBA), Theme based audit (ThBA) and Premises based Audit (PBA), which should be referred to for more details about Customs Audit.

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## Authorized Economic Operator (AEO) Programme

### 1. Back Ground:

- 1.1 Prior to adoption of the SAFE Framework by WCO in 2005, Customs administration all over the world including India, were already implementing various forms of Customs compliance programmes which focused on traditional areas of Customs requirements, and which can also be considered as trade facilitation programmes, based on the Revised Kyoto Convention's "Authorised Persons" provisions. In India this programme was known as Accredited Client Programme (ACP). (Notification no. 42/2005-Cus Dated 24.11.2005) which provided facilitation to clients subject to their fulfillment of the prescribed eligibility criteria. As of March 2015, 168 out of 180 WCO members have signed letters of intent committing to implement the SAFE Framework. In India the AEO programme was launched in 2011 on Pilot basis vide circular no. 37/2011-Cus dated 23.08.2011 and rolled out in full fledged manner vide circular no. 28/2012-Cus dated 16.11.2012. In the light of these international developments, as well as in view of the focus of the Government of India on "Ease Of Doing Business", Central Board Of Indirect Taxes and Customs has developed a comprehensive unified trade facilitation programme by incorporating the existing ACP scheme and ongoing AEO Programme into a revised AEO Programme vide circular no. 33/2016-Customs dated 22.07.2016 providing additional facilities to the legitimate trade who have demonstrated strong internal control system and willingness to comply with the laws administered by the Central Board of Indirect Taxes and Customs.
- 1.2 The objective of the revised AEO programme shall continue to remain same as earlier, that is, to provide businesses with an internationally recognized quality mark which will indicate their secure role in the international supply chain and that their customs procedures are efficient and compliant. An entity with an AEO status can, therefore, be considered a 'secure' trader and a reliable trading partner.
- 1.3 In 2005 the World Customs Organisation (WCO) adopted the SAFE Framework of Standards to secure and facilitate global trade, which includes the concept of an Authorized Economic Operator (AEO) whereby a party engaged in the international movement of goods is approved by Customs as compliant with the supply chain security standards, and given benefits, such as simplified Customs procedures and reduced Customs intervention. The AEO concept is being increasingly adopted by various Customs administrations with the objective of securing the supply chain with resultant benefits for the trading community. Consistent with the "SAFE Framework" developed by the WCO, the Indian Customs administration has developed an AEO Programme that encompasses various players in the international supply chain such as importers, exporters, warehouse owners, Custom House Agents, cargo forwarders and carriers. The objective of the AEO Programme is to provide businesses with an internationally recognized quality mark which will indicate their secure role in the international supply chain and that their Customs procedures are efficient and compliant. An entity with an AEO status can, therefore, be considered a 'secure' trader and a reliable trading partner.

- 1.4 As aforesaid, the AEO Programme seeks to secure the global supply chain in partnership with business entities that are fully legally compliant and provide with the Customs the confidence to validate their security features. Therefore, it is imperative that participating entities ensure they fulfill this fundamental requirement.
- 1.5 Customs organizations all over the world are tasked with the twin challenges of securing the borders from unlawful trade and at the same time facilitating the legitimate trade. Thus in light of the said objectives the AEO program was given strength vide Circular No. 33/2016-Customs dated 22.7.2016 (herein after referred to as 'said Circular'), Circular No. 03/2018 – Customs dated 17.01.2018 and 26/2018 – Customs dated 10.08.2018. This unique international instrument has ushered in modern supply chain security standards with the help of a closer partnership between Customs and business in the form of Authorized Economic Operator (AEO) programme, which constitutes one of the three pillars on which SAFE Framework sets. The AEO programme seeks to provide tangible benefits in the form of faster Customs clearances and simplified Customs procedures to those business entities who offer a high degree of security guarantees in respect of their role in the supply chain. The SAFE Framework sets forth the criteria by which businesses in the supply chain can obtain authorized status as a secure partner. Such criteria address issues such as threat assessment, a security plan adapted to the assessed threats, procedural measures to prevent illegitimate goods entering the supply chain, physical security of buildings and premises used as loading or warehousing sites, and security of cargo, means of transport, personnel and information system.

## 2. Three tier AEO programme for importers and exporters (AEO-T1, AEO-T2, and AEO-T3):

- 2.1 On the strength of Circular No. 33/2016-Customs dated 22-7-2016, the earlier existing ACP and AEO programmes were merged into the new AEO programme. For the economic operators other than importers and the exporters, the new programme offers only one tier of certification (i.e. AEO-LO) whereas for the importers and the exporters, there are three tiers of certification (i.e. AEO-T1, AEO-T2 and AEO-T3). Accordingly, henceforth the AEO Programme Manager may, following an application by an economic operator, issue the following Authorized Economic Operator Certificates (hereinafter referred to as AEO certificates) to which the applicant may be eligible as per the eligibility conditions and criteria laid down under paragraph 3 of the said circular:
- 2.2 **AEO-T1 Certificate**– This certificate may be granted only to an importer or to an exporter. For the purpose of this certificate,
- (i) the Importer/ Exporter should fulfill the criteria mentioned in Circular No. 26/2018-Cus., dated 10.08.2018.
  - (ii) All other requirements as stipulated in the said circular shall be considered to have been met if the information and documents submitted by the applicant prove the claims of the applicant to the satisfaction of the Zonal AEO Programme Manager.
- 2.3 **AEO-T2 Certificate**– This certificate may be granted only to an importer or to an exporter. For the purpose of this certificate,
- (i) the economic operator should fulfill the criteria mentioned at para 3.1 of the said circular; and

- (ii) all other requirements as stipulated in paragraphs 3.2, 3.3, 3.4 and 3.5 of the said circular shall be considered to have been met if the claims made in this regard in information and documents submitted by the applicant have been physically verified by the AEO Programme Team by visiting the concerned places/premises of the applicant, on the dates decided by mutual consent by the team and the applicant, and found to be true to the satisfaction of the AEO Programme Manager.

2.4 **AEO-T3 Certificate** - This certificate may be granted only to an importer or to an exporter.

For the purpose of this certificate,

- (i) The economic operator must have continuously enjoyed the status of AEO-T2 for at-least a period of two years preceding the date of application for grant of AEO-T3 status; or
- (ii) The economic operator must be an AEO-T2 certificate holder, and its other business partners namely importers or exporters, Logistics service providers, Custodians/Terminal operators, Customs Brokers and Warehouse operators are holders of AEO-T2 or AEO-LO certificate or any other equivalent AEO certificate granted by a foreign Customs.

### 3 **Single Tier AEO Programme for Logistics Providers, Custodians or Terminal Operators, Customs Brokers and Warehouse Operators**

3.1 **AEO-LO Certificate**— This certificate may be granted to categories of economic operators other than importers and exporters, namely Logistics Providers, Custodians or Terminal Operators, Customs Brokers and Warehouse Operators. For the purpose of this certificate,

- (i) the economic operator should fulfill the criteria mentioned at para 3.1 of the said circular; and
- (ii) all other requirements as stipulated in paragraphs 3.2, 3.3, 3.4 and 3.5 of the said circular shall be considered to have been met if the claims made in this regard in information and documents submitted by the applicant have been physically verified by the AEO Programme Team by visiting the concerned places/premises of the applicant, on the dates decided by mutual consent by the team and the applicant, and found to be true to the satisfaction of the AEO Programme Manager.

4. **Benefits of an AEO Certificate:** A business authorized by the Customs as an AEO can enjoy benefits flowing from being a more compliant and secure company as well as favourable consideration in any Customs proceedings coupled with better relations with Customs. AEO status will also ensure a low risk score is incorporated into Customs, Risk Management System” (RMS) and used to determine the frequency of Customs physical and documentary checks. The benefits may also include simplified Customs procedure, declarations, etc. besides faster Customs clearance of consignments of/for AEO status holders. The scope of the benefits to the AEOs based on their categories would be as mentioned below:

#### 4.1 **Benefits for AEO-T1:**

- i. They shall be accorded high level of facilitation in imports and export of their consignments, thereby ensuring shorter cargo release time.



- ii. Facility of Direct Port Delivery (DPD) of their import Containers and/ or Direct Port Entry(DPE) of their Export Containers would be available to them (depending on the volume of their Import/ Export trade in terms of number of containers).
- iii. ID cards to be granted to authorized personnel for hassle free entry to Custom Houses, CFSs and ICDs.
- iv. Wherever feasible, they will get separate space earmarked in Custodian's premises.
- v. In case they are required to furnish a Bank Guarantee, the quantum of the Bank Guarantee would be 50% of that required to be furnished by an importer/ exporter who is not an AEO Certificate Holder. However, this exemption from Bank guarantee would not be applicable in cases where the Competent Authority orders furnishing of Bank Guarantee for provisional release of seized goods.
- vi. Investigations, if any, in respect of GST, Customs, erstwhile Central Excise and Service Tax cases would be completed, as far as possible, in six to nine months.
- vii. Dispute resolution at the level of Adjudicating Authorities in respect of GST, Customs, erstwhile Central Excise and Service Tax cases would be done preferably and as far as possible within six months.
- viii. They will not be subjected to regular transactional PCA, instead of that onsite PCA will be conducted once in three years only.
- ix. They will get an e-mail regarding arrival/ departure of the vessel carrying their consignments.
- x. 24/7 clearances on request at all sea ports and airports – No Merchant Overtime Fee (MOT)charges need to be paid.
- xi. where there is no SION/valid Ad-hoc Norms for an export product and where SION has been notified but exporter intends to use additional inputs in the manufacturing process, eligible exporter, who is an AEO, can apply for an Advance Authorisation under this scheme on self declaration and self ratification basis" (added by Circular No. 3/2018-Cus., dated 17.01.2018).
- xii. Will be exempted from the requirements of drawal of samples for the purpose of grant of drawback, except in case of any specific information or intelligence(added by Circular No. 18/2017-Customs dated 29.05.2017).

#### 4.2 Benefits for AEO-T2:

The following benefits would be provided over and above the benefits offered in T1:

- i. They shall be accorded higher level of facilitation (as compared to AEO-T1 in imports and export of their consignments).
- ii. For Importers/Exporters not opting for DPD/DPE, seal verification/scrutiny of documents by Custom officers would be waived. Consignments would be given out of charge or let export order, as the case may be, without any scrutiny by the officers.

- iii. The containers selected for scanning will be scanned on priority, by giving front line of treatment.
- iv. Facility of deferred payment of duty will be provided, from a date to be notified
- v. Faster disbursal of drawback amount within 72 hours of EGM submission, from a date to be notified
- vi. The BEs/SBs selected for Assessment and/or Examination will be processed on priority by the Customs officers.
- vii. Facility of self -sealing of export goods would be allowed without the requirement to seek case to case base permission from the authorities
- viii. Faster completion of Special Branch ('SVB') proceedings in case of related party imports and monitoring of such cases for time bound disposal in terms of new guidelines
- ix. In case they are required to furnish a Bank Guarantee, the quantum of the Bank Guarantee would be 25% of that required to be furnished by an importer/ exporter who is not an AEO Certificate Holder. However, this exemption from Bank guarantee would not be applicable in cases where the Competent Authority orders furnishing of Bank Guarantee for provisional release of seized goods.
- x. They will be given facility to paste MRP stickers in their premises.
- xi. They will not be subjected to regular transactional PCA instead of that onsite PCA will be conducted once in three years only.
- xii. They will be given access to their consolidated import/export data through ICEGATE from a date that would be communicated separately.
- xiii. They will be provided the facility of submitting paperless declarations with no supporting documents in physical form.
- xiv. All Custom Houses will appoint a "Client Relationship Manager"(CRM) at the level of Deputy / Assistant Commissioner as a single point of interaction with them. The CRM would act as voice of the AEO within Customs in relation to legitimate concerns and issues of AEO and would assist in getting procedural and operational issues resolved by coordinating with different sections within Customs as well as other stakeholders.
- xv. The refund/Rebate of Customs/Central Excise duty and Service Tax would be granted within 45 days of the submission of complete documents.
- xvi. They will get trade facilitation by a foreign Customs administration with whom India enters into a Mutual Recognition Agreement/Arrangement.

#### 4.3 Benefits for AEO-T3:

The following benefits would be provided over and above the benefits offered in T2:

- i. They shall be accorded highest level of facilitation, as compared to AEO-T2, in imports and export of their consignments.

- ii. Their containers will not be selected for scanning except on the basis of specific intelligence. Further when any container is selected for scanning, top most priority will be given for scanning.
- iii. The assessing/examining custom officer will rely on the self-certified copies of documents submitted by them without insisting upon original documents.
- iv. They would not be required to furnish any Bank Guarantee. However, this exemption from Bank guarantee would not be applicable in cases where the Competent Authority orders furnishing of Bank Guarantee for provisional release of seized goods.
- v. An approach based on Risk based interventions, in case of requirements originating from the Acts administered by other Government Agencies/Departments, will be adopted for providing better facilitation in imports and export of their consignments.
- vi. On request, they will be provided on-site inspection /examination.
- vii. The refund/Rebate of Customs/Central Excise duty and Service Tax would be granted within 30 days of the submission of complete documents.

**The comparable benefits available to AEO-T1, AEO-T2 and AEO-T3 are summarized in table below:**

Sr. No.	Facility to be provided	Benefits for AEO-T1	Benefits for AEO-T2	Benefits for AEO-T3
1	Accorded facilitation in import and export Consignments ensuring shorter cargo release time	high	higher	highest
2	Facility of DPD/ DPE	Available depending on volume	Available	Available
3	ID cards for hassle free entry to Custom Houses, CFSs and ICDs	Yes	Yes	Yes
4	Separate space earmarked in Custodians premises	Yes	Yes	Yes
5	BG required to be furnished	50%	25%	NIL
6	Investigations to be completed	In 6-9 months	In 6-9 months	In 6-9 months
7	Dispute resolution at AA level	Within 6 months	Within 6 months	Within 6 months
9	Email intimating vessel arrival for their consignment	Yes	Yes	Yes
10	24X7 clearance at all sea ports and airports.	Yes	Yes	Yes

11	No merchant overtime fees need to be paid	Yes	Yes	Yes
12	Exemption from the requirements of drawal of samples for the purpose of grant of drawback	Yes	Yes	Yes
13	Waiver of seal verification / scrutiny of documents	--	For Non DPD / DPE option availed	Yes
14	OOO/ LEO without scrutiny by customs officer	--	Yes	Yes
15	Scanning on priority	--	Yes	Container will not be scanned except on specific intelligence
16	Facility of deferred payment of duty	--	Yes	Yes
17	Faster disbursal of drawback	--	Within 72 hours of EGM	Within 72 hours of EGM
18	Priority given to B/E or S/B selected for assessment/ examination	--	Yes	Yes
19	Facility of self sealing of consignments for export	--	Permitted on case to a case basis	Permitted
20	Faster completion of SVB Proceedings	--	Time bound manner	Time bound manner
21	Facility to paste MRP stickers in premises	--	Allowed	Allowed
22	Access to consolidated import export data on ICEGATE	--	Available	Available
23	Facility of paperless declaration	--	Available	Available
24	Custom House Assistance	--	Through Client Relationship Manager (CRM)	Through Client Relationship Manager (CRM)
25	Trade facilitation by foreign customs administration (MRA)	--	Yes	Yes
26	Assessing / examining officer will rely on self certified documents	--	--	Yes
27	Only Risk based intervention in case of other govt. agencies / departments	--	--	Yes
28	Onsite inspection / examination	--	--	On request available

**4.4 Benefits for AEO-LO: The benefits available to different entities eligible to be qualified as AEO-LO are summarized in table below:**

Sr. No.	Entity	Facilities to be provided
1	Logistic Service Providers	(a) Waiver of bank Guarantee in case of trans-shipment of goods under Goods imported (Condition of Trans-shipment) Regulations, 1995. (b) Facility of Execution of running bond. (c) Exemption from permission on case to case basis in case of transit of goods.  In case of international transshipped cargo (Foreign to Foreign), for the pre-sorted containers wherein Cargo does not require segregation, ramp to ramp or tail to tail transfer of cargo can be effected without Customs escorts.
2	Custodians or Terminal Operators	(a) Waiver of bank Guarantee under Handling of cargo in Customs Area Regulations 2009. (b) Extension of approval for custodians under regulation 10(2) of the 'Handling of cargo in Customs Area Regulation 2009' for period of 10 years.
3	Customs Brokers	(a) Waiver of Bank Guarantee to be furnished under regulation 8 of the CBLR, 2013. (b) Extended validity (till validity of AEO status) of licenses granted under regulation 9 of the CBLR 2018. System Manager to incorporate date of validity of AEO from time to time in the System Directory (c) Waiver from fee for renewal of license under sub regulation (2) of regulation 11 of CBLR, 2013.
4	Warehouse Operators	(a) Faster approval for new warehouses within 7 days of submission of complete documents (b) Waiver of antecedent verification envisaged for grant of license for warehouse under circular 26/2016 (c) Waiver of solvency certificate requirement under circular 24/2016 (d) Waiver of security for obtaining extension in warehousing period under circular 21/2016 (e) Waiver of security required for warehousing of sensitive goods under circular 21/2016

4.5 With a view to promote an overall voluntary compliance framework, the selection of AEO's for on-site post clearance audit (OSPCA) in respect of AEO-T1, AEO-T2 and AEO-T3 shall be based on risk assessment. Better and higher compliance level demonstrated by the AEO shall be taken into account for determining the frequency of audit. It is also clarified that AEO's undergoing OSPCA shall not be subjected to routine transactional PCA. Detailed guidelines on risk based OSPCA will be issued subsequently.

**5. Application for an AEO Certificate:**

The applicant for grant of AEO-T1, AEO-T2, AEO-T3 and AEO-LO should be made in duly filled

annexures as mentioned in Circular No. 33/2016-Customs dated 22.7.2016 as amended. However, an applicant is required to fill-in and submit only those annexures which may be applicable to it. The application should be sent directly to jurisdictional Customs Chief Commissioner or to the AEO Programme Manager, Directorate of International Customs, 10th Floor, Tower II, Jeevan Bharti Building, Connaught Place, New Delhi – 110001 or filed online on [aeoindia.gov.in](http://aeoindia.gov.in) in respect of AEO-T1 applications. Online AEO website( domain name: [aeoindia.gov.in](http://aeoindia.gov.in)) for filing of AEO T1 application has been launched on 30.11.2018.

[ Refer Circular No. 51/2018- Customs dated 07.12.2018]

**6. Eligibility conditions and Criteria for granting the AEO Certificate:** The following eligibility criteria is relevant for the grant of AEO status:

6.1 Who can apply for AEO Certificate is prescribed in Circular No. 33/2016-Customs dated 22-7-2016. The important eligibility criteria are briefed herein as follows:

- (i) Anyone involved in the international supply chain that undertakes Customs related activity in India can apply for AEO status. These may include exporters, importers, logistic providers (e.g. carriers, airlines, freight forwarders, etc.), Custodians or Terminal Operators, Customs House Agents and Warehouse Owners. Others who may qualify include port operators, authorized couriers, stevedores.
- (ii) Businesses that are not involved in Customs related work / activities will not be entitled to apply.
- (iii) Application for AEO status will only cover the legal entity of the applicant and will not automatically apply to a group of companies.
- (iv) In order to apply for AEO status the applicant must be established in India.
- (v) The applicant should have business activities for at least three financial years preceding the date of application. However in exceptional cases, on the basis of physical verification of internal controls of a newly established business entity, the AEO Programme Manager may consider it for certification.
- (vi) Keeping the small and medium scale enterprises in mind it has been decided the AEO programme is made open to all Importers/Exporters whose threshold of import or export declarations is 25 documents i.e. either Bills of Entry or Shipping Bills during the last financial year. The other economic operators should have handled at least 25 documents i.e. Bills of Entry or Shipping bills during the last financial year.
- (vii) The AEO Programme Manager shall take into account such factors as the size of the MSMEs, the legal status (e.g. proprietorship, partnership etc), the structure, the key business partners and also the specific economic activity of the economic operator while applying these eligibility conditions and criterias.
- (viii) Appropriate record of compliance of Customs and other relevant laws; There should be no case wherein prosecution has been launched or is being contemplated against the applicant or its senior management.

- (xi) An applicant will also need to demonstrate that he has (i). procedures in place to identify and disclose any irregularities or errors to the Customs, authorities or, where appropriate, other regulatory bodies. (ii). taken appropriate remedial action when irregularities or errors are identified.
- (x) Satisfactory system of managing commercial and, where appropriate, transport records;
- (xi) An applicant must be financially solvent during the three financial years preceding the date of application.
- (xii) An applicant must have in place appropriate internal control and measures to ensure, Premises security, cargo security, conveyance security, personnel security, security and safety standards for applicants business, and his supply chain and procedural security.

6.2 The various compliance required to be fulfilled by applicant and the manner of application and supportive documents to be submitted by the applicant are summarized under various headings under Section 3 in the Circular No. 33/2016-Customs dated 22-7-2016.

## **7. Procedure for issuing AEO Certificates:**

7.1 An applicant for grant of AEO status should submit the following in the manner as prescribed in the Circular No. 33/2016-Customs dated 22.7.2016 & Circular No. 03/2018-Cus., dated 17.01.2018 & 26/2018-Cus., dated 10.08.2018:

- (i) Application for Authorized Economic Operator (AEO) Status
- (ii) Appropriate Safety and Security plan as required and prescribed.
- (iii) Process map
- (iv) Site plan
- (v) Self-Assessment Form
- (vi) Legal Compliance
- (vi) Management of appropriate commercial and transport record compliance.
- (vii) Financial solvency compliance
- (viii) Business Partner Details.

7.2 The application should be sent directly to jurisdictional Customs Chief Commissioner or to the AEO Programme Manager, Directorate of International Customs, 10th Floor, Tower II, Jeevan Bharti Building, Connaught Place, New Delhi – 110001 or filed online on [aeoindia.gov.in](http://aeoindia.gov.in) in respect of AEO-T1 applications.

7.3 Section 4 of Circular No. 33/2016-Customs dated 22.07.2016 dealt with the Procedure for issuing AEO certificates which is as follows:

7.4 Acknowledgement of application: Each application will be acknowledged (wherever applicable, shall be done digitally) and recorded in an AEO Programme database.

**8. Return of application:**

- 8.1 If application is incomplete or deficient, the applicant will be suitably informed within 30 days of the receipt.
- 8.2 AEO Programme Manager will not process the following applications until the deficiencies, as indicated, are rectified,:
  - (a) Which is incomplete – This may be resubmitted with the complete information.
  - (b) Where the application has not been made by a legal person – This can only be resubmitted by the concerned legal entity.
  - (c) Where no responsible person is nominated – This can only be resubmitted when the applicant nominates a responsible person who will be the point of contact for the AEO Programme.
  - (d) Where the applicant is subject to bankruptcy proceedings at the time the application is made: This may be resubmitted when the applicant becomes solvent.
  - (e) Where a previously granted AEO status has been revoked -This may not be resubmitted until the period as prescribed in paragraph 5.7.3 has elapsed after the date of revocation. Para 5.7.3 states that, “In case the AEO status is revoked, the AEO-T1 and AEO-T2 status holder will not be entitled to reapply for the AEO certificate for a period of one year from the date of revocation.”

**9. Rejection of application:**

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

**10. Processing of application:**

- 10.1 On receipt of the complete application and after ensuring that the applicant is eligible to apply, the information and documents submitted by the applicant shall be scrutinized to assess whether or not the eligibility conditions and criteria for granting the AEO certificate as mentioned under the Section 3 of the said circular are met by the applicant.
- 10.2 If necessary, further information and/or documents in support of the claim of the applicant may be called for by the AEO Programme Manager or by an officer on his behalf. Such request shall be sent in writing.
- 10.3 The applicant shall submit such information and/or documents within a reasonable time.
- 10.4 In case of an application for grant of AEO-T1 status, once the eligibility conditions and criteria for granting the AEO certificate as mentioned under the Section 3 of this circular are found to have been met by the applicant to the satisfaction of the Zonal AEO Programme Manager, the applicant shall be issued the AEO-T1 certificate (wherever applicable, shall be done digitally)



within 30 days of submission of the information and/or documents.

- 10.5 In case of an application for grant of AEO-T2 or AEO-LO, the information and/or documents submitted by the applicant shall be scrutinized, and if they are found eligible to the satisfaction of the AEO Programme Manager, the applicant shall be duly intimated within 30 days of submission of the information and/or documents. Thereafter, the successful application will be assigned to a specific AEO Programme Team within 15 days to carry out physical verification of the information and documents. The date(s) for physical verification would be decided by the team in consultation with the applicant.
- 10.6 The AEO Programme Team will, within 90 days, visit the business premises for verification of the information and documents provided. Such visit shall be made on a convenient date after consulting the applicant.
- 10.7 If within 45 days of the date of intimation issued in terms of paragraph 4.4.5, the applicant has not been contacted by the AEO Programme Team, then the applicant should contact the Zonal AEO Programme Manager/ AEO Programme Manager immediately.
- 10.8 During the course of such verification, the applicant for AEO-T2 or AEO-LO status should be prepared to answer questions or provide additional information on all aspect of the application to the visiting AEO Programme Team.
- 10.9 Examination of the criteria laid down under Section 3 above shall be carried out for all the premises which are relevant to the customs related activities of the applicant for AEO-T2 or AEOLO status. The examination as well as its results shall be documented by the AEO Programme team.
- 10.10 In case several premises of the applicant are run in a similar way by standard systems of record keeping and security etc. there will be no need for the AEO Programme Team to visit all of them. However, if the business of the applicant covers a range of activities or different premises have different method of operating, then it may be necessary for more visits to be made.
- 10.11 The duration of visit/verification would depend on the size of business, number of premises, how they operate etc. The AEO Programme Team will give the applicant for AEO-T2 or AEO-LO status an estimate of time required, though this may have to be amended once the verification has commenced. The date(s) for physical verification would be decided by the team in consultation with the applicant.
- 10.12 Where appropriate, in addition to the other requirements detailed earlier, the AEO Programme Team may cover the following:
  - (i) Information on Customs matters.
  - (ii) Remedial action taken on previous Customs errors, if any.
  - (iii) Accounting and logistic systems.
  - (iv) Internal controls and procedures.
  - (v) Flow of cargo.

- (vi) Use of Customs House Agents/Customs Broker
  - (vii) Security of Computers/IT and documents.
  - (viii) Financial solvency.
  - (ix) Safety and security assessment – premises, cargo, personnel etc.
  - (x) Logistic processes.
  - (xi) Storage of goods.
- 10.13 During the course of physical visit/verification, the person who is nominated in the application form as point of contact must ordinarily be available unless unforeseeable situation arises. In addition, individuals responsible for specific business activities such as transport, recordkeeping and security should also be available.
- 10.14 On completion of verification, the AEO Programme Team will prepare their report and make a recommendation to the AEO Programme Manager within 60 days of completion of visits/ verification. The contents of report and recommendation can be seen by applicant who will get the opportunity to sign the same, but this will not be a mandatory requirement.
- 10.15 Within 30 days of such recommendation by the AEO Programme Team, the applicant will be suitably informed, including issue of the appropriate AEO certificate for AEO-T2 or AEO-LO status, by the AEO Programme Manager.
- 10.16 Where the application for grant of AEO-T2 or AEO-LO status is not accepted by the AEO Programme Manager after the verification by the AEO Programme Team, the applicant will be advised of the criteria that have not been met and give the applicant time to adapt procedures to remedy the deficiency. If applicant is unable to make the required changes within the specified time limits, the AEO Programme Manager will issue a decision to reject applicant's AEO application, explaining the reasons for rejection.
- 10.17 In exceptional cases, the physical verification may be stopped by consensus between the applicant for grant of AEO-T2 or AEO-LO status and the AEO Programme Manager in order for the applicant to provide additional information or to permit minor problems to be addressed. The period of stoppage will normally not be longer than six months and applicant will be informed in writing of the date when the AEO verification will recommence and the revised date by which applicant can expect a decision on his application.
- 10.18 In case an application for grant of AEO-T3 status is submitted by a holder of AEO-T2 status, who has been continuously enjoying the AEO-T2 status for a period of two years or more, the applicant shall be issued the AEO-T3 certificate within 30 days of submission of the application. However, in case of any significant changes in the business or the processes since the previous physical verification by an AEO Programme Team, the applicant may be subjected to physical verification as may be deemed necessary by the AEO Programme Manager by following the procedures as mentioned in the paragraph 4.4.5, 4.4.6 and 4.4.7 above.
- 10.19 In case an application for grant of AEO-T3 status is submitted by a holder of AEO-T2 status, who has not been continuously enjoying the AEO-T2 status for a period of two years or more, but

who satisfies the eligibility condition mentioned at paragraph 1.2.3 (ii), the application will be assigned to a specific AEO Programme Team within 15 days to carry out physical verification of the **information and documents submitted in Annexure-F only**. The date(s) for physical verification would be decided by the team in consultation with the applicant. Thereafter, the procedures as mentioned in the paragraph 4.4.5, 4.4.6 and 4.4.7 above shall be followed. However, in case of any significant changes in the business or the processes since the previous physical verification by an AEO Programme Team, the applicant may be subjected to physical verification as may be deemed necessary by the AEO Programme Manager by following the procedures as mentioned in the paragraph 4.4.5, 4.4.6 and 4.4.7 above.

## **11. Certification:**

- 11.1 If AEO status is granted, the AEO Programme Manager shall send the Certificate of AEO Status to the applicant in hard copy along with an electronic copy (for AEO T1 only). The Certificate shall bear the 'AEO logo' that may be used where it is appropriate to do so for the business, for example, company stationary, signage on vehicles or other publicity materials. The copyright for the logo is owned by the AEO Programme Manager on behalf of the Indian Customs Administration.
- 11.2. The AEO status will be activated within a week from the date of issue. Following this period, the applicant should enter the AEO certificate number on all Customs documentation to indicate their AEO Status.
- 11.3 It is highly recommended that the applicant should keep the Certificate of AEO status at a safe place and not release the AEO Certificate number to anyone unless required to do so for business purposes. Although the AEO status can be advertised by the applicant, the AEO Certificate number should not be part of their advertisement.

## **12. Web based filing, processing and digitized certification of AEO-T1 applications:**

- 12.1 To further ease out the AEO process an AEO Web Application has been launched (aeoindia.gov.in) on 30.11.2018. By this web application, the entire AEO process has been digitized to allow the application filing, processing & digital signed delivery of AEO certification over an online platform. DIC has already issued a circular prescribing the detailed procedure for filing, processing and certification of AEO-T1 applications through a web-based application. This will be done through respective Zonal CC Customs Zones as well as DIC (where DIC is chosen as zone).The Indian AEO Web Application will provide wholesome support to the applicant by allowing them the facility to submit their AEO application with the click of the button to ensure highest degree of ease in doing business. This web-application requires registration of the applicant on its home page. Once the registration is completed, a confirmation communication is sent to the applicant. Thereafter, the registered user applicant can proceed to file the application through "applicant's" access and follow the stepwise procedure for filing online AEO T1 application. For every completed procedure of registration, submission of Annexures, approval by Zonal AEO Program Manager and digital certificate issuance, the applicant would be getting SMS/E-mail for ease of information and transparency. The application will then be processed online by Customs officials and the digitally signed AEO certificate will be relayed online to the certified entity.

12.2 For departmental officers, the access to this web-application is through “Customs Official” tab with role specific login ID and password, which would be disseminated by the nodal AEO officer of the respective CC customs zone. There are 3 levels for online processing, i.e. Superintendent, AC/DC/JC/ADC and Zonal Programme Manager i.e. Commissioner/Pr. Commissioner. Once the recommendation of the Zonal AEO programme Manager is received, the DIC will issue digitally signed AEO Certificate and subsequently issue a hard copy of the AEO Certificate. This process will run simultaneously with manual processing till 31.03.2019 after which all AEO-T1 applications shall mandatorily be filed, processed and certified digitally only.

**13. Post-Certification Provisions**

13.1 The validity of AEO certificate shall be three years for AEO-T1, three years for AEO-T2, five years for AEO-T3 and five years for AEO-LO.

13.2 Renewal of AEO certificate

The AEOs, if they so desire to continue their AEO status and avail the benefits, must submit their application as stipulated under Section 2 of this circular, before lapse of their validity as per the following:-

AEO status	Time limit for submission of application for renewal before lapse of validity
AEO-T1	30 days
AEO-T2	60 days
AEO-T3	90 days
AEO-LO	90 days

13.3 While submitting the application for renewal, the applicant must clearly highlight the changes from the last application.

13.4 AEO Programme Manager will consider the renewal applications by following the procedure adopted while granting the fresh AEO status.

**14. Maintenance of AEO Status:**

14.1 After obtaining AEO status, the AEO status holder should maintain their eligibility by adhering to the appropriate standards.

14.2 The holder of a Certificate of AEO Status is required to notify any significant change in business and processes which may affect the AEO status to the AEO Programme Team. These changes may include the following:

- (i) Change to the legal entity.
- (ii) Change of business name and/or address.
- (iii) Change in the nature of business i.e. manufacturer / exporter etc.
- (iv) Changes to accounting and computer systems.
- (v) Changes to the senior personnel responsible for Customs matters.

(vi) Addition or deletion of locations or branches involved in international supply chain.

14.3 The AEO status holder should notify the AEO Programme Team as soon as the change is known or, at least within 14 days of the change taking place.

14.4. If the legal entity changes, the AEO status holder needs to reapply for AEO in the name of new legal entity.

14.5. If the AEO status holder makes Customs related errors, they must be reported to the local “Client Relationship Manager” (CRM) as well as the AEO Programme Team. Errors that are voluntarily disclosed will not impact the AEO status provided that the AEO status holder has:

(i) Examined the reasons for the errors.

(ii) Taken appropriate remedial action to prevent recurrence.

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

15.1 The AEO Programme Team will review AEO status periodically to ensure continued adherence to the conditions and standards of grant of Certificate of AEO Status. Thus, it is recommended that the AEO status holder should continue to re-assess its compliance with the conditions of certification and act upon any identified problems as soon as they arise. The frequency of such review will be two years, three years, five years and five years in case of AEO-T1, AEO-T2, AEO-T3 and AEO-LO respectively. As far as possible, the review and the onsite PCA, if applicable, will be conducted simultaneously.

## **16 Suspension or downgrading of AEO Status:**

16.1 The AEO Programme Manager may suspend the Certificate of AEO Status in the following cases:

i. Where any non-compliance with the conditions or criteria for the Certificate of AEO Status has been detected; or

ii. In the case of a Custodian or Custom Broker or Warehouse Operator, where the basic license as a Custodian or Custom Broker or Warehouse Operator, as the case may be, has been suspended by the competent authority.

16.2 In the case of an AEO importer or an AEO exporter, if any show cause notice has been issued alleging infringement of Customs/GST/erstwhile Central Excise or Service Tax law, other than those covered under para 3.2.1, AEO Programme Manager may downgrade the status of an AEO-T3 to AEO-T2 or AEO-T1, or downgrade the status of an AEO-T2 to AEO-T1, or suspend the status of the AEO, as deemed appropriate. The decision shall be taken after due diligence and on careful evaluation of the material evidence and arguments against the AEO of the case. The AEO Programme Manager may consult the jurisdictional Commissionerate before arriving at the final decision in this regard. The decision to downgrade the AEO status shall be purely an administrative decision.

## **17. Restoration of suspended/ downgraded AEO Status:**

17.1 Where AEO status had been suspended on account of detection of any non-compliance with the conditions or criteria for the Certificate of AEO Status, and if the AEO holder takes the

necessary remedial measures to the satisfaction of the AEO Programme Manager within 60 days of suspension, the AEO Programme Manager may restore the AEO status from a date to be notified by him.

17.2 Where AEO status had been suspended on account of suspension of the basic license as a Custodian or Custom Broker or Warehouse Operator or as the case may be, and subsequently such suspension of the basic license is revoked by the competent authority, the AEO Programme Manager may consider restoration of AEO status, and if deemed appropriate may restore the AEO status from a date to be notified by him.

17.3 Where AEO status had been suspended on account of issue of a show cause notice, and if the ratio of disputed duty demanded or drawback demanded or sought to be denied in SCNs issued under the Customs Act, 1962 during the last three years to the total duty paid and drawback claimed during the said period is not more than ten percent, the AEO Programme Manager may consider restoration of AEO status, and if deemed appropriate may restore the AEO status from a date to be notified by him.

17.4 In case an AEO status has been downgraded, it shall be open to the entity to apply again for higher status as and when the eligibility conditions and criterion are met by it. AEO Programme Manager will consider such applications by following the procedure adopted while granting the fresh AEO status.

## **18. Revocation of AEO Status:**

18.1 In following circumstances, the Certificate of AEO Status will be revoked:

- i. Where the Certificate of AEO Status is already suspended and the AEO holder fails to take the remedial measure within 60 days to have the suspension withdrawn; or
- ii. Where there is a reasonable belief that an act has been perpetrated that is liable to lead to prosecution and /or is linked to an arrest of person under Customs Act, 1962 as mentioned in Para 3.2.2; or
- iii. A show cause notice has been issued to them involving fraud, forgery, outright smuggling, clandestine removal of excisable goods or cases where Service Tax has been collected from customers but not deposited to the Government as mentioned in Para 3.2.1; or
- iv. Where the AEO status holder requests the authorization be revoked.

18.2 Prior to any decision to revoke authorization, the applicant will be notified. Revocation is applied from the day following the authorization holder being notified.

18.3 In case the AEO status is revoked, the AEO-T1 and AEO-T2 status holder will not be entitled to reapply for the AEO certificate for a period of one year from the date of revocation.

18.4 In case the AEO status is revoked, the AEO-T3 and AEO-LO status holder will not be entitled to reapply for the AEO certificate for a period of three years from the date of revocation.

## **19. Mutual Recognition**

19.1 As part of Indian Customs' efforts to enhance global supply chain security and facilitate the

movement of legitimate goods, Indian Customs seeks to sign Mutual recognition Arrangements or Agreements (MRA) with its major trading partners.

19.2 Through MRAs, Indian Customs and its partner Customs administrations mutually recognize the security requirements, validation process and accredited entities of each other's supply chain security programmes.

19.3 Under an MRA, the participating Customs administration recognizes certified companies (commonly known as Authorised Economic Operators, in short, AEOs) under each other's supply chain security programme as secure entities. Goods exported to or imported from such companies can thus enjoy a higher level of facilitation at clearance domestically and overseas.

These companies could, therefore, better predict the movement of their goods, particularly for time-sensitive shipments, and also enjoy saving in costs which would otherwise be incurred due to delay at the ports.

## **20 India's MRA Partners**

20.1 Indian Customs has signed two Mutual Recognition Agreements with the Customs administrations of South Korea and Hong Kong. MRA with Taiwan is scheduled to be signed on 18<sup>th</sup> December, 2018. Joint Action Plan (JAP) has already be signed with USA and Uganda and MRA with both the countries is in final stage of conclusion and shall be signed shortly. Further, 'letter of intent' for signing of MRA has already been relayed to 20 major trade partner countries and initial discussions with them are ongoing. The Joint Action Plan is a broad framework of timeline and actions that needs to be completed in a phased manner to conclude an MRA.

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## Customs Functions related to under FTAs

### 1. Introduction

- 1.1 One of the chief functions of Customs as the guardian of the economic frontier of the country is to administer tariffs, valuation and origin regulations and also strike a fine balance with trade facilitation.
- 1.2 Bilateral and plurilateral agreements have become a prominent feature in the multilateral trading system, allowing preferential tariff treatment to partnering countries. Customs officer at the port is required to have sufficient knowledge of all existing trade agreements and ability to apply and implement the correct rules corresponding to each of trade agreement under which the claim has been made.
- 1.3 With each such Agreement laying down a unique set of trade rules, and increase in such Agreements and there being overlap of multiple Agreements, the role of customs officer has become even more challenging.
- 1.4 Role of Central Board of Indirect Taxes & Customs officer broadly falls under three categories:

#### Policy

- To analyse impact of the proposed FTA on revenue.
- To provide inputs on Rules of Origin under negotiation.
- To notify the tariff rate under each of the Trade Agreements under Customs Act 1962.
- To notify the Rules of Origin, as agreed under the bilateral/plurilateral trade agreements under Customs Act 1962.
- To highlight any issues in implementation of the Agreement and suggest amendments.
- To study possible mechanism to help reduce compliance cost and dwell time with respect to clearance of goods, claiming preferential tariff.

#### At the time of Customs clearance

- To ensure that goods claiming preferential tariff treatment meet all the conditions as laid out in respective agreements.
- To ensure that Customs declaration claiming preferential tariff is supported by all necessary documents as listed out in the customs notification with respect to the said Agreement.
- To ensure that the proof of origin is valid, authentic and complete.

#### Enforcement

- Conduct investigation in cases where misuse is suspected or reported.

### 2. Rules of Origin



- 2.1 “Rules of origin” are the criteria used to define where a product was made/obtained. They are an essential part of trade rules because a number of policies discriminate between exporting countries: quotas, preferential tariffs, anti-dumping actions, countervailing duty (charged to counter export subsidies), and more. Rules of origin are also used to compile trade statistics, and for “made in ...” labels that are attached to products.
- 2.2 GATT has no specific rules governing the determination of the country of origin of goods in international commerce. Before the Uruguay round, each contracting party was free to determine its own origin rules, and could even maintain several different rules of origin depending on the purpose of the particular regulation.

### 3. Types of Rules of Origin

- 3.1 **Preferential Rules of Origin:** Used to implement trade preferences.
- 3.2 **Non-Preferential Rules of Origin:** Used for MFN treatment, anti-dumping and countervailing duties, safeguard measures, origin marking requirements and any discriminatory quantitative restrictions or tariff quotas, as well as those used for trade statistics and government procurement.

### 4. WTO Agreement on Rules of Origin (Uruguay Agreement)

- 4.1 The Agreement on Rules of Origin aims at harmonization of non-preferential rules of origin, and to ensure that such rules do not themselves create unnecessary obstacles to trade. The Agreement sets out a work programme for the harmonization of rules of origin to be undertaken after the entry into force of the World Trade Organization (WTO), in conjunction with the World Customs Organization (WCO).
- 4.2 Through this Agreement, members commit to negotiate common rules of origin for all **non-preferential trade** purposes. The Agreement does not contain rules (but broad principles), but rather, launch the negotiations for the harmonization of non-preferential rules of origin. However, these negotiations are still ongoing, so, for the moment, there are no common rules of origin at the WTO.

### 5. The Harmonization Work Programme (HWP)

- 5.1 Article 9:2 this Agreement provided that the HWP be completed within three years of initiation. Its agreed deadline was July 1998. While substantial progress was made in that time in the implementation of the HWP, it could not be completed due to the complexity of issues. In July 1998 the General Council approved a decision whereby Members have committed themselves to make their best endeavours to complete the Programme by a new target date, November 1999.

5.2 The work is being conducted both in the WTO Committee on Rules of Origin (**CRO**) in Geneva and in the WCO Technical Committee (**TCRO**) in Brussels.

#### a) Overall architectural design

The CRO and the TCRO have established an overall architectural design within which the harmonization work programme is to be finalized.

This encompasses:

- general rules, laid down in eight Articles provisionally entitled:
  - Scope of Application;
  - the Harmonized System;
  - Definitions;
  - Determination of Origin;
  - Residual Rules of Origin;
  - Minimal Operations or Processes;
  - Special Provisions; and
  - De Minimis;
- three Appendices:
  - Appendix 1: Wholly obtained goods;
  - Appendix 2: Product rules - substantial transformation; and
  - Appendix 3: Minimal operations or processes.

**b) Disciplines during the transition period**

- 5.3 During the transition period (i.e. until the entry into force of the new harmonized rules) Members are required to ensure that:
- (a) rules of origin, including the specifications related to the substantial transformation test, are clearly defined;
  - (b) rules of origin are not used as a trade policy instrument;
  - (c) rules of origin do not themselves create restrictive, distorting or disruptive effects on international trade and do not require the fulfilment of conditions not related to manufacturing or processing of the product in question;
  - (d) rules of origin applied to trade are not more stringent than those applied to determine whether a good is domestic, and do not discriminate between Members (the GATT MFN principle). However, with respect to rules of origin applied for government procurement, Members are not be obliged to assume additional obligations other than those already assumed under the GATT 1994 (the national treatment exception for government procurement contained in GATT Article III:8).
  - (e) rules of origin are administered in a consistent, uniform, impartial and reasonable manner;
  - (f) rules of origin are based on a positive standard. Negative standards are permissible either as part of a clarification of a positive standard or in individual cases where a positive determination or origin is not necessary;
  - (g) rules of origin are published promptly;
  - (h) upon request, assessments of origin are issued as soon as possible but no later than 150 days after such request, they are to be made publicly available; confidential information is not to

be disclosed except if required in the context of judicial proceedings. Assessments of origin remain valid for three years provided the facts and conditions remain comparable, unless a decision contrary to such assessment is made in a review referred to in (j). This advance information on origin is considered as a great innovation of the Agreement;

- (i) new rules of origin or modifications thereof do not apply retroactively;
- (j) any administrative action in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures independent of the authority issuing the determination; such findings can modify or even reverse the determination;
- (k) confidential information is not disclosed without the specific permission of the person providing such information, except to the extent that this may be required in the context of judicial proceedings.

**6. Main components of preferential Rules of Origin in existing trade agreements:**

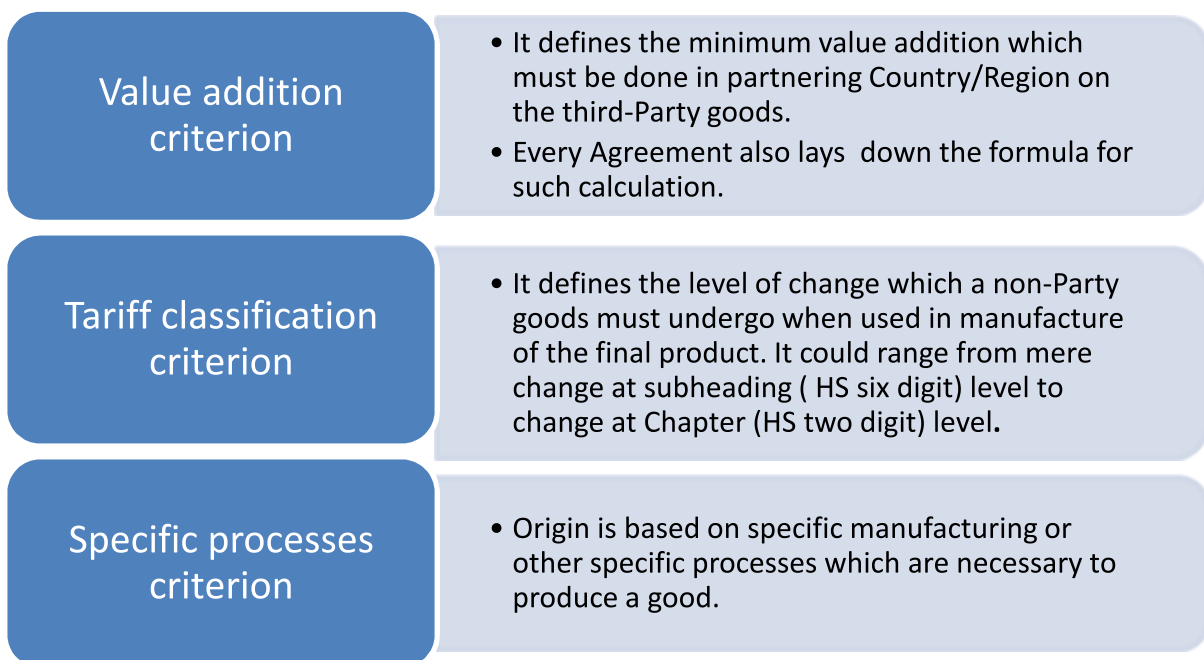
While there are no harmonised preferential rules of origin, the existing trade agreements do follow the general principles as laid out in the Uruguay round Agreement on Rules of Origin. The main components have been listed and briefly explained to assist in comprehension of rules of origin under various existing bilateral and regional free trade agreements.

**7. Originating Criteria**

7.1 A good is originating if it is wholly obtained in the partnering country or deemed to be originating if it undergoes substantial transformation.

**a) Wholly Obtained**

The origin category of “Wholly obtained goods” covers the cases in which a good is entirely obtained, extracted, or manufactured in a single country without using inputs imported from other countries.



**b) Substantially Transformed Goods**

Each trade agreement sets its own rules to define substantial transformation. There are however broadly three criteria used to define the originating criteria, which are used in various combinations and permutations.

**c) General Rule versus Product Specific Rules**

Depending upon the Agreement, either a single set of rule applies to all/most of goods offered under an Agreement and thus termed as “General Rule” or specific rules for the goods, identified based upon harmonised system and termed as “Product Specific Rule”.

**Note:** There are Agreements which provide option to an exporter to choose general or product specific rule to claim origin. In few cases however, general rule cannot be applied when a product specific rule is provided for. Customs officer should therefore read the Non-tariff Customs notification to check for same.

**8. Additional Provisions which influence Rules of Origin**

8.1 The originating criteria under trade agreements are additionally influenced by other elements, which either restrict or broaden the application of same, A customs officer should therefore read all provisions as notified under the Customs Tariff Act, 1975, for each Trade Agreement. Some of such elements which should be considered while inspecting a preferential claim or investing are as listed below:

**a) Cumulation**

Cumulation allows for treating inputs imported from or processes carried out in the partnering country as originating in or done within the exporting country. In effect, imported inputs would be considered to be domestic for origin purposes. Level of such cumulation is defined under each Agreement.

**b) De-Minimis**

This excludes a certain minimal part of non-originating goods from the change in tariff classification requirement, or otherwise said there is a certain tolerance to be applied with regard of the requirements to fulfil the origin criteria.

**c) Indirect Materials/ Neutral Elements**

They are goods used in the production, testing or inspection of goods but not physically incorporated in the goods, or goods used in the maintenance of buildings or the operation of equipment associated with the production of goods. Depending upon the provisions laid out under rules of origin under a agreement, these materials are either treated as originating or not taken into account while establishing criteria based upon value addition.

**d) Direct Consignment**

Under normal conditions all trade agreements allow preferential tariff treatment to only those goods which are transported directly between Parties. However, in case good is

not transported directly, it should meet the conditions and be supported by documents as laid out under Rules of Origin of the said Agreement.

**e) Minimal Operations Rule**

This rule lists processes or operations considered as insufficient to confer originating status, even if it meets prescribed value addition or/and tariff classification change criterion.

**9. Document submitted as Proof of Origin:**

9.1 Traditionally, all trade agreements have relied upon a Certificate of Origin, issued by a competent body, as proof of origin and is a requirement to claim tariff preference. Elements like, the format and data, validity, security features, if any, are prescribed under specific agreement.

9.2 Some countries are now shifting to self-certification of origin, eliminating the need of certificate of origin. India, at present, relies upon submission of physical copy Certificate of Origin (CoO), conditions for which, however are specific to each Agreement. To help facilitate export and import under the FTAs, CBIC is studying ways to incorporate information technology, to electronically transmit origin related data between customs administrations. This would lead to immediate validation of origin, reduce administrative burden and improve risk management.

**Note:** Following provisions are specific to each Agreement and therefore needs to be taken not based on general practice.

- i. Need to claim tariff preference at time of filing customs declaration.
- ii. Need for original proof of origin at time of filing customs declaration.
- iii. Validity of such document.
- iv. Provision for rectifying minor errors in such document.
- v. Time line of issuance of Proof of origin vis-a vis date of shipment. Retroactive documents can only be accepted if specifically provided for in the Rules of Origin. It also defines the conditions and time period within which a proof origin can be issued retroactively.
- vi. Options available in case of loss of original document.

**10. Verification of Proof of Origin**

10.1 Rules of Origin for each of the Agreement provides for mechanism for seeking details from exporting country, should a need be felt to supplement investigations done domestically to ascertain validity of origin of a good. The procedure and timelines for same are prescribed and vary from Agreement to Agreement.

**Note:** It is important to clearly state reasons for verification request and quote the rule under which same is sought. CBIC has issued detailed guidelines vide instruction no. 31/2016-Customs, dated 12.09.2016.

**11. List of Trade Agreements**

S. No.	FTA	Notification		General Rules	Countries
		Tariff	Non-Tariff		
	Asia Pacific Trade Agreement (formerly known as the Bangkok Agreement)	72/2005-Customs dated 22.07.2005	94/2006-Customs(N.T.) dated 31.08.2006	Value of Non-originating material ≤ 55% or PSR	Thailand, Bangladesh, China, Republic of Korea, Sri Lanka
	SAARC Preferential Trading Arrangement	105/99-Customs dated 10.08.1999	73/95-Customs (N.T.) dated 07.12.1995	Value of Non-originating material ≤ 60%	Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka
	Free Trade Agreement between the Democratic Socialist Republic of Sri Lanka and the Republic of India	26/2000-Customs dated 01.03.2000	19/2000-Cus. (N.T.), dated 01.03.2000	Value of Non-originating material ≤ 65% + CTH change	Sri Lanka
	Agreement between the Transitional Islamic State of Afghanistan and Republic of India	76/2003 – Customs dated 13.05.2003	Notification No. 33/2003-Cus. (N.T.), dated 13.05.2003	Value of Non-originating material ≤ 50% + CTH change	Afghanistan
	India-Thailand Early Harvest Scheme	No. 85/2004-Customs dated 31.08.2004	No. 101/2004-Customs (N.T.) dated 31.08.2004	PSR (exclusive) or [40% + CTSH change]	Thailand
	Comprehensive Economic Cooperation Agreement between Republic of India and Republic of Singapore	73/2005 – Customs dated 22.07.2005 ; 74/2005 – Customs dated 22.07.2005; 75/2005 – Customs dated 22.07.2005; 10/2008-Customs dated 15.01.2008	59/2005-Customs (N.T.) date20.07.2005	[35% + CTSH change] or PSR	Singapore

S. No.	FTA	Notification		General Rules	Countries
		Tariff	Non-Tariff		
	Agreement on South Asian Free Trade Area (SAFTA)	99/2011-Customs dated 09.11.2011	75/2006-Customs (N.T.) dated 30.06.2006	[Value of Non-originating material ≤ 60% + CTH change] or PSR  *10% relaxation for LDCs and 5% relaxation for Sri Lanka	Bangladesh, Bhutan, Maldives, Nepal, Pakistan, Sri Lanka, Afghanistan
	Preferential Trading Agreement between the Republic of India and the Republic of Chile	101/2007-Customs dated 11.09.2007	84/2007-Customs (N.T.), dated 17.08.2007	[Value of Non-originating material < 60% + CTH change] or PSR	Chile
	Duty Free Tariff Preference Scheme for Least Developed Countries	96/2008-Customs dated 13.08.2008	29/2015-Customs (N.T.) dated 10.03.2015	30% + CTSH change	Afghanistan, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Eritrea, Ethiopia, Gambia, Guinea, Guinea Bissau, Haiti, Lao PDR, Lesotho, Liberia, Madagascar, Malawi, Mali, Mozambique, Myanmar, Niger, Rwanda, Senegal, Somalia, Sudan, Timor Leste, Togo, Uganda, Tanzania, Yemen, Zambia

S. No.	FTA	Notification		General Rules	Countries
		Tariff	Non-Tariff		
	India-MERCOSUR Preferential Trade Agreement	57/2009-Cus dated 30.05.2009	56/2009-Cus (NT) dated 30.05.2009	Value of Non-originating material < 40%	Argentina Brazil, Paraguay, Uruguay
	Comprehensive Economic Partnership Agreement between the Republic of India and the Republic of Korea	152/2009-Customs dated 31.12.2009	187/2009-Customs (N.T.) dt. 31.12.2009	PSR (exclusive) or [35% + CTSH change]	Republic of Korea
	Treaty of Trade between Government of Nepal and the Government of India	104/2010-Customs dated 01.10.2010		Value of Non-originating material ≤ 70%	
	India- ASEAN Trade in Goods Agreement	46/2011 – Customs dated 01.06.2011	189/2009-Customs (N.T.) dated 31.12.2009	35% + CTSH change	Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand, Singapore, Viet Nam vii. Philippines, 8. Singapore, 9. Thailand 10. Viet Nam
	Comprehensive Economic Partnership Agreement between the Republic of India and Japan	69/2011-Customs dated 29.07.2011;	55/2011-Customs (N.T.) dated 01.08.2011	[35% + CTSH change] or PSR	Japan
	Comprehensive Economic Cooperation Agreement between Republic of India and Malaysia	53/2011-Customs dated 01.07.2011	43/2011-Customs (N.T.) dated 01.07.2011	[35% + CTSH change] or PSR	Malaysia

**References**

- [www.wcoomd.org](http://www.wcoomd.org)
- [www.wto.org](http://www.wto.org)





