

IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS

7.1 INTRODUCTION

The principles governing levy and exemption from customs duties have already been discussed in the previous chapters. There are various procedures under the Customs Act which govern assessment, collection, transportation and other important aspects. The procedures relating to assessment and collection of customs duty are discussed in this chapter.

The provisions relating to transportation are well understood when studied with the importation and exportation procedures since both chapters are governed by the same legal provisions. Hence the procedures relating to transportation have been covered in the current chapter under the relevant headings.

7.2 IMPORTATION

In this chapter, we will consider the procedure for assessment and collection of customs duty in respect of the following six situations of imports:

1. Goods imported by Sea
2. Goods imported by Air
3. Goods imported by Land
4. Goods imported by Post
5. Goods imported by passengers as their baggage
6. Ship stores considered to be imported and charged to customs duty

While the first three types of imports are governed by the normal provisions of the Customs Act, special provisions have been made in respect of the later three imports.

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7.3 DEFINITIONS OF IMPORTANT TERMS

7.3.1 Import [Section 2(23)] with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

The definition of imports is not restricted only to commercial imports. It only means bringing of goods from any place outside India into India.

The meaning of import has been one of the most contentious issues in Customs. There are two school of thoughts. One school of thought is that import gets completed when the vessel carrying goods crosses the territorial waters of India. The other school of thought is that the import is complete only when the goods mingle with the landmass of India. Now the settled law is in favour of second school of thought. It has been held in *Garden Silk Mills .v. UOI* [1999 (113) ELT 358 (SC)] that import of goods into India commences when the goods enter the territorial waters of India, but continue and complete only when the goods become part of mass of goods within the country. The taxable event occurs only when the goods reaches the customs barrier and the bill of entry for home consumption is filed. This view is also supported in *UOI .v. Apar Pvt. Ltd.* [1999 (112) ELT 3 (SC)].

7.3.2 Imported Goods [Section 2(25)] means any goods brought into India from a place outside India but does not include goods, which have been cleared for home consumption.

7.3.3 Importer [Section 2(26)] in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

The definition of importer includes not only the owner but also any other person holding out to be an importer. Owner is a person who is holding the documents of title to the goods. On the other hand importer also includes any person holding himself to be the importer for purpose of clearance of goods. It has been held that a State Financial Corporation, which financed the import and has also cleared the goods on payment of duty, is liable to pay the differential duty and cannot plead that it is not the actual importer. [*Karnataka State Financial corporation v. Commissioner of Customs* 1994 (72) ELT 904 (T-SRB)]. Also in the case of *Traditional Craft v. Commissioner of Customs*, [2000 (125) ELT 513 (T-WZB)] the tribunal has held that the person who has not caused the actual import but clears the goods from warehouse would be an importer within the meaning of this section.

7.3.4 India [Section 2(27)] includes the territorial waters of India.

The definition of India is an inclusive definition and includes not only the land mass of India but also the territorial waters of India. The territorial waters extend to 12 nautical miles into the sea from the appropriate base line.

7.3.5 Goods [Section 2(22)] includes

- (a) vessels, aircrafts and vehicles
- (b) stores
- (c) baggage
- (d) currency and negotiable instruments and
- (e) any other kind of movable property.

7.3.6 Coastal goods [Section 2(7)] means goods, other than imported goods, transported in a vessel from one port in India to another.

7.3.7 Stores [Section 2(38)] means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

7.3.8 Baggage [Section 2(3)] includes unaccompanied baggage but does not include motor vehicles.

7.3.9 Vehicle [Section 2(42)] means conveyance of any kind used on land and includes a railway vehicle.

7.3.10 Conveyance [Section 2(9)] includes a vessel, an aircraft and a vehicle.

7.4 STATUTORY PROVISIONS

From the above it is seen that import is an act of bringing anything into India from a place outside India and it gets completed once the goods culminate with the land mass of India. Also goods include Vessels, Aircrafts, Vehicles, Stores, Baggage, Currency, and other movable property and are subject to duty of Customs. The provisions for procedure for importation of goods are given in section 29 to 38 and 46 to 49 of Customs Act, 1962. The same has been discussed in detail in the subsequent paragraphs.

7.4.1 Arrival of vessels and aircrafts in India [Section 29] : This section provides that the person-in-charge of a vessel or an aircraft entering India from any place outside India shall not cause or permit the vessel or aircraft to call or land -

- (a) for the first time after arrival in India; or
- (b) at any time while it is carrying passengers or cargo brought in that vessel or aircraft; at any place other than a customs port or a customs airport, as the case may be.

Exception: The above provisions are not applicable in relation to any vessel or aircraft, which is compelled by accident, stress of weather or other unavoidable cause to call or land at a place other than a customs port or customs airport. However the person in charge of the vessel has the following obligation cast on him:

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1. He will have to report the arrival of the vessel to the nearest customs officer or officer in charge of police station, and produce the log book if demanded.
2. He should not allow any unloading of goods without permission, and should not allow any passengers or crews to leave the vicinity of the vessel. However the goods can be removed or the passengers and crews can be allowed to depart if the same is necessary for reason of health, safety or preservation of life or property.
3. He should comply with all the directions given by such officers.

Any failure on the part of the person in charge of the vessel to comply with the above provisions will not only render him to be liable to penalty under section 112 of the Customs Act but also render the imported goods liable to confiscation under section 111 (b) and 111 (c) of the Customs Act and the conveyance liable to confiscation under section 115 (1) of the Customs Act under certain circumstances.

7.4.2 Delivery of import manifest or import report [Section 30] : After ensuring that the vessels are landed only in approved customs port or airports, further duty is cast upon the person in charge of the vessel to deliver the import manifest.

Import manifest or import report is a detailed information to customs about goods in the vessels/air crafts which have been brought in at any port/airport for unloading at that particular port/international airport as also that which would be carried further for other ports/airports. Declarations of such cargo has to be made in a prescribed form (which is termed 'Import General Manifest' or IGM)

Time limit for delivery of IGM/IR: The person-in-charge of a vessel, or an aircraft, or a vehicle, carrying imported goods or any other person as may be specified by the Central Government, by notification in the Official Gazette, in this behalf shall, in the case of a vessel or an aircraft, deliver to the proper officer an import manifest prior to the arrival of the vessel or the aircraft, as the case may be, and in the case of a vehicle, an import report within twelve hours after its arrival in the customs station, in the prescribed form and if the import manifest or the import report or any part thereof, is not delivered to the proper officer within the specified time and if the proper officer is satisfied that there was no sufficient cause for such delay, the person-in-charge or any other person referred to in this section, who causes such delay, shall be liable to a penalty not exceeding fifty thousand rupees.

Belated filing of IGM: Import manifest/Report filed belatedly may also be accepted by the proper officer on valid justified grounds.

Amendment to IGM: If the proper officer is satisfied that the import manifest or import report is in any way incorrect or incomplete and there is no fraudulent intention, he may permit it to be amended or supplemented. [Section 30(3)].

Subsequent amendment of IGM relates back to the date of filing of IGM and is not a

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separate event. By the time supplementary IGM is filed, if entry inward has already been granted, the rate of duty applicable will be as on the date of presentation of bill of entry. *[Associated Forest Products (P) Ltd. V. Assistant Commissioner of Customs, 1992 (59) ELT 264, 277-78 (Cal), affirmed by the Supreme Court in 2000 (115) ELT 37 (SC).]*

Contents and Form of IGM/IR (Import General Manifest/Import Report):

Different forms of IGM/IR have been prescribed for the aircrafts, vessels and the vehicles. The form of IGM/IR is prescribed by

- (a) The Import Manifest (Vessels) Regulations 1971 in the case of vessels;
- (b) The Import Manifest (Aircraft) Regulations 1976 in the case of aircrafts;
- (c) The Import Report (Form) Regulations 1976 in the case of vehicles.

All the three regulations are substantially similar and provide for the following:-

- (i) The manifest/report should be delivered in duplicate and should cover all the goods carried in the aircraft/vessel/vehicle.
- (ii) The manifest/import report has to be in four parts as under-
 - 1. General declaration.
 - 2. Cargo declaration.
 - 3. Vessels stores list.
 - 4. a list of private property in the possession of the master, officers and crew.
 - 5. Passenger manifest in case of aircrafts.
- (iii) The cargo list is categorized in the manifest/report into the following categories and shall be delivered in separate sheets.
 - (1) cargo to be landed; (2) unaccompanied baggage;
 - (3) goods to be transhipped; (4) same bottom or retention cargo.
- (iv) In the cargo declaration, there should be separate mention about
 - (i) arms (ii) ammunition (iii) explosives
 - (iv) narcotics (v) dangerous drugs (vi) gold and
 - (vii) silver.

This declaration should be given irrespective of whether these are for landing, or for transshipment, or for being carried as same bottom cargo. The details about the above should be given in separate sheets and should be set out in the order of ports of loading. If the vessel/vehicle does not carry any of these cargo a nil declaration should be made.

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- (v) The person delivering the import manifest or report should subscribe in the declaration as to the truth of its contents.

The general declaration will give particulars about name of the vessel, nationality, tonnage, name of the shipping line, last port of call, port arrival and date and time of arrival, name of the master, nationality of the master, name and address of the local steamer/shipping agent, ports called during the present voyage, number of crew, number of passengers and the following documents are to be enclosed with the general declaration:

- (a) cargo declaration; (b) store list (c) private property list;
(d) crew list (e) passenger list (f) maritime declaration of health.

7.4.3 Imported goods not to be unloaded from vessel until entry inwards granted [Section 31] : This section provides that the master of a vessel shall not permit the unloading of any goods until an order has been given by the proper officer granting ENTRY INWARDS to such vessels. This is specified only for vessels and not for aircrafts or vehicles.

Entry inwards is a term used to denote colloquially that the ship's entry papers like arrival report, manifest etc have been received and they have been found to be in order, the person in charge of the conveyance can commence further import operations namely unloading of the cargo and disembarking of the passengers. The overt action for this permission, is assigning a rotation number (a serial No) for the conveyance. All the documents and papers relating to imports by this conveyance will be docketed and processed under this rotation number.

Date of entry inward is the date on which the vessel found a berthing place for discharge of cargo. There is no provision requiring grant of entry inward forthwith, nor a duty cast on the Customs Officer to forthwith grant entry inward when IGM is presented. [*Devpal Dhir v. B. V. Kumar, Commissioner of Customs (Appeals) 1987 (32) ELT 459 (Bom)*]

Section 31(2) provides that Entry Inwards shall not be given until the import manifest has been delivered or a valid reason is given for not delivering it. Grant of Entry Inwards is an acknowledgement of the fact that Customs Department is ready to supervise the unloading of the cargo, and is prepared to assess the goods to duty, as and when the concerned importer comes forward to clear the imported goods.

The provision is in two parts:- one where there is a full satisfaction that the ship's papers are in order and the import operations can be allowed. The second part relates to a situation where the IGM or import report is not complete or is defective. This can be cured within a given time, i.e. the required documents and/or information can be obtained and given within a short time. An indemnity bond/undertaking is taken from the master of the vehicles/local agent to provide the requisite documents and/or material within a

prescribed period, the entry inwards is then granted.

Though the master of the vessel cannot allow the goods to be unloaded until the grant of Entry Inwards, subsection (3) of section 31 provides that this provision is not applicable to unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.

7.4.4 Imported Goods not to be unloaded unless mentioned in Import manifest or import report [Section 32] : Without the permission of the proper officer, the imported goods cannot be unloaded, unless they are mentioned in the Import General Manifest for being unloaded in that customs station.

The mention of any consignment in the ship's/aircraft's manifest or conveyances cargo list is a proof of the genuine nature of the import goods. If the goods are not mentioned in the manifest or import report delivered to the proper officer at a customs port/airport/station, there is every reason to believe that the goods were intended to be smuggled into India, either without payment of duty or in contravention of any prohibition in force. On the other hand if the full particulars of the import consignment are timely given in the manifest/import report prima facie, there is every reason to believe that it is a straight forward transaction. It is in this perspective that section 32 of the Customs Act has stipulated the above restriction.

7.4.5 Loading and Unloading of goods at approved places only [Section 33] : Section 33 provides that loading and unloading of goods are to be undertaken only at places approved under section 8(a) of the Customs Act, 1962.

7.4.6 Goods not to be Loaded or Unloaded except under the supervision of Customs officer. [Section 34] : Section 34 provides that loading and unloading of goods should be done under the supervision of the proper officer.

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

In almost all major ports, customs officers are deployed at the wharfs and berths where the goods are imported or exported. These officers supervise all loading and unloading, and shipping operations.

7.4.7 Restrictions on goods being water-borne [Section 35] : There are certain customs ports like Pondicherry, Tuticorin, Mangalore, Saurashtra, where the ships cannot come to the shore for unloading or loading. In these places the cargo is ferried from the ships anchored at mid-sea to the port in boats, otherwise known as lighters. Even in other ports like Calcutta, Bombay, Madras, Cochin etc. not all ships arriving in the port get a berth. They have to wait for some time before they get allotment of berth. At times the ships have tight itinerary. In such cases the import cargo is taken from the ship to the shore and the export cargo is taken from the shore to the ship in boats.

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Section 35 of the Customs Act stipulates that no imported goods shall be water borne for being loaded in any vessel, and no export goods which are not accompanied by a shipping bill, shall be water borne for being shipped unless the goods are accompanied by a boat note in the prescribed form.

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

At present this exemption is in operation in

- (1) Chennai Port – for both imports and exports
- (2) Kolkata Port – for exports only.

◆ **Boat Note Regulations :** The form and content of the boat note is prescribed under the Boat Note Regulations, 1976.

These regulations specify that

- (1) normally the boat note should be issued by the proper officer;
- (2) however, in a special case, the Commissioner of Customs, may authorize an exporter or his authorized agent to issue a boat note;
- (3) Every person who is authorised by the Commissioner as above, shall maintain proper account of boat notes issued by him and furnish to the proper officer such information as may be specified by the Commissioner.
- (4) the boat notes should be of such dimension and colour as in prescribed forms;
- (5) the boat notes should be in duplicate and machine numbered.

Separate forms are prescribed for export cargo, import cargo, and transshipment cargo.

7.4.8 Other Controls : The following are further controls exercised on the conveyances and the loading/unloading of goods.

1. The goods cannot be loaded and unloaded on Sundays or other holidays observed by the Customs Department, or on any other day after the working hours unless the prescribed notice and the prescribed fee are paid. [Section 36]
2. The proper officer may, at any time, board any conveyance carrying imported goods or export goods and may remain on such conveyance for such period, as he considers necessary. [Section 37]
3. The proper officer may require the person in charge of any conveyance to produce any document or answer any questions and such person shall be bound to comply with the same. [Section 38]

7.4.9 Flow Pattern for Import: The following steps would illustrate the complete operation in this regard.

1. The vessel is escorted into the harbor by the pilot vessel of the port.
2. After entering the harbour, the vessel is brought to the particular quay or berth, where it is berthed and anchored.
3. The health department officials and police officials go on board the vessel. The health officials check
 - (a) Whether the vessel has called during its voyage at any port which is susceptible to epidemic diseases; and if so, whether the ship has been cleared by the Quarantine authorities.
 - (b) Whether any crew or passenger in the vessel has any contagious or epidemic for contagious disease;
 - (c) Whether the vessel or any crew/passenger requires to be quarantined;
 - (d) Whether the vessel carries any cargo contaminated by such epidemic diseases, affecting the health of people or crop, etc.

The immigration authorities check whether the ship has proper documents to call at an Indian airport.

4. The Customs Officer, who boards the vessel on its arrival alongside the health and police officials
 - (a) Collects the arrival report with its supporting papers from the master of the vessel.
 - (b) Scrutinizes the arrival report for details on
 - (i) import cargo/same bottom cargo;
 - (ii) Special goods like arms, ammunition, explosives, and dangerous drugs.
 - (iii) Proper clearance from the last port of call, health certificate, payment of light dues etc.
 - (b) Calls for necessary information/documents from the Master/mate/Chief officer/Ship's doctor to carry out the above checks;
 - (c) If satisfied, collects the arrival report and the Import Manifest if it has not been already filed and sends these papers to the Custom House.
 - (d) If entry had been given by the proper officer, allows the unloading to commence.

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5. Once the unloading of the cargo starts, supervises and checks whether the landing is done by proper tally maintained by Steamer Agents tally clerks and Port Trust's tally clerks.
6. Keeps a general surveillance to ensure that the goods are not illicitly removed from the ship or the storage godowns.

7.5 PROCEDURE FOR CLEARANCE OF IMPORTED GOODS

The procedures for clearance of imported goods are contained in Section 45 to Section 49 of the Customs Act. These procedures are not applicable to Baggage and Goods imported or to be exported by post.

7.5.1 Restrictions on custody and removal of imported goods [Section 45] : Once the imported goods have entered the Customs area, there arises the question of who is responsible for the safe custody of goods.

This section requires that until the imported goods are cleared for home consumption or are warehoused or are exported for transshipment, they shall remain in the custody of such person as may be approved by the Commissioner of Customs [Section 45(1)]. This person is called the custodian. The responsibility of the custodian commences in respect of imported goods the moment the ship is berthed in the harbour or the goods are ready for unloading from the aircraft. In major ports, the custodian is the Port Trust. In other places, the custodian are the ware house keepers. In Inland Container Depots, the Container Corporation of India is the custodian of the imported cargo. In case of air cargo, the custodian is the National Airport Authority. For goods brought by rail, the custodian is the Station Master.

◆ **Responsibility of Custodian of goods :** During the time the goods are in the custody of the custodians, they have the following responsibilities [Section 45(2)].

1. Maintain a proper record of goods received from the carriers and send a copy of the record to the customs authorities.
2. Not to permit such goods to be removed from the customs area or allow them to be dealt with otherwise except under the specific permission of the Customs Authorities.

In pursuance to this responsibility, the custodian is required to tally the particulars of the goods landed by a vessel, and send a report known as out turn statement to the customs authorities. This enables the customs authorities to check whether all goods manifested in the import general manifest for landing in a particular place have actually been landed. In case of the goods are not so landed, action is taken against the carriers.

◆ **Liability of the Custodians [Section 45(3)]:** This provision provides that notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading in any customs area, while in the custody

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the custodian, such custodian shall be liable to pay duty on such goods. Therefore, in respect of pilfered goods covered by section 13, the loss of revenue is compensated by the custodian. The duty shall be paid at the rate prevailing on the day of delivery of the import manifest or as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which such goods were carried.

This provision is intended to make the custodian of the imported goods lying in customs area liable for duty even if they are pilfered when they were in their custody. Earlier, in the matter of pilfered goods, the government has been losing the revenue, while the importer's interest was protected.

Section 45 holds the custodian responsible only in respect of the Customs duty in respect of pilfered goods. It does not extend to the value of goods lost. However in the case of *IAAI v. Ashok Dhawan, 1999 (106) E.L.T. 16 (SC)*, the Supreme Court has held that if the custodian has no explanation at all to show how the loss occurred in respect of goods in its custody, applying the principle *res ipso locquitor*, the custodian is liable for loss of goods.

7.5.2 Filing of Import Bill of Entry [Section 46(1)]: It is the duty of the importer of any goods to make an application to the proper officer for clearance of the goods. As has been mentioned earlier, the goods may be cleared for home consumption or for home consumption or for deposit in a warehouse or for transit or transshipment. Therefore, there are three types of Bills of Entries prescribed for these three different purposes.

Form I (white) – for home consumption.

Form II (yellow) – for warehousing (into bond).

Form III (green) – for ex-bond clearance for home consumption (ex-bond).

Bill of Entry can be filed electronically too in Customs Houses providing this facility.

The form of the bill of entry is governed by Bill of Entry (Forms Regulations, 1976). Normally the Bill of Entry is in four copies:

- (a) Original, meant for the customs authorities for assessment and collection of duty;
- (b) Duplicate, intended as an authority to the custodian of the cargo to release cargo to the importer from his custody;
- (c) Triplicate, as a copy for record for the importer; and
- (d) Quadruplicate, as a copy to be presented to the bank or Reserve Bank of India for the purposes of making remittance for the imported goods.

A facility has now been provided for clearance of the goods by making an electronic declaration to the Customs Computer Systems through network facility. The Bill of Entry (Electronic Declaration) Regulations, 1995, provides the details.

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The importer is required to declare in the Bill of Entry amongst other things the particulars of packages, the descriptions of the goods, in terms of the description given in the Customs Tariff to enable proper classification of the goods and the correct value of the goods for the determining the amount of duty. Since the assessment is based on the declaration made by the importer, the onus is cast upon him to make a declaration and solemn affirmation about the truth of the contents in the Bill of Entry.

Importer unable to furnish details: If for any reason the importer is unable to furnish these details, he may request the customs officials to examine the goods in his presence to enable him to ascertain the necessary details for making a proper declaration in the bill of entry. Alternatively, he can seek permission to deposit the goods in a public bonded warehouse appointed under section 57 pending receipt of the necessary information and the supporting documents under section 49. This is also called warehousing without warehousing.

Such goods shall not be deemed to be warehoused goods for the purpose of the Act and accordingly warehousing provisions shall not apply to such goods. A case law on the subject is given below:

Sewing Systems (P) LTD. 1989 (44) ELT 456 (Kar)

A demand was issued for duty on goods deposited under section 49 via warehouse with reference to date of removal from warehouse. It was held that there is no similarity between the warehousing facility referred to in section 49 and warehousing under section 59 because under section 49 it is explicitly made clear that such goods shall not be deemed to be warehoused goods for the purpose of the Act and, accordingly, warehousing provisions will not apply to such goods.

Normally, a bill of entry is required to be filed per consignment. However, the Commissioner may, at his discretion, permit the importer to present separate bill of entries for clearance of part of consignment.

Conversion from home consumption to warehousing and vice-versa: It may so happen that an importer has filed the bill of entry for home consumption. He may subsequently find that he is not in a position to pay duty and remove the goods to town. He may seek permission to substitute the bill of entry for home consumption with a bill of entry for warehousing. The reverse proposition is also permissible. In either case, the proper officer of customs has to be satisfied that this request is made on genuine grounds and not a device to avoid duty. In other words, if the rate of duty is high and the importer expects the government to reduce the duty, he cannot seek permission to substitute the bill of entry for home consumption by a bill of entry of warehousing so that he would decide to remove the goods as and when the rate of duty is reduced.

Bill of Lading: The Bill of Lading given by the carrier of the goods is the importer's document of title to the goods. The Bill of Lading covers all the goods imported with full description.

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Time limit for filing: According to Section 46(3) a bill of entry is to be normally filed after the delivery of the import manifest (vessel/aircraft)/import report (vehicle). However, it may be kept in mind that as per section 48, the cargo has to be cleared from the wharf within 30 days of unloading.

Prior entry Bill of Entry: The second proviso thereunder provided for the presentation of bill of entry even before the delivery of the import manifest if the vessel (not aircraft) by which the goods have been shipped for importation into India is expected to arrive within thirty days from the date of such presentation. The permission under this **prior entry system** is applicable to goods brought by vessels as well as aircraft. The prior entry Bill of Entry may be presented 30 days before the expected date of arrival of the vessel or aircraft.

In the case of Land Customs Stations, however, the Commissioner's permission is necessary for filing prior entry Bill of Entry in respect of goods imported by vehicles.

7.5.3 Assessment of Goods: The provisions regarding the assessment of goods are contained in section 17 of the Customs Act. After the bill of entry is filed, the bill of entry is assessed by the appraisers of the customs department. In this process, these officers may check the supporting documents like invoices, packing specification, payment particulars, catalogues, brokers note, insurance policy etc, which would enable them to arrive at a correct decision about the proper classification and valuation of the goods. A physical examination of the cargo is also provided for as a check over the cargo of the declaration made in the bill of entry. However, there are two options open to the department. If the customs department is *prima facie* satisfied that the declarations are true, the physical check can be postponed to a stage after payment of duty but before removal of goods. If on the contrary, the customs officers require to check physically the correctness of description, the physical examination is carried out first, before assessment. The customs authority also have the powers to take samples for chemical test and make such other enquiry as may be necessary for determination of correct classification and valuation.

Where any assessment is contrary to the claim of the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification and in cases other than those where the importer or the exporter, as the case may be, confirms his acceptance of the said assessment in writing, the proper officer shall pass a speaking order within 15 days from the date of assessment of the bill of entry or the shipping bill, as the case may be.

7.5.4 Provisional assessment of duty [Section 18]: Provisional assessment can be resorted to in the following cases

- (i) when the proper officer is satisfied that an importer or exporter is unable to produce documents or furnish information necessary for the assessment of duty

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- (ii) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty.
- (iii) where the importer or the exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry for assessing the duty,

In such cases the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed [Sub-section(1)].

When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, then, -

- (i) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of the duty finally assessed, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;
- (ii) in the case of warehoused goods, the proper officer may, where the duty finally assessed is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty [Sub-section(2)].

The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order. The interest shall be payable at the rate fixed by the Central Government under section 28AB. This interest shall be payable from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

If the refund arising out of the final assessment of goods cleared for home consumption or exportation (in case the amount paid at the time of provisional assessment exceeds the amount determined to be payable at the final assessment) is not refunded within 3 months from the date of final assessment of duty, interest shall be paid to the assessee on such unrefunded amount till the date of refund of such amount. This interest shall be payable at the rate fixed by the Central Government under section 27A.

The refund of duty and interest thereon shall be paid to the importer or the exporter, as the case may be, only if such amount is relatable to:

- (a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

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- (b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;
- (c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;
- (d) the export duty as specified in section 26;
- (e) drawback of duty payable under sections 74 and 75.

In all other cases, the amount of such refund and interest shall be credited to the Consumer Welfare Fund.

7.5.5 Clearance of goods [Section 47] : Once the customs check and payment of duty is completed, the customs officers allow clearance of the goods. Section 47 provides that where the proper officer is satisfied that the goods entered for home consumption are not prohibited and the appropriate import duty has been paid, he can make an order permitting clearance of the goods for home consumption. On making this order, which is popularly known as "pass out of customs charge order" the bill of entry (duplicate) copy is produced to the custodian who delivers the goods to the importer.

Some major importers have been given the green channel clearance facility. It means clearance of goods is done without routine examination of the goods. They have to make a declaration in the declaration form at the time of filing of bill of entry. The appraisement is done as per normal procedure except that there would be no physical examination of the goods. Only marks and number are to be checked in such cases. However, in rare cases, if there are specific doubts regarding description or quantity of the goods, physical examination may be ordered by the senior officers/investigation wing like SIIB.

Interest: Further if the importer fails to pay import duty within 5 days (excluding holidays) of the determination of the duty amount, he is required to pay interest on the duty till the time he actually pays the duty and clears the goods.

The rate of interest shall be not below 10 percent and not exceeding 36 percent per annum and shall be fixed by the central government. However, the interest may be waived by the CBEC in public interest.

Relevant Cases

Madanlal Steel Industries (P) Ltd V. UOI [1991 56 ELT 705 (Mad)]

Can the goods be confiscated after the order under section 47

It has been held in the above case that the order of clearance under section 47 is not required to be set aside to effect seizure & commence confiscation proceedings. The above decision has been followed in the case of *Titanide coating Pvt. Ltd v. Assistant Collector of Customs. [1993 (56) ELT 705 (Kar)]* which held that the proceedings under

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section 28, 110, & 124 are not subject to the order under section 47 of the act.

Tirupathi Plastics Vs. A.C. 1990 (49) ELT 49 (Kar)

Detention of goods by the department and who is to pay the demurrage charges?

In case there is detention of goods by Customs authorities for whatever reason, and goods so detained are given to the custody of approved custodian during the pendency of adjudication of rival claims between the department and the importer, the importer is entitled to be furnished with a detention certificate or an order detaining the goods indicating reasons which is to serve as the evidence of detention and as a receipt of the goods by the department. Upon the settlement of dispute, if the department succeeds in establishing that detention is justified, the importer has to bear the burden of demurrage, and if the department fails the department has to bear the same.

7.5.6 Procedure for disposal of goods not cleared [Section 48]: If there are any goods imported from a place outside India, which are not cleared within 30 days from the date of unloading, the custodian of the cargo is unnecessarily burdened with the custody of the goods. It also deprives the customs department of its legitimate revenue in the form of customs duty. The 30 days have been considered to be sufficient time for any importer to make up his mind whether the goods should be cleared into town on payment of duty or whether they should be transhipped or whether they should be deposited in a warehouse. If such imported goods are not cleared either for home consumption or for warehouse within 30 days or within such further time as the proper officer may allow or if the title to any imported goods is relinquished, the custodian of the goods is permitted, with the approval of the customs department and after giving notice to the importer, to sell the goods by auction.

In the case of sensitive goods like animals, foodstuffs and hazardous goods etc. the custodian with the approval of the proper officer can sell the goods even before the expiry of the 30 days limit. Similarly in the case of arms or ammunition, which cannot be sold in public auction, the disposal is regulated by the rules made in this regard.

7.5.7 Storage of imported goods in warehouse depending clearance [section 49] :

Where due to some genuine difficulty, the importer is unable to clear the goods for home consumption within the stipulated time, the goods may be deposited in a warehouse without double duty bond. This facility is available irrespective of whether the goods are dutiable or not. This is another instance of warehousing without warehousing. However, in this case the warehouse may be public or private. Such warehousing will not be covered under Chapter IX of the Act.

7.6 EXPORTATION

7.6.1 Important Definitions

Export [Section 2(18)] with its grammatical variations and cognate expressions, means taking out of India to a place outside India.

Export goods [Section 2(19)] means any goods, which are to be taken out of India to a place outside India.

Exporter [Section 2(20)] in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner or any person holding himself out to be the exporter.

7.6.2 Control Over Export Goods: It would be convenient at this juncture to discuss the provision relating to the export of the goods in so far as it applies to the master of the vessel or his agent. The steamer agent comes into the picture only after the customs have permitted the export goods to be shipped.

Loading of Export Goods [Section 40]: The first and foremost duty cast on the master of the vessel under section 40 is that export goods are not to be loaded unless duly passed by Proper Officer.

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

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

7.6.3 Entry outwards [Section 39]: One of the important requirements in this regard is that the vessel in question should be scheduled to go to the port of consignment. It is therefore, necessary that the vessel or conveyance in question should be cleared to go to on a foreign voyage and the port of destination should be in the vessel's itinerary. This permission to be granted by the Customs authorities is known as "Entry Outwards".

Section 39 stipulates that export goods are not to be loaded on vessel until entry outwards is granted. The master of the vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel. This restriction is for vessels and not for aircraft and vehicles. Therefore, for loading of goods for export, the following requirements are to be fulfilled :

- (i) Entry outwards to be granted under section 39.
- (ii) Shipping bill under section 50

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- (iii) 'Let-export' order under section 51
- (iv) Boat note under section 35 in case the vessel is anchored away from the wharf and the goods are carried in a boat to the vessel.

7.6.4 Export goods not to be loaded unless duly passed by proper officer [Section 40]:

This section applies to all types of conveyances. The goods can be taken on board only if they are accompanied by the following documents:

- (i) In case of export goods other than baggage and mail bags – the goods shall be accompanied by
 - Shipping Bill (at seaports/airports)
 - Bill of Export (at Land Customs Station)
 - Bill of Transshipment (for transshipment goods)all duly passed by the proper officer.

- (ii) In case of baggage and mail bags – they should be permitted by Customs for export.

7.6.5 Export General Manifest [Section 41] : This is the most important responsibility cast on the person-in-charge of the conveyance. He (including the Master of the vessel) has to give to the Customs Authorities a complete list of the cargo exported from India and taken by the conveyance under his charge.

Section 41(1) of the Customs Act, 1962 provides that the person-in-charge of a conveyance carrying export goods shall, before the departure of the conveyance from a Customs station, deliver to the proper officer, in the case of a vessel or aircraft an export manifest, and in the case of a vehicle, an export report in the prescribed form.

Amendment to EGM: If the proper officer is satisfied that the export manifest or the export report is in any way incorrect and there was no fraudulent intention, he may permit such manifest or report to be amended or supplemented. [Section 41(3)]

Preparation of EGM/ER : The procedure for preparation of EGM/ER is as follows:

- (i) In the case of shipment by sea, the ship's officer gives a receipt after he has received the consignment on board the ship. This receipt is called mate receipt. It is surrendered to the steamer agent or the agent who issues the bill of lading.
- (ii) In the case of shipment by air, after the cargo is delivered to the airways for loading, the airways issues an air consignment note.
- (iii) In the case of train and lorry a railway receipt or a lorry receipt as the case may be is issued as soon as the consignment is received by the carrier.

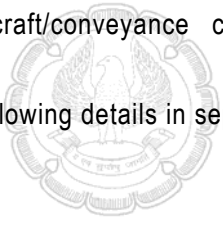
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The export general manifest or report is the consolidated report of all such Bills of Lading/air consignment notes/railway receipts/lorry receipts issued.

♦ **Form & Content of Export General Manifest or Export Report:** The form of the export general manifest/export report is prescribed under the following:

- (a) The Export Manifest (Vessel) Regulations, 1976
- (b) The Export Manifest (Aircraft) Regulations, 1976
- (c) The Export Manifest (Form) Regulations, 1975

In all the three regulations the common features are as follows:

- (1) The manifest/report shall be delivered in duplicate.
- (2) It shall consist of
 - (a) Cargo report
 - (b) Vessel's store list,
 - (c) Private property list of master, officers and crew
 - (d) In case the vessel/aircraft/conveyance carries passengers, a passenger manifest.
- (3) The cargo list shall give the following details in separate sheets.
 - (a) Cargo shipped
 - (b) Cargo transshipped,
 - (c) Cargo lying in the vessel/aircraft, but not landed or transshipped (same bottom cargo)
 - (d) Cargo in respect of which drawback is claimed.
 - (e) In case of the vessel, the dutiable goods, including arms and ammunition forming part of the ordinary equipment of a vessel.
- (4) Specific declaration should be made in respect of the following cargo, irrespective of whether it comprises same bottom cargo, shipment or transshipment
 - (i) arms (ii) ammunition (iii) explosives (iv) narcotics (v) dangerous drugs or (vi) gold

If the vessel/aircraft does not carry any such cargo, a nil report should be furnished.

7.6.6 No conveyance to leave without written order [Section 42] : The person-in-charge of the conveyance which has brought any imported goods or has loaded any export goods at a customs station shall not cause or permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

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Subsection (2) of section 42 stipulates that no such order shall be given until

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

The obligations on the part of the conveyance and/or the person-in-charge have been numerated in sub-section (2). They are explained one by one below: -

- (a) Apart from filing the IGM/Import report the person-in-charge of the vessel has to answer the questions put to him under section 38. Section 38 is invoked normally, when the particulars furnished, are inadequate and when the customs department feel that the person-in charge is deliberately suppressing some vital facts. If the same are not furnished in spite of use of section 38, obviously there is something wrong and the vessel cannot be permitted to depart without furnishing such information.
- (b) Obvious fulfillment of provisions of section 41 is a pre-requisite for any conveyance leaving an Indian port. Either the Export General Manifest or Export Report should have been filed or the necessary undertaking given by the ship's agent and with necessary security deposit.
- (c) The shipping bills and other shipping documents in respect of the exported goods

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have to be furnished to the customs department. The original shipping bill/bill of export forms the voucher record of the duty and other amounts paid and duplicate the proof of quantity actually shipped. These are basic records relating to shipment.

- (d) Technically speaking, all stores consumed during the stay of the conveyance at a particular customs station amount to import and home consumption. Thus customs duty is leviable on such stores. It is customary to have an inventory of ship stores at the time of arrival and again at the time of departure of the conveyance. Customs duty is leviable on the difference.
- (e) Similarly, a liability is cast on the person-in-charge of the conveyance, to account for all goods manifested for discharge at a particular station. If the goods manifested for discharge are not unloaded, the person-in-charge has to explain under section 116 of the Customs Act, as to what happened to such goods. He can show that
 - (i) The goods were really unloaded at the particular customs station;
 - (ii) The goods were not unloaded but were over carried and brought back to that particular station later;
 - (iii) The goods were not unloaded, but were over carried and delivered in some other place.

If he does not give a satisfactory explanation with supporting documents, a presumption arises that such goods are surreptitiously landed in India and smuggled into the country, in which case he is liable to penalty equal to twice the amount that would be leviable on such goods as duty and other charges had such goods been properly landed in India.

As seen from above, the liability to penalty for short landing of goods is on the person-in-charge of the conveyance. The proceedings usually take a long time and if the notice is served on the pilot, the aircraft will have to be detained for a long time. Hence it is held that it is sufficient if the notice is served on the owner of the conveyance i.e. the airlines. [Singapore Airlines v. UOI, 2000 (121) ELT 289 (Del)]

7.7 PROCEDURE FOR THE CLEARANCE OF EXPORT GOODS

7.7.1 Entry of goods for exportation [Section 50] : The exporter is, under section 50 of the Customs Act, required to present to a proper officer of customs a shipping bill in case of export by a vessel or by air and a bill of export, in case of export by a vehicle. The form of the shipping bill is regulated by the Shipping Bill (Forms & Regulations) Act, 1991.

The forms are as follows :

Dutiable goods	Yellow
Duty-free goods	White

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With drawback claim	Green
Duty free ex-bond	Pink
Export under DE PB Scheme	Blue

Normally a shipping bill is permitted to be filed only after an entry outward has been granted for the particular vessel or aircraft by which the goods are to be exported. However, under special circumstances the Commissioner of Customs may permit advance shipping bill to be filed.

7.7.2 Clearance of goods for exportation [Section 51] : After the shipping bill is filed, they are presented for the customs appraisal. Here also there are two parts namely, scrutinising assessment and physical check of assessment. Since the export regulations are not strict and rigid, these procedures are very simple. After the customs officer is satisfied that the goods are not prohibited and the exporter has paid the duty, he makes the order for shipment on the duplicate copy of the shipping bill. This is known as "Let Export" orders.

7.7.3 Notice of Short-Export of Goods: According to the Notice of Short Export Rules, 1963, if any goods mentioned in a shipping bill or bill of export and cleared for exportation are not exported, the exporter shall, within seven days, from the date of departure of the conveyance by which such goods were exported, furnish the prescribed information to the proper officer in respect of such goods.

7.7.4 Flow pattern for Export: Let us now consider the various steps and controls exercised by the Customs department on the export goods.

- (i) The exporter files an application for export of goods known as Shipping Bill.
- (ii) After the appraising department, the export duty assesses the shipping bill, export cess etc. are collected.
- (iii) Thereafter the Shipping Bill along with the export cargo is presented to the Customs officers in charge of supervision of the loading of the Cargo. (These officers are generally called Preventive Officers in the major Custom Houses.) The Preventive Officer after satisfying himself that all the customs checks including Export Trade Control license and export duty payment have been completed, will endorse the shipping bill with a "Let Ship" order.
- (iv) On receipt of the cargo on board the ship, the master/mate/agent of the ship issues a receipt of the quantity and particulars of the cargo loaded on the ship.
- (v) If the ship is not berthed alongside the quay and the goods have to be taken to the ship by boats/lighters the boat note procedure would be followed.
- (vi) When the Shipping Bill is presented to the master/agent/mate of the vessel, the export cargo will be permitted to be loaded.

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- (vii) The Customs Officer endorses on the Shipping Bill the quantity of the goods-loaded into the ship under the Ship Bill.

7.8 PROCEDURE FOR POSTAL ARTICLES

7.8.1 Import and export of goods by post: In the case of goods imported by post the agency for the carriage of goods is the Government of India be it through sea, air or land. The control of the Customs Department is only on goods, whether imported or exported

- (i) on which there is a duty; and
- (ii) which are subject to prohibition or restriction under the Customs Act or any other law for the time being in force.

The customs have no concern over other goods or other mail.

7.8.2 Provisions under Indian Post Office Act : The Indian Post Office Act, 1898, contains certain provisions to facilitate this control. The first of these is section 24 of the Indian Post Office Act, which reads as under:

- ◆ **Power to deal with postal articles containing goods contraband or liable to duty [Section 24] :** Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force, or anything is liable to duty, writing to the addressee, initiating him to attend, either in person, or by an agent, within a specified time at a post office, and shall in the presence of the addressee, or his agent, or if the addressee or his agent fails to attend as aforesaid, then in his absence open and examine the postal article.

It therefore, follows that

- (1) The post office authority has a right and duty to open and examine a postal article.
 - (2) The right can be exercised only if he has a reasonable suspicion that the goods contained in the postal article are-(a) liable to duty of customs, or (b) subject to a prohibition under any law in force.
 - (3) Before opening and examining the postal article he should issue a notice in writing to the addressee asking him to be present at an appointed time and place for the opening of the postal article.
 - (4) The addressee can be present either in person or by an agent; and if the addressee or his agent does not turn up at the appointed time and place, the postal authorities are entitled to open and examine the postal article in his absence.
- ◆ **Delivery to customs authority:** The power enabling the postal authorities to deliver such articles to the Customs authorities is enshrined in section 24A of the Indian Post

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Office Act. The relevant provisions read as follows:

The Central Government may, by a general or special order, empower any officer of the post office, specified in such order, to deliver any postal article, received from beyond the limits of India and suspected to contain anything liable to duty, to such customs authority as may be specified in the said order and such customs authority shall deal with such article in accordance with the provisions of the Sea Customs Act [now Customs Act, 1962] or any other law for the time being in force.

Thus once the postal authorities have found some postal article to contain dutiable or prohibited goods, that authority should deliver the postal article in question to the customs authority for necessary action.

7.8.3 Provisions under Customs Act: After considering the provisions of the Indian Post Office Act, let us now consider the provisions under the Customs Act relating to goods imported or exported by post. Sections 82 to 84 of the Customs Act are substantive provisions containing the various provisions.

◆ **Label or declaration accompanying goods to be treated as entry [Section 82] :**

In the case of goods imported or exported by post, any label or declaration accompanying the goods, which contains description, quantity and value thereof, shall be deemed to be an entry for import or export, as the case may be, for the purposes of this Act.

◆ **Relevant date for Rate of duty and tariff valuation in respect of goods imported or exported by post [Section 83] :**

(1) The rate of duty and tariff value, if any, applicable to any goods imported by post shall be the rate and valuation in force on the date on which postal authorities present to the proper officer a list containing the particulars of such goods for the purposes of assessing the duty thereon.

However, where the postal goods arrive on a vessel, and the list containing the particulars is available and is filed by the Post Master, before the arrival of the vessel, the list shall be deemed to have been filed on the date of arrival of the vessel.

The effect of this proviso is that the relevant date for imports by post is the date of submission of the list by the Post Master or the date of arrival of the vessel, whichever is later.

(2) The rate of duty and tariff value 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.

◆ **Power of the Central Board of Excise and Customs to make regulations [section 84]:** This section empowers the Board to make regulations providing

(a) the form and manner in which an entry may be made in respect of any specified class

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of goods imported or to be exported by post, other than goods which are accompanied by a label or declaration containing the description, quantity and value thereof;

- (b) the examination, assessment to duty, and clearance of goods imported or to be exported by post
- (c) the transshipment of transit or goods imported by post from one Customs station to another or to a place outside India.

7.8.4 Rules Regarding Postal Parcels & Letter Packets from Foreign Ports in/out of India

Landing : The rules and regulations under the old Sea Customs Act (which are valid under the Customs Act) provide that the boxes or bags containing the parcels would be labelled, like "Postal Parcels" "Parcel Mail" "Letter Mail" . They would be allowed to land at

- (i) Foreign Post Dept. at G.P.O. Calcutta
- (ii) Foreign Post Dept. at Bombay.
- (iii) Foreign Post Office at G.P.O. Madras
- (iv) Sorting air mail office at Delhi.
- (v) Foreign Post Dept. at New Delhi.
- (vi) Foreign Parcel department of Golakganj.



Clearing : The procedure to be followed is as under:

1. The Postmaster at Foreign Post Department will prepare in relation to all post parcels subject to customs scrutiny a list or sheet containing
 - (i) Parcel Nos.
 - (ii) Parcel Bills/sender's declarations/labels/despatch notes
 - (iii) Any other information relevant to the assessment of the parcels.
2. The mail bags other than those containing registered mail are checked in the sorting office as soon as they are received in India, to eliminate and detail mail containing dutiable or prohibited goods.
3. On receipt of the parcels, the customs appraiser would segregate them into the following:
 - (a) those that can be assessed to customs duty on the basis of the label or customs declaration;
 - (b) those that can be assessed to customs duty after opening the parcel and

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physical examination of the goods;

(c) those for which further information or further documents are necessary for determining the customs duty, restrictions on importation etc. These documents will be called from the addressee of the letter mail article.

1. The parcels to be opened will be opened by the postal authorities in the presence of the customs authorities and after the customs authorities have ascertained the necessary details for determination of the duty and prohibition aspects they shall close the letter mail articles or the parcels as the case may be.
2. In the case of parcels, letter mail articles, detained for further details or information a letter of call will be issued by the customs authorities. The postal articles will be presented to the customs authorities once again as soon as the requisite information is received.
3. As soon as the parcels are assessed to duty, the customs will indicate on the parcel assessment sheet, the value of the goods, description of the goods and the duty recoverable on the goods. The postal authorities shall inscribe the duty amount on the label of the parcel.
4. The postal authorities will collect the duty when the parcels are delivered to the addressee.
5. The duty amount is credited to the customs authorities periodically. The duty amount is collected at the time of delivery of the postal article to the addressee.

Section 13 of the Post Office Act provides that customs duty paid as postage is recoverable as postage. This provision states that when a postal article, on which any duty of customs is payable, has been received by post from any place beyond the limits of India, and the duty has been paid by the postal authorities, at any customs port or elsewhere, the amount of duty shall be recoverable as if it were postage due under the (Post Office) Act.

- ◆ **Imports through courier service:** The provisions applicable for postal goods do not apply to imports/exports made through courier agencies. They are governed by Courier Import and Exports (Clearance) Regulations, 1998.

7.9 SPECIAL PROVISIONS RELATING TO STORES

The term “stores” has got a special significance in the course of import and export under the Customs Act. The term “stores” has been defined under section 2(38) of the Customs Act to mean “goods for use in a vessel or aircraft, and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting”.

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The ambit of the term “stores” can be understood if the following needs of the vessel or conveyance are taken into account:

- (i) The food, drink and other needs of the passengers and crew and other human beings on board the vessel, aircraft or conveyance.
- (ii) Stock of the fuel necessary for running the vessel, aircraft, conveyance, for example diesel oil and furnace oil for ships, aviation, turbine fuel for the aircrafts, petrol or diesel or automobiles run on road, coal, diesel of locomotive etc.
- (iii) The conveyance has to carry with it certain essential spare parts for the maintenance and repair of the conveyance during the journey.
- (iv) Certain essential medical items like first aid boxes, medicine chest, oxygen etc are also necessary during the voyage.
- (v) Life saving things, life boats, life belts, etc. are also statutorily required to be kept on board the vessel/conveyance.
- (vi) If the voyage is long and tedious, certain entertainment to keep the passengers engaged is a commercial requirement. They include alcoholic liquors, musical instruments/videos/radio systems, small games, toys and other entertainment items for the children, long chain, etc. on ocean liners etc.

The emphasis is that all these items are not imported into or exported out of India in the course of international trade, but by the very fact of their being brought into India from a place outside India, and vice versa, they attract the rigours of the controls on import and export of goods. This has necessitated special provisions to deal with such stores. Sections 85 to 90 of the Customs Act contain detailed provisions relating to treatment of Stores under the Act.

7.9.1 Provisions of IGM/EGM: A specific provision has been made in the Import General Manifest to be filed with customs authorities on arrival at a customs port/airport/station, that the “Store list” in the prescribed form should be made out separately in the Manifest. A similar provision has been made in the Export General Manifest required to be filed at the time of departure from a customs port/airport/land customs station.

Before we go through the statutory provisions as aforesaid we shall analyse the movement of the vessels/aircrafts and the various possible circumstances that may arise. Since the stores are not landed and cleared for home consumption, the collection of duty on an assessment document does occur. There are three different situations:

- (i) The vessel/aircraft/conveyance terminates its journey at this port, or
- (ii) They proceed towards Indian coastal ports only and as such the stores continue to remain in Indian customs/territorial waters or Indian territory alone, or
- (iii) It proceeds towards a destination outside India.

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The journey inside India is called coastal run in the case of vessels, domestic flight in the case of aircraft and internal movement in the case of other transportation by land.

7.9.2 Transit & Transshipment [Section 86 and 87] : Section 86 of the Customs Act provides that

1. Any stores imported in a vessel or aircraft, may remain on board such vessel or aircraft, without payment of duty, while it is in India. (Transit)
2. Any stores imported in a vessel or aircraft may, with the permission of the proper officer be transferred to any vessel or aircraft as stores for consumption therein. (Transshipment)

No duty on consumption of stores on board a foreign going vessel/aircraft [Section 87]:

Therefore, when a foreign going vessel or aircraft enters territorial water, sub-section (i) of section 86 permits the stores on board such vessel or aircraft to remain on board without payment of duty during its stay in Indian waters.

Again, in transshipment cases, when such stores are transferred to any foreign going vessel or aircraft or to an Indian naval vessel for consumption, they are permitted to do so without payment of any duty vide sub-section (2) of this section.

Section 87 of the Customs Act provides that any imported stores on board a vessel or aircraft (other than stores to which section 90 applies) may, without payment of duty, be consumed during the period such vessel or aircraft is a foreign going vessel or aircraft.

This covers the situation between the first Indian port/airport of arrival to the final Indian port/airport of departure to a destination outside India.

In other words, no duty is leviable as long as the vessel/aircraft is a foreign going vessel/aircraft. However, if the vessel/aircraft ceases to be so and converts to a total run/local flight, duty will be chargeable on the stores on board.

As a result of these two specific provisions of law, it follows that in other cases normal law of levy and assessment to import duty would apply. Thus, in the case of :

- (i) vessels/aircraft arriving in India and terminating their voyage at the port of arrival:
- (ii) vessel/aircraft arriving in India and subsequently converting into coastal voyage/run or domestic flight

import duty would be chargeable on the unconsumed stores brought by the vessel/aircraft/conveyance at the point of its entry into India. The stores list in the import manifest forms the basic document for determination of duty liability.

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7.9.3 Warehousing of Shipstores [Section 85] : It has been found convenient to allow imported shipstores to be kept in a bonded warehouse and thereafter supply it to vessels/aircraft as and when required. Normally when imported goods are allowed to be kept in a warehouse the importer is required to bind him to pay the duty on the imported goods. It is customary to assess the imported goods to determine the amount of duty payable thereon before permitting such imported goods to be warehoused. In the case of shipstores such a detailed procedure is considered to be unnecessary.

Hence section 85 provides for warehousing ship-stores without assessment to duty. It provides that “where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircraft, without payment of import duty under this chapter the proper officer may permit the goods to be warehoused without the goods assessed to duty.”

◆ **Bonded Aircraft Stores (Procedure) Regulation, 1965 :** A regulation has been made to regulate such warehousing of shipstores and is called the Bonded Aircraft Stores (Procedure) Regulations, 1965. The regulation provides that,

- (1) Whenever any imported goods intended for supply for use in a foreign going aircraft are to be entered for warehousing, an application under the prescribed form should be made to the Assistant Commissioner of Customs or Deputy Commissioner of Customs.
- (2) This application will be treated as a Bill of Entry.
- (3) On receipt of the said application, the Assistant Commissioner or Deputy Commissioner of Customs may permit the goods specified in the application to be warehoused without the goods being assessed to duty.
- (4) When the said warehoused goods are to be cleared for use as stores in a foreign going aircraft, an application has to be made to the Assistant Commissioner or Deputy Commissioner in the prescribed form.
- (5) This application will be treated as a Shipping Bill.
- (6) On receipt of the said application, the Assistant Commissioner or Deputy Commissioner may permit clearance of the warehoused goods specified in the application for being taken on board the foreign going aircraft as stores.

7.9.4 Application of Section 69 and Chapter X to Shipstores [Section 88] : This section provides that the provisions of Section 69 and chapter X shall apply to stores other than those covered by section 90. Thus it follows that,

1. Section 69 allows warehoused goods to be exported without payment of import duty. By virtue of section 88, this benefit is available to warehoused goods if they are taken on board any foreign going vessel or aircraft as stores.

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2. Further, as per section 74, where duty paid imported goods are exported within two years then subject to certain conditions, such duty shall be repaid as drawback. By virtue of section 88, this benefit has been made available to imported shipstores.

In case of imported shipstores, which have been re-exported after the import duties for the same have been paid, the original import duty paid is eligible as drawback. However a special provision has been made in this regard for stores like fuel and lubricants oil taken on board any foreign going aircraft whereby the whole of the import duty paid is eligible as drawback as against 98% eligible for other imported goods.

7.9.5 Supply of Ship Stores [Section 89] : Section 89 of the Customs Act covers the case of indigenous goods, which are supplied to a vessel as ship stores. It states that goods produced or manufactured in India and required as stores on any foreign going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine having regard to the size of the vessel or aircraft, the number of passengers and the crew and the length of the voyage or journey on which the vessel or aircraft is about to depart. In a nutshell, the duty free supply of shipstores, should be reasonable and not in commercial quantities.

7.9.6 Special provisions regarding shipstores supplied to Indian Naval vessels [Section 90]: There are special provisions in relation to supply of stores to Naval vessels. They are:

- (i) Stores for the use in a ship of the Indian Navy and stores supplied free by the Government for the use of the crew of a ship of the Indian Navy, in accordance with their conditions of service, may be supplied without payment of duty to be consumed on board the ship of Indian Navy.
- (ii) The provisions of section 69 and Chapter X shall apply as they apply to other goods. However they will be entitled to drawback of the whole of the duty of customs if any paid therein, instead of 98% alone otherwise applicable.

7.10 SPECIAL PROCEDURES RELATING TO CLEARANCE OF BAGGAGE

7.10.1 Baggage: The term “baggage” has been defined under section 2 (3) of the Customs Act, to include unaccompanied baggage as well but does not include motor vehicles. The term baggage is a comprehensive term which means the luggage of a passenger accompanied or unaccompanied, and comprises of trunks or bags and the personal belongings of the passenger. It is not limited to the meaning of bonafide baggage as defined in clause 3 of Tourist Baggage Rules, 1958.

The term “goods” has been defined under section 2 (22) of the Customs Act, to include *inter alia*, baggage also. Therefore, the restrictions and regulations governing the import and export of goods will apply *mutatis mutandis* to baggage also.

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7.10.2 Issues relevant to baggage: There is a popular belief that baggage consists of personal belongings of an individual or family and is essential for the day to day life of such persons.

There is another popular belief that customs duty is on trade and merchandise only and the goods brought into India or taken out of India in the course of international trade alone are liable to customs duty and customs regulations. The customs duty is an indirect tax. It is on the goods. It is not way influenced by the parties to the transaction or the nature of the transaction. The only relevant factors are:

- (i) whether the goods are imported into India;
- (ii) whether they are subject to the levy of customs duty under the provisions of the Customs Act and
- (iii) whether there is any relief of payment of duty.

It is in this context that the provisions of the Customs Act have to be examined in their applicability to baggage.

The duty cast on the person-in-charge of the conveyance is to file an Import General Manifest in the case of imported goods and an Export General Manifest in the case of export goods. In both the cases, "baggage goods" are required to be declared in separate sheets.

7.10.3 Statutory Provisions : The statutory provisions relating to Baggage are covered by sections 77 to 81 of the Customs Act.

Entry of baggage by owner [Section 77] : Under this section the owner of the baggage has to make a declaration of its contents to the proper officer of customs, for the purpose of clearing it. This is known as Baggage Declaration Form.

Rate of duty and tariff valuation applicable to baggage [Section 78]: Section 78 of the Customs Act stipulates that -

the rate of the duty and tariff valuation, if any applicable to baggage shall be the rate of and valuation in force on the date on which a declaration is made in respect of such baggage under section 77. Therefore the relevant date is the date of filing baggage declaration under section 77.

Duty exemption to baggage [Section 79] : Section 79(1) of the Customs Act refers to the duty relief available in respect of baggage. It stipulates that the proper officer, may subject to any rules made under sub-section (2) pass free of duty

- (a) any article in the baggage, of a passenger or a member of the crew, in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

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- (b) any article in the baggage of a passenger in respect of which the officer is satisfied that it is for the use of the passenger or his family or is a bonafide gift or souvenir, provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rule.

The law thus envisages two categories of baggage, namely those belonging to (a) passengers; and (b) members of the crew.

Similarly it envisages three classes of goods, namely (a) personal effects, which have been in the use of the person for a minimum period; (b) household effects, which is used by the family including the person; and (c) gifts and souvenirs.

Sub-section (2) of section 79 enables the Central Government to make rules for the purposes of carrying out the provisions of section 79(1). It also stipulates that such rules may specify

- (a) the minimum period for which any article has been used by a passenger or a member of the crew for the purposes of [clause (a) of sub-section(1)] determining personal effects;
- (b) The maximum value of any individual article and the maximum total value of all the articles which may be passed free of duty [under clause (b) of sub-section (1)] i.e., household effects, gifts, souvenirs etc;
- (c) the conditions to be fulfilled before or after clearance subject to which the baggage may be passed free of duty. Sub-section(3) of section 79 provides that different rules may be made for different classes of persons.

Relevant Cases

1. **Gifts:** Articles brought in as baggage for personal use of another person cannot be treated as *bona fide* baggage for allowing freely. The tribunal has held this view in the case of *Saroj Goenka v. Commissioner of Customs 1987 [(31) ELT 839 (T-SRB)]*
2. **Software:** If software is imported by baggage mode, exemption under notification No 11/97-Cus would not be available because all baggage are liable to be classified and assessed to duty under heading No. 98.03.

7.10.4 Passenger Baggage Rules: In pursuance of the powers conferred under section 79 of the Customs Act, the Government has passed the Baggage Rules 1998. The content of the Baggage Rules, 1998 can be explained briefly as under:

Tourist: This means a person not normally resident in India who enters India for a stay of not more than six months for legitimate non-immigrant purposes such as touring, recreation, sports, health, family reasons, study, religious pilgrimage or business.

On arrival in India such a person shall be entitled to duty free clearance of his bonafide

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baggage to the following extent: [Appendix 'E' read with rule7]

Class of Tourist	Articles allowed free of duty
Tourist of Indian Origin other than those coming from Pakistan by land route	(i) Used personal effects and travel souvenirs, if a. these goods are for personal use of the tourist, and b. these goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination (ii) Articles as allowed to be cleared duty free under the basic allowance for passenger depending upon the country from which he is coming.
Tourist of foreign origin other than those of Nepalese origin coming from Nepal, or Bhutanese origin coming from Bhutan.	(i) Used personal effects and travel souvenirs subject to the same conditions as that of a person of Indian Origin. (ii) Articles other than those mentioned in Annexure-I upto a value of Rs. 8,000/- for making gifts.
Tourists of Nepalese origin coming from Nepal or of Bhutanese origin coming from Bhutan	No Free Allowance.
Tourist of Pakistani origin or foreign tourists coming from Pakistan or tourists of Indian origin coming from Pakistan by land route	(i) Used personal effects and travel souvenirs, if- (a) These goods are for personal use of the tourist, and (b) These goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination. (ii) Articles up to a value of Rs. 6000 for making gifts.

Passengers other than tourists: The basic allowance to such passengers consists of

- (a) Used personal effects, excluding jewellery required for satisfying daily necessities of life.
- (b) Other articles which are carried on the person or in his accompanying baggage.

There is no value limit for used personal daily necessities of life. However there is a value limit in respect of other articles of baggage (apart from the goods mentioned in

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Annexure-1) as categorized according to age of the passenger, country from which they returning and the number of days of stay abroad. The different allowances are tabulated below:

Sl. No.	Country coming from	Age of the Passenger	Duration of Stay	Value Limit
I	Nepal, Bhutan, Myanmar or China	10 Yrs. or more	More than 3 days	Rs. 6,000/-
	-do-	upto 10 yrs.	-do-	Rs. 1500/-
II	Countries other than Nepal, Bhutan, Myanmar or China	10 Yrs. or more	More than 3 days	Rs. 25,000/-
	-do-	-do-	3 days or less	Rs. 12,000/-
	-do-	Upto 10 yrs.	More than 3 days	Rs. 6,000/-
	-do-	-do-	3 days or less	Rs. 3,000/-

It may be noted that these free allowances are per individual passenger only and shall not be allowed to be pooled with other passengers.

Additional allowances to professionals of Indian origin: If the non-tourist passenger, is of Indian origin who was engaged in his profession abroad, on his return to India he shall be entitled to duty free allowances in addition to those mentioned above at varying scales depending upon the duration of stay abroad. The additional allowances consists of

- (i) used household articles and
- (ii) professional equipment in use and belonging to the passenger.

Professional equipment has been defined to mean portable equipment, instruments, apparatus and appliance as are required in his profession like a carpenter, a plumber, a welder, a mason and the like and shall not include items of common use, such as cameras, cassette recorders, dictaphones, personal computers, typewriters and other similar articles

This additional allowance may be tabulated as follows:

Sl. No.	Duration of Stay	Used house hold articles	Professional
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			<i>equipment</i>
1.	At least 3 months	Rs.12,000/-	Rs. 20,000/-
2.	At least 6 months	Rs.12,000/-	Rs. 40,000/-
3.	Minimum 365 days during the preceding 2 years and returning to India after termination of his work.	All used household articles and personal effects (which have been in possession and use abroad of the passenger or his family for at least six months) upto an aggregate value of Rs. 75,000/- . These exclude articles listed in Annex I, II or III of the Baggage Rules.	

Jewellery brought by non-tourist Indian passenger: The additional duty free allowance is applicable to non-tourist passenger of Indian origin who had stayed abroad for period exceeding one year. Indian non-tourist passengers who had stayed abroad for a period less than a year are not eligible for this additional jewellery allowance. The jewellery brought by them is specifically excluded from the duty free allowance for used personal effects. It has to be covered under the normal baggage allowance only. The additional jewellery allowance is as follows:-

Gentleman Passenger

- Rs. 10,000/-

Lady Passenger

- Rs. 20,000/-

Transfer of residence: A passenger, who has been staying abroad and transferring his residence to India, has naturally been given greater baggage allowance. He is given in addition to the allowance he would be otherwise eligible as a non-tourist, duty free clearance of all used personal and house hold articles, other than those listed in Annex I or Annex II, but including the articles listed in Annexure III and jewellery upto an aggregate value of

Rs. 10,000/- in the case of a gentleman

Rs. 20,000/- in the case of lady

This is subject to condition that

- (i) the passenger has stayed abroad for a minimum period of two years, immediately preceding the date of his arrival on transfer of residence;
- (ii) if the passenger had visited India, during the preceding two years, the sum total of such visits should not exceed six months; and
- (iii) the passenger had not availed baggage concession available to passengers coming on transfer of residence during the preceding three years.

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However, if the passengers had taken jewellery out of India at the time of their departure from India, they would be given duty free clearance thereof, if it is proved to the satisfaction of the Assistant Commissioner of Customs, that they were taken out of India. All passengers are advised to obtain jewellery Export Certificate from the Customs authority at the port of export/departure in respect of such jewellery.

7.10.5 Provisions relating to unaccompanied baggage: The various provisions in the above rules are also applicable to the unaccompanied baggage unless specifically excluded. The unaccompanied baggage must be dispatched within one month of his arrival in India or such further period as the Assistant Commissioner may allow. The unaccompanied baggage can land in India even before the arrival of the passenger. The unaccompanied baggage may arrive within two months before the arrival of the passenger. However if the passenger is not able to arrive in India due to circumstances beyond his control like sudden illness to himself or any member of family, natural calamities, disturbed conditions etc. the Assistant Commissioner may extend the period of two months upto a maximum of one year for reasons to be recorded.

Goods listed in Annexure I & II.

Annexure I :

1. Fire arms
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 200 or cigars exceeding 50 or tobacco exceeding 250 gms.
4. Alcoholic liquor or wine in excess of two litres
5. Gold or silver other than ornaments



Annexure II:

1. Colour Television/Monochrome television
2. Digital Video Disc Player
3. Video Home Theatre System
4. Dish Washer
5. Music System
6. Air conditioner
7. Domestic Refrigerators of capacity above 300 litres or its equivalent
8. Deep Freezer
9. Microwave Oven

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10. Video camera or the combination of such video camera with one or more of the following goods viz.
 - (a) Television receiver.
 - (b) Sound recording or reproducing apparatus.
 - (c) Video reproducing apparatus.
11. Word Processing Machine
12. Fax Machine
13. Portable Photocopying Machine
14. Vessel
15. Aircraft
16. Cinematographic films of 35 mm and above
17. Gold or silver in any form other than ornaments

Annexure III

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player
2. Washing Machine
3. Electrical or Liquefied Petroleum Gas Cooking Range
4. Personal computer (Desktop Computer)
5. Laptop Computer (Notebook Computer)
6. Domestic Refrigerators of capacity up to 300 litres or its equivalent.

Crew Baggage: These baggage rules are applicable to the members of the crew engaged in foreign going vessels, when they are finally paid off on termination of their engagement. However, a crew member of a vessel and aircraft shall be allowed to bring items like chocolates cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of Rs.600.

Temporary detention of baggage [Section 80] : It may so happen that a passenger has brought with him an article, which is prohibited. The passenger may not insist on taking it into the Indian Territory. On the contrary, he may opt to re-export it or take it with him when he leaves the country.

Similarly a passenger may not unnecessarily pay duty on an article, which he can conveniently avoid taking into the town, if the duty is heavy. In such case also, he may opt to take the article with him when he leaves the country.

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In both the cases, he will have to deposit the article with the customs authorities and take it back at the port of his departure.

“Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name”.

Declaration – the essence: The declaration of the goods brought in is a absolute necessity. If the goods are not declared under section 77, the passenger cannot subsequently claim the benefit under section 80 and the goods are liable for confiscation. *[Md. Ibrahim v. Secretary, Ministry of Finance, 2000 (123) ELT 239 (Mad).]*

7.10.6 Regulations in respect of baggage [Section 81] : Since the provisions in respect of baggage are a complete code by themselves, it is desirable to supplement detailed procedures wherever necessary with the rule making powers. Section 81 therefore provides that the Board may make regulations in the following matters:

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

♦ **Baggage declaration form :** In exercise of these powers, the form of the baggage declaration has been prescribed and standardized. Transit or transhipment of baggage from one customs station to another becomes a necessity for convenient clearance of unaccompanied baggage.

Baggage (Transit to Customs Stations) Regulations: The Central Board of Excise & Customs has made the regulations for the transit of unaccompanied baggage from the customs station of arrival at Bombay, Delhi, Calcutta, Madras, Bangalore, Trivandrum, Hyderabad or Cochin to any other of the aforesaid customs stations.

Conditions: Where the unaccompanied baggage of any passenger arrives at the customs station at Bombay, Delhi, Calcutta, Madras, Bangalore, Trivandrum, Hyderabad or Cochin and the passenger desires that the said baggage may be cleared at any of the aforesaid customs stations, other than the customs station at which the baggage has arrived, then on a request made in this behalf by the passenger, such baggage may be permitted to be transported to the customs station at which the passenger desires the same to be cleared, by air or by passenger train, if-

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- (a) all arrangements are made by the passenger or his agent for the transport of such baggage from the customs station of arrival to the customs station at which he desires to have the baggage cleared for its booking to that station, and for its transport to the custom house in the place at which the station is located,
- (b) the baggage remains under the supervision of an officer of customs, deputed for the purpose, except when it is under the custody of the airline or railway authorities, and the passenger pays for the services of the officer so deputed; and
- (c) in case of goods to be transported by rail such of the goods as can be insured with the railways are so insured.

However the Commissioner may at his discretion, allow the unaccompanied baggage to be transported to the customs station at which the passenger wants to have the same cleared by goods train if the goods are insured and the passenger or his agents satisfy the proper officer that the goods are not permitted to be transported in passenger train having regard to the size and weight or that the transport by passenger train would cause undue financial strain on him.

7.11 TRANSIT AND TRANSHIPMENT

7.11.1 Transit and transhipment of import cargo – An Introduction: A conveyance may not carry goods intended for a particular customs station only. It may carry goods intended for other Indian ports and other foreign ports. There are two distinct possibilities:

- (a) The conveyance may not call at all other Indian ports/customs stations and foreign ports for which it carries goods.
- (b) The conveyance may call at all other Indian ports/customs stations and foreign ports for which it carries goods.

In the case of the former, the goods will have to be transferred to any other conveyance onward carriage to the destination. This is called transhipment. This will cover both goods intended for Indian ports and foreign ports.

In the latter situation, the goods will continue to be carried by the same conveyance. This is called transit of goods.

In both the situations, import duty is not collected on the goods even though the liability has already accrued. It would be necessary to ensure that

- (a) in the case of goods intended for Indian ports, the goods have actually to be conveyed to the Indian port of destination and appropriate duty of customs is collected thereupon;
- (b) in the case of goods intended for foreign ports, the goods are actually conveyed out

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of India and are not landed in any Indian customs station.

7.11.2 Difference between Transit and Transshipment: The essential difference between transit and transshipment lies in the continuity of records and documentation.

- (a) In the case of transit of goods by the same conveyance, the record already made in the ship's/aircraft's manifest will continue. The goods would have to be shown in the manifest as same bottom cargo. The destination of the cargo consignment wise has to be shown in the same bottom cargo manifest. These entries have necessarily to figure in the export manifest of the conveyance. Thereafter when the conveyance calls at the next Indian customs port or airport the goods have to figure in the Import General Manifest filed there as landing cargo or same bottom cargo as the case may be. Thus there is continuity in the record and there is no chance of the control over such transit goods being lost.
- (b) The position of the transshipment is entirely different. In the first instance such transshipment goods are landed in the particular Indian customs station. There after they have to be shipped by a conveyance to the destination to be transhipped. These are the following stages where care and caution have to be exercised to ensure that the goods are not illicitly landed and smuggled into India.
 - (i) during the period when the transshipment goods lie in the Indian customs station;
 - (ii) when the goods are transhipped by another conveyance to their final destination;
 - (iii) where the transhipped goods are destined to another Indian customs station, care has to be taken at that station for actual landing and proper clearance.

7.11.3 Statutory Provisions: The statutory provisions relating to Transit and Transshipment of goods are covered in sections 52 to 56 of the Customs Act.

Exceptions to this chapter [Section 52] : The provisions of this chapter shall not apply to

- (a) Baggage
- (b) Goods imported by post and
- (c) Stores

Transit of goods in the same vessel or air [Section 53] : Subject to the provisions of section 11 any goods imported in a conveyance and mentioned in the import manifest or the import report, as the case may be, as for transit in the same conveyance to any place outside India or any customs station may be allowed to be so transited without payment of duty.

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Transshipment of goods without payment of duty [Section 54] : (1) Where any goods imported into a customs station are intended for transshipment, a bill of transshipment shall be presented to the proper officer in the prescribed form. Where the goods are being transferred under an international treaty or bilateral agreement between the Government of India and Government of a foreign country, a declaration for transshipment instead of a bill of transshipment shall be presented to the proper officer in the prescribed form.

- (2) Subject to the provisions of sections 11, where any goods imported into a customs station are mentioned in the import manifest or the import report, as the case may be, as for transshipment to any place outside India, such goods may be allowed to be so transhipped without payment of duty.
- (3) Where any goods imported into a customs station are mentioned in the import manifest or the Import report, as the case may be, as for transshipment:-
- (a) to any major port as defined in the Indian Ports Act, 1908 (15 of 1908), or the customs airport at Mumbai, Calcutta, Delhi, or Chennai or any other custom port or customs airport which the board may, by notification in the Official Gazette, specify in this behalf, or
 - (b) to any other customs station and the proper officer is satisfied that the goods bonafide intended for transshipment to such customs station,
- the proper officer may allow the goods to be transhipped without payment of duty, subject to such conditions as may be prescribed for the due arrival of such goods at the customs station to which transshipment is allowed.

Liability of duty on goods transited under section 53 or transhipped under section 54 [Section 55] : Where any goods are allowed to be transhipped under section 53 or transhipped under sub-section (3) of section 54 to any customs station, they shall, on their arrival at such station, be liable to duty and shall be entered in like manner as goods are entered on the first importation thereof and the provisions of this Act and any rules and regulations shall, so far as may be, apply in relation to such goods.

Transport of certain classes of goods subject to prescribed conditions [Section 56] : The provisions of sections 53 and 54 apply only to goods imported at an Indian customs port/airport and transmitted or transhipped to another Indian customs port/airport. They do not cover transport by land from one Indian land custom station to another Indian land customs station.

In the case of goods destined to foreign ports/airports/custom station, the problem had been specifically faced in the case where imported goods meant for Nepal landed at any Indian customs port/airport or land customs station. Such goods had to be transported by road or rail to Indian land customs station along the Indo Nepal Border and thereafter

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crossed over to the corresponding Nepalese customs station. Similarly there was rail traffic between West and East Pakistan before the latter was liberated and named Bangladesh. The movement across the Indian territory was found to be faster and cheaper compared to movement by sea around the Indian subcontinent. Such a situation is dealt with by section 56 of the Customs Act.

Section 56 specifically provides that Imported goods may be transported without payment of duty from one land customs station to another, and any goods may be transported from one part of India to another part through any foreign territory, subject to such conditions as may be prescribed for the due arrival of such goods at the place of destination.

In the first part there is a substantial exemption from customs duty. The second part technically amounts to export and subsequent re-import.

7.11.4 Goods Imported (Conditions of Transhipment) Regulations, 1995.

The legal provisions relating to the transhipment of goods are discussed in section 54. However the procedures relating to the transhipment of goods are governed by Goods Imported (Conditions of Transhipment) Regulations, 1995. Broadly, the transhipment procedure is as follows:

1. **Transhipment Permit:** A 'transhipment 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 alongwith transhipment 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 transhipment. In case, the documents are in order, permission for transhipment is granted by the Customs.
2. **Execution of Bond and Bank Guarantee:** 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 there safely, a bond with bank guarantee (@ 25% of bond value) is executed by the carrier engaged for the transhipment of the goods. The carriers in public sector i.e. CONCOR and CWC are exempted from the requirement of bank guarantee for transhipment of goods. 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 30 days 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.
3. **Sealing of goods:** After issuance of transhipment permit and execution of bonds as mentioned above, 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, containers are not required to be sealed again by the Customs. In such

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cases, shipping agents are required to inform the serial number of seals to Customs, which is just verified by the Customs.

Self-examination questions

1. What are the circumstances under which assessment is done provisionally under section 18?
2. State the provisions of transshipment of goods without payment of duty under section 54 of the Customs Act, 1962.
3. Explain the procedure prescribed in Customs Act, 1962 in case of goods not cleared, warehoused or transhipped within 30 days after unloading.
4. Write short notes on:
 - (a) Export general manifest
 - (b) Boat note (or restriction on goods being water borne)
5. Discuss briefly:
 - (a) Temporary detention of baggage
 - (b) Relevant date for rate of duty and tariff valuation in respect of goods imported and exported by post
6. What is the permissible time limit with respect to the following- :
 - (i) for filing a bill of entry
 - (ii) for paying the assessed duty
 - (iii) for delivery of import manifest/report and export manifest/report
7. State in brief the provisions of the Customs Act, 1962 relating to filing of "Import Manifest/Report".
8. Write a brief note on the declaration made by the owner of Baggage.
9. State and summarise the provisions and procedure in the Customs Act, 1962 governing preparation and filing of a bill of entry.
10. 'Queen Marry', the vessel containing the goods imported by XML Ltd. entered the Indian Territorial waters on 26.05.2009. The Import Manifest was submitted on 24.05.2009. The vessel arrived at the customs port on 29.05.2009 but the entry inwards was given to the vessel on 04.06.2009. An 'Into Bond Bill of Entry' was presented by XML Ltd. on 06.06.2009 and thus, the goods were classified, valued and stored in the bonded warehouse. On 03.07.2009 safeguard duty @ 8% was imposed on such goods. XML Ltd. had presented the 'Bill of Entry for Ex-Bond Clearance' in respect of such goods on 01.07.2009 and cleared the goods from the

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bonded warehouse on 05.07.2009.

Discuss whether XML Ltd. is liable to pay safeguard duty on the goods imported by it. Will your answer be different if the 'Bill of Entry for Ex-Bond Clearance' is presented by XML Ltd. on 04.07.2009? Give reasons in support of your opinion.

Answer

10. The Supreme Court in the case of *Kiran Spinning Mills 1999 (113) ELT 753* has held that the taxable event occurs when the customs barrier is crossed and not on the date when the goods had landed in India or had entered the territorial waters of India. For the goods stored in a warehouse the customs barrier would be crossed when they are sought to be taken out of customs and brought to the mass of goods in the country. As per section 15(1)(b) of the Customs Act 1962, the relevant date for determination of rate of duty and tariff valuation in case of warehoused goods is the date when a bill of entry for home consumption (bill of entry for ex-bond clearance) in respect of such goods has been presented under section 68 of the Customs Act, 1962. Therefore, in view of section 15(1)(b) the taxable event gets completed when the bill of entry for home consumption in case of warehoused goods is filed.

Thus, in the given problem, the taxable event gets completed on 01.07.2009, the date on which the bill of entry for ex-bond clearance is submitted and not on 05.07.2009 when the goods are removed from the warehouse. The safeguard duty is imposed on 03.07.2009 and the bill of entry for ex-bond clearance is submitted on 01.07.2009, thus, no safeguard duty can be imposed in such a case, as at the time when taxable event got completed there was no levy of safeguard duty. Further, as per section 15(1)(b) the relevant date for determining the rate of duty is the date of presentation of bill of entry for ex-bond clearance, and on that date there was no safeguard duty.

However, if the bill of entry for ex-bond clearance is filed on 04.07.2009, the date after the levy of safeguard duty, such duty will be levied on the goods.