

8.1 INTRODUCTION

The concept of warehousing is a trade practice involving trade off between (a) the economics of importation and (b) the requirement of the importer at any given point of time.

The requirements of the importer at any given point of time may be say X. Either the supplier may not agree to sell that much quantity or the freight may not be economical. The importer in those circumstances would be forced to place an order for 5X or 8X as the case may be. As soon as the goods were imported they were assessed to duty. The total amount of duty was determined. Thereafter instead of clearing the whole consignment the importer was allowed to clear the consignment in convenient lots after paying appropriate duty on that particular portion that was cleared. During the intervening period the goods were held in custody in a place called warehouse. The consideration the importer was required to pay for this facility was that

- (i) he should bind himself to pay to the government a sum equal to double the amount of total duty determined, with such surety or security as may be required (this was known as double duty bond) and
- (ii) he should agree to pay duty on the goods cleared from such warehouse at the rate of duty and valuation prevalent on the date on which a bill of entry in respect of such goods is presented.

This facility was also necessary in another situation. Ship stores like liquors, cigarettes, preserved food were imported into India and supplied to vessels according to their requirements. The entire consignment imported was intended to be so shipped out of the country. The same was the case of fuel for the ship like furnace oil, diesel oil etc. Obviously there was no point in collecting import duty on the whole of the consignment and granting drawback piecemeal as and when such goods were exported. It was not also safe for the revenue point of view to allow such goods to lie in the port uncleared until they were exported/shipped as shipstores.

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8.2 PARALLEL PROVISIONS FOR HOME CONSUMPTION

In these circumstances, in addition to the concept of “clearance for home consumption” the concepts of “clearance for deposits in a warehouse” and “clearance for home consumption from the warehouse” came into being. As a result of the above, parallel provision had also been made corresponding to clearance for home consumption. The examples are: -

Section 46(1): The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form.

Section 15(1): The rate of duty and tariff valuation, if any, applicable to the imported goods shall be the rate and valuation in force-

- (a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section.
- (b) In the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry in respect of such goods is presented.

8.3 SPECIAL PROVISIONS FOR WAREHOUSING

A separate chapter was therefore incorporated in the Customs Act, 1962, containing specific provisions relating to warehousing of imported goods. Chapter IX of the Customs Act, 1962 contains the following provisions: -

- (1) Appointment of public warehouses – Section 57
- (2) Licensing of private warehouses – Section 58
- (3) Warehousing bond – Section 59
- (4) Permission for deposit of goods in a warehouse – Section 60
- (5) Period for which goods may remain warehoused – Section 61
- (6) Control over warehoused goods – Section 62
- (7) Payment of rent and warehouse charges – Section 63
- (8) Owner’s right to deal with warehoused goods – Section 64
- (9) Removal of goods from one warehouse to another – Section 67
- (10) Clearance of warehoused goods for home consumption – Section 68
- (11) Clearance of warehoused goods for exportation – Section 69
- (12) Allowance in the case of volatile goods – Section 70

- (13) Goods not to be taken out of warehouse except as provided by this Act – Section 71
- (14) Goods improperly removed from the warehouse – Section 72
- (15) Cancellation and return of warehousing bond – Section 73

We shall examine each of the provisions separately in the subsequent paragraphs.

8.4 IMPORTANT DEFINITIONS

8.4.1 Warehouse [Section 2(43)] means a public warehouse appointed under section 57 or a private warehouse licensed under section 58.

8.4.2 Warehoused goods [Section 2(44)] means goods deposited in a warehouse.

8.4.3 Warehousing station [Section 2(45)] means a place declared as a warehousing station under section 9.

The law makes a clear distinction between public warehouses and private warehouses. The public warehouse is owned and managed by a government body. In most of the cases it is Central Warehousing Corporation. A private warehouse is licensed in places where there is no public bonded warehouse. An important point to be remembered is the liability of the warehouse keeper. Normally such warehouses are kept under double lock one that of the warehouse keeper, and the other of the customs department. Further in the case of the private bonded warehouse the licensee has to pay for and acquire the services of a customs officer (on cost recovery basis) to be posted and stationed in the private warehouse.

The common features about these warehouses are:

- (a) the warehouses should be situated in a warehousing station;
- (b) the ground plan of the warehouse should be scrutinized for suitability and security of the building;
- (c) there should be sufficient light and ventilation for proper storage of goods;
- (d) the windows should be secured with shutters and stout iron bars. Superfluous windows should be closed up with brick work;
- (e) the entrances should have strong and secured doors with strong locks. They should be capable of periodical check from outside and the doors are locked;
- (f) there should be proper and prominent name board, showing the full name and full address of the warehouse.

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8.5 PROCEDURE FOR DEPOSIT IN THE WAREHOUSE AND SUBSEQUENT REMOVAL

The following are briefly the various stages and steps involved in deposit of imported goods in a private bonded warehouse and their subsequent removal. The removal can be normally for

- (a) home consumption
- (b) export; and
- (c) transfer to another warehouse.

The stages in the processing of goods for deposit in warehouse are:

- (a) Assessment of into-bond bill of entry at the port of import;
- (b) Execution of double duty warehousing bond under section 59;
- (c) Bonding of the goods in a warehouse at the port of import;
- (d) Ascertain availability of space from the inland private bonded warehouse in the inland station;
- (e) Superintendent-in-charge of private warehouse issues space availability certificate;
- (f) On the strength of the certificate, the officer-in-charge of the port warehouse would permit transfer of the goods under section 67;
- (g) The necessary bond, for due transport and subsequent accounting of the goods, is executed;
- (h) Licensee should file, before depositing the transferred goods, the copy of invoice, bill of lading, authenticated copy of bill of entry at the port of importation and section 59 bond;
- (i) The jurisdictional Assistant Commissioner after necessary check of the documents will accept the section 59 bond and permit the transferred goods to be re-warehoused;
- (j) Before permitting the deposit of the goods in the private warehouse, the packages will be examined externally to satisfy by marks and numbers that they were the same goods duly covered by the bill of entry filed at the port of import. If any of the packages were damaged or broken in transit, the contents would be examined. If the packages do not bear distinguishing marks or running serial number, they will be provided on the packages;
- (k) During custody in the private bonded warehouse, the licensee will maintain
 - (a) Stock account book; and
 - (b) Into-bond bill of entry-wise account

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- (l) The licensee requiring clearance of the goods from the warehouse would present an ex-bond for home consumption at least 48 hours before the desired time for clearance;
- (m) After assessment of the ex-bond bill of entry and determination of the duty payable, the B/E will be returned along with challan in quadruplicate (for payment of duty);
- (n) The licensee shall also inform the customs officer about the proposed removal well in advance;
- (o) After payment of duty, the copies of the ex-bond bill of entry and one copy of the receipted challan to the superintendent-in-charge of the warehouse who will depute necessary officers to effect the release of the goods;
- (p) The officer after examination and test weightment will allow the clearance if the packages are found to tally with the particulars given in the bill of entry;
- (q) The officer will make necessary entries and endorsement on the warehouse register, stock card and bill of entry file.

8.6 STATUTORY PROVISIONS

8.6.1 Appointment of public warehouses [Section 57] : Under section 57 of the Customs Act, at any warehousing station, the Assistant Commissioner of Customs may appoint public warehouses wherein dutiable goods may be deposited.

In other words,

- (i) the place should have already been declared as a warehousing station;
- (ii) it is the Assistant Commissioner who is competent to declare a warehouse as a public bonded warehouse;
- (iii) only dutiable goods can be deposited in the warehouse.

The Assistant Commissioners have appointed the public bonded warehouses and the Commissionerates have issued trade notices about such appointment of public bonded warehouses. Some of the Commissionerates have issued public notice giving detailed instructions for the working of the public bonded warehouse. From these public notices, it is apparent that:

- (1) The policy of the Government is mainly to provide warehousing facility at selected places in the inland stations, having regard to the following:
 - (a) the requirement of trade and industry
 - (b) the proximity to port town
 - (c) availability of customs expertise

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- (2) These public bonded warehouses are generally managed by Central Warehousing Corporations.

The points covered by these public notices are:

- (1) obligations of the warehouse keeper;
- (2) procedure for warehousing imported goods for the first time;
- (3) procedure for warehousing on transfer from one warehouse to another;
- (4) issue of space availability certificate before accepting warehouse goods;
- (5) examination of goods before re-warehousing;
- (6) ex-bond clearance;
- (7) reassessment of warehoused goods;
- (8) maintenance of stock card and accounts;
- (9) permissible warehousing period;
- (10) procedure for extension of warehousing period;
- (11) failure to clear the goods from the warehouse;
- (12) penalty for goods improperly removed from the warehouse.

8.6.2 Licensing of Private Warehouses [Section 58]

- (1) At any warehousing station, the Assistant Commissioner of customs or the Deputy Commissioner of Customs may license private warehouses, wherein dutiable goods imported by or on behalf of the licensee, or any other imported goods in respect of which facilities for deposit in a public warehouse are not available, may be deposited.
- (2) The Assistant Commissioner of Customs may cancel a licence granted under sub-section(1)

- (a) by giving one month's notice, in writing to the licensee; or
- (b) if the licensee has contravened any provision of this Act or the rules or regulations or committed breach of any of the conditions of the license;

Provided that before any licence is cancelled under clause (b), the licensee shall be given a reasonable opportunity of being heard.

- (3) Pending an enquiry whether a licence granted under sub-section (1) should be cancelled under clause(b) of sub-section (2) the Assistant Commissioner may suspend the licence.

8.6.3 Private warehouses not to be permitted under this section where public warehouses are available: Under this section, grant of private bonded warehouse where public bonded warehouses are available are clearly debarred. This view is upheld by the High Court in the case of *Shree Pipes Ltd. v. UOI, 1995 (79) ELT 405 (Raj)*.

8.6.4 Procedure for permission of Private Warehouses : In case of Private Bonded Warehouses, the applications for such licences have been classified into two categories viz., storage of sensitive goods such as liquor, cigarettes, foodstuffs, consumables, etc. and other non-sensitive goods. Under Board's Circular No.99/95 dated 20.9.1995, the following guidelines in case of storage of sensitive goods have been provided:-

- (i) Applicants should produce a Solvency Certificate from a Scheduled Bank of repute for a value not less than Rs. 50 lakhs;
- (ii) Such warehouses may not be located in residential areas;
- (iii) The premises should be secure, possess fire-fighting provisions and be easily accessible to the Customs Officers;
- (iv) Goods deposited should be fully insured for a value at least equal to the customs duty;
- (v) The proprietor/partner/director must not be involved in any Customs or Excise offence. In case of any involvement in such offences, the licence may be terminated after following the prescribed procedure;
- (vi) In the case of individual consignments to be warehoused, a double duty-bond as prescribed under section 59 should be given by the licensee. In case of sensitive goods, a cash deposit/ bank guarantee equal to 25% of the duty liability (effective duty foregone) will be taken for each consignment. At the same time, a revolving bond with a single bank guarantee for a higher amount can be accepted if so requested for a number of consignments.

In the case of non-sensitive goods, applicants for Private Bonded Warehouses have to abide by all provisions as pertaining to sensitive goods discussed above, except that the requirement of furnishing a Solvency Certificate has been waived. The applicant, however, should be solvent for Rs. 10 lakhs and should possess a good record. A double duty bond with surety would suffice for storage of non-sensitive bonded goods. In case the Customs are not satisfied about the transactions of a particular bonder, the applicant may be asked to furnish a bank guarantee.

8.6.5 Warehousing Bond [Section 59]

Section 59 provides as follows:

- (1) The importer of any goods, specified in sub-section (1) of section 61, which have been entered for warehousing and assessed to duty under section 17 or section 18, shall execute a bond binding himself in a sum equal to twice the amount of duty

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assessed on such goods,

- (a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;
- (b) to pay on or before a date specified in a notice of demand
 - (i) all duties, and interest if any, payable under sub-section(2) of section 61;
 - (ii) rent and charges claimable on account of such goods under this Act, together with interest on the same from the date so specified at such rate not below eighteen percent and not exceeding thirty six percent per annum as is for the time being fixed by the central government in the Official Gazette, and
 - (iii) to discharge all penalties incurred in violation of the provisions of this Act and the rules and regulations in respect of such goods.
- (2) For the purpose of sub-section (1) the Assistant Commissioner of Customs may permit an importer to enter into a general bond in such amount as the Assistant Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.
- (3) A bond executed under this section by an importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to any other warehouse;

Provided that where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred and thereupon the bond executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee.

The double duty indemnity bond plays a very important role in the entire concept of warehousing.

The rate of duty and valuation prevalent on the date of removal are applicable in terms of section 15(1) for piecemeal clearances. Normally the rates of customs duty have been generally increasing. Therefore there has been no risk of loss of revenue on account of warehousing. Hence allowing for increase in duty rates, it was considered sufficient to cover double the duty amount by an indemnity bond with necessary surety or security. This is basically the underlying objective of the warehousing bond.

◆ **Determination of the bond amount:** : Subsection (2) specifies that instead of an individual double duty bond for each consignment, the importer may be permitted to file a general bond to cover imported goods to be warehoused by him during a particular period. The bond amount will be determined by the Assistant Commissioner of Customs, having

regard to the

- (a) Past imports warehoused and the duty involved in such consignments;
- (b) Anticipated imports and expected revenue involved.

In practice, a running account is maintained with debit when imported goods are warehoused and credits when warehoused goods are cleared ex-bond on payment of duty. There is a concept that as long as the goods are available to customs duty leviable thereon, the duty can be recovered from sale of goods. In fact 72 (2) provides for such a coercive method for the realization of duty.

♦ **Notification fixing higher rate of interest:** Under notification No 35/2000-Cus (NT), dated 12.05.2000, the Central Board of Excise and Customs has fixed the rate of interest at 24% per annum, for the purposes of sub-clause (ii) of clauses (b) of sub-section (1) of section 59 of the Customs Act.

8.6.6 Permission for deposit of goods In a Warehouse [Section 60] : When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting the deposit of the goods in a warehouse.

8.6.7 Period for which goods may remain warehoused [Section 61] : (1) Any warehoused goods may be left in the warehouse in which they were deposited or in any warehouse to which they may be removed-

- (a) in the case of capital goods intended for use in any hundred percent export oriented undertaking, till the expiry of five years; and
 - (aa) Goods other than capital goods, intended for use in any hundred per cent export-oriented undertaking, can be warehoused till the expiry of three years.
- (b) In the case of other goods till the expiry of one year, after the date on which the proper officer has made an order under section 60 permitting the deposit of the goods in a warehouse.

Provided that-

- (i) In the case of any goods which are not likely to deteriorate, the period specified in clause (a) or clause (aa) or clause (b) may on sufficient cause being shown, be extended -
 - (A) in the case of goods intended for use in any hundred percent export oriented undertaking by the Commissioner of Customs, for such period as he may deem fit, and
 - (B) in any other case, by the Commissioner of Customs, for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit,

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- (ii) In case any goods referred to in clause (b) if they are likely to deteriorate, the Commissioner of Customs may reduce the aforesaid period of one year, as he may deem fit.

Provided further that when the licence for any private warehouse is cancelled, the owner of any goods warehoused therein shall, within seven days from the date on which notice of such cancellation is given or within such extended period as the proper officer may allow, remove the goods from such warehouse to another warehouse or clear them for home consumption or exportation.

(2) Where any warehoused goods

- (i) specified in sub-clause (a) or sub-clause (aa) of sub-section (1), remain in a warehouse beyond the period specified in sub-section (1) by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in section 47 shall be payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods for the period from the expiry of said warehousing period till the date of payment of duty on the warehoused goods;
- (ii) Specified in sub-clause (b) of sub-section (1), remain in a warehouse beyond a period of ninety days, interest shall be payable at such rate or rates not exceeding the rate specified in section 47, as may be fixed by the Board, on the amount of duty payable at the time of clearance of goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods.

However, the Board may, if it considers it necessary so to do, in the public interest by order and under circumstances of an exceptional nature, to be specified in such order waive the whole or part of any interest payable under this section in respect of any warehoused goods;

Provided further that the Board may, if it considers it necessary so to do in the public interest, by notification in the respect of which no interest shall be charged under this section.

Explanation: For the purposes of this section “hundred percent export oriented undertaking” has the same meaning as in Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1994.

CBEC vide *Notification No. 18/2003-cus-(NT) dated 1.03.2003* has fixed the rate of interest at 15% for the purpose of clause (ii) of section 61.

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Main features of the provisions of section 61: The main features of section 61 can be analysed as follows:

- (1) the three classes of warehoused goods for the purposes of different periods of warehousing are
 - (a) capital goods intended for use in 100% export oriented undertaking and
 - (b) goods other than capital goods intended for use in 100% export oriented undertaking, and
 - (b) other goods.
- (2) The warehousing period for capital goods and other goods used in 100% EOU is 5 years and 3 years respectively. For the rest of the goods it is 1 year.
- (3) The power to extend the warehousing period beyond 5 years/3 years has been delegated to the Commissioner of Customs for such further period as he may deem fit. The period of 1 year can be extended by the Commissioner of Customs for further 6 months. However, for extending it further, authorisation of Chief Commissioner of Customs is required.
- (4) The Explanation under section 3 of the Central Excise Act, 1944 defines hundred percent export oriented unit to mean an undertaking which has been approved as a hundred percent export oriented undertaking by the Board appointed in this behalf by the Central Government, in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) Act, 1951 and the rules made under that Act.
- (5) The goods that are likely to deteriorate fall under the category "others" alone. Their warehousing period can be reduced to a shorter period by the Commissioner of Customs.
- (6) The interest under section 47 is chargeable only after the expiry of warehousing period;
- (7) The interest is chargeable on the amount of duty determined at the time of clearance of the warehoused goods under section 15.
- (8) The Board has power to waive the above interest, in individual cases (ad hoc orders) and by Gazette notification in respect of any class of goods.

Application for extension of warehousing period: There is nothing in section 61 to indicate that application for extension of warehousing period must be made before expiry of the period of warehousing initially permitted. It would appear that unless the authorities have taken coercive measures to recover duty and warehousing or other charges, power to grant extension of time does not come to an end. This was held by the Bombay High Court in the case of *Banswara Syntex Ltd. V. UOI*, 1994, (74) ELT 522 (Bom).

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8.6.8 Control over warehoused goods [Section 62] : Warehouse popularly called “bonded” warehouse has always been subjected to double lock. One of the locks was that of the owner of the warehouse-the custodian of the cargo and the second was that of customs department. This symbolically epitomized the customs control over the warehoused goods. This power has been placed on a statutory footing under section 62 of the Customs Act which provides as follows:

- (1) All warehoused goods shall be subject to the control of the proper officer;
- (2) No person shall enter a warehouse or remove any goods there from without the permission of the proper officer;
- (3) The proper officer may cause any warehouse to be locked with the lock of the customs department and no person shall remove or break such lock.
- (4) The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

8.6.9 Payment of rent and warehouse charges [Section 63]

- (1) The owner of any warehoused goods shall pay to the warehouse keeper, rent and warehouse charges at the rates fixed under any law for the time being in force and where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs.
- (2) If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse keeper may select.

In the case of the public bonded warehouse, normally the port trust in the major ports and the central warehousing authorities in other interior places is the owner of the warehouse. Naturally these authorities will charge the owners of the warehouse for the storage. This cargo will generally consist of the storage rent and other maintenance charges like electricity, cleaning, security etc.

The rates for these charges may be fixed by the Government or quasi Government authorities concerned. If they are not so fixed, the Customs Act gives the power to the Commissioner of Customs concerned.

8.6.10 Owner's right to deal with warehoused goods [Section 64] : Section 64 provides as follows: With the sanction of the proper officer, and on payment of the prescribed fees, the owner of any goods either before or after warehousing the same-

- (a) inspect the goods
- (b) separate damaged or deteriorated goods from the rest;

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- (c) sort the goods or change their containers for the purpose of preservation, sale, export or disposal of the goods;
- (d) deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods
- (e) show the goods for sale; or
- (f) take samples of goods without entry for home consumption, and if the proper officer so permits, without payment of duty on such samples.

When the imported goods are warehoused, the temporary possession and the custody of the goods are passed on to the warehouse keeper. However the remaining titular rights of the goods vest with the owner. Thus the owner has every access to the goods. In the course of his dealings with the goods, he may be required to

- (i) see and inspect the goods;
- (ii) ensure that the goods do not deteriorate or get damaged during storage in the warehouse;
- (iii) if some goods or some part of goods is already damaged, he has to segregate them from the good ones, and take appropriate measures to dispose them to the best advantage;
- (iv) if any container of the goods is damaged and requires repair or replacement, the owner will have to attend to these requirements;
- (v) again if the goods require to be repacked or the containers changed for the purposes of export of the goods or disposal for home consumption he should be permitted to carry out such operations;
- (vi) show the goods to prospective buyers or local consumers;
- (vii) draw samples to check the quality of the goods;
- (viii) draw such samples to show to prospective buyers or local consumers.

The only restriction on all these operations is that such operation should not cause any damage or deterioration to the goods. If such warehoused goods are so damaged or deteriorated, that the value of the goods depreciates, the duty leviable on the goods will come down and there will be loss of Government revenue.

8.7 REMOVAL OF GOODS FROM THE WAREHOUSE

The warehoused goods can be removed for

- (i) transfer from one warehouse to another; or
- (ii) clearance for home consumption; or

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(iii) clearance for exportation.

Each of the three is a different situation and separate procedures have to be followed. The interests to be safeguarded are different. As such separate provisions have been made for the above three situations under section 67, 68 and 69 respectively.

8.7.1 Removal of goods from one warehouse to another [Section 67] : Section 67 provides that the owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

The entire emphasis here is on ensuring the proper receipt of the warehoused goods at the destination warehouse, so that there is no risk to revenue. The Board in exercise of the powers conferred by section 157 of the Customs Act, 1962 has made Warehoused Goods (Removal) Regulations, 1963 to govern the same.

8.7.2 Warehoused Goods (Removal) Regulations, 1963

1. **Conditions for transport of warehoused goods in the same town:** Where the goods are to be removed from one warehouse to another in the same town the proper officer may require the transport of the goods between the two warehouses to be under the supervision of an officer of customs, the owner meeting the cost of such supervision.
2. **Condition for transport of warehoused goods to another town:** Where the goods are to be removed from one warehouse to another in a different town, the proper officer may require the person requesting removal to execute bond in a sum equal to the amount of import duty leviable on such goods and in such form and manner as the proper officer deems fit.
3. **Terms of bond:** The terms of the bond shall be that if the person executing the bond produces to the proper officer, within three months or within such extended period as such officer may allow a certificate issued by the proper officer at the place of destination that the goods have arrived at that place, the bond shall stand discharged but otherwise an amount equal to the import duty leviable on the goods in respect of which the said certificate is not produced shall stand forfeited.
4. **Surety or Security :** The proper officer may require that the bond shall be with such surety or security or both as is acceptable to him.

8.7.3 Clearance of warehoused goods for home consumption [Section 68] : The importer of any warehoused goods may clear them for home consumption, if-

- (a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;

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- (b) the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- (c) an order for clearance of such goods for home consumption has been made by the proper officer.

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

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

Analysis of Section 68 : The essential ingredients are

- (i) an ex-bond bill of entry should be presented to the proper officer.
- (ii) After assessment of the ex-bond bill of entry the duty determined should be paid.
- (iii) Along with the import duty the charges payable under section 63, namely warehouse charges should be paid.
- (iv) If any penalty is imposed or levied on the warehoused goods, they should also be paid.
- (v) Once the proper officer is satisfied that all the amounts payable by the owner of the goods including duty, warehouse rent, warehouse charges, interest under section 47, any penalty or fine or any other charges payable on the warehoused goods, have been paid, he may permit removal of the goods from the warehouse and pass a suitable order for clearance.

8.7.4 Brief outline of the procedure for clearance of warehoused goods for home consumption : In order to have a better understanding of the process of clearance of warehoused goods for home consumption, the following steps are relevant.

- (1) The document of clearance of such warehoused goods is called ex-bond bill of entry. It is green in colour.
- (2) It is filed in triplicate with the customs authorities at the place where the warehouse is situated.
- (3) The particulars of ex-bond bill of entry, like bill of entry no. quantity and description of warehoused goods sought to be cleared, its quantity and value, tariff classification adopted are noted in the bond register and copy of into-bond bill of entry.

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- (4) The bill of entry is then assessed having regard to the provisions of section 15(1)(b) i.e. the rate of duty and tariff valuation in force on the date when bill of entry in respect of such goods is presented.
- (5) In case any abatement is claimed under section 22(1)(c), the same is also examined.
- (6) In the case of import licence regulations and other prohibitions on imports, the common sense law is that they are relevant to the date of actual importation into India. Subsequent changes in the import policy would not NORMALLY affect the warehoused goods. However the details of such changes if any would be applicable to the subject goods as a matter of abundant precaution.
- (7) After assessment of the bill of entry namely; determination of the amount of duty, the duty and interest if any payable thereon would be paid to the customs.
- (8) The goods would then be subjected to physical examination under section 17 to ensure that the goods proposed to be removed are in conformity with the declaration made in the ex-bond bill of entry particularly in respect of description of goods tariff classification, quantity and value.
- (9) The owner of the goods would be required to get the amount of warehouse rent and other charges determined by the warehouse keeper and make necessary payment.
- (10) The proper officer of customs would thereupon make the permitted clearance for home consumption order. The bill of entry copy with this order will be presented to the warehouse keeper.
- (11) The warehouse keeper would make suitable entries in the stock card, warehouse register, into bond-bill of entry-wise file.
- (12) The fact of actual removal of the warehoused goods will be communicated to the customs authorities concerned.

8.7.5 Clearance of warehoused goods for exportation [Section 69] : The third method of disposal of the warehoused goods is by exportation. This is normally adopted in the case of shipstores, which are meant to be exported only; goods meant for re-export and goods supplied to duty free shops and the like. Section 69 provides that:

- (1) Any warehoused goods may be exported to a place outside India without payment of import duty, if-
 - (i) a shipping bill or bill of export has been presented in respect of such goods in the prescribed form;
 - (ii) the export duties, penalties, rent and other charges payable in respect of such goods have been paid; and

- (iii) an order or clearance of such goods for exportation has been made by the proper officer.
- (2) Notwithstanding anything contained in sub-section(1), if the Central Government is of the opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification, in the Official Gazette direct that such goods shall not be exported to any place outside without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

◆ **Main ingredients of section 69**

- (1) Warehoused goods may be exported out of India.
- (2) No Import duty will be levied on them if the procedure prescribed is followed.
- (3) A shipping bill of export in the prescribed form should be presented in respect of the warehoused goods sought to be cleared for export.
- (4) The appropriate export duty including cess leviable on such goods on export should be assessed and paid.
- (5) The import dues on the goods, namely penalties, warehouse rent, interest and other warehousing charges should be paid. Only payment of import duty otherwise leviable on such warehoused goods is waived.
- (6) The proper officer of customs should satisfy himself that all regulations, restrictions and prohibitions in force in respect of export of such goods, is complied with or fulfilled. After satisfying himself about this aspect as well as payment of all duties and other charges payable he will permit removal of the goods from the bonded warehouse for export.
- (7) In case Government of India is of the opinion that goods of any specified description are likely to be smuggled back into India, it may
 - demand payment of import duty payable otherwise, on the warehoused goods;
 - prescribe conditions to be fulfilled including execution of an Indemnity bond undertaking to produce proof of export or pay the import duty otherwise leviable
 - The Government of India, by notification prescribes the circumstances under which such conditions can be imposed.

8.7.6 Allowance in respect of volatile goods [Section 70] : Among the goods traditionally imported and warehoused are the following:

- (1) Petroleum products
- (2) Liquor and

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(3) Ethylene dichloride and liquid helium.

Petroleum products like aviation turbine fuel, superior kerosene; high speed diesel oil, light diesel oil, motor spirit, vapourising stored in tanks, subjected to atmospheric pressure had a tendency to evaporate during long period of storage. Similarly, liquor like brandy and whisky were imported under over proof conditions, in wooden casks stored in bonded warehouses, were volatile in nature and there was considerable evaporation loss during storage. Even articles like wine, beer, suffered evaporation losses during storage. Among the lower order mineral products raw naptha, furnace oil and batching oil also were prone to evaporation. As such there was invariably difference between the bonded quantity and the quantity at the time of removal from the warehouse. This loss was due to natural causes and neither the importer nor the warehouse keeper can be found fault with. On the same grounds neither the importer nor the warehouse keeper could be called upon to bear the duty burden of this loss. This position has been recognised and placed on a legal footing under section 70 of the Customs Act. Section 70 provides that

- (i) When any warehoused goods to which this section applies, are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may remit the duty on such deficiency.
- (ii) This section applies to such warehoused goods the Central Government, having regard to the volatility of the goods and the manner of their storage, may be notification in the Official Gazette specify.

◆ **Essential ingredients of section 70(1):**

- (i) The goods should be warehoused goods;
- (ii) The provisions of this section should apply to such goods by virtue of a notification under sub-section(2);
- (iii) The goods should be found deficient in quantity at the time of removal;
- (iv) The deficiency should be on account of natural loss;
- (v) The import duty leviable on such deficiency may be remitted;
- (vi) The Assistant Commissioner and the Deputy Commissioner are empowered to grant the remission.

The essential ingredients of section 70(2) are:

- (a) The power to specify vests with the Central Government.
- (b) Volatility and manner of storage will be the relevant factors;
- (c) An official notification will have to be issued for this purpose;

(d) The remission under section 70(1) applies only to such specified warehoused goods.

♦ **Notification under section 70(2)** : Under MF(DR) Notification No.122/63-Cus dt.11.5.1963 as amended subsequently the following goods have been specified as goods to which the provisions of section 70 apply when they are deposited in a warehouse, namely:

Aviation fuel	motor spirit	mineral turpentine
acetone	menthol	raw Naptha
vaporising oil	kerosene	high speed diesel oil
batching oil	diesel oil	furnace oil

and Etylene Dichloride kept in tanks and Liquid helium gas kept in containers;

(2) Wine, spirit and beer, kept in casks.

♦ **Remission under section 23 and section 70 – A Distinction**

Section 23 is a general provision applicable to cases where goods are lost before clearance for home consumption is made. Whereas, section 70 provides for remission of duty in respect of loss during warehousing of only the goods notified by the Central Government under that section. Therefore, granting remission for loss during transit between two warehouses does not render section 70 redundant. This view was taken by the Tribunal in the case of *Indian Oil Corporation v. Commissioner of Customs* 1985 (21) ELT 881 (T-B)

8.7.7 Prohibition on improper removal and penalty for such improper removal :

Three methods of disposal have been prescribed for warehoused goods under section 67, 68 and 69. In addition, under section 64, the owner of the goods can take samples with or without payment of import duty. These are removals authorised by law and are termed as proper removals. As a corollary it follows that warehoused goods cannot be removed otherwise. Section 71 and Section 72 provide for such a prohibition and the penal action.

8.7.8 Goods not to be taken out of warehouse except as provided by the Act [Section 71] : Section 71 provides that -

No warehoused goods shall be taken out of a warehouse except on clearance for home consumption, or re-exportation, or for removal to another warehouse, or as otherwise provided by this Act.

8.7.9 Goods improperly removed from warehouse etc. [Section 72]: (1) In any of the following cases, that is to say-

(a) where any warehoused goods are removed from a warehouse in contravention of section 71;

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- (b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in the warehouse;
- (c) where any warehoused goods have been taken under section 64 as samples without payment of duty;
- (f) where any goods in respect of which a bond has been executed under section 59, and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer.

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

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

Section 72(1) provides for penal action for violation of section 71. As a natural corollary, provision has been made under sub-section (2) of section 72, to collect such penal amounts coercively, if the owner of the warehoused goods does not pay up the amounts voluntarily. In such a situation the proper officer cause, such portion of the warehoused goods belonging to the defaulter, to be detained and sold to realise the amounts due. According to principles of nature justice, a notice will have to be given before such a coercive action is taken.

Mafatlal Fine Spinning and Manufacturing Company Ltd.(1987) Bombay: What will be the position in case the owner relinquishes the title to his goods under section 23(2) of the Customs Act, 1962. In the above case, it was decided that if he relinquishes his title before the order is passed by the Assistant Commissioner under provisions of section 72, no duty need to be paid. If, however, the relinquishment is made after the order is passed, he has to pay the duty.

♦ **Effect of Goods not being removed from warehouse :** Under clause (b) of section 72, goods which are not removed from the warehouse after the expiry of the period permitted for warehousing or extended, are deemed to be improperly removed. The rate of duty applicable will be the rate in force on the date of deemed removal, i.e. the date on which the permitted period or its permitted extension comes to an end. When the demand notice is issued is not relevant for determining the rate of duty. Section 15 (1) (b) applies only to the cases where a bill of entry is presented for removal from warehouse under section 68, and the payment of duty, interest, penalty, rent, etc. Section 15 (1) (b) has no application where the goods are removed from warehouse beyond the permitted period of warehousing. [*Kesoram Rayon vs CC 1996 (86) ELT 464 (SC)*]

8.7.10 Cancellation and return of the warehousing bond [Section 73] : When the whole of the goods covered by any bond executed under section 59 have been cleared for home consumption or exported or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond as discharged in full and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

This provision is the final of the warehousing provisions. It implies that:

- (i) all imported goods which have been warehoused have been duly accounted for in the proper manner provided therefor;
- (ii) all the consequential charges on the goods as well as the owner of the goods like warehouse rent, warehouse charges, interest on the duty amount, penalty etc leviable from the importer have been paid;
- (iii) all the conditions and obligations undertaken under the warehousing bond have been complied with or duly fulfilled.

Then the bond gets discharged and the proper officer shall formally endorse cancellation thereof. Thereafter if the person who had executed the bond or any other person entitled to receive it demands the return of the cancelled bond, the proper officer shall return to that person. Otherwise the cancelled bond shall remain with the proper officer.

8.8 MANUFACTURE IN BONDED WAREHOUSE

As mentioned earlier warehousing was considered in the initial stage as a device for:

- (i) temporary storage of imported goods which were intended to be ultimately exported out of India;
- (ii) piecemeal clearance of imported goods, for home consumption to suit importer's requirements.

As an improvement of the above facilities, certain operations were permitted to be carried out in the bonded warehouse itself before export of the goods. Gradually, this concept was extended to deliberate importation of raw materials, manufacture of goods in the bonded warehouse and final export of the finished goods out of India. In this scheme of things there was no:

- (i) effective import of goods and clearance of goods for home consumption, involving payment of import duty of customs; and
- (ii) effective export from the town, involving drawback of import duty etc. There was no problem or difficulty in ensuring the identity of the goods. There was also full security over the import duty otherwise payable on the imported goods through the medium of the warehousing double entry bond.

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It may not be incorrect to say that this concept further evolved into the concept of Free Trade Zones within or adjacent to the customs area in the port, and subsequently extending this facility to interior places as an adjunct to inland bonded warehouses and finally evolving the concept of 100% Export Oriented Undertakings.

Statutory Provisions

The statutory provisions relating to the manufacture in the bonded warehouse are contained in sections 65 and 66 of the Customs Act, 1962. Now we can discuss the statutory provisions in detail.

8.8.1 Manufacture and other operations in relation to goods in a warehouse [Section 65]

- (1) With the sanction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, and subject to such conditions and on payment of such fees as maybe prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.
- (2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply:-

- (a) If the whole or part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported:

Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form.

- (b) If the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste of refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

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

♦ **Analysis of Section 65**

The substantial ingredients of section 65(1) are

- (i) The owner of any warehoused goods may carry on any manufacturing process or other operations in relation to warehoused goods;
- (ii) This may be done with the specific sanction of the Assistant Commissioner of Customs;
- (iii) It will be subject to such conditions and on payment of such fees as may be prescribed.

♦ **Rules prescribing the conditions aforesaid:** A comprehensive regulations called the Manufacture and Other Operations in Warehouse Regulations, 1966, was promulgated by the Board under its Notification No. 155/66-Cus dated 30-7-1966. These regulations superseded several rules made earlier covering individual situations.

Subsection (2) of section 65 deals with any waste of refuse arising during the manufacturing operations or other processes done in the warehouse. The question that is considered in this provision is whether any import duty should be levied on the waste or refuse. The answer is dependent upon whether finished product manufactured out of the manufacturing process or other operations is exported out of India or cleared for home consumption.

If the finished products are cleared for home consumption on payment of appropriate import duty of customs, then appropriate duty of customs should be levied on the imported goods content in the waste or refuse. Let us consider a few examples to understand the above provisions.

Example 1: Let us take the case of cutlery manufactured out of imported high speed cutting steel strips. Locally procured plastic is used for providing handles to the cutlery i.e. knife, fork, etc. In a batch process 200 kg imported steel strips and 100 kg plastic is issued for the manufacture of the cutlery items. 400 gross knives are manufactured and they are cleared for home consumption. The steel strip content in the above knives is 178 kg. The weight of the plastic handles is 85 kg. The waste is in the form of shaving etc. The total weight of the waste is $[(200+100)-(178+85)=37\text{kg}]$. The steel content of the waste is 22 kg. So import duty of customs at the rate applicable to steel strips should be collected on the waste.

The other alternative is where the finished goods are exported out of the country. Take the same example. In this case the manufacturer has two options. He can destroy the waste. Then he will not be required to pay duty on the steel strip content in the waste. If he does not choose to destroy the waste, then he has to pay duty on the steel strip content in the waste. Remission of duty on the imported material content in the waste or refuse is allowed only when the final product concerned is exported out of India and the

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waste is destroyed.

Example 2: Let us now take an example where the final products are both exported and cleared for home consumption. The question of appropriating the waste will have to be decided first. The imported raw material is rubber. The end product is motor vehicle tyre. The additional materials used are (1) beading wire, (2) tyre cord warp sheet (3) chemicals and (4) mineral oil.

Total quantity of rubber issued	1500kg
Weight of beadwire used	10kg
Weight of tyre chord warp sheet used	180kg
Weight of chemical used	4kg
Weight of mineral oil used	16kg
Total weight of raw materials issued	1710kg
Total no. of tyres manufactured	100pcs
Weight per tyre	16.5kg
Thus total weight 100 tyres	1650kg
Wastage	60kg
Total no. of tyres cleared for home consumption	25pcs.
Total no. of tyres exported	75pcs.

$$\text{Wastage relatable to tyres exported } 60\text{kg} \times \frac{75}{100} = 45$$

Imported rubber content in the waste relatable to the exported tyres

$$= 45 \times \frac{1500}{1710} = 39.5 \text{ kg(appx)}$$

Import duty leviable on the import rubber content in the waste can be remitted if 45 kgs of the waste are destroyed.

Weight of waste relatable to tyres cleared for home consumption = 15 kg

Imported rubber content in the waste = 13.2 kg

Import duty is compulsorily leviable on this quantity of import rubber. The value would be the original import value; but the rate of duty would be that prevailing on the date of payment of duty.

♦ **Relevant date for determination of rate of duty leviable on import material content in the waste:** The next question is the relevant date for valuation and tariff valuation of the import material content in the waste/refuse. Attention is invited to the

provisions of section 15(1). In this case the goods are not

- (i) cleared for home consumption on a bill of entry filed under section 46; or
- (ii) cleared from the warehouse, where the date of presentation of bill of entry for home consumption is relevant. Hence in this case the third alternative, namely “the date of duty” under section 15(1)(c) applies. Hence in collecting the import duty on the imported material content in the warehouse or refuse, the rate of duty and tariff valuation prevalent on the date of payment of duty will apply.

Rate of duty leviable on the finished product: In the case of warehoused goods, the identity of the imported goods is retained at the time of clearance of the goods from the warehouse. When they are bonded in a warehouse and cleared as such the classification would not change. The rate of duty prevailing on the date of presentation of bill of entry for home consumption will apply. Normally it would not be less than the rate prevalent at the time of importation. Hence, there would normally be no loss of revenue on account of warehousing. With regard to the position in respect of manufacture in bonded warehouse, if the material undergoes change they have to be classified with regard to their finished condition.

◆ **Analysis of Section 66**

The policy of the Government in permitting manufacture in bond had been to encourage growth of Indian industry. Thus instead of attaching the difference in duty, that is lost in the process of manufacture in bond, the Government is prepared to forego it totally or partially. Section 66 of the Customs Act deals with this power.

Ingredients of section 66: The main conditions of section 66 are:

- (i) imported materials are used in the manufacture of any goods in accordance with the provisions of section 65
- (ii) the import duty leviable on the imported materials exceeds the rate of duty leviable on the finished products
- (iii) the Central Government is satisfied that in the interest of establishment or development of a domestic industry, it is necessary to give protection to the finished products. Then, the Central Government may by an official notification in the Gazette, exempt the imported material, from the whole or part of excess duty.

The use of manufacture-in-bond facility is now being resorted to less and less. The reasons are very simple. They are:

- (i) there is step-by-step control and interference by Customs Authorities
- (ii) the double duty bond under section 59 and the bond under section 65 cause undue financial burden on the manufacturers

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- (iii) the maintenance of detailed accounts and the control of Customs Officers over them is cumbersome
- (iv) the looking of the imported material storage room by customs and issue of such material for manufacture at the discretion and control of the customs causes undue operational bottlenecks
- (v) finally, the duty liability of imported material in the waste is another source of irritation.

8.9 FREE TRADE ZONES AND EXPORT PROCESSING ZONES

The exemption of import customs duty on raw material and other equipment brought into these zones, subject to specific undertaking that the products manufactured out of these material will be exported out of India, has been found to be a more feasible and viable alternative to the manufacture-in-bonded warehouse procedure.

The shift of supervisory control from the Customs Authorities to the Administrators of the Zone, had certain inherent advantages, which were in the interests of the manufacturers and conducive to the growth of the industries.

Several ministries and departments were involved in the development and welfare of these zones -

- The Industries department offered facilities in the form of favourable policy.
- Banking department offered banking facilities including loans etc
- Railways offered quick transport facilities
- Civil supplies department looked after the marketing needs of consumer products.
- DGTD attended to the problems of technical expertise.

Customs & Excise as well as sales department provided necessary concessions and relief to make the ventures economically viable.

Over and above, there was an administrative set up, more interested in solving the problems and practical difficulties of the entrepreneurs. The administrator did not belong to or identify himself with any one of the above ministries or departments. As such he did not have any over-riding vested interest.

8.9.1 Qualification of the importer: The importer should have:

- (a) been authorised to set up manufacturing unit or units in the zone;
- (b) been granted necessary import licence for the import of necessary plant and machinery, equipment and raw materials; and

- (c) satisfied the Development Commissioner that the goods so imported will be used in connection with the production of goods and packaging them for export out of India or connected with the such export promotion.

8.9.2 Goods covered by the scheme: The goods covered by the exemption scheme are :

1. Machinery;
2. Raw materials;
3. Components;
4. Spare parts for machinery;
5. Consumables;
6. Packaging materials;
7. Office equipments, spares and consumables thereof;
8. Tools jigs, gauges, fixtures, moulds, dies, instruments and accessories;
9. Prototypes, technical and trade samples for development and diversification;
10. Drawing, blue prints and charts;
11. Material handling equipment, namely forklifts, overhead cranes, mobile cranes, crawler cranes, hoists and stockers;
12. Goods re-imported within 1 year from the date of exportation from the Zone due to the failure of the foreign buyer to take delivery;
13. Goods received for repairs or reconditioning, within three years of the date of exportation, for export after repairs or reconditioning.

The sweep of the coverage is very wide. It covers:

- (a) Capital goods like plant and machinery, components and spaceports, ancillaries like tools, jigs fixtures etc;
- (b) Auxiliary equipment, like handling equipment, forklifts cranes etc.;
- (c) Establishment equipment like office equipment;
- (d) Drawings, blue prints, prototypes, samples etc. for development of the product;
- (e) Raw materials, components, packaging material and consumables;
- (f) Goods returned without the buyer taking delivery; goods sent back for repair and return.

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8.9.3 Maintenance of accounts: The importer shall maintain proper accounts of import, consumption and utilization of goods and accounts of exports made by him. He shall submit such account periodically to the Development Commissioner.

8.9.4 Execution of bond: The importer executes a Bond in Form B 17 fixed by the Assistant Commissioner of Customs, undertaking to fulfil the obligations and conditions stipulated

- (a) in this notification
- (b) under Import Control Policy

and also undertaking to pay on demand an amount equivalent to the duty leviable on the goods, which are not proved to the satisfaction of the Assistant Commissioner to have been used in the manufacture of articles for export.

8.9.5 Temporary removal, transfer or export of imported goods/manufactured goods:

Any imported goods or manufactured goods may be permitted to, subject to such conditions prescribed by the Commissioner/Assistant Commissioner of Customs,

- (a) be removed without payment of duty for repairs, processing or display: or
- (b) be supplied or transferred to another unit in the zone or 100% EOU, with the permission of the Development Commissioner of the zone
- (c) be re-exported out of the country with the permission of the Development Commissioner.

♦ **Note:** The above particulars have been given only to enable the students to have a general idea of the duty and other concession that are extended in case of manufacture in bond in a Free Trade Zone, or 100% Export Oriented Unit or like export promotion schemes. For practical application they are advised to refer to the actual details in the relevant notification.

8.10 PROJECT IMPORTS

Project Imports are the imports of machinery, instruments, and apparatus etc., falling under different classifications, required for initial set up of a unit or for substantial expansion of an existing unit. In a project several different items are required, each of which is importable at different rates of customs duties. Hence, it becomes very complicated to make assessment for such project imports. Therefore, one consolidated rate of customs duty has been made applicable for all items imported under a project irrespective of the nature of the goods and their customs classification.

The items eligible for project import are specified in Heading 9801 of the Customs Tariff Act, 1975. These include all items of machinery, instruments, apparatus and appliances,

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components or raw materials etc. for initial setting up of a unit or for substantial expansion of the same. The spare parts, raw material and consumables stores upto 10% of the value of goods can be imported.

This scheme has been made applicable to Industrial Plants, Irrigation Projects, Power Projects, Mining Projects, Projects for Oil or Mineral Exploration and other projects as may be notified by the Central Government. Earlier, there was a condition that investment in plant and machinery should be at least Rs.5 crore. This condition has been waived with effect from 22.01.2007.

Self-examination questions

1. Discuss the procedure for deposit of the imported goods in a private bonded warehouse and their subsequent removal.
2. How long the imported goods can remain in a warehouse as per the Customs Act, 1962?
3. What are the owner's right to deal with the warehoused goods under the Customs Act, 1962?
4. With reference to the provisions of the Customs Act, 1962, explain the following briefly:
 - (i) Power of the Central Government to exempt imported material used in the manufacture of goods in a warehouse
 - (ii) Project imports
5. X, an importer (other than 100% EOU) imported some goods and deposited them in the warehouse on 12.04.2009. These goods were re-exported on 15.08.2009 without payment of duty. With reference to the Customs Act, 1962, discuss whether any interest is payable by 'X'?

Answer

5. As per section 61(2)(ii) of the Customs Act, 1962, if goods (belonging to importer other than 100% EOU) are kept in the warehouse beyond a period of 90 days, interest shall be payable @15% p.a. on the amount of duty payable at the time of clearance of the goods. The interest shall be payable after the expiry of the said 90 days till the date of payment of duty.

In *Pratibha Processors v. UOI 1996 (88) ELT 12 (SC)*, the Apex Court has held that when goods at the time of removal from warehouse are wholly exempted from payment of duty, the liability to pay interest cannot be saddled on a non-existing duty. Liability to pay interest under section 61(2) of the Customs Act is solely dependant upon the exigibility or actual liability to pay duty. In case the liability to pay duty is nil, then, the interest will also be nil.

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Further, *Circular No. 38/2005-Customs dated 28.09.2005* clarifies that if no duty is payable on clearances from the warehouses, then no interest is payable thereon.

Therefore, since in this case the goods have been re-exported without payment of duty, no interest is payable by 'X'.

