

Warehousing

Question 1

Briefly examine with a note, the correctness of the following statement with reference to the Customs Act, 1962:

“Interest under section 47 is chargeable only after the expiry of warehousing period specified under section 61(1) of the Customs Act, 1962”.

Answer

No, it is not always correct to say that interest at the rate specified under section 47 of the Customs Act, 1962 is chargeable only after the expiry of warehousing period specified in section 61(1) of the Customs Act, 1962 as interest under section 47 is payable even if the goods have not been put in a warehouse. Interest under section 47 becomes payable when the importer fails to pay the import duty assessed on the bill of entry under section 47(1) within 5 days from the date on which bill of entry is returned to him for payment of duty.

Moreover, even in the case of warehoused goods, this statement is not absolutely correct. It is correct only in case of goods intended for use in 100% EOU as in this case, interest is chargeable after the expiry of five years or three years which are the permissible warehousing periods for capital goods and other goods respectively. However, in case of **other goods** this statement is not correct as **interest is chargeable after the expiry of ninety days**, though the permissible warehousing period for such goods is one year.

Question 2

- (a) *Briefly explain the law relating to private warehouses. What are the guidelines for storage of sensitive goods in such warehouses?*
- (b) *Who has the power to appoint public warehouse at places notified under the Customs Act, 1962?*

Answer

(a) According to **section 58** of the Customs Act, 1962, at any warehousing station, the Assistant/Deputy Commissioner may licence private warehouses where dutiable goods or any other imported goods may be deposited. However, where public warehouses are available, private warehouses are not permitted.

The Assistant Commissioner may cancel the licence by giving one month notice in writing to the licensee or if the licensee has contravened any provisions of the Customs Act, 1962 or any of the conditions of the licence. However, the cancellation of the licence in the latter case can be done only by giving the licensee a **reasonable opportunity** of being heard.

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In case of sensitive items, the **following guidelines** are to be observed:

- (i) Applicants should produce a **Solvency Certificate** from a Scheduled Bank of repute for a value not less than ₹ 50 lakhs;
- (ii) Such warehouses should **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**;
- (vi) A **cash deposit/ bank guarantee equal to 25% of the duty liability** (effective duty foregone) will be taken for each consignment.

(b) Section 57 of the Customs Act, 1962 empowers the Assistant/Deputy Commissioner of Customs to appoint public warehouse at places notified under the Customs Act, 1962.

Question 3

Write a note on warehousing period under section 61 of the Customs Act, 1962.

Answer

Section 61(1) of the Customs Act, 1962 provides that 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**;
- (b) in the case of goods other than capital goods, intended for use in any hundred per cent export-oriented undertaking, **till the expiry of three years**; and
- (c) in the case of any 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.

However,

- (i) in the case of any **goods which are not likely to deteriorate**, the period specified in clause (a) or clause (b) or clause (c) may, on sufficient cause being shown, **be extended**-
 - (A) in the case of such 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;

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

Question 4

What are the provisions made under the Customs Act, 1962 regarding control of customs over the warehoused goods?

Answer

Section 62 of the Customs Act, 1962 provides for the control of customs over the warehoused goods. The provisions are discussed as follows:

- (i) All warehoused goods shall be subject to the control of the proper officer.
- (ii) No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.
- (iii) 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.
- (iv) The proper officer shall have access to every part of a warehouse and power to examine the goods therein.

Question 5

Briefly state the rights of the owner of warehoused goods under the Customs Act, 1962.

Answer

According to provisions of section 64 of Customs Act 1962, 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;
- (c) sort the goods or change the containers for the preservation, sale, export or disposal of the goods;
- (d) deal with the goods & their containers in such manner as may be necessary to prevent loss, deterioration or damage to the goods;
- (e) show the goods for sale;
- (f) take samples of the goods without entry for home consumption, if the proper officer so permits, without payment of duty on such samples.

Question 6

Explain briefly with reference to the provisions of the Customs Act, 1962 whether the owner of the warehoused goods has the right to relinquish his title to such goods after the expiration of

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the warehousing period or the extended warehousing period, as the case may be, and also state whether any charges shall become payable upon such relinquishment.

Answer

Right to relinquish title to warehoused goods:-Yes, the owner of the warehoused goods has the right to relinquish his title to such goods after the expiration of warehousing period/extended warehousing period.

Proviso to section 68 of the Customs Act, 1962, provides that the owner of the warehoused goods can relinquish his title to such goods any time before an order for clearance of goods for home consumption has been made in respect of such goods. Similar view was expressed in the case of **CCus. v. i2 Technologies Software (P) Ltd. 2007 (217) ELT 176 (Kar.)**

However, 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.

On relinquishment of title to such goods, the owner of goods will be required **to pay rent, interest, other charges and penalties** that may be payable. However, duty will not be payable on relinquishment.

Question 7

Clearly mention the relevant date in the following cases of goods warehoused under bond:

- (i) *Rate of exchange, when goods are removed for home consumption.*
- (ii) *Rate of duty, when goods are removed for home consumption.*
- (iii) *Rate of duty if the goods are not removed from warehouse within the permissible period.*

Answer

- (i) The **relevant date for rate of exchange** is the date on which the bill of entry is presented for warehousing **under section 46** of the Customs Act, 1962 and not when bill of entry is presented under section 68 for clearance from warehouse.
- (ii) As per **section 15(1)(b)** of the Customs Act, 1962 rate of duty as prevalent on date of presentation of bill of entry for home consumption **for clearance from warehouse** is applicable and not the rate prevalent when goods were removed from customs port.
- (iii) Goods which are not removed within the permissible period are **deemed to be improperly removed** on the day it should have been removed. Thus, duty applicable on such date i.e. last date on which the **goods should have been removed is relevant** and not the date on which the goods were actually removed.

Question 8

BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was

passed. On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. When the goods were actually removed from the warehouse, the rate of duty got increased. The department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case law(s), if any.

Answer

Yes, the company will succeed. The facts of the given situation are similar to the case of **CCus vs. Biecco Lawrie Ltd. 2008 (223) ELT 3 (SC)** wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods removed in smaller lots have to be treated as cleared for home consumption and importer would not be required to pay anything more.

Further, **section 49** of the Customs Act, 1962 *inter alia* also provides that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse on the application of the importer that the same **cannot be cleared within a reasonable time shall not be deemed to be warehoused goods** for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

Question 9

Mention the circumstances under which goods are considered to have been removed improperly from a warehouse under the Customs Act.

Answer

Section 72 of the Customs Act provides that in any of the following circumstances the goods shall be considered to have been removed improperly from a warehouse –

- (a) where any warehoused goods are removed from a warehouse in contravention of **section 71** of the Customs Act;
- (b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under **section 61** to remain in a warehouse;
- (c) where any warehoused good have been taken under **section 64** as **samples without payment of duty**;
- (d) where any goods in respect of which a **bond has been executed under section 59** and which have not been cleared for home consumption or exportation are not duly accounted for to the satisfaction of the proper officer.

Question 10

In the context of section 65 of the Customs Act, 1962 dealing with waste or refuse arising during the manufacturing operations or other processes done in the warehouse:

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- (i) *Examine the validity of the following statement with brief reasons:*
"If 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."
- (ii) *Explain briefly the "relevant date" for determination of rate of duty leviable on the imported material content in the waste or refuse.*

Answer

- (i) **Section 65(2)(b)** of the Customs Act, 1962 deals with the question whether import duty should be levied on imported goods content in the waste and scrap when finished products are cleared for home consumption. The said section lays down that if the finished products are cleared for home consumption on payment of appropriate duty of customs, then appropriate duty of customs should be levied on the imported goods content in the waste or refuse.
- (ii) **The relevant date** for determination of rate of duty leviable on the imported material content in the waste or refuse shall be decided as per the provisions of section 15(1) of the Customs Act, 1962. In the given case, the goods are not:-
- (a) cleared for home consumption on a bill of entry filed under section 46; or
 - (b) cleared from the warehouse, where the date of filing bill of entry for home consumption is relevant.

Hence, in this case the third alternative namely the "date of payment of duty" under section 15(1)(c) shall apply.

Thus, in collecting the import duty on the imported material content in the waste or refuse, **the rate of duty prevalent on the date of payment of duty** shall apply

Question 11

The assessee imported capital goods and deposited them in the warehouse. The said goods were not removed from the warehouse within the period permitted under section 61(1)(a) i.e. five years. Subsequently, the assessee filed an application for relinquishment of title of such warehoused goods. The Department contended that since the assessee did not file an application for extension of warehousing period before the expiration of five years period fixed under section 61(1)(a), after expiration of the said period, the goods could no longer be termed as warehoused goods. Therefore, the assessee lost its title to the same and consequently, it lost its right to relinquish its title thereto. It was further claimed that the relinquishment of title to the said goods ought to have been made by the assessee before the expiration of the warehousing period and not thereafter and therefore the goods were deemed to have been improperly removed from the warehouse. Consequently, the assessee became liable to pay duty, penalty and interest with respect to the said goods as provided under

section 72(1)(b) of the Customs Act, 1962. Discuss, whether the contention of the Department is correct, by referring to case law, if any

Answer

The facts of the given case are similar to the facts of the case of **Commissioner Customs v i2 Technologies Software (P) Ltd. 2007 (217) ELT 176 (Kar.)**

The High Court, while dismissing the Department's appeal observed that the owner of the goods (importer) though **loses control over the goods** when he deposits them in the warehouse, but **he does not lose his title or ownership to such goods** so long as they remain in the warehouse either during the continuance of the warehousing period or even after its expiration. Therefore, the High Court rejected the Department's contention that on the expiration of the warehousing period or on the expiration of extended warehousing period, the owner of the goods loses his title in respect of such goods and consequently, also loses his right to relinquish his title to such warehoused goods.

The High Court elaborated that on **a plain reading** of the provisions of section 23(2), 47, 68 and the proviso to section 68 of the Customs Act, 1962, it is clear that the owner of warehoused goods has the right to relinquish his title to goods at any time before an order for clearance of goods for home consumption has been made in respect thereto.. There is **no prohibition on relinquishing the title to such goods after the expiration** of the warehousing period or after the expiration of the extended period. The High Court pointed out that the provisions of section 23(2) and proviso to section 68 make it clear that upon relinquishment of his title to any imported goods, including the warehoused goods, the owner of such goods **shall not be liable to pay duty** thereon and when the owner is not liable to pay duty, the question of paying any interest on the duty and penalty would not arise.

Therefore, in the instant case, the **Department's contention is not correct.**

Question 12

Can warehoused goods be transferred from one warehouse to another under the Customs Act, 1962 ?

Answer

Yes, section 67 of the Customs Act, 1962 permits removal of warehoused goods to other warehouse under bond, with the permission of the proper officer. For this purpose Transit Bond for concerned customs duty together with Bank Guarantee is required to be submitted. However, the aforementioned Bank Guarantee is not to be submitted by an EOU.

Question 13

Write a note on "Project Imports" under the Customs Tariff Act, 1975 enumerating the eligible projects and the minimum investment criteria, if any.

Answer

Project Imports:- Project Imports are the imports of machinery, instruments, and apparatus

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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, 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.

The **eligible projects** are:

- (i) Industrial plant
- (ii) Irrigation project
- (iii) Power project
- (iv) Mining project
- (v) Oil & other mineral exploration project
- (vi) Other projects as notified by the Central Government

Self-examination questions

Question 1

Discuss the procedure for deposit of the imported goods in a private bonded warehouse and their subsequent removal.

Question 2

How long the imported goods can remain in a warehouse as per the Customs Act, 1962?

Question 3

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

Question 4

X, an importer (other than 100% EOU) imported some goods and deposited them in the warehouse on 12.04.2010. These goods were re-exported on 15.08.2010 without payment of duty. With reference to the Customs Act, 1962, discuss whether any interest is payable by 'X'?

Answer

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.

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'.