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HANDBOOK ON

INSIGHT INTO CUSTOMS – PROCEDURE & PRACTICE

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

Vision Statement

"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

Mission Statement

"The Cost and Management Accountant professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting"

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1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners, stakeholders and also Crash Courses on GST for Colleges and Universities.

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- GST & Income Tax Course for Colleges & University Students
- Various Publications in Direct Tax & Indirect Tax

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The Institute of Cost Accountants of India
(Statutory body under an Act of Parliament)

Disclaimer:

President's Message

The Foreign Trade Policy, announced by the Ministry of Commerce, Government of India, sets forth a comprehensive framework of guidelines and procedures governing the export and import of goods and services. Over the years, this Policy has not only promoted the export of goods by offering various incentives but has also acknowledged the significant contribution of the services sector, introducing numerous schemes to support its export. Compliance with this Policy is mandated by the Foreign Trade Development and Regulation Act, 1992, and is administered by the Directorate General of Foreign Trade (DGFT), under the Ministry of Commerce.

India's export landscape is currently experiencing a robust phase of growth. The implementation of initiatives such as Production-Linked Incentives (PLI) and the Make in India campaign has spurred substantial progress, especially in the electronics sector. Notably, smartphone exports are expected to surge by 30 percent over the previous year, potentially exceeding the USD 15 billion mark in FY2024.

In March 2024, India's primary export destinations included the United States ($7.51 billion), United Arab Emirates ($4.01 billion), Netherlands ($2.11 billion), Singapore ($1.59 billion), and China ($1.56 billion). Meanwhile, the main sources of imports were China ($7.75 billion), Russia ($5.85 billion), United Arab Emirates ($4.89 billion), Iraq ($3.34 billion), and the United States ($3.14 billion). With India's diverse product range and expanding international partnerships, there is significant potential to further enhance trade with these regions.

This revised publication is the new and updated edition post the one published on 1st July, 2021 which aims to provide a detailed understanding of the Foreign Trade Policy 2023, its compliance requirements, and the evolving dynamics of India's foreign trade. We trust that this resource will be invaluable for stakeholders in navigating and leveraging the opportunities presented by India's trade environment.

I appreciate the efforts of Tax Research Department and acknowledge the mentoring of the Resource Persons. Thank you, team, "Tax Research" for putting in your best efforts.

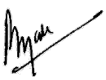
CMA Ashwinkumar G. Dalwadi
President, ICMAI

Vice President's Message

The Foreign Trade Policy (FTP) 2023 was passed by the Indian government on March 31, 2023. The policy aims to boost India's exports to USD 2 trillion by 2030. It focuses on emerging areas of export, such as high-tech manufacturing, pharmaceuticals, and e-commerce. The major objective of this policy has been Trade Facilitation and Ease of Doing Business. DGFT is bestowed to function as a facilitator of exports and imports. The focus is on good governance, which depends on efficient, transparent and accountable delivery systems and as a hand-holding scheme for new export/import entrepreneurs, DGFT is implementing the Niryat Bandhu Scheme for mentoring new and potential exporters on the intricacies of foreign trade.

Customs duty is an indirect tax imposed on products imported to and exported from India. Impositions of customs have a very important role to play in protecting the country's economy, trade environment, residents, jobs and more. The main purpose behind it is controlling the flow of the banned/ restricted commodities. Customs duty is also an essential part of National Tax Revenue since it is the topmost source of central fiscal revenue. Charging tax legitimately as well as working towards the well-being of the nation and tax payers is also a major task for the custom authorities.

India is quite conscious as of now on the customs front since this is an important contributor to the country's revenue. This publication addresses the importance of customs in the Indian economy and also the role of CMAs. I am happy to note the efforts of Team – Tax Research and the Indirect Taxation Committee and the Resource Contributors for bringing out such valuable publications.



CMA Bibhuti Bhusan Nayak

Vice President, ICMAI

Chairman's Message

In this age of aggressive consumption, no country in this world is endowed with all the resources to grow on its own and therefore they engage in International Trade. Practically, whether a country is open or closed depends on its relative openness to foreign trade and not in absolute manner. Foreign trade affects the domestic trade and markets of a country and India is not an exception in this scenario. India is a part of the globalization and any effect, positive or negative, on the global trade is bound to affect the Indian markets. The global economic downturn and the recent Economic crisis are two examples to understand this fact.

India's EXIM Policy for the period from April 1, 2023, to March 31, 2028, brings a host of exciting changes to boost exports and enhance the trade ecosystem. The EXIM Policy is like having a tech-savvy assistant to help with exporting goods. It's all about simplifying the process and making it more efficient. The Ministry of Commerce announced the recent Foreign Trade Policy, which also came into effect on 1 April 2023. FTP 2023-2028 seeks to make India an export hub and to integrate India further into global value chains.

Exim Policy or Foreign Trade Policy is a set of guidelines and instructions established by the DGFT in matters related to the import and export of goods in India. The Foreign Trade Policy of India is guided by the Export Import in known as in short EXIM Policy of the Indian Government and is regulated by the Foreign Trade Development and Regulation Act, 1992. DGFT (Directorate General of Foreign Trade) is the main governing body in matters related to Exim Policy. There are various intricacies attached to the policy of Export and Import in India and a detailed reading would surely help you with your work.

I appreciate the efforts of Tax Research Department and acknowledge the mentoring of the Resource Persons. Thank you team for putting in your best efforts. Wish you all the luck for your patience and perseverance.

CMA Rajendra Singh Bhati

Chairman – Indirect Taxation Committee

Preface

Budget 2024 placed on February 1, 2024, has been a vote to accounts. There are important highlights with respect to Customs introduced in Budget 2023 which has taken shape throughout the Financial Year and is important to understand and hence this book, an amalgamated, refreshed and updated version of the earlier two books under the nomenclature: 'Handbook on Customs: Procedure & Practice' and 'Handbook on Special Economic Zones and Export Oriented Units in India'. Budget 2023 was placed with the promotion of exports and enhancement of domestic manufacturing in focus. Hence, our Hon'ble FM announced a rearrangement in custom duties on various commodities and products with necessary changes made in the Basic Custom Duty in some cases and also rectification of inverted duty structure in many cases.

This book deals with all the important changes, not only in the budget but also the ones announced through notifications and circulars subsequently. This book includes different Act, Rules and Regulations in order cover the entire gamut of procedures and practices related to Customs.

Understanding the Processes and Procedures related to Customs are very important as it may be required by a working professional at any point during his job. We, at the Tax Research Department are grateful to CMA Niranjan Mishra and CMA Chittaranjan Chattopadhyay, Past Chairmen of the Indirect Taxation Committee whose thoughts gave shape to this book since 2019. We also acknowledge and are thankful to CMA Rajendra Singh Bhati, Present Chairman – Indirect Taxation Committee along with the members of Taxation committees, who has given us this opportunity to work on this handbook. We are also indebted to Professor Vijayan R without whose contributions this publication would have been incomplete. We express our gratitude to Advocate Ramesh Jena for his contribution towards the earlier editions of this book. Our sincere thanks to all the resource persons supporting the Tax Research Department in the diverse activities throughout the year.

Thank You.

Tax Research Department

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A1 : ROLE OF CMA'S - PROFESSIONAL OPPORTUNITIES

India's foreign trade have played crucial role in the economic development in the past years. Indian economy is growing rapidly and getting significant place in international worldwide. India's Foreign Trade Policy has, conventionally, been formulated for five years at a time and reviewed annually. The focus of the FTP has been to provide a framework of rules and procedures for exports and imports and a set of incentives for promoting exports. This handbook takes into consideration the performance of India's foreign trade and the various economic policies related to foreign trades which have contributed to its growth. It tried to focus on foreign trade, its meaning and definition, need and importance and types of foreign trade. Export of goods and services to other countries gives more foreign exchange. Similarly imports leads to expend the home currencies. So, every country should concentrate on the export of their goods than the import. International trade takes place between the two or more countries. It involves different currencies of different countries and is regulated by laws, rules and regulations of the concerned countries. Thus, International trade is more complex. The Special Economic Zones (SEZs) are an important policy tool in this effort to increase our exports, generate employment and provide momentum to economic growth. These zones are intended to be magnets for attracting foreign investment and acting as a one stop shop for the state-of-the-art infrastructural facilities. With the multitude of activities governing international trade and their increasing complexity, the era of single tasking or specialization is no longer in vogue. Increasingly, companies are on the lookout for professionals who can multi-task i.e. handle both commercial and technical functions. The role of the CMAs has therefore to be re-defined in this new era.

Advisory & Certifying Services Related to Foreign Trade Policies & Instruments:

1. Advisory Services to National Governments in framing WTO Compliant Foreign Trade Policies & modifying the existing schemes.
2. Analysis of business operations and facilitation services.
3. Formation of a company/subsidiary of a foreign company - Domestic operations & Incorporations like Formation of companies in India & related issues with ROC, RBI & other Government departments, Registrations with DGFT (IEC), EPC (RCMC), Industry Ministry (IEM), Income tax (PAN), Sales tax, GST, Excise, Representation

of Cases Before Central Excise Appellate Authorities, Customs Authorities, Fixation of /Brand Rates for Drawback, Rebate / Refund of Central Excise Duties, GST refunds Customs Duties etc.

4. Assistance in fulfilling the regulatory and licensing requirements, obtaining government clearances & Liaising across related government agencies
5. Development of strategies and implementation plans according to the specific needs of the clients.
6. Consulting, documentation and facilitation for
   - Exports and imports for Export-Import Policy
   - Licenses (authorization)
   - Incentives
   - Logistics
   - Foreign Trade Policy Finance
   - Foreign Trade Policy legal matters
7. Getting Foreign Investment and related matters like Setting up of Business Operations in India including Liaison Office, Branch Office, Subsidiary Company, Joint Ventures.
8. Approval of Investments from RBI/FIPB/Ministries.
9. Quality certification for Foreign Companies exporting to India
10. Application and Issuance of ~~DEPB~~, Advance License, EPCG License, Duty Drawback, Deemed Export Benefits.
11. Representation and Liaison:
    i. With DGFT, RBI and Ministries for import-export licenses & other matters,
    ii. For Foreign companies/NRIs in India, Indian Investments Abroad, etc.
    iii. Planning, Strategizing and implementation for clearances of Project Imports, Plant Relocations, import authorization from DGFT for Restricted Items Imports.
12. Consultancy services for developing and setting up units in Special Economic Zones (100% SEZ units) & Advisory Services Related to Special Economic Zones/100 % Export Oriented Units (EOU) / Software Technology Parks (STP) / Electronic Hardware Technology Parks (EHTP)
13. Assistance in preparation of project report
14. Assistance in necessary applications, compliances etc. with the Board of Approval, State Government, Development Commissioner, Approval Committee, etc.
15. Representation before Board of Approval on behalf of any person aggrieved by the order passed by the Approval Committee.

Rule 55 . of Special Economic Zones Rules, 2006 (**Form of Appeal**) states that any person aggrieved by an order passed by the Approval Committee under section 15 of the Special Economic Zones Act, 2005or against cancellation of Letter of Permission under section 16, may prefer an appeal to the Board.

Rule 61 of the Special Economic Zones Rules, 2006 **(Rights of Appellant to appear before the Board)** states that every appellant may appear before the Board in person or authorize one or more chartered accountants or company secretaries or **Cost Accountants (CMA)** or legal practitioners or any of his or its officers to present his or its case before the Board.

16. Certificate on production and exports
17. The unit has to present its claim for reimbursement of GST in the prescribed form to the Development Commissioner of the SEZ concerned or the designated officer of the EHTP/STP.
18. Certification of Statement of Exports made in the preceding licensing year in the format given in Appendix 26 for Annual Advance License purposes
19. Cost Accountants can Certify IGST Refund Claims (Reference: Circular No. 33/2018-Customs) - In the circular, the Central Board of Indirect Taxes and Customs (CBIC) has authorized the Cost Accountants to certify the 'IGST Refund Claims' of Exporters whose records were not transmitted from GSTN to Customs due to the mismatch in GSTR 1 and GSTR 3B. With this, the Cost Accountants are also empowered to issue requisite certificates at par with the Chartered Accountants. In May, the Board had provided an interim solution to the problem faced by the exporters whose records were not transmitted from GSTN to Customs due to the mismatch in GSTR 1 and GSTR 3B. Also under CGST Act, 2017, Cost Accountants have also been recognized for various certifications/ representations like in Section 35, Section 66, Section 116 and Section 48 read with Rule 24 of Return rules. Hence, it has been decided that Cost Accountants are also authorized to provide the requisite certificates as envisaged under Circular 12/2018-Customs dated 29.05.2018.

To specialize in this area, one has to have a deep understanding of India's Foreign Trade Policy administered by the office of the DGFT as also the trade related measures being applied by other government agencies such as Customs, Excise, GST, Income Tax, Ports, RBI etc. A Cost & Management Accountant (CMAs) is also required to keep

updated with the international trade laws and WTO's state of negotiations to compete with other professionals in other countries. Some of the Topics that are important from the perspective of a CMA for venturing into the area of foreign trade are:

- ☐ Legal provisions that is critical in the area of Foreign Trade, namely, Acts, Rules, Orders, Notifications, Public Notices, Circulars under the Foreign Trade Policy. The various statutes administered by the departments such as the Customs, Excise, GST, Service tax, Income Tax, RBI, Ports, Standard Setting Bodies etc. are also important from the perspective of international trade.
- ☐ Import and Export Policy in terms of prohibitions, restrictions and other related measures on imports and exports. This information would give an idea of the viability of a company venturing into the business related to any of these products.
- ☐ Macro picture of the trend in import and export of goods and services, regulations governing the realization/payments and accounting procedures thereof.
- ☐ Foreign exchange risk management strategies, product pricing and international marketing.
- ☐ Information of duty exemption/ remission schemes, end use duty exemption scheme, export promotion scheme and market development initiatives. These would help in the reduction of export costs.
- ☐ The ways and means of reducing transaction costs in international transactions.
- ☐ Risk management tools and mitigation of risks arising out of international transaction ranging from Marine risks, Exchange risks etc. to losses due to fire, accident etc.
- ☐ Knowledge of the best documentation practices for export and import documentation.

A2 : THE LEVY

- ☐ Custom Duty is an indirect tax, imposed under the Customs Act formulated in 1962. The power to enact the law is provided under the Constitution of India under the Article 265, which states that —no tax shall be levied or collected except by authority of law.
- ☐ Entry No. 83 of List I to Schedule VII of the Constitution empowers the Union Government to legislate and collect duties on import and exports. The Customs Act, 1962 is the basic statute which governs entry or exit of different categories of vessels, aircrafts,

goods, passengers etc., into or outside the country. The Act extends to the whole of the India.

- ☐ As held in 1999 (113) E.L.T. 753 (S.C.) - Kiran Spinning Mills v. C.C., the taxable event in this levy occurs when the customs barrier is crossed. Import of goods into India commences when the goods cross into the territorial waters of India and gets completed when the goods become part of the mass of goods in the country. Customs duty is now a significant source of revenue for all countries, more so in developing countries like India.
- ☐ The Customs Act, 1962, effective from 1.2.1963 provides for levy of duties. Section 12 of the Customs Act, 1962, provide for the levy of duties on goods imported into or exported from India. The items and the rates of duties leviable are specified in two Schedules to the Customs Tariff Act, 1975.
- ☐ The First Schedule specifies various import items and rates of import duties leviable thereon.
- ☐ The Second Schedule incorporates items that are subject to export duties and the rates of duties thereof.
- ☐ India is an active member of the World Customs Organisation and has adopted various international customs conventions and procedures, including the Harmonised System of Nomenclature for classification of goods and the WTO Code of Valuation. The Central Board of Excise & Customs (CBEC) [Now renamed as Central Board of Indirect Taxes and Customs (CBIC)] has recently entered into an agreement with three renowned institutes of the country (ICAI, ICWAI and ICSI) to set up Certified Facilitation Centres (CFC) that will help taxpayers assess their tax liability with ease. In the Budget 2011, Government has made a legislative provision to let importers and exporters make self-assessment of their customs duty liability, but that will be subject to checks and re-assessment by the Customs Officer, if found necessary.
- ☐ A provision has been introduced in the Customs Act, to conduct audit of the private records of importers and exporters, either in the Customs office or at the premises of the importer/exporter. To assist CBIC in international matters, a new Directorate, namely Directorate of International Customs has been created. Another body which has been created is Directorate General of Analytics and Risk Management (DGARM) for data mining and risk management.
- ☐ Directorate of International Customs. - The Department of Revenue has constituted, w.e.f. 1-7-2017, a new Directorate,

namely, the Directorate of International Customs (DIC), with its headquarters at Delhi which will assist the CBEC in international matters pertaining to Customs, Integrated Goods & Services Tax (IGST), Tariff matters, etc. — M.F. (D.R.) Office Memorandum F. No. A-11013/20/2017-Ad.IV, dated 11-7-2017.

- ☐ Directorate General of Analytics and Risk Management (DGARM). - The Department of Revenue has constituted, w.e.f. 1-7-2017, a new Directorate, namely, Directorate General of Analytics and Risk Management (DGARM) which will function as an apex body of CBEC for data analytics and risk management to provide national and sub-national perspective for policy formulation. — M.F. (D.R.) Office Memorandum F. No. A-11013/19/2017-Ad.IV, dated 11-7-2017.
- ☐ Extent of Customs Act, 1962. - Till amendment of sub-section (2) of Section 1 by Finance Act, 2018, the Customs Act extended to whole of India. However, with this amendment applicability of Customs Act has been extended also to any offence or contravention thereunder committed outside India by any person.

A3 : . TYPES OF CUSTOMS DUTIES LEVIABLE

In India, customs duties are levied on the goods at the rates specified in the Schedules to the Customs Tariff Act, 1975. The taxable event is import of goods into India or its export out of India. Export duties as specified in the Second Schedule are levied on a very few items only , such as leathers, iron ores and concentrates and chromium ores and concentrates only. As of now 50-line items are dutiable under Second Schedule (Export Tariff). But import duties are levied universally, barring a few items such as food grains, fertilizers, lifesaving drugs and equipment, etc. The taxable event is import into or export from India.

Import duties generally consist of the following types:

1) Basic duty : It may be at the standard rate or, in the case of import from some countries, at the preferential rate. [Section 2 of Customs Tariff Act, 1975]
2) Additional Customs Duty :
   (i) Additional Customs Duty equal to central excise duty is leviable on like goods produced or manufactured in India. Since Central Excise duty is presently confined only to specified Petroleum products and Tobacco products, scope of

Additional Customs Duty is now limited to import of items mentioned in Fourth Schedule to Central Excise Act, 1944. In case of alcoholic liquors, the additional duty is chargeable at a uniform rate specified by the Central Government irrespective of the varying rates in force in the States.

(ii) Additional duty is commonly (but erroneously) referred to as Countervailing Duty or C.V.D. It is payable only if the imported article is such as, if produced in India, its process of production would amount to "manufacture" as per the definition in Central Excise Act, 1944, vide Constitution Bench judgment in Hyderabad Industries Ltd. v. UOI — 1999 (108) E.L.T. 321 (S.C.). Exemption from excise duty has the effect of exempting additional duty of customs, vide Collector v. J.K. Synthetics — 2000 (120) E.L.T. 54 (S.C.); Thermax Pvt. Ltd. v. Collector — 1992 (61) E.L.T. 352 (S.C.); Priyesh Chemicals & Metals v. Collector — 2000 (120) E.L.T. 259 (Tri. - LB); Ministry's Circular F. No. 528/43/2001-Cus., dated 18-6-2001. In Collector v. Im Kemex India Ltd. — 1996 (86) E.L.T. 95 (Tribunal), it has been held further that imported waste and scrap which has not arisen out of the process of manufacture of prime product is not liable to C.V.D. Thus, used, worn-out, obsolete and scrap items of brass gathered as items of "collection" were not chargeable to C.V.D. with reference to Items 26A and 68 of old Central Excise Tariff. So also, copper wire scrap "Birch" — Karnataka Chemical Industries Corpn. Ltd. v. C.C. — 2005 (183) E.L.T. 207 (Tri.). Section 19 regarding assessment of a set of articles is not applicable to additional duty leviable under the Customs Tariff Act, 1975; said Section 19 applies only to duty under the Customs Act, vide Section 2(15), Collector v. Indian Organic Chemicals Ltd. — 2000 (118) E.L.T. 3 (S.C.). For method of calculation of additional duty for domestic market clearances of export oriented units, etc., please see Notification No. 23/2003-C.E., dated 31-3-2003 and Ministry's Circular.

(3) IGST and GST Compensation Cess. -

(i) In terms of sub-section (7) of Customs Tariff Act as introduced w.e.f. 1-7-2017, any article which is imported into India shall also be liable to integrated tax (IGST) at such rate, not exceeding forty per cent as is leviable under Section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India.

(ii) In addition to IGST, the articles imported into India shall also be liable to the goods and services tax compensation cess at such rate, as is leviable under Section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India.

(iii) Additional duty/IGST/GST compensation Cess, as the case may be, is calculated on a value base of aggregate of value of the goods including landing charges and basic customs duty. Other duties such as anti-dumping duty, safeguard duty, etc. are not taken into account.

(4) Additional duty of Customs is leviable @ ₹ 8/- per litre on imported motor spirit (petrol) and high-speed diesel oil. This is also known as Road and Infrastructure Cess.

(5) National Calamity Contingent Duty (NCCD). - It is imposed at present @ ₹ 50/- per metric ton on imported crude oil and @ 1% on mobile phones, two-wheelers, motor cars and multi-utility vehicles.

(6) Anti-dumping duty/Safeguard duty. -

(i) With a view to protecting domestic industry from unfair injury, Anti-dumping duty/Safeguard duty is imposed on import of specified goods. It would not apply to goods imported by a 100% EOU and units in FTZ and SEZ. But exemption is not available to EOU if imported goods as such or finished goods are cleared in DTA (Domestic Tariff Area). DTA is defined as India except SEZ and 100% EOU. Vide Section 59 of the Finance Act, 2011, Section 9AA was amended so as to enable the Central Government to reduce the anti-dumping duty imposed on an article or on an importer where such importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty in excess of the actual on margin of dumping. On export of goods, antidumping duty is rebatable only by way of a special Brand Rate of drawback. With respect to Safeguard Duties, it has now been clarified vide Circular No. 23/2015-Cus., dated 29-9-2015, that drawback, can be claimed under an application for Brand Rate for these duties also. An interesting feature of the Safeguard Duty Rules is the quick response procedure in "critical circumstances". Safeguard duties do not require the finding of unfair trade practice such as dumping or subsidy on the part of exporting countries but they must not violate the most favoured nation provision, that is, they should not discriminate between

imports from different countries. Provisional safeguard duty shall remain in force for a period not exceeding 200 days. Safeguard action is resorted to only if it has been established that a sudden increase in imports has caused or threatens to cause serious injury to the domestic industry. Safeguard action can restrict import of a product for a temporary period by raising tariffs or imposing import licensing conditions. Under Section 9C of the Customs Tariff Act, 1975, appeal against determination made by Central Government lies before the CESTAT. Mere recommendatory order of the designated authority is not appealable, vide Saurashtra Chemicals Ltd. v. UOI — 2000 (118) E.L.T. 305 (S.C.). Provisions of Section 27 of Customs Act, 1962 relating to limitation do not apply to refund of anti-dumping duty arising on re-fixation of such duty under Section 9A(2)(h) of Customs Tariff Act, 1975 as it is not a duty under the Customs Act, 1962. [Caprihans India Ltd. v. Commissioner — 2001 (129) E.L.T. 162 (Tri.-LB)], but doctrine of unjust enrichment applies in view of 2005 (181) E.L.T. 328 (S.C.) - Sahakari Khand Udyog Mandal Ltd. v. CCE; 2008 (230) E.L.T. 592 (Bom.) - CC v. Kamakia Constructions Pvt. Ltd. No anti-dumping duty is chargeable if levied after date of import, i.e., after arrival of ship carrying the goods in India, but prior to assessment — 2004 (174) E.L.T. 45 (Tri.) — M.K.P. Fashions v. CC; 2006 (202) E.L.T. 7 (S.C.) — Sneh Enterprises v. CC The Designated Authority should grant personal hearing to parties who file objections and adduce evidence before taking final decision since its function is a quasi-judicial one — 2011 (263) E.L.T. 481 (S.C.) — Automotive Tyre Manufacturers Associations v. Designated Authority.

(ii) Machinery provisions of the Customs Act shall apply to anti-dumping duties and safeguard duties also. For matters relating to anti-dumping duty, please contact the Director General, Anti-Dumping and Allied Duties, Ministry of Commerce [see the detailed procedure at 1998 (100) E.L.T. T16] and for Safeguard duty, Director General (Safeguards), Ministry of Finance (Department of Revenue). [Section 12 of Customs Act, 1962; Customs Tariff Act, 1975].

(iii) Vide Section 139 of Finance Act, 2016 certain notifications have been amended retrospectively to exempt Safeguard duty on imports under Advance Licence and DFIA.

(7) Education Cess/Secondary & Higher Education Cess. - Education cess @ 2% and a further Secondary and Higher Education Cess @ 1% of aggregate duties of Customs (including C.V.D.) is leviable. If goods are fully exempted from duty or are chargeable to nil rate of duty or are cleared without payment of duty under prescribed procedure such as clearance under bond, no cess would be leviable.

(8) Social Welfare Surcharge on imported goods. - In terms of Section 110 of Finance Act, 2018, a duty of Customs, to be called a Social Welfare Surcharge has been levied @ 10% on the goods specified in the First Schedule to the Customs Tariff Act, 1975 when imported into India, to fulfil the commitment of the Government to provide and finance education, health and social security. Said surcharge will be levied and collected on the aggregate of duties, taxes and cesses which are levied and collected under Section 12 of the Customs Act, 1962 and any sum chargeable on said goods under any other law for the time being in force, as a duty of customs. However, safeguard duty, the countervailing duty referred to in Section 9 of the Customs Tariff Act, the anti-dumping duty and Social Welfare Surcharge itself will not be included in said aggregation. The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to assessment, non-levy, short-levy, refunds, exemptions, interest, appeals, offences and penalties shall, as far as may be, apply to its levy and collection.

(9) Agriculture Infrastructure and Development Cess (AIDC) (a) One of the major changes in the duty structure is the introduction of Agriculture Infrastructure and Development Cess (AIDC) on Import goods vide clauses 115 and 116 (wherever excisable) of the Finance Bill, 2021. Clause 115 states: "Where on the goods specified in the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), being the goods imported into India, at the rate not exceeding the rate of customs duty as specified in the said Schedule, for the purposes of financing the agriculture infrastructure and other development expenditure.".

AIDC as a duty of Customs will be applicable for all items unless exemption is claimed by relevant notification. For all items falling under the Sl No 1 to 16 of the Notification 11/2021 – Customs dated 01.02.2021, the relevant notification and sl no will have to be mentioned by the importer in the Bill of Entry for the applicable

effective rate. Even for all other items which are completely exempted from AIDC, relevant Sl Nos (17 to 19) must be quoted in the Bill of Entry. Thus, the claim of AIDC notification shall be mandatory in the Bill of Entry.

Excise AIDC is applicable only for Petrol and High Speed Diesel. Importer can claim the benefit of relevant Central Excise exemption notification(s), wherever applicable

(10) Customs Health Cess (CHCESS) Vide clause of the Finance Bill, 2020, Health Cess is being imposed on the import of medical devices falling under heading 9018 to 9022, at the rate of 5 % ad valorem on the import value of such goods as determined under Section 14 of the Customs Act 1962 . This Health Cess shall be a duty of Customs and effective from 2nd February 2020.

A4 : . VALUATION OF IMPORTED GOODS AND EXPORT GOODS

(1) As per Section 14 of the Customs Act, the value of imported goods or export goods is the transaction value. The Transaction Value is defined as 'price paid or payable for the goods. If the value cannot be determined under Section 14, the importer shall resort to Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as 'Import Valuation Rules') or Customs Valuation (Determination of Value of Export Goods) Rules, 2007 (hereinafter referred to as 'Export Valuation Rules') to determine value of export goods.

Further, the price shall be calculated with reference to the rate of exchange as in force on the date on which BOE for home consumption or Shipping Bill or Bill of Export are presented.

(2) The Rates of Customs duties leviable on imported goods and export goods are either specific or on ad valorem basis or at time on specific cum ad valorem basis. When Customs duties are levied at ad valorem rates, i.e. based on the value of the goods, it becomes essential to lay down broad guidelines for such valuation to avoid arbitrariness and to ensure that there is uniformity in approach at different customs formations.

Example:

- A specific duty based on the quantity of the goods like ₹ 1,000 per metric ton of steel or
- Ad valorem basis, i.e., expressed as percentage of the value of the goods i.e 40% ad valorem. etc.

It was observed that the government was losing revenue due to the specific duty which remains fixed irrespective of price changes. Section 14 of the Customs Act, 1962 lays down the basis for valuation of imported & exported goods in the country. Briefly the provisions are explained in the following paragraphs:

1. Valuation of Goods has been quite a tricky issue in Indian Customs Houses. It is good that with effect from 10th October, 2007, a more objective and transparent law has taken the place of earlier ambiguous law in which sub-section.
2. Section 14 talked of a deemed value while its sub- section (1A) read with the earlier valuation rules said that the imported goods would be assessed to duty on the basis of their transaction value. The new Section 14 has done away with this dichotomy and gives pride of place to transaction value. Read together with the new valuation rules - the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 - it establishes the international valuation norms under the World Trade Organisation in India. The deemed value concept still survives but only as a residual method or the last resort method or cap value in Rule 9 when all other methods fail. There is no condition in the new Section 14 that it applies only to goods subject to ad valorem duties. Hence, it applies to all goods, whether imported or export and whether dutiable or duty free or on which export promotion benefit is claimed.
3. The new Rules spell out statutorily as to in what circumstances the buyer and seller would be considered related persons", they illustrate reasons for which customs may doubt declared values and give a list of items which if the buyer bears has paid for but have not been added to the declared value ought to be added. Sole distributorship in itself isnot a conclusive consideration — 2015 (324) E.L.T.17 (S.C.) — CC v. Bayer Corp. Science Ltd. Finally, the exhaustive Interpretative Notes in the Schedule appended to the import valuation rules, which are statutory, would aid in authoritative interpretation of the rules in case a valuation dispute does develop.
4. The transaction value concept recognises the sanctity of seller's right to sell the goods at any price he can get in given circumstances, such as sale price during seasonal offers, clearance sale, distress sale, festival occasions, offering heavier discount than usual have to be accepted if that is the price actually paid.

5. Imported goods. - For assessment of duty or for purposes of any other law, it should be the transaction value of the imported goods, that is to say,
   - the price actually paid or payable for the goods when sold for export to India (except in case of exceptions),
   - for delivery at the time and place of importation,
   - where the buyer and seller of the goods are not related,
   - price is the sole consideration for the sale,
   - there are no abnormal restrictions as to the disposition or use of the goods by the buyer, and
   - includes the amount paid or payable for costs and service including
     (1) Commissions and brokerage, except buying commissions,
     (2) engineering,
     (3) design work,
     (4) royalties and licence fees related to the imported goods [these are includible even for some post- importations processes, vide explanation to Rule 10(1)],
     (5) Costs of transportation to the place of importation (including shift demurrage charges on chartered vessels, lighter age or barge charges), [2015 (325)

         E.L.T. 214 (S.C.) — CCE v. Mangalore Refinery and Petro Chemicals Ltd. — Ship demurrage charges admittedly incurred after goods reaching Indian ports and hence a post-importation event, not includible in transaction value as settled in 2015 (319) E.L.T. 202 (S.C.) — CC. v. Essar Steel Ltd.]
     (6) insurance
     (7) loading,
     (8) unloading,
     (9) handling charges,
     (10) cost of containers, and
     (11) cost of packing whether, for labour or materials.

(6) Where actuals of cost of transport, loading, unloading, handling charges and insurance are not available, ad hoc additions would be made at the rates specified in Rule 10(2). Vessel demurrage charges are not includible. Rule 10(2) ibid has since been amended

on 26-9-2017 in view of judgment of Apex Court in Wipro Ltd.in 2015 (319) E.L.T. 177 (S.C.) defining place of importation and making other suitable changes. [Refer 2017 (354) E.L.T. (T10)]

(7) Nine circumstances have been specified in Rule 2(2) read with Explanation II thereof in which the buyer and seller would be regarded as related persons. However, if the buyer can demonstrate that the relationship did not influence the price [see Rule 3(3) for details], the transaction value "shall" be accepted. Held in 2006 (202) E.L.T. 13 (S.C.) - CC v. Prodelin India (P) Ltd. and reiterated in 2010 (284)

E.L.T. 294 (Tri.) - Sew Curodrive (I) Ltd. v. CC that the fact of importer and exporter being related is immaterial if the price charged from other unrelated parties is the same.

(8) Customs can resort to valuation under the Valuation Rules only if the transaction value is not determinable, such as when there is no sale, or the declared value is properly rejected in terms of Rule 12. In order to avoid arbitrary and irrational doubts leading to proceedings for rejection of declared transaction values, Rule 12 sets out illustrative circumstances in which such proceedings may be initiated. In that event, the value shall be determined by proceeding sequentially through Rules 4 to 9. Among the rules, most commonly used ones are Rules 4 and 5 which provide for comparison with transaction values (not provisional values) of identical or similar goods [see their definitions in Rule 2(1)] at about the same time and in a sale at the same commercial level and in substantially the same quantity as the goods being valued, due adjustment to be made if the commercial level/quantity differs. Where such comparative values are not available, only then resort can be had sequentially to Rule 7 (deductive value), Rule 8 (Computed value) or Rule 9 (residual method), in that order.

(9) Valuation of imported second-hand (old and used) machinery. - Fresh guidelines have been issued by C.B.E. & C. vide M.F. (D.R.) Circular No. 25/2015-Cus., dated 15- 10-2015 as under:

- All imports of second-hand machinery/used capital goods shall be ordinarily accompanied by an inspection/ appraisement report issued by an overseas chartered engineer or equivalent,

prepared upon examination of the goods at the place of sale.

- The report of the chartered engineer or equivalent should be as per the Form A of the circular [2015 (324) E.L.T. (T27)].
- In the event of the importer failing to procure an overseas report of inspection/appraisement of the goods, he may have the goods inspected by any one of the agencies in India, as are notified by the DGFT under Appendix 2G of the HBoP 2015-20 and Aayat Niryat Forms of FTP 2015-20, as amended from time to time (para 2.59 of Handbook of Procedures 2015-20 refers),
- At Customs stations where agencies notified by DGFT are not present, importers may continue to avail of the services of locally empaneled chartered engineers.
- In cases where the report is to be prepared by the agencies in India notified by DGFT or the chartered engineers empaneled by Custom Houses, the same shall be in the Form B of this circular.

As value of second-hand goods depends on their condition and age, value of contemporaneous imports cannot be blindly adopted. Board has prescribed the following scale of depreciation to arrive at value of the imported second-hand machinery

(i)	For every quarter during first year	4%	16
(ii)	For every quarter during 2nd year	3%	12
(iii)	For every quarter during 3rd year	2.50%	10
(iv)	For every quarter during 4th year	2%	8
	Subject to an overall limit of	70%	46

The cost of reconditioning done to the machinery (which would be available in the Chartered Engineer's Certificate) may be added to the depreciated value for the relevant year in which reconditioning was done. The depreciation will be calculated on the original value of the machinery when new under import.

[See M.F. (D.R.) Instruction F. No. 493/124/86-Cus.VI, dated 19-11-1987 - 2014 (300) E.L.T. T5-6 and M.F. (D.R.) Circular No. 25/2015-Cus., dated 15-10-2015]

(10) Valuation of warehoused goods.- Transaction value at time of sale after warehousing is not to be considered and value determined at time of filing into-bond B/E remains relevant. [M.F. (D.R.) Circular

No.11/2010-Cus., dated 3-6- 2010].

(11)Export goods. -The value shall be the transaction value, that is

(1)the price actually paid or payable for the goods when sold for export from India, for delivery at the time and place of exportation,"

where the buyer and seller of the goods are not related, or if related, the relationship has not influenced the price,

price is the sole consideration for the sale.

The Ministry has decided that from 1-1-2009, transaction value will form the basis, i.e., the export duty will be calculated simply on FOB price [Circular No. 18/2008-Cus., dated 10-11-2008]

(2) In case the declared value is not acceptable as transaction value, the Export Valuation Rules provide for the following three valuation methods to be adopted sequentially.

(3) Meaning of Transaction Value. As per Section 14 of the Customs Act, the value of imported goods or exported goods shall be the transaction value.

Transaction Value 14 (1)	Price actually paid or payable
	For the goods sold for delivery at the time and place of importation or exportation
	Where the buyer and seller are not related
	The price is sole consideration for sale

Section 14(2) provides that CBIC may fix tariff values for any class of imported/ export goods by way of notification.

"Related person" is defined in Rule 2(2) of the Customs Valuation (Determination of Value of Imported/Export Goods) Rules, 2007 as follows:

For the purpose of these rules, Persons shall be deemed to be 'related' only if-

- They are officers or directors of one another's businesses;
- They are legally recognized partners in business;
- They are employer and employee;
- Any person directly or indirectly owns controls or holds five percent or more of the outstanding voting stock or shares of both of them;
- One of them directly or indirectly controls the other;
- Both of them are directly or indirectly controlled by a third person;

- Together they directly or indirectly control a third person; or
- They are the members of the same family

Sole agent or sole distributor or sole concessionaire associated with any person shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

The term "person" also includes legal persons.

It may be noted that if for any transaction all the above conditions are not fulfilled cumulatively, one needs to resort to Rules for valuation of imported or export goods.

(3) **Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. —** The Central Government has amend the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 to amend Rule 2 ibid to define the term "place of importation" as the customs station where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse, so as to include the costs incurred up to the place of importation in transaction value under Section 14 of the Customs Act, 1962; and to amend Rule 10 ibid to provide that charges incurred for delivery of goods "to" the place of importation (such as the loading and handling charges incurred at the load port) shall now be includible in the transaction value; to impart more clarity in computation of transport and insurance charges, when actuals of each individual element are not known, but the cumulative value of FOB and freight, or, FOB and insurance charges are known; and to exclude costs related to transshipment of goods (from ports to ICDs; port to port, port to CFS, Airport to Airport, etc.) within India, providing uniform treatment to different modes of transshipment. — Notification No. 91/2017-Cus. (N.T.), dated 26-9-2017.

(4) **Import Valuation Rules:** In case, the value of imported goods cannot be determined under Section 14 of the Customs Act, the value shall be determined on the basis of provisions contained in Customs Valuation (Determination of value of imported goods) Rules, 2007.

Transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges as prescribed in the rules.

S. No.	Method of valuation of Imported Goods (in sequential order)	Rule
1.	Transaction Value of imported goods	Rule 3
2.	Transaction Value of Identical Goods	Rule 4
3.	Transaction Value of similar goods	Rule 5
4.	Determination of value when cannot be determined under Rule 3, 4 & 5	Rule 6
5.	Deductive value based on identical/ similar imported goods	Rule 7
6.	Computed Value	Rule 8
7.	Best Judged Value/ Residual Method	Rule 9
8.	Cost and services liable to be included in TV	Rule 10
9.	Valuation declaration	Rule 11
10.	Rejection of declared TV	Rule 12
11.	Interpretative notes to be used for interpretation of these Rules (Schedule providing interpretative notes for interpretation of above Rules above is provided with these Rules)	Rule 13

Out of the above rules, brief note on important rules is provided hereunder:

Rule 3: (Determination of the method of Valuation)

Transaction value shall be accepted provided;

- No restriction on disposition or use of goods by the buyer except restriction imposed by any statutory provisions or limiting the geographical area or restriction does not substantially affect the value of the goods
- Sale or price not subject to conditions or consideration for which value cannot be determined
- No further consideration to accrue directly or indirectly to seller unless adjustable as per Rule 10
- Buyer and seller are Unrelated

If they are related, the Transaction Value is accepted on examination of circumstances of sale which shall indicate that relationship did not influence the price and importer proves that prise is close to the transaction value of identical/ similar goods, in sales to unrelated buyers; deductive/ computed value of identical/ similar goods

If the value of imported goods cannot be determined under Rule 3,

value shall be determined by applying following rules (Rule 4 to 9) sequentially:

Rule	Method of valuation of Imported Goods (in sequential order)
Rule 4	Transaction Value of Identical Goods- • imported at or about the same time; • at the same commercial level and same quantity; • Otherwise appropriate adjustments of value of goods in terms of commercial level and quantity; The term 'identical goods' have been defined in Rule 2(d) of the Import Valuation Rules, 2007.
Rule 5	Transaction Value of Similar Goods- • imported at or about the same time; • at the same commercial level and same quantity; or
	• Otherwise appropriate adjustments of value of goods in terms of commercial level and quantity; The term 'similar goods' have been defined in Rule 2(f) of the Import Valuation Rules, 2007 Provided value of similar goods should not have been provisionally assessed
Rule 6	Determination of value when cannot be determined under Rule 3,4 & 5, it has to be determined as per Rule 7 and 8 sequentially. However, at the request of the importer and with the approval of proper officer, order of application of Rules 7 and 8 can be reversed
Rule 7	Deductive value based on identical/similar imported goods- If goods being valued or identical or similar goods are sold in India, in same condition as imported at or about the same time, the assessable value shall be Unit Price at which imported/identical/similar imported goods are sold in greatest aggregate quantity to unrelated persons in India but subject to following deductions- • commission usually paid or agreed to be paid or the additions usually made for profits and general expenses; • usual costs of transport and insurance and associated costs incurred within India; • the customs duties and other taxes payable in India by reason of importation or sale of the goods

Rule 8	Computed Value- Value of imported goods shall be based on a computed value, which is sum of - • Cost of materials and fabrication or other processing employed in producing the imported goods; • Amount of profit and general expenses equal to that reflected in sale of same class or kind of goods made by producers in the country of exportation for export to India; • The cost or value of expenses under Rule 10(2)
Rule 9	Best Judged Value/ Residual Method- If the value cannot be determined based on the above rules, it shall be determined by applying reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India. Value so determined shall be less than or equal to the Normal price of such goods in the course of international trade
Rule 10 (1)	Cost and services to be included in Transaction Value- The adjustments shall be made for the following cost and services and cost to be added if not included- a. Expenses incurred by the buyer, but not included in the value of imported goods, namely: o Commissioners and brokerage, except buying commissions; o Cost of containers; o Cost of packing (whether for labour or material). b. Goods and services supplied by the buyer free of charge or at reduced price for use in connection with production and sale for export of imported goods namely- o Materials, components, parts and other similar items incorporated in the imported goods; o Tools, dies, moulds and similar items used in the production of the imported goods; o Materials consumed in the production of the imported goods; o Engineering, development, art work, design work and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods

	c. Royalties and License fee related to the imported goods- payable by Buyer if such royalties are paid as a condition of the sale d. Proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly to the Seller e. All other payments actually made or to be made as a condition of sale of the Imported Goods, by the Buyer to Seller/ Third Party, agreed as a 'condition of sale' or to satisfy an obligation of the Seller is to be included in the value
Rule 10 (2)	Transaction Value shall include- a. Transportation Cost, upto the place of Importation (Transaction Cost also includes ship demurrage charges on chartered vessels, lighterage/ barge charges) b. Cost of Insurance to the place of Importation If Transportation cost is not ascertainable, 20% of the FOB value of the goods shall be added to such cost. Provided where FOB value is not ascertainable but sum of FOB value and Insurance Cost is ascertainable, Transport Cost shall be 20% of such sum. If Insurance Cost is not ascertainable, cost shall be 1.125% of FOB value of the goods. Provided where FOB value is not ascertainable but sum of FOB value of the goods and transportation cost is ascertainable, cost of insurance shall be 1.125% of such sum. In case where import is by air and Transaction Cost is ascertainable, Transaction Cost should not exceed 20% of FOB In case goods are imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded. Note: Said rule emerged after changes vide Notification No.-91/2017-Customs (NT) dated 26.09.2017. Further, Ad Hoc addition of 1% of FOB value came to struck down by Hon'ble Supreme Court in the case of *Wipro Ltd. vs Assistant Collector of Customs 2015 (319) ELT 177 (SC).*

Rule 11	Valuation declaration for determination of value of Imported Goods- Importer or his agent shall furnish declaration disclosing full and accurate details relating to the value of imported goods; any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer
Rule 12	Rejection of declared Transaction Value- If Customs authorities have reason to doubt the truth or accuracy of the declared value in terms of these Rules, the valuation shall be carried out by other methods
Rule 13	Interpretative notes to be used for interpretation of these Rules (Schedule providing interpretative notes for interpretation of above Rules above is provided with these Rules)

Export Valuation Rules-

In case, the value cannot be determined under Section 14 of the Customs Act, the value shall be determined on the basis of provisions contained in Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

Rule	Description
Rule 3	Conditions for acceptance of transaction value (TV)- Unless rejected by the proper officer under Rule 8, the value of export of goods shall be the transaction value. The Transaction Value shall be accepted even where the buyer and seller are related provided the relationship has not influenced the price. Further, Rules 4 to 6 of said Rules needs to be sequentially followed if buyer and seller are related and the price is influenced by the relationship or where price is not the sole consideration for sale.

Rule	Description
Rule 4	Determination of export value by comparison- The value of the export goods shall be based on • the transaction value of **goods of like kind and quality** • exported at or about the same time • to other buyers in the same destination country of import or in its absence another destination country of import with adjustment The Proper officer shall make reasonable adjustments, taking into consideration the relevant factors, including adjustment for difference in dates, commercial levels, quantity levels, composition, quality, design, freight and insurance
Rule 5	Computed Value- shall include cost of production, charges for design or brand and amount towards profit
Rule 6	Best Judged Value/Residual method- In case of failure to determine value as per above Rules, residual method shall be applied using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods
Rule 7	Valuation declaration- Exporter shall furnish a declaration relating to the value of export of goods in the manner as prescribed in this behalf
Rule 8	Rejection of declared Transaction Value- If proper officer has reason to doubt the truth and accuracy of the value declared, best judgment assessment shall be done as laid down in this Rule

Determination of the method of valuation.—

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted : Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or con sideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below

Where the buyer and seller are related, the transaction value shall

(3) (a) be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price. In a sale between related persons, the transaction value shall be

(b) accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods :

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Transaction value of identical goods

(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(1) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Transaction value of similar goods. — (1)Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued :
Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Determination of value where value can not be determined under rules 3, 4 and 5. — If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8:

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

Deductive value. —

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : —

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value

(3) (a) shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India. In such determination, due allowance shall be made for the value

(b) added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

Computed value. — Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;
(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India:
(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

R**esidual method. —**

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India :
Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of this rule on the basis of :-
(i) the selling price in India of the goods produced in India;
(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
(iii) the price of the goods on the domestic market of the country of exportation;
(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
(v) the price of the goods for the export to a country other than India;
(vi) minimum customs values; or
(vii) arbitrary or fictitious values.

Cost and services. —

(1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, —

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-
  (i) commissions and brokerage, except buying commissions;
  (ii) the cost of containers which are treated as being one for customs purposes with the goods in question;
  (iii) the cost of packing whether for labour or materials;

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely :-
  (i) materials, components, parts and similar items incorporated in the imported goods;
  (ii) tools, dies, moulds and similar items used in the production of the imported goods;
  (iii) materials consumed in the production of the imported goods;
  (iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation. — Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is

includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

[(2)For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and shall include -

(a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;

(b) the cost of insurance to the place of importation :

Provided that where the cost referred to in clause (a) is not ascertainable such cost shall be twenty per cent of the free on board value of the goods:

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be twenty per cent of such sum
Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods :
Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum :
Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods :
Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.
Explanation - The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on charted vessels, lighterage or barge charges.]

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

(4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

Declaration by the importer. —

(1) The importer or his agent shall furnish -
   (a) a declaration disclosing full and accurate details relating to the value of imported goods; and
   (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rejection of declared value. —

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. - (1) For the removal of doubts, it is hereby declared that :-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(3) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(4) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(5) the sale involves special discounts limited to exclusive agents;

(6) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(7) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(8) the fraudulent or manipulated documents.

Interpretative notes. — The interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules

(5) Rule 4. Determination of export value by comparison.

The value shall the based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation after making adjustments for -

(i) difference in the dates of exportation,

(ii) difference in commercial levels and quantity levels,

(iii) difference in composition, quality and design between the goods to be valued and the goods withwhich they are being compared, and

(iv) difference in domestic freight and insurance charges depending on the place of exportation.

(6) Rule 5. Computed value method.

If the value cannot be determined on the basis of transactionvalue of goods of like kind and quality, it shall be based on a computed value which shall include -

- cost of production, manufacture or processing of export goods,
- Charges, if any, for the design or brand, and
- an amount towards profit.

C.A. or Cost Accountant certificate should be given due weightage.

(7) Rule 6. Residual method.

The above two methods failing, the value shall be determined using reasonable means consistent with the principles and general provisions of the valuation rules. The local market price of the export goods may not be the only basis for determining the value of export goods.

(8) The exporter should give his value declaration in the prescribed format along with the shipping bill to comply with Rule 7.

(9) Rule 8 gives three illustrative reasons for which the customs offices may doubt the declared value, call for further information and then either accept the declared value or determine the export value by proceeding sequentially in accordance with Rules 4 to 6.

(10) The object behind the Export Valuation Rules is not safeguarding of revenue since very few export goods are subject to duty but to provide a sound legal basis to check overvaluation and misuse of value based export promotion schemes and transfer pricing. No significant change in the existing pattern of valuation is intended, Board has instructed that no export consignment shall be detained for doubts on valuation without approval of the Commissioner. When the Customs doubt the declared value, samples may be drawn for further inquiry after taking Joint/Additional Commissioner's orders and goods should be allowed to be exported against a simple undertaking.

(11) Value Declaration by the exporter. — The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

Rejection of declared value. When the proper officer has reason —

(1) to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so

declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3

(2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1). Explanation. - (1) For the removal of doubts, it is hereby declared that -

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.

(iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include -

(a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

(b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.

(c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production

(12) Tariff values. - The Board has the power to fix tariff values for any class of imported goods or export goods and in that event the notified tariff value shall be the value for purposes of assessment of duty. Section 3 of the Customs Tariff Act is amended so as to provide that where the Central Government has fixed tariff value for collection of Central Excise duty on an article produced or manufactured in India, the value of a like imported article for the purpose of charging additional duty shall be such tariff value

(13) Value base for additional Customs Duty (C.V. duty).

- It would comprise of the transaction value CIF plus basic customs duty plus anti-dumping duty plus surcharge.

(14) Date for determination of rate of duty, etc. - Supreme Court has held in Kiran Spinning Mills v. Collector — 1999 (113) E.L.T. 753 (S.C.) that taxable event occurs when the customs barrier is crossed and not on the date when goods had landed in India or had entered the territorial waters of India. Same view has been taken in Garden Silk Mills Ltd. v. UOI — 1999 (113) E.L.T. 358 (S.C). Since exchange rates, rates of duty and tariff values keep changing, the law provides that the rate as in force on the date of presentation of bill of entry for home consumption will be the rate applicable. However, there are two exceptions to it. In case the bill of entry has been filed in advance of entry inwards of the vessel or the arrival of the aircraft, the crucial date will be the date of entry inwards of the vessel or the date of arrival of the aircraft. Secondly, in the case of clearance of goods from a bonded warehouse, the date of presentation of the ex-bond bill of entry for home consumption is the crucial date provided the goods are removed during the permitted warehousing period (including extension allowed, if any). But once the permitted warehousing period expires, the goods cease to be warehoused goods and they are deemed to be improperly removed from the warehouse. The rate of duty applicable in that case will be the rate prevalent on the date when the warehousing period (including permitted extension) came to an end, vide Keshoram Rayon v. Collector—1996 (86) E.L.T. 464 (S.C); UOI v. Apar Pvt. Ltd. — 1999 (112) E.L.T. 3 (S.C). When imported goods are allowed to be warehoused and they are cleared subsequently from the warehouse, rate as applicable on date of actual removal of goods from warehouse is applicable. — Commissioner v. BieccoLawrie Ltd. — 2008 (223) E.L.T. 3 (S.C).

(15) High Sea Sale is a sale for export to India when goods are sold while enroute to India before arrival of ship/aircraft. Full consideration paid by the buyer to the high sea seller is the assessable value. Service charges comprising profit of high seas seller and other expenses incurred before clearance of goods from warehouse for home consumption are includible — 2011 (263) E.L.T. 728 (Tri.) — Bhansali Engineering and Polymers Ltd. v. C.C.

(16) Exchange Rate. - As regards exchange rate, the rate notified by the Board and as in force on the date of presentation of the bill of entry (for home consumption or for warehousing) will be the one applicable. [Sections 14,15 & 16 of Customs Act, 1962]

A4A : LEVY OF IMPORTED GOODS AND SERVICES

Meaning of Imported goods

Section 2(10) of the IGST Act,2017 defines "Import of goods "with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

The term 'brining goods' in to India means 'physically' goods should be brought into India and "import of goods "commences when the goods cross the Customs frontiers of India, it may be land, air and territorial waters of India. Thus "import of goods' necessarily implies goods to be brought physically in India.

Important Definition

Section 2(4) of the IGST Act,2017 defines " Customs frontiers of India" means the limits of a customs area as defined in Section 2 of the Customs Act, 1962 (52 of 1962).

Section 2(25) of the Customs Act, 1962 defines "imported goods" means any goods bought into India from a place outside India but does not include goods which have been cleared for home consumption.

Section 2(27) of the Customs Act, defines "India "includes the territorial waters of India.

Section 2(28) of the Customs Act, defines Indian Customs Waters" means the waters extending into the sea up to the limit of contiguous zone of India under Section 5 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act,1976 and includes any bay, gulf, harbor, creek or tidal river.

Section 2(56) of the CGST Act, 2017 defines "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters.

Section 2(11) "Customs area", means the area of a customs station and includes any area in which import goods or export goods are ordinarily kept before clearance by Customs Authorities.

The term "importer "has not been defined in IGST Act but as per

Section 2(26) of the Customs Act, "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

11.25 of Foreign Trade Policy states "Import" is as defined in Foreign Trade (Development & Regulations) Act, 1992 as amended from time to time.

11.26 of Foreign Trade Policy states "Importer" means a person who imports or intends to import and holds an IEC number, unless otherwise specifically exempted.

Levy of duty on imported goods

Any goods imported into India are chargeable to duties of Customs under Section 12 of the Customs Act, 1962 at rates specified in the Customs Tariff Act, 1975.

As per Section 12 of the Customs Act, levy of duties of customs is on the goods imported into India. Import commences when the goods cross the territorial waters and is completed when bill of entry for home consumption is filed. Taxable event occurs when bill of entry for home consumption is filed; same is also applicable for warehouse goods.

As per Section 7(2) of the IGST Act, 2017, Supply of goods imported into the territory of India, till they cross Customs frontier of India, shall be treated to be supply of goods in the course of inter-State trade or commerce. Further as per Section 8(1)(ii) of the IGST Act, 2017, goods imported into the territory of India till they cross the Customs frontiers of India shall not be treated as intra-State supply of goods.

In view of the above interpretation IGST shall be levied on imported goods once the same cross the Customs frontiers of India i.e. on inter-State supply of goods.

As per Section 5(1) of the IGST Act, 2017, Integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of Customs are levied on the said goods under Section 12 of the Customs Act, 1962.

Though, the levy of IGST is under IGST Act, its valuation is as per

Customs Tariff Act and levied and collected when duties of Customs are "levied and collected".

As per Section 8 of Compensation Cess Act, compensation cess shall be levied on such intra-State supplies of goods or services or both, as provided for in Section 9 of the Central Goods and Services Tax Act, and such inter-State supplies of goods or services or both as provided for in Section 5 of the Integrated Goods and Services Tax Act,

Levy of Social Welfare Surcharge @ 10% as a duty of Customs on imported goods in to India, in addition to any other duties of Customs or tax or cess chargeable on such goods, under Section 25(1) of the Customs Act, 1962 read with Clause 108 of the Finance Bill, 2018.

The integrated tax on imported goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to Sates) Cess Act, 2017 and also recently levy of Social Welfare Surcharge.

The Customs Tariff Act, 1975 has accordingly been amended to provide for levy of Integrated Tax, the Compensation Cess, Social welfare Surcharge on imported goods. Accordingly, goods which are imported into India shall, in addition to the Basic Customs duty, be liable to Integrated Tax at such rate as is leviable under the IGST Act, 2017 on similar article on its supply in India.

Duty Calculation

IGST rate: IGST rates have been notified through Notification No. 1/2017-I.T. (Rate), dated 28-06-2017. IGST rate on any product can be ascertained by selecting the correct Sl. No. as per description of goods and tariff headings in the relevant schedules of the notification. Importers have to familiarize themselves with IGST and GST compensation cess rates, schedule and exemptions which are available on C.B.E. & C. website. The Customs duty calculator would be made available on C.B.E. &C and ICEGATE website. There are seven rates prescribed for IGST- Nil, 0.25%, 3%, 5%, 12%, 18% and 28%. The actual rate applicable to an item would depend on its classification and would be specified in Schedules notified under Section 5 of the IGST Act, 2017.

The different rates of tax have been notified for goods attracting

Compensation Cess which is leviable on 55 item descriptions (of supply). These rates are mostly ad valorem. But some also attract either specific rates (e.g. coal) or mixed rates (ad valorem + specific) as for cigarettes. The coverage of the goods under GST compensation cess is available on C.B.E. & C website along with their HSN codes and applicable cess rates. The IGST Rates of Goods, Chapter wise IGST rate, GST Compensation Cess rates, IGST Exemption/Concession are available on C.B.E. & C. website for trade and departmental officers as well.

Import of Services

(1) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contract value
(2) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced.

The GST applicability on the above two transactions will be :

(a) Supplier of services located in India would be liable to pay integrated tax on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India & the said supplier of services located in India would be eligible for taking input tax credit of the integrated tax so paid.
(b) The total value of consideration will be the value of services as per the contract of exporter of services located in India & Recipient of services located outside India, Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of the services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of Section 2(6)(iv) of the IGST Act, 2017.

If IGST has been paid by the supplier located in India for import of services on that portion of services which has directly provided by

the supplier located outside India to the recipient of services located outside India.

RBI by general instruction or by specific approval has allowed that a part of the consideration for such exports can be retained outside India.

Circular No. 78/2018, dated 31-12-2018

Valuation of the imported goods

The value of imported goods, for levy of duties of Customs shall be transaction value of such goods as determined under Section 14(1) and 14(2) of the Customs Tariff Act, 1975. As per Amendment by Finance Bill, 2018, IGST shall be charged on last transaction value [sub-section 8A of Section 3 of the Customs Tariff Act, 1975], Compensation Cess shall be charged on last transaction value [sub-section (10A) of Section 3 of the Customs Tariff Act, 1975] and social welfare Surcharge shall be collected as a duty of Customs @ 10% calculated on the aggregate of duties or taxes or Cesses.

The value of the imported article for the purpose of levying GST Compensation cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being in force, as an addition to, and in the same manner as, a duty of customs. These would include Social Welfare surcharges, anti-dumping and safeguard duties. The inclusion of anti-dumping duties and safeguard duty in the value for levy of IGST and Compensation Cess, social welfare Surcharge is an important change. These were not hitherto included in the value for the levy of Additional Duty of Customs (CVD) or Special Additional Duty (SAD).The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess. Although BCD, Social Welfare Surcharge and IGST would be applicable in majority of cases, however, for some products CVD, SAD or GST Compensation cess may also be applicable. For different scenarios the duty calculation process is different.

However, for this topic the applicable duties on clearance of imported goods into India as well as goods imported under export promotion schemes are summarised in the following Table.

Sl. No.	Types of Transaction or Customs Clearances.	Documents for Customs Clearances & filing	Basic Customs Duty. (BCD)	Integrated Tax (IGST)	Social Welfare Surcharge
1.	Imported goods Clearance from the port of Import either from sea, air or land Customs stations)	Bill of Entry, Commercial Invoice, Packing List. (Bill of entry for Home Consumption shall be filed by the importer and duties payable by the importer). (In case of clearances of imported goods from a port of import to warehouse, importer has to file an into-bond bill of entry for warehousing)	(BCD) % rates as applicable in terms of Customs Tariff. NIL (For movement of imported goods from port to customs bonded warehouse)	Integrated Tax (IGST) % applicable as per Tariff Only IGST will be charged on Commercial Invoice in accordance with Board Circular No. 46/2017-Cus., dated 24-11-2017	Social Welfare Surcharge @10%
2.	Clearances from the Public Warehouse appointed under Section 57 of the Customs Act, or from the Private warehouse licensed under Section 58 of the Customs Act.	Commercial Invoice, Buyer shall file the Bill of entry for Home Consumption. (Buyer shall pay Customs duty, IGST and SWC as applicable and Seller shall pay IGST only)	Basic Customs Duty (BCD) % as applicable and also seller will charge IGST on removal from warehouse over & above	Integrated Tax (IGST) % as applicable	Social Welfare Surcharge @10%.

3.	High Sea Sales (Goods before crossing the Customs frontiers of India).	Commercial Invoice, High Sea Sale-Agreement. Buyer will file the Bill of entry (pay the duties)	Basic Customs Duty (BCD) % as applicable to in terms of customs Tariff.	Integrated Tax (IGST) % as applicable (IGST shall be levied only on the last transaction value at the time of clearances vide C.B.E. & C., Circular No. 33/2017-Cus., dated 1-8-2017)	Social Welfare Surcharge @10%.
4.	Export oriented units/ STPI(imported goods clearances from the port of import)* Remarks: IGST/ Compensation cess is exempted till1-10-2018 vide Notification No. 78/2-17 Cus dated 13.10.2017 as amended by Notification No 33/2018 Cus dated 23.3.2018	Bill of Entry, Commercial invoice, Packing list, Bill of entry shall be filed by the EOU/STPI *M.C & I (D.C) Notification No. 55/2015-20 dated 23.3.2018, BCD – Nil, Notification No. 59/2017 Cus dated 30.6.2017, Unit have to follow customs duty (imports of goods Concessional rate of duty) Rules 2017	Basic Customs Duty (BCD) % as applicable as per Customs Tariff (in case of EOU's has domestic clearance in place of export) Otherwise BCD Nil vide Notification No. 19/2021 Customs dated 30.03.2021	Integrated Tax (IGST) % as applicable * IGST-Nil Compensation Cess- NIL Till 31'st March'2022 vide Notification No. 18/2022-Cus., dated 30-3-2022	Social Welfare Sur- charge @10%.* Social Welfare Sur- charge is exempt vide Notification No. 13/2018-Cus., dated 2-2-2018

5.	Special Eco-nomic Zone / FTWZ. (Clearance from Port of importation to the said units)	Bill of Entry, Commercial Invoice, Packing List. Bill of Entry shall be filed through SEZ/ FTWZ online and presented to the Customs port of importation for clearance/ transshipment of goods to Unit for examination and assessment shall be carried by the authorised officer of SEZ.	Basic Cus-toms Duty (BCD) % - NIL.	Integrated Tax (IGST)- NIL Notification No. 64/2017- Cus., dated 5-7-2017	Social Welfare Surcharge - NIL
6.	Special Eco- nomic Zone/ FTWZ. (Clearance from SEZ/ FTWZ to Domestic Tariff Area i.e. within India)	Bill of Entry, Commercial Invoice, Pack- ing List. Bill of Entry shall be filed by the SEZ / FTWZ Unit on behalf of the Buyer and pay duties.	Basic Customs Duty (BCD) % as applicable in terms of Cus- toms Tariff.	Integrated Tax (IGST) as applicable rate.	Social Welfare Surcharge @10%

7.	Import of Goods against Advance Authorisation/ EPCG scheme. **M.C. & I. (D.C) Notification No. 54/2015-20, dated 23-3-2018	Bill of Entry, Commercial Invoice, Packing List, Copy of Authorisation / License issued by the DGFT,	Basic Customs Duty- NIL (subject to fulfillment of export obligation by physical exports) BCD is exempted vide Notification No. 79/2017-Cus., dated 13th October' 2017 as amended.	Integrated Tax (IGST) NIL ** **IGST and Compensation Cess is exempt till 30th June 2022 vide DGFT Notification No. 57/2015- 20., dated 20-3-2019 and No- tification No.19/2022-Cus., dated 31.03.2022	Social Welfare Surcharge –NIL**

Note on duty structure of imported goods:

(1) GST Compensation Cess shall be charged in certain luxurious imported goods vide Notification No. 1/2017-Compensation Cess dated 28-6-2017.
(2) Compensation Cess ₹ 400 P.T on Coal, lignite, briquettes & peat vide Notification No. 1/2017-Compensation Cess (Rate) , dated 28-6-2017.
(3) Exemption from the whole of Social Welfare Surcharge leviable on Integrated tax under sub-section (7), and Goods and Services Tax compensation cess under sub-section (9), of section 3 of the said Customs Tariff Act read with the said clause108 of the Finance Bill , when goods imported into India vide Notification No. 13/2018-Cus., dated 2-2-2018.
(4) Exemption from Social Welfare Surcharge to specified goods vide Notification No.11/2018-Cus., dated 2-2-2018.
(5) Exemption of import duty: Customs duty is free for second hand capital goods imported for re-pair and reconditioning re-exported after repair.
(6) Apart from the BCD, IGST, Compensation Cess in certain items anti-dumping and safeguard duties shall be collected as per Customs Tariff and specific Notification.
(7) CBIC vide Notification No. 16/2020- Customs dated March 24, 2020 amended Notification No. 52/2003- Customs dated March

31, 2003 to extend the exemption from IGST and compensation cess to EOUs on imports till March 31, 2021 by substituting "1st day of April, 2020" in proviso to the opening para of Notification No. 52/2003- Customs dated March 31, 2003 with "1st day of April, 2021" and further exemption extended up to 1'st day of April'2022 vide Notification No.19/2021-Cus., dated 30-03-2021.

Input tax credit paid on imported goods

Input Tax Credit of the Integrated Tax (IGST) paid at the time of import of goods shall be available to the importer and the same can be utilized by him as Input Tax credit for payment of taxes on his outward supplies. The Basic Customs Duty (BCD), shall however, not be available as input tax credit.

IGST on Import of goods by 100% EOU's

The Central Government vide Notification No. 65/2018-Cus., dated September 24, 2018 has extended the exemption provided to goods imported by EOUs for specified purposes as per Notification No. 52/2003-Cus., dated March 31, 2003 as amended vide Notification No. 78/2017-Cus., dated October 13, 2017 from levy of IGST and Compensation Cess leviable thereon under sub-sections (7) and (9), respectively of Section 3 of the Customs Tariff Act, 1975 till March 31, 2019 and extended further upto 31'st March'2020 vide Notification No.9/2019-Cus., dated 25-3-2019.

CBIC vide Notification No. 16/2020- Customs dated March 24, 2020 amended Notification No. 52/2003- Customs dated March 31, 2003 to extend the exemption from IGST and compensation cess to EOUs on imports till March 31, 2021 by substituting "1st day of April, 2020" in proviso to the opening para of Notification No. 52/2003- Customs dated March 31, 2003 with "1st day of April, 2021". and further exemption extended up to 1'st day of April'2022 vide Notification No.19/2021-Cus., dated 30-03-2021.

Further, Amendments in Foreign Trade Policy, 2015-2020.

1. Exemption from Integrated Tax and Compensation Cess under Advance Authorisation under Para 4.14 of FTP 2015-20 is extended up to 31-3-2020.
2. Exemption from Integrated Tax and Compensation Cess under EPCG Scheme under Para 5.01(a) of FTP 2015-2020 is extended upto 31-3-2020.
3. Exemption from Integrated Tax and Compensation Cess under EOU Scheme under Para 6.01(d) (ii) of Foreign Trade Policy 2015-2020.

[M.C. & I.(D.C.) Notification No.57/2015-20, dated 20.03.2019]

Further, Amendments in Foreign Trade Policy, 2015-2020.

1. Exemption from Integrated Tax and Compensation Cess under Advance Authorisation under Para 4.14 of FTP 2015-20 is extended up to 30-06-2022.
2. Exemption from Integrated Tax and Compensation Cess under EPCG Scheme under Para 5.01 (a) of FTP 2015-2020 is extended upto 30-06-2022
3. Exemption from Integrated Tax and Compensation Cess under EOU Scheme under Para 6.01(d) (ii) of Foreign Trade Policy 2015-2020is extended upto 30-6-2022.

[M.C. & I.(D.C.) Notification No.66/2015-20, dated 1-4-2022]

Meaning of Import of Services:

Section 2(11) of the IGST Act, 2017 defines "import of services" means the supply of any service, where,-

(i) the supplier of service is located outside India;
(ii) the recipient of service is located in India; and
(iii) the place of supply of service is in India;

Section 7(4) of the IGST Act, 2017 prescribed that where the supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.
Section 7(1)(b) of the CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business shall be considered as supply.
Thus, import of services without consideration shall not be considered as supply and not liable to GST.
Further, the provision contained in Schedule 1 (clause 4) of the CGST Act, 2017, import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business, even if made without consideration shall be treated as supply and clause (2) of schedule 1 of the CGST Act, specified supply of goods or services or both between related persons or between distinct persons as per Section 25 of the CGST Act, 2017, when made in the course of or furtherance of business shall be treated as supply and liable to GST.

DEFERRED PAYMENT OF CUSTOMS DUTY

The deferred payment of Customs duty means delinking duty payment and Customs clearance. It is based on the principle 'Clear First-Pay

later'. The aim is to have a seamless wharf to warehouse transit in order to facilitate just-in-time manufacturing as a part of the ease of doing business. It is a trade facilitation move wherein benefits are extended to the importers who have demonstrated strong internal control systems and willingness to comply the deferred payment.

Section 47 of the Customs Act, 1962 prescribes clearance of goods for home consumption and where the proper officer is satisfied that importer has paid import duty on goods meant for clearance. Accordingly, a proviso was inserted in section 47 that the Government may permit a class of importers to make deferred payment of the import duty. Accordingly, The Government has introduced the 'Deferred Payment of Import Duty Rules, 2016' vide Notification Nos 134/2016-Customs (NT) and 135/2016-Customs (NT) both dated 02 Nov 2016.This scheme is in force w.e.f. 16 Nov 2016. The scheme was as part of 'Turant Customs' reforms which envisages a faceless, contactless and paperless Customs environment for enhancing ease of doing business, increasing efficiency and improvement in turnaround time.

This benefit is currently being extended to importers holding AEO T-2 or T-3 status

The highlights of the Deferred Payment of Import Duty Rules, 2016' as under:

1. **Applicability:** Only applicable to eligible importer who have been notified under the proviso to sub-section (1) of section 47 of the Act, 1962.
2. **Intimation:** The eligible importer, who intends to make deferred payment, or his authorised representative, shall indicate the same using flag "D" in the Payment Method column of each Bill of Entry filed. In his/her ICEGATE Login, the AEO Nodal person will be able to acknowledge such intent of availing the facility of deferred duty payment by authenticating using One Time Password (OTP) sent to his registered e-mail address. The Nodal person would be able to authenticate multiple Bills of Entry at one go. Only on such authentication by the AEO, customs clearance would be provided for the consignment under deferred payment of duty Rules. The Concerned authority after verifying the eligibility permits the facility of deferred payment of Customs duty.
3. **Payment of duty :** The eligible importer shall pay the duty by the dates specified hereunder inclusive of the period (excluding holidays) as mentioned in sub-section (2) of section 47 of the

Customs Act,1962, the importer will pay Customs duty on imports in the manner is summarised in the below table.

Particulars	Date of payment of Customs Duty
for goods corresponding to Bill of Entry returned for payment from 1st day to 15th day of any month,	By the 17th day of that month
for goods corresponding to Bill of Entry returned for payment from 16th day till the last day of any month other than March,	by the 2'nd day of the following month;
for goods corresponding to Bill of Entry returned for payment from 16th day till the 29'th March	by the 31'st March and
for goods corresponding to Bill of Entry returned for payment from 30'th day till the 31st day of March	The duty shall be paid by the 2'nd day of April.

4. **Manner of payment:** The eligible importer shall pay the duty electronically:

   Provided that the Assistant Commissioner or the Deputy Commissioner of Customs, as the case may be, for reasons to be recorded in writing, may allow payment of duty by any mode other than electronic payment.

5. **Deferred payment not to apply in certain cases:** - An eligible importer who fails to pay duty in full by due date more than once in a period of three consecutive months shall not be permitted to make deferred payment:

   Provided that the facility of deferred payment shall not be restored unless the eligible importer has paid the duty in full along with the interest.

6. **Exemption in respect of certain goods:** Nothing contained in these rules shall apply to the goods which have not been assessed or not declared by the importer in the entry made under the Act.

C.B.E. & C Circular:

C.B.E. & C vide its Circular No. 52/2016-Cus, dated 15.11.2016

[2016(341) E.L.T.(T37)]was clarified that Importers certified under Authorised Economic Operator Programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of duty of Customs.

2. Every importer certified as AEO-T2 / AEO-T3 shall obtain ICEGATE Login which is essential to avail benefits envisaged in the AEO Programme. Further, in order to avail the facility of deferred payment, every AEO-T2 /AEO-T3 is advised to nominate a nodal person borne on their establishment who would be responsible for authenticating all the customs related transaction on behalf of the AEO. Since the option of deferred payment has been extended only to AEO (Tier-Two) and AEO (Tier –Three), it is important for the AEO to exercise due caution in nominating the AEO nodal person to prevent misuse of facility of deferred payment. The contact details of AEO nodal person shall also be provided in ICEGATE login to ensure that the information reaches in time at their registered mail for authentication.
3. As per rule 4 of the Deferred Payment of Import Duty Rules, an eligible importer who intends to avail the benefit of deferred payment shall intimate to the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be , having jurisdiction over the port of clearance , his intention to avail the said benefit. An Intimation addressed to the AEO Programme Manager with a copy to the Principal Commissioner(s) of Customs or the Commissioner(s) of Customs, as the case may be, having jurisdiction over the port(s) of clearance shall be considered as an intimation by an eligible importer of his intention to avail the said benefit.
4. The eligible importer who intends to make deferred payment shall indicate the same using flag ”D” in the Payment Method column of Bill of Entry filed. In order to ensure that the facility of deferred payment is availed only by the eligible importer, option has been provided in ICEGATE Login for AEO Nodal person to acknowledge such intent and authenticate using one Time Password (OTP) sent to his registered e-mail address. The Nodal person would be able to authenticate multiple Bills of Entry at once. Only on such authentication by the eligible AEO importer, customs clearance would be provided for the consignment under deferred payment of duty Rules.
5. The due dates for deferred payment of import duty by eligible importers are specified in rule 6 of the said Rules. The eligible importer also has an option to select the challans belonging to the

deferred period and pay at anytime, even before the due date at their convenience.

Reports regarding availing of deferred payment at each port are made available in ICES. The Principal Commissioner/Commissioner of Customs may monitor the same for their jurisdiction

C.B.I.& C. Circular:

CBIC vide its Circular No. 37/2020-Customs, dated 19.08.2020 [2020(373) E.L.T.(T75)] has clarified that the Extension of Deferred payment of Customs duty benefits to 'Authorised Public Undertakings'. The facility shall be made available to eligible APUs and further clarified that:

2. The facility of deferred payment of Customs import duty shall be governed by the Deferred Payment of Import Duty Rules, 2016, as amended. It is expected that the extension of this facility to the Authorised Public Undertakings shall expedite the Customs clearance of their imported goods at the Ports/Airports/ICDs.
3. The facility of deferred payment of Customs import duty shall be available to Public Undertakings of Central and/or State Government which satisfy the following criterion:
   (i) Must be a Government company as defined in the Companies Act, 2013 or a statutory Corporation, a department or an autonomous body owned and/or controlled by the Central Government and/or State Government.
   (ii) Must possess a valid Importer-Exporter Code (IEC).
   (iii) Must be recommended for availing the said facility by an officer not below the rank of the Deputy Secretary to the Government of India or an officer of equivalent rank in the State Government.
   (iv) Must undertake to comply with the provisions of the Deferred Payment of Import Duty Rules, 2016.
   (v) Must adhere to legal compliance requirements as per Section 3.2 of revised AEO programme as per Circular No.33/2016-Customs, dated 22nd July 2016[2016(338)E.L.T.(T6)], as follows:
   (a) There should be no show cause notice issued to them during last three financial years involving fraud, forgery, outright smuggling, clandestine removal of excisable goods or cases where Service Tax/ GST has been collected from customers but not deposited to the Government.

(b) There should be no case wherein prosecution has been launched or is being contemplated against the applicant or its senior management.

(a) (c)If the ratio of disputed duty demanded or drawback demanded or sought to be denied, in all the show cause notices issued under the Customs Act, 1962 [other than those mentioned in Para 3(v) (a) and 3(v)(b)] during the last three financial years, to the total duty paid and drawback claimed during the said period is more than ten percent, a review would be taken of the nature of cases and decision would be taken on issue or continuance of AEO status by AEO Programme Manager.

Explanation: for para 3(v)(a), 3(v)(b) and 3(v)(c) above, the cases where the show cause notices have been dropped or decided in favour of the applicant by the adjudicating or appellate authorities will not be considered.

(4) The eligible Public Undertaking desiring to avail the facility of deferred payment of Customs import duty shall apply to the Principal Commissioner/Commissioner, Directorate of International Customs (DIC), CBIC in the form as per Annexure-I. After careful scrutiny of the application and satisfying himself that the applicant satisfies the eligibility conditions, the Principal Commissioner/ Commissioner, DIC, CBIC shall approve the applicant as an 'Authorized Public Undertaking' eligible for availing the benefit of deferred payment of Customs import duty. The facility shall in the first instance be available for a period of 2 years, extendable for a further period not exceeding 2 years at a time. Further, at the time of granting approval, the Principal Commissioner/ Commissioner, DIC, CBIC shall update the details in the Customs Automated System to enable the facility of deferred payment of duty. No further action will be required by the APU in order to avail the facility.

(5) Upon approval by the Principal Commissioner/Commissioner, DIC, CBIC, the nodal person appointed/authorised by the APU shall obtain ICEGATE login following the procedure laid down in Advisory on www.icegate.gov.in. The same is available on the following link https:// www.icegate.gov.in/ Download/v1.2_ Advisory _Registration_ APPROVED. The contact details of such nodal person shall be provided in the ICEGATE login to ensure that the information reaches their registered email/contact number on time for due verification and authentication. The nodal person

shall be responsible for authenticating all the Customs related transactions on behalf of the Authorized Public Undertaking.

(6) The eligible APU intending to make deferred payment of Customs import duty shall indicate the same using flag "D" in the Payment Method Column of the Bill of Entry filed. In order to ensure that the facility of deferred payment of Customs import duty is availed only by the eligible importer, an option has been provided in ICEGATE login for the nodal person on behalf of the APU, to acknowledge such intent and authenticate it using One Time Password (OTP) sent to his registered e-mail address/ contact number. The nodal person would be able to authenticate multiple Bills of Entry at once. Only on such authentication, the Customs clearance would be provided for the subject consignment under the Deferred Payment of Import Duty Rules, 2016.

(7) The due dates for making the deferred payment of Customs import duty are specified in rule 5 of the said Rules, are reproduced for reference as follows :
   (a) For goods corresponding to Bill of Entry returned for payment from 1st day to 15th day of any month, the duty shall be paid by the 16th day of that month;
   (b) For goods corresponding to Bill of Entry returned for payment from 16th day till the last day of any month other than March the duty shall be paid by the 1st day of the following month; and
   (c) For goods corresponding to Bill of Entry returned for payment from 16th day till the 31st day of March, the duty shall be paid by the 31st March.

(8) The eligible Authorized Public Undertaking has an option to select the challans belonging to the deferred period and pay the Customs import duty anytime, even before the due date, at his convenience.

(9) Reports regarding availment of deferred payment of Customs import duty at each Customs station of import are available to the Principal Commissioner/Commissioner of Customs in ICES in their standard reports and Commissioner dashboards. The Principal Commissioner/ Commissioner of Customs may monitor the same for imports pertaining to his jurisdiction and ensure timely payment of the Customs import duty as per the said Rules. Instances of non-payment may be brought to the notice of the Principal Commissioner/Commissioner, DIC, CBIC. Further, the

Principal Commissioner/Commissioner, DIC, CBIC may revoke such approval granted under para 3 of this circular, if the APU becomes ineligible for the facility of deferred payment of Customs import duty at any point in time.

(10) In this regard attention is also drawn to the omission of Rule 4 of the Deferred Payment of Import Duty Rules, 2016. The implication of this omission is that henceforth the approved AEO Tier 2/3 or approved APU shall not be required to send any intimation regarding the intent to avail the facility of deferred payment of Customs import duty to the Principal Commissioner/Commissioner, DIC and/or the Principal Commissioner/Commissioner having jurisdiction over the port(s) of clearance. Accordingly, para 3 of Circular No.52/2016-Customs, dated 15.11.2016 stands deleted.

IGST on Goods Sold through Customs Warehouse

IGST shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e. at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption. The supply of good before their clearance from the warehouse would not be subject to IGST and the same would be levied and collected from the Customs bonded warehouse. C.B.E. & C. Circular No. 3/1/2018- IGST, dated 25-5-2018.

The Circular No.3/1/2018-IGST, dated 25.5.2018 has been rescinded by CBIC, Circular No.04/01/2019-GST dated 1'st February, 2019 as the provision of the CGST (Amendment) Act, 2018 and SGST Amendment Acts of the respective States have been brought into force w.e.f.1.2.2019. Schedule III of the CGST Act, 2017 has been amended vide section 32 of the CGST (Amendment) Act, 2018 so as to provide that the "supply of warehoused goods to any person before clearance for home consumption" shall be neither a supply of goods nor a supply of services.

LEVY OF IGST ON HIGH SEA SALE TRANSACTIONS

High Seas Sale is sale of goods by the original importer to another party when the imported goods are yet on high seas. High seas sale happened prior to importation and filing of bill of entry for customs clearance. In such situations, the bill of entry for Customs clearance shall be filed by the person who purchase these imported goods on high seas basis from the original importer.

In terms of sub-section (1) Section 5 of the IGST Act, 2017, provides that the Integrated Tax on goods imported shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

In terms of Section 7(2) of the IGST Act, 2017, which has specified that supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce. As such High Seas Sale is also covered under IGST Act, 2017.

In view of confusion for the levy and collection of Integrated Tax and Customs Duty on High Seas Sale of imported goods under GST regime, the C.B.E. & C., has issued clarification Vide Circular No. 33/2017-Cus., dated 1-8-2017 [2017 (352) E.L.T. (T43)].

The extract of the relevant paras is reproduced as under:

The issue has been examined in the Board. 'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High Sea sale of the goods, the Customs declarations i.e. Bill of Entry etc. is filed by the person who buys the goods from the original importer during the said sale. In the past, CBEC has issued various instructions regarding high sea sales appropriating the contract price paid by the last high sea sales buyer into the Customs valuation. [Circular No. 32/2004- Cus. dated 11-5-2004 refers].

As mentioned earlier, all inter-state transactions are subject to IGST. High sea sales of imported goods are akin to inter- State transactions. Owing to this, it was presented to the Board as to whether the high sea sales of imported goods would be chargeable to IGST twice i.e. at the time of Customs clearance under sub-section (7) of section 3 of Customs Tariff Act, 1975 and also separately under Section 5 of The Integrated Goods and Services Tax Act, 2017.

GST council has deliberated the levy of Integrated Goods and Services Tax on high sea sales in the case of imported goods. The council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

The above decision of the GST council is already envisioned in the provisions of sub-section (12) of Section 3 of Customs Tariff Act, 1975 inasmuch as in respect of imported goods, all duties, taxes, Cessess etc. shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purposes. The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales- contract, details of service charges/ commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In case of a doubt regarding the truth or accuracy of the declared value, the department may reject the declared transaction value and determination the price of the imported goods as provided in the Customs Valuation rules.

Circular No. 42/ 2019 –Customs, dated 29.11.2019

Subject: Mandatory uploading of specified supporting documents and mention of document code and IRN in Bills of Entry (BoE) – reg.

Reference is invited to Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 [notified vide Notification No 36/2018-Cus (NT) dated 11.05.2018]. In the said regulations, "Supporting documents" have been defined under Regulation 2(g) as documents in the electronic form or otherwise, which are relevant to the assessment of the imported goods under Section 17 and 46 of the Customs Act, 1962.

2. Reference is also invited to various Board's Circulars issued in relation to eSANCHIT on imports.
3. Currently, on the import side, uploading of at least one document on e-Sanchit is mandatory for every Bill of Entry. This is now being modified to mandatorily uploading on eSANCHIT, for every Bill of Entry, Invoice/ Invoice cum packing list and Transport Contract i.e. Bill of Lading/ Airway bill etc., as the case may be. Directorate of Systems have issued Advisory No. 25/2019 dated (web link) laying down requirement of mandatory uploading on e-Sanchit, the Invoice/ Invoice cum packing list and Bill of Lading/ Airway bill etc. for every Bill of Entry and subsequent declaration of document code and IRNs in the Bill of Entry.

   With effect from 02.12.2019, for every Invoice and Bill of Lading/ Airway Bill declared in the Bill of Entry, the reference of IRN (Image Reference Number) generated from eSANCHIT with the relevant document code as given above must be provided. The reference of the above document codes from eSanchit in the Bills

of Entry has been made mandatory in System.

4. As regards all the other supporting documents (such as Country of Origin Certificate (COO), license/ permission from any Government Agency (PGA) in relation to the eligibility for import / clearances or claim of duty exemption), it is emphasized that to make Customs duty truly paperless, uploading of these documents through eSANCHIT either by beneficiary or by PGAs, should be ensured administratively. Therefore, the field offices must ensure that no physical copy of any supporting document is submitted and every relevant document is submitted only electronically via eSanchit either by the beneficiary or by the Participating Government Agency. DG (Systems) would also enforce the same in due course.

5. The above changes have been separately communicated to the various CHA associations and RES software providers. However, the same may further be given publicity by way of Trade notices. The above two changes may kindly be given wide publicity and the Trade may be guided suitably to ensure that there is minimum disruption after their implementation.

Circular No. 40/2019-Customs, dated 29.12.2019

Subject: Auto Out of Charge under Express Cargo Clearance System (ECCS) – reg.

Briefly, courier Bills of Entry (CBE) filed for clearance of imported cargo under ECCS are subjected to Risk Management System. The Risk Management Server either facilitates or interdicts a Courier Bill of Entry (CBE). The facilitated CBEs after payment of duty, if any are diverted for X-ray screening before final out of charge.

2. The X-ray screening of goods may either 'clear' the goods or mark them as 'suspicious'. The goods marked 'suspicious' have to undergo examination by the proper officer. However, CBEs in respect of X-ray cleared goods are sent to the Shed Superintendent or Appraiser for Out Of Charge (OOC) order.
3. Express Industry Council of India (EICI) has stated that all Customs procedures including assessment, compulsory compliance requirements, duty payment etc., for a shipment are electronically complete before the facilitated shipment is subjected to Customs X-ray screening; once the shipment is 'cleared' on X-ray screening, there may not be a requirement for a Customs officer to issue an Out of Charge order. Express Industry Council of India (EICI) has requested to introduce 'Auto Out of Charge' for

such imported shipments as this will help in mitigating delays in clearance of Express Cargo at the international courier terminals.

4. Directorate General of Systems and Data Management is in technical agreement with the proposal of EICI to implement 'Auto Out of Charge' under ECCS.
5. Over the years, cross-border movement of express cargo has increased significantly which mandates simplification of procedure. It is also observed that sending a CBE after X-ray screening to the Shed Superintendent/Appraiser, merely for giving out of charge order, adds an avoidable step in the automated clearance process. Board is of the view that ECCS should automatically give out of charge to goods covered under facilitated CBE which has been 'cleared' on Customs X-ray screening.
6. In view of the foregoing, Directorate of System & Data Management shall take necessary steps to implement Auto OOC. All Chief Commissioners are requested to issue suitable Public Notice and Standing order, for guidance of the stakeholders and the concerned officers.

A5 : WAREHOUSING

(1) The facility of warehousing of imported goods in Customs Bonded Warehouses, without payment of Customs duty, is permitted under the Customs Act, 1962. In addition to that, the provision of the Warehoused Goods (Removal) Regulations, 1963 and Manufacture and Other Operations in Warehoused Regulations, 1966 are also applicable. Basically, goods after landing are permitted to be removed to a warehouse without payment of duty and duty is collected at the time of clearance from the warehouse. The law lays down the time period upto which the goods may remain in a warehouse, without incurring any interest liability and with interest liability.

If the imported goods cannot be cleared within a reasonable time the same can be allowed to be deposited in a public warehouse in terms of Section 49 of the Customs Act, 1962. The period of storage of imported goods pending clearance is 30 days which can be extended further by Commissioner, for a period of 30 days at a time. Warehousing provisions are not applicable to these goods. However, single Window NOC Module Project introduced for normal imports w.e.f. 5-2-2016 has been extended to in bond Bills of entry with certain exceptions.

(2) For answers to frequently asked questions on Customs bonded warehouses, please see 2016 (338) E.L.T. T81 and 2016 (337) E.L.T. T19-20.

(3) If the importer does not want to use the entire stock of imported goods immediately or he is not in a position to pay the full customs duty leviable on these goods, he can file an into bond bill of entry for warehousing the goods. Public warehouses run by Central Warehousing Corporation or by State Warehousing Corporations have come up at all important centres. In terms of amendments carried out by Finance Act, 2016, these warehouses are now required to be licensed as against being appointed earlier. Private warehouse under Section 58 as well as Special Warehouses under Section 58A of Customs Act are also required to obtain license. Board's power to declare warehousing station has also been dispensed with. The licensing power has been given to Commissioner/Commissioner/Principal Commissioner and validity of these licenses is till their suspension by competent authority or surrender by License holder. For suspension of license on breach of Rules, procedure of notice, inquiry and hearing have been prescribed. Detailed Regulations for licensing, storage and handling of good for each type of warehouse have been notified. Importer intending to deposit goods in these warehouses, has to file a Bond of thrice the amount of duty involved along with prescribed security. A running duty Bond is also permissible. New Bonds have been prescribed replacing old Bond format. In certain cases, requirement of security has been dispensed with vide 2016 (336) E.L.T. (T6). Department has done away with the requirement of bank guarantee for storing imported goods for one year. For certain goods with a long gestation period and imports of strategic importance, security may not be demanded.

(4) **Warehousing period.** - As per amended provisions w.e.f. 14-5-2016 vide Finance Act, 2016, warehousing period in respect of Capital goods intended for use in EOU/EHTP/ STP Units or any warehouse where manufacture or other operations have been permitted, is till their clearance from the warehouse and in case of goods other than capital goods for these units till their consumption or clearance from the warehouse. [Earlier it was five years in the case of capital goods and 3 years in the case of other goods, extendable without limit by Commissioner]. In all other cases warehousing is allowed only for one year suitably reducible for perishable goods and extendable for other goods by

Commissioner/Principal Commissioner for one year at one time. However, in such cases if initial Bond is without security, then security as prescribed has to be furnished [2016 E.L.T. 336 (T6)]. Extension of warehousing period cannot be granted, except in very exceptional circumstances, if application therefor is received after expiry of the earlier allowed warehousing period (including extension, if any) as such goods can no longer be regarded as warehoused goods. Extension of warehousing period applied for in time not rejected by department but kept undecided - rate of duty as on date of clearance would apply — 2009 (242) E.L.T. 299 (Tribunal) — BMS Chemie v. Commissioner.

(5) **Special Warehouses.** - A new concept of special warehouses has been introduced vide Section 58A of Customs Act, 1962 as inserted vide Finance Act, 2016 wherein specified goods are to be warehoused. Regulations for these warehouses are different from the ones for other regular warehouses in as much as that Bond Officer shall cause these warehouses to be locked and these shall not be operated except in presence of Bond Officer. For removal of goods from one warehouse to another or for export, a onetime lock for transportation will be used. However, there is no provision for escorting the goods. The provisions of special warehousing is applicable to Gold, Silver, Precious metals and articles, supplies for duty free shop, supply as store to Vessels and Aircrafts and supply to foreign privileged persons.

An amendment to the Customs Act modifying the terms and conditions subject to which the goods shall "remain warehoused", shall not apply to the goods warehoused prior to such amendment.

(6) **Relinquishment of title.** - The owner of any warehoused goods can relinquish his title to the goods on payment of penalties that may be payable on these goods (rent, interest and other charges omitted by Finance Act, 2016) at any time before an order for clearance of these goods for home consumption has been made so as to get absolved from payment of duty. This benefit has been barred (vide Finance Act, 2006) in case of goods regarding which an offence appears to have been committed. Rajasthan and Karnataka High Courts have held the view that if the ex- bond bill of entry is not filed and assessed, the owner can relinquish his title even after expiry of the warehousing period and can get himself absolved of the duty [2008 (223) E.L.T. 138 (Raj.) - J.K. Cement Works v. CCE; 2007 (217) E.L.T. 176 (Kar.) - CCE v. i2

Technologies Software Pvt. Ltd.].

(7) **Free Trade and Warehousing Zones** proposed to be set up under the Foreign Trade Policy 2004-09 with the intention of making India an international trading hub will operate on the same lines as Special Economic Zones. Under the Foreign Trade Policy, private bonded warehouses even for Negative List Items will be permitted to make faster supply of goods to specific license holders or Advance License holders.

(8) **Interest on warehoused goods. -**Interest at a flat rate (currently 15%) is chargeable after completion of 90 days of warehousing period, in accordance with Section 61(2). Board has power to waive interest under circumstances of exceptional nature. The interest for past periods is to be calculated at prescribed different rates for the time being in force. Held in 2011 (264) E.L.T. 492 (S.C.) — SBEC Sugar Ltd. v. U.O.I : Goods deemed as improperly removed under Section 72(l)(b) when cleared from warehouse after expiry of permitted period. Interest payable on duty amount from date of expiry of permitted period till date of clearance from warehouse. License under EPCG scheme obtained subsequently but benefit thereof applicable to already imported goods only when goods are cleared under Section 68. Any different operation would render Section 72 otiose resulting in EPCG operating as amnesty scheme granting unintended and undue advantage to importer. Interest under Section 61 is not demandable for the period prior to issuance of demand notice - 2009 (236) E.L.T. (Tri.) -CC v. Stilbene Chemicals Ltd. [See S.C. and Delhi H.C. Judgments referred to therein and relied on]. Interest is not payable for over-stay if goods at the time of removal from warehouse were duty free. [Pratibha Processors v. U.O.I. -1996 (88) E.L.T. 12 (S.C.)]. Interest accrued on capital goods, permissible office equipment, captive power plants, tools, jigs, gauges, fixtures, moulds, dies, instruments and accessories imported by 100% EOUs (including those situated in Electronic Hardware/Software Technology Parks) has been exempted. 'Interest' in Section 68 means interest on other dues such as warehouse charges, rent, etc. and not duty (Section 68 has since been amended vide Finance Act, 2016 to delete terms interest, rent and charges). Interest under Section 47(2) is not leviable on warehoused goods cleared under Section 68. Interest amount would be nil where duty payable at the time of clearance of goods from the warehouse is nil. No interest shall be charged on crude, imported and stored in underground rock

caverns, for its storage beyond specified period.

(9) **Interest on Warehoused Goods**

No requirement of payment of interest prior to allowing extension of warehousing goods

Sub: Manner of payment of interest on warehoused goods:

Section 61 of the Customs Act, 1962 had been amended vide the Finance Act, 1994 whereby the interest payable with respect to warehoused goods was to be calculated with reference to the duty payable at the time of clearance of the goods from the warehouse. This was clarified through Circular no 31/96-Customs dated 07.06.1996. 2. However, noting the high inventory of goods lying in bonded warehouses, with the consequential effect of locking revenue, the Board had vide Circular 47/2002-Customs dated 29th July 2002, prescribed that interest due in terms of section 61 should be collected before allowing extensions, with a view to encourage early clearances. This led to importers having to deposit interest and seek refunds in the event of interest not being payable, for example in cases where goods were finally exported. In certain industries, the Board had relaxed the above condition for extending the warehousing period but prescribed that a demand notice should be served upon the importer and the same decided upon clearance of the goods, i.e. when the liability became determinable (Para 7 of Circular 10/2006-Customs dated 14th Feb 2006).The extant circulars have been reviewed by the Board with a view towards simplification of processes and promoting the ease of doing business.

In order to secure revenue and discourage protracted duty deferment arising due to warehousing, the Board has prescribed conditions for furnishing of security by importers vide circular 21/2016-Customs dated 31.05.2016. The said circular also specifies the amount (which is a percentage of the sum of duty and interest) of bank guarantee that would have to be furnished before allowing an extension in warehousing period. In continuation of the earlier dispensation, certain industries have been exempted from furnishing of such security. 4. In view of having prescribed the requirement of furnishing a bank guarantee as security, it has been decided by the Board that henceforth there would be no requirement of payment of interest prior to allowing extensions of warehousing period nor would there be any need to issue a demand for payment of interest. Interest, if any, shall be paid at

the time of ex-bonding of the goods from the warehouse. C.B.I& C, Circular No. 23/2016 –Customs dated 1.6.2016

(10)**Waiver/Refund.** -For waiver of interest up to ₹ 2 crores, Board's power has been delegated to Chief Commissioners. Ministry's consolidated guideline issued vide Circular No. 10/2006-Cus., dated 14-2-2006 [2006 (194) E.L.T. T23]

lists 13 categories of imports where this delegated power can be exercised. Tribunal has approved refund by Customs of warehousing charges paid by the importer to CWC due to wrong or delay committed by the department - 2006 (200)

E.L.T. 338 (Tri.) — C.C. v. PAC Systems Put. Ltd.

(4) Re-export of warehoused goods is permitted under Section 69 of Customs Act, 1962 except under certain notified restrictions [For details please see Part 4 of this Manual].

(11)Duty remission on account of natural loss in respect of specified warehoused goods is also permitted vide Notification No. 3/2016-Cus. (N.T.), dated 11-1-2016.

(12)Removal of mandatory warehousing for EOUs, STPIs, EHTPs, etc. - Revised procedure prescribed.-Consequent upon amendment of Notification No. 52/2003-Cus., dated 31-3-2003 by Notification No. 44/2016-Cus., dated 29- 7-2016 the need to comply with warehousing provisions has been done away with for EOUs, EHTPs, STPIs and Bio- Technology Park Units, these units shall stand de-licensed as warehouses under Customs Act, 1962, with effect from 13- 8-2016. However, C.B.E. & C. since re-named as C.B.I. & C, has prescribed maintenance of records of imported goods, in digital form, based upon data elements contained in Form A by these units. Further, in place of the re-warehousing certificate procedure and bond to bond movement, revised procedures to be followed have also been prescribed. —

M.F. (D.R.) Circular No. 35/2016-Cus., dated 29-7-2016.

(13)Dispensation of Bond for EOUs on implementation of GST. -It has been clarified by CBIC that B-17 Bond being a general purpose running bond will serve the requirement of continuity bond and there is no need for filing a separate continuity bond by EOUs [Circular No. 29/2017-Cus dated 17-7-2017].

(14)Clearance of warehoused goods has now been permitted by filing Bill of Entry under Customs Automated System in addition to existing clearance by the proper officer. [Sections 82, 83 and 84

of Finance Act, 2018]

A6 : RE-IMPORTATION/RE-EXPORTATION OF GOODS

Re-exports consist of foreign goods exported in the same state as previously imported, from the free circulation area, premises for inward processing or industrial free zones, directly to the rest of the world and from premises for customs warehousing or commercial free zones, to the rest of the world. And Re-importation or reimportation is the importation of goods into a country which had previously been exported from that country.

(1) **Re-imports.** -Goods which are exported out of India would, on their re-import, attract Customs duty like any import unless specifically exempted by a notification (Section 20). However, by issue of exemption Notification No. 94/96- Cus., dated 16-12-1996, the pre-1995 Budget position has been substantially restored, i.e., the goods on re-import have to pay customs duty equal to the export benefit availed at the time of their export. Re-importation should take place within 3 years (extendable by another 2 years by the Commissioner of Customs; also extendable to 10 years in case of re-import from Nepal) and there should be no change in the identity of the goods between the time of their export and re-import. Each item must be identified by methods appropriate to nature of the goods involved in it —

K.L. Iambi & Co. v. C.C. — 2005 (180) E.L.T. 226 (Tri.). The goods shall not be deemed to be the same if these are re- imported after being subjected to re-manufacturing or re- processing through melting, recycling or re-casting abroad.

(2) **Re-import of goods exported under DEEC/EPCG Schemes.** - In case of goods exported under the DEEC Scheme or EPCG Scheme, re-importation should take place within one year (extendable by another year by the Commissioner), the period of full export performance under the EPCG Scheme should not have expired and endorsement of re-import made in the record thereunder, details of the re-importation should be intimated to the Assistant Commissioner of Customs and the licensing authority and their acknowledgement obtained.

(3) **Re-import by registered manufacturers. -** In case of manufacturer-exporters registered with Central Excise Department the re-imported goods can be taken to the manufacturer's factory

without payment of central excise duty under a bond executed with the Assistant Commissioner of Customs which would be cancelled on receipt of a certificate of central excise authorities that re- imported goods have been received in the factory.

(4) **Cases eligible for free re-import. -** Under SI. No. 3 of the same Notification, goods which had not claimed any benefit at the time of export, such as those sent abroad for demonstration or exhibition or as samples, are eligible to be imported without payment of any duty. This duty exemption, however, does not apply in the case of re- imports effected by 100% EOU/EPZ units or those which had been exported from a bonded warehouse. For these goods, there is a more liberal scheme for re-import, repairs and reconditioning, etc. under Customs bond and re-export of the goods thereafter, under Notification No. 134/94- Cus., dated 22-6-1994.

(5) **Re-import of goods exported for repair. -** Under SI. No. 2 of the said Notification, goods exported for repairs abroad can be re-imported by paying duty only on the aggregate of (i) fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not) and (ii) insurance and freight charges both ways.

(6) **Another Notification No. 158/95-Cus. was issued for re-imports,** which is specific for exempting goods manufactured in India and parts of such goods, whether of Indian or foreign manufacture when re-imported into India for repairs or for re-conditioning from the duty of customs, basic as well as additional. Here also, similar conditions such as identity of goods being established, re-importation taking place within a period of three years etc. are provided. Importantly, another condition is that the re-imported goods are re- exported after repairs within a period of six months from the date of actual clearance of the goods (extendable for another six months by the Commissioner) and to ensure that the importer has to execute a bond for the amount of duty likely to be involved, supported by 25% bank guarantee. In case of failure to re-export, duty would have to be paid.

(7) In case the re-importation is for re-processing, refining, re-making or any other similar process, re-importation should take place within one year from the date of exportation and not three years as in the case of re-importation for repairs or re-conditioning. The process loss would be exempted from basic as well as additional customs duty. The notification also covers

situations such as re-packing of goods earlier exported, remaking of tablets of damaged medicines, re- processing of chemicals and is also applicable to re-import of goods which were earlier exported under any scheme like DEEC, 100% EOU, etc; subject to fulfilment of other prescribed conditions.

(8) Re-import of goods exported after introduction of GST is governed by Notification No. 45/2017-Cus., dated 30-6- 2016 with similar conditions.

(9) **Goods imported for exhibitions.** - Regarding goods imported for fair/exhibition/demonstration, subject to re- export, please see the procedure to be followed at 1996 (84) E.L.T. (T99-T104).

The period for re-export of leased equipment and machinery, imported for temporary use in contracts has been increased from 12 months to 18 months. No drawback is admissible when such leased goods are re-exported.

RE-EXPORT

Sometimes, indigenously manufactured goods, when exported, are returned back for various reasons including cancellation of export order, repair, etc. Similarly imported goods may have to be sent out for repair, reconditioning etc. Private, personal imported property may also have to be sent abroad for repair within the warranty period and returned.

Re-exportation of imported goods

1. It is to be noted that under Section 12 on import duties of Customs are leviable and no distinction is made whether the goods being imported had discharged duties earlier and they are being re-imported after exportation for particular purposes. Similarly, even if goods are indigenously manufactured which had been exported earlier under various export incentive schemes or duty drawback claim or even without any export incentive claim, when these are reimported, they attract and have to discharge the customs duty leviable on like import goods (as the duty is on the act of importation) unless an exemption is issued
2. To avoid repeat total duty on the full value of the imported goods when sent abroad for repairs, certain relief from duty liable has been provided. Similarly, where the goods are indigenously manufactured the basic intention is that when re-importation is effected on customs clearance for consumption in the market, they should bear the Central Excise duties which are otherwise leviable and which may not have been discharged at the time of exportation. Further, the exporters shold not get away with any

benefits which may have been given as an export incentive and these benefits should be recovered by way of duty. Exemption notification has been issued under Notification No.94/96-Cus. dated 16.12.1996 covering re-importation of indigenously manufactured goods under duty drawback/rebate claims export under bond or under other export incentive claims and the same may be referred to. Thus, certain duties have to be paid equivalent to the export incentives etc., on re-importation. It is only where the goods were exported earlier on payment of Central Excise duty, without claiming any rebate, and without claiming any export incentives such as duty 124 drawback or benefits of the duty exemption schemes, EPCG scheme and where the indigenously manufactured goods are being returned that no customs duties are leviable.

3. Where the indigenously manufactured goods are exported for repair and returned without claiming any benefits as provided in the said notification, duty is to be paid on a value comprising fair cost of repairs including cost of materials used in repairs, insurance and freight charges both ways.
4. Section 74 of the Customs Act, 1962 provides for grant of Drawback @ 98% of the Customs duties leviable at the time of importation, if the goods are re-exported by the importer, subject to certain conditions. The re-export is to be made within a maximum period of two years from the date of import (which period can be extended on sufficient grounds being shown) and goods have to be identified with the earlier import documents and duty payment to the satisfaction of the Assistant/Deputy Commissioner of Customs at the time of export. If such goods are used after importation, Drawback is granted on a proportionate basis but if such goods are re-exported after more than 18 months of import 'nil' Drawback is admissible. Further, no Drawback of the import duty paid is permissible for specific categories of goods such as wearing apparel, tea chests, exposed cinematographic films passed by Film Censor Board, unexposed photographic films, paper and plates and x-ray films. Also, in respect of motor vehicles imported for personal and private use the Drawback is calculated by reducing the ieport.com - India's Premier Export Import Portal 148 import duty paid according to the laid down percentage for use for each quarter or part thereof, but upto maximum of four years. [Refer Notification No.19/65-Cus., dated 6-2-1965]

5. **Section 74 of the Customs Act:** Duty Drawback on Re-export of Duty Paid Goods

Duty drawback under Section 74 of the Customs Act covers those goods that have been imported into India and re-exported. As per the provisions, any goods that are easily identifiable and imported into India on which any duty has been paid and are-

- Entered for export where the proper officer makes an order permitting loading and clearance of goods for exportation under section 51 or
- Are to be exported as baggage and for the purpose of exportation, the owner makes a declaration of its contents to the proper officer under section 77 and the such officer makes an order permitting clearance of goods for the purpose of export or
- Are entered for export and the proper officer makes an order for permitting the clearance of goods for export

The 98% of duty drawback shall be allowed as a drawback subject to the following conditions:

- The goods have been identified as the goods that were imported to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs
- The goods are entered for export within 2 years from the date of payment of import duty. This period of 2 years may be extended by the board on sufficient cause being shown

Further, the rate of duty drawback for goods that have been used after importation shall be such as the Central Government notifies having regard to the depreciation in value, duration of use, etc. These rates have been specified in Notification No. 19/65 Cus dated 6-2-1965. As per the notification, the following goods shall not be entitled to duty drawback if they have been used after an importation:

- Tea chests
- Wearing Apparel
- Unexposed photographic films, X-ray films, paper, and plates.
- Exposed cinematographic films passed by the Board of Film Censors in India

Further, the following rates have been fixed at which drawback for import duty shall be allowed for goods that have been used after an importation:

Sr. No.	The period between the date of clearance for home consumption and the date when the goods are placed under Customs Control for Export	% of import duty allowed as a drawback
1	Not more than 3 months	95%
2	More than 3 months but not more than 6 months	85%
3	More than 6 months but not more than 9 months	75%
4	More than 9 months but not more than 12 months	70%
5	More than 12 months but not more than 15 months	65%
6	More than 15 months but not more than 18 months	60%
7	More than 18 months	NIL

Even if the goods were not used but merely tested, still they shall be treated as used after importation.

6. **Section 75:** Drawback of Imported Materials Used in the Manufacture of Goods That are Exported

Duty drawback under Section 75 of the Customs Act covers the cases where any goods are being exported and any imported material has been used in the manufacturing or processing of such goods or carrying out operations in such goods. In such case, duty drawback shall be allowed for the duty paid on the imported material used for the manufacture or processing of such goods. However, if the duty drawback has been allowed and sale proceeds on export have not been received in accordance with the provisions of FEMA 1999, then such duty drawback shall be deemed to have never been allowed and the procedure for recovery or adjustment of the drawback amount shall be initiated. Further, if it appears to the Central Government that the total quantity of materials imported into India is more than the total quantity of materials used in the exported goods, then it may declare so much of the materials as is contained in the goods

exported to be the imported materials. Further, the Central Government has been provided the powers to specify the provisions and methodology for the implementation of the above provisions.

7. **Section 75A: Interest on Drawback**

In case the drawback payable to a claimant under section 74 or 75 is not paid within 1 month from the date of filing of the claim for such drawback, then the claimant shall be paid interest at the rate not less than 5% and not exceeding 30% from the date immediately after the expiry of 1 month till the date of payment of such drawback.

Further, if excess drawback has been paid to the claimant, then the claimant shall pay the drawback within 2 months from the date of demand along with interest at the rate not less than 10% and not exceeding 36%. The interest shall be payable from the date of payment of such drawback to the claimant till the date of recovery of the drawback.

8. **Procedure for claiming Duty Drawback Under Customs Act, 1962**

The procedure for claiming duty drawback on export goods (whether AIR or Brand Rate) to be claimed at the time of export and requisite particulars filled in the prescribed format of Shipping Bill/Bill of Export under Drawback. If the processing of documents has been computerized, then the exporter is not required to file any separate application for claiming duty drawback. In the case of manual export, a separate application is to be submitted for claiming duty drawback. The claim is to be accompanied by certain documents as laid down in the Drawback Rules 1995. A Triplicate copy of the shipping bill becomes the application only after the Export General Manifest is filed.

Eligibility Criteria:

In order to file the application of Duty Drawback under Customs Act, 1962 the entity exporting the goods must be the legal owner of goods at the time of exportation & they must have paid customs duty on imported goods.

9. **Refer to the Rule:** Re Export of imported goods (Drawback of

Customs duties) Rules 1995

A7 : EXPORT PROMOTION SCHEMES

(1) **Directorate General of Foreign Trade (DGFT)** issues various types of scrips/authorizations under different export promotion schemes through its Regional Authorities (RAs) across the country. This MIS information on various parameters is helpful in monitoring the performance of Regional Authorities and for policymakers and stakeholders to monitor and evaluate the export promotion schemes.

In principle, it is conceded that exports should by and large be relieved of home taxes so as to make Indian manufacturers internationally competitive. The following main schemes have been evolved under Customs and Central Excise and GST Acts to translate this principle into practice. They are just duty neutralization and remission schemes. It is also the Government's endeavour that exports should not be held up or delayed and if there are some deficiencies, the Customs Officer may obtain an undertaking from the exporter to make them good but the consignment (other than prohibited/contraband goods) would be allowed to move on. The jurisdictional Commissioners have now been empowered, in cases of exigency, to permit imports and exports under all EP Schemes through any other sea-port, airport, ICD or LCS in their jurisdiction even if the said port/ICD, etc. has not been specifically mentioned in the concerned EP notification. In the case of manufacturer- exporter, in-house test results (photocopy to be attached) would be relied upon for the purpose of exports under the various export promotion schemes if the manufacturer- exporter has been awarded any of the ISO 9000 series certification. To accelerate export clearances pre-shipment test certificates from accredited international agencies are also acceptable where Customs Laboratory test reports are likely to be delayed.

Export of services is also free from GST (including identifiable GST on secondary services consumed in the main service exported). The Reserve Bank of India has also raised the limit on export of goods by way of gift to ₹ 5 lakhs per annum. All exporters are eligible to import duty free samples of value upto Rupees Three lakhs.

All exporters can now retain 100% of their earnings in EEFC

(Exchange Earners' Foreign Currency) accounts. Exchange Earners' Foreign Currency Account (EEFC) is a non-interest-bearing Current maintained in foreign currency with an Authorised Dealer Category - I bank i.e. a bank authorized to deal in foreign exchange. It is a facility provided to the foreign exchange earners, including exporters, to credit 100 per cent of their foreign exchange earnings to the account, so that the account holders do not have to convert foreign exchange into Rupees and vice versa, thereby minimizing the transaction costs.

Discounts would be excluded for computation of benefits under reward schemes. As regards 'commissions', foreign agency commission will be restricted to 12.5% of FOB value for computation of rewards. Facility of recredit of 98% duty in scrips issued under all reward schemes is available on re-export of defective/unfit goods within six months. All duty credit scrips issued after 26-7-2012 have validity of 18 months. [Since increased to 24 months for scrips issued w.e.f. 1-1-2016 vide DGFT Public Notice No. 33/2015-20, dated 23-10-2017]. Duty credit scrips issued under Focus Product Scheme, Focus Market Scheme, Agri. Infrastructure Incentive Scheme, Special Agriculture and Village Industry Scheme under VKGUY and Status Holder Incentive Scheme have been permitted to be utilised for products obtained from domestic market free of excise duty, subject to certain conditions.

Exporters can now give a revolving bank guarantee for different deals. Duty Credit Scrip can be utilised/debited for payment of Customs Duties in case of EO defaults for Authorizations issued under Chapters 4 and 5 of previous FTPs.

On central excise side, warehouses have been set up at select centres for export. All goods supplied against international competitive bidding are charged to a nil rate of excise duty provided they are exempted from customs duties when imported. Validity period for all export promotion scheme licences has been extended to 24 months uniformly. All exporters with minimum turnover of ₹ 5 crores and good track record have been exempted from furnishing bank guarantee. All goods and services exported shall be exempt from excise duty/GST. Provision for cash refund of GST credit, which is not utilisable for paying tax for supplies within the country, has been made. Export Cess on export of all agricultural and plantation commodities has been removed. Balance export obligation will be waived for the exporters completing 75% of their export obligation in half the prescribed

export obligation period.

(2) Status holders have been permitted licence/certificate/ permissions and Customs clearances for both imports and exports on self-declaration basis. Further, if an exporter is denied the benefit under one scheme by DGFT/Ministry of Commerce/Customs due to any dispute, he shall be entitled to claim benefit under some other scheme to which he may be entitled. This facility is also endorsed by the M.F. (D.R.) vide Circular No. 4/2004-Cus., dated 16-1-2004 where no fraud is suspected but conversion of free shipping bills to Advance Licence/DEPB/DFIA shipping bills would not be allowed. Exporters should declare their intention to claim export benefits in shipping bills filed at the time of export.

So far as quality assurance of our goods is concerned, our official Export Inspection Council is now gaining world-wide recognition. For export markets development, the Ministry of Commerce has provided a single window facility by merging the MDA and MAI Schemes.

(3) If export obligation is not fulfilled due to market considerations which made it difficult, if not impossible, to fulfill it, importer not liable to penalty — 2015 (322) E.L.T. 561 (S.C.) —Jaswal Necco Ltd. v. C.C.

(4) In a significant relief to exporters, the Supreme Court has ruled that excise duty and sales tax cannot form part of total turnover while computing deduction under Section 80HHC of the Income Tax Act, 1961.

(5) In collaboration with Indian Institute of Foreign Trade, DGFT has launched an online certificate programme in export- import business with the object of reaching out to new and potential exporters.

Drawback, the Drawback of such Countervailing Duties can be claimed under art application for Brand Rate under Rule 6 or Rule 7 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and/or the Customs and Central Excise Duties Drawback Rules, 2017, as the case may be.

(6) As such drawback shall be admissible only where the inputs that suffered Countervailing Duties were actually used in the goods exported as confirmed by the verification conducted for fixation of Brand Rate.

(7) Furthermore, where imported goods subject to Countervailing Duties are exported out of the country as such, then the Drawback

payable under Section 74 of the Customs Act, 1962 would also include the incidence of Countervailing Duties as part of total duties paid, subject to fulfilment of other conditions. - M.F. (D.R.) Circular No. 49/2017-Cus., dated 12-12-2017.

Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 — Notes and Conditions revised. - The Central Government has amended Notification No. 131/2016-Cus. (NX), dated 31-10-2016, to dispensed with, w.e.f. 1-7-2017, requirement of the certificate from GST officer to claim higher rate of drawback, which can now be claimed on the basis of self- declaration to be provided by exporter in terms of revised Note and Condition 12A of aforesaid Notification. - Notification No. 73/2017-Cus. (N.T.), dated 26-7-2017.

Nominated agencies importing gold/silver/platinum under the scheme for Export Against Supply by Nominated Agencies — In view of the representation by the Gems and Jewellery Export Promotion Council regarding problems being faced by GIEPC and the jewellery exporters in establishing one to one correlation between the gold procured duty free and corresponding export of jewellery, the C.B.I. & C. has clarified that there is no such requirement. However, the nominated agencies/exporters are required to maintain accounts of duty free gold and domestically procured duty paid gold to be able to establish export of jewellery out of duty free gold/silver/platinum obtained for this purpose. -

M.F. (D.R.) Circular No. 23/2018-Cus., dated 23-7-2018

Merchandise Exports From India Scheme (MEIS)

MEIS was introduced in the Foreign Trade Policy (FTP) for the period 2015-2020. The MEIS was launched as an incentive scheme for the export of goods. The rewards are given by way of duty credit scrips to exporters. The MEIS is notified by the DGFT (Directorate General of Foreign Trade) and implemented by the Ministry of Commerce and Industry.

MEIS replaced the various export incentive schemes which gave different types of duty credit scrips namely, Focus Market Scheme (FMS), Focus Product Scheme (FPS), Vishesh Krishi Gramin Udyog Yojana (VKGUY), Market Linked Focus Product Scheme (MLFPS) and Agri Infrastructure incentive scheme. All duty credit scrips issued under the earlier incentive schemes were transferred to the MEIS.

MIES Incentive

Under the FTP 2015-20, MEIS intends to incentivise exports of goods manufactured in India or produced in India. The incentives

are for goods widely exported from India, industries producing or manufacturing such goods with a view to making Indian exports competitive.

MEIS covers goods notified for the purpose of the scheme. The incentives under the schemes are calculated as a percentage, which is 2%, 3% or 5% of the realised FOB (free-on-board) value exports in free foreign exchange or FOB value of exports as per shipping bills in free foreign exchange. The incentives are allotted through a MEIS duty credit scrip. The 'free foreign exchange' will include foreign exchange earned through international credit cards and other instruments allowed by the Reserve Bank of India (RBI)

The duty credit scrips can be utilised to pay customs duties on import of inputs or goods, safeguard duty, anti-dumping duty and any other customs duty under FTP 2015-20. The scrips can also be transferred as well as used for importing goods against them.

MEIS incentivizes close to 5,000 items classified and notified under various ITC (HS) codes and with corresponding reward rates ranging from 2% to 5%. The items are notified by the DGFT.

MIES withdrawn

MEIS has since been withdrawn w.e.f. 1st January, 2021.

Service Exports from India Scheme (SEIS) Scheme

The SEIS Scheme or Service Export from India Scheme is an incentive given by the Ministry of Commerce through the Directorate General of Foreign Trade (DGFT) to Service Exporters based in India. This reward scheme is to promote the export of services from India.

SEIS Scheme was introduced on 1st April 2015 for 5 Years under the Foreign Trade Policy of India 2015-2020. Earlier, this Scheme was named as Served from India Scheme (SFIS Scheme) for Financial Year 2009-2014

SEIS discontinued

SEIS scheme has now been discontinued w.e.f. 01.04.2020.

A7A : SCHEME REMISSION OF DUTIES AND TAXES ON EXPORTED PRODUCTS (RoDTEP)

RoDTEP scheme

Remission of Duties and Taxes on Exported Products (RoDTEP) scheme is a Department of Commerce scheme which was implemented for exports w.e.f. 01.01. 2021 and extended upto 30th June 2024. The scheme rebates various Central, State and local duties/taxes/ levies

which are not refunded under other duty remission schemes.

RoDTEP replaced the MEIS, in response to the US challenging the Indian export subsidies under the MEIS at the WTO. When the WTO dispute panel ruled against India, RoDTEP was framed to ensure that India remains WTO-compliant, while also supporting low-volume exports of commodities from India.

RoDTEP is based on the globally accepted principle that taxes and duties should not be exported, and taxes and levies borne on the exported products should be either exempted or remitted to exporters. The RoDTEP scheme rebates/refunds the embedded Central, State and local duties/taxes to the exporters that were so far not being rebated/refunded. The scheme is being implemented from 1st January 2021 and the rebate is issued as a transferable electronic scrip by the Central Board of Indirect Taxes & Customs (CBIC) in an end-to-end IT environment.

Eligibility

- All sectors, including the textiles sector, may enjoy the benefits of the scheme. Labour intensive sectors that enjoy benefits under the MEIS scheme will be given priority.
- Manufacturer exporters and merchant exporters are both eligible for the benefits of this scheme
- There is no particular turnover threshold to claim the RoDTEP
- Re exported products are not eligible under this scheme
- The exported products need to have the country of origin as India to avail the benefits of this scheme
- Special Economic Zone units and Export Oriented Units are also eligible to claim the benefits under this scheme.
- RoDTEP scheme is applicable for the goods exported via courier through e-commerce platforms.

How to avail the benefits under this scheme?

- The ICEGATE portal will contain the details regarding the credits availed by the exporter
- At the port, the exporter must indicate in the shipping bill the details of the claim of the RoDTEP benefit with regard to a particular item of export and generate a credit scrip for it. The credit scrips can be utilized to pay basic customs duties, claim rebates or can be transferred to other importers as the case may be.
- The process for the generation and claiming of scrips under this scheme is as under:
  - ☐ The exporter should make a declaration of the claim for

RoDTEP in the shipping bill

- ☐ Once the Export General Manifest (EGM) is filed, the claim will be processed by the customs.
- ☐ After processing the claim, a scroll with all individual shipping bills for the admissible amount will be generated and available in the users account at ICEGATE portal.
- ☐ The exporter should login to the ICEGATE poral and create a RoDTEP credit ledger account.
- ☐ After the RoDTEP credit ledger account is created, the exporters can log in to their accounts and generate scrips by selecting the relevant shipping bills.
- ☐ Once the scrips are generated, the refund will be credited and reflected in the exporter's ledger account and will be available for utilization in payment of the eligible duties and during imports or for transfer to any other importers. In short, this can be sold if not required by the importer.

CATAGORIES OF PRODUCTS COVERED UNDER THIS SCHEME

Category A

1. Agriculture
2. Textiles
3. Handicrafts

Category B

products with high employment generation potential

1. Marine products
2. Leather
3. Gems
4. Jewelry

Category C

Products with significant potential for export growth

1. Engineering goods
2. Pharmaceuticals
3. Chemicals

Category D

Products with lower priority

1. Plastics
2. Rubber

3. Ceramic

DOCUMENTS REQUIRED

1. Export Invoice
2. Shipping Bill
3. Bill of lading
4. GST returned filed
5. Bank Realisation certificate
6. Certificate of origin of exported goods
7. Any other documents that may be required by Customs or DGFT authorities
8. Valid RCMC copy
9. Valid Icegate Registration with Login Id and password.

MEIS vs RODTEP

S No	MEIS	RoDTEP
1	Incentives given on the export of goods	Refund of duties and taxes allowed that are currently not being reimbursed by any other schemes.
2	Not compliant with World Trade Organisation norms.	Complaint with WTO norms
3	2%-5% of the FOB (Free On Board) value of exports.	Product based % . Exporters will be given tax refunds in the range of 0.5 - 4.3 percent
4	Issued in the form of physical transferable scrips.	Issued in the form of transferable duty credit or electronic scrips which will be maintained via an electronic ledger.

PACKING CREDIT

Packing credit is the most commonly used trade finance tool by an exporter. The international sales cycle is longer when compared to domestic sales, which makes packing credit a convenient line of credit for exporters. The advance is given to purchase raw materials, process, manufacture, pack, market, and transport the required goods and services. In addition, the packing credit is also used to finance the working capital and meet the requirements of wages, travel

expenses, utility payments, etc., for companies listed as exporters.

Significance of Packing Credit

The export packing credit facility supports the exporter's supply chain and provides funds to bridge the gap until the receipt of final payment from the customer. The bank that issues the packing credit usually advances a partial or complete proportion of the invoice based on the assumed risk. The loan would be granted in either the exporter or another easily convertible currency mutually decided by both the exporter and the lending bank.

Features of Packing Credit

The salient features of packing credit are

- Self-liquidating
- Credit to buy goods
- Covers manufacturing expenses
- A lower rate of interest
- Flexible terms of credit

Self-Liquidating

The self-liquidating features are the essential feature of the packing credit. The loan could be liquidated against the final payment of the services and goods or converted to post-shipment finance after the shipment of the goods. This is useful to small exporters who may not have the required capital. Moreover, this eliminates a lot of risk from financing, as the bank has the assurance of payment before the exporter receives the proceeds.

Credit to Buy Goods

Packing credit is a convenient way to purchase expensive goods or raw materials, even if they exceed the allocated budget.

Cover Manufacturing Expenses

Packing credit covers manufacturing-related expenses like wages, cost of raw materials, etc. This is useful if the exporter has outsourced all or a part of the goods to be shipped.

Lower Rate of Interest

Packing credit charges a lower rate of interest when compared to a

typical overdraft facility. Every bank may not have a standard interest rate for packing credit. It differs based on the nature of the business, borrowing amount, etc. However, it will be lower than various standard loans.

Flexible Terms of Credit

Due to the self-liquidating feature and customized loans, the packing credit enjoys flexible terms. The bank permits the exporter to repay the loan after receiving the final payment and resumes financing all the interim requirements of the exporter.

Nature of Facility

Pre-shipment finance extended as working capital.

Target Group

Manufacturers and merchant exporters can avail of Rupee Packing Credit at a concessional interest rate.

Eligibility Criteria

- An existing customer already availing of credit facilitates
- New units
- The takeover of existing units from other banks/ FIs with a satisfactory track record.

Quantum of Loan

The quantum of loans is need-based finance.

Margin

The margin percentage is determined based on the nature of the order, commodity, capability of the exporter, etc., considering the RB guidelines for liberal finance to the export.

Collateral Security

The collateral security is applicable in the case of cash credit/ working capital limits.

Repayment Period

The period for which the bank gives packing credit is based on the manufacturing/ trade cycle or specific requirements of the individual export, not more than 180 days.

Processing Fee

The processing fee is applicable to cash Credit Facility/ working capital limits.

A8 : SEARCH, SEIZURE & SUMMONS

(1) The Customs Law seeks to regulate imports and exports. It is, therefore, necessary for the customs Department to be fully equipped to meet situations where there is any illegal export or import of goods. In any fiscal enactment, it is common to find provisions relating to searches, seizure and arrest. These provisions only advance the primary objective of the law namely 'Prevention of illegal imports and exports. At the same time, it should be remembered that the Customs Act does not aim at detection of a crime. The Customs Officers are also not primarily concerned with the detection and punishment of a crime but they are entrusted in ensuring that there is no smuggling of contraband articles. They have to safeguard the recovery of customs duty properly applicable to the goods. Chapter XIII of the Act consisting of Sections 100 to 110A contains detailed provisions in regard to searches, seizure and arrest.

Searches & Seizures. -One of the aspects through which one frequently hears of customs is anti-smuggling or preventive operations. Under the Customs Act, definition of 'smuggling' is very wide. Any act or omission which will render the goods liable to confiscation amounts to smuggling. Customs officers are empowered to inspect any premises or conveyances, X-ray any person and effect search and seizure in cases where they have reason to believe that the goods are of a contraband nature. Seized goods can be released against bond with security/BG. Finance Act, 2011 has amended Section 110A so as to empower the adjudicating uthority to allow release of the seized goods pending adjudication. CBIC has issued detailed guidelines in this regard vide Circular No. 35/2017-Cus., dated 16-8-2017. For details please see 2017(352) E.L.T. (T101). Pendency of proceedings is not a ground to retain goods for an indefinite period. — Sonia Overseas Pvt. Ltd. v. Dy. Director— 2007 (216) E.L.T. 687 (P & H). If a consignment is detained, it should be presumed that the goods have beenseized in terms of Section 110 of the Act even if no formal order has been issued by the Customs Authority andthe

time for issuing notice in terms of Section 124(a) runs from the actual date of detention - 2011 (268) E.L.T. 17(Cal.) - S.J. Fabrics Pvt. Ltd. v. U.O.I. Further, an order under Section 110A for provisional release of seized goodsis appealable — 2015 (326) E.L.T. 561 (T.-LB). Show cause notice in respect of goods seized has to be issued within6 months. However, in case of provisional release of goods, said period of six months is not applicable. Further, incase extension in period of six months is required, an order in this regard is required to be issued before expiry ofsix months. Delhi High Court in its judgment in the case of Digipro Import and Export (P) Ltd. reported at 2017(353) E.L.T. 3 (Del.) has held that collection of post dated cheques during search operations was unsustainable.

The Customs officers also have the power to investigate or interrogate a person in connection with any inquiry under the Customs Act and arrest him. Power of arrest has been widened to include cases of false declarations/statements, obstruction of customs officers involved in implementation of the statute and actions preparatory to evasion and smuggling. However, Customs and Central Excise officers cannot arrest without an Arrest Warrant. Further, serious offences under Central Excise and Customs Acts [Those involving import of prohibited goods or of evasion of Customs duty exceeding ₹ 50 lakhs or Excise duty ₹ 50 lakhs] are cognizable (all other offences are non-cognizable).

(2) **Power to undertake controlled delivery. -** A new provision under Section 109A has been introduced in Customs Act vide Finance Act, 2018 providing for undertaking a controlled delivery of goods for identifying person involved in the commission of an offence or contravention of Customs Act. Detailed rules/procedure are yet to be notified.

(3) The following categories of offences are non-bailable: -

(a) Evasion or attempted evasion of duty exceeding fifty lakh rupees;

(b) Smuggling of prohibited goods notified under Section 11 and also notified under Section 135(l)(i);

(c) Import of concealed/undeclared goods of market price exceeding one crore rupees; or

(d) Fraudulent availing of drawback/exemption of duty exceeding ₹ 50 lakh;

(e) Organised smuggling cases;

(f) Master minds or key operators of smuggling in the name of

benami or dummy parties.

(4) The officers are under instructions to make arrest in bailable offences only in exceptional situations which may include:

(a) **Baggage cases. -** Outright smuggling of high value goods such as gold, silver, restricted or prohibited items or goods notified under Section 123 or foreign currency where the value of the offending goods exceeds ₹ 20 lakh;

appraising cases (relating to trade goods) involving willful mis-declaration in description of goods/ concealment of goods/ goods notified under Section 123 where the CIF value of the offending goods exceeds rupees two crores

Fraudulent drawback cases where the amount of drawback is rupees one crore or more.

(b) In cases related to exportation of trade goods (i.e., appraising cases) involving (i) willful mis-declaration in value/description; (ii) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962, where FOB value of the offending goods is rupees two crores or more.

(c) The above criteria of value mentioned would not apply in cases involving offences relating to FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna.

In bailable offence cases, the arresting officer is bound to release the arrested person on bail and accept the bail bond.

(5) Every arrest should be intimated to the Chief Commissioner/ DGRI who will further inform the concerned Board Member.

(6) An arrested/detained person must be produced before Magistrate within 24 hours excluding journey time. Finance Act, 2013 provides for grant of bail only in non-cognizable cases. India has a serious smuggling problem. Strategic location between the Golden Triangle (Burma, Thailand and Lagos on eastern sector) and the Golden Crescent (Afghanistan, Pakistan and Iran on western sector) has turned India into a transit country for narcotics. Smuggling in arms, ammunition and explosives for terrorist activities is also a more serious phenomenon. Further, with a view to fighting trade mark and copy right violations and seize and confiscate pirated goods, Intellectual Property Right (Imported Goods) Enforcement Rules, 2007 have been promulgated to prohibit import of such goods. However, goods of a non-commercial nature contained

in personal baggage or sent in small consignments intended for personal use of the importer have been exempted from such restrictions. For more detailed information on IPR, please see the Department's Circular No. 41/2007-Cus., dated 29-10-2007 at 2007 (217) E.L.T. T9. Prevention of Money Laundering Act is also proposed to be tightened and its scope expanded. The Department is liable to make good the loss when seized goods under its custody are stolen — Commissioner v. Moti Lai Gupta — 2007 (216) E.L.T. 353 (Del.).

(7) **Summons.** - With effect from 13-7-2006, all customs officers have the power to issue summons. Forrights and duties of the interrogating officer and the summoned person, please see the Supreme Court's directives in Ajit Jain v. Directorate of Revenue Intelligence — 1998 (102)

E.L.T. 521 (S.C.). Show cause notice proposingconfiscation can be issued only after prior permission of an officer not below the rank of Deputy Commissioner.
A copy of statement of the accused if not supplied to him in spite of his request, cannot be relied upon in adjudication proceedings. — Amba Lai v. UOI— 1983 (13) E.L.T. 1321 (S.C.) (Constitution Bench). Mere markings of foreign origin on the goods is no proof of their being actually of foreign origin [Shew Sunder Shukla v. C.C. (Preventive) — 2001 (131) E.L.T. 465 (Tri.)]. Trade opinion of shopkeepers and traders as to foreign origin of goods is not expert opinion which could establish foreign origin beyond doubt [Dinanath Maurya v. C.C. — 2001 (131)E.L.T. 203 (Tri.)]. If show cause notice for extending the time limit of six months under Section 110(2) and passingof order pursuant thereto are not completed before expiry of six months from the date of seizure, the seized goodshave to be returned to the person from whose possession they were seized —

B.R. Enterprises v. C.C. — 2004 (164)E.L.T. 266 (Tribunal), relying on — Tarsem Kumar v. C.C.E. — AIR 1972 P & H

444. Board's view is that even afterrelease of such goods, show cause notice for penalty and confiscation of such goods is still issuable. [Sections 100 to 110].

(8) **Presence of Advocate during interrogation.** - Although statutory provisions are silent, presence of Advocate at a visible distance but beyond hearing range has been allowed [Refer Apex

Court decision in 2017 (345) E.L.T. 323 (S.C.)].

Setting up of the Office of the Commissioner (Investigation-Customs). - The C.B.I. & C. has created a new post of the Commissioner (Investigation-Customs) who shall be reporting to Member (Investigation) in the Board. - C.B.I. & C. Circular No. 30/2018, dated 29-8-2018.

A9 : ADJUDICATION, CONFISCATION & PENALTY

Essentially all goods brought into the country or taken outside the country must pass through authorized entry/exit points, be reported to Customs, and the importers/exporters must fulfill the prescribed legal and procedural requirements laid down under Customs Act, 1962 and allied laws including payment of the duties leviable, if any. Accordingly, the Customs Act lays down in detail provisions to deal with acts and omissions that violate the law, and provide for penalties that can be imposed by departmental authorities and punishments that can be imposed by courts of law. The law also empowers Customs officers to carry out searches, arrests and prosecution of persons involved in such offences. The Customs Act also lays down the procedural requirements to be followed while imposing the various penal provisions for violations so as to ensure that due process of law is followed before action is taken against offending goods, persons or conveyance involved in the violations.

Adjudication:

(i) **Show Cause Notice and adjournments.** - Contraventions of the provisions of customs law and also of the connected import/export and foreign exchange laws are punishable departmentally by way of confiscation of goods and imposition of penalty. Such adjudication is done by officers of and above the rank of a Superintendent of Customs where value of goods involved is upto rupees One lakh, Assistant/Deputy Commissioner where value of goods involved is upto rupees Ten lakh (Notification No. 50/2018-Cus. (N.T.), dated 8-6-2018), without limit, by a Principal Commissioner of Customs or Commissioner of Customs or a Joint Commissioner (and Additional Commissioner) of Customs. Amendments have been carried out in Section 122 of Customs Act vide Finance Act, 2018 to authorize CBIC to notify officers below the rank of Joint Commissioner to adjudicate cases upto

value limit as may be specified in notification. Issue of a show cause notice and adjudication proceedings may be dispensed with if short levy is paid voluntarily with interest. Finance Act, 2011 provides for issuance of show cause notice with prior approval of an officer not below the rank of an Assistant Commissioner. No more than three adjournments of the hearing will be granted to a noticee.

(ii) **DGFT clarifications.** - Clarifications on import policy issued by office of D.G.F.T. are binding on customs as far as ITC Policy is concerned even if such clarification is signed by Joint Director General of Foreign Trade — Cine Land v. Commissioner — 1999 (114) E.L.T. 653 (Tri.).

(iii) **Relied upon documents/Evidences. -** In Collector v. East Punjab Traders — 1997 (89) E.L.T. 11 (S.C.), the Supreme Court has held that unsigned photocopies of documents obtained by Indian Customs Officer during visit to Japan for inquiry cannot be relied upon and presumption under Section 139(h) cannot be raised on the basis thereof. It has also been held by the Supreme Court in Reliance Cellulose Products Ltd. v. Collector — 1997 (93) E.L.T. 646 (S.C.) that test report of Chemical Examiner and Chief Chemist unless demonstrated to be erroneous cannot be lightly brushed aside on the basis of opinion of some private persons obtained by assessee. Market Enquiry report for determining margin of profit should be put to the importer — Eyelite Optical Industries Pvt. Ltd. v. Commissioner — 1999 (114) E.L.T. 94 (Tri.). Further, evidence on affidavit is not dismissible straightaway as an afterthought without a proper enquiry and examination of the deponent — Kulbhushan Jain v. Commissioner — 1999 (111) E.L.T. 906 (Tri.).

(iv) **Burden of proof. -** An interesting feature of customs adjudication is that in respect of specified goods which are prone to smuggling such as gold and its manufactures, silver and watches, the burden to prove that the goods are not smuggled is on the person from whose possession they are seized (Section 123 of the Customs Act).

(v) **Time-limit for passing orders.** - Adjudication orders should be passed by the authority within 6 months in normal cases and within one year in fraud etc. cases. However, officer senior to adjudicating authority can extend this period for a further period of six months and one year respectively. In case if the demand notice is not adjudicated even within the extended period, it

would be deemed as if no demand had been issued. However on certain grounds said time limit of six months or one year shall remain suspended. These grounds are (a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court or (b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court or (c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending or (d) where the Settlement Commission has admitted an application made by the person concerned. Commissioner of Customs, JNCH, Nhava Sheva-I & III, vide his Standing Order No. 58/2015, dated 29-12-2015 has directed that in respect of Live Bills of Entry, adjudication should be completed within 3 working days of receipt of the objection from the Docks, in the event if the importer waives the issuance of Show Cause Notice.

A10 : COMPOUNDING OF OFFENCES

In general, compounding of offences is available only in respect of those offences committed against individuals and not against those offences against the public policy / society. The offences listed under Section 320 of the Criminal Procedure Code would fortify the above. Though the offences under the Central Excise Act, 1944 / Customs Act, 1962 are against the exchequer, the liberal attitude of the Government to provide for "compounding" of such offences against public is definitely a welcome measure. But, the manner in which the Rules have been framed and clarified raises our eyebrows!

(i) Compounding of offences by the Chief Commissioner, either before or after initiation of prosecution proceedings, is possible. On compounding, the person would get immunity from prosecution but would have to pre-pay duty, penalty, interest and compounding fee. However, compounding fees have been reduced to make the scheme attractive The compounding amount has been fixed in certain cases and for the rest it is left to the Chief Commissioner's discretion. The compounding amount is to be paid within 30 days and it is not refundable except when the Court (in which the prosecution may be going on) rejects the grant of immunity. Customs and Central Excise Officers are not covered under the immunity and compounding scheme. Compounding cannot be

claimed as a matter of right; it is at the discretion of the Chief Commissioner. There is a life time ceiling of rupees one crore (in terms of value of the goods covered) on compounding. So, the big sharks are out at the threshold; it is a scheme only for small fries. Finally, there is no compounding for persons convicted under Customs or Central Excise Acts after 30-12-2005 or for persons involved in serious offences such as narcotics, arms, chemical weapons etc. Compounding is not allowable in a case where there are demonstrable contradictions, inconsistencies or incompleteness.

(ii) A new proviso inserted by Finance (No. 2) Act, 2009 in Section 137 makes compounding of offences inapplicable for more than one time to certain specified types of offences. Persons accused of offence under Customs Act as well as NDPS Act and other specified Acts like Arms Act will not be eligible for compounding. Persons who have been allowed compounding once in respect of cases where value of offending goods exceed ? 1 crore will be barred from availing it again. Persons convicted under Customs Act on or after 30-12-2005 will also be hit by this new restriction. Amendments to include manner of compounding in Section 137 and 157 have also been made. [Section 137(3) and Notification No. 114/2005-Cus.(N.T.)J. Compounding cannot be allowed if there are apparent contradictions and incompleteness in the case before Compounding Authority — UOI v. Anil Chanana — 2008 (222) E.L.T. 481 (S.C.).

For amendments in the corresponding Central Excise Compounding Rules, see Notification No. 42/2007-C.E. (N.T.), dated 27-12-2007. See M.F. (D.R.) Circular No. 20/2008-Cus., dated 2-12-2008 [2008 (232) E.L.T. T16] for guidelines after relaxation of the scheme.

(iii) As regards Foreign Exchange Management Act, 1999, Reserve Bank has been empowered to compound contraventions of all Sections of the said Act except clause (a) of Section 3. Directorate of Enforcement would continue to exercise powers of compounding under the said clause (a) [dealing essentially with hawala transactions and money laundering involving national and security concerns and cases not applied for compounding within the stipulated period] [RBI, A.P. (DIR Series) Circular No. 31, dated 1-2- 2005].

A11 : PROSECUTION

(1) Arrest provisions under various civil laws have always acted as good deterrence against different kinds of offences. But these powers in the hands of enforcement authorities can also be misused causing not only harassment to genuine law abiding citizens, but also embarrassment to the government. Customs law in India is not very different from any other law, in this regard. In the last two years, Ministry of Finance has been serious in not only recovering tax dues but also in making the arrest and prosecution provisions stricter.

(2) In addition to departmental action, prosecution in a court of law, with the sanction of the Chief Commissioner or DG CEI/DRI, is often resorted to in serious cases of Customs contraventions including mis-declaration of value and fraudulent exports. In cases of outright smuggling or for habitual offenders, prosecution is launched as a matter of course. In appraising cases (such as those relating to mis- declaration of quantity, description or value of goods), it is resorted to if mens rea is involved and value of goods is sufficiently high. Vide Board's Circular No. 27/2015- Cus. [F.No. 394/68/2013-Cus. (AS)], dated 23-10-2015, prosecution is to be launched in cases as under :

(A) Baggage and Outright smuggling cases:

(i) Cases involving unauthorized importation in baggage / cases under Transfer of Residence Rules, where the CIF value of the goods involved is ₹ 20,00,000/- (Rupees twenty lakh) or more;

(ii) Outright smuggling of high value goods such as precious metal, restricted items or prohibited items notified under Section 11 of the Customs Act, 1962 or goods notified under Section 123 of the Customs Act, 1962 or foreign currency where the value of offending goods is ₹ 20,00,000 (Rupees twenty lakh) or more;

(B) Appraising Cases/Commercial Frauds:

(i) In cases related to importation of trade goods (i.e., appraising cases) involving (a) willful mis- declaration in value/description; (b) concealment of restricted goods or goods notified under Section 11 of the Customs Act, 1962, where CIF value of the offending goods is ₹ 2,00,00,000 (Rupees two crores) or more;

(ii) In cases related to fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty provided under the Customs Act, 1962, if the amount of drawback or exemption from duty is ₹ 2,00,00,000 (Rupees two crores) or more;

(iii) In cases related to exportation of trade goods (i.e., appraising cases) involving, (a) willful mis- declaration in value/description; (b) concealment of restricted goods or goods notified under Section 11 of the Customs Act, 1962 where FOB value of the offending goods is ₹ 2,00,00,000/-(Rupees two crores) or more.

(C) Exceptions: The above threshold limits would not apply in case of persons indulging habitually insuch violations or Special Cases relating to FICN, arms, ammunitions, explosives, antiques art treasure,wild life items and endangered species of flora and fauna, etc.The above limits are also applicable to arrest and bails.

(3) Punishments under the Customs Act are quite severe, going upto imprisonment for seven years and fine if the value exceeds rupees one crore or evasion of duty exceeds ₹ 50 lakhs or fraudulent availment of Drawback exceeds ₹ 50 lakhs or fake Indian currency. However, if the Tribunal, the final fact finding authority, has held that the charge of concealment or clandestine activity against the accused person is not proved, prosecution proceedings against him on the same charge cannot be sustained. — G.L. Didwania v. I.T.O. — 1999 (108) E.L.T. 16 (S.C.). This would be so particularly in cases where Tribunal's order has become final. For a contrary view, please see Assistant Collector of Customs v. L.R. Malwani — 1999 (110) E.L.T. 317 (S.C.). (Constitution Bench) which is a judgment of 1968. [Sections 132 to 140A]

(4) As per sub-clauses (B) and (D) of clause (i) of section 135(1) of the Customs Act, the threshold limit for punishment in an offence relating to evasion or attempted evasion of duty or fraudulently availing of or attempting to avail of drawback or any exemption from duty in connection with export of goods, is now ₹ 50 lakh. (Vide Finance Act, 2013) but moderated by Board's Circulars referred to above.

(5) As per Sections 104(6) & 104(7), all offences under the Customs Act are bailable except the following specified offences punishable under Section 135, shall be non- bailable, namely:-

1. evasion or attempted evasion of duty exceeding ₹ 50 lakh;
2. involving prohibited goods notified under Section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of Section 135;
3. import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds ₹ 1 crore;
4. Fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds ₹ 50 lakh.

(6) C.B.E. & C. vide its Circular No. 1018/6/2016-CX., dated 29-2-2016 [2016 (333) E.L.T. (T45)] has directed withdrawal of prosecution in all those cases which are 15 years old and where duty involved is less than ₹ 5 lakh.

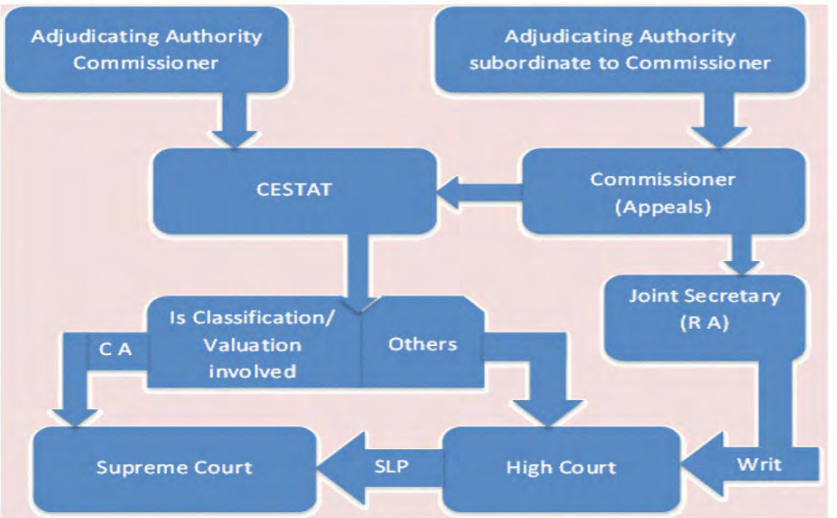
(7) **Stage for launching of prosecution :** Normally, prosecution is to be launched immediately on completion of adjudication proceedings. However, prosecution in respect of cases involving offences relating to items FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna may preferably be launched immediately after issuance of show cause notice. Gold has since been added to this list.

Fugitive Economic Offenders Act, 2018. - The Fugitive Economic Offenders Act, 2018 has been enacted providing measures to deter fugitive economic offenders from evading the process of law in India by stayingoutside the jurisdiction of Indian courts. This Act extends to the whole of India and has come into force with effect from 21-4-2018.

Fugitive Economic Offenders (Procedure for sending Letter of Request to the Contracting State for Service of Notice and Execution of Order of the Special Court) Rules, 2018. - The Central Government has notified the Fugitive Economic Offenders (Procedure for sending Letter of Request to the Contracting State for Service of Notice and Execution of Order of the Special Court) Rules, 2018 which have come into effect from 25-5-2018. - [M.F. (D.E.A.) Notification No. GSR 501(E), dated 25-5-2018]

A12 : APPEAL

Appellate Mechanism: A multi-tier appellate mechanism has been provided in the Customs Act, 1962, Central Excise Act, 1944, Service Tax (Chapter V of Finance Act, 1994) against the adjudication orders passed by the Departmental officers.



(1) **Filing. -**

(i) If a person is aggrieved by the orders of customs authorities (up to and inclusive ofAdditional Commissioner in rank) he can file an appeal to the Commissioner of Customs (Appeals) within 60days in Form C.A. 1. Commissioner (Appeals) should, as far as possible, decide appeals within six months. Powerto remand cases by Commissioner (Appeals) which was earlier withdrawn has again been restored.

(ii) A second appeal lies to the Customs, Excise and Service Tax Appellate Tribunal which should be submitted in Form C.A. 3 along with the prescribed additional declaration within three months. New Forms C.A.-3, C.A.-4, C.A.-5 have been introduced from 1-6-2013. However, if the order has been passed by an officer of and above the rank of Commissioner (Additional Commissioner not being treated as a 'Commissioner' for this purpose), appeal there-against lies

direct to the Tribunal. Only one appeal to the Tribunal need be filed where the impugned order is one, irrespective of the number of show cause notices or bills of entry it relates to — Eicher Motors Ltd. v. Collector — 2000 (116) E.L.T. 306 (Tri.) (Larger Bench). Time available for review/revision of an adjudication order by the Committee of Chief Commissioners or Commissioners and filing an application thereafter is now 3 months + 1 month only. Tribunal may not admit an appeal involving no question of valuation or classification if the amount involved is less than ₹ 50,000/-. A final appeal lies to the Supreme Court against the Tribunal's order if it relates to rate of duty or valuation of goods and in all other cases an appeal on a substantial question of law lies to the High Court. Such appeal has to be filed direct to the High Court in Form C.A. 6 with a fee of ₹ 200/- and within 180 days of receipt of the impugned order (passed on or after 1-7-2003). Department too has a reciprocal right of appeal. Section 130 [appeal to High Court] has been amended by Finance (No. 2) Act, 2009 retrospectively with effect from 1-7-2003. This retrospective amendment is intended to empower High Courts to condone delay in filing appeal beyond 180 days if sufficient cause is shown. Similar amendment in respect of reference applications has also been made retrospectively with effect from 1-7-1999.

(iii) As per Section 129C(4) of the Customs Act, 1962 (Amended by Finance Act, 2013), Single Member Bench of CESTAT can now decide case involving duty, penalty or fine up to ₹ 50 lakhs.

(iv) The Tribunal can refuse admission of an appeal if the amount involved therein is ₹ 2 lakhs or less.

(v) Right of appeal. - Right of appeal is confined only to parties to the proceedings before the adjudicating authority and a third party could earn a locus standi to file appeal as 'person aggrieved' only if it is able to show that it has a direct legal interest in the goods involved in adjudication, such as a party contending that such goods really belonged to it and not to the purported importer [Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd. — 1997 (91) E.L.T. 502 (S.C.)]. Assessment order on the bill of entry is a final order and is appealable — Priya Blue Industries Ltd. v. C.C. (Prev.) — 2004 (172) E.L.T. 145 (S.C).

Appeal filed by the power of attorney holder of the appellant is also valid — Deen Dayal Didwania v. C.C. — 2003 (155) E.L.T. 17 (S.C). Department too has a reciprocal right of appeal on the recommendation of a Committee of Commissioners/Chief Commissioners within the limitation.

The Board has directed that an appeal will not normally be filed before the Tribunal by the Department if the amount involved, including fine and penalty, is below rupees Ten lakh and not before the High Court if the amount involved is below Rupees Fifteen lakhs. The limit in respect of Apex Court is below ₹ 25 lakhs. However, if adverse judgments relate to the constitutional validity of the provisions of an Act or Rule and where Notification/ Instruction/Order or Circular has been held to be illegal or ultra vires, then value limit for filing SLP before Apex Court would not be applicable. The Board has also directed field formations to withdraw cases pending before Tribunal or High Court on identical matters where Apex Court has decided case against Department.

(2) Pre-deposit of duty and penalty. -

(i) With effect from 6-8-2014, under Section 129E as amended bythe Budget 2014, the appellant during the pendency of the appeal is required to pre-deposit the mandatory fixedpre-deposit of 7.5% of the duty demanded (including demand for erroneous drawback) or total penalty imposedor both for filing appeal with the Commissioner (Appeals) or the Tribunal at the first stage and 10% of the duty demanded or total penalty imposed or both for filing second stage appeal before the Tribunal. The amount of pre-deposit payable would be subject to a ceiling of ₹ 10 crores. In terms of Larger Bench order dated 20-4-2017 appellants, for preferring appeal against Commissioner (Appeals)'s order, are required to deposit separately 10% of the amount of the duty confirmed/ penalty imposed over and above the amount deposited before Commissioner (Appeals).

(ii) Deposit made earlier during investigation or audit would be treated as pre-deposit. If this is complied with there would be no recovery during pendency of the appeal before Commissioner (Appeals)/Tribunal. On appeal being decided in assessee's favour, the assessee should file a simple letter

for return of the deposit [along with interest at the prescribed rate (now six per cent.) from date of making deposit to date of refund].

(3) **Disposal of appeals. -**

(i) Section 129B(2A) of Customs Act, 1962 provides for decision by theTribunal in appeals within 3 years from date of filing as far as possible.

(ii) Events subsequent to passing of order and during pendency of the appeal ought to be taken note of by the Appellate Authority and relief moulded accordingly. [Pioma Industries v. Collector — 1995 (77) E.L.T. 424 (Tri.)].

(iii) **Authorised Representative.** - The assessee has the right to be represented by an authorised representative (Advocate, Consultant, Chartered Accountant etc.) in adjudication, appeal and revision proceedings before statutory authorities. [Section 146AJ. But on ceasing to hold office, a CESTAT President/Vice- President/Other Member cannot appear before the Tribunal. No more than three adjournments of the hearing may be granted to a party.

(iv) If the goods have been disposed of or they had suffered damage while under confiscation by the Department but in appeal they are released, the Department has to return to the importer the money value of the goods as on the date and time when the goods ought to have been cleared by the Department for home consumption [Northern Plastics Ltd. v. Collector — 1999 (113) E.L.T. 3 (S.C.)], besides duty, redemption fine and penalty paid, if any, by the importer and not the lesser price at which the goods were sold by the department or the custodian [Shilps Impex v. UOI — 2002 (140) E.L.T. 3 (S.C.) read with 2004 (174) E.L.T. A130 (S.C.)]. [Sections 128 to 131C].

(4) **Rectification of Mistake. -** The Tribunal has the power to rectify any mistake apparent from therecord within six months, from the date of its order. [Section 129B(2)].

A13 : REVISION APPLICATIONS

(1) Against the orders passed by Commissioner (Appeals), appeals in general, lie with Appellate Tribunal. But in respect of certain specified cases, instead of an appeal to the Tribunal, revisionary proceedings of the Central Government constitute the dispute

resolution mechanism. For revision of orders, an application is required to be filed with the Central Government. Section 129DD of Customs Act, 1962 titled as "Revision by Central Government" is the governing provision. Customs (Appeals) Rules, 1982 also specifies certain procedures in this regard.

(2) **Cases within the jurisdiction of Revisionary Authority. -** The following cases are covered by the procedure of revision-
   (a) Cases involving import or export of goods as baggage;
   (b) Cases where goods loaded for import into India, but which are not unloaded at the destination in India. This category also includes cases where such failure to unload pertains to short quantity than required to be unloaded in a particular destination [goods not landed or short-landed]; and
   (c) Cases involving payment of drawback.

(3) **Form and Procedures for Revision. -** Revision application is required to be filed in Form No. C.A. 8 (see Customs Series Form No. 88). The application shall be filed in duplicate and two copies of the impugnedorder, i.e., order of Commissioner of Customs (Appeals) (an order against which the revision is sought) as well as the Order- in-Original are also required to be submitted. The revision application can be presented in person or sent by Registered Post to the Under Secretary, Revision Applications, Department of Revenue, Ministry of Finance, HUDCO Vishala Building, Bhikaji Kama Place, New Delhi. The Central Government can refuse to admita revision application if the disputed duty or penalty or fine is less than ₹ 500. The time-limit for filing revision application is three months i.e. it should be filed within three months from the date of communication of the order against which such revision application is filed. Delay in filing revision application can be condoned for a further period of three months. Normally, an officer of the rank of Additional Secretary in the Ministry of Finance is vested with the powers of Revisionary Authority. Revisionary proceedings follow Principles of Natural Justice. Hearing is granted and after taking all evidences into account, order is passed.

(4) **Fee for Revision Application. -** There are two slabs regarding fees to be paid when revision application is filed:
   (a) The fee is ₹ 200 if the amount of duty and interest demanded, fine or penalty levied is upto ₹ 1 lakh.
   (b) The fee is ₹ 1,000 if the amount of duty and interest demanded, fine or penalty levied is more than ₹ 1 lakh.

There is no fee for revision application filed by the Department.

A14 : ADVANCE RULINGS

(1) For persons who wish to have clear idea on tax liabilities before venturing into a particular taxable activity, a statutory mechanism has been provided in the form of Advance Rulings. As the name suggests, it is sought and given before the commencement of a particular activity and it is a 'ruling', i.e., it is in the nature of an order binding the parties involved. For this purpose, Authority for Advance Rulings (Common for both direct and indirect taxes) has been established. (Definition of "Authority" has been amended vide Section 93 of Finance Act, 2017 to amend Section 28E of the Customs Act to adopt definition of Authority in terms Section 245-0 of Income Tax Act, 1961).

(2) Persons eligible to seek Advance Ruling:
   (a) Any person who is a non-resident setting up a joint venture in India in collaboration with a nonresident or a resident.
   (b) Any person who is a resident setting up a joint venture in India in collaboration with a non-resident.
   (c) A wholly owned subsidiary Indian company of which the holding company is a foreign company.
   (d) A joint venture in India.
   (e) A resident falling within any class or category of persons as the Central Government may notify.
   (f) Public sector undertakings in India.
   (g) A resident who proposes to import goods claiming assessment under Heading 9801 of Customs Tariff (Project Imports).
   (h) A Resident Public Limited Company.
   (i) Any new business of import & export proposed to be undertaken by existing importer or exporter.

   A resident firm (partnership firm, sole proprietorship firm or one person company).

   (j) A resident firm including limited liability partnership which has no company as its partner, sole proprietory firm or one person company as specified in Notification No. 27/2015-Cus., dated 1-3-2015.

(3) Advance Rulings can be sought on :
   (a) Classification of goods under the Customs Tariff Act, 1975;
   (b) Applicability of notifications issued under Section 25(1) of Customs Act, 1962 having a bearing on the rate of duty;
   (c) Principles of valuation under the Customs Act, 1962;

(d) Applicability of notifications issued in respect of duties under the Customs Act, 1962, Customs Tariff Act, 1975 and any duty chargeable under any other law in force in the same manner as duty of customs leviable under the Customs Act; and

(e) Determination of origin of the goods in terms of rules notified under the Customs Tariff Act, 1975 and related matters.

(4) **Application for Advance Ruling.** - Application for advance ruling shall be made in Form AAR (CUS)(see Customs Series Form No. 122) in quadruplicate. The prescribed application fees has been raised from ₹ 2,500 to ₹ 10,000/- vide Section 96 of the Finance Act, 2017 by amending Section 28(3) of the Customs Act, 1962. This fee is payable by demand draft. The Advance Rulings Authority shall pronounce the ruling within six months of receipt of application in view of the amendment of Section 28-1(6) of the Customs Act vide Section 97 of the Finance Act, 2017. Opportunity of hearing is provided before rulings are pronounced and other judicial principles are observed. Advance Rulings pronounced by the Authority are binding on the applicant and the jurisdictional departmental officers of the applicant in respect of the matter on which the ruling has been pronounced. High Courts have jurisdiction over orders of the Advance Ruling Authority. A comprehensive official write-up on the scheme is available at 2006 (199) E.L.T. T13.

(5) **Customs Authority of Advance Ruling. -** Far reaching changes have been carried out under Finance Act, 2018 with regard to Advance Ruling Authority. The present Authority has been converted to Appellate Authority with formation of new Authority named Customs Authority of Advance Ruling wherein Commissioner or Principal Commissioner rank officers would be appointed by Board. The new Authority's jurisdiction is broad based. Definition of the term "applicant" has been amended to include large number of importers, exporters and other people with justifiable cause to the satisfaction of the Authority. The definition of "advance ruling" has been substituted so as to make it broad based covering aspects beyond mere determination of duty. Time limit within which the Customs Authority for Advance Rulings shall pronounce its advance ruling has been reduced from six months to three months. The Ruling of this Authority is appealable both by department as well as applicant. These changes shall come into force only when customs authority for advance ruling is appointed.

A15 : SETTLEMENT COMMISSION

(i) The Settlement Commission has been considerably weakened by the provisions in the Finance Act, 2007. It now has the power to grant immunity from prosecution under the Customs and Central Excise Acts and for Service Tax only and immunity, full or partial, from infliction of fine and penalty but not interest provided the assessee makes a true and full declaration of his duty liability. It is a forum for self surrender and seeking relief and not a forum for challenging the legality of assessment orders. The settlement provision will apply in cases where the additional duty liability accepted by the assessee exceeds ₹ 3 lakhs and the accepted amount has been paid with interest under Section 28 AA before application to the Commission. Matters relating to classification cannot be raised before the Commission. But Settlement Commission has no jurisdiction to decide cases in relation to smuggling of goods specified under Section 123, vide 2015 (323) E.L.T. 424 (Del.). C.B.E. & C. has also taken same stand in Instruction F. No. 275/46/2015-CX. 8A, dated 1-10 2015. (Vide Clause 106 of Finance Act, 2017, sub-section (5) has been inserted in Section 127B of the Customs Act to allow any person, other than assessee to approach the Settlement Commission.

(ii) The Act provides that issue of show cause notice in relation to a bill of entry or a shipping bill is mandatory before an application for settlement can be made before the Commission. An application for settlement of cases can also be filed in cases where a bill of export, Declaration, Label or Declaration accompanying the goods effected through post or courier have been filed. The matter should be pending before the adjudicating authority. Application to the Settlement Commission should be in form SC (C) - 1 in quintuplicate and should be accompanied by a fee of ₹ 1,000/-. It should be submitted to the jurisdictional Bench of the Commission. Location of headquarters of the Commissioner passing the impugned order (or to whom the impugned show cause notice is answerable) decides the Bench jurisdiction. Proceedings of the Commission are not open to public. Orders of the Commission cannot be re-opened in any proceedings except writ proceeding on ground of fraud or of jurisdictional error. An order obtained by fraud being void, the Commission retains the power to decide (on Revenue's initiative) whether it was obtained

by fraud or misrepresentation — C.I.T. v. Om Prakash Mittal — 2005 (184) E.L.T. 3 (S.C.). Nine months time (extendable by another three months) has been given to the commission of making an order on the application failing which the case shall revert back to the adjudicating authority. Settlement Commission has now been invested with power to rectify any error apparent on the face of record (See Section 107 of Finance Act, 2017). It can also authorize publication of its orders in any authoritative report or by the press.

A15A: POWERS AND PROCEDURES OF SETTLEMENT COMMISSION UNDER CUSTOMS 1962

The provision of Settlement Commission has been inserted vide Finance Act, 1998 with effect from 1.8.1998. Chapter XIV-A covering Section 127A to Section 127M of the Customs Act, 1962 deals with the provisions of Settlement of Commission. The Settlement Commission has been inserted under Customs Statute to speed up disposal of the cases or proceeding under this Act for the levy, assessment and collection of duty, pending before an adjudicating authority on the date on which an application made to the Settlement Commission.
The adjudicating authority means Appellate Authority, Appellate Tribunal, any Court or any other Authority under the Customs Act, 1962. The Government has been notified, Customs (Settlement of Cases) Rules, 2007 vide Notification No. 54/2007-Customs (NT), dated 28-5-2007 and Settlement Commission Procedure Rules vide Notification No.1/2017-S.C (PB), dated 31-5-2017 for the smooth running of Settlement Commission.

Structure of Settlement Commission:

The Settlement Commission has been constituted under section 32 of the erstwhile Central Excise Act, 1944. The Commission has its Principal Bench at New Delhi and three Additional Benches at Chennai, Kolkata and Mumbai. The Settlement Commission Chairman, vice-Chairman and other members shall be appointed by the Central Government from amongst person of integrity and outstanding ability having special knowledge on Customs, experience on Customs and well acquainted on Customs laws.

Objectives of Settlement Commission:

The objectives of setting up of the Settlement Commission to:-

(i) provide an alternate channel for dispute resolution for the pending cases of Customs;
(ii) expedite recovery of Customs dues involved in disputes by avoiding costly and time consuming litigation process;
(iii) provide an opportunity to the taxpayers to take clean certificate even if he evaded payments of tax;
(iv) act as a judicial forum for the assesses to admit application for settlement of their cases, on the basis of factual records and complete disclosure of the duty liability;
(v) encourage early settlement of disputes and rescue taxpayers from heavy penalty, interest and prosecution by the customs authority.

Who can apply for Settlement of Cases:

Any importer, exporter or any other person, who has been issued Show Cause notice under Customs Act, 1962, can make an application for Settlement in respect of a case for adjudication to the Settlement Commission to have the case settled. The application should contain a full and true disclosure of:

(i) Duty liability which has not been disclosed before the proper officer;
(ii) Manner in which such liability has been incurred;
(iii) Additional amount of Customs duty accepted to payable by him;
(iv) Such other particulars of dutiable goods in respect of which he admits short levy on account of misclassification, under valuation or inapplicability of exemption notification.

Procedure for filing application:

Section 127B of the Customs Act,1962 provides the procedure for filing application before Settlement Commission and application cannot be filed before the Settlement Commission where -

(i) the applicant has not filed a bill of entry, or a shipping bill, or a bill export and such other Customs documents, a show cause notice has been issued to him by the proper officer;
(ii) the additional amount of duty accepted by the applicant in his application exceeds ₹3 lakhs;
(iii) the applicant has paid the additional amount of Customs duty accepted by him along with interest due under section 28AA of Customs Act, 1962;
(iv) the cases which are pending in the Appellate Tribunal (CESTAT) or any court;

(v) the goods relating to the dispute is good as specified under Section 123 of the Customs Act;

(vi) the goods in relation to the dispute are covered under the Narcotic Drugs and Psychotropic Substances Act, 1985;

(vii) the case involves interpretation of the classification of any goods under the Customs Tariff Act, 1975;

(viii) any dutiable goods, books of accounts, other documents or any sale proceeds of the goods have been seized and period of 180 days from the date of seizure is not yet complete.

(ix) the application shall not be accompanied by fees of ₹1,000/- and in Form SC(C)-1.

Withdrawal of Application:

Once an Application made shall not be allowed to be withdrawn by the applicant.

Procedure on Receipt of an Application:

Procedure to be followed on receipt of application has been prescribed under section 127C of Customs Act, 1962 as under:

(i) On receipt of an application, within 7 days, Settlement Commission issue notice to the applicant to explain in writing the reason as to why the application made by him should not be allowed to be proceeded with.

(ii) On the basis of explanation provided by the applicant, the Settlement Commission shall within a period of 14 days from the date of the notice, by an order, allow the application to be proceeded with or reject the application.

(iii) A copy of every order shall be sent to the applicant and to the Commissioner of Customs having jurisdiction.

(iv) The Settlement Commission is required to call for a report along with relevant records from the Commissioner of Customs having jurisdiction within 7 days from the date of order and the Commissioner shall furnish the report within period of 30 days on receipt of communication from the Settlement Commission, if the Commissioner does not furnish then the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(v) The Settlement Commission on examination of such report of commissioner, if it is not satisfied and is of the opinion that it requires further investigation, within 15 days of receipt of report, the Settlement Commission directs the Commissioner

(Investigation) for further enquiry, furnish the report of which is required to be furnished within 90 days of the receipt of communication from the Settlement Commission.

Provided that where the Commissioner fails to furnish the report within 90 days, the Settlement Commission shall proceed to pass an order without such report.

(vi) Where the Commissioner (Investigation) furnish report within specified time in that case, after the examination of the report of the Commissioner of Customs and giving an opportunity to the applicant of being heard, either in person or through a representative duly authorised in his behalf and after examining such further evidence as may be placed before it, the Settlement Commission may pass such order as it fit on the matters covered by the applicant.

(vii) The Settlement Commission is required to pass an order providing the terms of settlement including any demand by way of duty , penalty or interest , the manner which any sums due shall be paid and all other matters to make the settlement effective.

(viii) The amount duty liability as ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 127B.

(ix) If the order of the Settlement Commission is not complied or the liability is not paid within 30 days of receipt of a copy of the order, the amount which remains unpaid , shall be recovered along with interest due thereon.

(x) If it has been found that the settlement have been obtained by fraud and misrepresentation, the settlement becomes void and proceedings for matters covered are be deemed to have been revived from the stage at which the applicant was allowed to be proceeded with by the Settlement Commission.

(xi) The proper officer having jurisdiction may complete such proceedings at any time before the expiry or two years from the date of the receipt of communication that the settlement became void.

Disclosure and Dismissal:

(a) The Settlement Commission has the power to reject or dismiss the application for settlement if it is of the opinion that complete disclosure has not been made by the applicant.

(b) Power to decide and dismiss an application can be made by Commission at any stage of the proceedings before it.

(c) There may be cases where Settlement Commission is sure that full disclosure is not made and it can reject the application. However, in some cases where the Settlement Commission is not sure, the application cannot be rejected at initial stage, but Commission is justified in rejecting the application at a later stage if it finds that complete disclosure was not made in the application.

(d) The opinion of the Settlement Commission has to be on the basis of the material contained in the report and other circumstantial evidence. However, the applicant is fully empowered to appeal against the order of dismissal of application by the Settlement Commission in the higher courts / judiciary. Power to dismiss is not normally interfered with unless the rejection is contrary to law.

Powers of Settlement Commission:

The powers of settlement commission have been specified under section 127D to section 127-I of the Customs Act, 1962 are summarized as under:

Power of Commission for provisional attachment (Section 127D):

The Settlement Commission may order for provisional attachment of any property belonging to the applicant, during the pendency of any proceeding before it, if the settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary to do as may be specified by rules.

Every provisional attachment made by the Settlement Commission cease to have effect from the date on which the sums due to the Central Government are paid by the applicant and evidence to that effect is submitted to the Settlement Commission

Rule 5 of Customs (Settlement of Cases) Rules, 2007 provides that the Settlement Commission orders attachment of property under sub-section (1) of section 127D, it shall send a copy of such order to the Commissioner of Customs having jurisdiction over the place in which the applicant owns any movable or immovable property or resides or carries on his business or has his bank account. The Commissioner may authorise any officer subordinate to him and not below the rank of an Assistant Commissioner of Customs to take steps to attach such property of the applicant. The officer authorised shall prepare an inventory of the property attachment and specify in it, in the case of the immovable property the over description of such property sufficient to identify it and in case of the movable property,

the place where such property is kept and shall hand over a copy of the same to the applicant or to the person from whose charge the property is attached. The officer authorised under shall send a copy of the inventory so prepared each to the Commissioner of Customs and also the Settlement Commission.

Power of Commission to reopen completed proceeding (Section 127E):

If the Settlement Commission is of the opinion that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under section 127B was made, it may, with the concurrence of the applicant, reopen such proceeding.

After reopening the proceeding, it may pass appropriate order as if the case in relation to which the application for settlement had been made by the applicant under that section covered such proceeding also.

However, that no proceeding shall be reopened by the Settlement Commission under this section after the expiry of five years from the date of application under sub-section (1) of section 127B.

Power to regulate its own procedure (Section 127F):

The Settlement Commission shall have all the powers which are vested in an officer of the Customs in terms of Act or the rules. The Settlement Commission have exclusive jurisdiction to exercise the powers and perform the functions of any officer Customs and have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its power, or the discharge of its functions, including the places at which the Benches shall hold their sittings.

Power to inspect (Section 127G):

No person shall be entitled to inspect, or obtain copies of, any report made by any officer of the Customs to the Settlement Commission; but the Settlement Commission may, in its direction, furnish copies thereof to any such person on an application made to it in his behalf and on payment of such fee as may be specified by rules, furnish him with a certified copy of any such report or part thereof relevant for the purpose.

Power to grant immunity from prosecution and penalty

(Section 127H):

The Settlement Commission may grant immunity, if it is satisfied that any person who made application for settlement has co- opted with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his duty liability, provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application.

Maybe an immunity granted to a person at any time ought to stand withdrawn, if such person fails to pay any sum specified in the order of the settlement passed within the time specified in such order or fails to comply with any other condition subject to which the immunity was granted.

If the Settlement Commission is satisfied that such person had, in the course of the settlement proceedings , concealed any particulars, material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

Power to send a case back to the proper officer (Section 127-I):

The Settlement Commission may, if it is of opinion that any person who made an application for settlement has not co- operated with the Settlement Commission in the proceedings before it, send the case back to the proper officer who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application had been made.

For the purpose of this section the proper officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such proper officer or held or recorded by him in the course of the proceedings before him.

The time -limit under section 28 and for the purpose of interest under section 28AA, the period commencing on and from the date of the application to the Settlement Commissioner under section 127B and ending with the date of receipt by the officer of Customs of the order of the Settlement Commission sending the case back to the officer of

Customs shall be excluded.

Order of settlement to be conclusive (Section 127J):

Every order of settlement passed by the Settlement Commission shall be conclusive as to matters stated therein and no matter covered by such order shall, save as otherwise, be reopened in any proceeding under this Act or under any other law for the time being in force.

Recovery of sums due under order of settlement (section 127K):

Any sum specified in an order of settlement passed by the Settlement Commission, subject to such conditions, if any as may be specified therein, be recovered and any penalty for default in making payment of such sum may be imposed and recovered in accordance with the provisions of Section 142, by the proper officer having jurisdiction over the applicant.

Bar on subsequent application for settlement in certain cases (Section 127L):

Where,

(i) An order of settlement passed provides for the imposition of a penalty on the applicant for settlement , on the ground of concealment of particulars of his duty liability; or
(ii) after the passing of an order of settlement in relation to a case, such person is convicted of any offence under this Act in relation to that case; or
(iii) the case of such person is sent back to the proper officer by the Settlement Commission, then such person is not entitled to apply for settlement under section 127B in relation to any other matter.

Proceedings before Settlement Commission to be judicial proceedings (Section 127M).-

Any proceedings before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196, of the Indian Penal Code.

A16 : INDIRECT TAX OMBUDSMEN

They are to be independent of C.B.I. & C. and have powers to receive and consider complaints from tax payers, facilitate their satisfaction or settlement by agreement, through conciliation and mediation or by

passing an 'award', call for any information from concerned authorities and suggest remedial measures for redressal of grievances. He shall recommend abolition or amendment of provisions and procedures that cause harassment to tax payers. He shall also recommend action against delinquent officers. For details, please see the Government Notification at 2011 (268) E.L.T. N41-48. Currently, it is decided to appoint an Ombudsman each at seven important places (New Delhi, Mumbai, Chennai, Kolkata, Bengaluru, Ahmedabad and Lucknow).

A17 : THE INDIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

In Chapter XI of Finance Act, 2016, a new scheme has been introduced to be known as The Indirect Tax Dispute Resolution Scheme effective 1-6-2016 where under applications for resolutions of disputes of indirect taxes can be filed till 31- 12-2016. The scheme has been notified vide Notification No. 29/2016-C.E. (N.T.), dated 31-5-2016. Salient features of scheme are as under:

- The scheme is applicable to appeal cases pending before Commissioner (Appeals) as on 1-3-2016
- A person is required to make a declaration in prescribed form to designated authority before 31-12-2016 and obtain acknowledgement thereof
- Within 15 days of acknowledgment of application, the declarant is required to pay tax due along with interest and 25% of said tax as penalty.
- Within 7 days of payment, designated authority has to be informed of this fact
- Designated authority shall pass a discharge order within 15 days of receipt of information.
- This scheme is not applicable to search and seizure proceedings, cases pertaining to Narcotic drugs and other prohibited goods, cases where prosecution is launched before 1-6-2016, COFFEPOSA cases and cases punishable under Cr.P.C. and Prevention of Corruption Act.
- Amount paid under said scheme shall not be refunded and order made thereunder shall not be treated as a precedent
- Declarant shall get immunity from all proceedings under the Act, in respect of the indirect tax dispute for which the declaration has been made under this Scheme.

A18 : CUSTOMS AND GST

- **Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017- Implementation thereof.** – With the advent of Goods and Services Tax, since Central Excise duty would not be applicable except on a few commodities like Petroleum products, Tobacco products etc., the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 notified w.e.f. 1-7- 2017 provides that the tasks performed by the Central Excise officers under earlier rules would be performed by Customs officers under the new rules. - M.F. (D.R.) Circular No. 25/2017, dated 30-6-2017.

- **Applicability of GST to imports & exports. –** The applicability of GST on import and export goods is mandated in the Constitution itself. Article 269A of the Constitution as inserted vide The Constitutional Amendment Act, 2016 prescribes that the supply of goods in the course of import into the territory of India shall be deemed to be supply of goods in the course of inter-State trade or commerce for levy of integrated tax. In other words GST on import is leviable under IGST Act. Various provisions to this effect have been incorporated in the IGST Act as well as under the Customs Tariff Act, 1975 as amended by the Taxation Law (Amendment) Act, 2017. IGST on import of goods would be levied under the Customs Act, 1962 read with the Custom Tariff Act, 1975.
- **Duties at the time of import. –** In the GST regime, IGST and GST Compensation cess is being levied on import of goods by virtue of sub-sections (7) & (9) of Section 3 of the Customs Tariff Act, 1975. Barring specified petroleum and tobacco products import of all other goods attract levy of IGST. Further, a few products such as aerated waters, tobacco products, motor vehicles, etc., also attract levy of GST Compensation Cess, over and above IGST. These levies are applicable on cargo arrived on or after 1st July, 2017 or even if arrived prior to this date but Bill of Entry filed on or after this date.

Duty Calculation - IGST rate. – (1) IGST rates have been notified through Notification No. 1/2017-Integrated Tax (Rate), dated 28-6-2017. IGST rate on any product can be ascertained by selecting the

correct SI. No. as per description of goods and tariff headings in the relevant schedules of the notification. Importers are advised to familiarize themselves with IGST and GST compensation cess rates, schedule and exemptions. There are seven rates prescribed for IGST - Nil, 0.25%, 3%, 5%, 12%, 18% and 28%. The actual rate applicable to an item would depend on its classification and would be specified in Schedules notified under Section 5 of the IGST Act, 2017. For details please refer to R.K. Jain's GST Law Manual.

(1) Different ad valorem rates of tax have been notified for goods attracting Compensation Cess. But some also attract either specific rates (e.g., coal) or mixed rates (ad valorem + specific) as for cigarettes.

Valuation and method of calculation. –

(1) IGST is leviable on the value of imported goods and for calculating integrated tax on any imported article, the value of such imported goods would be the aggregate of -

   (i) the value of imported article determined under sub-section (1) of Section 14 of the Customs Act, 1962 or the tariff value fixed under sub-section (2) of that section, and

   (ii) any duty of Customs chargeable on that article under Section 12 of the Customs Act, 1962 and any sum chargeable on that article under any law for the time being in force as an addition to, or as dutyof Customs but does not include the tax referred to in the sub-section (7) (IGST) and sub- section (9) (Compensation Cess).

(2) The value of the imported article for the purpose of levying GST Compensation cess shall be, assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on the goods under any law for the time being in force, as an addition to, and in the same manner as, a duty of customs. These would include education cess or higher education cess as well as anti-dumping and safeguard duties. The inclusion of anti-dumping duties and safeguard duty in the value for levy of IGST and Compensation Cess is an important change. These were not hitherto included in the value for the levy of additional duty of customs (CVD) or Special Additional Duty (SAD). The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess. This provision can be explained with following illustration:-

Transaction Value of imported article under Section 14 of Customs Act	₹ 100
BCD @ 5%	₹ 5
Value for levy of IGST = Transaction Value of imported article + BCD	₹ 105
IGST @ 18% = ₹ 105*18/100	₹18.90
Compensation Cess (if leviable) say @ 12% = ₹105*12/100	₹12.60

Importer Exporter Code (IEC). — In GST regime, GSTIN is used for credit flow of IGST paid on import of goods. Therefore, GSTIN would be the key identifier. DGFT in its Trade Notice No. 9, dated 12-6-2017 has stated that PAN would be the Import Export Code (IEC). However, while PAN is identifier at the entity level, GSTIN would be used as identifier at the transaction level for every import and export. Further, in scenarios where GSTIN is not applicable, UIN or PAN would be accepted as IEC.

Bill of Entry Regulations and Format. — To capture additional details in the Bill of entry such as GSTIN, IGST rate and amount, GST Compensation Cess and amount, the electronic as well as manual formats of Bill of entry including Courier Bill of entry have been amended.

Import under Export Promotion Schemes and duty payment through EXIM scrips. — (1) Under the GST regime, Customs duties are exempted on imports made under export promotion schemes namely EPCG, DEEC (Advance License) and DFIA. IGST and Compensation Cess will have to be paid on such imports.

The EXIM scrips under the export incentive schemes of chapter 3 of FTP (for example MEIS and SEIS) can be utilised only for payment of Customs duties or additional duties of Customs, on items not covered by GST, at the time of import. The scrips cannot be utilized for payment of Integrated Tax and Compensation Cess. Similarly, scrips cannot be used for payment of CGST, SGST or IGST for domestic procurements.

Imports/Procurement by SEZs. — Authorised operations in connection with SEZs shall be exempted from payment of IGST. Hence, there is no change in operation of the SEZ scheme.

Project Import. — Earlier for items imported under project import

scheme (i.e., CTH 9801), unique heading under the Central Excise Tariff, for the purposes of levy of CVD did not exist and levy was done in respect of each item. In the GST regime, for the purpose of levying IGST all the imports under the project import scheme are classified under heading 9801 and IGST is being levied @ 18%.

Baggage. — Full exemption from IGST has been provided on passenger baggage.

Export under Bond or Letter of undertaking[1]. — In view of the difficulties being faced by the exporters in submission of bonds/Letter of Undertaking (LUT for short) for exporting goods or services or both without payment of integrated tax, Notification No. 37/2017-Central Tax, dated 4th October, 2017 has been issued which extends the facility of LUT to all exporters under rule 96A of the Central Goods and Services Tax Rules, 2017 (hereafter referred to as "the CGST Rules") subject to certain conditions and safeguards. This notification has been issued in supersession of Notification No. 16/2017-Central Tax, dated 7th July, 2017 except as respects things done or omitted to be done before such supersession.

Eligibility to export under LUT : The facility of export under LUT has now been extended to all registered persons who intend to supply goods or services for export without payment of integrated tax except those who have been prosecuted for any offence under the CGST Act or the Integrated Goods and Services Tax Act, 2017 or any of the existing laws and the amount of tax evaded in such cases exceeds two hundred and fifty lakh rupees unlike Notification No. 16/2017-Central Tax, dated 7th July, 2017 which extended the facility of export under LUT to status holder as specified in paragraph 5 of the Foreign Trade Policy 2015-2020 and to persons receiving a minimum foreign inward remittance of 10% of the export turnover in the preceding financial year which was not less than rupees one crore.

[1] Vide C.B.E. & C. Circular No. 8/8/2017-GST, dated 4-10- 2017. CM 19

(a) Validity of LUT: The LUT shall be valid for the whole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub-rule (1) of rule 96A of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the

period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable integrated tax or under bond with bank guarantee.

(b) **Form for bond/LUT:** Till the time FORM GST RFD-11 is available on the common portal, the registered person (exporters) may download the FORM GST RFD-11 from the website of the Central Board of Indirect Taxes and Customs (www.cbec.gov. in) and furnish the duly filled form to the jurisdictional Deputy/ Assistant Commissioner having jurisdiction over their principal place of business. The LUT shall be furnished on the letterhead of the registered person, in duplicate, and it shall be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor. The bond, wherever required, shall be furnished on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished.

Documents for LUT: Self-declaration to the effect that the conditions of LUT have been fulfilled shall be accepted unless there is specific information otherwise. That is, self-declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Notification No. 37/2017-Central Tax, dated 4th October, 2017. Verification, if any, may be done on post-facto basis.

(c) **Time for acceptance of LUT/Bond:** As LUT/Bond is a prior requirement for export, including exports to a SEZ developer or a SEZ unit, the LUT/bond should be processed on top most priority. It is clarified that LUT/bond should be accepted within a period of three working days of its receipt along with the self- declaration as stated in para 2(d) above by the exporter. If the LUT/bond is not accepted within a period of three working days from the date of submission, it shall be deemed to be accepted.

(d) **Bank guarantee:** Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding Rupees two hundred and fifty lakhs. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

(e) **Clarification regarding running bond:** The exporters shall furnish a running bond where the bond amount would cover the

amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit/credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

(f) **Sealing by officers:** Till mandatory self-sealing is operationalized, sealing of containers, wherever required to be carried out under the supervision of the officer, shall be done under the supervision of the customs officer having jurisdiction over the place of business where the sealing is required to be done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.

(g) **Purchases from manufacturer and Form CT-1:** It is clarified that there is no provision for issuance of CT-1 form which enables merchant exporters to purchase goods from a manufacturer without payment of tax under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

(h) **Transactions with EOUs:** Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter.

(i) **Realization of export proceeds in Indian Rupee:** Attention is invited to para A(v) Part-I of RBI Master Circular No. 14/2015-16, dated 1st July, 2015 (updated as on 5th November, 2015), which states that "there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules*Regulations, Notifications and Directions framed under the foreign Exchange Management Act, 1999.Further, in terms of Para 2.52 of the Foreign Trade Policy (2015-2020), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any

country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan".

Accordingly, it is clarified that the acceptance of LUT for supplies of goods to Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT will also be permissible on the same lines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange.

Jurisdictional officer: In exercise of the powers conferred by sub-section (3) of section 5 of the CGST Act, it is hereby stated that the LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

Refund of IGST paid on export of goods. —

(1) Under GST regime exports are considered as zero-rated supply. Any person making zero-rated supply (i.e., any exporter) shall be eligible to claim refund under either of the following options, namely :-

   (a) he may supply goods under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

   (b) he may supply goods subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods supplied in accordance with the provisions of Section 54 (Refunds) of the Central Goods and Services Tax Act or the rules made thereunder (i.e., Refund Rules, 2017).

(2) For the option (b), the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when the person in charge of the conveyance carrying the export goods duly files an export

manifest or an export report covering the number and the date of shipping bills or bills of export and the applicant has furnished a valid return.

(3) Exporters have to provide details of GST invoice in the Shipping bill. ARE-1 which is being submitted presently shall be dispensed with except in respect of commodities to which provisions of Central Excise Act would continue to be applicable.

Change in export Procedures. — Electronic as well as manual Shipping Bill formats including Courier Shipping Bill have been amended to include GSTIN and IGST related information so as to ensure that the export benefits like refund of IGST paid as well as accumulated input tax credit can be processed seamlessly.

Export under factory stuffing procedures. — In the context of GST, taking into account the obligation of filing GSTR-1 and GSTR-2 by exporters who are registered under GST, Board has simplified the procedure relating to factory stuffing hitherto carried out under the supervision of Central Excise officers.

Drawback. —

(1) No amendments have been made to the drawback provisions (Section 74 or Section 75) under Customs Act, 1962 in the GST regime. Hence, the drawback scheme will continue in terms of both Section 74 and Section 75. Option of All Industry Rate (AIR) as well as Brand Rate under Section 75 shall also continue.

(2) Drawback under Section 74 will refund Customs duties as well as Integrated Tax and Compensation Cess paid on imported goods which are re-exported.

(3) Under GST regime, Drawback under Section 75 shall be limited to Customs duties on imported inputs and Central Excise duty on items specified in Fourth Schedule to Central Excise Act, 1944 (specified petroleum products, tobacco, etc.) used as inputs or fuel for captive power generation.

Procedural Changes. — In addition to changes in the law as stated above, procedural hanges have also been carried out. These changes became a must because all the validation related to IGST refund (in case of exports) or flow of IGST credit (in case of imports) shall happen electronically between Customs EDI and GSTN. These changes are relating to change in Bill of Entry and Shipping Bill forms to capture additional details required for the above validation with GSTN. In respect of manual filing of Bills of Entry and Shipping Bills,

procedure to electronically capture basic data required for validation with GSTN on imports and exports, has also been prescribed. In this regard Bill of Entry, Shipping Bill and Courier Regulations and Forms, both Manual and EDI, have been suitably modified.

Declaration of GSTIN in EDI Bill of Entry. — Since credit of IGST paid on imported goods is available to an importer, declaration of GSTIN on the Bill of Entry has been made mandatory for those importers who wish to claim credit. This is necessary so that information in the Bill of Entry could be reconciled with returns filed by tax payer on GSTN. In this way, credit claimed in their GST Return in respect of IGST paid on imports would be cross checked with the Customs EDI system. Importers not registered with GSTN will be required to declare their PAN along with their state code as per the Census of India. This is required for transfer of the IGST paid by the non GST importers to the account of the "consumption" state. Diplomatic organizations or UN bodies can quote their UIN issued by GSTN on the Bill of Entry. Changes have been made in the BE forms to capture details like GSTIN, PAN, State code, etc. of the importer. Similar changes will also be incorporated for imports at SEZ and imports through Courier. In case of Courier, GSTIN for GST registered consignees or PAN for non-GST registered consignees, as applicable, has to be quoted in the bill of entry filed by the Courier agency, wherever goods are subject to IGST. For the time being, importers/exporters have been advised to declare GSTIN, PAN and IEC while filing document for import/export of goods. However, over a period of time, declaration with regard to only GSTIN and PAN shall be required in the Bill of Entry.

Modification in Shipping Bill. — In order to facilitate proof of export, Shipping Bill forms have also been modified to capture details such as GSTIN of the exporter, GST export invoice number etc. The exporters are required to declare item-wise taxable value and corresponding IGST on the Shipping Bill. All these details will be used to validate the declarations made by the exporter on the GST return to confirm export.

Manual Bill of Entry and Shipping Bill. — In case of EDI locations, where manual Bill of Entry or Shipping Bill is filed, Board has issued instructions vide F. No. 401/81/2011-Cus. Ill, dated 2nd June, 2017 wherein it is envisaged that any manual bill of entry or shipping bill in EDI locations needs to be filed following the procedure laid out in the

circular. Subsequently, Directorate of Systems issued ICES Advisory 009/2017(GST), dated 15-6-2017 on the subject enclosing the detailed user manual. For non-EDI locations also, a utility has been designed/ being designed by Directorate of Systems where certain basic consignment data can be uploaded digitally, post clearance. This utility is web-based with added offline functionality. The non-EDI locations have been advised to have a nodal officer in each of such location who would be entrusted with overseeing uploading preferably on the same day.

EOU — GST Implementation. - In view of the amendment to Notification No. 52/2003-Cus., dated 31-3-2003 by Notification No. 59/2017-Cus., dated 30-6-2017, under which EOUs are allowed duty free import of goods, the C.B.E. & C. has clarified that B-17 bond, being a general purpose running bond will serve the requirement of continuity bond to be submitted under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, and therefore EOU/STP/ EHTP units are not required to submit separate continuity bond; the units may submit the requirements for any shorter period than one year and then can give requirements for the subsequent period and they can amend/modify/add such information from time to time as per the requirement of import of goods; and for the transitional period upto 31-7-2017, the EOU/EHTP/STP units would have option to follow the procedure of Rule (5) of IGCR, rules or use procurement certificate for import of goods. - M.F. (D.R.) Circular No. 29/2017-Cus., dated 17-7-2017.

A19 : : FTP AND GST

Many of the EXIM provisions also need a re-look. DGFT has already issued Trade Notice No. 09/2018, dated 12-6-2017 wherein it has been indicated that with regard to importer/ exporter registered with GSTN, importer/exporter would need to declare only GSTIN at the time of import and export of goods and the importers who are not registered under GST would use their PAN for imports. It has also been decided to make IEC, a PAN based 15 digit number instead of 10 digit as at present. Suitable changes have been made suo-motu by the system and existing importer/Exporter need not apply for same.

Important FTP provisions in the context of the implementation of

the GST regime applicable w.e.f.1-7-2017. — Consequent upon implementation of the GST regime applicable w.e.f. 1-7-2017, the D.G.F.T. has notified chapter wise changes made in the provisions of the FTP 2015- 20. — D.G.F.T. Trade Notice No. 11/2018, dated 30-6-2018.

GSTIN or PAN in place of Importer Exporter Code (IEC).

(1) As, with the implementation of the GST, w.e.f. the notified date, GSTIN would be used for purposes of credit flow of IGST on import of goods, and refund or rebate of IGST related to export of goods, the D.G.F.T. has decided that importer/exporter would need to declare only GSTIN (wherever registered with GSTN) at the time of import and export of goods.

(2) Since obtaining GSTIN is not compulsory for all importers/ exporters below a threshold limit of turnover, all exporters/ importers may not register with GSTIN, barring compulsory registration in certain cases, it has been further decided, with the implementation of GST, to use PAN of an entity for the purpose of IEC. -Joint D.G.F.T. Trade Notice No. 9/2018, dated 12-6- 2017.

MOU with GSTN. — DGFT has signed an MOU with the Goods and Services Network (GSTN) for sharing foreign exchange realisation and Import-Export code data. This will strengthen processing of export transactions of taxpayers under GST, increase transparency and reduce human interface. Facility of message exchange with GSTN has also been introduced.

Mid-term Review of FTP 2015-20. — In the light of GST and other related developments, the Government has undertaken a mid-term review exercise of FTP 201520 and a revised policy has been notified vide M.C. & I. (D.C.) Notification No. 41/2015- 20, dated 5-12-2017. The revised policy has, inter alia, focused on leveraging benefits of GST. For this purpose, necessary adjustments have been made in policy to align the same with GST law. Under revised Policy certain trade friendly measures have been taken to mitigate the effect of GST on various sectors. Some of the prominent changes in this regard are as under.-

Issue of working capital blockage of the exporters due to upfront payment of GST on inputs has been addressed. Now, under Advance

Authorization, Export Promotion of Capital Goods and 100% EOU scheme, exporters have been extended the benefit of sourcing inputs/capital goods from abroad as well as domestic suppliers for exports without upfront payment of GST. Further, an 'E-wallet' will be launched from 1st April, 2018 to make these schemes operational from 1st April, 2018?

- Merchant-exporters have been allowed to pay nominal GST of 0.1% for procuring goods from domestic suppliers for export.
- Issue of Gold availability for exporters resolved by allowing Specified Nominated Agency to import Gold without payment of IGST.
- The validity period of the Duty Credit Scrips has been increased from 18 months to 24 months to enhance their utility in the GST framework.
- GST rate for transfer/sale of scrips has been reduced to zero from the earlier rate of'12%.
- EOU/EHTP/STP/BTP units may import and/or procure goods from bonded warehouse in DTA or from international exhibition held in India without payment of Customs Duties and Integrated Tax and GST Compensation Cess.

GST implementation and updation in FTP/HBP consequent upon Mid-Term Review on 5-12-2017.

Appendices 6A to 6M & Aayat Niryaat Form ANF-6A to ANF-6D amended. - In the light of implementation of GST and consequent upon Mid-Term review of Foreign Trade Policy 2015-20, the DGFT has amended Appendices & Aayat Niryaat Forms (ANFs) pertaining to Chapter 6 of Handbook of Procedures 2015-2020. These changes have come into force with effect from 5-12-2017.

- D.G.F.T. Public Notice No. 36/2015-20, dated 4-9-2018.

GST implementation and updation in FTP/HBP consequent upon Mid-Term Review on 5-12-2017. —

Appendices 7A to 7F and Aayat Niryaat Form ANF-7A to ANT- 7B. - In the light of implementation of GST and consequent upon Mid-Term review of Foreign Trade Policy 2015-20, the DGFT has amended Appendices & Aayat Niryaat Forms (ANFs) pertaining to Chapter 7 of Handbook of Procedures 2015-2020. These changes have come

into force with effect from 5-12-2017. - D.G.F.T. Public Notice No. 37/2015-20, dated 4-9-2018.

A20 : GOODS AND SERVICES TAX ACT VIS-A-VIS CUSTOMS ACT

Goods and Services Tax is a unique Tax system which has subsumed multiple taxes was prevailed in the erstwhile tax regime except the provisions of Customs Act. Even though Customs is one of the indirect taxes but it is treated as separate provision and distinct from Goods and Services Tax. The Government has brought certain changes in the Customs Act to match with CGST Act but still there are few provisions of Customs Act are dissimilar with CGST Act.

A comparative analysis of Goods and Services Tax Act vis-a-via Customs Act is summarised in the following Tabular manner.

TABLE

Sl. No.	Provisions of Customs Act, 1962	Provisions of the Central Goods and Services Tax Act, 2017
1.	Levy of Tax – Section 12- Prescribes Levy of duties of Customs on goods imported into, or exported from, India. Export and Import is considered as inter-State supplies in terms of GST provision.	Levy of Tax- Section 9- Prescribes for levy of tax on all intra-State supplies of goods or services or both except on the supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel.
2.	Power to grant exemption from tax- Section 25 - If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions as may be specified in the notification of goods of any specified.	Power to grant exemption from tax- Section 11- Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either bsolutely or subject to such conditions as may be specified therein, goods or services or both of any specified.

3.	Valuation of goods: Section 14 – The value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation.	Valuation of taxable supply- Section 15 – The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
4.	Self-assessment : Section 17- An importer entering any imported goods under section 46, or any exporter entering any export goods under section 50, shall, as otherwise provided in section 85, self-asses the duty, if any, leviable on such goods.	Self-assessment: 59 - Every registered person shall self-asses the taxes payable under this Act and furnish a return for each tax period as specified under section 39.
5.	Provisional assessment of duty: Section 18- Where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; the proper officer may direct that the duty leviable on such goods, be assessed provisionally if the importer or the exporter, as the case may be, furnished such security and the duty provisionally assessed.	Provisional assessment of tax : Section 60- where the taxable person is unable to determine the value of goods or services or both or determine rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order, within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

6.	Final assessment: Section 18(2) - where the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty paid, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be.	Final assessment : Section 60 (3)- The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-section (1) of section 60, pass the final assessment order after taking into account such information as may be required for finalizing the assessment. Where excess paid amount to be refunded as per the provision of sub-section (8) of section 54, interest shall be paid on such refund as provided in section 56.
7.	Remission of duty on lost, destroyed or abandoned goods- Section 23 – Any imported goods have been lost (as a result of pilferage) or destroyed at any time before for home consumption, A.C/D.C, shall remit the duty on such goods.	Remission of duty on lost/destroyed – No such provisions under GST rather it has been prescribed under section 17(5) (i) reversal of duty credit / apportionment of credit in case of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
8.	Claim for refund of duty – Section 27- Any person claiming refund of any duty or interest (a) paid by him or (b) borne by him, may make an application in such form and manner as may be prescribed for such refund before the expiry of one year, from the date of payment of such duty or interest.	Refund of tax- Section 54 - Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, by make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.

9.	Interest on Delayed refunds- Section 27A – If any duty ordered to be refunded to an applicant is not refunded within three months from the date of receipt of application, there shall be paid to that applicant interest at such rate not below 5% and not exceeding 30% per annum on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.	Interest on Delayed refunds- Section 56-If any tax ordered to be refunded to any applicant is not refunded within sixty days from the date of receipt of application, interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund of such tax.
10.	Recovery of duties or erroneously r e f u n d e d - Section 28 (1) - Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts, the proper officer shall, within 2 years from the relevant date, serve notice on the person chargeable, requiring him to show cause why he should not pay the amount specified in the notice.	Recovery of tax - Section 73- Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-mis statement or suppression of facts to evade tax, he shall serve notice on the person chargeable, requiring him to show cause within 3 years from the due date for furnishing annual return for the financial year, as to why he should not pay the amount specified in the notice along with notice.

11.	Recovery of duties - Section 28(4)- where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, - Collusion; or any wilful mis-statement; or suppression of facts, by the importer or exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable, requiring him to show cause why should not pay amount specified in the notice.	Recovery of tax- Section 74 - where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised by reason of fraud or any wilful-mis statement or suppression of facts to evade tax, he shall serve notice on the person chargeable, requiring him to show cause within five years from the due date for furnishing annual return for the financial year, as to why he should not pay the amount specified in the notice along with notice.
12.	Interest on delayed payment of duty- Section 28AA - The person who is liable to pay duty in accordance of section 28, shall in addition to such duty, be liable to pay interest at such rate not below ten per cent. And not exceeding thirty-six per cent. per annum.	Interest on delayed payment of tax – Section 73(5) and Section 74(5) – Interest payable along with tax as per section 50 of the CGST Act. On which own, interest at such rate not exceeding eighteen per cent. In case of undue excess claim of input tax credit, shall pay interest, as such rate not exceeding twenty-four per cent. Per annum.

13.	Provisional attachment to protect revenue in certain cases-Section 28BA- Where, during the pendency of any proceeding 28, 28AA, 28B, the proper officer is of the opinion that for the purpose protecting the interest of revenue, it is necessary so to do, he may, with the previous approval of the Commissioner of Customs, by order in writing, attach provisionally property belonging to the person on whom notice is served after the expiry of six months from the date of the order.	Provisional attachment to protect revenue in certain cases- Section 83- Where during the pendency of any proceedings under section 73 and 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to taxable person after the expiry of one year from the date of the order.
14.	Advance Rulings: Section 28E – Advance Ruling means the determination, by the authority, of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity which is proposed to be undertaken by the applicant. The authority on receipt of application, may call upon commissioner to furnish relevant records. After examining the application and the records called for, by order, either allow or reject the application. The authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.	Advance Ruling: Section 95- Advance Ruling means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions of Classification, applicability of a notification, determination of time and value of supply of goods or services, admissibility of input tax credit, determination tax liability, registration and determine whether particular thing done by the applicant amounts to supply of goods or services. After giving opportunity of being heard to the applicant, the Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

15.	Power to search : Section 100 to Section 102, Section 105, Section 106 - If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person or goods such as gold, diamonds, watches and any other goods. No female shall be searched by anyone excepting a female. Power to search premises has been assigned to the Assistant Commissioner or Deputy Commissioner of Customs or in any area adjoining the land frontier or the coast of India. Power to stop and search conveyances such as aircraft, vessel or vehicle within the Indian customs waters or land.	Power of inspection, search and seizure : Section 67 & Section 68 – Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that- a taxable person has suppressed any transaction and any person engaged in the business of transportation goods likely to evade tax or to cause evasion of tax payable, he may authorize in writing any other officer central tax to inspect any places of business of the taxable person or owner of transporting goods or godown any other place, he may require the person in charge of the said conveyance to produce documents and device verification and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

16.	Power to summon persons to give evidence and produce documents: Section 108- Any Gazetted Officer of Customs shall have power to summon any person to give evidence or to produce document, every such inquiry shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of IPC, 1860.	Power to summon persons to give evidence and produce documents: Section 70- The proper officer shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner as provided in the case of a civil court under the provisions of the Code of Civil procedure, 1908 and judicial proceedings within the meaning of section 193 and section 228 of IPC, 1860.
17.	Power to arrest: Section 104- If an officer of customs empowered in this behalf by general or special order of the ommissioner of Customs has reason to believe that any person in India or within the Indian Customs waters has committed an offence punishable under section 132 or Section 133 or Section 135 or Section 135A or Section 136, he may arrest such person and shall as soon as may be, inform him of the grounds for such arrest and produce him before a magistrate within 24 hours. Subject to observance of Code of Criminal Procedure, 1973.	Power of arrest: Section 69- Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) to (d) of sub-section (1) of section 132 which is punishable, he may authorize any officer of central tax to arrest such person, officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours, subject to observance of Code of Criminal Procedure, 1973.

18.	Seizure of goods, documents and things: Section 110- If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods and may seize any document or thing which, in his opinion, will be useful for, or relevant to any proceeding under this Act. Any seized goods, documents to be released to the owner on taking a bond with such security may require.	Seizure of goods, documents: Section 67(2) -The authorize officer reason to believe any goods liable to confiscation, may himself search and seize such goods, documents or books or things. The goods so seize shall be released on a provisional basis upon execution of a bond and furnishing of a security or on payment of applicable tax, interest and penalty payable, as the case may be. The proper officer at any place intercept the conveyance carrying goods and documents.
19.	Appeal to Commissioner (Appeals): Section 128A – Any person aggrieved by any decision or order by an officer of customs lower in rank than a Commissioner of Customs, may appeal to the Commissioner (Appeals) within sixty days from the date of communication to him of such decision or order. The commissioner (Appeals) shall give an opportunity to the appellant to be heard if he so desires and decide every appeal within period of six months from the date on which it is filed.	Appeals to Appellate Authority: Section 107- Any person aggrieved by any decision or order by an Adjudicating Authority may appeal to such Appellate Authority within three months from the date on which the said decision or order is communicated to such person. The Appellate Authority shall give an opportunity to the applicant of being heard and decide every appeal within a period of one year from the date on which it is filed.

20.	Revision by Central Government: Section 129DD- The Central Government may, on the application of any person aggrieved by any order passed by Commissioner (Appeals), annul or modify such order. An application shall be made within three months from the date of the communication to the applicant of the order against which the application is being made.	Powers of Revisional Authority: Section 108- The Revision Authority may, on his own motion, or upon information received by him or on request from the Commissioner, to the interest of revenue, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing on modifying or annulling the said decision. Revisional Authority may pass an order before the expiry of a period of one year from the date of Order.
21.	Appeals to Appellate Tribunal: Section 129A- Any person aggrieved by order passed by the Commissioner of Customs, Commissioner of (Appeals), an order passed by the Board. The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against and decide every appeal within a period of three year from the date on which suchappeal is filed.	Appeals to Appellate Tribunal : Section 112- Any person aggrieved by an order passed against him by Appellate Authority or Revisionary Authority, may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal. The Appellate Tribunal may,after giving the parties to the appeal an opportunity of being heard pass such order appealed against, Appellate Tribunal hear and decide every appeal within a period of one year from the date on which it is filed.

22.	Appeal to High Court: Section 130- An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. The High Court shall decide the question of law so formulated and deliver such judgement thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.	Appeal to High Court: Section 117- Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court in FORM GST APL-08 and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law. The High Court shall decide the question of law so formulated and deliver such judgement thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
23.	Appeal to Supreme Court: Section 130E- An appeal shall lie to the Supreme Court from any judgement of the High Court delivered in an appeal made under section 130, the party aggrieved immediately after passing of the judgement, the High Court certifies to be a fit one for appeal to the Supreme Court or any order passed by the Appellate Tribunal on rate of duty or valuation of goods for purposes of assessment.	Appeal to Supreme Court: Section 118- An appeal shall lie to the Supreme Court from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or from any judgement or order passed by the High Court in an appeal in made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgement or order, High Court certifies to be a fit one for appeal to the Supreme Court.

In light of the observation of the cited comparison of Customs Act vis-a-vis Goods and Services Tax Act, It seems most of the provisions of Goods and Services Tax Act, has been borrowed from the Customs Act. It is very clear that both Acts having similarity on

most of the provisions but there are certain dissimilarities on certain aspects, which needs attention of the Government to take initiation for synchronization between both Acts for better compliance by the taxpayers. The Gist of comparisons and findings of both Acts are listed below:

1. Customs duties levied on imported goods and goods meant for export if not exempted by notification whereas levy of GST on supply of goods or Services or both.
2. Both Acts have provisions of self-assessment, provisional assessment and finalization of assessment by the department for the benefits of the taxpayers.
3. The provision of transaction value and price mechanism is the sole factor for the payment of tax and basis of tax determination are available in the both Acts.
4. In case of shot payment or non-payment of tax by the taxpayers there is provision of Demand and Recovery by the tax authority has prescribed in the both Acts. The recovery period for normal period is 3 years under GST whereas recovery period is 2 years in case of Customs and interest on delayed payment of tax for normal period is 10% under Customs whereas interest on delayed payment of tax is 18% under GST.
5. The both Acts have provision of Refund but interest on delayed refund is not exceeding 6% under GST whereas in case of Customs is not below 5% and not exceeding 30%.
6. To control tax evasion there is provision of search, inspection and seizure for recovery of Government dues by the attachment of properties on certain cases.
7. The provision of Remission of duty on lost or destroyed goods has prescribed under Customs Act but no such provisions under Goods and Services Tax Act.
8. There are similar provisions relating to power to summons and power to arrest are provided in both Customs Act as well as Goods and Services Tax Act to control illegal export and import and clandestine removals of goods under GST.
9. There are adjudicating procedures, Appellate procedures, revision authority in both Acts to sort out litigations between taxpayers and revenue authorities.
10. There is a provision of Settlement of cases under Customs Act to settle dispute of importer or exporter by the Settlement Commission and the same provision is absent under GST law.

11. Both Acts have provision of Authority for Advance Rulings but there is no provision of Appellate Authority for Advance Rulings as well as National Appellate Authority for Advance Rulings under Customs and Customs having single or centralize Authority for Advance Ruling.
12. Further, even though there is provision of second appellate authority namely called as Appellate Tribunal under Customs like GST but there is no provision of Regional Benches of Appellate Tribunal under Customs.
13. Both Acts have provision of Appeal to High Court in case of substantial question of law arises in case of Order passed by the Appellate Tribunal.
14. Both Acts have provision of Appeal to Supreme Court but in case of Customs, appeal can be made only in the matter of classification, rate of duty and valuation of goods against Order passed by the High Court but in case of GST all matter of disputes appeal can be made to Supreme Court against Order passed by the High Court.

SEARCHES, SEIZURE AND ARREST UNDER CUSTOMS ACT, 1962

The provisions of searches, seizure and arrest have been prescribed under Customs Act, 1962 to control improper import or export goods. Customs officers are empowered to search any premises or conveyances, X-ray any person and effect search and seizure in cases where they have reason to believe that goods are of a contraband nature are stored. The customs officers also have the power to investigate or interrogate a person in connection with any inquiry under the Customs Act and arrest him.
Section 100 to Section 110A of the Customs Act, 1962 deals with the subject of searches, seizure and arrest.

Section 100. Power to search suspected persons entering or leaving India, etc. -

(1) If the proper officer has reason to believe that any person to whom this section applies has secreted about his person, any goods liable to confiscation or any documents relating thereto, he may search that person.

(2) This section applies to the following persons, namely: —
   (a) any person who has landed from or is about to board, or is on board any vessel within the Indian customs waters;
   (b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;

(c) any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India;
(d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;
(e) any person in a customs area.

Section 101. Power to search suspected persons in certain other cases:

(1) Without prejudice to the provisions of section 100, if an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs, has reason to believe that any person has secreted about his person any goods of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person.
(2) The goods referred to in sub-section (1) are the following: —
(a) gold;
(b) diamonds;
(c) manufactures of gold or diamonds;
(d) watches;
(e) any other class of goods which the Central Government may, by notification in the Official Gazette, specify.

Section 102. Persons to be searched may require to be taken before gazetted officer of customs or magistrate.-

(1) When any officer of customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest gazetted officer of customs or magistrate.
(2) If such requisition is made, the officer of customs may detain the person making it until he can bring him before the gazetted officer of customs or the magistrate.
(3) The gazetted officer of customs or the magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.
(4) Before making a search under the provisions of section 100 or section 101, the officer of customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall

be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses.

(5) No female shall be searched by any one excepting a female.

Section 103. Power to screen or X-ray bodies of suspected persons for detecting secreted goods.-

1) Where the proper officer has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and shall, ––

with the prior approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as soon as practicable, screen or scan such person using such equipment as may be available at the customs station, but without prejudice to any of the rights available to such person under any other law for the time being in force, including his consent for such screening or scanning, and forward a report of such screening or scanning to the nearest magistrate if such goods appear to be secreted inside his body; or (a) produce him without unnecessary delay before the nearest magistrate.

(2) A magistrate before whom any person is brought under sub-section (1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

(3) Where any such magistrate has reasonable ground for believing that such person has any such goods secreted inside his body and the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect.

(4) Where a magistrate has made any order under sub-section (3), in relation to any person, the proper officer shall, as soon as practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section, and such person shall allow the radiologist to screen or X-ray his body.

(5) A radiologist before whom any person is brought under sub-section (4) shall, after screening or X-raying the body of such person, forward his report, together with any X-ray pictures taken by him, to the magistrate without unnecessary delay.

(6) Where on receipt of a report [from the proper officer under clause

(a) of sub-section (1) or] from a radiologist under sub-section (5) or otherwise, the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction:

Provided that in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner.

(7) Where any person is brought before a magistrate under this section, such magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody and for such period as he may direct.

(8) Nothing in this section shall apply to any person referred to in sub-section (1), who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods.

Explanation. - For the purposes of this section, the expression "registered medical practitioner" means any person who holds a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or notified under section 3 of that Act, or by an authority specified in any of the Schedules to the Indian Medical Council Act, 1956 (102 of 1956).

Section 104. Power to Arrest. -

(1) If an officer of Customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs has reason to believe that any person has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a magistrate.

(3) Where an officer of customs has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police-station has

and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898).

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence relating to —
   (a) prohibited goods; or
   (b) evasion or attempted evasion of duty exceeding fifty lakh rupees; or,
   (c) fraudulently availing of or attempting to avail drawback or any exemption from duty provided under this Act, where the amount of drawback or exemption from duty exceeds fifty lakh rupees; or fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, and such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds fifty lakh rupees, shall be cognizable.

(5) Save as otherwise provided in sub-section (4), all other offences under the Act shall be non-cognizable.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) an offence punishable under section 135 relating to — (Non-bailable offences)
   (a) evasion or attempted evasion of duty exceeding fifty lakh rupees; or
   (b) smuggling of prohibited goods notified under section 11 which are also notified under sub-clause (c) of clause (i) of sub-section (1) of section 135; or
   (c) import of concealed or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or
   (d) fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees; or,
   (e) fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, and such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds fifty lakh rupees, shall be non-bailable.

(7) Save as otherwise provided in sub-section (6), all other offences under this Act shall be bailable.

The officers are under instructions to make arrest in bailable offences only in exceptional situations may include:

(a) Baggage cases – Outright smuggling of high value goods such as gold, silver, restricted or prohibited items or goods notified under Section 123 or foreign currency where the value of the offending goods exceeds ₹20 lakh.

(b) Appraising cases (relating to trade goods) involving wilful mis-declaration in description of goods / concealment of goods / goods notified under Section 123 where the CIF value of the offending goods exceeds ₹2 crores.

(c) Fraudulent drawback cases where the amount of drawback is ₹ 1 crore or more.

(d) In cases related to exportation of trade goods (i.e. appraising cases) involving (i) wilful mis-declaration in value / description; (ii) concealment of restricted goods or goods notified under section 11 of the Customs Act, 1962, where FOB value of the offending goods is ₹2 crores or more.

(e) The above criteria of value mentioned would not apply in cases involving offences relating to FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna.

In bailable offence cases, the arresting officer is bound to release the arrested person on bail and accept the bail bond. Finance Act, 2013 provides for grant of bail only in non-cognizable cases. The C.B.E &C, Circular No.38/2013- Customs dated 17.09.2013, {2013(295) E.L.T.T134}, (amendments to section 104 of the Customs Act), Specify all offences are bailable other than the categories of offences punishable under section 135 of the Act ibid.

Every arrest should be intimated to the Chief Commissioner / DGRI who will further inform the concerned Board Member.

Section 105. Power to search premises.-

(1) If the Assistant Commissioner of Customs or Deputy Commissioner of Customs, or in any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of customs to search or may himself search for such goods, documents or things.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898), relating to searches shall, so far as may be, apply to

searches under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words Principal Commissioner of Customs or Commissioner of Customs were substituted.

Section 106. Power to stop and search conveyance.-

Where the proper officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and -

(a) rummage and search any part of the aircraft, vehicle or vessel;
(b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;
(c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

(1) Where for the purposes of sub-section (1) -
   (a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and thereupon, such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;
   (b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

Section 106A. Power to Inspect.- Any proper officer authorised in this behalf by the Principal Commissioner of Customs or Commissioner of Customs may, for the purpose of ascertaining whether or not the requirements of this Act have been complied with, at any reasonable time, enter any place intimated under Chapter IVA or Chapter IVB, as the case may be, and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge

thereof, to produce to him for his inspection the accounts maintained under the said Chapter IVA or Chapter IVB, as the case may be, and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or are likely to be illegally exported.

Section 107. Power to examine person.- Any officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods, -

(a) require any person to produce or deliver any document or thing relevant to the enquiry;
(b) examine any person acquainted with the facts and circumstances of the case.

Section 108. Power to summon persons to give evidence and produce documents.-

(1) Any Gazetted officer of Customs hall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.
(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.
(3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:
Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.
(4) Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

Section 108A. Obligation to furnish information.- Any person, being -

(a) a local authority or other public body or association; or
(b) any authority of the State Government responsible for the collection

of value added tax or sales tax or any other tax relating to the goods or services; or

(c) an income-tax authority appointed under the provisions of the Income-tax Act, 1961 (43 of 1961); or

(d) a Banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934); or

(e) a co-operative bank within the meaning of clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961); or

(f) a financial institution within the meaning of clause (c), or a non-banking financial company within the meaning of clause (f), of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934); or

(g) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003 (36 of 2003), or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or

(h) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); or

(i) a Registrar within the meaning of the Companies Act, 2013 (18 of 2013); or

(j) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988); or

(k) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013); or

(l) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or

(m) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); or

(n) the Post Master General within the meaning of clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or

(o) the Director General of Foreign Trade within the meaning of clause (d) of section 2 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992); or

(p) the General Manager of a Zonal Railway within the meaning of clause (18) of section 2 of the Railways Act, 1989 (24 of 1989); or

(q) an officer of the Reserve Bank of India constituted under section

3 of the Reserve Bank of India Act, 1934 (2 of 1934),

(1) who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts specified above or under any other law for the time being in force, which is considered relevant for the purposes of this Act, shall furnish such information to the proper officer in such manner as may be prescribed by rules made under this Act.

(2) Where the proper officer considers that the information furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such information and give him an opportunity of rectifying the defect within a period of seven days from the date of such intimation or within such further period which, on an application made in this behalf, the proper officer may allow and if the defect is not rectified within the said period of seven days or, further period, as the case may be, so allowed, then, notwithstanding anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall apply.

(3) Where a person who is required to furnish information has not furnished the same within the time specified in sub-section (1) or sub-section (2), the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding thirty days from the date of service of the notice and such person shall furnish such information.

Section 108B. Penalty for failure to furnish information return.- Where the person who is required to furnish information under section 108A fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such information continues

Section 109. Power to require production of order permitting clearance of goods imported by land.- Any officer of customs appointed for any area adjoining the land frontier of India and empowered in this behalf by general or special order of the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under section 47 permitting clearance of the goods:

Provided that nothing in this section shall apply to any imported goods passing from a land frontier to a land customs station by a

route appointed under clause (c) of section 7.

Section 109A. Power to undertake controlled delivery.- Notwithstanding anything contained in this Act, the proper officer or any other officer authorised by him in this behalf, may undertake controlled delivery of any consignment of such goods and in such manner as may be prescribed, to —

(a) any destination in India; or
(b) a foreign country, in consultation with the competent authority of such country to which such consignment is destined.

Explanation. — For the purposes of this section "controlled delivery" means the procedure of allowing consignment of such goods to pass out of, or into, the territory of India with the knowledge and under the supervision of proper officer for identifying the persons involved in the commission of an offence or contravention under this Act.

Section 110. Seizure of goods, documents and things.- (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer :

Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.

(1A)The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from

time to time, determine after following the procedure hereinafter specified.

(1B)Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of -

(a) certifying the correctness of the inventory so prepared; or
(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or
(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1C) where an application is made under sub-section (1B), the Magistrate shall, as soon as may be, allow the application.]

(2)Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:
Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

The person from whose custody any documents are seized under sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

(2) Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest of revenue or preventing smuggling, it is necessary so to do, he

may, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, by order in writing, provisionally attach any bank account for a period not exceeding six months:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified.

Section 110A. Provisional release of goods, documents and things seized [or bank account provisionally attached] pending adjudication. - Any goods, documents or things seized or bank account provisionally attached under section 110, may, pending the order of the adjudicating authority, be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

Conclusion:

Customs officers are assigned with power of searches, seizure, summons and arrest under Customs Act. The objective of search & seizures under Customs is anti-smuggling or preventive operations. Customs officers are empowered to inspect any premises or conveyances, x-ray any person and effect search and seizure in cases where they have reason to believe that goods are of a contraband nature. Seized goods can be released against bond with security / bank guarantee.

1.1.I. & .C. has issued detailed guidelines in this regard vide Circular No.35/2017-Cus., dated 16-8-207. With regard to arrest C.B.I.& C. has issued guidelines for arrest a person involving import of prohibited goods or of evasion of Customs duty exceeding ₹50 lakhs in case of cognizable offences and in case of non-cognizable offences Customs officer cannot arrest without an arrest warrant from Magistrate as per the code of Criminal procedure, 1973.

"ATA" CARNET

The term "ATA" is a combination of the initial letters of the French words "Admission Temporaire" and the English words "Temporary Admission". It is a system which allows free movement of goods across frontiers and their temporary admission into a Customs territory with relief from payment of duties and taxes. The goods are covered by a single document known as the 'ATA carnet' that is secured by an international guarantee system. With this system the

international business community enjoys considerable simplification of Customs formalities. The ATA carnet serves as a goods declaration at export, transit and import. In addition no import duties or taxes are collected for the temporary importation of goods covered by the system since internationally valid security has been established by the national associations issuing the ATA carnets. These national associations are approved by Customs and are affiliated to an international guaranteeing chain administered by the ICC World Chambers Federation (ICC/WCF).

Legal Position

India is signatory to the ATA convention. In discharge of it's obligation with regard to implementation of ATA convention, India has taken following measures: ATA Carnet Page 6 of 10 (i) Vide notification No. 14/90-Custom(NT), dated 6.4.1990, the Government has issued the ATA Carnet (Form of Bill of Entry and Shipping Bill) Regulations, 1990.

These regulations prescribe the format of Bill of Entry and Shipping Bill for ATA Carnet. (ii) Vide notification No. 157/90-Customs, dated 28.3.1990 as amended from time to time, the Central Government has exempted the goods temporarily imported into India for specified purposes under ATA carnet from payment of customs duty. Under notification No. 157/90-Customs, dated 28.3.1990, the following goods are allowed to be imported temporarily under ATA Carnet without payment of duty.

(a) Goods intended for display or demonstration.

(b) Goods intended for use in connection with the display of foreign products, including –

  (i) goods necessary for the purpose of demonstrating machinery or apparatus to be displayed:

  (ii) construction and decoration material including electrical fittings, for the temporary stands of foreign exhibitors:

  (iii) advertising and demonstration material which is demonstrably publicity material for the goods displayed, for example, sound recording, films and lanterns, slides and apparatus for use therewith :

  (iv) equipment including interpretation, apparatus, sound recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings conferences or congresses. The goods specified above for the purposes of display and use for the following events as

specified in Schedule II and III in the above said notification. The events specified are as under:

(1) Trade, industrial, agricultural or crafts exhibition, fair, or similar show or display.

(2) Exhibition or meeting which is primarily organised for a charitable purpose.

(3) Exhibition or meeting which is primarily organised to promote any branch of learning, art, craft, sport or scientific, educational or cultural activity to promote friendship between peoples, or to promote religious knowledge or worship.

(4) Meeting of representatives of any international group of organisations.

(5) Representative meeting of an official of commemorative character.

Explanation:- The events specified in this Schedule do not include exhibitions organized for private purposes in shops or business premises with a view to promote the sale of foreign goods.

ACCREDITED CLIENT PROGRAMME (ACP)

Introduction

The Accredited Client Programme (ACP), is a major element of the risk management strategy of the department. Under this programme, clients who are assessed as highly compliant would be given assured facilitation by the RMS.

Accredited Clients Programme means a programme introduced by the Customs Department whereby importers registered by them as "Accredited Clients" will form a separate category to which assured facilitation will be provided. Except for a small percentage of consignments selected on random basis by the RMS, or cases where specific intelligence is available or where a specifically observed pattern of non-compliance is required to be addressed, accredited clients will be allowed clearance on the basis of self- assessment i.e., as a matter of course, clearance will be allowed on the basis of their declaration and without examination of goods. Further this benefit will be available to Accredited Clients at all ports in the country where EDI and RMS are operational. It is expected that this programme will bring reduction in the dwell time of cargo and transaction cost of such importers. Commissioners of Customs are also required to work with the custodians for earmarking separate storage space,

handling facility and expeditious clearance procedures for these clients. Further IMG has also recommended 'faster delivery system by creating separate area in the port premises clearly earmarked for delivery of cargo to specified accredited importers.' This programme has been defined in detail in Customs Circular No. 42/2005 – cus dated 24th November 2005.

The importers desirous of availing the facility as "Accredited Clients" are required to apply for registration under the scheme using the Application form attached at Annex – 1. Importers meeting the following criteria shall be the eligible under the Accredited Clients Program:

(i) They should have imported goods valued at Rs Ten Crores [assessable value] in the previous financial year; or paid more than Rs One Crore of Customs duty in the previous financial year; or, in the case of importers who are also Central Excise assessees, paid Central Excise Duties over Rupees One Crore from the Personal Ledger Account in the previous financial year.

(ii) They should have filed at least 25 Bills of Entry in the previous financial year in one or more Indian Customs stations.

(iii) They should have no cases of Customs, Central Excise or Service Tax booked against them in the previous three financial years. Cases booked would imply that there should be at least a show cause notice, invoking penal provisions, issued to an importer.

(iv) They should also not have any cases booked under any of the Allied Acts being implemented by Customs.

(v) The quality of the submissions made by the applicants to Customs should be good as measured by the number of amendments made in the bills of entry submitted by them in relation to classification of goods, valuation and claim for exemption benefits. The number of such amendments should not have exceeded 20% of the bills of entry during the previous financial year.

(vi) They should have no duty demands pending on account of non-fulfillment of Export obligation.

(vii) They should have reliable systems of record keeping and internal controls and their accounting systems should conform to recognized standards of accounting. They are required to provide the necessary certificate from their Chartered Accountants in this regard as per format given in the Application form.

For qualifying for the ACP, the applicants will have to satisfy any one of the criteria set out at serial number (i) and all the other criteria set out above. Further, the accreditation would initially be valid for a

period of one year and would be renewable thereafter upon a review of the compliance record of the Accredited Client.

It will be mandatory for you, or your Custom Broker, to file your bills of entry only through the ICEGATE using digital signatures, excepting when this is not possible due to any system failure. In addition , you or your CB, will have to nominate and authorize specific personnel, who alone will deal with the Customs for clearance of your goods.

You shall make the duty payments for all your bills of entry through your account only at the designated bank. No payment shall be made in any other mode.

A21 : SPECIAL ECONOMIC ZONES

India was one of the first in Asia to recognize the effectiveness of the Export Processing Zone (EPZ) model in promoting exports, with Asia's first EPZ set up in Kandla in 1965. With a view to overcome the shortcomings experienced on account of the multiplicity of controls and clearances; absence of world-class infrastructure, and an unstable fiscal regime and with a view to attract larger foreign investments in India, the Special Economic Zones (SEZs) Policy was announced in April 2000.

To instil confidence in investors and signal the Government's commitment to a stable SEZ policy regime and with a view to impart stability to the SEZ regime thereby generating greater economic activity and employment through the establishment of SEZs, a comprehensive draft SEZ Bill prepared after extensive discussions with the stakeholders. A number of meetings were held in various parts of the country both by the Minister for Commerce and Industry as well as senior officials for this purpose.

The Special Economic Zones Act, 2005, was passed by Parliament in May, 2005 which received Presidential assent on the 23rd of June, 2005. The draft SEZ Rules were widely discussed and put on the website of the Department of Commerce offering suggestions/ comments. Around 800 suggestions were received on the draft rules. After extensive consultations, the SEZ Act, 2005, supported by SEZ Rules, came into effect on 10th February, 2006, providing for drastic simplification of procedures and for single window clearance on matters relating to central as well as state governments. The main objectives of the SEZ Act are:

- generation of additional economic activity
- promotion of exports of goods and services

- promotion of investment from domestic and foreign sources
- creation of employment opportunities
- development of infrastructure facilities

The SEZ Rules provide for different minimum land requirement for different class of SEZs. Every SEZ is divided into a processing area where alone the SEZ units would come up and the non-processing area where the supporting infrastructure is to be created.

The SEZ Rules provide for:

- "Simplified procedures for development, operation, and maintenance of the Special Economic Zones and for setting up units and conducting business in SEZs;
- Single window clearance for setting up of an SEZ;
- Single window clearance for setting up a unit in a Special Economic Zone;
- Single Window clearance on matters relating to Central as well as State Governments;
- Simplified compliance procedures and documentation with an emphasis on self certification

The SEZ Act 2005 envisages key role for the State Governments in Export Promotion and creation of related infrastructure. A Single Window SEZ approval mechanism has been provided through a 19 member inter-ministerial SEZ Board of Approval (BoA). The applications duly recommended by the respective State Governments/ UT Administration are considered by this BoA periodically. All decisions of the Board of approvals are with consensus.

SEZs are treated as foreign territory for tax purposes even though they are located within a country's borders. Supplies into SEZs are exempt from paying GST because they are considered as exports. But, when an SEZ supplies goods/services to anyone, it will be deemed a regular inter-state supply and will attract IGST. However, when an SEZ supplies goods/services to a Domestic Tariff Area (DTA), it is exempt from paying taxes, although the receiver in the DTA has to pay.

- Asia's first EPZ (Export Processing Zones) was established in 1965 at Kandla, Gujarat.
- While these EPZs had a similar structure to SEZs, the government began to establish SEZs in 2000 under the Foreign Trade Policy to redress the infrastructural and bureaucratic challenges that were seen to have limited the success of EPZs.
- Presently, 378 SEZs are notified, out of which 272 are operational.

About 64% of the SEZs are located in five states – Tamil Nadu, Telangana, Karnataka, Andhra Pradesh and Maharashtra.

SEZ Approval Mechanism

The SEZ approval mechanism is a single-window process provided by a 19-member inter-ministerial SEZ Board of Approval (BoA).

- The developer has to submit the proposal to the state government.
- The state government forwards this proposal to the BoA along with its recommendation within forty-five days.
- The developer or applicant can also directly submit the proposal to the BoA.
- The Board, which has been constituted by the Central Government, and is a 19-member Board takes the decision considering the merits of the proposal. All decisions taken by the Board are by consensus.
- The Board is chaired by the Secretary of the Dept. of Commerce, Ministry of Commerce and Industry.
- The other members are from various bodies and ministries such as the Central Board of Excise and Customs (CBEC), the Central Board of Direct Taxes (CBDT), Department of Economic Affairs, Dept. of Commerce, Ministry of Science and Technology, Ministry of Home Affairs, Ministry of Law and Justice, Ministry of Urban Development, etc.
- Once the BoA gives its approval, and the central government notifies the area of the SEZ, units are allowed to be established inside the SEZ.

SEZs Facilities & Incentives

The government offers many incentives for companies and businesses established in SEZs. some of the important ones are:

- Duty-free import or domestic procurement of goods for developing, operating and maintaining SEZ units.
- 100% Income tax exemption on export income for SEZ units under the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years. (Sunset Clause for Units will become effective from 2020).
- Units are exempted from Minimum Alternate Tax (MAT).
- They were exempted from Central Sales Tax, Service Tax and State sales tax. These have now subsumed into GST and supplies to SEZs are zero-rated under the IGST Act, 2017.
- Single window clearance for Central and State level approvals.
- There is no need for a license for import.

- In the manufacturing sector, barring a few segments, 100% FDI is allowed.
- Profits earned are permitted to be repatriated freely with no need for any dividend balancing.
- There is no need for separate documentation for customs and export-import policy.
- Many SEZs offer developed plots and ready-to-use space.

SEZs may be set up for manufacturing of goods or rendering services or both and may be multiproduct, sector specific, or Free Trade and Warehousing Zone. In terms of Section 53 of the SEZ Act, SEZs are deemed to be a territory outside the Customs territory of India for the purpose of undertaking the authorized operations and goods/ services entering it (from DTA) are treated as exports.

Board of Approvals

As per Section 8 of the SEZ Act, the Board of Approval (BOA) is to be chaired by an officer not below the rank of Additional Secretary in the Department of Commerce and includes Member (Customs), CBEC as its member. Presently, the BOA meetings are chaired by Commerce Secretary. The BOA approves proposals for establishing SEZs and providing infrastructure facilities. Its functions include approving authorized operations of Developer/ Co-developer.

Unit Approval Committee:

As per Section 13 of the SEZ Act, a Unit Approval Committee is to be notified for each SEZ, within six months from the date of establishment of such Special Economic Zone. Development Commissioner has administrative control over the SEZ and chairs the Unit Approval Committee.

The Unit Approval Committees are, inter-alia, expected to accord approval to the procurement of goods and services by SEZ units indigenously or through imports. The Committees is also required to monitor and supervise compliance of conditions subject to which the letter of Approval (LOA) has been issued. Commissioner of Customs or his nominee not below the rank of a joint Commissioner is designated as an ex-officio member of the UAC. However, meetings of the Approval Committee must be attended by the Jurisdictional Commissioner of Customs or Central Excise and never go unrepresented as decisions taken in such meeting have serious revenue implications. It should also be ensured that the view point of revenue is conveyed effectively in each such meeting and that such views are duly reflected in the minutes of these meetings.

The decisions of the Approval Committee are by a 'general consensus'

implying thereby that in the absence of a consensus amongst all the Members present in the meeting, the proposal cannot be carried forward and shall stand referred to the Board of Approval.

Establishment of SEZs:

The SEZs can be set up either jointly or severally - by the Central Government, State Government, or any person as per Section 3 of the SEZ Act. Such person or body or authority is termed as developer/ co-developer of the SEZ in terms of Section 2(g) of the SEZ Act. A Co-developer is a person who is allowed to provide any infrastructure facility in the SEZ in Custom Manual, 2018 176 accordance with an agreement with the developer and as approved by the Board of Approval. The State Government is required to forward the proposals received under section 3 of SEZ Act for setting up of a SEZ to the Board of Approval along with its recommendations, within forty-five days of receipt of such proposal and where the Board approves a proposal received directly under Section 3(3) of the SEZ Act, the person is required to obtain concurrence of State Government within 6 months from the date of approval.

The BOA may approve as such or modify and approve a proposal for establishment of a Special Economic Zone, in accordance with the provisions of Section 3(8) of the SEZ Act subject to the requirements of minimum area of land and other terms and conditions indicated in Rule 5(2) of the SEZ Rules.

All existing Special Economic Zone shall be deemed to be a multi-sector Special Economic Zone.

Setting up of SEZ unit:

As per Section 15 of the SEZ Act, any person, who intends to set up a Unit for manufacture of goods or rendering services in a Special Economic Zone, may submit a proposal to the Development Commissioner concerned. On receipt of the proposal, the Development Commissioner is required to submit the same to the Approval Committee for its approval. The Approval Committee may approve or approve with modification or reject a proposal placed before it within fifteen days of its receipt as per conditions prescribes in Rule 18 of SEZ Rules.

As per Rule 19 of the SEZ Rules, the Letter of Approval shall be valid for one year within which period the Unit shall commence production or service or trading or Free Trade and Warehousing activity and the Unit shall intimate date of commencement of production or activity to Development Commissioner. On receipt of a request from the entrepreneur, further extension can be granted by the Development Commissioner for a further period not exceeding two years. The

Development Commissioner may grant further extension of one year subject to the condition that two-thirds of activities including construction, relating to the setting up of the Unit is complete. If the unit has not commenced production or service activity within the validity period or the extended validity period, the Letter of Approval shall be deemed to have been lapsed with effect from the date on which its validity expired. The Letter of Approval shall be valid for five years from the date of commencement of production or service activity and it shall be construed as a license for all purposes related to authorized operations, and, after the completion of five years from the date of commencement of production, the Development Commissioner may, at the request of the Unit, extend validity of the Letter of Approval for a further period of five years.

Monitoring of activities of SEZ units:

As per Rules 15 and 54 of the SEZ Rules, the performance of the Unit is to be monitored by the Approval Committee. If Approval Committee comes to the conclusion that a Unit has not achieved positive Net Foreign Exchange Earning or failed to abide by any of the terms and conditions of the Letter of Approval or Bond-cum-Legal Undertaking, without prejudice to the action that may be taken under any other law for the time being in force, the said Unit shall be liable for penal action under the provisions of the Foreign Trade (Development and Regulation) Act, 1992.

Net Foreign Exchange Earnings:

SEZ units shall achieve positive Net Foreign Exchange Earnings (NFE), which is calculated cumulatively for a period of 5 years from the commencement of production, subject to conditions prescribed in terms of Rule 53 of the SEZ Rules.

Import and procurement:

A SEZ unit or Developer/co-developer may import or- procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park unit or Bio-technology Park unit, various types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) and subject to condition prescribed under Rule 26 of the SEZ Rules.

As per Rule 30 the SEZ Rules, The Domestic Tariff Area supplier supplying goods or services to a unit or Developer shall clear the

goods or services, as in case of zero-rated supply as per provisions of section 16 of IGST Act, 2017(13 of 2017) either under bond or undertaking or under any other refund procedure permitted under Goods and Service Tax laws or Central Excise laws, or as duty or tax paid goods under claim of rebate, on the cover of documents laid down under the relevant Central Excise law for the purpose of export by an manufacturer or supplier.

(i) Goods (or services) procured by unit or developer, on which (GST) exemption has been availed but without any availment of export entitlement, shall be allowed admission into SEZ on the basis of documents referred to in above rule.

(ii) The goods procured by a unit or developer under claim of export entitlement shall be allowed admission into SEZ on the basis of documents referred above and a bill of export filed by the supplier or on his behalf by the unit or developer which is assessed by authorized officer before arrival of the goods. A copy of the documents referred to above rule or copy of Bill of Export as the case may be, with an endorsement by authorized officer that goods have been admitted in full into SEZ shall be treated as proof of export and a copy with such endorsement shall also be forwarded by unit or developer to the GST or the Central Excise officer having jurisdiction over the DTA supplier within forty-five days failing which the GST or Central Excise officer shall raise demand of tax or duty against the DTA supplier.

Exports:

As per Rule 45 of the SEZ Rules, a unit may export goods or services as per the terms and conditions of Letter of Approval including agro-products, partly processed goods, subassemblies and components except prohibited items under the Import Trade Control (Harmonized System) Classification of Export and Import Items and the Unit may also export by-products, rejects, waste scrap arising out of the manufacturing process.

Sub-contracting:

As per rule 41 of the SEZ Rules, a unit may sub-contract a part of its production or any production process, to a unit in the Domestic Tariff Area or in a Special Economic Zone or Export Oriented Unit or a unit in Electronic Hardware Technology Park unit or Software Technology Park unit or Bio-technology Park unit with prior permission of the Specified Officer to be given on an annual basis.

No permission is necessary if subcontracting is done through units in

same SEZ but both the supplying and receiving units should maintain proper account of goods involved in the subcontracting. A Developer/ co-developer on their behalf their contractor, may also temporarily remove the goods, procured or imported duty free by them for their authorized operations, to a place in the Domestic Tariff Area or a unit in the same or another Special Economic Zone or Export Oriented Unit or a unit in Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, for sub-contracting a process, with prior permission of and subject to such conditions as may be prescribed by the Approval Committee.

Sub-contracting for DTA unit for export:

A Unit may on the basis of annual permission from the Specified Officer undertake subcontracting for export on behalf of a Domestic Tariff Area exporter subject to conditions prescribed in Rule 43 of the SEZ Rules.

As per Rule 47(2) of the SEZ Rules, scrap or dust or sweepings of gold or silver or platinum may be sent to Government of India Mint or Private Mint from a Unit and returned in standard bars in accordance with the procedure specified by Customs authorities or may be sold in the Domestic Tariff Area on payment of duty on the gold or silver or platinum content in the said scrap.

DTA sale:

A Unit may sell goods and services including rejects, wastes, scraps, remnants, broken diamonds, by-products arising during the manufacturing process or 111 connections therewith, in the Domestic Tariff Area on payment of applicable Customs Duties under Section 30 of the SEZ Act and subject to fulfilment of condition laid down in the SEZ Rules.

Valuation of goods cleared into DTA:

As per Rule 48 of the SEZ Rules, valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made Thereunder as applicable to goods when imported into India. If goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods and shall be subject to such procedure and conditions as applicable in the case of normal re-import of goods from outside India.

Temporary removal of goods into the DTA:

As per Rule 50 of the SEZ Rules, the SEZ units can remove the goods from the Zone into the DT A temporarily without payment of duty

for the purpose of inter-alia display, export promotion, exhibition job work, test, repair, refining, calibration or subject to conditions as prescribed. If a unit fails to bring back the goods into SEZ within the prescribed period, the unit is liable to pay applicable duty on such goods.

Duty remission on destruction of goods:

As per Rule 39 of the SEZ Rules, after advance intimation to the Specified Officer, a Unit may destroy, without payment of duty, goods including capital goods, procured from Domestic Tariff Area or goods imported or goods manufactured/produced by the Unit including rejects, waste, scrap subject to prior environmental clearance if any required for such destruction. Where it is not possible to destroy goods within the Special Economic Zone, destruction of goods shall be carried out, outside the Special Economic Zone with the permission of Specified Officer and in the presence of the Authorized Officer. However, destruction of precious metals, diamond, precious stones and semi-precious stones IS not allowed. The officers supervising destruction are required to ensure that goods are destroyed fully rendering them unfit for further use and give certificate to that effect. The Unit shall be required to pay back the drawback and Duty Exemption Pass Book credit availed in of case goods procured from Domestic Tariff Area are destroyed due to natural calamities.

Exit of units:

As per Rule 74 of the SEZ rules, the Unit may opt out of Special Economic Zone with the approval of the Development Commissioner and such exit shall be subject to payment of applicable duties and taxes on the imported or indigenous capital goods, raw materials, components, consumables, spares and finished goods in stock and if the unit has not achieved positive Net Foreign Exchange, the exit shall be subject to penalty that may be imposed under the Foreign Trade (Development and Regulation) Act, 1992. The unit opting out of SEZ shall execute a legal undertaking in Form L.

In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gem and other materials available for manufacture of jewellery is required to be handed over to an agency nominated by the Central Government at a price to be determined by that agency.

Development Commissioner can permit a Unit, as one time option to exit from Special Economic Zone on payment of duty on capital goods under the prevailing Export Promotion Capital Goods Customs Manual, 2023 236 Scheme under the Foreign Trade Policy subject to

the Unit satisfying the eligibility criteria under that Scheme.

Drawback on supplies made to SEZs:

Section 26(d) of the SEZ Act provides that every Developer and entrepreneur is entitled to Drawback of duties on goods brought from the DT A into an SEZ. The triplicate copy of the assessed Bill of Export is to be treated as the Drawback claim and processed in the Customs section (Specified Officer) of the Special Economic Zone. Dy./Asstt. Commissioner of Customs posted on deputation at the SEZ being the Dy./ Asstt. Commissioner of Customs at the Customs Station of export could sanction such Drawback claims. Thus, Drawback claim in respect of such supplies are not to be processed or sanctioned by the Customs and Central Excise formations.

Drawback can also be claimed by the DTA supplier on the basis of the disclaimer issued by the SEZ Unit Developer. In such cases, the Commissionerate of Customs and Central Excise/ Central GST having jurisdiction over the DT A unit would sanction the Drawback. The jurisdictional Commissioner of Customs in consultation with the Pay and Accounts Officer shall make arrangements for issue of authorization and drawback cheque books.

The office of Principal CCA has issued instructions regarding banking arrangements for payment of refund/Drawback cheques and accounting procedure to be followed in that regard. Accordingly, the PAOs are issuing cheque books to each Customs & Central Excise/ Central GST formations for payment of refund / Drawback claims and the same cheque book can be used for making refunds and payment of Drawback. The cheque issuing officer is required to submit separate list of payment for Central Excise (0038) and Customs (0037) to their jurisdictional PAO.

Other administrative guidelines:

The Customs/Central Excise/Central GST Officers nominated to the Approval Committee of SEZs should ensure that the decisions taken at the Committee are within the provisions of law and should be made keeping in mind the revenue implications of such decisions.

The Customs/Central Excise/Central GST Officers are advised to conduct verification of credentials of the entrepreneurs proposing to set-up SEZ units and provide inputs on past history to the Committee for taking appropriate decision.

(i) While granting assent to the approval, the representatives of DOR should ensure whether the particular process to be carried out by the unit constitutes manufacture or not in terms of Section 2 (r) of the SEZ Act.

(ii) The Committee approves the import or procurement of goods from the DTA in the SEZ for carrying on the authorized operations by a developer. It should be ensured that the authorized operations are covered under the provisions of SEZ Act and Rules. Activities like Housing, etc, should only be allowed in phases of 20 of approval at a time and Commensurate with the needs of SEZs. In case of activities like setting up of hospitals, hotels and other such social infrastructure, no duty free material is permitted for Operation and maintenance of such facilities.

(iii) Any activity outside the SEZ cannot be allowed as Authorized Operation. (iv) No tax benefits would be available for measures taken to establish contiguity. (v) Field formations (Range/ Divisions) should follow the specified procedure laid down for movement of goods from SEZ to DT A and from DT A to SEZ.

(iv) No unit should be allowed to start functioning till the walls and specified entry/exit points and the offices of the Development Commissioner (including the Customs officers posted under him) are in place. Only one entry/exit gate should be permitted in view of security and revenue loss concerns.

Social & Commercial Infrastructure In Non-Processing Area For Use By DTA entities

Social and commercial infrastructure located in the Non-Processing Area of an SEZ can be used by SEZ entities as well as DTA entities provided that all duty benefits availed in setting up of such infrastructure has been refunded back by the developer in full as certified by the jurisdictional Development Commissioner.

Advantages

Being in a SEZ can be advantageous to a certain extent when it comes to taxes. Any supply of goods or services or both to a Special Economic Zone developer/unit will be considered to be a zero-rated supply. That means these supplies will attract Zero tax rate under GST. In other words, supplies into SEZ are exempt from GST and are considered as exports.

Therefore, the suppliers supplying goods to SEZs can:

(a) Supply under bond or LUT without payment of IGST and claim credit of ITC; or

(b) Supply on payment of IGST and claim refund of taxes paid. Any supply of goods or services or both to or by an SEZ developer/unit to DTA are chargeable to duties of customs under the Customs Tariff Act, 1975 as leviable on such goods when import into the country(refer Section 30 of the SEZ Act, 2005).

E-Way Bill and SEZ

Under GST, transporters should carry an E-Way Bill when moving goods from one place to another if the value of these goods are more than ₹ 50,000. SEZ supplies are treated how the other inter-state supplies are treated. The SEZ units or developers will have to follow the same EWB procedures as the others in the same industry follow. In case of supplies from SEZ to a DTA or any other place, the registered person who facilitates the movement of goods shall be responsible for the generation of e-Way bill.

A22 : EXPORT ORIENTED UNITS

Introduction:

Export Oriented Units was Introduced in 1981. The scheme aims to increase exports from India, to thereby increase foreign exchange earnings and create employment. This scheme also complements other schemes such as Free Trade Zone (FTZ) and Export Processing Zone EPZ in India. The provisions of Chapter 6 of the Foreign Trade Policy and its procedures are applicable to EOU, as well as to Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs). In common parlance, EOU/ STP/EHTP/BTP are together called the EOU scheme. Units registered under the EOU scheme are required to export 100% of their products unless they sell a portion of it to Domestic Tariff Area (DTA).

As per Foreign Trade Policy, Units may be set up under the Export Oriented Unit (EOU) Scheme, Electronics Hardware Technology Park (EHTP) Scheme, Software Technology Park(STP) Scheme or Bio-Technology Park (BTP) Scheme for manufacture of goods, including repair, re-making, reconditioning, re-engineering, rendering of services, development of software, agriculture including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Trading units are not covered under these schemes.

Objectives:

The main aims and objectives of EOU Scheme are summarized under:

(a) Promote exports,
(b) Enhance foreign exchange earnings,
(c) Attract foreign investment for export production,
(d) Generation of employment,

(e) Backward and forward linkage by way of sourcing of raw material from and supply of finished goods to DTA,
(f) Attracting latest technology into the country,
(g) Upgrading the skill and creating source of skilled man-power,
(h) Development of backward area

Benefits of Export Oriented Units

- They can procure raw materials and capital goods through domestic sources or import without paying any duty on the purchase
- They can claim reimbursement on GST amounts they pay
- In case they have paid duty on the purchase of fuel from domestic oil companies, they can claim a refund on the same
- EOUs are allowed to claim an input tax credit on goods and services
- EOUs enjoy priority-basis clearance facilities
- EOUs are not required to obtain the industrial licensing which is required for manufacturing items that are reserved for the SSI sector

Need for Special License

To set up an EOU for the following sectors, an EOU owner needs a special license.

- Arms and ammunition,
- Explosives and allied items of defence equipment,
- Defence aircraft and warships,
- Atomic substances,
- Narcotics and psychotropic substances and hazardous chemicals,
- Distillation and brewing of alcoholic drinks,
- Cigarettes/cigars and manufactured tobacco substitutes.

In the above mention cases, EOU owner are required to submit the application form to the Development Commissioner who will then put them up to the Board of Approvals (BOA).

Choosing the Location for EOU

EOUs can be set up anywhere in the country and may be engaged in the manufacture and production of software, floriculture, horticulture, agriculture, aquaculture, animal husbandry, pisciculture, poultry and sericulture or other similar activities. However, it should be noted that in case of large cities where the population is more than one million, such as Bangalore and Cochin, the proposed location should be at least 25 km away from the

Standard Urban Area limits of that city unless, it is to be located in an area designated as an "industrial area" before the 25th July, 1991. Non-polluting EOUs such as electronics, computer software and printing are exempt from such restriction while choosing the area. Apart from local zonal office and state government, setting up of an EOU is also strictly guided by the environmental rules and regulations. Therefore, an even if the EOU unit has fulfilled all locational policy but not suitable from environmental point of view then the Ministry of Environment, Government of India has right to cancel the proposal. In such situation industrialist would be required to abide by that decision.

- Minimum Investment To assume the status of an EOU, an investment of at least one crore (minimum) must be put into plant and machinery. This criterion is not applicable in case of software technology parks, electronics hardware technology parks and biotechnology parks. Besides, a minimum investment is also not compulsory in case of EOUs that deal in agriculture, animal husbandry, handicrafts, information technology, brass hardware, services and handmade jewellery.

EOU Unit Obligations

The EOUs are required to achieve the minimum NFEP (Net Foreign Exchange Earning as a Percentage of Exports) and the minimum EP (Export Performance) as per the provisions of EXIM Policy which vary from sector to sector. As for instance, the units with investment in plant and machinery of ₹5 crore and above are required to achieve positive NFEP and export US$ 3.5 million or 3 times the CIF value of imported capital goods, whichever is higher, for 5 years. For electronics hardware sector, minimum NFEP has to be 'positive' and minimum EP for 5 years is US$ 1 million or 3 times the CIF value of imported capital goods, whichever is higher. NFEP is calculated cumulatively for a period of 5 years from the commencement of commercial production according to a prescribed formula.

Replacement/repair of imported /indigenous goods

EOUs may send capital goods abroad for repair with permission of Customs authorities. However, no permission will be required for sending capital goods for repair within the country. Removal of capital goods by all units irrespective of status within the country for the

purpose of test, repair, calibration and refining on the basis of prior intimation to the proper officer subject to maintenance of proper accounts of removal and receipts of goods is also allowed.

(Reference: para 6.17 of FTP & 6.28 of HBP 2015-20)

Records and returns

In view of the condition of warehousing having been dispensed with respect to the units, the warehoused goods register (warehousing bond register) shall not be required to be maintained w.e.f 13th August 2016. However, to maintain records of receipts, storage, processing and removal of goods, imported by the units, the Board has prescribed that the units shall maintain records of imported goods, in digital form, based upon data elements contained in Form A. A digital copy of Form A, containing transactions for the month, shall be provided to the proper officer, each month (by the 10th of month) in a CD or Pen drive, as convenient to the unit. The return submission is strictly monitored by EPCs under this jurisdiction and it is informed that penal action will be initiated for non-submission of the same within the due date. The EOUs should also submit the Quarterly Performance Report and Annual Performance Reports as mandated by DGFT Public Notice no. 36/2015-2020 dated 04.09.2018.

(Reference: Circular No 7/2021 Cus dated 22.2.2021 and 35/2016-Customs dated 29.07.2016)

Bonding Period of EOU

The EOUs are licensed to manufacture goods within the bonded time period for the purpose of export. As per the Exim Policy, the period of bonding is initially for five years, which is extendable to another five years by the Development Commissioner. However on a request of EOU Unit, time period can also be extended for another five year by the Commissioner / Chief Commissioner of Customs.

GST in Export Oriented Units

A supplier must charge GST on goods supplied to the EOU. For its part, the EOU can either apply for an input tax credit on the GST paid while providing supplies to the DTA or claim a refund of the GST. EOUs are required to pay GST on admissible sales made to DTAs, except if it is the sale of zero-rated supplies which are exempt from GST. It must be noted that GST is applicable even in case of

sales from one EOU to another, as such a transaction is considered a regular sale for the purpose of the GST law. Notably, primary customs duty is exempted for an EOU in case of imports.

Customs Rules for EOU

As per Notification No. 52/2003- Customs dated 31.03.2003, 100% EOUs are exempted from payment of Basic Customs Duty as per the First Schedule of the Customs Tariff Act, 1975, as well as Additional Customs Duty as per Section 3. But, this notification was later substituted by Notification No. 59/2017- Customs dated 30.06.2017. As per this notification, the exemption on payment of Basic Customs Duty will not apply to inputs used to manufacture finished goods sold to DTA by payment of GST. But, the exemption will continue to apply for additional duty, if any, payable under Section 3 of the Customs Tariff Act.

How to exit from EOU status?

An EOU can opt out of the scheme after getting approval from the Deputy Commissioner (DC) of Customs. But, such exit is subject to payment of applicable taxes of Excise and Customs, IGST, SGST, CGST and compensation cess, if any, as per the industrial policy in force. Also, if the unit could not meet its obligations, it shall be subject to penalty at the time of exit.

If the entity ceasing its operations is in the manufacture of gems and jewellery, then all the gold and other precious metals available for its manufacture are given to an agency as specified by DC at a price determined by such agency.

Difference between Economic Oriented Unit and Special Economic Zone

Below is the table that includes information on EOU Vs SEZ:

Economic Oriented Unit (EOU)	Special Economic Zone (SEZ)
For EOU, a minimum investment in building, equipment, and plant is ₹ 100 lakhs. Before the start of commercial manufacturing, this should happen.	For SEZ (Special Economic Zone) there S is no such restriction.

For the clearance of imported consignments for EOU, there is a Fast Track Clearance Scheme (FTCS).	For SEZ units, export and import customs clearance is achieved within the zone itself.
Purchase-related Central Sales Tax (CST) is reimbursable (but not local tax).	The supplier does not have to pay CST (Central Sales Tax) for SEZ units.
It can be set up anywhere in India. In other words, it is not bound by the location or any boundaries across India.	In SEZ, units can be set up only at the designated sites.
Upon payment of the relevant customs duties, all DTA clearances are permitted (IGST, Cess, etc.). The importer or SEZ unit must file the bill of entry (on behalf of the importer)	On payment of the relevant GST, all DTA clearances are accepted. Furthermore, the benefit of BCD exemption received on imported inputs utilized in the production of completed goods cleared in DTA must be forfeited or paid along with interest. Only a tax invoice needs to be generated.

PART B

LEGAL APPROACH

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B1	OVERVIEW OF CUSTOMS FUNCTIONS
B2	ARRIVAL OF CONVEYANCES AND RELATED PROCEDURES
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B4	CLASSIFICATION OF GOODS
B5	CLASSIFICATION/ASSESSMENT OF PROJECTS IMPORTS, BAGGAGE AND POSTAL IMPORT
B6	CUSTOMS VALUATION
B7	PROVISIONAL ASSESSMENT
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B8	IMPORT/EXPORT RESTRICTIONS AND PROHIBITIONS
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B9	WAREHOUSING
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B10	CUSTOMS REFUNDS
B11	RE-IMPORTATION AND RE-EXPORTATION OF GOODS
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B15	EXPORT PROMOTION SCHEMES
B15A	STATUS HOLDER
B16	AUDIT

B1 : OVERVIEW OF CUSTOMS FUNCTIONS

1. Introduction

1.1 CBIC (Central Board of Indirect Taxes and Customs) , Department of Revenue, Ministry of Finance, Government of India deals with the formulation of policy concerning levy and collection of Customs, Goods and Service Tax (GST) and Central Excise duties, prevention of smuggling and administration of matters relating to Customs, Goods and Service Tax (GST), Central Excise, and Narcotics to the extent under CBIC's purview. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Customs Preventive Commissionerates, Central Goods and Service Tax (CGST) Commissionerates and the Central Revenues Control Laboratory.

1.2 The important Customs related functions include the following:

(a) Collection of Customs duties on imports and exports as per the Customs Act, 1962 and the Customs Tariff Act, 1975;

(b) Enforcement of various provisions of the Customs Act, 1962 governing imports and exports of cargo, baggage, postal articles and arrival and departure of vessels, aircrafts etc.;

(c) Discharge of agency functions and enforcing prohibitions and restrictions on imports and exports under various legal enactments;

(d) Prevention of smuggling including interdiction of narcotics drug trafficking; and

(e) International passenger clearance.

1.3 Customs functions cover substantial areas of activities involving international passengers, general public, importers, exporters, traders, custodians, manufacturers, carriers, port and airport authorities, postal authorities and various other government and semi-government agencies, banks etc.

1.4 Customs is continuously rationalizing and modernizing its procedures through adoption of EDI and global best practices. Also, as a member of the World Customs Organization, Indian Customs has adopted various International Customs Conventions and procedures including the Revised Kyoto Convention, Harmonized Classification System, GATT based valuation etc.

2. Statutory provisions for levy of Customs duty:

2.1 Entry No. 83 of List 1 to Schedule VII of the Constitution empowers the Union Government to legislate and collect duties on imports and exports. Accordingly, the Customs Act, 1962, effective from 1-2-1963 provides vide its Section 12 for the levy of duties on goods imported into or exported from India. The items and the rates of duties leviable thereon are specified in two Schedules to the Customs Tariff Act, 1975. The First Schedule specifies the various Import items in systematic and well considered categories, in accordance with an international scheme of classification of internationally traded goods known as "Harmonized System of Commodity Classification" and specifies the rates of import duties thereon, as prescribed by the legislature. The duties on imported items are usually levied either on specific or ad-valorem basis, but in few cases specific-cum-ad-valorem duties are also levied. The Second Schedule incorporates items that are subject to exports duties and the rates of duties thereof.

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

3. Ease of Doing Business

3.1 Board has initiated numerous measures to facilitate the Customs clearance process and reduce transaction costs. The objective is to make the Customs clearance process in India a world class experience by reducing dwell time of cargo, which in turn improves the competitiveness of businesses. Some of these measures are presently work in progress and their present importance is in the fact that these highlight the approach of the Board towards ensuring the ease of doing business.

3.2 **Single Window:** An Indian Customs Single Window Project has begun with the establishment of an appropriate administrative structure in the form of an inter-ministerial Steering Group that is chaired by Member (Customs), CBIC, a Project Management Group

in CBIC and Project Management Units in the Ministries. With the introduction of Single Window, an electronic online message exchange between the Food Safety and Standards Authority of India (FSSAI) and the Department of Plant Protection, Quarantine and Storage (PQIS) with the Customs has started, which enables reducing the dwell time considerably. Under this online message exchange system for import goods there is seamless online exchange in real time of the Customs Bill of Entry (Import declaration) with these agencies and Release Order (RO) from both the agencies will be received by the Customs in electronic message format. The salient features of this online message exchange system are as under:

(i) Indian Customs EDI (ICES) would transmit "BE message" to the FSSAI and PQIS on completion of assessment of the relevant Bills of Entry (Bs/E) by the Customs ICES application after entry-inward of the consignment. The BE message would be provided to FSSAI/PQIS for all Bs/E falling under the identified Custom Tariff Heads (CTHs), as per list made available by the respective agencies.

(ii) The Customs officers would be able to access the details of the Bs/E referred by the ICES to FSSAI/PQIS

(iii) The importers would track the status of the Bs/E on ICEGATE (https://www.icegate.gov.in).

(iv) The receipt of the Bs/E messages hall be acknowledged by the FSSAI/PQIS through a receipt message to the ICES.

(v) On processing of the Bs/E message by the FSSAI/PQIS, these agencies would electronically transmit an RO, concerning each item of the Bs/E. From the Customs side, Out of Charge (OOC) will not be allowed in the system till the RO is received from the agency concerned for all the items. There are 6 types of ROs which may be provided by the FSSAI/ PQIS to the ICES, as follows:

   a) Release – goods can be released by the Customs.

   b) Destruction – goods to be destructed by the Customs.

   c) Deportation – goods to be exported back to the Countryof Origin.

   d) No Objection Certificate (NOC)– goods can be released by the Customs.

   e) NCC (Non-compliance Certificate) – non-rectifiable defects observed in the goods. Product Out of scope – goods are out of scope for FSSAI/PQIS.

(vi) In case, the Release Order falls under types (b), (c) and (e) above, the OOC would not be allowed in the ICES. Details of such consignments will be entered by the Customs Assessing Officer in the closure of B/E menu after all processes are complete.

(vii) On receipt of RO online, the Customs ICES shall integrate the data in the ICES database, which shall be available to the Customs officers concerned.

(viii) The other formalities under the Customs Act, 1962 such as duty payment, goods registration, examination would continue during the time interval between transmissions of Bs/E message from ICES to the receipt of RO message from FSSAI/PQIS. During this period the samples of the goods under consideration may also be taken for testing purposes.

(ix) In terms of Board's Circular No.3/2011-Cus., dated 6-1- 2011 import consignments that have been tested on previous five consecutive occasions and found in order may not be referred to FSSAI. Under single window project, the electronic monitoring and waiver of shipments which are eligible for waiver from FSSAI testing are being affected without human interference.

(x) Since, the electronically received RO in regard to Bs/E referred to FSSAI/PQIS shall be accepted by the Customs for clearance of the imported foods items/plant materials, the Customs shall not insist on a physical copy of the RO from these agencies. [Circular 09/2015- Customs dated31.03.2015)

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

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

3.3 **CCFC:** Board has set up a Customs Clearance Facilitation Committee (CCFC) at every major Customs sea port, airport, Customs Preventive Commissionerates (Land Customs Stations) and Commissionerates having jurisdiction over Inland Container Depot, which is chaired by the Principal Commissioner of Customs/ Commissioner of Customs concerned. Its membership includes the senior-most functionary of the departments/agencies/ stakeholder at the particular seaport/air port namely,

(i) Food Safety Standards Authority of India/Port Health Officer (PHO),

(ii) Plant Quarantine Authorities,

(iii) Animal Quarantine Authorities,

(iv) Drug Controller of India (CDSO),

(v) Textile Committee

(vi) Port Trust / Airport Authority of India / Land Ports Authority of India (for CCFC in LCSs),

(vii) Custodians,

(viii) Forest and Wild Life Authorities,

(ix) Railways/CONCOR,

(x) Border Security Agencies (for CCFC in LCSs),

(xi) Pollution Control Board and

(xii) any other Department/Agency/stake holder to be co-opted on need basis. The CCFC is required to meet once a week or more frequently, if needed, as per the following mandate:

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

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

3.4 **IGM/SMTP:** (Import General Manifest/Sub Manifest Transhipment Permit)Taking into account the requirement of Customs as well the fact that an electronic version of IGM is already available,

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

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

3.5 **Reduction of documents:** The Board has decided that in case an importer/exporter submits a commercial invoice cum packing list that contain all necessary data fields / information otherwise contained separately in these documents, a separate packing list would not be insisted upon by Customs. However, the option to do so is with the importer/exporter. As a result, the documents ordinarily required by the Customs stand reduced to only 3 viz. Bill or Entry or Shipping Bill, commercial invoice cum packing list and Bill of Lading or Airway Bill.

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

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

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

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

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

3.7 **Digital Signature:** The Board has decided that with effect from 1-4-2015 importers, exporters, customs brokers, shipping lines, airlines or their agents shall have the facility to use Digital Signature Certificate for filing Customs process documents viz. Bills of Entry, Shipping Bills, IGM (General Declaration and Cargo Declaration),

EGM (General Declaration), CGM through Remote EDI System (RES). Besides ACP, all importers, exporters using services of Customs Brokers for formalities under Customs Act, 1962, shipping lines and air lines are required to file customs documents under digital signature certificates mandatorily with effect from 01.01.2016.
[Refer Circular No.10/2015–Cus., dated 31-3-2015 and Circular 26/2015- Customs dated 23.10.2015]

3.8 **Re-export permission:** With a view to expedite decision-making in respect of re-export of when the said goods are destined elsewhere but which are inadvertently imported at a particular Customs station, the Board has decided that the permission for re-export may be granted on merit by the officer concerned as per the adjudication powers as per Section 122 of the Customs Act, 1962.
[Refer Circulars No.24/2011-Cus., dated 31-5-2011 and No. 4/ 2015–Cus. dated 20-1-2015]

3..9 **E-Sanchit:** The CBIC has introduced 'eSanchit' for paperless transaction. The importers are now required to upload the required documents online through www.icegate.gov.inwhile filling the Bill of Entry instead of submitting the physical papers. Reply to queries raised by Customs Officers can be submitted online by uploading the documents. Physical presence of paper or person for assessment related works have been done away with. CBIC is embarking on a project to bring all Participating Government Agencies(PGAs) under eSanchit wherein PGAs who issues Licenses, Permits, Certificates and Other Authorizations (LPCOs) would upload the documents themselves doing away with uploading of such document by the beneficiary (importer/ exporter) themselves. Importers/ Exporters, Customs Brokers and other beneficiaries are required to register on ICEGATE for this purpose.
[Refer Circular 35/2018- Customs dated 01.10.2018]

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

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

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

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

4. **Control and regulatory provisions**:

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

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

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

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

5. Role of Custodians:

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

5.2 Various port trusts and other authorities in the public and private sectors handle the import and export cargo when kept in their custody at various ports, international airports/ICDs. The cargo handling and custody at the international airports is generally entrusted to International Airport Authority of India (IAAI), but there is an increasing trend of the IAAI leasing such facility to private sector or even of direct entry of private sector in this area. Also, new ICDs are being opened at various places in the interior of the country as a facilitation measure with the result that Customs clearances of both imported and export cargo from these places has expanded substantially in recent years.

5.3 Maximum import and export cargo is handled at different sea ports and there is a trend towards containerized cargo movement; increasing part of import cargo landed at some ports like Nhava Sheva is also transshipped to interior ICDs for final clearance by importers at their door steps. Security arrangements ensure there is no pilferage/ theft of the cargo and arrangements of loading and unloading of

cargo at different berths in various docks, their movement to different places including container yards/ storage godowns etc., are arranged by the port authorities.

5.4 Customs authorities are given appropriate office place and requisite facilities in the dock area as well as in international cargo complexes/ICDs etc., to discharge their functions in relation to imports and exports such as supervision of loading/ unloading of goods from vessels/crafts etc., supervision of stuffing or de-stuffing of containers, inspection and examination of goods which are imported/ presented for exportation before Customs clearance formalities etc. For this purpose and in order to provide comprehensive guidelines for custodians / Cargo Service Providers (CCSP) for handling, receipt, storage and transportation of cargo in a Customs area, the Board has framed the Handling of Cargo in Customs Areas Regulations, 2009.

6. **Obligations of carriers:**

6.1 To regulate and have effective control on imports and exports the Customs Act, 1962 enjoins certain liabilities on the carriers. Thus, they have to bring in the cargo imported into the country for unloading only at notified ports/airports/Land Customs Stations; furnish detailed information to Customs about goods brought in for unloading at that particular port/ international airport as also those which would be carried further to other ports/airports. Declaration of such cargo has to be made in an Import General Manifest (IGM) prior to arrival of the vessel/ aircraft at the Customs station. In the case of imports through Land Customs Stations the person in charge of the vehicle has to give similar import report within 12 hours of its arrival. Since the cargo clearance formalities are linked generally with the availability of information about cargo being brought by a vessel for unloading at any port, provisions is also made for prior filing of an IGM if all details of relevant cargo for any port are available even before the vessel arrives. The final IGM can be filed after arrival of the vessel.

6.2 Unless, the IGM is furnished in the prescribed form, noun loading of cargo can be undertaken from any vessels/aircrafts/ vehicles in normal circumstances. After the IGM is duly delivered the unloading takes place under the supervision of the Preventive Officers of Customs. The law prohibits unloading of any goods at a Customs station, which are not mentioned in the IGM/ import report. Similarly, there are restrictions on loading for export such that no vessel/ aircraft can begin loading goods for export unless intimation is given to Customs and its permission for loading obtained - what is also called

"Entry Outward" of the vessel. Loading of cargo on vessels, aircrafts etc. is checked and supervised by Preventive Customs Officers who ensure that cargo loaded has discharged the prescribed Customs formalities such as payment of duties or cess, where leviable, any other formalities enjoined by the law, and authorization for exports is duly given by the proper officer as a part of Customs clearance formalities.

6.3 - The person in charge of the vessel/air craft is required to furnished tail so fall the "(EGM). The person in charge of a vehicle must furnish a similar report called Export goods loaded on a vessel/ aircraft in a prescribed form, which is termed 'Export General Manifest Report". The EGM/ Export Report is to be furnished before the vessel/aircraft/ vehicle departs and is essentially taken as the proof of shipment/export.

7. **Customs preventive control:**

7.1 No vessel/aircraft can leave a Customs station unless a written order for port clearance is given by the proper officer of Customs. This permission for departure is given subject to the satisfaction of the proper officer that all the prescribed formalities have been fulfilled, duties/ penalties etc., have been paid or secured.

7.2 The Preventive Officers of Customs are authorized to board the vessels/aircrafts to take suitable declarations, crew property list etc., and to check whether there are any goods which are not declared for unloading at a particular Customs station in the IGM with intention to smuggle them without following the prescribed formalities and payment of duties. A thorough examination and checking of the vessels/aircrafts - known as rummaging - is also undertaken on selective basis taking due note of the past history of the vessels, the port/airport from which these are arriving, the intelligence report etc.

7.3 The Preventive Officers of Customs also keep a very careful vigil for checking any illegal activities and develop intelligence to guard against any possible attempts of unauthorized removals from the docks, unloading of un-manifested cargo etc.

8. **Customs clearance of cargo**:

8.1 Before any imported goods can be cleared for home consumption in the country or for warehousing for subsequent Customs clearances as and when needed etc., the importers have to comply with prescribed Customs clearance formalities. Essentially, these involve presentation of certain documents along with filing a customs document "Bill of Entry", which gives essential particulars in relation to imported goods, country of origin, particulars of vessel/aircraft etc.

seeking clearance of goods for home consumption / warehousing etc. The importer either himself handles the import clearance documents or appoints Customs Brokers, who are trained and experienced in Customs clearance work and are licensed by Customs for such work in terms of the Customs Broker Licensing Regulations,2018.

8.2 The import clearance documentation, presentation, and processing is handled in the Custom Houses by Appraising staff trained in assessment matters. After a tally has been made with related IGM to ensure the goods sought for clearance have arrived and declared in the particular IGM of the vessel/aircraft mentioned in the Bill of Entry (or even where the prior manifest is filed) the scrutiny of documents-manually or through EDI system is taken up. The main function of the Appraising staff in the Custom Houses is the careful scrutiny of the Bill of Entry and related particulars / information with a view to checking the import permissibility in terms of the Foreign Trade Policy and any other laws regulating import and to determine value, classification and duties leviable on the goods on import - (Basic, Additional, Anti- dumping, Safeguards etc.). Permissibility of various benefits of duty free clearances under different schemes or applicability of any exemption notification benefits is also checked and decided.

8.3 Normally, the import declarations made are scrutinized without prior examination of the goods with reference to documents made available and other information about the values/ classification available with Customs and duties chargeable on the goods are assessed and paid up by the importer or his authorized representative. It is only at the time of clearance of the goods from the custody of the port trusts/international airport authority or other custodians that these are examined on percentage basis by separate staff posted in the premises where the goods are stored pending Customs clearance. These officers undertake checking of nature of goods, valuation and other part of declaration, or draw samples as may be ordered by the Appraising officers of the Custom House/Air Cargo Complexes/ ICDs. If no discrepancies in relation to the nature of goods, quantity, value etc., are observed at the time of examination of the cargo, 'Out of Customs Charge' orders are issued, and thereafter goods can be cleared after discharging any other fees/ charges etc., of the custodians.

8.4 At times, for determining the duty liability and permissibility of import it may become necessary to examine the goods. Such goods are examined after filing of Bill of Entry and other documents and based upon the report of the examining staff, duties etc. are assessed and if there is no prohibition etc., the goods are taken clearance from the custodian without the need for further examination.

8.5 Where disputes arise in the matter of classification/valuation or any violations of any provisions of law are observed, where the goods cannot be allowed clearance finally without further investigations and following adjudication proceedings, the law provide for provisional clearances subject to suitable bond / security. Only where the goods are of prohibited nature or in certain other exceptional cases, where provisional release is not considered advisable, the final decision may be taken after results of enquiries etc. are known and adjudication proceedings completed, where necessary.

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

9. Smuggling and other violations and penal provisions: (Chapter XIV , Sections117 to 122)

9.1 Unscrupulous elements do attempt to evade the duties leviable and by-pass various prohibitions/ restrictions in relation to imports by attempting to bring the goods into the country from places other than the notified ports / airports / Land Customs Stations without reporting or presenting the goods to customs. Similar attempts are also made by some unauthorized persons to take goods out of the country. This is essentially termed as "smuggling" and Customs officers have very important role in ensuring that they detect any such attempts of

smuggling into or out of the country and take appropriate action both against the goods as well as the persons involved.

9.2 The Customs Act, 1962 provides for strict penalties in relation to the goods/persons involved in smuggling and other violations of the legal provisions. These include seizure/ confiscation (including absolute confiscation) of the offending goods and fines and penalties on the persons involved in the offence as well as those abetting the offence. The law also empowers Customs officers to carry out searches, arrests and prosecution of persons involved in smuggling and serious commercial frauds and evasion of duties or misuse of export incentives by fraudulent practices (mis-declaration of nature, and value of the goods or suppression of quantities etc.).

9.3 Whereas the Customs Act, 1962 provides for deterrent penal provisions for violations, due process of law has to be followed before action is taken against offending goods or persons/ conveyance etc. involved. The Customs officers act as quasi- judicial authorities and the liabilities for duty evaded or sought to be evaded, fines, penalties etc., are adjudged by giving the persons concerned due notice (or Show Cause Notice) of contemplated action against including the gist of the charges and their basis and providing opportunity for representation as well as personal hearing.

9.4 In grave offence cases, the Customs Act, 1962 provides for prosecution with imprisonment upto maximum of 7 years. This involves criminal proceedings in a Court of law, after sanction for prosecution is given by the competent Customs officer.

9.5 Guidelines for launching of prosecution in relation to offences punishable under Customs Act, 1962 has been prescribed in Circular No. 27/2015-Customs dated 23.10.2018 amended by Circular No. 46/2017-Customs dated 04.10.2018 and Circular No. 07/2017-Customs dated 06.03.2017.

10. Appellate remedies:

10.1 Any concerned person aggrieved with the departmental adjudication is given the right to appeal against the said order. The first level of appeal is to Commissioner (Appeal) and thereafter to an independent Tribunal (CESTAT)(The Customs, Excise & Service Tax Appellate Tribunal,) unless the adjudication order is originally passed by the Commissioner of Customs in which case the first level of appeal is to the CESTAT. On questions of law, the orders of CESTAT could also

be considered for reference to the High Court and certain categories of decisions involving classification or valuation can be appealed even before the Supreme Court.

11. Passenger processing:(Chapter XI, section 77,to 81 of The Customs Act 1962)

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

12. Import/Export by post/courier: (Chapter XI, Section 82,83,84 of The Customs Act 1962)

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

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

13 **Citizen Charter:**

13.1 Customs has committed in its Citizen Charter to provide to

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

B2 : ARRIVAL OF CONVEYANCES AND RELATED PROCEDURES

1. Introduction:

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

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

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

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

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

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

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

5. Person filing the manifest to be registered:

5.1 In terms of the Import Manifest(Vessels) Regulations, 1971 and Import Manifest (Aircrafts) Regulations, 1976, any person who delivers the import manifest for a vessel or an aircraft to the proper officer under Section 30 of the Customs Act, 1962 is required to be registered with Customs.

5.2 In order to ensure that the Import Manifest for vessel or air craft is filed prior to arrival of vessel or aircraft, the following procedure has been formulated:

i. The person responsible for filing of the Import Manifest, both at Master as well as House- level details, shall register with the Customs in advance. The application for registration shall be made to the jurisdictional Commissioner in Form V or Form VI, as the case may be, of the said Regulations. The application should be accompanied by an undertaking to file the manifest details as required.

ii. Airlines/Steamer Agents/Shipping Lines/Consol Agents (including 'any other person' notified as per Section 30 of the Customs Act, 1962) are assigned business category codes as AL, SA, SL and CN, respectively. For the purpose of registration of Airlines/ Steamer Agents/Shipping Lines, the existing Airline Code or Steamer Agents Code or Shipping Lines Code already allotted to them shall be used for filing manifest and same shall be their registration number. As regards consol agents, their registration number shall be of 12 digits (10-digit Income Tax PAN, followed by business category code, i.e. CN).A sample of registration number of a consol agent will look like AAACK8719PCN.

iii. Airlines/Steamer Agents/Shipping Lines/Consol Agents are required to submit the information as per the prescribed Annexure "A", which is a system compliant form that contains information prescribed as per the Form V and Form VI of the Import Manifest (Aircraft) Regulations, 1976 and Import Manifest (Vessels) Regulations, 1971 respectively, to the respective Commissioners, where they are operating, for capturing the details in the EDI System.

iv. In the case of chartered flights where the consol agents themselves are entrusted with the responsibility of filing both Master as well as House-level details, the consol agents will have to be registered with the Customs as airline agent and will be allotted an ad- hoc/ temporary code (accepted by system), as per existing format for each such flight.

Access to the system for filing IGM details will be allowed after the receipt of the applications, in the Annexure "A" along with a self-declaration of the correctness of the particulars, by the jurisdictional Commissioner. The verification of details will be done subsequently and for this the applicant will mention in Annexure "A" the name of the Commissionerate i.e. "Port/Airport/ ICD of verification" where their details would be verified. In the case of any discrepancies observed at the time of verification the registered party would be debarred from filing IGM. The concerned Commissionerate after the verification will send the registration number along with the name of the registered entity to webmaster of www.cbic.gov.in who in turn will post the details on the website for the information of all stakeholders. Verification of the declaration will be done only by the "Port/Airport/ ICD of verification" mentioned in Annexure "A" and no other port etc. will be required to do further verification. In case of doubt, they may refer the same to the Commissioner of "Port / Airport / ICD of verification".

v. The responsibility for filing the import manifest with Master level details shall rest with the person in-charge of the vessel or air craft or their agent while the House level details shall be filed by "any other person" specified under Section 30 of the Customs Act, 1962. In case the "any other person" is not registered under the said Regulations, then, the responsibility to file House level details shall also rest with the person in- charge of the vessel or aircraft or their agent. The shipping lines or airlines should,

therefore, ensure that the person authorized to issue delivery orders in respect of goods carried by them, are duly registered with Customs. Failure to file the IGM in advance will invite action as per Section 30(1) of the Customs Act, 1962.

vi. At Customs stations having operational Indian Customs EDI (ICES) system, the IGM shall be filed through electronic mode. At other i.e. non-EDI Customs stations, the hard copies of IGM shall be required to be filed manually, in advance as per the Section 30 of Customs Act, 1962. Where ICES is operational but some Bills of Entry are filed manually, hardcopy of IGM will have to be filed but late filing of hardcopy will not be considered as non-filing or late filing of IGM, provided that the soft copy is filed in time.

vii. In the case of vessels, where the voyage from the last port of call exceeds 4 days, the IGM shall be filed at least 48 hours before the entry inward of such vessels. In the case of short haul voyages, i.e., where the voyage from the last port of call is less than 4 days, the IGM is required to be filed 10 hours before entry inward of the vessel.

viii. In the case of long haul flights i.e. flight time of at least 3 hours from the last airport, the IGM shall be filed within 2 hours before the arrival of the aircraft and for short haul flights, before the arrival of the aircraft. Further, flights in domestic sector, which carry transshipped imported goods from one Indian air port to another air port in India, would be treated as short haul flight for the purpose of filing IGM under Section 30 of the Customs Act, 1962.

ix. The vessel's stores list and list of private property in possession of the Master, officer and crew etc. should contain the quantity of store on board at the time of departure from the last port of call and estimated quantity likely to be consumed till the grant of entry inward.

x. At the time of registration, the requirement stipulated in the para5 of Form V and Form VI of the Import Manifest (Aircraft) Regulations, 1976 and Import Manifest (Vessel) Regulations, 1971 respectively.

5.3 In supersession of Import Manifest (Vessels) Regulations, 1971, Export Manifest (Vessels) Regulations,1976 and Transportation of Goods (Through Foreign Territory) Regulations, 1965, new

regulations, Sea Cargo Manifest and Transshipment Regulations ,2018 have been notified and these regulations shall come into force with effect from the 1stMarch, 2019 and the accordingly the procedure prescribed therein shall be followed.

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

6. Amendments of IGM:

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

(a) Major Amendments:

i. Addition of extra entries (Line numbers in the IGM).

ii. Amendment in the quantity of goods already declared.

iii. Changing the date of the Bill of Lading mentioned in the IGM.

iv. Changing the Importer's/consignee name.

v. Commodity description.

vi. Conversion of general description of goods from cargo to un-accompanied baggage and vice-versa.

(b) Minor Amendments:

i. Changing the Importers address only.

ii. Correcting any spelling mistakes.

iii. Conversion from one unit of measurement to another.

iv. Change in the container number (only alphabetic prefix and last 10th test numerical).

v. Change/addition of marks and numbers.

vi. Conversion from local to TP/SMTP and vice-versa.

vii. Port of Loading.

viii. Size of containers (provided there is no change in weight of consignment).

ix. Port of discharge;

x. Type of packages.

xi. Number of packages (provided there is no change in the weight).

xii. Seal number.

6.2 The need for adjudication will arise only in cases where there are major amendments involving fraudulent intention or substantial revenue implication. Further it is possible that in certain special situations such as mother/daughter vessel operation for lighter age on account of shortage of draft, congestion of port, natural calamity, the final quantity of goods covered by the IGM would be known only after completion of such lighter age operation, requiring amendment in quantity originally declared at the time of filing IGM. These exceptional situations need to be taken care so that penal action is not initiated mechanically.

6.3 Amendment of IGM after the arrival of vessel or aircraft would not be treated as late filing. However, the veracity of the amendment would be examined by the Assistant/Deputy Commissioner of Customs for the purpose of invoking penal provisions under Section 116 of the Customs Act, 1962.

6.4 Procedure for disposal of amendment applications within specified time limits have been prescribed by the Board. All minor amendments are expected to be approved on the same day while all major amendments are expected to be generally approved within 24 hours of submission of complete application.

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

7. Penal liability:

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

8. Exclusion from IGMs of items originally manifested:

8.1 Exclusion from IGMs of items originally manifested is permitted only on the basis of an application from the person filing the IGM and on production of the documentary evidence of short shipment of goods. Further, prescribed fee will have to be paid for the amendment, if permitted.

8.2 Exclusions or amendments of items in the IGM involving reduction in number of packages or weight thereof is allowed on an application from the person filing the IGM and on the basis of connected documentary evidence. Such excisions or amendments will only be allowed if investigation proves that the excess quantity was originally shown in error. In the absence of such proof, the application will be dealt with by the Manifest Clearance Section at the time of closure of the manifest file.

8.3 Applications for the exclusion or amendments of items for which Bills of Entry have been noted will be dealt with by the Manifest Clearance Section if made within two months of the arrival of the vessel.

8.4 In respect of a vessel, an IGM shall, in addition, consist of an application for grant of Entry inwards.

9. Enclosures to Import General Manifest:

9.1 The various IGM forms are designed according to IMO-FAL Convention. The forms have to be filed in prescribed sizes along with the following declarations:

(i) Deck Cargo declaration/certificate.

(ii) Last port clearance copy.

(iii) Amendment application (when relevant).

(iv) Income Tax Certificate in case of export cargo.

(v) Nil export cargo certificate.

(vi) Port Trust "No Demand" certificate.

(vii) Immigration certificate.

(viii) Application for sign on/sign off of crew (when relevant).

(ix) Application for crew baggage checking when they sign on (when relevant).

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

10. Procedure for filing IGM at EDI Custom Houses:

10.1 In case of sea cargo the shipping lines are required to submit the electronic version of the IGM through the EDI Service Centre or

through internet at ICEGATE, containing all the details and particulars. It is to be ensured that all the particulars and details of the IGM are correct and that details of House Bill of Lading are also incorporated in case of consol cargo.

10.2 In case of air cargo the airlines are required to file IGM in prescribed format through electronic mode. The IGMs should contain all details and particulars, including the details of the Master Airway Bills and the House Airway Bills in the case of consol cargo. The air lines are also required to furnish the additional information, namely, the ULD numbers for use by the custodians.

11. Filing of Stores List:

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

12. Entry Inwards and unloading and loading of goods:

12.1 On arrival of the vessel, the shipping line needs to approach the Preventive Officer for granting Entry Inwards. Before making the application, the shipping line has to make payment of the Light House dues, as may be applicable.

12.2 Section 31 of the Customs Act, 1962 requires that the Master of the vessel shall not permit unloading of any imported goods until an order is given by the proper officer granting Entry Inwards to such vessel. Normally, Entry Inwards is granted only after the IGM is delivered. The date of Entry Inwards is crucial for determining the rate of duty in case of filing of prior Bill of Entry, as provided in Section 15 of the Customs Act, 1962.

However, unloading of items like accompanied baggage, mail bags, animals, perishables and hazardous goods are exempt from this stipulation.

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

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

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

Other liabilities of carriers:

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

A conveyance within Indian waters or port or Customs area, which is constructed, adopted, altered or altered for concealing goods.

A conveyance from which goods are thrown overboard, staved or destroyed so as to prevent seizure by Customs officers.

(a) A conveyance, which disobeys an order under Section 106 to stop or land, without sufficient cause.

(b) A conveyance from which goods under drawback claim are unloaded without the proper officer's permission.

(c) A conveyance, which has entered India with goods, from which substantial portion of goods are missing and failure of the master to account there for.

(d) Any conveyance, when used as means of transport for smuggling of any goods or in the carriage of any smuggled goods, unless

the owner establishes that it was used without the knowledge or connivance of the owner, his agent and the person in-charge of the vessel.

12.3 Under Section 116 of the Customs Act, 1962, penalty may be imposed on the person in- charge of vessel if there is failure to account for all goods loaded in the vessel for importation into India or transshipped under the provisions of Customs Act and these are not unloaded at the place of destination in India or if the quantity unloaded is short of the quantity to be unloaded at particular destination. Penalty may be waived if failure to unload or deficiency in unloading is accounted for to the satisfaction of competent officer. Thus, if there is any shortage, which is not satisfactorily accounted for, the person in-charge of the vessel will be liable to penalty, which may be twice the duty payable on the import goods not accounted for.

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

B3 : PROCEDURE FOR CLEARANCES OF IMPORTED AND EXPORT GOODS

1. Introduction:

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

thereafter the goods can be cleared. Similarly, Customs clearance formalities for goods meant for export have to be fulfilled by presenting a Shipping Bill and other related documents. These documents are verified for correctness of assessment and after examination of the goods, if warranted, "Let Export Order" is given on the Shipping Bill.

2. Import procedure - Bill of Entry:

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

2.1 For goods which are offloaded at a port/airport for clearance, the importers have the option to clear the goods for home consumption after payment of duties leviable or to clear them for warehousing without immediate discharge of the duties leviable in terms of the warehousing Provisions of the Customs Act,1962. For the purpose of clearance of imported goods, every importer is required to file, in terms of the Section 46 ibid, a Bill of Entry for home consumption or warehousing, as the case may be, in the form prescribed under the relevant regulations. In cases where it is not feasible to make entry electronically on the customs automated system, Principal Commissioner of Customs or Commissioner of Customs, allow an entry in any other manner.

2.2 Foreign Trade Policy provides that Importer-Export Code (IEC) number, a 10-character alpha- numeric allotted to a person

by the Directorate General of Foreign Trade (DGFT) is mandatory for undertaking any export/import activities. However, exempt categories and corresponding permanent IEC numbers are provided in Para2.07 of Handbook of Procedures issued by DGFT.

2.3 For clearance of goods through the EDI system, the importer is required to file a cargo declaration having prescribed particulars required for processing of the Bill of Entry for Customs clearance.

2.4 Under the EDI system, the importer by himself or through his authorized customs broker may file the declarations in electronic format through the service centre or ICEGATE. Facility of uploading scanned documents along with the declaration for filing a bill of Entry, is also available through 'e-Sanchit' programme.

2.5 eSANCHIT has been extended to all ICES locations on PAN India basis for all types of exports under ICES.

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

3. Self-assessment of imported and export goods:

3.1 Section 17 of the Customs Act, 1962 provides that an importer entering any imported goods under section 46 or an exporter entering any export goods under section 50 shall self-assess the duty. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, etc. in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill.

3.2 The declaration filed by the importer or exporter may be verified by the proper officer when so interdicted by the Risk Management Systems (RMS). Such verification will be done selectively on the basis of the RMS, which not only provides assured facilitation to those importers having a good track record of compliance but ensures that on the basis of certain rules, intervention, etc., high risk consignments are interdicted for detailed verification before clearance. On the basis of interdictions under RMS, Bills of Entry may either be taken up for verification of assessment or for examination of the imported goods or both. If the self- assessment is found incorrect, the duty may be reassessed. In cases where there is no interdiction by RMS or non existence of any other factor, there will be no cause for the declaration filed by the importer to be taken up for verification, and

such Bills of Entry will straight away be facilitated for clearance without assessment and examination, on payment of applicable duty, if any.

The verification of a self-assessed Bill of Entry or Shipping Bill, which are interdicted by the RMS, shall be with regard to correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of imported or export goods. For the purpose of verification, the proper officer may order for examination or testing of the imported or export goods. The proper officer may also require production of any relevant document or ask the importer or exporter to furnish any other relevant information. Thereafter, if the self-assessment is not found to have been done correctly, the proper officer may re-assess the duty. This is without prejudice to any other action that may be warranted under the Customs Act, 1962. On re-assessment, contrary to the self-assessment done by the importer or exporter, the proper officer shall pass a speaking order, if so desired by the importer or exporter, within 15 days from the date of re- assessment of bill of entry or shipping bill. When verification of self-assessment in terms of Section17 requires testing/ further documents / information, and the goods cannot be re- assessed quickly however, the importer or the exporter requires the goods to be cleared on urgent basis. In such cases, provisional assessment may be done in terms of Section 18 of the Customs Act, 1962, once the importer or exporter, as the case may be, furnishes such security as deemed fit by the proper officer of Customs for payment of deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

3.3 In cases, where the importer or exporter is not able to determine the duty liability or make self- assessment for any reason, except in cases where examination is requested by the importer under proviso to Section 46(1), a request shall be made to the proper officer for provisional assessment of duty under Section 18 (1)(a) of the Customs Act, 1962. In such a situation an option is available to the proper officer to resort to provisional assessment of duty by asking the importer / exporter to furnish security as deemed fit for payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed, as the case may be, and the duty provisionally assessed.

3.4 For the purpose of proper assessment of duty and to ensure

correctness of trade statistics, importers/exporters should mandatorily declare the Standard Unit Quantity Code (UQC), as indicated in the Customs Tariff Act, 1975.

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

4. Examination of goods:

4.1 The imported goods, which are interdicted for examination by the RMS, are required to be examined for verification of correctness of description/declaration given in the Bill of Entry and related documents. The imported goods may also be examined prior to assessment in cases where the importer does not have complete information with him at the time of import and requests for examination of the goods before assessing the duty liability or, where the proper officer, on reasonable belief feels that the goods should be examined before assessment, giving reasons for the same. Wherever required, samples are drawn in the examination area for chemical analysis, verification or any other purposes.

4.1 After assessment by the appraising group or for cases where examination is carried out before assessment, bill of entry needs to be presented for registration for examination of imported goods in the import shed. The proper officer of customs examines the goods along with requisite documents. The shipments, found in order are given clearance order by the proper officer of customs in the Import Shed.

5. Execution of bonds:

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

6. Payment of duty:

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

6.2 With effect from 17-9-2012, e-payment of Customs duty is mandatory for importers registered under Accredited Clients

Programme/Authorised Economic Operator scheme and importers paying duty of ₹ 1 lakh or more per Bill of Entry.

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

[Refer Circulars No.33/2011-Cus., dated 29-7-2011 and No. 24/2012-Cus., dated5-9- 2012, Circular 52/2016- Customs dated 15.11.2017]

7. Amendment of Bill of Entry:

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

8. Prior Entry for Bill of Entry:

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

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

8.3 The Bill of Entry is required to be filed before the end of next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

Where in the Bill of Entry is not filed within the time specified in Para 8.3 above and the proper officer of customs is satisfied that there is

no sufficient cause for such delay, the importer shall be liable to pay charges for the late presentation of Bill of Entry at the rate of rupees five thousand per day for initial three days of the default and at the rate of rupees ten thousand per day for each day of default thereafter.

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

9. Bill of Entry for bond/warehousing:

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

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

10. Risk Management System in Import:

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

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

10.1 RMS has dispensed with the practice of routine assessment, concurrent audit and the present focus is on quality assessment, examination and Post Clearance Audit of selected Bills of Entry/ Themes / Auditees.

10.2 Bills of Entry and IGMs filed electronically in ICES through the Service Centre or the ICEGATE are transmitted by ICES to the RMS. The RMS processes the data through a series of steps and produces an electronic output for the ICES. This output determines whether a particular Bill of Entry will be taken-up for appraisement or examination or both or be cleared after payment of duty without assessment and examination. Also, where necessary, RMS provides instructions for Appraising Officer, Examining Officer or the Out-of-Charge Officer. It needs to be noted that the appraising and examination instructions communicated by the RMS have to be necessarily followed by the proper officer. It is, however, possible that in a few cases the proper officer might decide to apply a particular treatment to the Bill of Entry which is at variance with the instruction received from the RMS. This may happen due to risks which are not factored in the RMS. Such a course of action shall however be taken only with the prior approval of the jurisdictional Commissioner of Customs or an officer not below the rank of Additional / Joint Commissioner of Customs, authorized by him for this purpose, after recording the reasons for the same. A brief remark on the reasons and the particulars of Commissioner's authorization should be made by the officer examining the goods in the departmental comments section of the electronic Bill of Entry in the EDI system.

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

quality and advise the importers suitably where the quality of their declarations is found efficient.

11. Risk Management System in Export:

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

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

Shipping Bills filed electronically in ICES through the Service Centre or the ICEGATE will be processed by RMS through a series of steps / corridors and an electronic output will be produced for the ICES. This output from RMS will determine the flow of the Shipping Bill in ICES i.e. whether the Shipping Bill will be taken up for verification of self-assessment or examination nor both or to be given "Let Export Order" directly after payment of Export duty (if any) without any verification of self-assessment or examination. The RMS will also provide instructions for appraising Officer / Superintendent, Examining Officer / Inspector or the Let Export Order (LEO) Officer, wherever necessary. It is possible that in a few cases, the concerned officer may decide to apply a particular treatment to the Shipping Bill which is at variance with the instructions received for the RMS owing to risks which are not factored in the RMS. Such a course of action shall be taken only with the prior approval of the jurisdictional Commissioner of Customs or an officer not below the rank of Additional/Joint Commissioner of Customs, authorized by him for this purpose, after recording the reason for the same. A brief remark on

the reasons and particulars of Commissioner's authorization should be made by the officer examining the goods in the departmental comments of the electronic shipping bill in the EDI system.

11.3 With the implementation of export RMS, a Post Clearance Audit (PCA) function has been introduced in respect of exports after the LEO is given for export consignment. The objective of PCA is to monitor, maintain and enhance compliance levels, while reducing the dwell time of cargo. The RMS would select the Shipping Bills for audit, after issue of LEO, and these selected Shipping Bills will be directed to the audit officers for scrutiny.

11.4 The selection of Shipping Bills for verification of Self-assessment and/or examination will be based on the output given by RMS to ICES. However, owing to some technical reasons if the RMS fails to provide output to ICES or RMS output is not received at ICES end, in time, the existing norms of assessment and examination will be applicable.

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

12. Risk Management Division:

12.1 A Risk Management Division (RMD) in Mumbai under Directorate General of Analytics and Risk Management has the following charter of functions:

(i) The RMD has the overall responsibility for designing, implementing and managing RMS using various risk parameters and risk management tools to address risks facing Customs, i.e., the potential for non-compliance with Customs and allied laws and security regulations, including risks associated with the potential failure to facilitate international trade.

(ii) The RMD on the basis of perceived risks, suggests assessment and examination in respect of consignments or facilitate the bill of entry or shipping bill, as the case may be.

(iii) The RMD is responsible for collecting and collating information and developing an intelligence database to effectively implement the Risk Management System and also carry out effective risk assessment, risk evaluation and risk mitigation techniques. It will update and maintain risk parameters in relation to the trade, commodities and all stakeholders associated or involved with the supply chain logistics.

(iv) The RMD will closely interact with all Custom Houses, Directorate of Revenue Intelligence (DRI) and Directorate of Valuation (DOV)

to enable it to effectively address national risks. The RMD shall also work in close coordination with Directorate General of Audit (DG Audit). The local risks will be largely addressed by RMD in co-operation with the Custom Houses. Further, the RMD will also closely interact with DOV on all matters pertaining to the Valuation Risk Assessment Module (VRAM) of RMS. DOV will also supply the list of Most Sensitive Commodities with value bands, the list of valid valuation alerts and the list of Unusual Quantity Code (UQC) at agreed intervals.

The RMD will review the performance of the RMS in terms of reviewing the various targets/interventions inserted by the Local Risk Management (LRM) Committee, make objective assessment of the effectiveness of such insertions, and ensure that the performance is consistent with the objective laid down. For this purpose, the RMD shall provide necessary advice and guidance to Custom Houses as and when required, which shall be followed. The RMD will also review the extent of facilitation being provided to the trade and offer necessary guidance to the officers in the Custom Houses with a view to providing appropriate facilitation and also ensuring compliance.

(v) The RMD will coordinate and liaise with Other Government Departments (OGDs), for dealing with risks relating to the compliance requirements under relevant allied Acts.

(vi) The RMD will work in close coordination with NACIN in developing training manuals and other documentation necessary for implementing RMS and also work out regular training schedules for officers responsible for the RMS in major Customs locations.

13. National Risk Management Committee:

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

(i) Review performance of the RMS including implementation of ACP/

AEO and PCA.

(ii) Review risk parameters and behavior of important risk indicators.

(iii) Review economic trends, policies, duty rates, exemptions, market data etc. that adversely impact Customs functions and processes and suggest remedial action.

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

14. Local Risk Management (LRM) Committee:

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

(i) Review trends in imports of major commodities and valuation with a view to identifying risk indicators.

(ii) Decide the interventions at the local level, both for assessment and examination of goods prior to clearance and for PCA.

(iii) Review results of interventions already in place and decide on their continuation/modification or discontinuance etc.

(iv) Review performance of the RMS and evaluate the results of the action taken on the basis of the RMS output.

(v) Send periodic reports to the RMD, as prescribed by the RMD, with the approval of the Commissioner of Customs.

15. Authorized Economic Operator scheme:

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

15.1 The earlier Accredited Clients Programme (ACP) /Authorized Economic Operator (AEO) scheme granted assured facilitation to importers who have demonstrated capacity and willingness to comply with the laws administered by the Customs. The earlier existing ACP and AEO programmes were merged into the new AEO programme vide Circular No. 33/2016-Customs dated 22-7- 2016. For the

economic operators other than importers and the exporters, the new programme offers only one tier of certification (i.e. AEO-LO) whereas for the importers and the exporters, there are three tiers of certification (i.e. AEO-T1, AEO- T2 and AEO-T3).

Considering the likely volume of cargo imported by the "Authorized Economic Operator", Custom Houses are advised to create separately earmarked facility/counters for providing Customs clearance service to them. Commissioners of Customs are also required to work with the Custodians for earmarking separate storage space, handling facility and expeditious clearance procedures for these clients.

15.2 The RMD maintains the list of AEOs centrally in the RMS and also monitors their levels of compliance, in co-ordination with the DRI/Commissioners of Customs. Where compliance levels fall, the importer is at first informed for self-improvement and in case of persistent on- compliance, the importer may be deregistered under the AEO.

15.3 The new combined three tiers AEO programme enhance the scope of these programmes so as to provide further benefits to the entities who have demonstrated strong internal control system and willingness to comply with the laws administered by the Central Board of Indirect Taxes and Customs. Benefits besides lowered risk ratings on RMS includes simplified Customs procedure, declarations, etc. besides faster Customs clearance of consignments of/for AEO status holders The features and details of the revised programme are available in CBIC Circular No. 33/2016-Customs dated 22.07.2016.

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

16. Export procedure – Shipping Bill:

16.1 For clearance of export goods, the exporter has to obtain an Importer- Export Code (IEC) number from the DGFT prior to filing of Shipping Bill. Under the EDI System, IEC number is received online by the Customs System from the DGFT. The exporter is also required to register authorized foreign exchange dealer code (through which export proceeds are expected to be realized) and open a current account in the designated bank forced it of Drawback incentive, if any.

16.2 All the exporters intending to export under the export

promotion scheme need to get their licenses etc. registered at the Customs Station. For such registration, original documents are required.

17. Waiver of GR form:

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

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

18. Arrival of export goods at docks:

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

19. Customs examination of export goods:

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

20. Examination norms:

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

20.2 After presentation of goods for registration to Customs and

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

20.3 Notwithstanding the examination norms, any export consignment can be examined by the Customs (even up to 100%), if there is any specific intelligence in respect of such consignment. Further, to test the compliance by trade, once in three months a higher percentage of consignments (say for example, all the first 50 consignments or a batch of consecutive 100 consignments presented for examination in a particular day) would be taken up for examination. Out of the consignments selected for examination a minimum of two packages with a maximum of 5% of packages (subject to a maximum of 20 packages) would be taken up for checking/examination.

20.4 In case export goods are stuffed and sealed in the presence of Customs/Central Excise officers at the factory of manufacture/ ICD/ CFS/warehouse and any other place where the Commissioner has, by a special order, permitted, it may be ensured that the containers should be bottle sealed or lead sealed. Also, such consignments shall be accompanied by an examination report in the prescribed form. In case of export through bonded trucks, the truck should be similarly bottle sealed or lead sealed. In case of export by ordinary truck/other means, all the packages are required to be lead sealed.

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

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

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

21. **Drawal of samples:**

21.1 The representative sample from the consignment is drawn in accordance with the orders of the proper officer.

21.2 If considered necessary, the Assistant/ Deputy Commissioner, may order sample to be drawn for purposes other than testing such as for visual inspection and verification of description, market value inquiry, etc.

22. Stuffing / loading of goods in containers:

22.1 In case of container cargo the stuffing of container at Dock is done under Preventive supervision. Further, loading of both containerized and bulk cargo is to be done under Preventive supervision. The Customs Preventive Officer supervising the loading of container and general cargo into the vessel may give "Shipped on Board" endorsement on the Exporters copy of the Shipping Bill.

22.2 Palletization of cargo is done after grant of Let Export Order (LEO). Thus, there is no need for a separate permission for palletization from Customs. However, the permission for loading in the aircraft/vessel is to be obtained.

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

23. Amendments:

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

(i) If the goods have not yet been allowed "Let Export" the amendments may be permitted by the Assistant / Deputy Commissioner (Exports).

(ii) Where the "Let Export" order has already been given, amendments may be permitted only by the Additional/Joint Commissioner in charge of Export.

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

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

24. Drawback claim:

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

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

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

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

25. Export General Manifest:

25.1 All the shipping lines/agents need to furnish the Export General Manifests, Shipping Bill-wise, to the Customs electronically before departure of the conveyance.

25.2 Apart from lodging the EGM electronically the shipping lines need to continue to file manual EGMs along with the exporter copy of the Shipping Bills in the Export Department where they would have been entered in a register. The shipping lines may obtain acknowledgement indicating the date and time at which the EGMs were received by the Export Department.

[Refer Circulars No.33/96-Cus., dated 17-6-1996, No.6/2002- Cus., dated 23-1-2002, No.31/2002-Cus., dated 7-6-2002, No.3/2003-Cus., dated 3-3-2003,No.53/2004-Cus., dated 13- 10-2004, No.18/2005-

Cus., dated 11-3-2005, No.42/2005-Cus., dated24-11-2005, No.43/2005-Cus., dated 24-11-2005, No.1/2006-Cus., dated 2-1-2006,No.8/2007-Cus., dated 22-1- 2007, No.23/2007-Cus., dated 28-6-2007, and No.1/2009-Cus., dated 13-1-2009]

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

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

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

27. 24x7 Customs clearance facility:

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

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

28. Sealing of Export Goods: electronic sealing facility:

28.1 Board has laid down a simplified procedure for stuffing and sealing of export goods by introducing self-sealing subject to certain conditions.

28.2 Exporter shall inform the details of the premises whether a factory or a warehouse or any other place where container stuffing is to be carried out to the jurisdictional officer at least 15 days

before first planned movement of a consignment from his factory premises for consideration of grant of permission by the jurisdictional Commissioner.

28.3 Customs formation granting the self sealing permission shall circulate the permission along with GSTIN of the exporter to all Customs Houses/Station concerned. Principal Commissioners/ Commissioners would also communicate to RMD the IEC of the exporters newly granted permission for self-sealing; exporters already operating under self-sealing procedure, exporters permitted factory stuffing facility, AEOs.

28.4 Exporter shall seal container with tamper-proof electronic seal of standard specification before leaving the premises. The physical serial number of the electronic seal shall be declared by the exporter at the time of filing integrated online Shipping Bill. Prior to sealing the container, exporter shall feed data such as name of exporter, IEC, GSTIN, description of goods, tax invoice number, name of authorized signatory (for affixing the e-seal) and Shipping number in the electronic seal.

28.5 Exporter shall procure the RFID seals from vendors conforming to the standards specified by the Board.

28.6 All consignments in self-seal containers shall be subject to risk based criteria and intelligence, if any, for inspection/ examination at the port of export. At the port/ ICD, Customs officers would verify the integrity of the seals to check for any sign of tampering en-route.

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

Circular no. 51/2017- Customs dated 21.12.2017]

B3A : CUSTOMS CLEARANCE OF IMPORTED AND EXPORT GOODS

1. Introduction

1.1 Import and Export are the two pillars of country's economic growth. The procedures of import and export are governed by the Customs Act, 1962. The procedures of clearances of imported goods and export goods are prescribed under Section 44 to Section 51 of the Customs Act, 1962. No imported goods entered into India or

would be crossed to the Customs frontier of India without Customs clearances and no export goods also leave Customs port without Customs clearances. For easy step to step procedures of Customs clearance of imported goods and export goods as per Customs Act, 1962.

2. Important Definitions:

Import - Section 2(23) of the Customs Act, 1962 defines "import" means with its grammatical variations and cognate expressions, means bringing into India from a place outside India.

Imported goods - Section 2(25) of the Customs Act,1962 defines "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

Importer-Section 2(26) of the Customs Act,1962 defines "importer" means any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

Export- Section 2(18) of the Customs Act, 1962 defines "export" means with its grammatical variations and cognate expressions, means taking out of India to a place outside India.

Export goods- Section 2(19) of the Customs Act, 1962 defines "export goods" means any goods which are to be taken out of India to a place outside India.

Exporter- Section 2(20) of the Customs Act, 1962 defines "exporter" means in relation to any goods at any time between their entry for export and the time when they are exported, includes any owner, beneficial owner or any person holding himself out to be the exporter.

Customs area- Section 2(11) of the Customs Act, 1962 defines "customs area" means the area of customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.

Customs port- Section 2(12) of the Customs Act, 1962 defines "Customs port" means any port appointed under clause (a) of section 7 to be customs port and includes a place appointed under clause (aa) of that section to be an inland container depot.

Customs station – Section 2(13) of the Customs Act, 1962 defines "Customs station" means any customs port, customs airport,

international courier terminal, foreign post office and land customs stations.

3. Appointment of places for imported goods and export goods:

Section 7 of the Customs Act, 1962 prescribed that the Board by official gazette may appoint the following places for clearances of import & export goods.

(a) the ports and airports which alone shall be customs ports or customs airports for the unloading of imported goods and the loading of export goods or any class of such goods;

(aa) the places which alone shall be inland container depots or air freight stations for the unloading of imported goods and the loading of export goods or any class of such goods;

(b) the places which alone shall be land customs stations for the clearance of goods imported or to be exported by land or inland water or any class of such goods;

(c) the routes by which alone goods or any class of goods specified in the notification may pass by land or inland water into or out of India, or to or from any land customs station from or to any land frontier;

(d) the ports which alone shall be coastal ports for the carrying on of trade in coastal goods or any class of such goods with all or any specified ports in India;

(e) the post offices which alone shall be foreign post offices for the clearances of imported goods or export goods or any class of such goods;

(f) the places which alone shall be international courier terminals for the clearance of imported goods or export goods or any class of such goods.

Further, Section 8 of the Customs Act,1962 empowers the principal Commissioner or Commissioner of Customs to approve landing places in any customs port or customs airport or coastal port for the unloading and loading of goods or for any class of goods.

4. Cargo arrival Notice / Filing of Manifest (IGM / EGM):

The person-in-charge of a vessel or aircraft carrying imported goods before entering into India, shall issue cargo arrival notice to the importer. The importer or his customs house agent shall submit to the proper officer an import manifest through electronically prior to the arrival of the vessel or the aircraft. The import manifest popularly

known as Import General Manifest (IGM). If the import report not delivered to the proper officer within twelve hours after its arrival in the customs stations and the proper officer is satisfied that there was no sufficient cause for such delay, shall be liable to a penalty of not exceeding ₹50,000/-. If the proper is satisfied that the imports manifest or import report is in any way incorrect or incomplete and that there was no fraudulent intention, he may permit it to be amended or supplemented.

With regard to vehicle carrying export goods for loading into outgoing vessel is granted entry outwards and load export goods thereafter. Before departure of vessel / aircraft, an export manifest called as Export General Manifest (EGM) shall be filed by exporter or his customs house agent through electronically and now a penalty not exceeding ₹50,000/- is also imposable on late filing of Export Manifest. (Section 29 & 30 of the Customs Act, 1962).

5. Unloading / loading of Goods:

The master of vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel. The same is not applicable to, passengers, crew members, mail bags, animals, perishable goods and hazardous goods.

No imported goods shall be unloaded and no export goods shall be loaded at any place other than place approved under Section 8 of the Customs Act, 1962. Imported goods shall not be unloaded from and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer.

6. Mandatory documents:

(a) Documents required for import of goods into India:

(i) Bill of Lading / Airway Bill/ Lorry Receipt / Postal Receipt;

(ii) Commercial Invoice issued by the shipper or supplier;

(iii) Packing List issued by the shipper or supplier; (iv) Copy of Purchase Order raised by the importer; (v) The copy of LC documents if any;

(vi) Authorisation letter in the favour of CHA for clearing import shipment;

(vii) Copy of IEC;

(viii) Copy of Scheme certificates for getting exemptions if any;

(ix) Bill of Entry (now also called as Integrated Declaration Form

to be electronically filed at ICEGATE portal at all EDI ports.)

(b) Documents required for export of goods from India:

(i) Bill of Lading / Airway Bill/ Lorry Receipt / Postal Receipt;

(ii) Commercial Invoice issued by the exporter;

(iii) Packing List issued by the exporter;

(iv) Copy of Purchase Order receipt from overseas customer;

(v) The copy of LC documents if any;

(vi) Authorisation letter in the favour of Custom Broker (CB) for clearing export shipment;

(vii) Copy of IEC;

(viii) Shipping Bill / Bill of Export;

(ix) Samples / test certificates of the export goods.

7. Submission of bill of entry and shipping bill:

An importer or exporter entering the imported or export goods self-assesses duty liability, if leviable on the same. The work of examination of goods, verification of self-assessments, classification, valuation, checking from import license point of view etc. is attended to in the Customs House by appraisers and examiners of Customs.

For clearance of goods through the EDI system, it is generated in the computer system, but in case of import the importer or the authorised person is required to enter the electronic integrated declaration and the supporting documents himself by affixing his digital signature and enter the Customs Automated System and he may also get the electronic integrated declaration made on the customs automated system along with the supporting documents by availing the services at the service centre. E-payment of Customs duty is mandatory for specified class of importers. Manual processing and clearance of import / export goods is allowed only in exceptional and genuine cases by Commissioner of Customs, when processing through EDI is not feasible. The bill of entry has to be filed / presented before the end of the next day following the day (excluding holidays) on which the aircraft or vessel carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing failing which late charges are required to be paid @ ₹5,000/- per day for the initial three days of default and at the rate of

₹10,000/- per day for each day of default thereafter.

8. Entry of goods on importation:

Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and importer has paid the import duty assessed thereon and the proper officer may make an order permitting clearance of the goods for home consumption. If any goods are not cleared for home consumption or warehoused or transshipped within 30 days from the date of the unloading thereof at customs station, the proper officer may issue notice to the importer and with permission of the proper officer be sold by the person having the custody thereof. In case any imported goods entered for home consumption but cannot be cleared within a reasonable time, then Deputy Commissioner / Assistant Commissioner of Customs is satisfied on the application of importer may permitted to be stored in a public warehouse for a period not exceeding 30 days and further may be extended not exceeding 30 days by the Commissioner or principal Commissioner of Customs.

9. Entry of goods for exportation:

The exporter by presenting a shipping bill through electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft and in the case of goods to be exported by land, a bill of exports may be presented to the Customs officer. In the event of it is not feasible to make entry by presenting electronically through Customs automated system, thereby the Principal Commissioner or Commissioner of Customs may allow to be presented in any other manner.

The exporter who presents a shipping bill or bill of export shall ensure the following:

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and compliance with the restriction or prohibition, if any, relating to the goods under this Act.

10. Clearance of goods for exportation:

Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid duty, if any, assessed thereon and proper officer may make an order permitting clearance and loading of the goods for exportation. Where the exporter fails to pay the export duty, either in full or in part, he shall

pay interest on said duty not paid or short paid till the date of its payment not below 5% and exceeding 36% per annum.

There is relaxation on examination of export cargo and no examination for factory / warehouse stuffed and sealed goods unless seal are found tampered; examination of shipping bills (where there is no export incentive) and a low percentage of examination (less than 10%). The outgoing ship/ aircraft has to obtain a 'port clearance' before leaving and the ship or its steamer agents have to submit an Export General Manifest of goods being carried before departure of ship.

If export cargo is shut-out by the vessel originally indicated in the shipping bill, exporters may amend the same of the vessel by taking approval of the Deputy Commissioner / Assistant Commissioner of Customs (Export) in the Customs House or of the preventive Superintendent of Customs.

11. Treatment of Exports under GST:

In the GST regime, as per Section 16 of the IGST Act, 2017 prescribes supply of goods and services for exports are to be treated as "Zero rated supplies" implying that registered person exporting goods and service shall follow the procedure of export under bond or letter of undertaking without payment of IGST and claim refund of unutilized input tax credit or on payment of IGST and claim refund of the IGST so paid on goods and services exported. Export procedure and sealing of containers has been prescribed vide C.B.I & C, Circular No.26/2017-Cus., dated 1'st July' 2017 as amended from time to time.

B4 : CLASSIFICATION OF GOODS

1. Introduction:

1.1 Import and export of goods are required to be assessed to duty which may include an assessment of nil duty. For this purpose, it is necessary to determine the classification of the goods, which basically means the categorization of the goods in a specific heading of the Schedules to the Customs Tariff Act, 1975.

1.2 Classification of imported/export goods is governed by the Customs Tariff Act, 1975 which contains two Schedules. The First Schedule specifies the nomenclature of imported goods that is based on the Harmonized Commodity Description and Coding System

generally referred to as "Harmonized System" or simply "HS", developed by the World Customs Organization (WCO) which is applied uniformly by more than 137 countries the world over. The Second Schedule contains description of goods chargeable to export duty. As the nomenclature also specifies the Customs duty rates (Tariff), it is called the "Indian Customs Tariff" or "Tariff Schedule".

2. Methodology of classification:

2.1 In the Tariff Schedule, commodities/products are arranged in a fixed pattern with the duty rates specified against each of them. The pattern of arrangement of goods in the Tariff is in increasing degree of manufacture of commodities/products in the sequence of natural products, raw materials; semi finished goods and fully finished goods/ article /machinery, etc. The Indian Customs Tariff has 21 Sections and 98 Chapters. Section is a group consisting of a number of Chapters which codify a particular class of goods. The Section notes explain the scope of chapters/ headings, etc. The Chapters consist of chapter notes, brief description of commodities arranged at four digit, six digit and eight digit levels. Every four-digit code is called a "heading" and every six digit code is called a "sub heading" and 8-digit code is called a "Tariff Item".

2.2 The Harmonized System (HS) provides commodity/product codes and description upto 4- digit (Heading) and 6-digit (Sub-heading) levels only and member countries of WCO are allowed to extend the codes up to any level subject to the condition that nothing changes at the 4-digit or 6-digit levels. India has developed 8-digit level classification to indicate specific statistical codes for indigenous products and also to monitor the trade volumes.

2.3 The HS is amended periodically in a review cycle of 4/6 years, taking note of the trade flow, technological progress, etc. After the HS came into effect on 1.1.1988, it was amended in 1992, 1996, 2002, 2007, 2012 and 2017. Member countries including India are under obligation in terms of International Convention on Harmonized System to amend their Tariff Schedules in alignment with HS. Therefore, the classification of some commodities/ products may change over a period of time. Those involved in the negotiation of international commercial arrangements, multilateral tariff agreements etc. should refer to correlation tables showing the transposition of sub-headings from older version to the newer and the newer to the older version of the HS.

2.4 For purposes of uniform interpretation of the HS, the WCO

has published detailed Explanatory Notes to various headings/ subheadings. This forms the basis for interpreting the HS. The WCO, in its various committees discusses the classification of individual products and gives classification opinion on them. Such information, though not binding in nature provides a useful guideline for classifying goods.

2.5 The process of arriving at a particular heading/subheading code, either at four digits, six digits or eight digit levels for a commodity in the Tariff Schedule is called "classification". The titles of Sections, Chapters and Sub-chapters are provided for ease of reference only. For legal purposes the texts of the Section Notes, Chapter Notes, Subheading Notes, Supplementary Notes, Headings, Subheadings, and the General Rules for Interpretation of Import Tariff (GIR) should be relied upon to determine the classification of an item. Classification helps in determining the rate of duty leviable. The Indian Customs Tariff provides specific headings for goods imported under Project Import Scheme, goods imported by post and goods imported as baggage in Chapter 98 under which they will be classified straightaway even though they may be covered elsewhere.

2.6 The GIR (General Interpretative Rules / General Rules of interpretation) is a set of 6 rules for classification of goods in the Tariff Schedule. These rules have to be applied sequentially. Rule 1 gives precedence to the Section notes/Chapter notes while classifying a product. Rule 2(a) applies to goods imported in incomplete / finished condition and assembled / unassembled condition. Rule 2(b) is applicable to 'mixtures' and 'composite goods'. Goods which cannot be classified by application of Rule 2(b), will be classified by application of Rule 3 i.e. by application of "most specific description" as per Rule 3(a) or by ascertaining the "essential character" of the article as per Rule 3(b) or by taking into consideration the heading that occurs last in the numerical order as per Rule 3(c). Rule 4 states that goods which cannot be classified by application of the preceding rules may be classified under the heading appropriate to the goods to which they are most akin. Rule 5 applies to packing materials/ articles in which the goods are carried. Rule 6 is applied to arrive at the appropriate subheading within a heading and for that purpose the provisions of Rules 1 to 5 apply mutatis mutandis on the understanding that subheadings at the same levels are comparable. For the purpose of Rule 6, the relative Section and Chapter Notes also apply unless the context otherwise requires.

2.7 While classifying goods, the foremost consideration is the

"statutory definition" and any guideline provided by HS Explanatory Notes. In their absence, the cardinal principle would be the way goods are known in "common parlance". Many times statutes contain definitions and meanings of only a restricted number of words, expressions or phrases. Therefore, while interpreting the common words used in the statute, giving more than due importance to common dictionary meanings may be misleading, as therein all shades of meaning of a particular word are given. Similarly, meanings assigned in technical dictionaries will have limited application.

2.8 For purposes of classification the "trade meaning" is given due importance unless the Tariff itself requires the terms to be interpreted in a strict technical sense in which case technical dictionaries should be used. If any scientific test is to be performed, the same must be carried out as prescribed to arrive at the classification of goods. The common dictionary meaning of technical words should not be accepted in such cases since normally, the common parlance understanding is indicative of the functional character of the goods. Further, in matters of classification the quality of goods, whether prime or defective is not material. There is no prohibition on revising the classification once decided. However, revision should be only done for good and sufficient reasons. In case of difficulty in understanding the scope of the headings / subheadings, reference should invariably be made to supplementary texts like the Explanatory Notes to the HS.

2.9 The rate of duty specified in the Tariff Schedule is called "Tariff rate of duty". Goods which are not levied concessional rate of duty or exempted from duty by an exemption notification issued under the Customs Act, 1962 are levied the Tariff rate of duty. The Export Tariff Schedule mentions only the commodities on which export tariff is levied. Likewise, the Central Excise Tariff prescribed Excise duties against each subheading, which is relevant for the purpose of computing the Additional Duty of Customs. Goods which are prescribed 'nil' rates of duty in the Tariff are those goods which are levied to 'free' rates of duty. The rates of Integrated GST, which is to be levied on the imported goods, are also aligned at 4digit level of Tariff Schedule.

2.10 Board issues Tariff Advices in the form of circulars/ instructions to ensure uniformity in classification of goods at an All India level. Such issues also get discussed and resolved in the periodic Conferences of Chief Commissioners/Commissioners of Customs on Tariffs and Allied Matters. An Advance Ruling Authority gives binding tariff advice to applicants.

2.11 Permissibility of import and export of goods is governed by the DGFT's ITC (HS) Classification of Import and Export Goods. This nomenclature arranges goods as in the HS to regulate the Foreign Trade Policy and collating the statistical analysis of the imports and exports of the country.

B5 : CLASSIFICATION/ASSESSMENT OF PROJECTS IMPORTS, BAGGAGE AND POSTAL IMPORTS

1. Introduction:

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

2. Project imports:

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

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

headings may cover these goods more specifically.

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

2.3 Goods that can be imported under Project Import Scheme are machinery, prime movers, instruments, apparatus, appliances, control gear, transmission equipment, auxiliary equipment, equipment required for research and development purposes, equipment for testing and quality control, components, raw materials for the manufacture of these items, etc. In addition, spare parts, consumables up to 10% of the assessable value of goods can also be imported under Project Import.

2.4 The purposes for which such goods can be imported under the Project Import Scheme are for "initial setting up" or for "substantial expansion" of a unit of the project. The "unit" is any self-contained portion of the project having an independent function in the project. A project would fall under the category of "substantial expansion" if the installed capacity of the unit is increased by not less than 25%, as per the Project Import Regulations, 1986.

2.5 The scope of the items eligible for import under the Project Import Regulations 1986, shall cover construction equipment as auxiliary equipment; if essentially required for initial setting up or substantial expansion of registered projects. The construction equipment may be permitted to be transferred to other registered project under CTH 9801, after completion of its intended use, on recommendations of sponsoring authority. The "Plant Site Verification Certificate" required to be submitted for finalization of project as per Circular No. 14/2006- Cus., dated 17-4-2006 shall incorporate the details of construction equipment imported and used for the project, to ensure proper utilization of goods imported.

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

3. Registration of contracts:

3.1 In terms of Regulation 4 of the Project Import Regulations, 1986 (PIR), the basic requirement for availing the benefit of assessment under Tariff Heading No. 98.01 is that the importer should have entered into one or more contracts with the suppliers of the goods for setting up a project. Such contracts should be registered, prior to clearance, in the Custom House through which the goods are expected to be imported. The importer shall apply for such registration in writing to the proper officer of Customs.

3.2 Regulation 5 provides in the manner of registering contracts, which is as follows:

(i) Before any order is made by the proper officer of Customs permitting the clearance of the goods for home consumption;

(ii) In the case of goods cleared for home consumption without payment of duty subject to re-export in respect of fairs, exhibitions, demonstrations, seminars, congresses and conferences, duly sponsored or approved by the Government of India or Trade fair Authority of India, as the case may be, before the date of payment of duty.

3.3 To expedite registration, the importers are advised to submit the following documents along with the application for registration:

(i) Original deed of contract together with true copy thereof.

(ii) Industrial License and letter of intent, SSI Certificate granted by the appropriate authority with a copy thereof.

(iii) Original Import licence, if any, with a list of items showing the dimensions, specifications, quantity, quality, value of each item duly attested by the Licensing Authority and a copy thereof.

(iv) Recommendatory letter for duty concession from the concerned Sponsoring Authority, showing the description, quantity, specification, quality, dimension of each item and indicating whether the recommendatory letter is for initial set-up for substantial expansion, giving the installed capacity and proposed addition thereto.

(v) Continuity Bond with cash security deposit equivalent to 2% of CIF value of contract sought to be registered subject to the maximum of ₹50 lakhs and the balance amount by the bank Guarantee

backed by an undertaking to renew the same till finalization of the contract. The said Continuity Bond should be made out for an amount equal to the CIF value of the contract sought to be registered.

(vi) Write up, drawings, catalogues and literature of the items under import.

(vii) Process flow chart, plant layout, drawings showing the arrangement of imported machines along with an attested copy of the Project Report submitted to the Sponsoring authorities, Financial Institution, etc.

(viii) Two attested copies of foreign collaboration agreement, technical agreement, know-how, basic / detailed engineering agreement, equipment supply agreement, service agreement, or any other agreement with foreign collaborators/ suppliers/ persons including the details of payment actually made or to be made.

(ix) Such other particulars, as may be considered necessary by proper officer for the purpose of assessment under Heading No.9801.

3.4 In regard to the requirement of registration of the contract (or contracts) and production of the "original deed of contract", the Board noted that as per Section 10 of the Indian Contract Act, 1872 a valid contract contains certain essential elements viz. (a) it is entered into by free consent of parties competent to contract; (b) there should be lawful consideration; (c) there should be a lawful object; and (d) it is not expressly declared to be void under the statute. It is therefore decided that a purchase order that contains all the essential ingredients of avalid contract must be treated as one under the Indian Contract Act, 1872. Thus, such a purchase order can be accepted as a "deed of contract" for the purpose of Regulation 5 of Project Import Regulations, 1986.

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

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

4. Clearance of goods after registration:

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

5. Finalization of contract:

5.1 Under Regulation 7 of the PIR, 1986 the importer is required to submit, within three months from the date of clearance of the last consignment or within such extended time as the proper officer may allow, the following documents for the purpose of finalization of the assessment:

(i) A reconciliation statement i.e. a statement showing the description, quantity and value of goods imported along with a certificate from a registered Chartered Engineer certifying the installation of each of the imported items of machinery;

(ii) Copies of the Bills of Entry, invoices, and the final payment certificate is insisted upon only in cases where the contract provides that the amount of the transaction will be finally settled after completion of the supplies.

5.2 To ensure that the imported goods have actually been used for the projects for which these were imported, plant site verification may be done in cases where value of the project contract exceeds ₹1 crore. In other cases, plant site verification is normally done selectively.

5.3 In the normal course, after submission of the reconciliation statement and other documents by the importers, the provisional assessments are finalized within a period of three months where plant site verification is not required and within six months where plant site verification is required. In cases where a demand has been issued and confirmed on such finalization and importer has not paid the duty demanded, steps are taken as per law to realize the amount.

6. Baggage:

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

7. Postal imports for personal use:

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

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

B6 : CUSTOMS VALUATION

1. Introduction:

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

2. Tariff value:

2.1 Board is empowered to fix values, under Section 14(2) of the Customs Act, 1962 for any item, which are called "Tariff Values". If tariff values are fixed for any goods, ad-valorem duties thereon are to be calculated with reference to such tariff values. The tariff values may be fixed for any class of imported or export goods having regard

to the trend of value of such or like goods and the same have to be notified in the official gazette. Tariff values are presently been fixed in respect of import of Crude Palm Oil, RBD Palm Oil, Other Palm Oils, Crude Palmolein, RBD Palmolein, Other Palmoleins, Crude Soya bean Oil, Brass Scrap (all grades), Poppy Seeds, Areca Nuts, Gold and Silver.

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

3. Valuation of imported/export goods in general:

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

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

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

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case; and

(iii) The manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.

3.3 The price paid or payable shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry

is presented under Section 46, or a Shipping Bill or Bill of Export, as the case may be, is presented under Section 50 of the Customs Act, 1962.

3.4 When compared to the earlier provisions Section 14(1), the present provisions have is carded the concept of "deemed value" and adopted the concept of 'transaction value'. Also, the present Section 14 contains there in provisions for specific rules to be made for determination of value and also for specific additions to value on account of cost and services. Some provisions deleted from the earlier Section 14 include:

(i) Reference to such or like goods. Thus, the value (transaction value) shall be the price actually paid or payable for the goods under consideration.

(ii) The reference to price of the goods ordinarily sold or offered for sale.

(iii) The price of the goods when sold for export to India is to be considered and not the price in the course of international trade.

3.5 As provided in Section 14(1), the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007 and the Custom Valuation (Determination of Value of Export Goods) Rules, 2007 have been framed for valuation of imported goods and export goods, respectively.

3.6 The provisions of Section 14(1) and the Custom Valuation (Determination of Value of Imported Goods) Rules, 2007 are based on the provisions of Article VII of GATT and the Agreement on implementation of Article VII of GATT. The methods of valuation prescribed therein are of a hierarchical (sequential) order.

3.7 The importer is required to truthfully declare the value in the import declaration and also provide a copy of the invoice and file a valuation declaration in the prescribed form to facilitate correct and expeditious determination of value for assessment purposes.

4. Methods of valuation of imported goods:

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

5. Transaction value:

5.1 Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 states that subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with the provisions of its Rule 10.

5.2 The price actually paid or payable is the total payment made or to be made by the buyer to the seller or for the benefit of the seller for the imported goods. It includes all payments made as a condition of sale of the imported goods by the buyer to the seller or by the buyer to a third party to satisfy an obligation of the seller.

5.3 If objective and quantifiable data do not exist with regard to the valuation factors, if the valuation conditions are not fulfilled, or if Customs authorities have doubts concerning the truth or accuracy of the declared value in terms of Rule 12 of the said Valuation Rules, 2007 the valuation has to be carried out by other methods in the following hierarchical order:

(i) Comparative Value Method – Comparison with transaction value of identical goods (Rule 4);

(ii) Comparative Value Method - Comparison with transaction value of similar goods (Rule 5);

(iii) Deductive Value Method - Based on sale price in importing country (Rule 7);

(iv) Computed Value Method - Based on cost of materials, fabrication and profit in country of production (Rule 8); and

(v) Fallback Method - Based on earlier methods with greater flexibility (Rule 9).

6. Valuation factors:

6.1 Valuation factors are the various elements which must be taken into account by addition (factors by addition) to the extent these are not already included in the price actually paid or payable or by deduction (factors by deduction) from the total price incurred in determining the Customs value, for assessment purposes.

6.2 Factors by addition are the following charges:

(i) Commissions and brokerage, except buying commissions;

(ii) The cost of containers, which are treated as being one with the goods in question for Customs purposes;

(iii) The cost of packing whether for labour or materials;

(iv) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:

(a) Material, components, parts and similar items incorporated in the imported goods;

(b) Tools, dies, moulds and similar items used in the production of the imported goods;

(c) Materials consumed in the imported goods; and

(v) Engineering, developing, artwork, design work, and plans and sketches undertaken elsewhere than in the importing country and necessary for the production of the imported goods;

(vi) Royalties and license fees related to imported goods being valued that the buyer must pay either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(vii) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

(viii) Advance payments;

(ix) The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the pace of importation wherein the cost of transportation includes ship demurrage charges on chartered vessels, lighter age and barge charges; and

(x) The cost of insurance to the place of importation.

(xi) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.{This sub-clause is not included in the draft text but is a part of Rule 10(1)(e)}

Wherein the "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for

being removed for deposit in a warehouse.

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

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

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

6.4 Factors by deduction are the following charges provided they are separately declared in the commercial invoices:

(i) Interest charges for deferred payment;

(ii) Post-importation charges (e.g. inland transportation charges, installation or erection charges, etc.); and

(iii) Duties and taxes payable in the importing country.

7. Cases where transaction value may be rejected:

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

(i) If there are restrictions on use or disposition of the goods by the buyer. However, the transaction value not to be rejected on this ground if restrictions:
   (a) Are imposed by law or public authorities in India;
   (b) Limit geographical area of resale; and
   (c) Do not affect the value of the goods substantially.

(ii) If the sale or price is subject to a condition or consideration for which a value cannot be determined. However, conditions or considerations relating to production or marketing of the goods shall not result in rejection.

(iii) If part of the proceeds of the sub sequent resale, disposal or use of the goods accrues to the seller, unless an adjustment can be made as per valuation factors.

(iv) Buyer and seller are related; unless it is established by the importer that:

   (a) The relationship has not influenced the price; and

(b) The importer demonstrates that the price closely approximates one of the test values.

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

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

8. Provisional clearance of imported goods:

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

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

9.1 Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 enumerates the persons who shall be deemed to be "related". It has been made clear by Explanation II thereto that the sole agent, sole distributor or sole concessionaire shall be deemed to be related only if they fall within the criteria of this sub-rule. Further, Rule 3(3) provides that where buyer and seller are related, the transaction value can be accepted if the examination of circumstances of the sale of the imported goods indicate that the relationship did not influence the price or if the importer

demonstrates that the declared value of the goods being valued, closely approximates to one of the test values namely transaction value of identical/ similar goods, in sales to unrelated buyers in India, deductive value for identical/ similar goods or computed value for identical/ similar goods ascertained at or about the same time can be used.

9.2 In related party transactions, the importer is required to fill a questionnaire and furnish a list of documents so that it can be ascertained whether the said case requires investigation by SVB or not. The proper officer shall examine the information provided by the importer in terms of Rule 3(3)(b) of the CVR, 2007 and shall submit the findings to the Commissioner for a decision as to whether the case is fit for being referred to the SVB for investigation. The Commissioner shall after due consideration of the preliminary findings, take a considered view whether:

(a) The matter be referred to the SVB for further investigations and the goods be provisionally assessed to duty in terms of section 18 of the Customs Act, 1962,or

(b) The transaction does not merit investigation by the SVB and that assessment be finalized on the basis of enquiries to be conducted by the proper officer in terms of Rules 4 to 9 of the CVR 2007, or

(c) the transaction be assessed in terms of Rule 3 of the CVR 2007.

9.3 In cases, where the Commissioner concerned finds it fit that the transaction requires investigation to be conducted by SVB, the Investigations are carried out by Special Valuation Branches (SVB) located presently in the major Custom Houses at Bengaluru, Mumbai, Kolkata, Chennai and Delhi. As and when imports requiring investigation by SVBs are noticed at any customs formation, the concerned Commissionerate shall after following the laid down procedure, transfer all records to the jurisdictional SVBs for investigations.

9.4 With effect from 09.02.2016, the functional and supervisory control over the SVBs has been divested from DGOV and the same has been vested with the jurisdictional Chief Commissioner/ Principal Commissioner/ Commissioner. DGOV will continue to support the SVBs by issuing advisories on legal issues & guidance notes. DGOV shall also qualitatively monitor investigation orders issued by SVBs.

9.5 The provision of taking Extra Duty Deposit@1% of declared

assessable value for four months, during which he is supposed to submit requisite documents and information to SVBs, has been withdrawn and in order to reduce the transaction cost it has been mandated that no security in the form of EDD shall be obtained from the importer. However, if the importer fails to provide the documents and information required for SVB inquiries, within 60 days of such requisition, security deposit at a rate of 5% of the declared assessable value shall be imposed by the Commissioner for a period not exceeding the next three months.

9.6 Only cases with significant revenue implications are taken up for SVB investigations. The following cases are not to be taken up for SVB investigations:

(a) Import of samples and prototype from related sellers

(b) Imports from related sellers where duty chargeable (including additional duty of customs etc.) is unconditionally fully exempt or NIL.

(c) Any transaction where the value of imported goods is less than ₹1 Lac but cumulatively these transactions do not exceed Rs 25 lac in any financial year.

9.7 Apart from investigation of transactions involving related parties, cases involving possible additions to declared transaction value also need to be examined to determine whether SVB investigations are necessary. Accordingly, transactions where any payments are sought to be made which are in the nature of instances given below shall also be examined with respect to the need for SVB investigations:

(i) 'royalty' and 'license fee' under Rule 10 (1)(c) of CVR, 2007, or

(ii) where the value of any part of proceeds of any subsequent resale, disposal or use of imported goods accrues to the seller i.e. Rule 10 (1)(d) of CVR, 2007 or

(iii) Where any other payments are made or are contemplated to be made in future by buyer to seller as a condition of sale of imported goods etc. Rule 10(1) (e) of CVR, 2007.

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

10. Methods of valuation of export goods:

10.1 The provisions of Section 14(1) of the Customs Act, 1962 specifically cover the valuation of export goods. Also, the Customs

Valuation (Determination of Value of Export Goods) Rules, 2007 have been framed to provide a sound legal basis for the valuation of export goods and check deliberate overvaluation of export goods and mis-utilization of value based export incentive schemes.

10.2 Rule 3 of the Customs Valuation (Determination of Value of Export Goods) Rules 2007 that are framed in a format similar to the said Valuation Rules, 2007 for the imported goods emphasizes for acceptance of the transaction value, which is the primary basis for valuation of export goods. In cases where the transaction value is not accepted, the valuation shall be done by application of Rules 4 to 6 sequentially. As per Rule 7, exporter has to file Export Value Declaration relating to the value. Also, the value of the export goods declared by the exporter can be rejected under Rule 8.

10.3 Wherever there are doubts about the declared value of export goods and an investigation/ enquiry is being undertaken to determine whether or not the Declared Value should be accepted, the export consignments should not be ordinarily detained. Due process envisaged under Rule 8, for rejection of declared value and consequent re-determination of value may be undertaken by applying valuation Rules sequentially.

10.4 The explanation to Section 14 provides for the determination of rate of exchange for the conversion of Indian currency into foreign currency and foreign currency into Indian currency which will be used by the assessing officer to arrive at the value of exported and imported goods respectively. Currently, such values are notified for 20 currencies. For the purpose of valuation of goods, "foreign currency" and ''Indian currency" have the same meanings assigned to them in terms of clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of1999) respectively.

11. Rights of appeal:

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

appeal lies to the Tribunal (CESTAT) consisting of administrative and judicial members. A third appeal lies to the Supreme Court of India. The importer is informed regarding his rights of appeal by each of the adjudicating and appellate authorities.

B7 : PROVISIONAL ASSESSMENT

1. Introduction:

1.1 The Finance Act, 2011 introduced self-assessment under which importers and exporters are mandatorily required to self-assess the duty in terms of Section 17 of the Customs Act, 1962. This self-assessment is subject to verification by the proper officer of the Customs and may lead to reassessment by the proper officer of Customs if it is found to be incorrect. However, in terms of Section 17(1) of the Customs Act, 1962 in case an importer or exporter is not able to make self- assessment, he may, request in writing to the proper officer for assessment. Also, in terms of Section18 of the Customs Act, 1962, in case, the proper officer is not able to verify the self- assessment or make re- assessment of duty or he deems it necessary to subject any imported or export goods to any chemical or other tests or where necessary documents have not been produced or information has not been furnished and it is necessary to make further enquiry, he may direct that the duty leviable on such goods be assessed provisionally.

2. Conditions for provisional assessment:

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

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

(b) furnish such security for the payment of duty deficiency as prescribed.

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

3 **Finalization of provisional assessment:**

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

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

B7A : PROVISIONS OF ASSESSMENT UNDER CUSTOMS ACT, 1962

1. Introduction:

Assessment is an important provision under any tax laws. Assessment under Customs Act, refers to determination of tax liability on imported goods and export goods. Every import and export consignments are to be assessed properly by the Customs Officer before allowing clearance. Once goods declaration is submitted in form Bill of entry or shipping Bill containg all relevant information, the duty leviable on the imported goods or export goods, if any, is assessed by the Customs Officer.

2. Definition of Assessment:

After the amendment of Section 2(2) of the Customs Act, vide Finance Act, 2011 the definition of "assessment" stated that "assessment" includes provisional assessment and re- assessment. However, under Finance Act,2018 , definition of " assessment" under clause (2) has been substituted to make it broad based by giving it a specific meaning as determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, with reference to classification, value, exemption and other parameters of levy of duty.

The relevant portion of definition of "assessment" under Customs Act, 1962 is reproduced: -

[(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable,

if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to —

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued there-for under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made there under, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

And includes provisional assessment, self-assessment, re- assessment and any assessment in which the duty assessed is nil;]

The following mandatory documents are required to be submitted for examination and assessment of imported goods and export goods.

(a) For imported goods following documents are mandatory.

1. Bill of Lading / Airway Bill / Lorry Receipt / Railway Receipt / Postal Receipt.
2. Commercial Invoice cum packing list.
3. Bill of Entry (Integrated Declaration Form to be electronically filed at ICEGATE portal at all EDI ports.
4. Purchase Order of imported goods.
5. LC documents if any for payments to be made in nominated Bank.

(b) For export goods following documents are mandatory.

1. Bill of Lading / Airway Bill / Lorry Receipt / Railway Receipt / Postal Receipt.
2. Commercial Invoice cum packing list.
3. Shipping Bill / Bill of export.
4. Purchase order for exports goods.
5. LC documents if any for payment receipt in nominated Bank.

The documents are required to be furnished by the importer or the exporter or requisitioned by the proper officer may be submitted in one instance. The importer or the exporter or his authorized representative or Customs Broker shall inform the proper officer in writing that he has submitted all the documents or information to be furnished or requisitioned

3. Self-Assessment of duty:

The importer or exporter is responsible for self-assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete.

Self-assessment can result in assured facilitation for compliant importers/exporters. However, delinquent and habitually non-compliant importers/exporters could face penal action on account of wrong self-assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

The self-assessment procedure in customs came into effect only from 8-4-2011 vide Finance Act, 2011.Section 17 of the Customs Act, 1962 prescribes assessment of duty. An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self- assess the duty, if any, leviable on such goods and Section 85 provides exemption to the stores that may be allowed to be warehoused without assessment of duty. Such self-assessment is subject to verification by the proper officer primarily on the basis of risk evaluation through appropriate selection criteria.

The proper officer may verify the self-assessment of goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:

For verification of self-assessment, the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

Self-assessed import/export declaration may be verified by the Department. For this purpose, the Customs officer may call for documents like contract, basis of transfer pricing of goods, broker note, policy insurance, catalogue, invoice etc. If required, the goods may also be examined or tested by the officer. Verification may result in re-assessment of duty by the officer for which the officer passes a speaking order within 15 days except when importer/exporter accepts re-assessment in writing.

In case the self-assessment is not possible, the importer/exporter may ask for provisional assessment. The officer may also order provisional assessment under Section 18(1). In case, the proper officer feels that the provisional assessment is to be allowed, the concurrence of jurisdictional Commissioner of Customs is required to be taken.

4. Proper Officer:

The proper officer may allow a further period not exceeding three months, on his own or at the request of the importer or the exporter, in case the documents or information are not made available within the time period of one month. The reasons for the extension shall be recorded in writing

5. Additional/Joint Commissioner:

The Additional Commissioner or Joint Commissioner of Customs, may further extend the time period referred for another three months, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available within the period as allowed above by the proper officer.

6. Power of Commissioner:

The Commissioner of Customs, may extend the time period further as deemed fit, in case the documents or the information required to be submitted by the importer or the exporter or requisitioned by the proper officer have not been made available even after the extension of time.

7. Re-assessment:

Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

Where any re-assessment done is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concession of duty availed consequent any notification issued thereof under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Sigma Power Products Pvt. Ltd. v. Commissioner of Customs (Port), Kolkata reported in 2017 (350) E.L.T.510 (Cal.), it was held that the order made by the proper officer on the Bills of Entry in changing the classification and value enhancement is an order of re- assessment attracting the provisions of sub-section 5) of Section 17 of Customs Act, 1962. Hence, the proper officer was required to pass a speaking order on the re- assessment within 15 days of the re-assessment of the Bills of Entry. Since no speaking order was passed, the re-assessment was set aside

8. Provisional assessment of duty:

On certain occasions, it is not possible to assess the duty liability due to non-availability of relevant information / document or any other reason. Consequently, keeping pending of clearance of imported goods for non-assessment, may cause hardship to the importers to bear the cost of demurrage / detention charges incurred for not discharging of goods from vessel/ release of container in time. It may cause indirect cost like reschedule of production programme and financial loss for non-clearance of imported goods for home consumption. Similarly, delay of exports clearance on account of non-assessment of export goods, which may cause delay delivery of goods to overseas customers and delay clearance of export goods may cause cancellation of export orders. In order to meet such exigencies , both importer and export have been allowed assess the duty provisionally and allow clearance of the goods under section 18 of the Customs Act,1962 by executing a bond with appropriate security as prescribed

thereunder. The Act also provides for provisional assessment of duty in cases where proper assessment is not possible for want of certain information/document.

Section 18 of the Customs Act, prescribes the provision of provisional assessment of duty under the following conditions:

(a) where the importer or exporter is unable to make self-assessment and makes a request in writing to the proper officer for assessment; or

(b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or

(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

In the above situations, the proper officer may direct that the duty leviable on such goods 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 as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

9. Execution of the Bond:

Where the provisional assessment is allowed pending the production of any document or furnishing of any information by the importer or exporter, completion of any test or enquiry , are required to execute Bond and the person executing the bond shall pay the deficiency , if any between the duty finally assessed and the duty provisionally assessed.

10. Security of the Bond:

The proper Officer of Customs i.e. A.C / D.C may accept bond for provisional assessment with such security, as he deems fit and if proper officer satisfied, allow the provisional assessment of Bill of entry or shipping Bill, as the case may be.

Section 18 of Customs Act has been amended vide Finance Act, 2018 to bring into fold export consignments under purview of provisional Assessment. Provisional assessment is also done if the importer or

exporter is unable to self-assess the goods. Penalty is not imposable when the assessment was provisional.

In Manickam Enterprises v. Commissioner of Customs, Trichy-2002 (140) E.L.T. 16 (Mad.) the Hon'ble High Court held that when statute provides for provisional assessment in certain specified circumstances, the same has to be done in the manner provided in the Act and not according to the whims and fancies of the Department. As per section 18 of the Customs Act,1962, goods can be assessed provisionally pending production of information/ documents or completion of test/ enquiry if the exporter or importer, as the case may be, furnishes such bond/security as the proper officer deems fit for the payment of the deficiency, if any, as may accrue after finalization of the assessment.

11. Finalisation of provisional assessment:

The Finance Act, 2018 inserted a new Section 18(1A) in the Act which provides for final assessment. The said section provides that the proper officer shall finalize the provisional assessment within such time and in such manner, as may be prescribed. The C.B.I & C, has notified the Customs (Finalisation of Provisional Assessment) Regulations, 2018 which shall apply to the provisional assessments ordered on and after the enforcement of these regulations vide Notification No.73/2018-Cus. (N.T.), dated 14-08-2018. Hence, a statutory regulation for finalization of provisional assessment has been put in place with effect from 14-8-2018 and final assessment is now required to be done strictly in accordance with these regulations except the cases of provisional assessment which are required to be kept pending as per Board's directions. For the purpose of these regulations, each Bill of Entry or Shipping Bill, as the case may be, that has been assessed provisionally, shall be treated as a separate case of provisional assessment.

(1) Where, pursuant to the provisional assessment, if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.

(2) When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then -

(a) in the case of goods cleared for home consumption or

exportation, the amount paid shall be adjusted against the duty [finally assessed or re-assessed, as the case may be,] and if the amount so paid falls short of, or is in excess of [the duty [finally assessed or re-assessed, as the case may be,]], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty [finally assessed or re-assessed, as the case may be,] 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.

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

(4) If any refundable amount, is not refunded under that sub- section within three months from the date of assessment of duty finally, [or re-assessment of duty, as the case may be,] there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable and the interest, if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, 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;

(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.]

If any refundable amount is not refunded within three months from the date of assessment of duty finally, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under Section 27A till the date of refund of such amount.

The Bond executed at the time of provisional assessment with security, if any, shall be cancelled after finalization of provisional assessment and the security shall also be returned, if there are no pending dues.

B7B : FACELESS ASSESSMENT UNDER CUSTOMS ACT, 1962

1. Introduction

Assessment is the processes used to carry out by the Customs Officer at the port of import for the determination of Customs duty on the basis of physical documents such as Bill of Entry for Customs clearance of imported goods through EDI system and goods examination report. The physical documents verification and examination of goods for Customs clearances has been replaced by the Faceless assessment.

Faceless Assessment, a component of the Turant Customs programme, is a path breaking initiative aimed at introducing anonymity and uniformity in Customs assessments pan India. Faceless Assessment is a paperless process where a Bill of Entry that is identified for scrutiny is assigned to an assessing officer who is physically located at a Customs station, which is not the Port of Import in the Customs Automated System. It separates the assessment process from the physical location of Port of Import, using a technology platform. The assessment part of the Customs clearance procedure would be delinked with the geographical location where the goods are available for examination. Faceless assessment has been rolled out in phases manner and has been scheduled to cover the entire country by 31st October 2020.

After running pilot programmes since August 2019, the first formal phase of Faceless Assessment commenced in Bengaluru and Chennai in June 2020. It primarily focused on cargo under Chapters 84 and 85 of the Customs Tariff Act, 1975. This was followed by other phases covering new Customs locations and new items of import. After running pilot programmes since August 2019, the first formal phase of Faceless Assessment commenced in Bengaluru and Chennai in June 2020. This was followed by other phases covering new Customs locations and new items of import. Assessment has now been firmed

up. Faceless Assessment is expected to have considerable impact on India' s performance on various in dependent global assessments and boost the country's trade competitiveness, including ease of doing business.

2. Need for the Faceless Assessment:

Previous Customs clearance processes involved myriad requirements that were manually operated, complex, sequential and time-consuming. Migration of core Customs process to a technology platform opened-up a host of opportunities to reform the border clearance ecosystem. Earlier, the importers, exporters and other actors engaged in international trade (shipping lines, freight forwarders etc.) were required to prepare and submit large amount of information to border agencies to comply with various regulatory requirements. Also, this information had to be submitted separately to several different agencies, which their own specific automated or manual systems to process the data. This used to put a serious burden both on Government and trade. Thus, early initiatives by Customs focused on expeditious transmission of documents between Participating Government Agencies (PGA) as well as parallel processing of documents.

3. Key objectives of Faceless Assessment:

i. Anonymity in assessment for reduced physical interface between trade and Customs.

ii. Speedier Customs clearances through efficient utilisation of manpower.

iii. Greater uniformity of assessment across locations.

iv. Promoting sector specific and functional specialisation in assessment

It is estimated that the Faceless Assessment initiative will help slash release time to only few minutes and few hours, substantially lower than the present clearance times averaging three to four days. Accordingly, Faceless Assessment is expected to have considerable impact on India's performance on various independent global assessments and boost the country's trade competitiveness, including ease of doing business. Faceless Assessment also offers many other advantages to both trade and CBIC.

A pilot of the initiative was initiated last year by CBIC and post

validation of the expected outcomes; it has been decided to roll out the programme nationally. These Pilot Programmes helped test Faceless Assessment first in the same zone, then across zones.

Faceless Assessment is now being extended across all Customs ports in India to usher a more modern, efficient, and professional Customs administration, with resultant benefits for trade and industry.

4. Workflow for BE under Faceless Assessment:

Sl. No.	Scenario	Workflow
1	First Check	Approved for First Check by Faceless Assessment Groups, goes to local shed (Port Verification Unit) for examination, comes back to Faceless Assessment Group for assessment.
2	Provisional Assessment	Where prior permission is available, Faceless Assessment Group to assess it. Bond and BG to be registered at local port of import. If no prior permission, BE to be sent to port of import for assessment.
3	Reassessment for valuation	Either through query or consent. Or in case First Check is given for valuation by Charted Engineer etc., then like case 1.
4	Reassessment for classification where testing is required	If ordered by Faceless Assessment Group as first check, then test memo to be sent by port of import and send back the BE to Faceless Assessment Group with test report.
5	First check but for provisional assessment	Approved for 1st Check by Faceless Assessment Group but assessment cannot be finalized by Faceless Assessment Group for want of further inputs / test reports. To be sent to port of import for provisional assessment.

5. Institutional setup:

The Faceless Assessment institutional set up has two levels, i.e., (i) Local and (ii) Virtual

A. Local Setup

Port of Import: The port of import is the Customs station of import where the goods lie and the importer has entered a BE for home consumption or warehousing. Its functions are as follows:

- Turant Suvidha Kendra (TSK) to be set up at Port of Import for various document/report submission/ generation for the assessment.
- It will have one Port Assessment Group (PAG) to assess cases referred to by the FAG in specific circumstances.

Port Assessment Groups: the equivalent of Appraising Group currently located in each port of import for verification of the assessment and other related functions as is the normal practice. Their functions include:

i. All functions pertaining to the BE which are not marked to the Faceless Assessment Group by the Customs Automated System.
ii. BEs that are referred by the Faceless Assessment Group to the port of import, for any reason.
iii. Handling of issues arising post assessment, relating to the BEs which were handled in the Faceless Assessment Group.

Turant Suvidha Kendras: are facilitation centres which will handhold and facilitate trade, as it adapts to the new system. To reduce friction and to handhold stakeholders,

TSK at the port of import will facilitate trade. Their functions illustratively include:

- Accept Bonds or Bank Guarantee;
- Carry out any other verification that may be referred by FAGs;
- Defacing of documents/permits licenses, wherever required;
- Debit of documents/ permits/ licenses, wherever required;
- Handle queries related to assessment; and
- Other functions determined by Commissioner to facilitate trade

B. Virtual Setup

National Assessment Centres: NACs have been created for the purpose of rollout of faceless assessment. 11 Customs Commissionerates have been partially re-organized as NACs, with all India jurisdictions. NACs are organized commodity-wise according to the First Schedule to the Customs Tariff Act, 1975.

Faceless Assessment Groups: Officers from different jurisdictions will be brought together on a technology platform to form various FAGs2 for assessment of particular groups in an NAC. BE will be assigned to these set of officers who are from different customs locations but are virtually connected.

Their role will require them to verify assessment of any BE that is assigned to their group by the Customs Automated System. Each FAG would have an all-India jurisdiction and it may or may not necessarily have a presence in all Customs formations.

6. National Assessment Centers:

Selection and Rationale of NAC: is based on the share of the volume of import of a particular commodity group(s) in its Zone as compared to all India imports and/or share contributed by the said commodity group(s) or the share of import of the particular commodity group(s) in their own Zones.

The rationale for the selection of Conveners for the NAC is its share of all India revenue contributed by the said commodity group(s) or the share of the revenue contributed by the particular commodity group(s) in their own Zones.

7. Organization Structure of NAC

i. Each NAC shall be co-convened by Principal Chief Commissioners/ Chief Commissioners of the Zones.

ii. Each NAC shall consist of Principal Commissioners/ Commissioners of Customs from the Zones.

iii. For each NAC, the Principal Chief Commissioners/ Chief Commissioners, having jurisdiction over the Zones, shall nominate a nodal Principal Commissioners/ Commissioners.

iv. Chief Commissioners will be in charge of different zones. Nodal Commissioners will be responsible for performance of the FAG.

8. Functions of NAC include:

i. Monitoring of assessment practices adopted by FAGs.

ii. Ensuring uniformity of classification, valuation, exemption benefit and compliance to import policy conditions.

iii. Promotion of adoption of best practices (including international practices) among the FAGs aligned to them.

iv. Examining audit objections and take necessary corrective action where required.

v. Analyzing RMS facilitated BEs pertaining to their industrial sector and advise, the Directorate General of Analytics and Risk Management (DGARM) on necessary interventions.

vi. Liaising with Commissionerate's on matters of interpretation pertaining to classification, valuation, exemption and policy conditions.

vii. Interacting with sectoral trade and industry for insights and issue resolution.

viii. Functioning as a knowledge hub or repository for that industrial sector.

ix. Promoting uniformity in assessment by examining orders/ appellate orders on assessment practices pertaining to commodities assigned to each NAC and provide inputs for review of such orders.

x. Suggesting for policy interventions on commodities assigned to the NAC.

xi. Working with National Academy of Customs and Indirect Taxes (NACIN) for design and development of training modules and impart training to officers to promote sector specific specialization.

xii. Constituting working groups for matters relating to Monitoring timely assessment of BE, Valuation and related issues, Classification and related issues, Restrictions and prohibitions and co-ordination with PGAs, Communication and outreach strategies, any other matter relevant to uniform and timely assessment.

xiii. The working group to monitor timely assessment shall meet virtually on a daily basis. All other working groups shall have weekly virtual meetings.

Co-convenors of NAC: shall monitor the functioning of the NACs and provide necessary leadership include Nomination of Principal Commissioners/ Commissioners as Members of the NAC from Zones, Establishing working groups within NACs for smooth functioning, Ensuring that NACs develop expertise over the assigned FAGs on different facets of assessment like classification, valuation,

prohibitions and restrictions, Co-ordinating with other Directorates and NACs for functions elaborated subsequently and making timely recommendations to the Board for policy consideration.

Coordination among NAC Commissioners: As nodal officers are located in different geographies; institutional coordination is required to surmount teething issues. For this purpose, measures include web meetings to review ongoing performance and de- bottlenecking and weekly consultations to review technical matters of assessment.

Continuous Assessment: Endeavour to minimize delay in verification of assessment in case of a holiday for members of a particular FAG. This may be achieved by spreading work across multiple locations.

Coordination of NACs with Other Directorates: will be required on an ongoing basis to achieve the project 's intended objectives. Given the propensity of teething trouble as the system transitions to a new mode, it is critical that intensity of coordination activities in initial days is high, to allow timely course correction.

9. Process for Faceless Assessments:

Procedure for Verification of Assessment by FAG: From an importer's perspective, there will be no changes to the process of filing a BE. He/ she will continue to file his/ her documentation including BE and supporting documents4 on the ICEGATE portal.

Customs Automated System will assign the BE to a FAG based on an inbuilt logic considering tariff entries in terms of either duty payable or highest assessable value, in that order. FAG will assess the BE for purposes of duty determination and compliance to restrictions. In cases where the FAG seeks additional information, communication to and from the importer shall be managed electronically through the system. Where authenticity of a document is in doubt and verification by an external agency is required, the same shall be communicated to shed officers at the Port of Import, for necessary action. Any assessment/ speaking order passed by FAG, shall be appealable to the Commissioner of Customs (Appeals) at the Port of Import.

10. For Examination/Testing:

a) If the FAG deems it fit to order examination/ testing of goods for the purpose of assessment it shall coordinate the same with the shed officer at the Port of Import.

b) Instructions for 1st check examination/ testing of the goods with specific directions of testing parameters should be communicated to the shed officers.

c) Onus of sending samples to the laboratory (with the requisite test memo) would lie with the shed officers and the TSK.

d) Results of examination/ test report would be fed by shed officer in the system and referred to concerned FAG.

e) In case goods are confirmed to be in violation of some restriction/ prohibition before or during assessment on the basis of examination/ test report or otherwise, the FAG shall refer such BE to the PAG at Port of Import for adjudication and assessment.

11. Re-Assessments:

In case of the need for re-assessment, the re-assessment in different situations would be carried out in the following manner:

1. Before Out of charge, where request is made by Importer and change in assessment is requested, the same may be referred to FAG for consideration.
2. Before Out of charge, where request is made by Importer and change in details other than assessment is requested including consequential amendment related to short- shipments, changes in bond conditions, etc. may be carried out by PAG.
3. Before OOC, if reassessment to be done Suo-moto by Customs for any reason, may be carried out by PAG.
4. After OOC, reassessment to be done for any reason may be carried out by PAG.

12. Provisional Assessment

i. If the requisite approval for provisional assessment as per the Customs Act 1962 and department guidelines has already been obtained, the FAG may assess the BE provisionally.

ii. In other cases, FAG may forward the BE citing reasons for the same and refer the BE to the PAG at the Port of Import.

iii. In case the importer opts to move the goods to a warehouse u/s 49, such request shall be processed by the TSK at the port of import.

iv. Shed officers at the Port of Import would conduct necessary verification/examination, as required by the FAG or required as per Compulsory Compliance Requirements (CCR) of RMS.

13. Appellate Proceedings:

Board has issued Notification No.85/2020-Customs (N.T.) dated 4th September 2020 by virtue of which the Commissioners of Customs (Appeals) are empowered to take up appeals filed in respect of Faceless

Assessments pertaining to imports made in their jurisdictions even though the Faceless Assessment officer may be located at any other Customs station. To illustrate, Commissioners of Customs (Appeals) at Bengaluru would decide appeals filed for imports at Bengaluru though the Faceless Assessment officer is located at any other port of the country, say Delhi.

14. Review Proceedings:

The review of any speaking order on re-assessment passed by a proper officer of Faceless Assessment Groups, under sub-section (2) of Section 129D of the Customs Act 1962, shall lie with the reviewing authority having administrative control over the that proper officer of the Faceless Assessment Group.

15. Demands under Section 28 of the Customs Act 1962:

Issuing of demands under Section 28 of the Customs Act 1962, adjudication thereof and handling of audit objections shall be done by the officers of the port of import. In matters where clarifications and inputs are required to be given by the Faceless Assessment Groups to the Port of Import, the nodal Commissionerates as in para 4 above shall co-ordinate with the ports of import.

16. Key Considerations for Faceless Assessments:

The Nodal Commissioners in the NAC shall co-ordinate to ensure that Faceless Assessment is implemented smoothly and creates no disruption in the assessment and clearance of goods.

17. Identification of Location of FAG:

i. National Assessment Centre have identified Customs locations within each Zone, where Faceless Assessment pertaining to a group would be undertaken.

   The volume of import and availability and experience of officers were considered for this purpose.

ii. It is critical to note that setting up adequate number of FAGs in a zone with sufficient number of officers is one key area which will enable faster disposal and more timely assessment

1. Uniform Assessment Practices:

i. Consider audit objections, judicial and quasi-judicial decisions accepted by the Department relating to the assessment of the goods to be handled by the FAG under the concerned NAC and circulate among the officers.

ii. Identify variations, if any, in assessment practices and harmonies them for application across FAGs for uniformity of assessment.

iii. Ensure that imported items are properly declared along with full details to ensure proper classification and eligibility for notification benefit.

iv. Keep track of all instances where the description is falling short of requirement and report the same in a monthly bulletin for the benefit of importers and customs brokers.

v. Study present assessment practice concerning major commodities in the Groups being imported at customs station and being assessed by them.

vi. Ensure uniformity in classification, valuation, exemption benefits, and compliance with import policy conditions.

vii. Endeavour to reduce incidence of queries and issue public/ trade notices from time to time to sensitize trade on good practices required to reduce incidence of queries. For e.g., sensitizing trade to provide complete details and description of a commodity such as brand name, model and any other specifications essential for the assessment.

2. Exchange of Port Specific Practice and Procedures

i. Faceless Assessment Group officers shall share the list of sensitive commodities and knowledge with regard to sensitive items that are traded from their respective port of jurisdiction with FAG officers of other zones to enhance uniformity and reduce dwell time of assessment.

ii. FAG officers shall share valuation practices among different FAGs of respective zones for clarity and uniformity in assessment processes.

iii. The Nodal Commissioners shall work in tandem with all nodal Commissionerates assessing the same chapter, to ensure that best assessment practices are in place for the group which will be the norm pan India.

3. Performance Measurement:

Principal Commissioners/ Commissioner of Customs shall be administratively responsible for monitoring and ensuring fast and uniform assessments in their respective zones. For this purpose of monitoring and measuring the impact of Turant Customs initiative, have been identified for monitoring impact of the initiative.

It is hoped that Faceless Assessment system would enhance smooth functioning of Customs clearances of imported goods, facilitates trade and business in the country.

Hence, there is need of outreach programme and impart of training to field officers, which is essential to manage the change of system from physical to technology plat Form and smoothen its acceptance among all stakeholders. These activities are taken up on an ongoing basis by CBIC in addition to training. This will help smooth transition and implementation of the Turant programme and aid in faster acceptance across the country.

Recently, the CBIC has issued clarifications and details procedures for Faceless Assessment under Turant Customs Programme vide.

M.F. (D.R.) Circular No. 45/2020-Cus, dated 12-10-2020.

4. Bills of Entry-amendment in Customs Section 46 for Faceless Assessment:

Subject: Urgent measures to sensitize trade in light of proposed changes to Section 46 of the Customs Act, 1962–reg.

Kind reference is invited to the proposed amendments in Section 46 of the Customs Act, 1962 introduced through the Finance Bill, 2021 [clause 84 of the Bill].

2. Subject to passing of Finance Bill, 2021 by the Parliament of India, these changes in Section 46 would facilitate pre-arrival processing and assessment of Bills of Entry (BE) by mandating their advance filing thus leading to significant decrease in the Customs clearance time. The amended Section 46 would require an importer to file a BE before the end of the day (including holidays) preceding the day of arrival of the vessel/aircraft/ vehicle carrying the imported goods at a Customs port/station at which such goods are to be cleared for home consumption or warehousing.

3. The proposed amendments in Section 46 also empower the Board to prescribe different time limits for filing of BE in certain cases, but not later than the end of the day of arrival of the vessel/ aircraft/vehicle at the Customs port/station. Trade has represented for a relaxation so as to prescribe a different time line for filing of Bills of Entry in respect of imports at Land Customs Stations and airports, imports consigned from neighbouring countries, which arrive by short-haul vessels citing practical difficulties that may arise in filing of the BE before the end of the day (including holiday) preceding the day of arrival of the vessel/ aircraft/vehicle carrying the imported

goods at a Customs port/ station. Board is considering the same. However, any relaxation that is found merited can be notified only after the proposed amendment to Section 46 comes into effect.

4. It may be noted that the aforementioned changes would be a distinct departure from the present legal provision that allows the filing of a BE even after the arrival of the vessel/aircraft/vehicle. Therefore, it is of utmost importance that the trade/Customs Brokers etc. are alerted to be ready for the change, which would come into force shortly with the enactment of the Finance Bill, 2021. Hence, Board requests all the field formations to issue suitable Public Notices/Trade Notices urgently to sensitize the trade so as to avoid inconvenience and disruptions.

5. Board would shortly issue a detailed clarificatory circular on the subject, once the Finance Bill, 2021 is enacted.

(Board Circular - [M.F. (D.R.) Instruction No.5/2021-Cus., dated 24-3-2021)

B8 : IMPORT/EXPORT RESTRICTIONS AND PROHIBITIONS

1. Introduction

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

2. Legal provisions governing restrictions/prohibitions:

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

(a) "Prohibited Goods" are defined in Section 2(33) of the Customs Act, 1962 as meaning "any goods the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force". Thus, a prohibition under any other law can be enforced under the Customs Act, 1962. For instance,

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

(b) Under Section 11 of the Customs Act, 1962 the Central Government has the power to issue notification under which export or import of any goods can be declared as prohibited. The prohibition can either be absolute or conditional. The specified purposes for which a notification under Section 11 can be issued are maintenance of the security of India, prevention and shortage of goods in the country, conservation of foreign exchange, safeguarding balance of payments etc.

(c) Section 111(d) and Section 113(d) of the Customs Act, 1962 provide that any goods which are imported or attempted to be imported and exported or attempted to be exported, contrary to any prohibition imposed by or under the said Act or any other law for the time being in force shall be liable to confiscation.

(d) Section 112 of the Customs Act, 1962 provides for penalty for improper importation and Section 114 of the said Act provides for penalty for attempt to export goods improperly. In respect of prohibited goods, the adjudicating Officer may impose penalty upto five times the value of the goods. It is, therefore, absolutely necessary for the trade to know what are the prohibitions or restrictions in force before they contemplate to import or export any goods.

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

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

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

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

4.2 Operationalization of SWIFT (Single Window Interface for Trade)

Board Circular Nos. 03/2016-Customs dated 03.02.2016 and 10/2016-Customs dated 15.03.2016 were issued for operationalization of the Interface for Facilitation of Trade (SWIFT) from 01st April, 2016 at all EDI locations throughout India.

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

5. FSSAI has also issued a list of accredited laboratories for the testing of all food-related consignments vide order F. No. 12012/02/2017-QA dated 1st August, 2017. This list can be accessed at http://www.fssai.gov.in/home/food-testing/Orders---Notice.html. Prior to clearance, the Customs officers posted in the shed should record in the system the acceptance or rejection of the consignments as part of the examination report as this would help in carrying out risk analysis.

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

4.3 PFA/FSSA lay down detailed guidelines for examination and testing of food items prior to Customs clearance. It is, thus, provided that the Customs shall under take the following general check sand if the product does not satisfy these requirements, clearance shall not be allowed:

(i) All consignments of high risk food items, as listed in DGFT Policy Circular No. 37 (RE-2003)/2002-2007 dated 14.06.2004 (as may be modified from time to time), shall be referred to Authorized Representative of FSSAI or PHOs, as the case may be, for testing and clearance shall be allowed only after receipt of the test report as per the instructions contained in the Customs Circular No. 58/2001-Cus., dated 25-10-2001.

(ii) All consignments of perishable items like fruits, vegetables, meat, fish, cheese, etc., will continue to be handled in terms of the guidelines contained in Para 2.3 of the Board's Circular No. 58/2001-Customs dated 25-10-2001.

(iii) In respect of food items not covered under (a) and (b) above, the following procedure would be adopted in addition to the general checks prescribed under Para 2.1 of the Circular No. 58/2001-Cus dated 25-10-2001 (amended by Circular No.03/2011-Cus):

(a) Samples would be drawn from the first five consecutive consignments of each food item, imported by a particular importer and referred to Authorised Representative of FSSAI or PHOs, as the case may be, for testing to ascertain the quality and health safety standards of the consignments.

(b) In the event of the samples conforming to the prescribed standards, the Customs would switch to a system of checking

5% - 20% of the consignments of these food items on a random basis, for checking conformity to the prescribed standards. The selection of food items for random checking and testing would be done by the Customs taking into consideration fact or slike the nature of the food products, its source of origin as well as track record of the importers as well as information received from FSSAI from time to time.

(c) In case, a sample drawn from a food item in a particular consignment fails to meet the prescribed standards, the Customs would place the import of the said consignment on alert, discontinue random checking for import of such food items and revert to the procedure of compulsory checking. The system of random sampling for import of such food items would be restored only if the test results of the samples drawn from the 5 consecutive consignments re-establish that the food items are in conformity with the prescribed standards.

4.4 The 'general checks' include checking the condition of the hold in which the products were transported to see whether they meet the requirements of storage, as per the nature of the product, and does not in any way cause deterioration or contamination of the products. Also, physical/ visual appearance in terms of possible damage - whether it is swollen or bulged in appearance; and also, for rodent/ insect contamination or presence of filth, dirt etc. should be checked. Finally, it should be checked that the product meets the labelling requirements under the Prevention of Food Adulteration Rules and the Packaged Commodities Rules. This includes ensuring that the label is written not only in any foreign language, but also in English. The details of ingredients in descending order, date of manufacture, batch no., best before date etc. are mandatory requirements. All products will also have to indicate details of best before on all food packages.

4.5 Authorised Officers of FSSAI will ascertain that for the imported pre-packaged good items, the language and other major requirements of the label like mention of best before date, nutrition information etc. should comply the labeling provisions under PFA Rules, failing which sample may not be drawn from such consignment for testing.

4.6 Introduction of SWIFT has automatically integrated the RMS CCR instructions in the systems and the system automatically refers food- related consignments to the Food Safety & Standards Authority of India (FSSAI) through a message exchange system established

between ICEGATE and the Food Import Clearance System (FICS) operated by FSSAI.

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

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

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

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

5. Labeling of the goods imported into India:

5.1 DGFT Notification No.44 (RE-2000)/1997-2002 dated 24- 11-2000 provides for labeling of the goods imported into India which are covered by the provisions of Standards of Weights & Measures (Packaged Commodities) Rules, 1977. This Notification mandates that compliance of labeling conditions have to been sured before the import consignment of such commodities are cleared by Customs for home consumption.

5.2 In order to redress the issue and to remove the difficulties faced by importers on account of space constraints at CFSs/Port/ ICDs and the nature of goods, etc., the Board has allowed the labeling on imported goods in Bonded warehouses subject to certain procedural conditions. It is clarified that the importers should first ascertain that for such marking / labeling facility, space, is available in warehouse prior to exercising this option. In such cases, importers may file Ware housing Bill of Entry and the Assessing Group will give suitable directions to Dock staff to allow bonding of the goods without labeling and with endorsement on the Warehousing Bill of Entry that verification of compliance of DGFT Notification No.44 (RE-2000)/1997- 2002 is to be done prior to de-bonding by Bond Superintendent. The goods will then be labeled in the bonded premises and compliance of said DGFT Notification will be ensured at the time of ex-bonding of the goods, by the Bond Officer, by examining the goods again and endorsing the Examination Report on the Ex-bond Bill of Entry. 100% examination at the time of Ex-bond clearance of goods should be done to ensure compliance of the said DGFT Notification. The Examination Report can be endorsed on hardcopy of Ex-bond Bill of Entry where EDI facility is not extended, and on hardcopy as well as EDI system where EDI facility is extended to Bonded Warehouses. It is also clarified that this facility is applicable only to goods that cannot be easily labeled in ports/CFS, having regard to their size and other fact or such as sensitivity to temperature and dust.

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

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

6. The Livestock Importation Act, 1898:

6.1 The import of livestock and livestock products is regulated by the Livestock Importation Act, 1898. The objective of this Act and the notifications/orders issued therein is to regulate the import

of livestock products in such a manner that these imports do not adversely affect the country's human and animal health population.

6.2 The livestock products are allowed to be imported into India only through the sea ports or airports located at Delhi, Mumbai, Kolkata and Chennai, where the Animal Quarantine and Certification Services Stations are located. In addition, import of perishable fish items, exclusively meant for human consumption but excluding seed material for breeding or rearing purposes, is allowed at Petra pole, District North 24 Parganas, West Bengal, through land route. On arrival at the port/seaport, the livestock product is required to be inspected by the officer in-charge of the Animal Quarantine and Certification Services Station or any other veterinary officer duly authorized by the Department of Animal Husbandry and Dairying. After inspection and testing, wherever required, quarantine clearance is accorded by the concerned quarantine or veterinary authority for the entry of the livestock product into India. If required in public interest, the quarantine or veterinary authority may also order the destruction of the livestock product or its return to the country of origin. The Customs will have to ensure that the livestock products are granted clearance for home consumption only after necessary permission is granted by the quarantine or veterinary authorities.

Wherever any disinfection or any other treatment is considered necessary in respect of any livestock product, it is the importer who has to arrange the same at his cost under the supervision of a duly authorized quarantine or veterinary officer.

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

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

7.1 Import of plants and plant materials into the country is regulated under the Destructive Insects & Pests (DIP) Act, 1914 and PFS Order, 1989 and Plant Quarantine (Regulation of Import into India) Order, 2003. As per the requirements of these enactments, subject to exemptions, as may be applicable, no consignment shall be imported even for consumption unless it is accompanied by an Import Permit and an Official Phytosanitary Certificate. However, cut flowers, garlands, bouquets, fruits and vegetables weighing less than 2kgs. That are imported for personal consumption is allowed

without a Phytosanitary Certificate or an Import Permit. Likewise, the requirement of Import Permit is relaxed for import of (a) mushroom spawn culture by EOUs and (b) tissue culture materials of any plant origin and flower seeds.

7.2 The Department of Agriculture and Co-operation has issued detailed guidelines for inspection and clearance of plant/plant materials, the basic features of which are as follows:

Registration of application: The importer or his authorized representative is required to file an application at the Plant Quarantine Station in respect of each consignment immediately upon arrival at the port. In case of perishable consignments, such application can be filed in advance to enable the Plant Quarantine authorities to organize inspection/testing on priority. Along with application for registration, copies of documents namely, import permit, phyto-sanitary certificate issued at the country of origin, copy of bill of entry, invoice, packing list and fumigation certificate, etc. are required to be submitted. The Plant Quarantine Officer shall register the application and the assessed inspection fee is required to be paid by the importer or his agent. No such application is required to be filed in the case of import of plant and plant materials through passenger baggage and post parcels.

(i) Sampling/inspection/fumigation of consignments: The importer or his agent is required to arrange for inspection/ sampling of the consignment. In the event of live insect infestation having been noticed, the importer or his agent shall arrange for fumigation of consignment by an approved pest control operator at his own cost under the supervision of the Plant Quarantine officer.

(ii) Release/detention of consignments: Are lease or Deri issued to Customs, if a consignment on inspection is found to be free from pests. However, in case it is found infested with live pests, the same is permitted clearance only after fumigation and re-inspection. The detention order is issued, if the consignment is imported in contravention of the PQ Regulations, for arranging deportation failing which the same shall be destroyed at the cost of importer under the supervision of the Plant Quarantine Officer, in presence of Customs Officers after giving due notice in advance i.e., for perishable plant material 24-48 hours and 7 days for other plant material. The Customs will ensure that plant/plant material (primary agricultural products) are granted clearance for home consumption only after necessary permission is granted by the concerned Plant and Quarantine Officer.

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

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

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

(a) Name and address of the importer;

(b) Generic or common name of the commodity packed;

(c) Net quantity in terms of standard unit of weights and measures. If the net quantity in the imported package is given in any other unit, its equivalent in terms of standard units shall be declared by the importer;

(d) Month and year of packing in which the commodity is manufactured or packed or imported; and

(e) Maximum retail sale price at which the commodity in packaged form may be sold to the ultimate consumer. This price shall include all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertising, delivery, packing, forwarding and the like, as the case maybe.

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

9.1 In terms of Rule 133 of the Drugs and Cosmetics Rules, 1945, no cosmetics shall be imported into India except through the points of entry specified in Rule 43A of the said Rules. Further, under Schedule "D" to the said Rules read with Rule 43, an exemption is provided to certain categories of substances from the restrictions under Chapter III of the Drugs and Cosmetics Act, 1940 relating to import of drugs and cosmetics. Further, the Drugs Controller General of India (DCGI) has clarified that under Schedule "D " to the said Rules, an exemption has been Provided for substances not intended for medical use from the provisions of Chapter III of the Drugs and Cosmetics Act and Rules made there under. The Act provides for separate definition for 'cosmetic' and "drug" under Sub-Section 3(aaa) and 3(b), respectively. Hence, the phrase "sub-stances not intended for medical use" would only relate to substances which would otherwise fall under the definition of the term „drug" under Section 3(b) of the Act, but are being imported not for medicinal use or for some other purposes or are of commercial quality and are being labeled indicating that they are not for medicinal use. Accordingly, DCGI had clarified that this exemption does not extend to other categories of products defined under the Act including cosmetics. For the purpose of import of cosmetics, provision of Rule 133 therefore remains applicable.

9.2 The points of entry specifically mentioned in Rule 43A are Chennai, Kolkata, Mumbai, Nhava Sheva, Cochin, Kandla, Delhi, Ahmedabad, Hyderabad and Ferozepur Cantonment, Amritsar, Ranaghat, Bongaon and Mohiassan Railways Stations.

9.3 As per rule 43A of the Drugs and Cosmetics Rules, 1945, drugs can be only imported into India through specified places. Accordingly, import of drugs at any other place may not be permitted. Further, whenever in doubt, field formations may seek necessary clarification about the generic name versus chemical name of medicines before clearance. The specified places are:

(i) Ferozepore Cantonment and Amritsar Railway Stations (for drugs imported by rail across the frontier with Pakistan)

(ii) Bongaon, Mohiassan and Ranaghat Railways Stations (for drugs imported by rail across the frontier)

(iii) Raxaul (for drugs imported by road and railway lines connecting Raxaul in India and Birganj in Nepal)

(iv) Chennai, Cochin, Kandla, Kolkata, Mumbai and Nhava Sheva (for drugs imported by sea) (v) Ahmedabad, Chennai, Delhi, Hyderabad, Kolkata and Mumbai (for drugs imported by airports)

9.4 Import consignments of Electronic Nicotine Delivery Systems (ENDS) including e-Cigarettes, Heat Not Burn devices, Vape, e-Sheesha, e-Nicotine Flavored Hookah, and the like devices/ products may be referred to Assistant/ Deputy Drugs Controller for checking compliance.

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

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

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

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

[Refer circular 28/2016 dated 14.06.2016]

10. **Import of hazardous substances:**

10.1 As per Chapter 1A of General Notes regarding Import Policy (ITC (HS) Classification of Export and Import Items, Schedule I, imports

of Hazardous Waste into India shall be subject to the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Further, notwithstanding anything contained in ITC (HS) Classifications of Export and Import Items, import of hazardous waste or substances containing or contaminated with such hazardous wastes as specified in Schedule 8 of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 shall be prohibited.

1.2 Wastes arising out of the operation from ships beyond five kilometers of the relevant base line as covered under the provisions of the Merchant Shipping Act, 1958 (44 of 1958) and the rules made thereunder and as amended from time to time; The utilization of waste oil/sludge derived from the normal course of a ship's operation as a resource or after pre-processing either for co- processing or for any other use, including within the premises of the generator (if it is not part of process), shall be carried out only after obtaining authorisation from the State Pollution Control Board in respect of waste on the basis of standard operating procedures or guidelines provided by the Central Pollution Control. Such waste oil/sludge will conform to the definition in Schedule IV of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016

1.3 Import of Hazardous Chemicals is permitted in accordance with the provisions of the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989 (as amended) made under the Environment (Protection) Act, 1986). Besides other conditions mentioned in the Rules, the importer shall, before 30 days but not later than the date of import, furnish the details specified in Rule 18 to the Authority specified in Schedule 5 of the said Rules.

1.4 Import of products, equipment containing Ozone Depleting Substances (ODS) will be subject to Rule 10 of the Ozone Depleting Substances Rules, 2000. In terms of these Rules no person shall import or cause to import any product specified in column (2) of Schedule VII, which was made with or contains Ozone Depleting Substances specified in column (3), unless a license is obtained from the Directorate General of Foreign Trade.

1.5 Import of Genetically Modified Food, Feed, Genetically Modified Organism (GMOs) and Living Modified Organisms (LMOs) will be subject to the following conditions:

i. The import of GMOs/LMOs for the purpose of (i) R&D; (ii) food; (iii) feed; (iv) processing in bulk; and (v) for environment release will be governed by the provisions of the Environment Protection Act, 1986 and Rules1989.

ii. The import of any food, feed, raw or processed or any ingredient of food, food additives or any food product that contains GM material and is being used either for industrial production, environmental release, or field application will be allowed only with the approval of the Genetic Engineering Approval Committee (GEAC).

iii. Institutes/Companies who wish to import Genetically Modified material for R & D purposes will submit their proposal to the Review Committee for Genetic Modification (RCGM) under the Department of Bio-Technology. In case the Companies/Institutes use this Genetically Modified material for commercial purposes approval of GEAC is also required.

iv. At the time of import all consignments containing products which have been subjected to Genetic Modification will carry a declaration stating that the product is Genetically Modified. In case a consignment does not carry such a declaration and is later found to contain Genetically Modified material, the importer is liable to penal action under the Foreign Trade (Development and Regulation) Act, 1992.

As per Chapter 1A of General Notes regarding Import Policy (ITC (HS) Classification of Export and Import Items, Schedule I, import of textile and textile articles is permitted subject to the condition that they shall not contain any of the hazardous dyes whose handling, production, carriage or use is prohibited by the Government of India under the provisions of Section 6(d)(2) of the Environment (Protection) Act, 1986 read with the relevant rule(s) framed thereunder. For this purpose, the import consignments shall be accompanied by a pre-shipment certificate from a textile testing laboratory accredited to the National Accreditation Agency of the Country of Origin. In cases where such certificates are not available, the consignment will be cleared after getting a sample of the imported consignment tested and certified from any of the agencies indicated in Public Notice No.12 (RE-2001)/1997-2002, dated 3-5-2001. The sampling will be based on the following parameters:

(i) At least 25% of samples are drawn for testing.

(ii) While drawing the samples, Customs will ensure that majority samples are drawn from consignments originating from countries where there is no legal prohibition on the use of harmful hazardous dyes.

(iii) The test report will be valid for a period of 6 months in cases where the textile/ textile articles of the same specification/ quality are imported and the importer, supplier and the country of origin are the same.

11. Clearance of imported metal scrap:

(a) In terms of the relevant provisions of the Foreign Trade Policy, the following procedure is prescribed for clearance of imported metal scrap.

(i) Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

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

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

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

(a) The consignment so fun-shredded, compressed or loose scrap shall be cleared only through those EDI ports where Risk Management Module is operational. These consignments will be subjected to documentary or physical

check on the basis of selection done by Risk Management System.

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

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

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

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

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

(b) Copy of the contract between the importer and the exporter stipulating that the consignment does not contain any type of arms, ammunition, mines, shells, cartridges, radioactive contaminated, or any other explosive material in any form either used or otherwise.

(c) Import of scrap would take place only through following designated ports and no exception is allowed even in case of EOUs and SEZs:

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

(iv) Import of other kinds of metallic waste and scrap will be allowed in terms of conditions of ITC (HS). Further, import from Hodaideh, Yemen and Bandar Abbas, Iran will be in shredded form only.

(v) In respect of metal scrap in unshredded, compressed or loose form accompanied by a pre-shipment inspection certificate, examination will be 25% of the containers in respect of manufacturer importers and 50% in respect of traders, for each import consignment, subject to examination of a minimum of one container. The container selected will be examined 100%. Where EDI with Risk Management Module (RMM) is operational, the percentage of examination will be determined by the RMM

(vi) Imported metal scrap in un-shredded, compressed or loose form not accompanied by the prescribed pre-shipment in section certificate will be subject to 100% examination a part from stringent penal action for violation of provisions of the FTP. The examination may be done in the presence of police authorities, if considered necessary by the Commissioner, at the risk and cost of the importer shredded form examination may

be limited to 10% of the consignment subject to examination of minimum one container. The identified container should be examined 100%.

(vii) In respect of metal scrap consignments meant for EOUs and SEZ units the existing procedure is relevant subject to100% examination at the premises of the EOU or the SEZ unit, in the presence of police authorities, if considered necessary by the proper officer.

(viii) It will be the responsibility of the shipping line to ensure that every consignment of metal scrap in unshreded, compressed or loose form is accompanied by such a pre-shipment inspection certificate before it is loaded on the ship. Failure to observe this precaution would invite penal action for abetment regarding irregular import of metal scrap.

[Refer Circulars No. 43/2001-Cus., dated 6-8-2001, No.58/2001- Cus., dated 25-10-2001, No.21/2003-Cus., dated 28-3- 2003, No.23/2004-Cus., 5-3-2004, No.39/2004- Cus., dated 3-6-2004, No.60/2004-Cus., dated 26-10-2004, No.40/2005- Cus., dated 3-10-2005, No.48/2005-Cus., dated 28-11-2005, No.28/2006-Cus., dated 6-11-2006, No.13/2007- Cus., dated 2-3-2007, No.2/2010-Cus., dated 9-2-2010, and No.8/2010-Cus., dated 26-3-2010, No.48/2016 dated26.1.2016and Instructions F.No.450/80/2000-Cus.IV, dated24-7-2000, F.No.450/132/2004-Cus.IV, dated 4-1-2005, F.No.450/122/2005-Cus-IV, dated 13-10-2005, F.No. 450/08/2007-Cus.IV, dated 22-1-2007, and F.No. 450/19/2005-Cus.IV, dated 2-4-2009]

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

12.1 International Standards for Phytosanitary Measures (ISPM) are prescribed as per IPPC convention of FAO to reduce the risk of introduction/or spread of quarantine pest associated with wood packaging material (including dunnage) made of coniferous and no coniferous raw wood, in use in international trade.

12.2 DGFT, vide Notification No 54/2009-2014 dated 3-8-2010 has made it mandatory that export of goods including plant and plant products using wood packaging materials such as pallet, dunnage, crating, packing blocks, drums, cases load boards, pellet collars shall be allowed subject to compliance of ISPM-15.

12.3 On export side, a large number of consignments are intercepted abroad for non- compliance of ISPM-15 Standards relating to wood packaging materials used for export of materials, as informed by Department of Agriculture and Cooperation. Thus, the Board has decided that export/imported consignment with wood packaging material are to be inspected by Customs and if any export / imported consignment is found without ISPM- 15 mark or with doubtful marking, it should be reported to Plant Quarantine Officer / authorities for taking necessary action. It is also clarified that exporter should specifically indicate in the Shipping Bill, the description of packaging material so as to ensure whether any consignment with wooden packaging material warrants mandatory compliance with ISPM-15 standards or not.

12.4 Department of Agriculture and Cooperation has informed that all the agencies authorized to provide ISPM Certification on wood packaging material have been duly accredited by Directorate of Plant Protection, Quarantine & Storage. These agencies issue ISPM-15 certification after providing treatment with Methyl Bromide or Forced Hot Air as per prescribed norms. The list of these accredited agencies is available at www. plantquarantineindia.org.

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

Cases of non-adherence/infringement of prescribed phytosanitary standards have been reported by other Customs administrations especially EU. Ministry of Agriculture has repeatedly expressed concerns over increasing number of such cases and desired remedial action be taken to check export of consignments not meeting required phytosanitary specifications i.e., ISPM–15. Board has reiterated that no export consignments packed with raw or solid wood packaging material that is found deficient in meeting phytosanitary requirements ISPM–15 shall be allowed clearance.

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

13. Export of Leather

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

(a) Officials of CLRI shall be deployed at Chennai, Mumbai and Kolkata ports and Kanpurand Tughlakabad ICDs and the cost thereof shall be borne by CLE.

(b) The officials of CLRI shall assist Customs officers in examination of export consignments of leather. Where required, samples shall be drawn by Customs in presence of officials of CLRI. Samples so drawn by Customs shall be sent to CLRI or approved labs for testing.

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

14. Compliance of mandatory Indian Quality Standards (IQS)

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

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

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

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

B8A : ILLEGAL IMPORT AND EXPORT UNDER CUSTOMS ACT, 1962

1. Introductiopn:

Import and Export is governed under the provisions of the Customs Act, 1962. Generally, the Illegal import and export means where the importer or the exporter carries a transaction of imported goods and export goods on violation of the Customs provisions or contravention of the Customs Act or any laws concerning export or imports. There are special measures for the purpose of checking the illegal import as well as illegal export under Customs Act, 1962.

Definitions: Section 11A (a) of the Customs Act, 1962 defines "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force".

2. Detection of illegally imported goods and prevention of the disposal thereof

Power of Central Government to notify goods (Section 11B) With regard to the magnitude of the illegal import of goods of any class or description, if the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of checking the illegal import, circulation or disposal of such goods or facilitating the detection of such goods, it may, by notification in the official Gazette, specify goods of such class or description.

3. Persons possessing notified goods to intimate the place of storage (Section 11C):

(1) Every person within seven days of notification of notified goods shall intimate and arrange delivery to the proper officer with a statement containing such particulars in relation to the notified goods owned, possessed or controlled by him and the place where such goods are kept or stored.

(2) Every person who acquires, after the notified date, any notified goods, shall before making such acquisition, deliver to the proper officer an intimation containing the articulars of the place where such goods are proposed to be kept or stored after such acquisition, deliver to the proper officer a statement in relation to the notified goods acquired by him.

(3) If any person intends to shift any notified goods to any place other than the intimated place, he shall, before taking out such goods from the intimated place, deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted.

(4) No person shall, after the expiry of seven days from the notified date, keep or store any notified goods at any place other than intimated place.

(5) Where any notified goods have been sold or transferred, such goods shall not be taken from one place to another unless they are accompanied by the voucher referred to in section 11F.

(6) No notified goods (other than sold or transferred) shall be taken from one place to another unless they are accompanied by a transport voucher prepared by the persons owning, possessing or controlling such goods.

4. Precaution to be taken by persons acquiring notified goods (Section 11D):

No person shall acquire, after notified date, any notified goods-

(i) Unless such goods are accompanied by, -

(a) the voucher referred to in section 11F or the memorandum referred to in section 11G, as the case may be, or

(b) in the case of a person who has himself imported any goods, any evidence showing clearance of such goods by the customs authorities; and

(ii) unless he has taken, before acquiring such goods from a person other than a dealer having a fixed place of business, such reasonable steps to ensure that the goods so acquired by him are not goods which have been illegally imported.

5. Persons possessing notified goods to maintain accounts (11E):

(1) Every person who, on or after the notified date, owns, possesses, controls or acquires any notified goods shall maintain a true and complete account of such goods and shall, as often as he acquires or parts with any notified goods, made an entry in the said account in relation to such acquisition or parting with, and shall also state therein the particulars of the persons from whom such goods have been acquired or in whose favour such goods have been parted with, as the case may be, and such account shall be kept, along with the goods, at the place of storage of the notified goods to which such accounts relate.

(2) Every person who owns, possesses or controls any notified goods and who uses any such goods for the manufacture of any other goods, shall maintain a true and complete account of the notified goods so used by him and shall keep such account at the intimated place.

6. Sale or transferred of notified goods (11F):

Once the Central Government notify the notified goods of illegally import, from the date of notification, no person shall sell or otherwise transfer any notified goods, unless every transaction in relation to the sale or transfer of such goods is evidenced by a voucher in such form and containing such particulars as may be specified by rules made in this in behalf.

7. Provisions not apply to goods in personal use (11G):

With regard to intimation of place of storage, maintenance account of notified goods and sale / transfer of notified goods to be evidenced by vouchers are not required in the following situations:

(i) in personal use of person by whom they are owned, possessed or controlled, or

(ii) kept in the residential premises of a person for his personal use.

(iii) If any person, who is in possession of any notified goods sells or otherwise transfers for a valuable consideration, any such goods, he shall issue to the purchaser or transferee, as the case may be, a memorandum containing such particulars and no such goods shall be taken from one place to another in the absence of the said memorandum.

8. Prevention or Detection of illegal export of goods:

Definitions: Section 11H(a) of the Customs Act, 1962 defines "illegal export " means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force".

9. Power of Central Government to specify goods (Section 11 -I):

With regard to the magnitude of the illegal export of goods of any class or description, the Central Government is satisfied that it is expedient in the public interest to take special measures for the purpose of checking the illegal export or facilitating the detection of goods which are likely to be illegally exported, it may, by notification in the Official Gazette, specify goods of such class or description.

10. Persons possessing specified goods to intimate the place of storage (11J):

(1) Every person who owns, possesses or controls any specified goods within seven days of from the date of notification, in case of the said goods where the market price of which exceeds fifteen thousand rupees shall deliver to the proper officer an intimation containing the particulars of place where such goods are kept or stored within the specified area.

Every person who acquires after the specified date, any specified goods and where the market price of the said goods of the same class or description, if any owned, possessed or controlled by him on the date of such acquisition exceeds fifteen thousand rupees shall, before making such acquisition, deliver to the proper officer

an intimation containing the particulars of the place where such goods are proposed to be kept or stored after such acquisition.

(2) If any person intends to shift any specified goods, before taking out such goods from the intimated place, he shall deliver to the proper officer an intimation containing the particulars of the place to which such goods are proposed to be shifted.

(3) No person shall, after the expiry of seven days from the specified date, keep or store any specified goods at any place other than the intimated place.

11. Transport of specified goods to be covered by vouchers (Section 11K):

(1) No specified goods shall be transported from, into or within any specified area or loaded on any animal or conveyance in such area unless they are accompanied by a transport voucher prepared by the person owning, possessing, controlling or selling such specified goods. (Provided that no transport voucher shall be necessary within a village, town or city of any specified goods the market price does not exceed one thousand rupees)

(2) Where the Central Government, after considering the nature of any specified goods, the time, mode, route and the market price of the goods intended to be transported, the purpose of the transportation and the vulnerability of the specified area with regard to the illegal export of such goods, is satisfied that it is expedient in the public interest to do so, it may-

(i) by notification in the Official Gazette, specify goods of such class or description and of a market price exceeding such sum as that Government may notify; and different sums in relation to the specified goods of the same class or description, or different classes or descriptions, may be notified for the same specified area or for different specified areas, and

(ii) direct that no person shall transport any goods so specified unless the transport voucher in relation to them has been countersigned by the proper officer.

12. Persons possessing specified goods to maintain accounts (Section 11L):

(1) Every person who, on or after the specified date, owns, possesses or controls, within a specified area, any specified goods of a market price exceeding fifteen thousand rupees, shall maintain a true and complete account of such goods and shall, as often as

he acquires or parts with any specified goods, make an entry in the said account in relation to such acquisition or parting with and shall also state therein the particulars of the person from whom such goods have been acquired or in whose favour such goods have been parted with, and such account shall be kept, along with the goods at the place of storage of the specified goods to which such accounts relate.

(2) Every person who owns, possesses or controls any specified goods to which the provisions and who uses any such goods for the manufacture of any other goods, shall maintain, a true and complete account of the specified goods so used by him and shall keep such account at the intimated place.

(3) If at any time, on a verification made by a proper officer, it is found that any specified goods owned, possessed or controlled by a person are lesser in quantity than the stock of such goods as shown, at the time of such verification in the accounts, it shall be presumed, unless the contrary is proved, that such goods, to the extent that they are lesser than the stock shown in the said accounts, have been illegally exported and that person owning, possessing or controlling such goods has been concerned with the illegal export.

13. Steps to be taken by persons selling or transferring any specified goods (Section 11M):

Every person who sells or otherwise transfers within any specified area, any specified goods, shall obtain, on his copy of the sale or transfer voucher, the signature and full postal address of the person to whom such sale or transfer is made and shall also take such other reasonable steps as may be specified by rules made in this behalf to satisfy himself as to the identity of the purchaser or the transferee, and if after an enquiry made by a proper officer, it is found that the purchaser or the transferee, as the case may be, is not either readily traceable or is a fictitious person, it shall be presumed unless the contrary is proved, that such goods have been illegally exported and the person who had been sold or otherwise transferred such goods had been concerned in such illegal export.

Provided that nothing in this section shall apply to petty sales of any specified goods if the aggregate market price obtained by such petty sales, made in the course of a day, does not exceed two thousand and five hundred rupees. (Explanation "petty sale" means a sale at a price which does not exceed one thousand rupees.)

14. Case Laws:

The Apex Court in the case of *Akbar Badrauddin Jiwani v. Collector of Customs, reported in 1990 (47) E.L.T. 161 (S.C.),* held that "it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law. (Para 57)

The Hon'ble Supreme Court in the case of *Kanungo & Co, v. Collector of Customs, reported in 1983 (13) E.L.T. 1486 (S.C.),* held that "The fact that it was not shown in the stock register is not material to show that it has been illegally imported. It is not stated by the Authorities that the invoice and the bill of entry had nothing to do with this watch. (Para -18)

The Hon'ble High Court of Punjab & Haryana considered illegal export in the case of Vidya Bagaria v. UOI - reported in 2000 (123) E.L.T. 506 (P. & H.), held that "attempt to export empty shells without containing electronic components merely wrong declaration or mis-description of goods to customs authorities and not amounts to smuggling, goods sought to be exported being not prohibited goods."

The Supreme Court considered as illegal export in the case of *Narayandas Bhagwandas, v. State of West Bengal- reported in 1999 (110) E.L.T. 85 (S.C.),* held that "It is true that the appellant had not taken the currency notes in question out of India across any customs frontier as defined by the Central Government. He had, however, clearly attempted to take the same out of India. In such a case no question of his crossing the customs frontier arises. That an attempt to take out the currency notes in question is an offence punishable under the Sea Customs Act is clear from the provisions of Section 167 Item

8. The Foreign Exchange Regulation (Amendment) Act, 1952 (8 of 1952) came into force in February 1952. By this Act Section 23B was introduced into the Foreign Exchange Regulation Act.

Section 23B makes punishable an attempt to contravene the provisions of the Foreign Exchange Regulation Act or any rule, direction or order made thereunder."

B9 : WEREHOUSING

1. Introduction:

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

2. Legal provisions:

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

3. Appointment of Public Warehouses:

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

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

(a) is a citizen of India or is an entity incorporated or registered under any law for the time being in force;

(b) submits an undertaking to comply with such terms and conditions as may be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be;

(c) furnishes a solvency certificate from a scheduled bank for a sum of two crore rupees: Provided that the condition of furnishing a

solvency, certificate shall not be applicable to an undertaking of the Central Government or State Government or Union territory or to ports notified under the Major Port Trusts Act, 1963 (38 of 1963);

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

4. Appointment of Private Warehouses:

4.1 As per Section 58 of the Customs Act, 1962, The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

4.2 The main conditions for granting Private Bonded Warehouse licenses are:

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

provide an all-risk insurance policy, that includes natural calamities, riots, fire, theft, skillful pilferage and commercial crime, in favour of the President of India, for a sum equivalent to the amount of duty involved on the dutiable goods proposed to be stored in the private warehouse at any point of time;

(a) provide an undertaking binding himself to pay any duties, interest, fine and penalties payable in respect of warehoused goods under sub-section (3) of section 73A or under the Warehouse (Custody and Handling of Goods) Regulations, 2016;

(b) provide an undertaking indemnifying the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, from any liability arising on account of loss suffered in respect of warehoused goods due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, delivery, storage, dispatch or handling; and

(c) appoint a person who has sufficient experience in warehousing operations and customs procedures as warehouse keeper.

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

5. Appointment of Special Warehouses:

5.1 As per Section 58A of the Customs Act, 1962 the Principal

Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.

5.2 The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1) of Section 58A of Customs Act 1962.]

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

6. Cancellation of License:

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

Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the license, the Principal Commissioner of Customs or Commissioner of Customs may cancel the license granted under section 57 or section 58 or section 58A:

Provided that before any license is cancelled, the licensee shall be given a reasonable opportunity of being heard.

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

(2) Where the operation of a warehouse is suspended under sub-section (2), no goods shall be deposited in such warehouse during the period of suspension:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.

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

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed

to another warehouse or cleared for home consumption or for export, during such period.

7. Warehousing Bond:

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

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

(a) To comply with all the provisions of the Act and the rules and regulations made there under in respect of such goods;

(b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and

(c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

7.2 For the purposes of sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

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

7.4 Any bond executed under this section by an importer in respect to any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.

7.5 Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified in sub-section (1) or sub-section (2) and furnish security as specified under sub-section (3).

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

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

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

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

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

9. Period for which goods may remain warehoused:

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

(1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed, —

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

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

(c) in the case of any other goods, till the expiry of one year from the date on which the proper officer has made an order under sub-section (1) of section 60 Provided further that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

10. Extension of warehousing period:

10.1 Section 61 of the Customs Act, 1962 provides that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time.

11. Interest for storage beyond permissible period:

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

section (1) of Section 61 of Customs Act 1962 remain in a warehouse beyond a period of ninety days from the date on

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

12. Waiver of interest:

12.1 Section 61(2) of the Customs Act, 1962 provides that if the Board considers it necessary so to do, in the public interest, it may, -

(a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;

(b) by notification in the Official Gazette, specify the class of goods in respect to which no interest shall be charged under this section;

(c) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section60.

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

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

(a) inspect the goods;

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

(c) sort the goods; or

(d) show the goods for sale.

14. Transfer of goods from one warehouse to another:

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

(a) allow removal of the goods and their loading onto the means of transport;

(b) affix a one-time-lock to the means of transport;

(c) endorse the number of the one-time-lock on the Form for transfer of goods from a warehouse and retain a copy thereof;

(d) endorse the number of the one-time-lock on the transport document and retain a copy thereof;

(e) take into record the removal of the goods; and

(f) cause to be delivered, copies of the retained documents to the bond officer.

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

(a) Verify the one-time-lock on the means of transport carrying the goods to the warehouse;

(b) inform the bond officer immediately if the one-time-lock is not founding act, and refuse the unloading of the goods;

(c) allow unloading, provided the one-time-lock is found intact, and verify the quantity of goods received by reconciling with the Form for transfer of goods from a warehouse bearing the orders of the bond officer;

(d) report any discrepancy in the quantity of goods to the bond officer within twenty four hours;

(e) endorse the Form for transfer of goods from a warehouse with quantity received and retain a copy thereof;

(f) acknowledge the receipt of the goods by endorsing the transportation document presented by the carrier of the goods and retain a copy thereof;

(g) take into record the goods received; and cause to be delivered, copies of the retained documents to the bond officer and to the warehouse keeper of the warehouse from where the goods have been received.

15. Clearance of warehoused goods for home consumption:

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

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

(b) The import duty, interest, fine and penalties pay able in respect of such goods have been paid; and

(c) an order for clearance of such goods for home consumption has been made by the proper officer:

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

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

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

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

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

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

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

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

(b) take into record the goods removed.

16. Clearance of warehoused goods for Export:

16.1 Any warehoused goods may be exported to a place outside India without payment of import duty if–

(a) a shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods;

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

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

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

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

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

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

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

16.3 It shall be ensured that due to re-export from the bonded warehouses there is no net loss of foreign exchange i.e., value of the goods at the time of re-export shall not be less than the foreign exchange paid at the time of their import. Moreover, if the goods were imported by payment in freely convertible currency, the re-export shall not be allowed against Indian Rupees.

16.4 Section 69 of the Customs Act, 1962 provides that if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and

conditions as may be specified in the notification. In terms of Section 69 of the Customs Act, 1962, the following notifications have been issued:

(i) Notification No. 45-Cus, dated 13-2-1963 provides that the warehoused goods shall not be exported to Bhutan, Nepal, Burma, Sikang, Tibet or Sinkiang, However, the warehoused goods can be exported to Nepal in the following circumstances:

(a) If goods are exported against an irrevocable letter of credit in freely convertible currency;

(b) If goods are exported for supplies to projects financed by any UN Agency or IBRD Association or ADB or any other multilateral agency of the like nature and for which payments are received in freely convertible currency; and

(c) If the specified capital goods are supplied against a global tender invited by HMG of Nepal for which payment is received in Indian Rupees. These goods can be exported only from Jogbani or Raxaul LCS on production of bank certifies of receipt of the payment in freely convertible currency or Indian Rupees, as the case may be.

As per Notification No.46-Cus, dated 1-2-1963, export of warehoused goods without payment of import duty in a vessel of capacity less than 1000 tons gross is permitted subject to the condition that the exporter or agent of the vessel executes a bond for an amount equal to the import duty leviable on such goods backed by surety or security and produces a certificate within 3 months from the Customs authorities at port of destination that the goods have been landed at the port of destination.

(ii) Notification No.47-Cus, dated 1-2-1963 bans export of warehoused (a) Alcoholic liquors, (b) Cigarettes, (c) Cigars, and (d) Pipe Tobacco without payment of import duty as stores on board a vessel of capacity less than 200 tons gross.

17. Allowance in case of volatile warehoused goods:

17.1 Section 70 of the Customs Act, 1962 provides that when any warehoused goods at the time of delivery from a warehouse are found to be deficient in quantity on account of natural loss, the Assistant/Deputy Commissioner of Customs may remit the duty on such deficiency.

17.2 Notification No. 3.2016 -Customs (N.T.) dated 11.01.2016 issued under Section 70 (20) of the said Act specifies the goods on

which duty may be remitted on account of natural loss, having regard to the volatility of the goods and the manner of their storage. These goods are:

(i) aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naptha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks;

(ii) wine, spirit and beer, kept in casks:

(iii) liquid helium gas kept in containers; and

(iv) crude stored in caverns.

18. Maintenance of records in relation to warehoused goods:

18.1 A licensee shall, -

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

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

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

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

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

19. Recovery of duty from bonded warehouses:

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

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

(ii) Where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;

(iii) where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer.

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

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

20. Cancellation and return of warehousing bond:

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

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

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

21.2. If the resultant product manufactured or worked upon in a bonded warehouse is exported, the licensee shall have to file a shipping

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

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

21.4. It may be noted that units operating under section 65 read with section 58 of the Customs Act, are entitled to import capital goods, machinery, inputs etc. by following the provisions under Ch IX. In so far as domestic procurement is concerned, applicable rate so taxes shall be Payable and exemptions, if any, can also be availed. By virtue of simply being a unit operating under section 65, they shall not be entitled to procure goods domestically, without payment of taxes. The records in respect of such domestically procured goods shall be indicated in the form for accounts as prescribed.

21.5 Since the warehouse operating under section 65 also functions as a warehouse licensed under section 58, the licensee scan import goods and clear them as such, under section 68 or section 69 of the Act, on payment of duties, along with interest as per sub-section (2) of section 61 of the Act. The licensees shall also be required to maintain to submit monthly returns in "Form B" as p re scrib ed un d er Circu lar No. 25/ 2016 -Cus dated 8th June 2016 for such purposes.

Notifications and Circulars for reference:

Sl. No	Notification/Circular No. and date	Subject
1	Notification 66/2016-Customs (N.T.) dated 14.05.2016	Goods notified under section 58 A
2	Notification 67/2016-Customs (N.T.) dated 14.05.2016	Warehoused Goods (Removal) Regulations, 2016
3	Notification 68/2016-Customs (N.T.) dated 14.05.2016	Warehouse (Custody and Handling of Goods) Regulations, 2016
4	Notification 69/2016/2016-Customs (N.T.) dated 14.05.2016	Special Warehouse (Custody and Handling of Goods) Regulations 2016
5	Notification 70/2016-Customs (N.T.) dated 14.05.2016	Public Warehouse Licensing Regulations, 2016
6	Notification 71/2016-Customs (N.T.) dated 14.05.2016	Private Warehouse Licensing Regulations, 2016
7	Notification 72/2016-Customs (N.T.) dated 14.05.2016	Special Warehouse Licensing Regulations, 2016
8	Circular No. 17 / 2016-Customs dated 14.05.2016	Amendment to Ch. IX of the Customs Act, 1962 – removal of goods from a customs station - instructions regarding affixation of one-time-lock - reg.
9	Circular No. 18 / 2016-Customs dated 14.05.2016	Amendment to Ch. IX of the Customs Act, 1962 – Bond required to be filed under section 59 - reg.
10	D.O.F. No. 484/03/2015-LC (Vol. II) New Delhi, dated 14.5.2016	D.O letter of Commissioner Customs on changes in warehousing through the Finance Act 2016.

11	Circular 19/2016- Customs dated 20.05.2016	Allotment of Warehouse Code for Customs Bonded Warehouses.
12	Circular 20/2016- Customs dated 20.05.2016	Amendment to Ch.IX of the Customs Act, 1962–Insertion of Section 58A – clarification regarding transitional provisions relating to Duty Free Shops/Ship stores/Airline Stores/ Diplomatic Stores –reg.
13	Circular 21/2016- Customs dated 31.05.2016	Security under section 59 (3) of the Customs Act.
14	Circular No. 22 /2016 – Customs dated 31.05.2016	Procedure regarding filing of ex-bond bill of entry.
15	Circular No. 23/2016 – Customs dated 01.06.2016	Manner of payment of interest on warehoused goods.
16	Circular No. 24 /2016 – Customs dated 02.06.2016	Requirement of Solvency Certificate for the purposes of Private Warehouse Licensing Regulations 2016.
17	Circular No 25 /2016- Customs dated 08.06.2016	Maintenance of records in relation to warehoused goods in electronic form, filing of Returns and acknowledgement of receipt of goods.
18	Circular No. 26/ 2016 – Customs dated 09.06.2016	Form of application for a Licence under Public Warehousing Licensing Regulations, 2016 / Private Warehousing Regulations, 2016 / Special Warehousing Regulations, 2016.
19	Circular No. 27/2016- Customs dated 10.06.2016; Circular No. 23/2018- Customs dated 23.07.2018	Procedure to be followed by nominated agencies importing gold/silver/platinum under the scheme for‘ Export Against Supply by Nominated Agencies’.
20	Circular 31/2016- Customs dated 06.07.2016	Sale of goods at Duty Free Shops in Indian Currency

21	Circular No 32/2016-Customs Dated 13th July 2016	Procedure regarding Duty Free Shops
22	Circular 50/2017- Customs dated 18.12.2017	Sale of goods and display of prices at duty free shops in Indian currency – amendment of circular 31/2016- Customs dated 6th July 2016
23	Notification 155/1966-Customs (N.T) dated 30.07.1966.	Manufacture and Other Operations in Warehouse Regulations, 1966
24	Circular 38/2018- Customs dated 18.10.1018 and Circular No. 53/2018-Customs dated 28.12.2018.	Procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouses under section 65 of the Customs Act
25	Circular 19/2018- Customs dated 18.06.2018 as amended vide Circular 39/2018- Customs dated 23.10.2018 and further amended by Circular 41/2018- Customs dated 30.10.2018	Electronic sealing-deposit in and removal of goods from Customs Bonded warehouse.

B9A : MANUFACTURING AND OTHER OPERATIONS IN A CUSTOMS BONDED WAREHOUSE (MOOWR)

Meaning of MOOWR Scheme

MOOWR scheme was introduced by CBIC in 1996 and revamped in 2019 to boost the Make In India campaign and provide foreign business with a simplified approval process for manufacturing operations within the bonded warehouse.

Please refer to the Manufacture and Other Operations in Warehouse Regulations 2019, issued vide Notification No. 44/2019-Customs (N.T) dated 19th June, 2019 and Circular 38/2018-Customs dated 18.10.2018 issued to streamline the procedure, documentation and compliances to be followed under Section 65 of the Customs Act, 1962 (hereinafter referred to as the "Act").

Purpose and Objectives of the scheme

The purpose and objective of the scheme is to make India a manufacturing hub and an investment destination. This scheme has been launched to defer customs duties on imported goods used for manufacturing or other activities such as re packing, grading, relabeling, sorting, testing and repair.

Single point of approvals

The Commissioner of Customs is the one point contact for all approvals and simplifying things.

Single Application Form

There is a single form for all licenses and permissions for these private bonded facilities and manufacturing operations, reducing paperwork.

Setup Anywhere

One can set up a new manufacturing facility or convert an existing one into a bonded facility, regardless of its location

Digital Record keeping

All relevant records are to be kept digitally in a standardized format, making it easy to manage and track. This ensures smooth operations.

Simple bond process

A customs officer will visit to check compliance before sanctioning a license. A bond is to be submitted to the Customs Commissioner.

Clearance options

Goods from this warehouse can be cleared for use within the country i.e. domestic requirement, for export or sent to another bonded facility. Thus, this facility offers many choices.

Reports

Regular monthly reports must be submitted to the customs as a mandatory requirement to stay in this scheme

Obligation of scheme

No rigid requirements for minimum exports or domestic sales , making this facility more flexible.

Benefits of the scheme

This scheme benefits manufacturers in multiple ways. The key benefits to manufacturers are as under:

- Customs duty is deferred on imported raw materials and capital goods.
- No customs duty to be paid if the manufactured goods are exported

- There is no time limit for storing goods in the warehouse in this scheme
- License does not have any expiry date i.e. no need of renewal
- There is single window contact point for all approvals
- No export obligations to operate this scheme
- The unit location is flexible with no physical control by customs
- No minimum investment requirement
- Warehouse to warehouse transfers is easy and smooth

Eligibility criteria

Any individual or any type of businesses can register for this scheme. The following criteria should be met to make oneself eligible.

☐ Anyone holding a license for a warehouse under the Section 58 of the Customs Act 1962, in compliance with the Private Warehouse Licensing Regulations , 2016.

☐ Any individual seeking a license for a warehouse under section 58 of the Customs Act 1962 along with permission to conduct manufacturing or other operations within the warehouse under Section 65 of the Act , also eligible.

Application Process

The application process is simple and the registration steps for this scheme are as under:

☐ Fill the application online (Annexure A)

☐ Sign a bond and give it to the Jurisdictional Commissioner of Customs

☐ The Commissioner checks the application, place and issues a license.

☐ There is no expiry for the license unless it is cancelled or surrendered by the licensee

Through bonded manufacturing, all types of businesses can avail exemption on customs duty on imported inputs used in the production of finished goods to be exported. In the case of domestic consumption, the duty on imported inputs is deferred until the finished goods are cleared to the domestic market.

To summarise, the MOOWR scheme, launched by CBIC, aims to delay the Customs duties levy on imported goods used for manufacturing or other activities. The goal is to make India a competitive manufacturing

hub and an appealing investment destination. It offers customs duty exemption on essential input/capital goods used in exported products. Additionally, it allows the postponement of Customs duty on inputs used in goods sold in the domestic market, promoting ease of business.

B9B : MANUFACTURE AND OTHER OPERATIONS IN SPECIAL WAREHOUSES (MOOSWR) UNDER CUSTOMS ACT, 1962

Manufacture and Other Operations in Special Warehouse Regulations, 2020 (MOOSWR) have been issued vide Notification No. 75/2020-Customs (N.T.) dated 17.08.2020. The said regulations allow manufacturing and other operations in a special warehouse licensed under section 58A, and 65 of the Customs Act, 1962. The procedures and documentations for the said schemes have been clarified vide C.B.I. & C, Circular No.36/2020-Customs, dated 17'th August, 2020.

The provisions and procedures of MOOSWR, 2020 are sequentially presented in brief as under:

Application: These regulations shall apply to,-

(i) the units that operate under section 65 of the Act, or

(ii) the units applying for permission to operate under section 65 of the Act, in a special warehouse licensed under section 58 of the Act.

Eligibility for application for operating under these regulations: -

(1) The following persons shall be eligible to apply for operating under these regulations,-

(i) a person must have the premises licensed as a special warehouse under section 58A of the Customs Act. The applicants can seek a license under section 58A and permission to operate under section 65 synchronously, or request for permission under section 65, if they already have a warehouse licensed under section 58A.

(ii) a person who has been granted a licence under section 58A of the Act for warehousing of the specified goods, in accordance with Special Warehouse Licensing Regulations, 2016.

(2) An application under these regulations shall be made to the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, along with an undertaking to,-

(i) maintain accounts of receipt and removal of goods in digital form in such format as may be specified and furnish the same to the bond officer on monthly basis digitally;

(ii) provide facilities, equipment and personnel as required in these regulations;

(iii) execute a bond in such format as may be specified;

(iv) submit security in such manner and with such amount as may be specified;

(v) inform the input-output norms, for raw materials and the final products and to inform the revised input-output norms in case of change therein;

(vi) pay for the services of supervision of the warehouse by officers of customs on cost recovery basis or overtime basis, as may be determined by the Principal Commissioner of Customs or the Commissioner of Customs as the case may be; and

(vii) comply with such other terms and conditions as may be specified by the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be.

Grant of permission. - The Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, upon due verification of the application in Annexure –A, made under sub regulation (2) of regulation 4, and after satisfying that all requirements of regulation 4 and regulation 5 of Special Warehouse Licensing Regulations, 2016, have been fulfilled, may grant permission to operate under the provisions of these regulations, along with a licence under section 58A of the Act where required, subject to such conditions as deemed necessary. The warehouse in which section 65 permission is granted shall also be declared by the licensee as the principal / additional place of business for the purpose of GST. The importer of the warehoused goods to furnish security and execute a triple duty bond as per Annexure C for the warehoused goods under section 59 of the Act. Additionally, the licensee will furnish security by way of a bank guarantee equivalent to the duty involved on the warehoused goods.

Validity of permission: The permission granted under regulation 5 shall remain valid unless it is cancelled or surrendered or the licence issued under section 58A is cancelled or surrendered, in terms of the provisions of the Act or the rules and regulations made there under.

Appointment of warehouse keeper. –

(1) A person who has been granted permission under regulation 5

shall appoint a warehouse keeper who has sufficient experience in warehousing operations and customs procedures to discharge functions on his behalf.

(2) The warehouse keeper shall obtain a digital signature from authorities licensed by the Controller of Certifying Authorities for filing electronic documents required under the Act or rules or regulations made thereunder.

(3) Appointment of any new warehouse keeper should also be intimated along with the monthly returns. Jurisdictional Commissionerate should ensure that such emails are functional and details of same are communicated at the time of issuance of license and also published through public notice.

Facilities, equipment and personnel. – A person who has been granted permission under regulation 5 shall provide at the warehouse,-

(i) signage that prominently indicates that the site or building is a customs bonded warehouse;

(ii) a computerized system for accounting of receipt, storage, operations and removal of goods;

(iii) doors, windows and other building components of sturdy construction;

(iv) a separate strong-room for keeping the specified warehoused goods;

(v) facility for locking the warehouse and the strong-room by the bond officer;

(vi) sufficient office space for bond officer;

(vii) adequate personnel, equipment and space for the examination of goods by officers of customs; and

(viii) such other facilities, equipment and personnel as are sufficient to control access to the warehouse, provide secure storage of the goods in it and ensure compliance to these regulations by officers of customs.

Strong-room:

(1) Except for the dutiable specified goods, no other goods shall be stored in the strong -room and it should be ensured that there is / are CCTV cameras at the gate(s) and there is a provision of accessing the same by customs officers.

(2) The bond officer shall cause the strong-room to be locked and no person shall enter the strong- room or deposit goods therein or remove goods therefrom, except in presence of the bond officer. (3) The warehouse keeper shall, as and when required by the bond officer and at least once in six- months, conduct physical stock taking of the goods stored in the strong-room in presence of the bond officer, and demonstrate that-

(i) the physical stock of specified goods in the strong room tallies with the stock on record; and (ii) the specified goods cleared from the strong-room are either lying as work-in-progress or have been utilized in the permitted manufacturing or other operations or have been exported as such or have been cleared as such in domestic market.

(4) The warehouse keeper and the bond officer shall sign summary of stock taking, prepared in duplicate, and keep one copy each for their records.

(5) Where a discrepancy is noticed during a stock taking conducted under these regulations, the bond officer shall take appropriate action under the Act.

Conditions for transport of goods. – (1) Where the goods are transported from the customs station of import to a warehouse or from one warehouse to another warehouse or from the warehouse to a customs station for export, the load compartment of the means of transport shall be securely sealed with a one- time-lock:
Provided that the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may having regard to the nature of goods or manner of transport, permit transport of such goods without affixing the one-time-lock.

(2) Where the goods to be warehoused are removed, from the customs station of import to a warehouse, the one-time-lock as per sub-regulation (1) shall be affixed by the proper officer of customs.

(3) Where the warehoused goods are removed from the warehouse to another warehouse, the one - time-lock as per sub-regulation (1) shall be affixed by the licensee, in presence of the bond officer. (4) Where the warehoused goods are removed, from the warehouse to a customs station for export, the one- time-lock as per sub-regulation (1) shall be affixed by the licensee, in presence of the bond officer.

Receipt of goods from customs station. –

(1) A licensee shall not receive any goods or permit unloading of any goods at the warehouse except in the presence of the bond officer.

(2) Upon the bond officer permitting the deposit of the goods received from a customs station, the licensee shall, –

(i) verify the one-time-lock affixed by the proper officer at the customs station on the load compartment of the means of transport carrying the goods to the warehouse;

(ii) inform the bond officer immediately if the one-time-lock is not found intact, and refuse the unloading of the goods;

(iii) allow unloading, provided the one-time-lock is found intact, and verify the quantity of goods received by reconciling with the bill of entry for warehousing;

(iv) report any discrepancy in the quantity of goods immediately to the bond officer;

(v) endorse the bill of entry for warehousing with the quantity of goods received and retain a copy thereof;

(vi) acknowledge the receipt of the goods by endorsing the transportation document presented by the carrier of the goods and retain a copy thereof; take into record the goods received; and

(vii) where the goods are dutiable specified goods, deposit the goods received in the strong room.

(3) Upon taking into record the goods received in the warehouse, the licensee shall cause to be delivered an acknowledgement to the proper officer referred to in sub-section (1) of section 60 of the Act and to the bond officer regarding the receipt of the goods in the warehouse.

Receipt of goods from another warehouse. –

(1) A licensee shall not receive any goods or permit unloading of any goods at the warehouse except in the presence of the bond officer.

(2) Upon the bond officer permitting the deposit of the goods received from another warehouse, the licensee shall, -

(i) verify the one-time-lock affixed on the load compartment of the means of transport carrying the goods to the warehouse

(ii) inform the bond officer immediately if the one-time-lock is not found intact and refuse the unloading of the goods;

(iii) allow unloading, provided the one-time-lock is found intact, and verify the quantity of goods received by reconciling with, -

(a) in case of goods received from a unit operating under section 65 of the Act, the Form appended to these regulations;

(b) in case of goods received from a warehouse not operating under section 65 of the Act, the Form as prescribed under the Warehoused Goods (Removal) Regulations, 2016.

(iv) report any discrepancy in the quantity of the goods immediately to the bond officer

(v) endorse the Form for transfer of goods from a warehouse with quantity received and retain a copy thereof;

(vi) acknowledge the receipt of the goods by endorsing the transportation document presented by the carrier of the goods and retain a copy thereof;

(vii) take into record the goods received; and

(viii) where the goods are specified goods, deposit the goods received in the strong-room. The licensee upon taking into record the goods received in the warehouse shall cause to be delivered, copies of the retained documents to the bond officer and to the warehouse keeper of the warehouse from where the goods have been received.

Receipt of domestically procured goods. – (1) A licensee shall not receive any goods or permit unloading of any goods at the warehouse except in the presence of the bond officer.

(2) Upon the bond officer permitting receipt and deposit of the domestically procured goods, the licensee shall take into record the goods received.

Transfer of goods from a warehouse. – (1) A licensee shall not allow the transfer of warehoused goods to another warehouse or to a customs station for export without the permission of the bond officer on the form for transfer of goods from a warehouse.

(2) Upon the bond officer permitting the removal of the goods from the warehouse, the licensee shall, in the presence of the bond officer,-

(i) allow removal of the goods and their loading onto the means of transport;

(ii) affix a one-time-lock to the means of transport;

(iii) endorse the number of the one-time-lock on the form and retain a copy thereof;

(iv) endorse the number of the one-time-lock on the transport document and retain a copy thereof;

(v) take into record the removal of the goods; and

(vi) hand-over copy of the retained documents to the bond officer.

Removal of resultant goods for home consumption. – (1) A licensee may remove the resultant goods from the warehouse for home consumption:

Provided that a bill of entry for home consumption has been filed in respect of the warehoused goods contained in so much of the resultant goods and the import duty, interest, fine and penalties payable, if any, in respect of such goods have been paid:

Provided further that the goods shall not be removed except in the presence of the bond officer.

(2) The licensee shall retain a copy of the bill of entry filed and take into record the goods removed. **Removal of resultant goods for export**. – (1) A licensee shall remove the resultant goods from the warehouse for export, upon, -

(i) filing a shipping bill or a bill of export, as the case may be; and

(ii) affixing a one-time-lock to the load compartment of the means of transport in which such goods are removed from the warehouse:

Provided that the licensee shall cause the goods to be loaded onto a means of transport and affix a one-time-lock to the means of transport in the presence of the bond officer.

(2) The licensee shall take into record the goods removed.

Conditions for due arrival of goods. - The licensee of the goods shall produce, -

(i) to the proper officer within one month of the order issued under sub-section (1) of section 60 of the Act, an acknowledgement that the goods have been deposited in the warehouse;

(ii) to the bond officer in charge of the warehouse, within one month from the date of removal of the goods from the warehouse an acknowledgement issued by the licensee of the warehouse to

which the goods have been removed, stating that the goods have arrived at that place;

(iii) to the bond officer in charge of the warehouse, within one month from the date of removal of the goods from the warehouse an acknowledgement issued by the proper officer at the customs station of export, stating that the goods have arrived at that place; failing which, the owner of such goods shall pay the full amount of duty chargeable on account of such goods together with interest, fine and penalties payable under sub-section (1) of section 72.

Maintenance of records in relation to warehoused goods. –

(1) A licensee shall, -

(i) maintain detailed records in Annexure-B of the receipt, handling, storing, and removal of any goods into or from the warehouse, as the case may be, and produce the same to the bond officer, as and when required;

(ii) keep a record of each activity, operation or action taken in relation to the warehoused goods;

(iii) keep a record of drawl of samples from the warehoused goods under the Act or under any other law for the time being in force; and

(iv) keep copies of the bills of entry, transport documents, forms for transfer of goods from a warehouse, shipping bills or bills of export or any other documents evidencing the receipt or removal of goods into or from the warehouse and copies of the bonds executed under section 59 of the Act.

(2) All activities prescribed in these regulations need to be recorded immediately and the data prescribed in the Form shall also be stored electronically. Such electronic as well as manual records should be kept updated, accurate and complete and shall be available at the warehouse at all times and accessible to the bond officer or any other authorised officer for verification.

(3) The software for maintenance of electronic records must incorporate the feature of audit trail which means a secure, computer generated, time-stamped electronic record that allows for reconstruction of the course of events relating to the creation, modification or deletion of an electronic record and includes actions at the record or system level, such as, attempts to access the system or delete or modify a record. At the time of

inspection, the proper officer should, through a demonstration, check and ensure that the software meets the requirements of Regulation. In case licensee wishes to use any other software after issuance of license, bond officer should be informed in advance along with similar demonstration. Proper officer should record the observations and confirm that the new software meets the requirements of Regulation.

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

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

(6) A licensee shall file with the bond officer a monthly return of the receipt, storage, operations and removal of the goods in the warehouse, within ten days after the close of the month to which such return relates. This information shall be communicated from the registered email address of a licensee to the designation based official email id accessed by the bond officer.

Resultant Product: The resultant product emerges out of manufacturing or other operations of warehouse is required to clear for domestic consumption on payment of applicable GST and compensation Cess, as such transaction falls within the ambit of "supply" under Section 7 of the CGST Act,2017. The clearance of resultant product from warehouse to domestic tariff area under cover of GST invoice and exported on filing of a shipping bill or bill of export.

Audit. –The proper officer may conduct audit of a unit operating under section 65 of the Act in accordance with the provisions of the Act and the rules made thereunder.

Penalty. –If a person contravenes any of the provisions of these regulations, or abets such Contravention or fails to comply with any of the provision of these regulations, he shall be liable to penalty in accordance with the provisions of the Act.

Power to exempt. – The Board, having regard to the nature of the goods, their manner of transport or storage, may exempt a class of

goods from any of the provisions of these regulations.

The Customs Act,1962 prescribes the warehousing licensing under Section 58A and 65 of the Customs Act including the scheme Manufacturer and other operations in special warehouse Regulations,2020 (MOOSWR 2020), and sets the conditions for storage in strong-room, appointment of a warehouse keeper, conditions for transportation of goods, receipt of goods from customs station, receipt of goods from another warehouse, receipt of domestically procured goods, transfer of goods from a warehouse , removal of resultant goods from home consumption, removal of resultant goods for export, condition for due arrival of goods, maintenance of records in relation to warehoused goods, Warehouse operating under Section 65 is subject to Audit and a person contravenes any of the provisions of these regulation shall be liable to penalty.

B10 : CUSTOMS REFUNDS

1. Introduction:

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

2. Legal provisions:

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

(a) the goods are returned to such person otherwise than by way of resale;

(b) the goods are re-imported within one year from the date of exportation; and

(c) an application for refund of such duty is made before the expiry of six months from the date on which the proper officer makes an order for the clearance of the goods.

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

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

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

(b) the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

(c) the importer does not claim drawback under any other provisions of this Act; and

(d) (i) the goods are exported; or

(ii) the importer relinquishes his title to the goods and abandons them to customs; or

(iii) such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed and within a period not exceeding thirty days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section47:

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

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

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

2.2 Any person claiming refund of any duty or interest has to make an application in duplicate in the form as prescribed in the Customs

Refund Application (Form) Regulations, 1995, to the jurisdictional Deputy/Assistant Commissioner of Customs.

3. Relevant dates for submission of a refund application:

3.1 In terms of Section 27 of the Customs Act, 1962 an application for refund is required to be filed within one year from the date of payment of duty and interest. Normally, the time limit of one year is computed from the date of payment of duty, however, in following situations, such time limit is computed differently:

(a) In case of goods which are exempt from payment of duty by an ad-hoc exemption order issued under Section 25(2) of the Customs Act, 1962 the limitation of one year is to be computed from the date of issue of such order;

(b) Where duty becomes refundable as a consequence of judgment, decree, order or direction of the appellate authority, Appellate Tribunal or any court, the limitation of one year is to be computed from the date of such judgment, decree, order or direction.

(c) Where any duty is paid provisionally under Section 18 of the Customs Act, 1962 the limitation of one year is to be computed from the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment; and

(d) The date of payment of any duty and interest in relation to a person, other than the importer shall be, the date of purchase of goods by such person.

3.2 The limitation of one year for claiming refund does not apply where any duty and interest has been paid under protest.

4. Processing of refund claim:

4.1 The application for refund is required to be filed with

documentary or other evidence including documents relating to assessment, sales invoice and other like documents to support the claim that the duty and interest was paid in excess, incidence of duty or interest has not been passed on by him to any other person, and the refund has not been obtained already.

4.2 Where on scrutiny, the application is found to be complete in all respects the Customs issues an acknowledgement in the prescribed Form. However, in case the application is found to be incomplete, the Customs will return the same to the applicant, pointing out the

deficiency. The applicant has to then re-submit the application after making good the deficiency.

4.3 The application of refund found to be complete in all respects by Customs, is processed to see if the whole or any part of the duty and interest paid by the applicant is refundable. In case, the whole or any part of the duty and interest is found to be refundable, an order for refund is passed. However, in view of the provisions of unjust enrichment enshrined in the Customs Act, the amount found refundable has to be transfer red to the Consumer Welfare Fund except in the following situations when it is to be paid to the applicant:

(a) If the importer has not passed on the incidence of such duty and interest to any other person;

(b) If such duty and interest was paid in respect of imports made by an individual for his personal use;

(c) If the buyer who has borne the duty and interest, has not passed on the incidence of such duty and interest to any other person;

(d) If amount found refundable relates to export duty paid on goods which were returned to exporter as specified in Section 26 of the Customs Act, 1962;

(e) If amount relates to Drawback of duty payable under Sections 74 and 75 of the Customs Act, 1962; and

(f) If the duty or interest was borne by a class of applicants which has been notified for such purpose in the Official Gazette by the Central Government.

If the duty was paid in excess by the importer before an order permitting clearance of goods for home consumption is made where such excess payment of duty is evident from the bill of entry in the case of self-assessed bill of entry or the duty actually payable is reflected in the reassessed bill of entry in the case of reassessment.

5. Unjust enrichment:

5.1 In terms of Section 27(2) of the Customs Act, 1962 the concerned Assistant/Deputy Commissioner of Customs has to examine the facts of the case and the material placed before him in order to determine whether the amount claimed by an applicant is refundable to him or not. Further, the Assistant/ Deputy Commissioner of Customs should go through the details of audited balance sheet and other related financial records, certificate of the Chartered Accountant etc., submitted by the applicant in order to decide whether the applicant had not passed on the incidence of the duty and interest

there on, if any, to any other person. The Order-in-Original passed by the Assistant/ Deputy Commissioner of Customs on the refund application should be as peaking order providing specific details including the relevant financial records that are relied upon to arrive at a conclusion whether the burden of duty or interest, as the case may be, has been passed on or not. Refund orders issued in a routine and casual manner there by sanctioning the amount but crediting the same to the Consumer Welfare Fund without going through the factual details of the case and the due process as provided in the first proviso cannot be considered as a complete and speaking order.

6. Interest on delayed refund:

The Customs has to finalize refund claims immediately after receipt of the refund application in proper form along with all the documents. In case, any duty ordered to be refunded to an applicant is not refunded within 3 months from the date of receipt of application for refund, interest that is currently fixed @ 6% is to be paid to the applicant. The interest is to be paid for the period from the date immediately after the expiry of 3 months from the date of receipt of such application till be date of refund of such duty. For the purpose of payment of interest, the application is deemed to have been received on the date on which a complete application, as acknowledged by the proper officer of Customs, has been made.

6.1 Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any Court against an order of the Assistant Commissioner/Deputy Commissioner of Customs, the order passed by the Commissioner (Appeals), Appellate Tribunal or by the Court, as the case may be is deemed to be an order for the purpose of payment of interest on delayed refund.

6.2 The interest on delayed refund is payable only in respect of delayed refunds of Customs duty and no interest is payable in respect of deposits such as deposits for project imports, security for provisional release of goods etc.

7. Expeditious disposal of refund applications:

7.1 The procedure to ensure expeditious disposal of Customs duty refund applications and to enhance transparency in refund disbursement is as follows:

(a) Receipt and acknowledgement of all refund applications: All refund applications made under Section 27 of the Customs Act, 1962 whether by post or courier or personal delivery, shall be received by the department and a simple receipt of having received the

"refund application" shall be issued immediately. The receipt should make it clear that the application has not been scrutinized for its completeness. These applications are required to be scrutinized for their completeness within 10 working days of their receipt, for giving acknowledgement by the Proper Officer as per the Customs Refund Application (Form) Regulations, 1995. Hence, if any deficiency is found in the application or any document is required by the department, the same shall be in formed at this stage of initial scrutiny itself within 10 working days of the initial receipt. This will avoid any chance for raising repeated queries to the applicant, in a piece-meal manner and bring certainty in dealing with refund applications.

(b) Processing of refund applications and their disposal: Application found complete in all respects after scrutiny, shall be processed on first-come-first served basis. If refund is due, an order for refund is required to be passed in terms of Section 27 (2) of the Customs Act, 1962 or where the claim for refund is found liable to be rejected, as the case may be, a speaking order shall be passed giving complete reasons for the order. Further, the order should indicate that the aspect of unjust enrichment has been examined based on the applicable guidelines. The order should also contain the findings of adjudicating authority on the documents produced in support of the claim and the basis for determining the amount as either refundable to the claimant or payable to the Consumer Welfare Fund or the claim not being admissible.

(c) Issue of cheque: Where the refund application is admitted, whether in part or in full, and claimant is eligible for refund, the Assistant/Deputy Commissioner of Customs may ensure that payment is made to the party within 3 days of the order passed after due audit, if any. In all such cases refund amount shall be paid to the applicant by a cheque drawn on the authorized bank with which the sanctioning authority maintains account. After the cheque is signed, it shall either be delivered to the claimant or his authorized representative personally or sent to him by Registered Post, Acknowledgement Due at Government cost, on the basis of pre-receipt already obtained from the claimant.

(d) Audit: Pre-audit of refund claims (other than those to be post-audited) will be conducted by the Assistant/Deputy Commissioner (Audit), in the Commissionerate Headquarters Office. Thereafter, the Assistant/Deputy Commissioner of Group/ Division will pass an order-in-original in respect of the claim. Thereafter, the orders-in-original passed in this regard shall be subjected to review by the

Commissioner concerned. The applications of refund of amount below ₹ 50,000/- may be post- audited on the basis of the random selection by Assistant/ Deputy Commissioner (Audit). The selection can be made in such a way that 25% of the refund applications are post-audited. The applications of refund for amount between ₹ 50,000/- and ₹ 5 lakhs should be compulsorily post-audited. This audit system is aimed at checking improper sanction and payment of refunds. However, this does not dispense with the verification of the refund vouchers and the re- conciliation of refunds, which shall be done by the Chief Account Officers. It may be ensured that where pre-audit is involved, the same is completed at the earliest so that the disposal of refund applications is not unduly delayed.

CVC's instructions: Under authority of Sect ion 8(1)(h) of the CVC Act, 2003 Central Vigilance Commission (CVC) has issued instructions to bring about greater transparency and account ability in the discharge of regulatory, enforcement and other public dealings of the Government organizations. These instructions require that status of individual applications/ matters should be made available on the organization's website and updated from time to time so that the applicants are duly informed about the status of their applications. It is further stated that the manual records maintained for various purposes may continue. In pursuance of CVC's instructions, all Commissioners of Customs shall establish a mechanism for maintenance of a comprehensive database in their respective website, indicating the receipt, acknowledgement, action taken for disposal (either payment or rejection) of refund applications and those pending at the end of the month. The details of refund application such as name of the claimant, file number, date of application, amount of refund claimed, date of its acknowledgement shall be indicated in chronological order by the date of its receipt. The applications may be serially numbered for each year and shall be shown in a single list indicating their respective status distinctly. The illustrative status that could be mentioned for easy understanding of any applicant may include the following: (i) refund application received but pending for scrutiny and acknowledgement (ii) refund application acknowledged for its completeness (iii) refund application found in complete and returned for rectification of deficiency (iv) refund application rejected by passing a speaking order (iv) refund application sanctioned, pending verification by audit (v) cheques issued for refunds sanctioned and paid to applicant/credited to consumer welfare fund. This is not exhaustive and any other stage of processing of refund application may also be indicated. An abstract at

the end of the month about the total number of refund applications received, acknowledged, disposed and pending may also be indicated. This online data base would be accessible to the trade and public as well as by all Customs officers to enhance transparency. Further, the status of individual applications for refund of Customs duty shall be up dated from time to time, at least daily, so that the applicants remain duly informed about the status of their applications. The data may be allowed for display in the website for three months period from the date of its final disposal and there after it can be moved to the history database.

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

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

8. IGST REFUND

1.1. IGST Refund module for exports is operational in ICES since 10.10.2017. As per Rule 96 of the CGST Rules 2017, dealing with refund of IGST paid on goods exported out of India, the shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India, once both the export general manifest (EGM) and valid return in Form GSTR-3 or Form GSTR- 3B, as the case may be, has been filed. Rule 96 further stated that the information on GSTR-1 shall then be transmitted electronically to Customs and the System designated by Customs shall process the refund claim.

The IGST refund module has been designed in line with the above rule and has an inbuilt mechanism to automatically grant refund after validating the Shipping Bill data available in ICES against the GST Returns data transmitted by GSTN. The matching between the two

data sources is done at Invoice level and if the necessary matching is successful, ICES shall process the claim for refund and the relevant amount of IGST paid with respect to each Shipping Bill or Bill of export shall be electronically credited to the exporter's bank account as mentioned with the Customs authorities.

1.2. Pre-requisites and precautions required to be taken by exporters for successful processing of refund claims:

(i) file GSTR 3B with taxable value for export and IGST paid against exports indicated in appropriate fields.

(i) File GSTR-1 or Table 6A for the exports made with correct details such as Invoice number, Taxable value, IGST paid, Shipping Bill number, Shipping Date and Port Code.

(ii) ensuring aggregate IGST paid amount claimed in GSTR 1 or Table 6A is not greater than the IGST paid amount indicated in Table 3.1(b) of GSTR 3B of the corresponding month

(iv) use Table 9 of GSTR-1 of the following month to amend the records of previous month so as to take care of issues mentioned in paras (ii) and (iii)above.

8.4 Ensuring hassle free processing of refund claims:

(a) Jurisdictional officers at gateway port may initiate swift penal action against shipping lines/ agents who fail to file either regular or supplementary EGMs electronically for cargo originating from ICDs.

(b) Jurisdictional officers in ICDs should ensure filing of local EGM i.e., train or truck summary, as the case may be, immediately after cargo leaves the port, leasing with the jurisdictional officers at the port for incorporation of Shipping Bills pertaining to the cargo originating in ICDs, in the EGMs filed at gateway port by the Shipping lines/agents and rectification of errors in local and gateway EGM, wherever necessary.

(c) Jurisdictional officers at gateway port should strictly monitor the EGM pendency and error reports available in ICES and get the EGM errors resolved in an expeditious manner by asking the Shipping lines/ agents to file requisite amendments and approving those amendments on ICES. Errors in shipping bill or in local EGM (i.e., truck or train summary), the remedial action has to be taken by jurisdictional officer in ICD.

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

A. Cases where there is no short payment:

(i) The Customs policy wing would prepare a list of exporters whose cumulative IGST amount paid against exports and interstate domestic outward supplies, for the period July' 2017 to March' 2018 mentioned in GSTR-3B is greater than or equal to the cumulative IGST amount indicated in GSTR-1 for the same period. Customs policy wing shall send this list to GSTN.

(ii) GSTN shall send a confirmatory e-mail to these exporters regarding the transmission of records to Customs EDI system.

(iii) The exporters whose refunds are processed/ sanctioned would be required to submit a certificate from Chartered Accountant before 31st October, 2018 to the Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018. In case there are exports from multiple ports, the exporter is at liberty to choose any of the ports of export for submission of the said certificate.

(iv) A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15th November 2018.

(v) Non submission of CA certificate shall affect the future IGST refunds of the exporter

(vi) The list of exporters whose refunds have been processed as above shall be sent to DG (Audit)/ DG (GST) by the Board.

B. Cases where there is short payment:

In cases where there is a short payment of IGST i.e., cumulative IGST amount paid against exports and interstate domestic outward supplies together, for the period of July' 2017 to March' 2018 mentioned in GSTR-3B is less than the cumulative IGST amount indicated in GSTR-1 for the same period, the Customs policy wing would send the list

of such exporters to the GSTN and all the Chief Commissioner of Customs.

(i) e-mails shall be sent by GSTN to each exporter referred in para (i) above so as to inform the exporter that their records are held up due to short payment of IGST. The e-mail shall also advise the exporters to observe the procedure under this circular.

(ii) The exporters would have to make the payment of IGST equal to the short payment in GSTR 3B of subsequent months so as to ensure that the total IGST refund being claimed in the Shipping Bill/GSTR-1 (Table 6A) is paid. The proof of payment shall be submitted to Assistant/Deputy Commissioner of Customs in charge of port from where the exports were made. In case there are exports from multiple ports, the exporter is at liberty to choose any of the ports of export.

(iii) Where the aggregate IGST refund amount for the said period is upto ₹ 10 lacs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST payment to the concerned Customs office at the port of export. However, where the aggregate IGST refund amount for the said period is more than ₹ 10 lacs, the exporter shall submit proof of payment (self- certified copy of challans) of IGST to the concerned Customs office at the port of export along with a certificate from Chartered Accountant that the shortfall amount has been liquidated.

(iv) The exporter would give an undertaking they would return the refund amount in case it is found to be not due to them at a later date.

(v) The Customs zones shall compile the list of exporters (GSTIN only), who have come forward to claim refund after making requisite payment of IGST towards short paid amount and complied with other prescribed requirements.

The compiled list may be forwarded to Customs policy wing, DG (Audit) and DG (GST). Customs policy wing shall forward the said list of GSTINs to GSTN. On receipt of the list of exporters from Customs policy wing, GSTN shall transmit the records of those exporters to Customs EDI system.

(vi) The exporters whose refunds are processed/sanctioned as above would be required to submit another certificate from Chartered Accountant / Cost Accountant before 31st October, 2018 to the same Customs office at the port of export to the effect that there

is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018. A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15th November 2018.

(vii) Non submission of CA certificate shall affect the future IGST refunds of the exporter. Post refund audit 4.

C. The exporters would be subjected to a post refund audit under the GST law. DG (Audit) shall include the above referred GSTINs for conducting Audit under the GST law. The inclusion of IGST refund aspects in Audit Plan of those units may be ensured by DG (Audit). In case, departmental Audit detects excess refunds to the exporters under this procedure, the details of such detections may be communicated to the concerned GST formations for appropriate action.

D. DG (GST) shall send the list of exporters to jurisdictional GST officers (both Centre / State) informing that these exporters have taken benefit of the procedure prescribed in this circular. The jurisdictional GST formations shall also verify the payment particulars at their end

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

- Customs dated 09.10.2018, Circular 40/2018 - Customs dated 24.10.2018]

B11: RE-IMPORTATION AND RE-EXPORTATION OF GOODS

1. Introduction:

1.1 Sometimes, indigenously manufactured goods, when exported, are returned back for various reasons including cancellation of export order or after exhibition/display etc., or after use in particular project/ contract and completion of the contract etc. (such as machinery). Similarly imported goods which may have discharged duties at the

time of original importation have also to be often sent out for repair, reconditioning etc. Private, personal imported property may also have to be sent abroad for repair within the warranty period and returned. There are also goods that may have to be sent for special processes like electroplating, polishing or coating and re- imported. Thus, specific legal provisions permit the facility of re-import and re-export of goods.

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

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

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

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

(i) On re-import of indigenously manufactured goods under duty Drawback/claim of refund of integrated tax paid, export under bond or under other claim of export incentives, essentially the duties equivalent to the export incentives etc. availed have to be paid, on re- importation. Thus, if the goods were exported on payment of GST, without claiming any rebate, and without claiming any export incentives such as Drawback or benefits of the duty exemption schemes, EPCG schemes, and where the indigenously manufactured goods are being returned then no Customs duties are leviable. Further, when the indigenously manufactured goods are exported for repair and returned without claiming any benefits, duty is to be paid

on a value comprising fair cost of repairs including cost of materials used in repairs, insurance and freight charges both ways. Similarly, in case of re-import of cut and polished precious and semi- precious stones exported for treatment abroad as referred to in Paragraph 4A.20.1 of the Foreign Trade Policy, duty is to be paid.

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

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

(i) Similar duty exemption provisions in case of re-import of the goods falling within the Fourth Schedule to the Central Excise Act, 1944(1of1944) are contained in Notification No.47/2017- Cus, dated 30.06.2017.

Goods manufactured in India or parts thereof that are re- imported for repairs or reconditioning or reprocessing/refining/ remaking etc. are exempt from duty subject to the condition that the re- importation takes place within a specified period; the goods are re-exported within six months of re-importation; the Assistant/ Deputy Commissioner of Customs is satisfied as regards the identity of the goods; and certain other conditions ensuring re-export including execution of bonds are fulfilled.

[Refer Notification No.158/95-Cus, dated 14-11-1995 as amended vide Notification 43/2017-Cus dated 30.06.2017]

(iv) Re-imported private personal property, which was imported earlier but exported out for any alteration, renovation, repair free of charge etc. is exempt from duty subject to the condition that the goods are repaired on free of charge basis in accordance with the terms of warranty given by the manufacturers and in accordance with the established trade practice and Drawback or other incentives have not been availed. However, certain Custom duties equivalent to the cost of alterations/ renovations/ additions/repairs, if any, are payable.

[Refer Notification No.174/66-Cus. dated 24-9-1966] as amended vide Notification 44/2017-Cus dated 30.06.2017

3. Re-exportation of imported goods:

3.1 There are often occasions where imported goods may have to be re-exported such as when the import goods are found defective after Customs clearance or are not found as per specifications or requirements. Various machinery items imported for use in certain projects or otherwise are also often to be re-exported by the original owner. Re-exports can be made by sea, air, baggage or post.

Section 74 of the Customs Act, 1962 provides for grant of Drawback @98% of the Customs duties paid at the time of importation, if the goods are re-exported by the importer, subject to certain conditions. The re-export is to be made within a maximum period of two years from the date of payment of duty on importation (which period can be extended on sufficient grounds being shown) and goods have to be identified with the earlier import documents and duty payment to the satisfaction of the Assistant/ Deputy Commissioner of Customs at the time of export. If such goods are used after importation, Drawback is granted on a proportionate basis but if such goods are re-exported after more than 18 months of import 'nil' Drawback is admissible. Further, no Drawback of the import duty paid is permissible for specific categories of goods such as wearing apparel, tea chests, exposed cinematographic films passed by Film Censor Board, un-exposed photo graphic films, paper and plates and x- ray films. Also, in respect of motor vehicles imported for personal and private use the Drawback is calculated by reducing the import duty paid according to the laid down percentage for use for each quarter or part thereof, but upto maximum of four years. Further Circular 21/2017-Cus dated 30.06.2017 has been issued post introduction of GST in this regard.

[Refer Notification No.19/65-Cus, dated 6-2-1965 and Re-export of imported Goods (Drawback of Customs Duties) Rules 2017]

3.2 Section 26A of the Customs Act, 1962 allows refund of import duty if the imported goods are found defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods. One of the conditions for claiming refund is that the goods should not have been worked, repaired or used after the importation except where such use was indispensable to discover the defects or non- conformity with the specifications. Another condition is that the goods are either exported without claiming Drawback or abandoned to Customs or destroyed or rendered commercially valueless in the presence of the Proper Officer within a period of 30 days from the date on which the Proper Officer makes an order for

the clearance of imported goods for home consumption. The period of 30 days can be extended by the jurisdictional Commissioner of Customs on sufficient cause being shown. However, no refund shall be available in respect of perishable goods and goods which have exceeded their shelf life or their recommended storage-before- use period.

B11A : PROCEDURES OF RE-IMPORT UNDER CUSTOMS VIS-A-VIS UNDER GST REGIME

1. Introduction:

Any goods manufactured outside India and bringing in to India is called "imports', whereas any goods already exported out of India or send to another country and the same goods are again import back into India, act is called re-imports. Re-imports are goods imported in the same place as from where they were as previously exported.

Imported goods - Section 2(25) of the Customs Act,1962 defines "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

Export goods- Section 2(19) of the Customs Act, 1962 defines "export goods" means any goods which are to be taken out of India to a place outside India.

2. Re-importation of Goods:

There are several reasons why exported goods might return to the country of origin. The major reasons of return of exported goods may be because the goods were found defective and need further repair or that the overseas purchaser may have defaulted on payments or cancelled the order of exported goods. Goods which are exported out of India would, on their re-import, attract Customs duty like any import unless specifically exempted by a notification.

3. Statutory provision under Customs Act:

Section 20 of the Customs Act, 1962 prescribes –

"Re-importation of goods". – If goods are imported into India after exportation there form, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof." Sections 25, 25A and 25B of the Customs Act, 1962

prescribes –

Section 25. Power to grant exemption from duty - "If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notifications, in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of any specified description from the whole or any part of duty of customs leviable thereon."

4. Section 25A. Inward processing of goods:

Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are imported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely :—

(a) the goods shall be re-exported after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order for clearance of the imported goods is made;

(b) the imported goods are identifiable in the export goods; and

(c) such other conditions as may be specified in that notification."

5. Section 25B.Outward processing of goods:

Notwithstanding anything contained in section 20, where the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification, exempt such of the goods which are re-imported after being exported for the purposes of repair, further processing or manufacture, as may be specified therein, from the whole or any part of duty of customs leviable thereon, subject to the following conditions, namely:—

(a) the goods shall be re-imported into India after such repair, further processing or manufacture, as the case may be, within a period of one year from the date on which the order permitting clearance for export is made;

(b) the exported goods are identifiable in the re-imported goods; and

(c) such other conditions as may be specified in that notification."

Thus, normal customs duty will be payable on re-imports unless

specifically exempted by a notification. However, certain concessions and exemptions are available for re-imports. These are summarized as under:

Re-import of same goods.- If the same goods which were exported are re-imported within 3 years (extended by another 2 years by the Commissioner of Customs, also extendable to 10 years in case of re-import from Nepal) by same person and there should be no change in the identity of the goods between the time of their export and re-import. Customs duty equal to the export benefit (such as drawback claim plus central excise duty, which was exempted when the goods were initially exported) availed at the time of their export. However, this concession is not applicable to goods which were exported by EOU or FTZ units. Goods should be re-imported within specified time limit vide Notification No.94/1996-Cus, dated 16.12.1996.

Re-import of goods exported under DEEC / EPCG Schemes.- In case of goods exported under the DEEC Scheme or EPCG Scheme, re-importation should take place within one year (extended by another year by the Commissioner), the period of full export performance under the EPCG Scheme should not have expired and endorsement of re-import made in the record thereunder, details of the re-importation should be initiated to the Assistant Commissioner of Customs and the licensing authority and their acknowledgement obtained.

Re-import by registered manufacturers.– In case of manufacturers –exporters registered with GST Department the re-imported goods can be taken to the manufacturer's factory without payment of GST under a bond executed with the Assistant Commissioner of Customs which would be cancelled on receipt of a certificate of GST authorities that re-imported goods have been received in the factory.

Cases eligible for free re-import.- As per the Notification 94/1996-Cus,dated 16.12.1996, re- imported goods which had not claimed any benefit at the time of export, such as those sent abroad for demonstration or exhibition or as samples, are eligible to be imported without payment of any duty. This duty exemption, however, does not apply in the case of re-imports effected by 100% EOU/ EPZ units or those which had been exported from a bonded warehouse. For these goods, there is a more liberal scheme for re-import, repairs and reconditioning, etc. under Customs bond and re-export of the goods thereafter, under Notification No. 134 / 94-Cus., dated 22.6.1994.

Re-import of goods exported for repair. – As per Notification No. 94/1996-Cus,dated 16-12-1996, if goods are sent abroad for repairs, can be re-imported by paying duty only on the value aggregate of (i) fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not) and (ii) insurance and freight charges both ways,

Re-import of goods and parts thereof for repairs, reconditioning, reprocessing, remaking or similar other process:

Notification No.158/95-Cus, dated 14.11.1995, which provides the procedures as under.

(1) The Notification was issued for re-imports, which is specific for exempting goods manufactured in India and parts of such goods, whether of India or foreign manufacture when re-imported in to India for repairs or for re-conditioning from the duty of Customs, basic as well as additional. Here also, similar conditions such as identity of goods being established, re-importation taking place within a period of three years etc. are provided. Importantly, another condition is that the re-imported goods are re-exported after repairs within a period of Six months from the date of actual clearance of the goods (extendable for another six months by the Commissioner) and to ensure that the importer has to execute a bond for the amount of duty likely to be involved, supported by 25% bank guarantee. In case of failure to re-export, duty would have to be paid.

(2) In case the re-importation is for re-processing, refining, re-making or any other similar process, re-importation should take place within one year from the date of exportation and not three years as in the case of re-importation for repairs or re- conditioning. The process loss would be exempted from basic as well as additional customs duty. The Notification also covers situations such as re-packing of goods earlier exported, re-making of tablets of damaged medicines, re-processing of chemicals and is also applicable to re-import of goods which were earlier exported under any scheme like DEEC, 100% EOU, etc; subject to fulfillment of other prescribed conditions.

Therefore, in the above situations it is clear that no customs duty is payable if goods are re- imported for repairs, reconditioning, reprocessing, dyeing, refining, or similar process. It was clarified that the period of 6 months should be calculated from date of actual clearance of goods from the port-C.B.E & C. Circular No.14/97-Cus, dated 3.6.1997 [1996(93) E.L.T. (T8)].

Goods imported for exhibitions: Regarding goods imported for fair/exhibition / demonstration, subject to re-export, hence no customs duty is payable if goods are re-exported after completion of exhibition.

Re-import of personal property which was sent out for repairs : A separate exemption notification also has been issued to take care of re-importation of the private personal property which was imported earlier but exported out any alternation, renovation, repair free of charge etc. If the goods are repaired on free of charge basis in accordance with the terms of warranty given by the manufacturers and in accordance with the established trade practice and subject to certain laid down conditions about non-availment of any drawback or other facilities the whole duty of customs is exempted in terms of notification No. 174/96-Customs, dated 24-9-1996. Hence, if private / personal property which were imported were re-exported for alternations, renovation, repair free of charge etc. it can be re-imported without payment of customs duty. However, if any alternations, renovations, or additions or repairs executed subsequent to their export, certain customs duties are payable equivalent to the cost of alternations / renovations / additions.

No duty on share certificates re-imported: In view of notification No. 94/96-Cus, dated 26-12- 1996, C.B.I&C has clarified that Customs duty will not be leviable on share certificates of Indian companies sent abroad and brought back for sale or dematerialization.

Re-imports under GST regime:

In the GST regime, as per Section 16 of the IGST Act, 2017 prescribes supply of goods and services for exports are to be treated as "Zero rated supplies" implying that registered person exporting goods and service shall follow the procedure of export under bond or letter of undertaking without payment of IGST and claim refund of unutilized input tax credit or on payment of IGST and claim refund of the IGST so paid on goods and services exported in accordance with the provisions of Section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

On introduction of GST, a number of Circulars and Notifications issued by C.B.I & C, to clarify the taxability and exemptions provided to the goods re-imported into India.

Notification No. 45/207-Cus dated 30.6.2017 provided exemption to re-import of goods exported under duty drawback, rebate of duty or

under bond on or after the 1st July, 2017. This Notification applies to exports made after 1-7-2017.The description of export goods under this Notification is listed as under:

1. Goods exported,
   (a) under claim for drawback of any Customs or Excise duties levied by the Union,
   (b) under claim for drawback of any Excise duty levied by a State,
   (c) under claim for refund of integrated tax paid on export goods,
   (d) under bond without payment of integrated tax,
   (e) under duty exemption scheme (DEEC/Advance Authorisation/ DFIA) or Export Promotion Capital Goods Scheme (EPCG).
2. Goods, other than those falling under Sl. No. 1 exported for repairs abroad.
3. Cut and polished precious and semi-precious stones exported for treatment abroad as referred to in Paragraph 4A.20.1 of the Foreign Trade Policy, other than those falling under Sl. No. 1.
4. Parts, components of aircraft replaced or removed during the course of maintenance, repair or overhaul of the aircraft in a Special Economic Zone and brought to any other place in India.
5. Goods other than those falling under Sl. No. 1, 2, 3 and 4. Provided that the Assistant Commissioner of Customs/Deputy Commissioner of Customs is satisfied with goods are the same which were exported and no change of identity of goods and goods are re-imported within seven years after their exportation or within such extended period, not exceeding three years, as may be allowed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, on sufficient cause being shown for the delay; in case of goods exported under various duty exemption scheme.

Notification No. 46/2017-Cus, dated 30-6-2017 provided exemption to re-import of goods exported under duty drawback, rebate of duty or under bond on or after the 1st July, 2017 and in suppression of Notification No. 94/96-Customs, dated the 16th December, 1996. The description of goods and conditions are the same for re-import of exported goods like Notification No.45/2017- Cus. This Notification applies to exports made before 1-7-2017.

C.B.I.&C. Circular No.45/2018-Cus., dated 19-11-2018[2018(362) E.L.T (T51)], provides Clarification for re-imports through post under Notification Nos. 45/2017-Cus., dated 30- 6-2017 and 46/2017-Cus., dated 30-6-2017 and clarified that "The harmonious reading of these two notifications make it clear that the intention of the said paras 2 of respective notification is only to prescribe that one notification applied to the exports made before 1-7-2017 (46/2017-Cus.) and the other applied to the exports made on or after 1-7-2017 (45/2017-Cus.). In other words, these are cutoff date for applicability of said notifications. In all other respect, the concessions available under notification No. 94/96-Cus. (in the pre-GST period) have been continued through these notifications. It may be seen that the reference to Section 51 of the Act in the notification does not seek to deny the benefit to the goods to which Section 51 may not apply. By implication, if Section 51 does not apply to certain goods the para 2 may not apply. However, even in these cases the application of notifications does not pose any challenge as the intended nature of duty/tax concession is clearly stated in the opening para of the Notifications e.g. 45/2017-Cus. provides exemption from duties as applicable after introduction of GST. Accordingly, it is being clarified that the notification No. 45/2017-Cus. and 46/2017- Cus., both dated 30th June 2017 are also applicable to the re- imports of goods which were earlier exported through Post.

C.B.I & C, Circular No. 21/2019-Cus, dated 24-7-2019[2019(367) E.L.T. (T17)], clarified that regarding applicability of Notification No. 45/2017-Cus, dated 30-6-2017 on goods which were exported earlier for exhibition purpose/consignment basis.

Further, clarified that even in cases where exports have been made to related or distinct persons or to principals or agents, as the case may be, for participation in exhibition or on consignment basis, but, such goods exported are returned after participation in exhibition or the goods are returned by such consignees without approval or acceptance, as the case maybe, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the consignees. Hen ce, re-import of such goods after return from such exhibition or from such consignees will be covered by Entry at Serial No. 5 of the Notification No. 45/2017-Cus, dated 30-6-2017, provided re-import happens before six months from the date of delivery challan.

C.B.I & C, Circular No. 21/2019-Cus., dated 24-7-2019, clarified that that the activity of sending/taking the specified goods (i.e. goods sent/taken out of India for exhibition or on consignment basis for export promotion except the activities satisfying the tests laid down in Schedule I of the CGST Act, 2017) out of India do not constitute supply within the scope of Section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as 'Zero rated supply' as per the provisions contained in Section 16 of the IGST Act, 2017. Also that there is no requirement of filing any LUT/bond as required under section 16 of IGST Act, 2017 for such activity of taking specified goods out of India.

Situation mentioned at Sl. No. 1(d) of the Notification no. 45/2017-Cus, dated 30-6-2017 requires payment at the time of re-import of integrated tax not paid initially at the time of export, for availing exemption under the said notification. As in the case of re-import of specified goods, no integrated tax was required to be paid for specified goods at the time of taking these out of India, the activity being not a supply; hence the said condition requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable. It is clarified that such re-import cannot be taken to be falling under situation at Sl. No. 1(d) of the said notification. Such cases will fall more appropriately under residuary entry at Sl. No. 5 of the said notification even though those specified goods were exported under LUT, in view of the fact that the activity of sending/taking specified goods out of India is neither a supply nor a zero rated supply.

It is also clarified that, even in cases where exports have been made to related or distinct persons or to principals or agents, as the case may be, for participation in exhibition or on consignment basis, but, such goods exported are returned after participation in exhibition or the goods are returned by such consignees without approval or acceptance, as the case maybe, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the consignees. Hence, re-import of such goods after return from such exhibition or from such consignees will be covered by Entry at Serial No. 5 of the Notification No. 45/2017 -Cus, dated 30-6-2017, provided re-import happens before six months from the date of delivery challan.

Therefore, unlike earlier provisions of Customs, under GST regime also certain exemptions also provided with due considerations of various provisions of the CGST Act / IGST Act read with Customs Act to allow re-imports of goods, which were exported under bond or on payment of IGST and re-exports or imported earlier but sent to abroad for reconditioning / repair and re-imported in to India in terms of notifications issued under Customs and GST Acts.

Case Laws:

The Commissioner (Appeals), in the case of India Crafts, v. D.C. Customs, reported in 1996 (84) E.L.T. 387 (Commr. Appl.), held that "It is found that the goods were not re-imported in their original export packing but the identity of the goods was established on the basis of the description and the quantity declared and tag markings found with respect to export documents. It is also mentioned that they have not claimed drawback against the concerned shipping bills. The impugned order also stated that the appellants mentioned that at the time of exportation of the subject goods, they had not submitted any type of bond and that necessary correction was made in the DEEC books in respect of this consignment. The appellants also brought out that the importation is not hit by the negative list in view of the saving clause. The goods are clearly eligible for the benefit of Section 20." [Para 7]

The Hon'ble Supreme Court in the case of Tata Tea Limited, v. Commissioner of Customs, reported in 1999 (114) E.L.T. 775 (S.C.), held that "definition of 'import' as given in clause (23) of Section 2, imported goods would include re-imported goods as well and therefore the goods sent out of India and re-imported would also be liable to payment of duty in the same manner in which they would have been liable if imported for the first time in India." [Para 7]

The Hon'ble Tribunal in the case of BHEL v.CC, reported in 1998(97) E.L.T.88 (Madras), held that such re-import within three years is permissible as per (a) above only when 'same' goods are returned without any processing carried out on them. In this case, it was held that if goods re- imported after drilling and re-burring are not identifiable as same goods can be allowed only on payment of duty.

The Hon'ble Tribunal in the case of NTPC Ltd. v. CC, reported in 2011(271) E.L.T. 535 (Madras), held that scrap generated during repair cannot be allowed to be imported at concessional rate of duty.

The Hon'ble Tribunal in the case of Ford India, v, CC, reported in

2008(228) E.L.T. 71 (Tri. Chennai), held that if goods are imported after fitment to or assembly wit h other goods, it cannot be said that 'same' and full exemption is available.

Thus, goods indigenously manufactured when exported under Bond or Zero rated supply is returned back for various reasons for repairs, replacement and re-export. Similarly, imported goods which may have discharged duties at the time of original importation have also to be often sent out for repair, reconditioning etc. private, personal imported property may also have to be sent abroad for repair within the warranty period and returned. But, import duties of Customs are leviable for re-imports and no distinction is made whether the goods being imported had discharged duties earlier and they are being re-imported after exportation for particular purposes. So, the Government has issued notifications from time to time to get exemption of Customs duty for re- imports in all such cases of re-imports

B12 : DISPOSAL OF UNCLAIMED/UNCLEARED CARGO

1. Introduction:

1.1 Imported goods are allowed to be cleared for home consumption by the Customs, if there are no restrictions or prohibitions, assessment formalities have been completed, and duty leviable has been paid. However, it is often the case that the importer files the Bill of Entry but does not clear the goods due to various reasons such as financial problems, lack of demand for the goods, etc. Such goods are called 'uncleared goods'. In some cases, the importer does not even come forward to file the Bill of Entry for clearance of goods. Such goods are known as 'unclaimed goods'.

1.2 In terms of the provisions of the Customs Act, 1962, the duty is leviable on imported goods, regardless of whether they are cleared by the importers or not. Similarly, dues of other agencies, such as, carriers and custodians for carriage and storage of goods respectively, may also arise. Where the importers do not come forward to make payment of such dues, the Customs duty and other dues can be recovered by selling the unclaimed/uncleared goods.

2. Legal provisions:

2.1 As per Section 48 of the Customs Act, 1962, if any goods brought in to India from a place outside India are not cleared for home consumption or warehoused or transshipped within 30 days from the date of unloading thereof at a port, such goods can be disposed of by

the custodian. The Act, however, stipulates that the goods can be sold only after a notice is issued to the importer and the permission from Customs is obtained. The provisions relating to manner of disposal of unclaimed/uncleared goods and apportionment of sale proceeds thereof are contained in Sections 48 and 150 of the Customs Act, 1962.

3. Procedure for sale of unclaimed/uncleared goods:

The Board has laid down a comprehensive procedure for disposal of unclaimed/ uncleared goods. The procedure for disposal of cargo which are unloaded at a Customs Station after being brought from outside India on or after 01.04.2018 and which fall in the category of 'unclaimed/ un-cleared' in terms of section 48 of the Customs Act, 1962 is as follows:

(i) The concerned custodian of the Customs Station shall prepare a list of cargo lying unclaimed/un-cleared in the bonded area of the Customs Station for more than 30 days from the date of arrival of such cargo in the Customs Station. This list shall be sent to the jurisdictional Commissioner of Customs to intimate as to whether listed goods/cargo can be taken up for disposal through public auction. The list will contain the following details:

(a) Bill of Lading No. and date
(b) Container number
(c) Description of goods
(d) Weight
(e) Name of the consignor (exporter) and consignee (importer).

These details will be furnished as per the information available from the IGM message of ICEGATE.

(ii) The custodian shall simultaneously update the list with importer's name and address .In those cases, where the address of the importer is not mentioned in the IGM message from ICEGATE, a notice shall be sent to the respective Shipping Line requesting them to give address of the importer/consignee within one week of receipt of the notice.

The Shipping Line will be obliged to respond with the relevant details within 7 days of receipt of letter from the custodian. The Shipping line will also be requested by the custodian to contact the importer and ask him to clear the cargo from the concerned Customs Station.

Jurisdictional Commissioner of each customs station shall issue instructions to the officers and staff posted at the station to ensure that details of all goods/shipments which are put on hold for investigation or otherwise by DRI/Preventive/SIIB or any other agency are furnished to the Disposal branch of the customs station and the concerned custodian immediately, under proper receipt and acknowledgement. This will ensure that the Disposal branch and custodian are at all times aware of the goods/shipment s/ containers for which 'No Objection Certificate' from the concerned agency would be required before initiating disposal process.

(iii) From the said list, Customs will segregate shipments which are disputed/stayed shipments required to be retained for investigation/ adjudication/court procedure etc. Customs shall also segregate shipments containing motor vehicles or other goods requiring Licence/ Permission/ Certification from DGFT or any other Department. Customs will furnish to the custodian within 10 days of the receipt of the said list, the details of shipments not to be included in the auction process. Customs shall also choose 10% shipments from the list of shipments segregated for inclusion for the auction process for which detailed inventory shall be made in their presence for sample check. This will be conveyed to the concerned custodian along with the list of shipments/containers which are required to be retained.

(iv) (a) Based on the intimation received from Customs, the concerned custodian will issue a notice to importer under Section 48 of the Customs Act 1962 advising him to clear the goods within 10 days from the date of issue of the notice failing which the goods will be placed in public auction. Notice will be sent to the importer on the address as given in IGM message available with the custodians, or the address ascertained from the shipping lines in terms of the para 3 (ii) above.

(b) A copy of the notice issued to the importer under section 48 of the Customs Act, 1962 shall also be affixed on the notice board of the Customs Station.

(v) The concerned custodian, in the next 20 days shall prepare a detailed inventory of the shipments which are not required to be retained by Customs for any purpose. In doing so, they will associate the Customs in 10% of the consignments for which Customs has already intimated that inventory has to be drawn in their presence for sample check.

Within 7 days of drawing up of inventory, the concerned custodian shall approach the jurisdictional Customs authorities along with the said inventory seeking No Objection Certificate (NOC) in respect of all containers which are to be taken up for auction through the e-auction/ tender. The inventory should have a detailed description of the items, to enable Customs to easily identify the regulatory requirements in respect of the consignments mentioned in the inventory and it shall clearly indicate variation in description of goods with respect to description of goods mentioned in the list already forwarded as per para 3 (i), above.

(vi) Customs shall examine the list and within 15 days of receipt of such request, intimate to the custodian, details of the listed shipments which can straight way be taken up for auction as they do not require any regulatory clearances (NOC from FSSAI, Drug Controller, BIS etc.), or do not need any chemical analysis to identify the contents and fitness for consumption/usage. The consignments for which such unconditional NOCs are issued by Customs, shall be taken up for auction bye-auction through MSTC to ensure maximum outreach and participation .In order to ensure quick and regular turnover, the concerned custodian shall attempt to hold at least one auction each month. In case the list is incomplete and does not have the complete details for Customs to clearly pin point the regulatory requirements, Customs shall indicate the deficiencies in the list, within this period of 15 days.

(vii) In case regulatory clearances from agencies other than Customs are required such as NOC from FSSAI, Drug Controller, BIS etc., or samples of the consignment are required to be chemically analyzed to identify the contents and fitness for consumption/ usage, Customs shall identify such requirement and intimate to the concerned custodian within 15 days of the receipt of complete list. The concerned custodian will then approach the jurisdictional Customs officer for assistance in obtaining the said regulatory clearance. If in this process, chemical analysis is required, Customs shall draw the samples and forward the same to the respective agency for testing. The required testing fees or such other charges required to be paid to the concerned agency, shall be paid directly by the concerned custodian to the said agency. The concerned agency will be required to submit the test reports within 15 days of receipt of the samples.

(viii) NOC for such consignments shall be issued by Customs only after receipt of the required clearance/result of chemical analysis

from the concerned agency, without which the concerned custodian shall not put the said consignment for auction.

(ix) In case the result of chemical analysis, or report from FSSAI, Drug Controller, Plant Quarantine etc. indicate that the sample is not fit for consumption/ usage, Customs shall inform the concerned custodian about the need for destruction of the same and the concerned custodian shall arrange to destroy the same at their expense, after obtaining the requisite environmental and other clearances as per law. Date of the proposed

Destruction shall be intimated to Customs at least 15 days in advance, to enable the representative of the Customs to witness the same, should the need for the same be felt.

(x) The value of the shipment/lot included in the auction list shall be fixed in next 7 days by a panel of Govt. approved valuers appointed by the concerned custodian which shall include an expert on the product line without involvement of the local Customs authorities. The values assessed by the approved valuers appointed by the custodians shall form the "reserve price".

(xi) The concerned custodian shall fix a date immediately after assessment of value of such shipment/lot, for holding the auction/ tender and communicate such date to the jurisdictional Commissioner of Customs and the Assistant/Deputy Commissioner, Disposal branch of the Customs Station. The Assistant/ Deputy Commissioner shall nominate, if necessary, an officer not below the rank of Superintendent/Appraiser to witness the auction/tender. Customs shall not withdraw any consignment at the last moment from the auction/tender except with the written approval of the jurisdictional Commissioner of Customs.

(xii) The shipment/ lot in respect of which NOC has been given by Customs, shall be taken up for auction. All bids of value equal to or more than the reserve price, or those up to 5% less than the reserve price, shall be treated as successful bids for sale of goods. Remaining shipments/ lots of the list shall again be taken up for second auction against the same reserve price. In case, shipments or lots, where bids are not received up to the reserve price, shall again be taken up for third auction against the same reserve price. Unsuccessful shipments/ lots of third auction, in respect of which three auctions have already taken place, shall be considered for fourth auction against the reserve price fixed before the first auction of such shipments/ lots, however, in the

fourth auction such shipments/lots are to be necessarily sold for the highest bid regardless of the reserve price fixed. In the event of the shipments/lots not being disposed of in the first auction, subsequent auction/ tender should be conducted in a time bound manner and such shipments/lots should be taken up in the next auction. Custodian shall furnish shipment/ lot wise bids received in respect of each auction to the jurisdictional Commissioner of Customs for approval. Further, if these goods remain unsold and pass into the category of landed-more than one-year prior, the concerned custodian can sell the same following the independent procedure as detailed in para 3 of CBIC Circular No.50/2005- Cus .dated 01.12.2005 without any reference to Customs, and adjusting the number of auctions/ tenders to which the lot was already subjected to against the prescribed number of four such auctions/ tender. However, even for such goods the requisite NOC from Customs will be obtained by the concerned custodian following the procedure laid down in par as above.

(xiii) After the successful bidder has been informed about the result of the auction, a consolidated bill of entry, buyer-wise will be filed with the Customs in the prescribed format by the concerned custodian for clearance of the goods as per Section 46 of the Customs Act 1962 read with Un-Cleared Goods (Bill of Entry) Regulations, 1972 (Regulation 2 & 3).

(xiv) (a) The proper officer of Customs shall assess the goods to duty in accordance with the extant law within 15 days of filing of the Bill of Entry and after assessment inform the amount of duty payable to the concerned custodian.

2) The auctioned goods shall be handed over to the successful bidder after assessment and out-of-charge orders given by the proper officer, on payment of dues. 4. The above procedure shall be applicable to cargo, which are unloaded at a Customs Station after being brought from outside India on or after 01.04.2018 and which fall in the category of 'unclaimed/ un-cleared' in terms of section 48 of the Customs Act, 1962. It would also be applicable to all unclaimed/un-cleared goods brought from outside India before 01.04.2018 (unclaimed/ uncleared for a period not exceeding one year) in respect of which:(a)auction process has not started yet; or(b) list of cargo proposed for auction has been sent to Customs by the custodian but Customs has not yet provided the necessary information as referred in the para 3 (i) and 3 (iv) above.

3.1 The above procedure is also be applicable to all unclaimed/ un-cleared goods brought from outside India before 01.04.2018 (unclaimed/ uncleared for a period not exceeding one year) in respect of which:

(a) auction process has not started yet; or

(b) list of cargo proposed for auction has been sent to Customs by the custodian but Customs has not yet provided the necessary information as referred in the para 3 (i) and 3 (iv) above

3.2 The sale proceeds of the auction shall be disbursed as per Section 150 of the Customs Act 1962.

3.3 In case the entire process of auction is not concluded within 180 days of the commencement of auction, the custodian shall inform the bidder about further extended time which may be required to conclude the auction process. Where ever, the bidder indicates his unwillingness to wait further, his successful bid will be cancelled and the earnest money, if any deposited with the custodian by the bidder will be returned to the bidder under intimation to Customs. Otherwise, the auction process shall be concluded within the extended time conveyed to the bidder.

3.4 Wherever, any amount of earnest money is deposited by the bidder with the custodian, the same shall be refunded to the bidder within one week of announcement of auction results where the bid fails to succeed in the auction.

[Refer Circular No.50/2005-Cus, dated 1-12-2005, Circular No.52/2005-Cus, dated 09.12.2005 & Circular No. 49/2018- Customs dated 03.12.2018]

4. Disposal of hazardous waste:

4.1 The disposal of hazardous waste is to be carried out in accordance with the directions dated 14 -10-2003 of the Hon'ble Supreme Court in WP No. 657/95. Basically, the Apex Court has directed that such waste are to be categorized as either those that are banned or those that are regulated. The waste in the banned category should be either re-exported, if permissible, or destroyed at the risk, co-stand the consequence of the importer. The waste in the regulated category are permitted for recycling and reprocessing within the permissible parameters by Specified authorized persons having the requisite facilities under the rules. Disposal of hazardous and other waste regulated by the provisions of Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016,

shall be in accordance with the provisions of the said rules. In case of illegal import of the hazardous or other waste, the importer shall re-export the waste in question at his cost within a period of ninety days from the date of its arrival into India and its implementation will be ensured by the concerned Port and the Custom authority. In case of disposal of such waste by the Port and Custom authorities, they shall do so in accordance with these rules with the permission of the Pollution Control Board of the State where the Port exists. In case of illegal import of hazardous or other waste, where the importer is not traceable then the waste either can be sold by the Customs authority to any user having authorization under rules from the concerned State Pollution Control Board or can be sent to authorized treatment, storage and disposal facility.

[Refer Circular No.31/2004- Cus, dated 26-4-2004]

5. Compliance with restrictions/prohibitions under various laws:

5.1 The disposal of goods, which are subject to restrictions/ prohibitions under any law for the time being in force, can only be made in terms of the relevant statutes.

6. Mechanism for interaction between custodians and Customs:

There would be a formal mechanism for interaction and a quarterly meeting between the custodians and Customs to review the pendency of uncleared cargo and to reconcile/update the status of pending consignments by matching the pendency with the custodian with the figures of uncleared consignments as per Customs records.

[Refer Circulars No.31/2004-Cus, dated 26-4-2004, No.50/2005- Cus, dated 1-12-2005, No.52/2005-Cus, dated 10-12-2005, No.11/2006-Cus, dated 16-2-2006 and Instruction F. No. 450/97/2010-Cus. IV, dated 22-7-2010].

PROVISIONS OF CAROTAR-2020 AND FTA BENEFITS

TRADE Agreements are based on the principles of WTO agreements. Trade agreements are between two or more countries or trading blocs that primarily agree to reduce or eliminate customs tariff and non tariff barriers on substantial trade between them normally cover trade in goods (such as agricultural or industrial products) or trade in services (such as banking, construction, trading etc.).

The Ministry of Commerce & Industry, (Department of Commerce), the Government of India has been taken number steps for negotiating with the various countries to enter into trade agreements for imports of goods on concession of Customs duty or preferential rates under the Customs Tariff. The various Trade Agreements are summarised as under:

(i) FTA (Free Trade Agreements)

(ii) PTA(Preferential Trade Agreement)

(iii) CECA(Comprehensive Economic Cooperation Agreement)

(iv) CEPA(Comprehensive Economic Partnership Agreement)

Accordingly, Ministry of Finance , Department of Revenue, the Government of India, in order to provide benefit of concession of Customs duty or preferential rates of Tariff under the various trade agreements. The Government of India has issued time to time Notifications for Customs Tariff (Determination of Origin of goods under the Preferential Trade Agreements) with Member States of the Association of Southeast Asia Nations (ASEAN), South Asian Free Trade Area (SAFTA). These Notifications provides Tariff rates under various Chapter heading/sub-heading of all goods for concessional Customs duty/preferential rates for the goods imported from various countries under FTA. The preferential rates/concession of Customs duty are provided for imported goods under Trade Agreements were notified under the customs Notifications issued in terms of Section 5 of the Customs Tariff Act, 1975. The C.B.I&C also have issued time to time circulars for clarification on preferential rates for imported goods as well as Guidelines for Provisional Assessment under Section 18 of the Customs Act 1962 and implementations of Section 28DA of the Customs Act, 1962.

The C.B.I & C has been issued Notification & Circular on CAROTAR, 2020, in respect of Rules of Origin under Trade Agreements (FTA /PTA /CECA/ CEPA)/for verification of Certificates of Origin.

Conditions of preferential Tariff under Trade Agreements:

The Rules of Origin are important in the context of making an assessment on the application of preferential tariff under an FTA. Hence, without the rules of origin, the preferential tariffs under an FTA cannot be implemented. Moreover, the non-members to the FTA are not provided with the benefit of the preferential tariffs, agreed

between the FTA partners. The rules of origin are enforced through a certificate of origin that is issued by authorised agencies of the trading partner.

Procedure for obtaining Certificate of Origin:

A Certificate of Origin is a certificate that is used to identify the country of manufacturing of any goods. It is a necessary instrument for import for cross-border trades, as agreed upon by trade agreements and treaties by nations. The overseas exporter is required to apply to the authorised agencies of his jurisdiction for issuance of the certificate of origin and he should shipped goods along with the Certificate of Origin.

Procedure to avail concession of Customs duty:

Upon receipt of shipment of imported goods at the port of discharge, the importer has to file Bill of Entry under Section 46 of the Customs Act, 1962 and in the said Bill of Entry, the importer has to mention the details such as Serial Number of Certificate of Origin, date of issue of Certificate of Origin for claiming exemption of Basic Customs duty or preferential rates of duty as per Customs Tariff and also mention the Notifications Number issued under various Trade Agreements.

Verification of Certificate of Origin:

"Verification" means verifying genuineness of a certificate of origin or correctness of the information contained therein in the manner prescribed by the respective Rules of Origin. The Government of India, Ministry of Finance (Department of Revenue) issued a set of rules is called the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (in short CAROTAR, 2020) vide Notification No.**81/2020-Customs (N.T.)** dated 21.08.2020 and these rules apply to import of goods into India where the importer makes claim of preferential rate of duty in terms of a trade agreements.

The very objective of the these CAROTAR, 2020 rules for verification of Certificate of Origin by the Customs Authority at the time of assessment of Bill of Entry for imported goods clear for home consumption and allow benefits of concession of Customs duty or preferential rates of duty as specified under Tariff Notifications were issued under the various Trade Agreements.

The assessing officer on the basis of information and documents received, if the proper officer is satisfied that the origin criteria

prescribed in the respective Rules of Origin have been met, he shall accept the claim and inform the importer in writing within fifteen working days from the date of receipt of said information and documents.

Where the importer fails to provide requisite information and documents by the prescribed due date or where the information and documents received from the importer are found to be insufficient to conclude that the origin criteria prescribed in the respective Rules of Origin have been met, the proper officer shall forward a verification proposal in terms of rule 6 to the nodal officer nominated for this purpose.

The assessing officer cannot denied the benefits of concession Customs duty or preferential rates to importer under various trade agreements without verification of Certificate of Origin as prescribed vide C.B.I&C, Circular No**.38/2020**-Customs., dated 21.08.2020 and CBIC vide its Notification No.81/2021-Customs (N.T.) dated 21.08.2021 (CAROTAR Rules 2020) prescribed as per clause 3 of point no-8 that "In the event of a conflict between a provision of these rules and a provision of the Rules of Origin, the provision of the Rules of Origin shall prevail to the extent of the conflict".

Denial of benefits to the importers:

The field formation officers of Customs/assessing officers of Customs having their own interpretation and denying the benefits of concession Customs duty or preferential rates duty under Tariff Notifications under various Trade Agreements in the following grounds:

(i) The Physical copy of Certificate of Origin against Bill of Entry for home consumption has not been submitted along with other documents for assessment of BoE for which benefits of Customs duty are not permitted,

The Bill of Entry has been self-assessed under RMS without claiming exemption , so amendment or re-assessment Bill of Entry for extending benefits of Customs duty under Trade Agreements are not allowed,

(ii) Certificate of Origin has been issued retroactively or retrospectively after the imported goods have been shipped to importer benefits under Trade Agreements are not allowed,

(iii) Imported goods are directly warehoused for verification of

Certificate of Origin beyond the stipulated time of verification CoO and thereby instantly passing of benefits of concession of Customs duty are being denied to the importer.

(iv) Rejection of Certificate of Origin for minor discrepancy and thereby denying benefit of preferential rates as per Tariff Exemption Notification.

Recent Board Instruction:

In view of difficulties being faced by Trade in implementation of CAROTAR, 2020 has been issued vide Circular No.**38/2020**-Customs, dated 21.08.2020, wherein directions were issued to the field formations to ensure judicious application of CAROTAR,2020, follow prescribed timelines strictly and avoid unnecessary delays or use of arbitrary practices during clearance of goods. It is observed that bulk verification requests are still pending from Verifying Authorities in terms of Rule 6(1)(b) of CAROTAR,2020, without citing appropriate grounds and without mentioning specific information to be sought from the Verification Authority

Therefore, vide this recent instruction No. **18/2021-Cus**., dated 17-08-2021,it is reiterated that while forwarding a Verification Request to the Board under Rule 6(1)(b) of CAROTAR,2020, the proper officer must clearly indicate the reasons to believe why goods are not meeting the prescribed origin criteria and specific information required to be obtained from the Verifying Authority that the proper officer consider necessary to determine the origin and the verification requests should be communicated to the Board within the prescribed timelines of CAOROTAR,2020.

Judicial pronouncements:

The Hon'ble High Court of Tripura in the case of Shri Pijush Banik vs. Union of India, reported in **- *TOG-343-HC-TPR-CUS-2021***, observed that the petitioner was not afforded any opportunity to meet the purported deficiency for which the clearance has been refused. No observation on the legality or regularity of the process of verification on merit is called for at this stage, considering that the verification is still inconclusive. But in the emerged circumstances, the assessing officer and the other respondent authorities are directed to provisionally assess the duty and to release the goods on obtaining an indemnity bond, to be submitted by the petitioner binding himself to deposit the duty or the difference between the duty that would

be assessed by the competent authority on verification and the preferential duty within a period of 7(seven) days. In the event of failure to deposit the assessed duty on completion of verification within the said stipulated time, the payable duty shall carry interest at the rate of 15% per annum from 26.09.2020 till the said duty is deposited. The provisional assessment in respect of the goods covered under the Bill of Entry dated 26.09.2020 shall be completed within a period of two days from the date of receipt of a copy of this order. After furnishing of the indemnity bond, those goods be released within next 24 (twenty four) hours.

The Hon'ble Tripura High Court in the case of *Shri Goutam Roy vs. Union of India, reported in* - ***TOG-861-HC-TPR-CUS-2021***,observed that " Having appreciated the submissions made by the counsel for the parties and the averments made in the writ petition and in the reply, the pertinent question which emerges and is falls for consideration whether the verification is random verification falling under Rule 6(1)(c) of the CAROTAR, 2020 or the verification falls under the category leveled by Rule 6(1)(b) of the CAROTAR, 2020. The petitioner has brought categorical allegation against the respondents that he has furnished all requisite documents and information for clearance but the imported goods have been ware- housed without any reason being disclosed to the petitioner whether those goods were held up for any verification regarding the Certificate of Origin produced by the petitioner for availing the concessional rate of the customs duty or for any other reason. This allegation has been levelled in para-7 of the writ petition and in reply thereof, the respondents have evaded any specific reply. They have simply stated that -

"assessment/clearance of goods has not been stopped. Only preferential treatment of customs duty has been denied till the doubt on the Country of Origin certificate is resolved."

The said reply does not conform to any verification under Rule 6(1)(b) of the CAROTAR, 2020 which is structured on the failure to provide the requisite information, as no such information was asked from the petitioner. The said verification cannot be treated as prima facie verification under Rule 6(1)(b) of the CAROTAR, 2020, rather it would prima facie come under Rule 6(1)(C) of the CAROTAR, 2020. Thus, Rule 5(b) of CBEC's circular No.**38/2016**-Cusoms dated 22.08.2016 will apply in the present case. After thorough verification, if some defects is located, such verification will take a different character. In the present case, the respondents have stated that the petitioner

has furnished the subsequent statement which conforms to the nature of container. Hence, the respondents are directed to release the imported goods under the Bill of Entry No.659390/INP/AGT-LCS/2020-21 dated 26.12.2020 on obtaining an indemnity bond to be submitted by the petitioner binding himself to deposit the duty meaning the difference between the duty that would be assessed by the competent authority on verification and the preferential duty which has been paid by the petitioner."

B13 : INTELLECTUAL PROPERTY RIGHTS

1. Introduction:

1.1 India is a signatory to the WTO Treaty on Trade Related Aspects of Intellectual Property Rights (TRIPS), which was brought into force on 1st January, 1995. Articles 51 to 60 of TRIPS [Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization] relate to border measures (i.e. measures required to be taken for providing protection against infringement of IPRs at the border).

2. Legal provisions:

2.1 Copyright Act, 1957, the Trade Marks Act, 1999, the Designs Act, 2000 and the Geographical Indications of Goods (Registration and Protection) Act, 1999 have provisions prohibiting import of goods infringing Intellectual Property Rights under the respective Acts.

Central Government has been empowered under Section 11 of the Customs Act, 1962 to issue notifications for prohibiting either absolutely or subject to such conditions as may be specified in the notification, the import or export of goods of any specified description. Section 11(2) of the said Act details the purpose for which such a notification may be issued by the Central Government which, inter-alia, covers the following purpose:

(i) Protection of patents, trademarks and copyrights. [Section 11(2)(n)]; and

(ii) Prevention of the contravention of any law for the time being in force [Section 11(2)(u)].

2.2 Notification No.51/2010-Cus.(NT), dated 30.06.2010 as amended vide Notification No. 57/2018- Customs(N.T.) dated 22.06.2018 prohibits import of goods infringing specified provisions of Trademarks Act, Copyrights Act, Designs Act, and Geographical Indications Act subject to following the procedure prescribed under

the Intellectual Property Rights (Imported Goods)Enforcement Rules, 2007 (IPR Rules) issued under Notification No.47/2007-Cus.(NT), dated 08.05.2007 as amended vide notification No. 56/2018-Customs (N.T.) dated 22.06.2018. Goods in transit through India are excluded from its coverage and only goods intended for sale or use in India would be covered under the notification.

2.3 The prohibition of imported goods for the purpose of protecting intellectual property rights as specified under Notification No.51/2010-Customs (N.T.) dated 30.06.2010, does not relate to all infringements under the parent IPR Acts but only to those imports that infringe the specific provisions of various parent Acts governing IPR, mentioned in the notification No.51/2010- Customs (N.T.) dated 30.06.2010, as amended vide Notification No. 57/2018-Cus (N.T.) dated 22.06.2018. To illustrate, in case of the Trade Marks Act, 1999, prohibitions against infringement of trademarks on import of goods intended for sale or use in India, that attract the provisions IPR (Imported Goods) Enforcement Rules, 2007 would apply to:

(i) Imported goods having applied there to a false trademark, as specified in section 102 of the Trade Marks Act, 1999; and

Imported goods having applied thereto any 'false trade description' within the meaning of definition provided in clause (i), in relation to any of the matters connected to description, statement or other indication direct or indirect of the product but not including those specified sub- clauses (ii) and (iii) of clause (za), of sub-section (1) of Section 2 of the Trade Marks Act, 1999.

2.4 In this context, the issue of permitting import of original/ genuine products (not counterfeit or pirated) which are sold/ acquired legally abroad and imported in to the country, by persons other than the intellectual property right holder without permission/ authorisation of the IPR holder, known in the trade as 'parallel imports' has been clarified by the Department of Industrial Policy and Promotion (DIP&P), Ministry of Commerce & Industries, which is nodal authority for all matters relating to(i) Trade MarksAct,1999and(ii)DesignsAct,2000. CBIC's circular No. 13/2012-Cus., dated 08.05.2012 may please be referred.

2.5 The Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 provide a procedure to be followed by the right holders and Customs officers to prohibit importation of goods infringing Intellectual Property Rights and the action to be taken, by

the right holders and Customs Officers, after suspension of release of the infringing goods. These Rules provide for, inter alia:

(i) Notice to be given by a right holder in writing to the Commissioner of Customs or any Customs Officer authorised by Commissioner requesting for suspension of release of imported goods suspected to be infringing intellectual property rights;

(ii) Notice to be accompanied by fees of ₹2,000/-;

(iii) Within 15 days or extended period additional information to be supplied by the right holder to Deputy/Assistant Commissioner, if missing from the format;

(iv) Right holder to inform Customs, when his IPR ceases to be valid;

(v) Time limit for right holders to join proceedings;

(vi) A single point for registration of the right holder;

(vii) Adequate protection to the rightful importer and for indemnifying Customs;

(viii) Suo-moto action by Customs;

(ix) Disposal of the confiscated goods; and

(x) Goods of non-commercial nature contained in personal baggage or sent in small consignments meant for personal use would not attract prohibition.

3. Conditions for registration:

3.1 The grant of registration shall be subject to following conditions, namely:

(i) The right holder or his authorised representative shall execute a bond with the Commissioner of Customs for such amount with such surety and security as deemed appropriate by the Commissioner, undertaking to protect the importer, consignee and the owner of the goods and the competent authorities against all liabilities and to bear the costs towards destruction, demurrage and detention charges incurred till the time of destruction or disposal, as the case maybe;

(ii) The right holder shall execute an indemnity bond with the Commissioner of Customs indemnifying the Customs authorities against all liabilities and expenses on account of suspension of the release of allegedly infringing goods.

(iii) At the time of registration but prior to importation, it may be difficult to fix the bond amount corresponding to the value of suspected infringing goods not yet imported. Further, this would lock in right holders' money in the form of security. Therefore, the right holders may furnish a General Bond without security [Para 3.1 (i)]. The right holder shall also undertake to execute Consignment Specific Bond with the jurisdictional Commissioner of Customs at the port of interdiction within three days from the date of interdiction of any allegedly infringing imported consignment. The surety and security shall be on consignment basis and shall be furnished along with the consignment specific bond consequent upon interdiction of the consignment allegedly infringing rights of the right holder.

3.2 The bond amount equal to 110% of the value of goods and security of 25% of the bond value is required to be furnished by the right holder.

3.3 An on-line, system driven, centralized bond management module has been implemented as part of the existing Automated Recordation and Targeting System (ARTS). The main objective of this system is to provide for a single centralized bond and surety/security account that can be used at all ports in India, so that the IPR holders do not have to rush to different customs formations to execute consignment specific bonds and sureties/ securities upon receipt of information about an interdiction of allegedly infringing consignment.

3.4 The Commissioner shall notify the applicant within 30 days of receipt of notice or from the date of expiry of extended period whether the notice has been registered or rejected.

3.5 If registration is granted, its validity period would be indicated and the same shall minimum for one year (unless the right holder request sit for shorter period).

3.6 After the grant of the registration of the notice by the Commissioner, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962.

[Refer Circulars No.41/2007-Cus., dated 29-10-2007 and No. 10/2011-Cus., dated 24-2-2011]

4. Automated monitoring of imports involving IPR:

4.1 Besides the legal measures to check import of counterfeit and pirated goods, an automated system facilitates genuine trade and targeting of infringing goods more effectively. Such a mechanism also integrates the Custom clearance procedures with the IPR regime.

4.2 A software module called Automatic Recordation &Targeting System (ARTS) has been developed with the following objectives:

(i) Effective implementation of the IPR (Imported Goods) Enforcement Rules,2007;

(ii) Integration of IPR enforcement with Customs clearance procedure;

(iii) Web-based on-line recordation;

(iv) Providing a platform for right holders to record their rights with Customs;

(v) Enabling National targeting of suspect consignments;

(vi) Creation of a centralized national database containing useful information for enforcement;

(vii) Providing access to National data for the Customs field officers; and

(viii) Trade facilitation.

4.3 ARTS has provision for recording and targeting of Trade Marks, Copyright, Designs and Geographical Indications. ARTS seeks to integrate IPR enforcement with the Customs clearance procedure being done using the Risk management System (RMS). The consignments suspected to be infringing the rights of the IPR holders are interdicted through the RMS.

[Refer Notifications No. 47/2007-Cus (N.T), dated 8-5-2007, No.49/2007- Cus (N.T), dated 8-5-2007, No.51/2010- Cus(N.T), dated 30-6-2010 and No. 57/2018-Cus (N.T.) dated 22.06.2018 and Circulars No.41/2007-Cus., dated 29-10-2007 and No.10/2011-Cus., dated 24-2-2011].

B14 : DUTY DRAWBACK SCHEME

1. Drawback on re-export of imported goods

1.1 Duty Drawback on export of duty paid imported goods is allowed in terms of Section 74 of Customs Act, 1962 read with Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995. The goods are to be entered for export within two years from date of payment of duty on importation thereof. Under certain circumstances this period may be extended upto one year by the Principal Chief Commissioner/Chief Commissioner of Customs and beyond that by the Board.

[Refer Notification No.33/94-Cus (N.T.) dated 01.07.1994]

1.2 Application by exporter is required to be made within 3 months from the date on which an order permitting clearance and loading of goods for exportation is made by the proper officer.

This period may be extended up to 12 months from such date of order subject to conditions and fee payment.

[Refer Circular No.13/2010-Cus., dated 24-6-2010]

1.3 A portion of the Customs duty paid at the time of import is given back as duty drawback, subject to certain procedure and conditions including identification of export goods with those imported on duty payment and their usage. Where the goods are not put in to use, ninety eight per cent of Duty Drawback is admissible. Otherwise drawback is granted based on period of use. Used goods do not get Drawback if exported 18 months after import.

[Refer Notification No.19-Cus., dated 6-2-1965]

1.4 On the issues of compliance to Rules, 1995 relating to manner and time of claiming drawback, identification, determination of and extent of use and other attendant aspects, all cases of drawback processing or denial are to be handled by way of detailed speaking order, following the principles of natural justice. Each such order is examined by the Commissioner for its legality and propriety.

[Refer Circular No.35/2013-Cus., dated 5-9-2013]

1.5 The examination report on shipping bill for re-export must be recorded separately in a self- contained and explicit manner on each of the two aspects of identity and use. The examination report should

not be made of phrases that are cryptic, generalized or sweeping in nature such as 'as per declaration', 'in as such condition', 'found in order', 'found as declared', 'goods are same' etc.

[Refer Circular No.16/2016-Cus., dated 09.05.2016]

1.6 In order to prevent dual benefit while sanctioning drawback under Section 74 of the Customs Act,1962,it may be ensured that a certificate duly signed by the Central/State/UTGST officer,

Having jurisdiction over the exporter is obtained, that no credit of integrated tax/compensation cess paid on imported goods has been availed or no refund of such credit or integrated tax paid on re-exported goods has been claimed.

[Refer Circular No.21/2017-Cus., dated 30.06.2017]

1.7 The Pay and Accounts Office (PAO) under Chief Controller of Accounts, CBIC does the accounting and reconciliation of drawback payments after the receipt of monthly account from the concerned Commissionerates or Customs Houses.

2. Duty drawback on export of manufactured goods:

2.1 Duty Drawback rebates Customs and Central Excise duties chargeable on any imported materials or excisable materials used in the manufacture of goods exported. The composite rates of Duty Drawback comprising incidence of Customs and Central Excise duties and Service Tax have been discontinued

w.e.f. 1.10.2017. Drawback is now limited to incidence of duties of Customs on inputs used and remnant Central Excise Duty on specified petroleum products used for generation of captive power for manufacture or processing of export goods. Duty Drawback is of two types:

(i) All Industry Rate and (ii) Brand Rate. The legal framework is provided by Sections 75, 75A and 76 of the Customs Act, 1962. Customs and Central Excise Duties Drawback Rules, 2017 (Drawback Rules, 2017) (earlier The Customs, Central Excise duties and Service Tax Drawback Rules, 1995) have been issued under the Customs Act, 1962 and the Central Excise Act, 1944.

2.2 The All Industry Rates (AIR) are notified, generally every year, by the Government in the form of a Drawback Schedule based on the average quantity and value of inputs and duties (both Customs & Central Excise) borne by export products. The AIRs are essentially

average rates based on assessment of average incidence. These AIRs are recommended by a Drawback Committee which is set up by the Government.

2.3 AIR are fixed after extensive discussions with stakeholders like Export Promotion Councils, Trade Associations, individual exporters so as to obtain relevant data, which includes procurement prices of inputs, indigenous as well as imported, applicable duty rates, consumption ratios and FOB values of export products. Data is also sought from Customs and Central Excise field formations and Ministries which is taken into account.

The AIR may be fixed as a percentage of FOB price of export product or as specific rates. Drawback Caps are imposed in cases to obviate the possibility of misuse. All claims of duty drawback are filed with reference to the tariff items and description of goods given in the Schedule. The rates of drawback specified in the Schedule are not applicable to export of commodity or product manufactured or exported, among others, in discharge of export obligation under Advance Authorization or Duty free Import Authorization issued under Duty Exemption Scheme of relevant Foreign Trade Policy; by a licensed hundred per cent Export Oriented Unit; by units situated in Free Trade Zone, Export Processing Zone or Special Economic Zone, etc. However in case of exports in discharge of export obligation under Special Advance Authorization scheme of DGFT, rates of drawback specified in the Schedule shall apply subject to certain restrictions and modifications.

[Refer Notification No.89/2017-Cus (N.T.), dated 21.09.2017]

2.4 The tariff items and description of goods in the Schedule are aligned with the tariff items and description of goods in the First Schedule of Customs Tariff Act, 1975 at four digit level only. The description of goods given at six or eight digits in the Schedule are in several case may not be aligned with the description of goods given in the First Schedule to Customs tariff Act, 1975. The general rules for interpretation of First Schedule to Customs Tariff Act, 1975 apply, mutatis mutandis, for classifying the export goods listed in the Schedule.

[Refer Notification No.89/2017-Cus (N.T.), dated 21.09.2017]

2.5 The scrutiny, sanction and payment of Duty Drawback claims at EDI locations is carried out through the EDI system which also facilitates payment directly to the exporter's bank account, if other conditions are fulfilled.

2.6 The Brand Rate of Duty Drawback may be fixed in terms of Rules 6 and 7 of the Drawback Rules, 2017 in cases where the export product does not have the AIR of Duty Drawback or the AIR neutralizes less than eighty per cent. of the duties paid on the materials or components used in the production or manufacture of the export goods. Brand rate is fixed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export.

2.7 An exporter intending to claim Brand rate of Drawback, has to file an application for fixation of the brand rate within 3 months from the date of Let Export Order which can be extended up to 12 months from LEO subject to conditions and payment of fee as provided in the Drawback Rules, 2017. This application has to be made before the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the place of export.

[Refer Drawback Rules, 2017 and Circular No. 38/2017-Cus dated 22.09.2017]

2.8 The application for fixation of Brand rate is to include, inter alia, the proportion in which the materials or components are used in the production or manufacture of goods and the duties paid on such materials or components.

2.9 In Brand rate of drawback, the exporter is compensated the incidence of Customs and Central Excise duties actually incurred in the export product based on verification of documents and proof of usage of actual quantity of materials or components utilized in the manufacture of export product and duties/tax paid thereon.

2.10 Exporters who file application for fixation of Brand Rate under Rule 6 of the Drawback Rules, 2017 may also apply to the Principal Commissioner of Customs or Commissioner of Customs for provisional drawback to be granted to him pending determination of amount or rate of drawback. Similarly, exporters claiming Brand rate of duty drawback under rule 7 of the Drawback Rules, 2017 shall be paid a provisional drawback amount, as may be specified by the Central Government, by the proper officer of Customs. He may also apply to the Principal Commissioner of Customs or Commissioner of Customs for further provisional drawback.

[Refer Rules 6 and 7 of drawback Rules,2017]

A time limit of 15 days is prescribed for Customs Commissionerates to issue such provisional Brand rate letters in case of revised simplified

procedure and 25 days for final Brand rate letters in the case of normal procedure. The work related to fixation of brand rates should be regularly monitored by the Commissioner of Customs, and by Chief Commissioners, for ensuring concerted and sustained action for disposing Brand rate work. The Brand rate fixation letter issued by Customs Commissionerates has to indicate full and comprehensive description/ details of the exported goods and other details.

[Refer Circular No. 14/2003-Cus dated 06.03.2003, D.O. letter No. 609/110/2005-DBK dated 26.08.2005 and Instructions No. 603/01/2011- DBK dated 31-7-2013 and dated11.10.2013].

3. Procedure for claiming Duty Drawback:

3.1 AIR or the Brand Rate may be claimed on the shipping bill at the time of export and requisite particulars filled in the prescribed format of Shipping Bill/Bill of Export. In case of exports under electronic Shipping Bill, the Shipping Bill itself is treated as the claim for Drawback. In case of manual export, triplicate copy of the Shipping Bill is treated as claim for Drawback. The claim is complete only when accompanied by prescribed documents described in the Drawback Rules 2017. If the requisite documents are not furnished or there is any deficiency, the claim may be returned for furnishing requisite information/documents. The export shipment, however, will not be stopped for this reason.

[Refer Rule14 of Drawback Rules, 2017]

3.2 Duty Drawback on goods exported by post is also allowed on following the procedure prescribed under Rule 12of the Drawback Rules, 2017.

4. Supplementary claim of Duty Drawback:

Where any exporter finds that the amount of Duty Drawback paid to him under section 75 is less than what he is entitled to on the basis of the amount or rate of Drawback determined, he may prefer a supplementary claim. This claim has to be filed within 3 months of the relevant date, which is fixed as follows: (i) where the rate of Duty Drawback is determined or revised under Rules 3 or 4 of the Drawback Rules, 2017 from the date of publication of such rate in the Official Gazette; (ii) where the rate of Duty Drawback is determined or revised upward under Rules 6 or 7 of the Drawback Rules, 2017, from the date of communicating the said rate to the person concerned; and (iii), in all other cases, from the date of payment or settlement of the original Duty Drawback claim by the proper officer:

4.1 The period of 3 months for filing a supplementary claim may be extended up to 18 months subject to conditions and payment of requisite fee as provided in the Drawback Rules, 2017.

[Refer Rule 16 of Drawback Rules, 2017]

4.2 In cases where the drawback claim was made zero-zero without following the normal procedure or principles of natural justice, the Commissioners are required to redress the problem where the exporter's have produced the documents/ replied to queries.

[Refer Instruction F. No. 609/14/2014-DBK dated 30.06.2016]

5. Limitations on admissibility of Duty Drawback:

5.1 The Customs Act, 1962 and the Drawback Rules, 2017 lay down certain limitations and conditions for grant of duty drawback. No duty drawback shall be allowed where:

(i) The duty drawback amount due in respect of any goods is less than ₹ 50/ - (Section 76, ibid.),

(ii) In respect of any goods the market price is less than the amount of drawback due there on (Section 76 ibid.),

(iii) Where value of export goods is less than the value of imported material used in their manufacture. In this regard, if necessary, certain minimum value addition over the value of imported materials can also be prescribed by the Government (Section 75 ibid.) and

(iv) The drawback amount or rate determined under Rule 3 of Drawback Rules 2017 does not exceed one-third of the market price of the export product (Rule 9 of Drawback Rules, 2017).

5.2 In case the Central Government forms an opinion that there is likelihood of export goods being smuggled back into India, the Government may not allow drawback or allow it subject to specified conditions or limitations. Notifications have been issued under Section 76 of the Customs Act, 1962.

[Notification No. 208-Cus., dated 1-10-1977]

5.3 While prior repatriation of export proceeds is not a pre-requisite for grant of Duty Drawback, the law prescribes that if sale proceeds are not received within the period stipulated by the RBI, the Duty Drawback will be recovered as per procedure laid down in the Drawback Rules, 2017. An exception is made where non-realization of sale proceeds is compensated by the Export Credit

Guarantee Corporation of India Ltd. under an insurance cover and the Reserve Bank of India writes off the requirement of realization of sale proceeds on merits and the exporter produces a certificate from the concerned Foreign Mission of India about the fact of non- recovery of sale proceeds from the buyer.

[Refer Rule 18 of Drawback Rules, 2017]

6. Monitoring of realization of export proceeds:

6.1 Each Custom House is to have a special cell monitoring realization of export proceeds. EDI locations are also facilitated, via RBI-BRC module under ICES, to retrieve data on exports (made from 1.4.2014 onwards) under Drawback scheme whose remittance is outstanding beyond due date. Notices are to be issued for recovery of drawback paid in respect of export consignments where export proceeds remain unrealized within the prescribed period. Adjudication as well as further actions are to be taken in a methodical and time bound manner by the field formations.

6.2 For cases where any notices are returned undelivered as the recipient/address was non - existent, the Commissioners should also report names of relevant exporters to the Regional Authorities of DGFT so that action could be initiated under FT(DR) Act as well and the IE Codes got cancelled for furnishing wrong address.

[Refer Circular No.5/2009-Cus., dated 2-2-2009, Instructions F.No. 609/119/2010- DBK, dated 18-1-2011, F.No. 603/01/2011-DBK, dated 11-10-2013, DG (Systems) letter No.IV (35)/46/2013-Systems dated 25/28.8.2014 and Instruction F.No.609/59/2012-DBK dated27.11.2015]

7. Other aspects relating to Duty Drawback:

7.1 The Citizen Charter provides for remission of Drawback within

7 working days of filing of manifest in the case of electronic processing of declarations or filing of a paper claim in the case of manual processing.

7.2 While processing Drawback claims, whether under Section 74 or Section 75, wherever any deficiency is noticed in the claim, it is to be communicated to the exporter in a clear un- ambiguous manner within a period of 10 days, from the date of filing of the claim. Commissioners of Customs are to undertake a periodic review and monitoring of the status of pending drawback claims.

[Refer Circular No.46/2011-Cus., dated 20-10-2011]

7.3 The field formations are to ensure periodic sample checks and verifications with respect to export declarations accepted for AIR drawback purposes and these are to be regarded as audit checks and their proper record maintained. These include checks on value, present market value, verification of actual freight payment certificates when CIF or C&F values are declared, declarations that affect the applicability of AIR itself etc. In the pre-GST era, these declarations included whether goods were or were not manufactured or exported in terms of rule 19(2) of Central Excise Rules or by availing rebate on material used in manufacture or processing in terms of rule 18 of Central Excise Rules. In the post –GST era (transition period of July to September 2017), the declarations were to be given w. r. t. the availment of input tax credit of CGST or IGST on the export goods or inputs or input services used in the manufacture of export product, refund of IGST paid on the export goods or carrying forward of CENVAT credit on export product or on inputs or input services used in the manufacture of export product. Random checks with respect to debit notes raised by foreign buyers after initial realization by exporter, reduction in invoice value after proceeds are negotiated or realized, etc may also be considered by Commissioners. Detections that indicate lower FOB/realization or other information of relevance when benefits under FTP are also involved should also be intimated to Regional Authority of DGFT for necessary action.

[Refer Circular No.46/2011-Cus., dated 20-10-2011, Instruction F.No. 603/01/2011-DBK dated 11-10-2013 and Circular no. 32/2017-Customs dated 27.07.2017]

7.4 Further, by way of audit, the Commissioners are also to exercise special checks, in cases of first time exporters, exporters who have taken large amounts of drawback suddenly, sensitive destinations, sensitive products etc., to ensure there is no misuse of the drawback facility.

7.5 Commissioners are to ensure that Internal Audit wings achieve desired diligence levels and a significantly improved performance. In Customs these areas include payment of re- export drawback and cases of manual processing of drawback.

[Refer Instruction F.No. 603/01/2011-DBK., dated 11-10-2013]

7.6 Field formations are to monitor levels of pendency of EGM not

filed, EGM filed in error and no filing of stuffing reports to ensure trade facilitation. The mismatch of declaration made in the Shipping Bill (item details vis-à-vis drawback details) should be verified to avoid the excess payment of drawback on this account.

[Refer Instruction F.No. 603/01/2011-DBK., dated 26.06.2012]

7.7 Board has issued an8 point comprehensive action plan for implementation of Duty Drawback Scheme vide D.O. letter No. F.No.609/41/2018-DBK dated27.09.2018.The main action points are briefly as follows:

(i) EGM to be filed by various stakeholders within a week of let export order,

(ii) EGM errors should not exceed 1% of total shipping bills,

(iii) Queries should be resolved well within a month's time and number of queries should be monitored at senior level,

(iv) Drawback claims must be cleared on a daily basis and scrolls generated by major Customs stations at least twice a week and by others once every week or more,

(v) Percentage of shipping bills scrolled out within seven days should increase to 75% in the current FY and taken further in next FY,

(vi) All efforts should be made to reduce the percentage of shipping bills scrolled out beyond thirty days to nil,

(vii) Focus on disposal of application for Brand rate fixation so that no application remains pending beyond one month at the end of this FY,

(viii) Timely issuance of SCNs in cases of non-reconciliation of sale proceeds and time bound disposal of SCNs.

B15 : : EXPORT PROMOTION SCHEMES

Foreign Trade Policy 2023

1. FTP is Issued under Section 5 of the Foreign Trade (Development and Regulations) Act, 1992

2. Formulated and administered by the Directorate General of Foreign Trade

3. It Consists of:

(i) Foreign Trade Policy 2023

(ii) Handbook of Procedures

(iii) Standard Input Output Norms (SION)

4. The Foreign Trade Policy was valid for 5 years in the past. However, from this policy there is no end date to current FTP.

5. Major policy shift from incentives on exports (like MEIS, SEIS etc) to remission of duties. MEIS and SEIS have been discontinued with effect from January 1, 2021, and April 1, 2020, respectively.

(i) Any License/ Authorisation/ Certificate/ Scrip/ instrument bestowing financial or fiscal benefits issued before commencement of FTP 2023 shall continue to be valid for the purpose and duration for which it was issued, unless otherwise stipulated. The Foreign Trade Policy is closely knit with the Customs, GST Laws and Excise/ state laws of India. However, the policy provisions per-se do not override tax laws.

6. Three new chapters introduced – Developing Districts as Export Hub (Chapter 3), Promoting Cross Border Trade in Digital Economy (Chapter 9) and SCOMET (Chapter 10)

7. Regulates import and export of goods from India

8. Goods are categorized in 3 categories:

(i) Free: Import or export allowed without any license or permission

(ii) Restricted: Import allowed with license/authorisations

(iii) Prohibited: Import or export not allowed

9. Approvals or licenses under other laws need to be obtained separately

10. To boost merchanting activities from India – Merchanting trade involving shipment of goods from one foreign country to another foreign country without touching Indian ports, involving an Indian intermediary allowed subject to compliance with RBI guidelines, except for goods/items in the CITES and SCOMET list

11. IEC mandatory for service exporters on the date of rendering service for availing benefits under FTP

Export Promotion Schemes

Pre-Export Schemes (Duty Exemption Schemes)

1	Advance Authorisation (AA)	To enable Duty free import of inputs for export production
2	Duty Free Import Authorisation (DFIA)	To enable Duty free import of inputs for export production
3	Export Promotion Capital Goods (EPCG)	To enable Duty free import of Capital Goods for export production

Post Export Schemes (Duty Remission schemes)

1	Rebate of State and Central Taxes and Levies (RoSCTL)	Duty Credit Scrips on export of goods
2	Remission of Duties and Taxes on Exported Products (**RoDTEP**)	Duty Credit Scrips on export of goods
3	Duty Drawback	Cash drawback of Basic Customs Duty on Export of Goods

Advance Authorisation (AA)

Advance Authorisation Scheme allows duty free import of inputs, which are physically incorporated in an export product. In addition to any inputs, packaging material, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, is also be allowed.

Eligibility

Advance Authorization can be availed by manufacturer exporters or merchant exporters who are linked with supporting manufacturers for physical exports (including exports to SEZ), intermediate supplies, and supply of 'stores' on board foreign going vessels/ aircraft (conditions apply). Advance Authorization is issued to sub-contractors to any project (where the name of the sub-contractors appears in the main contract). The quantity of inputs allowed for a given product is based on specific norms defined for that export product, which considers the wastage generated in the manufacturing process. DGFT provides a sector-wise list of Standard Input-Output Norms (SION) under which the exporters may apply. Alternatively,

exporters may use it for their ad-hoc norms in cases where the SION does not suit the exporter.

The Advance Authorization issued and the materials imported thereunder will be with actual user condition. This means that the actual user alone may import such goods. The authorization will not be transferable even after completion of export obligation.

Basis for issuing Advance Authorisation

Advance Authorisation can be issued for inputs used in the product that is to be exported on the basis of the following:

1. Standard Input Output Norms (SION) notified: The Director General of Foreign Trade (DGFT) , issues standard norms that define the amount of input required in the manufacture of a unit of the out product what will be exported **based on the recommendations of the Norms Committee.** It is available for a wide range of products.
2. **Self-declaration:** Sometimes the SION is not available for a particular product. In such a case, an application may be made to the Regional Authority who will issue the Advance Authorization upon review.
3. **Application prior to fixation of the norm by the Norms Committee:** Another option available to the exporter where the SION is not defined is to make an application to the norms committee, requesting the same. After providing all the required data to the norms committee, the committee shall endeavour to either fix these norms or provide ad-hoc norms on the basis of the application made. Such ad-hoc norms are valid for one authorization only and no repeat authorisations can be issued
4. **Self Ratification Scheme:** This option is available only to an exporter who holds the Authorised Economic Operator (AEO) certificate under Common Accreditation Programme (CAP) of CBIC. This scheme can be opted for when there is no SION or a valid ad-hoc norms for an export product and also where ,SION has been notified **but the exporter wishes** to use additional inputs in the manufacturing process. Ratification by the norms committee is not required under this scheme and the regional authority may issue AA upon fulfilment of the relevant conditions.

Duty-free importable items under this scheme

Goods allowed to be imported without payment of duty under this schemes are as under:

- Inputs that are physically incorporated in the product to be exported after making regular allowance for wastage
- Fuel, oil, and catalysts are consumed or utilized to obtain the export product.
- Mandatory spares that are required to be exported along with the resultant export product – up to 10% of the CIF value (Cost, Insurance, and Freight) of Authorization
- Specified spices would be allowed to be imported duty-free only for activities like crushing, grinding, sterilization, and manufacture of oil or oleoresin and not for more specific activities like cleaning, grading, re-packing, etc.

Value Addition

Under Advance Authorization, the minimum Value Addition to be achieved is 15%, except for physical exports for which payments are not received in freely convertible currency and other specified export products. For tea, minimum Value Addition is 50% Where certain items are supplied free of cost by the foreign buyer, its notional value will be added in the CIF value of import and FOB value of export for the purpose of calculating Value Addition. Irrespective of the currency of realization, Exports to SEZ units/supplies to developers/ co-developers would be covered.

Free provision of Inputs

The facility of Advance Authorization is applicable where the foreign buyer supplies a few or all of the inputs without imposing any charges on the exporter. Given such a scenario, the notional value of free-of-cost inputs and the importance of other duty-free inputs are considered for calculating value addition. If all the information is supplied without cost, the exporter will be facilitated with the option of complying with the provisions prescribed by the DoR (Directorate of Drawback).

Validity period of the License: –

The validity period for import of Advance Authorisation shall be 12 months from the date of the issue of Authorisation. The validity of Advance Authorisation for supplies under chapter 7 of FTP 2015-20, shall be co-terminus with contracted duration of project execution or 12 months from the date of issue of Advance Authorisation whichever is later. Regional Authority may consider a request of original Authorisation holder and grant one revalidation for six months from the expiry date, Request for revalidation of Authorisation shall be filed online in ANF-4D.

Export Obligation

The initial Export obligation period under Advance Authorisation is 18 months, and the initial Import validity period is 12 months. This means that from the license issue date, you have 12 months to complete the import and 18 months to complete the export.

Advance Release Order (ARO) and Invalidation Order

Holders of Advance Authorization, Advance Authorization for Annual Requirement, and Duty-Free Import Authorization, who are aiming to source inputs from indigenous sources/State Trading Enterprises (instead of direct import) are facilitated to start them either against Advance Release Order (ARO) or Invalidation letter denominated in free foreign exchange or Indian rupees.

Consequences for Non-fulfilment of Export Obligation: –

The license holder who hasn't fulfilled the Export Obligation (EO) is required to pay the Customs Duty saved along with Interest at the specified rate under Sec 28AA of Customs Act 1962. In terms of Sec 11(2) of FT(D&R) act 1992, the defaulted license holder shall be liable to pay 1,000/- or five times of the value of the goods imported whichever is higher as penalty i.e., the defaulted license holder has to pay penalty of 5 times of the CIF value of goods imported.

Exemptions of Duty

Imports of commodities under this scheme are exempted from paying essential customs duty, additional customs duty, education, anti-dumping duty, and safeguard duty.

Duty Free Import Authorisation (DFIA)

A Duty Free Import Authorization (DFIA) is issued to allow duty free import of inputs which are used in the manufacture of an export product, making normal allowance for wastage, and energy, fuel, catalyst etc. Many are utilized in the course of their use to obtain the export product.

- To replace the Duty-Free Replenishment (DFRC) Scheme, the DFIA scheme was introduced on 1st May 2006. This scheme has features similar to the of the Advance Authorisation Scheme, however, there are certain distinct features as well.
- DFIA is issued specifically for the products that have been notified under the Standard Input and Output Norms (SION). Thus, import entitlement should be according to the limit specified by the SION.

- The DFIA License is freely transferable. The license of imported inputs can be transferred or sold beneath the DFIA Scheme.

DFIA issued under the FTP 2009-14 are similar to AA in many aspects including requirement of monitoring. However, DFIA has a minimum value addition requirement of 20% and once export obligation is completed, transferability of the authorization and / or material imported against it is permitted. The DFIA is issued only where SION are notified. After the annual supplement 2013 to the FTP 2009-14, the exemption from antidumping duty and safeguard duty is not available when materials are imported against a DFIA made transferable. In case imported materials are transferred, the importer is to pay an amount equal to the anti-dumping and safeguard duty leviable on the material, with interest. These aspects apply subject to specified conditions.

WHAT ARE THE EXEMPTED DUTIES UNDERNEATH THE DFIA SCHEME?

- The DFIA License only exempts the payment of Basic Customs Duty (BCD).
- IGST and the Compensation Cess aren't exempted under the DFIA Scheme.

WHAT ARE THE ELIGIBILITY CRITERIA FOR CLAIMING BENEFITS UNDER THE DFIA SCHEME?

- The DFIA License must be issued based on the post exports for the products that are notified by the Standard Input -Output Norms.
- All the exporters, manufacturers, or merchants are eligible for applying to get the DFIA License. The merchant exporters must mention the name and address of the supporting manufacturer in every document, the shipping bills, bill of exports/ tax invoice as notified by the GST rules.
- To export under the duty-free import authorization, the exporter needs to first apply for an application to the concerned DGFT RA.
- DFIA License won't be issued for an actual user condition or products specified under Appendix-4J such as spices, tea, coconut oil, precious metals, etc.
- An import that is subject to pre-import conditions, isn't eligible to get duty-free import authorization

STEPS TO APPLY UNDER DUTY-FREE IMPORT AUTHORISATION SCHEME?

- Before initiating exports under the DFIA Scheme, the exporter has to apply for an application online to the regional authority.
- The exports must be completed within 12 months of filing the application for the DFIA.
- During the time of exports, it is compulsory for the applicant to mention the file number on the documents for exports, such as ARE-1, ARE-3, Shipping Bills, Bill of Exports, etc.
- After the completion of exports and realization of the proceeds, the applicant can file a request for issuance of transferable DFIA to the specified Regional Authority. This request must be filed within the 12 months period from the date of export or within the time duration of 6 months from the realization of export proceeds, whichever is later.
- A separate DFIA License shall be issued for each SION and port individually.
- Exports under the DFIA Scheme must be made from a single port.
- The DFIA shall not be issued for export products that are prescribed under the SION as actual user conditions for any input.

VALIDITY AND TRANSFERABILITY CONDITIONS OF THE DFIA SCHEME?

- Under the DFIA Scheme, the validity of the transferable DFIA License is 12 months from the date of issuing by the DGFT Regional Authority.
- A separate DFIA Application will be issued for every SION.
- Under the DFIA Scheme, for EDI and Non-EDI ports, a separate application is required in concern with the Regional Authority of the DGFT.

Minimum Value Addition

The minimum value addition of 20% is mandatory to be required to be achieved

Domestic Procurement Of Inputs

Instead of direct import, the holder of Duty Free Import Authorization can obtain inputs from the domestic supplier. Procurement of domestic inputs can be done against Advance Release Order or Invalidation letter. Also, the validity of Advance Release Order or Invalidation letter would be co-terminous with the validity of Duty Free Import Authorization.

Export Promotion Capital Goods (EPCG)

1. EPCG Scheme:

1.1 Under FTP 2023,-

Zero duty EPCG scheme allows import of capital goods(except those specified in negative list in Appendix 5F of Handbook of Procedure). The Export Obligation is equivalent to 6 times of the duties/taxes and cess saved on the capital goods imported with EO period of 6 years (extendable by 2 years) from the date of issue of Authorization. A more favourable dispensation for EO is provided for export of specified green technology products as well as units located in North Eastern States, Sikkim and Jammu and Kashmir. The EO for spares for imported/domestically sourced capital goods is same as that for capital goods.

(a) The import of capital goods has to be made within 18 months from the date of issue of the Authorization.

(b) EO is to be fulfilled in two blocks i.e. 4 years and 2 years wherein 50% EO is to be fulfilled in the respective blocks. The RA can grant extension of block-wise period or overall period of fulfillment subject to specified conditions. In the case of manufacturer/ merchant/ service exporters, the EO is required to be fulfilled by exporting goods manufactured or capable of being manufactured or services rendered by the use of capital goods imported under the scheme. The EO is to be over and above the average level of exports achieved in the preceding three licensing years for the same and similar products. Certain sectors as specified in Para 5.13 of the Handbook of Procedure 2015-20are not required to maintain average level of exports.

(c) The Authorizations are issued to manufacturer exporters and merchant exporters with or without supporting manufacturer, and service providers and also available to Common Service Provider (CSP). The authorizations specify the value/quantity of the export product to be exported against it.

(d) The Authorization holder is required to file bond with 100% Bank Guarantee with the Customs prior to commencement of import of capital goods. Certain categories of exporters get benefit of exemptions from Bank Guarantee in terms of the Circular No. 58/2004-Cus dated 21-10-2004 as amended last by Circular No. 15/2014-Customs dated 18.12.2014. The CG imported are subject to actual user condition and the goods import ed cannot be transferred or sold, etc. till the fulfillment of EO.

(e) Third party exports are permitted with respect to exported goods manufactured by the authorization holder and conditions have been specified to ensure this aspect.
(Refer para 5.04 of FTP 2015-20 read with 5.10 of HBP 2015-20).

(f) Installation Certificates (ICs) for capital goods are permitted to be obtained from jurisdictional Customs Authority or independent Chartered Engineer at authorization holder's option. In the latter case, the authorization holder would send copy of IC to the jurisdictional Customs office. Capital goods may be installed at supporting manufacturer's premises if prior to such installation the latter's details are endorsed on the authorization by RA, who would intimate the change to jurisdictional Customs office and the Customs location where authorization is registered in terms of para 5.02 of FTP2015-20.

(g) The EPCG Authorization holder is required to indicate the EPCG Authorization No./date on the shipping bill/invoice (in case of deemed exports). After fulfillment of specified EO, relevant documents are to be submitted to RA for obtaining EODC. This is taken into account by Customs authority at port of registration for purposes of redemption of bond/Bank Guarantee, subject to prescribed checks including intelligence based checks.

(h) The export obligation is lower by 25% when capital goods are sourced indigenously. This is implemented by RA.

(i) The EPCG authorization for annual requirement, the provisions for technological up- gradation and for transfer of EPCG capital goods to group companies in certain cases/ sectors are discontinued in FTP2015-20.

[Refer Notification No.16/2015- Customs, dated 1-4-2015]

1.2 After introduction of GST, imports are liable to levy of IGST and Compensation Cess. W.e.f. 13.10.2017, imports under EPCG by all sectors are exempted from IGST and Compensation Cess.

This exemption is optional for the EPCG holder. Such exemption is available only for physical exports.

[Notification No.16/2015-Cus dated 1-4-2015 as amended by Notification No. 79/2017- Cus. Dated 13.10.2017 & DGFT Notification No. 33/2015-20 dated 13.10.2017]

1.3 Domestic supplies to holder of EPCG are treated as deemed export under Section 147 of CGST Act,2017. Supplier or recipient of such supplies is eligible for refund of GST paid on such supply.

[Notification No. 47/2017-Central Tax dated 18-10-2017 & Notification No. 48/2017-Central Tax dated 18-10-2017]

2. Post Export EPCG Duty Credit Scrip Scheme:

2.1 Post Export EPCG Duty Credit Scrip is available to exporters who intend to import capital goods on full payment of applicable duties in cash and choose to opt for this scheme. Basic Customs duty paid on Capital Goods shall be remitted in the form of freely transferable duty credit scrip(s),similar to those issued under Chapter 3 of FTP. Upon initial application by an exporter, RA shall issue a post export EPCG authorization specifying "Not for imports" on the body of the authorization and specify average EO if any. Specific EO shall be 85% of the applicable specific EO as mentioned in the authorization. EO period shall commence from the authorization issue date. Installation and use of the imported capital goods and other conditions including non - disposal of the capital goods till the date of last export shall be applicable to this authorization. Further, all provisions of the erstwhile EPCG Scheme shall apply insofar as these are not inconsistent with this scheme.

2.2 Upon completion of the specific as well as average EO mentioned in the authorization, RA shall issue a freely transferable duty credit scrip equivalent to the proportionate EO fulfilled based on Basic Customs duty paid. The said scrip shall be produced before the proper officer of Customs at the time of import for debit of applicable duties leviable on the imported goods. The validity of the scrip shall be 18 months from the date of issue and the said scrip has to be valid at the date of import for debits.

[Refer notification No.17/2015-Customs dated 1-4-2015]

3. General provisions relating to Export Promotion Schemes:

3.1 Imports and exports under the Export Promotion schemes are permitted at the ports, airports, ICDs and LCSs, as specified in the respective Customs duty exemption notifications. However, these notifications empower the Commissioners of Customs to permit export/ import under these schemes from any other place which has not been notified, on case to case basis by making suitable arrangements at such places. In addition, international courier terminals and foreign post offices, as notified are included as port of export for rewards on exports of goods subject to value limit of ₹ 5 lakh per consignment.

[Refer DGFT Notification No. 22/2015-20 dated 26.07.2018 and

Customs Notification No. 24/2015-Cus dated 8.4.2015 as amended vide Notification No.63/2018-Cus Dated 18.09.2018]

3.2 Facility to execute a common bond for specified export promotion schemes like Advance Authorization/Duty Free Import Authorization and EPCG is permitted to authorization holders, subject to certain conditions.

[Refer Circular No.11(A)/ 2011-Cus., dated 25-2-2011]

3.3 Facility for suo-moto payment of Customs duty in case of bona fide default in export obligation under the Advance/ EPCG authorizations is provided in procedure prescribed vide Circular No. 11/2015- Customs dated01.04.2015.Para 4.50 and para 5.23 of HBP 2015-2020 refer to this facility.

4. Verification and Monitoring related to AA, DFIA, EPCG and Post Export EPCG authorizations:

4.1 The AA holder is required to maintain a true and proper account of consumption and utilization of duty free imported/ domestically procured goods for a specified minimum period. The AA No./date is to be indicated on the shipping bill/bill of export or invoice (in case of deemed exports). The imports/ exports under AA and their utilization require monitoring. The AA holder is to submit relevant export documents to RA to obtain an Export Obligation Discharge Certificate (EODC). An AA holder is required to deposit Customs duties with interest in case EO is not fulfilled. The RA informs details of payments to Customs at the port of registration or Commissioner of Customs having jurisdiction over the factory of AA holder, as the case may be. The EODC or redemption letter is taken into account by Customs authority at port of registration for purposes of redemption of Bond/ Bank Guarantee, subject to prescribed checks including intelligence based checks.

The jurisdictional Commissioners of Customs are required to take action to monitor fulfillment of export obligation. Field formations are now also enabled to view in EDI the authorization- wise all India export details which would assist in identifying actionable cases under Advance Authorization and EPCG scheme. Commissioners are to put in place an institutional mechanism for periodical meetings with RA to exchange intelligence, check misuse and pursue issues such as EO fulfillment status in cases where EO period has expired in that quarter/ previous quarter so that concerted action can be taken against the

defaulters. In case of defaulters, the field formation may issue simple notice to the Authorization holder for submission of proof of discharge of export obligation. In case, where the Authorization holder submits proof of their application having been submitted to DGFT, the matter may be kept in abeyance till the same is decided by DGFT. Further, timely action taken in all cases of default is required to be initiated to safeguard revenue. The action to safeguard revenue is monitored through CBIC's Comprehensive MIS formats DGI - Cus 11& 11A. All field formations are required to update this data on regular basis.

[Source: Circular 16/2017 Dated 02.05.2017]

4.2 Apart from the checks prescribed in Board's extant instructions, the jurisdictional Commissioners of Customs are also to cause random verification for some of the authorizations issued under EPCG/ DFIA/ Advance Authorization schemes to check correctness of address on the Authorizations. The correctness of installation certificates issued by the Chartered Engineers is required to be verified on a random basis and has been restricted to 5% cases. When address verification or Installation Certificate verification is requested by the Customs authorities in respect of EPCG authorizations, the authorities should include in their verification, a check of the periodical utility bills (containing the address) as one of the means enabling verification of installation/ operation/ licensee premises. Wherever aforesaid checks are prescribed, the verification shall be carried out through the jurisdictional Customs authorities.

[Source: Inst. issued vide F.No. 605/71/2015-DBK dated 14.10.2016]

4.3 To rule out fabricated export documents used to show fulfillment of EO, the genuineness of shipping bills or bills of export not on Customs EDI (i.e. manual) is to be expeditiously verified while registering a duty credit scrip or post export EPCG duty credit scrip or processing EODC/ redemption letters based on document purported to be of Customs non-EDI ports.

[Refer Circulars No.5/2010-Cus., dated 16-3-2010, No.25/2012–Cus., dated 6-9-2012, Instruction No.609/119/2010-DBK, dated 18-1-2011 and Circular No.14/2015- Cus., dated20-4-2015]

REBATE OF STATE AND CENTRAL LEVIS AND TAXES (RoSCTL) SCHEME UNDER CUSTOMS

RoSCTL stands for Rebate of State and Central and Taxes Levis Scheme. It is one of the export promotion schemes to boost exports of the

Country by way of giving incentives to the domestic manufacturers to enhance their export production. This scheme provides an export incentive in the form of transferable and sellable duty credit scrips offered on the basis of the FOB value of export.

Back ground of the Scheme: The Ministry of Commerce has been introduced the RoSCTL scheme on 7th March 2019 for better compliance with WTO guidelines, and the old RoSL (Rebate of State Levies) scheme was discontinued. The RoSCTL Scheme is currently applicable only for exporters of apparel and made-ups where the exporters will be reimbursed the State Taxes and Levies, Central Taxes and Levies in the form of duty credit scrips issued by the DGFT, for all exports made on or after 1st April 2019.This scheme has been replaced the MEIS scheme for exports of goods from India. The Scheme for Rebate of State and Central Levis and Taxes on exported products has been notified vide Notifications. No.75/2021-Customs (N.T) dated 23.09.2021 and 77/2021-Customs (N.T) dated 24.09.2021 issued by the C.B.I &C consequence of Ministry of Textiles' RoSCTL scheme Notification No. 12015/11/2020-TTP dated 13.8.2021 and rates along with caps for eligible products notified vide Notification No.14/26/2016-IT(Vol. II) dated 08.03.2019. This scheme has been declared as independent RoSCTL scheme w.e.f. 01.01.2021 to 31.03.2024.

Scheme Objective: The benefits of RoSCTL are available to exporters of apparel/readymade garments and made-ups. The scheme aims to offset high freight cost and other externalities to international markets with a view to enhance export competitiveness globally. An exporter can benefit from this scheme for all exports done after 1'st April' 2019.

Process for claiming scrips benefits:

Escrip module is developed by ICEGATE. The ICEGATE portal (Indian Customs Electronic Gateway) having the details of credits available to the exports from the various scheme benefits under export products. RoSCTL Scheme provides for rebate of Central, State and Local duties/taxes/levies which are not refundable under any other duty remission schemes. The process for the generation and claiming of scrips under the RoSCTL scheme are listed as under:

1. The process starts with filing of the Export General Manifest (EGM) at ICEGATE.

2. The exporters' desires of availing the benefit of the scheme should make a declaration of the claim for RoSCTL in the shipping bill.

3. The exporter should log in to the ICEGATE portal and create a RoSCTL credit ledger.
4. After the RoSCTL credit ledger account is created, the exporters can log in to their account by using class-3 DSC.
5. The exporter can generate scrips by selecting the relevant shipping bills.
6. After processing the claim, a scroll with all individual shipping bills for the admissible amount would be generated and made available in the users account at ICEGATE portal.
7. Once the scrips are generated the refund will be credited and reflected in the exporter's ledger account.
8. The RoSCTL benefit would be calculated in System as per the calculation logic as notified in the Board notification i.e. value equal to declared export FOB value of the said goods or up to 1.5 times the market price of the goods, whichever is less.

It has been decided that for the Chapters 61,62 and 63, RoSCTL would continue to be given beyond 31.12.2020 and till 31.12.2024. Implementing of RoSCTL scheme in Customs Automated System has been developed.

Procedure to obtain scrip licenses:

- ☐ The exporters have to submit application in ANF-4R Form (Aayat Niryat Form) to the DGFT of their jurisdiction for availing the benefit of RoSCTL scheme.
- ☐ The DGFT shall issue duty credit scrip (licenses) based on corresponding rate for item of exports.
- ☐ Exports from multiple EDI (electronic) ports can be clubbed into a single application and the port of registration can be selected from one of the shipping bills considered for the application.
- ☐ Application needs to be filed with DGFT authority within one year from the date of uploading of shipping Bills from ICEGATE to DGFT server. There is no provision for late cut deductions under this scheme.
- ☐ The licence shall be valid for 24 months for utlisation for payment of Customs duty against imports. Revalidation of the RoSCTL licence is not possible.

Responsibility of the exporters:

- ☐ The exporters have to retain shipping bills and other documents related to the export for three years from the date of issue of the scrips.
- ☐ The DGFT authorities may verify the all exports related documents and non-submission of exports documents may be penalised under the provision of the Foreign Trade (Development and Regulation) Act.
- ☐ Every exporter has to ensure realization of foreign currency and retain the proof of receipt of sale proceeds by obtaining BRIC from the Bank.
- ☐ The jurisdiction DGFT regional authority may carry scrutiny of value of scrips through an electronic examination of records. If an excessive rebate is found to be claimed then exporter has to payback excess claim of rebate with interest from the date of receipt of scrip to the repayment date.
- ☐ The legal action may also be initiated under FTDR Act in case of non-payment

Utilisation of Duty Scrips in Imports:

The e-scrips would be used only for payment of duty of Customs leviable under the First Schedule to the Customs Tariff Act, 1975 viz. Basic Customs Duty (BCD) on imports made through customs automated system only by giving the details of the scrips in the license table of the Bill of entry. The scheme code to be used in Bill of Entry for these scrips would be "RS" along with Notification No as "RoSCTL". The credit amounts are available in the ledger may be utilize for payment of the eligible duties during imports or for transfer to any other importers having IEC and a valid IECGATE registration.

C.B.I & C, Conditions and restrictions:

1.1.I& C, vide its Notification No.75/2021-Cus. (N.T.), dated 23-09-2021 notifies the regulation for use, transfer, maintenance and cancellation of scrips as specified hereunder:

Issuance of duty credit in the scroll. -

(1) A shipping bill or a bill of export, presented under section 50 of the Act on or after the 01st day of January, 2021 and having a claim of duty credit under the Scheme, shall be processed in the customs automated system, including on the basis of risk evaluation through appropriate selection criteria.

(2) The claim shall be allowed by Customs as per the conditions and restrictions notified for the Scheme, after the filing of export manifest or export report.

(3) Once the claim is allowed, a scroll for duty credit will be generated by the proper officer in the customs automated system. Separate scrolls will be generated for each Scheme.

(4) The scroll details, including the details of shipping bill or bill of export, duty credit allowed and date of generation of scroll, shall be visible in the customs automated system to the exporter who is the recipient of such duty credit.

***Creation of e-scrip in the ledger**. -*

The exporter shall have the option to combine the duty credits under a particular Scheme, allowed to him in one or more shipping bills or bills of export, and to carry forward the said duty credits to create an e-scrip for that Scheme in the ledger, customs station- wise according to the customs station of export, within a period of one year from the date of generation of the scroll in the customs automated system:

Provided that if the exporter does not exercise the said option of creating the e-scrip within the said period of one year, duty credit in each scroll will be combined customs station-wise for each Scheme and will be automatically created by the customs automated system as a single e-scrip for duty credit for that Scheme, for each customs station, in the ledger of the said exporter.

(1) Each e-scrip shall have a unique identification number and date of its creation and all transactions in the ledger shall be carried out using the said number and date.

Registration of e-scrip. -

(1) The customs station of export shall be the customs station of registration for an e-scrip.

(2) The registration of e-scrip shall be automatic and separate application for the same shall not be required to be filed.

***Use and validity of e-scrip**. -*

(1) The duty credit available in the e-scrip in the ledger shall be used for payment of duties of Customs specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The e-scrip shall be valid for a period of one year from the date of its creation in the ledger and any duty credit in the said e-scrip remaining unutilized at the end of this period shall lapse.

(3) Such duty credit in the e-scrip that has lapsed shall not be re-generated.

(4) The ledger, including e-scrip and the transactions made therein, shall be visible in the customs automated system to the recipient of such duty credit and the Customs.

Transfer of duty credit in e-scrip. -

(1) Transfer of duty credit in e-scrip shall be allowed within the customs automated system from the ledger of a person to the ledger of another person who is a holder of an Importer-exporter Code Number issued in terms of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992).

The duty credit available in an e-scrip shall be transferred at a time for the entire amount in the said e-scrip to another person and transfer of the duty credit in part shall not be permitted.

(2) The period of validity of the e-scrip, of one year from its creation, shall not change on account of transfer of the e-scrip.

(3) The ledger of the transferee, including e-scrip and the transactions made therein, shall be visible in the customs automated system to the transferee and the Customs.

Suspension or cancellation of duty credit. - Where a person contravenes any of the provisions of the Act or any other law for the time being in force or the rules or regulations made thereunder in relation to the exports to which the duty credit relates, or in relation to the e-scrip, the said duty credit or e-scrip may be suspended or cancelled in the ledger in the manner as notified by the Central Government under section 51B of the Act.

Further**,** C.B.I & C, vide its Notification No.77/2021-Cus. (N.T.), dated 24- 09-2021 notifies the conditions, situations and manner of suspensions or cancellation of duty scrips or recovery of duty credit allowed was in excess or where exports proceeds are not realised as specified hereunder.

2. ***Such duty credit shall be subject to the following conditions, namely:-***

(1) that the duty credit is issued –

(a) against exports of garments and made-ups (hereinafter referred to as the said goods) and their respective rate and cap as listed in Schedules 1, 2, 3 and 4 to the notification of Government of India, Ministry of Textiles' notification No. 14/26/2016-IT (Vol.II), dated the 8th March, 2019 for the Scheme:

Provided that the value of the said goods for calculation of duty credit to be allowed under the Scheme shall be the declared export Free on Board (FOB) value of the said goods or up to 1.5 times the market price of the said goods, whichever is less;

(b) against claim of duty credit under the Scheme made by an exporter by providing the appropriate declaration at the item level in the shipping bill or bill of export in the customs automated system;

(c) against the shipping bill or bill of export, presented under section 50 of the said Act on or after the 1st day of January, 2021, and where the order permitting clearance and loading of goods for exportation under section 51 of the said Act has been made;

(d) after the claim is allowed by Customs upon necessary checks, including on the basis of risk evaluation through appropriate selection criteria, and after filing of export manifest or export report;

(e) in accordance with any rules or regulations issued in relation to duty credit, e-scrip or electronic duty credit ledger;

(2) that such duty credit shall be used for payment of the duty of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) on goods when imported into India;

(3) that the export categories or sectors listed in Table-1 annexed hereto shall not be eligible for duty credit under the Scheme;

(4) that the duty credit allowed under the Scheme, against export of goods notified vide notification No. 14/26/2016-IT (Vol.II), dated the 8th March, 2019 for the Scheme, shall be subject to realisation of sale proceeds in respect of such goods in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), failing which such duty credit shall be deemed to be ineligible;

(5) that the imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations which allow the bill of entry and shipping bill or bill of export to be presented and processed electronically on the customs automated system;

(6) that the exporter has realised the sale proceeds against export of goods made earlier by the said exporter where the period allowed for realisation, including any extension of the said period by the Reserve Bank of India, has expired:

Provided that duty credit shall be issued by Customs in excess of the ineligible amount of duty credit pertaining to the unrealised portion of sale proceeds against export of goods made earlier:

Provided further that if the Principal Commissioner of Customs or Commissioner of Customs has reason to believe, on the basis of risk evaluation or on the basis of enquiry, that the claim of duty credit made by an exporter on export goods may not be bona fide, he may direct, for reasons to be recorded in writing, to allow duty credit after realisation of sale proceeds of such exports;

that duty credit under the Scheme for exports made to Nepal, Bhutan and Myanmar shall be allowed only upon realisation of sale proceeds against irrevocable letters of credit in freely convertible currency established by importers in Nepal, Bhutan and Myanmar in favour of Indian exporters for the value of such goods.

3. ***Cancellation of duty credit***.-

(1) Where a person contravenes any of the provisions of the said Act or any other law for the time being in force or the rules or regulations made thereunder in relation to exports to which the duty credit relates, or in relation to the e-scrip, the Principal Commissioner of Customs or Commissioner of Customs having jurisdiction over the customs station of registration of the e-scrip may, after enquiry, pass an order to cancel the said duty credit or e-scrip.

(2) Where the e-scrip is so cancelled, the duty credit amount in the said e-scrip shall be deemed never to have been allowed and the proper officer of Customs shall proceed to recover the duty credit amount used in such e-scrip or transferred from such e-scrip.

(3) The proper officer of Customs may, without prejudice to any other action that may be taken under the said Act or any other law for the time being in force, suspend the operation of the said e-scrip or the electronic duty credit ledger of such exporter or any duty credit transferred from such e-scrip, during pendency of the enquiry under sub-clause (1).

4. ***Recovery of amount of duty credit.-***

(1) Where an amount of duty credit has, for any reason, been allowed in excess of what the exporter is entitled to, the exporter shall repay the amount so allowed in excess, himself or on demand by the proper officer, along with interest, at the rate as fixed under section 28AA of the said Act for the purposes of that section, on that portion of duty credit allowed in excess, which has been used or transferred, and where the exporter fails to repay the amount along with interest, as applicable, it shall be recovered in the manner provided in section 142 of the said Act.

The duty credit amount that an exporter is so required to repay under sub-clause (1) shall be deemed never to have been allowed, and if the exporter fails to repay the said amount within a period of fifteen days along with interest so demanded, then the proper officer of Customs may, without prejudice to any action against the exporter, proceed for recovery of the said duty credit amount from the transferee in the manner as provided in section 142 of the said Act.

5. ***Recovery of amount of duty credit where export proceeds are not realised.-***

(1) Where an amount of duty credit has been allowed to an exporter but the sale proceeds in respect of such export goods have not been realised by the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), the exporter shall, himself or on demand by the proper officer, repay the amount of duty credit, along with interest, at the rate as fixed under section 28AA of the said Act for the purposes of that section, within fifteen days of expiry of the said period.

(2) In case any extension of the said period for realisation of sale proceeds has been given by the Reserve Bank of India and the exporter produces evidence of such extension to the proper officer, and if the said sale proceeds are not realised in such extended period, the exporter shall repay the said amount of duty credit along with the said interest, within fifteen days of expiry of the said period.

(3) If a part of the sale proceeds has been realised, the amount of duty credit to be recovered shall be the amount equal to that portion of the amount of duty credit allowed which bears the same proportion as the portion of the sale proceeds not realised bears to the total amount of sale proceeds.

(4) Where the exporter fails to repay the duty credit amount within the said period of fifteen days, the said duty credit shall be deemed never to have been allowed and it shall be recovered, along with the said interest, in the manner as provided in section 142 of the said Act.

(5) The proper officer of Customs may, without prejudice to any action against the exporter, proceed for recovery of said duty credit amount from the transferee in the manner as provided in section 142 of the said Act.

During the pendency of any recovery, as provided in clauses 4 and 5, no further duty credit, on any subsequent exports, shall be allowed to such exporter till the time such recovery is made and any unutilised duty credit with the exporter or the transferee shall be suspended pending such recovery.

RoDTEP scheme

Export Promotion Schemes under Foreign Trade Policy 2015- 20 having provision of several schemes to boost exports of the Country by giving incentives to the domestic manufacturers to boost export production & distribution to various countries. In order to give relief to the exporters by reimbursement of all State and local levies which are part of the price of the goods exported, a new scheme has been introduced as Remission of Duties and Taxes on exported products (RoDTEP) w.e.f. 01-Jan- 2021. RoDTEP is a new scheme launched by the Government to replace the existing MEIS scheme for exports of goods from India and this scheme was announced vide press release dated 31-Dec-2020 by the advisory of Ministry of Finance, which is applicable to all export goods.

Objective of the scheme:

(i) The very fundamental principles of FTP, 'Let the goods are exported', not the taxes therein' and the objective behind introduction of RoDTEP scheme, under which a mechanism would be created for reimbursement of taxes / duties / levies, at the Central, State and local level, which are currently not being refunded under

any other mechanism, but which are incurred in the process of manufacturing and distribution of exported products.

(ii) To boost exports scheme for enhancing Exports to International Markets.

(iii) To make Indian exports cost competitive and create a level playing field for Indian exporters in international market

(iv) To boost to employment generation in various sectors,

(v) It aims to boost dwindling outward shipments.

Salient features of RoDTEP Scheme:

1. RoDTEP scheme is going to give a boost to the domestic industry and Indian exports providing a level playing field for Indian producers in the International market so that domestic taxes / duties are not exported.
2. Taxes such as VAT on fuel, excise duty on fuel, Mandi Tax, which were used in the production goods and used in the distribution services of export goods will be reimbursed through the RoDTEP scheme.
3. Thereby, the objective of Zero-rating of export products can be achieved through the RoDTEP scheme.
4. Under the scheme an inter-ministerial Committee will determine the rates and items for which the reimbursement of taxes and duties would be provided.

   The refund would be claimed by the exporters as a percentage of the freight on board (FOB) value of export goods of each consignment once it is exported.
5. Refund under the scheme, in the form of transferable duty credit electronic scrip will be issued to the exporters, which will be maintained in an electronic ledger. The scheme will be implemented end to end digitization.
6. An exporter desirous of availing the benefit of the RoDTEP scheme shall be required to declare his willingness for each export items in the shipping bill or bill of export.
7. Once the rates are notified, System would automatically calculate the RoDTEP amounts for all the items where RoDTEP was claimed. No changes in the claim will be allowed after filing of export general manifest with Customs authority.

8. A monitoring and audit mechanism, with an information technology based risk management system (RMS), would be put in place to physically verify the records of the exporters.
9. Increase in loan availability for exporters introduced through ECG acting as guarantee for loans availed.
10. Decrease in credit interest rates to MSMEs.
11. A budget to provide higher insurance cover through Export Credit Guarantee Corporation (ECGC), to increase the lending opportunities from banks.
12. Reduction in turnaround time on airports and ports to decrease delays in exports. A real time monitoring of clearance status via digital platform will be made available.

Eligibility to avail benefits of the RoDTEP scheme:

- The Scheme will cover all sectors (including textiles), with priority given to labour - intensive sectors which are enjoying benefits under MEIS Scheme at 2%, 3% or 5% of the export value.
- Both merchant exporters and manufacturer exporters are eligible.
- There are no minimum turnover criteria or threshold limit to claim the RoDTEP.
- Goods exported through e-commerce platform via courier are also eligible.
- The exported products need to have country of origin as India.
- Re-exported products are not eligible under this Scheme.
- Special Economic Zone Units are also eligible to claim the benefits under this Scheme.

Remarks: As per clarification dated 15'th January'2021 by SEZ Division, Department of Commerce provided that if an SEZ unit files shipping bill under RoDTEP scheme, the sam e would be allowed after mentioning the following in the remarks column:

"Shipping Bill filed under RoDTEP scheme if applicable to SEZ unit & subject to such conditions as prescribed including the product coverage"

In case exports from SEZ are covered under the RoDTEP scheme, such exports may be taken into account under RoDTEP.

Ineligible exporters for the RoDTEP scheme:

- This scheme does not cover to the export of services only exporters of goods are eligible to avail this scheme.
- Exports by EOUs, Advance Authorisation Holders are not covered under this scheme.

Process for claiming scrips/benefits under RoDTEP Scheme:

The ICEGATE portal (Indian Customs Electronic Gateway) having the details of credits available to the exports from the various scheme benefits under export products. The process for the generation and claiming of scrips under the RoDTEP scheme are listed as under:

1. The process starts with filing of the Export General Manifest (EGM) at ICEGATE.
2. The exporters desires of availing the benefit of the scheme should make a declaration of the claim for RoDTEP in the shipping bill.
3. The exporter should log in to the ICEGATE portal and create a RoDTEP credit ledger.
4. After the RoDTEP credit ledger account is created, the exporters can log in to thei r account by using class-3 DSC.
5. The exporter can generate scrips by selecting the relevant shipping bills.
6. After processing the claim, a scroll with all individual shipping bills for the admissible amount will be generated and available in the users account at ICEGATE portal.
7. The exporters will be able to club the credits allowed for any number of shipping bills at a port and generate credit scrips for the same.
8. Once the scrips are generated the refund will be credited and reflected in the exporter's ledger account.
9. The credit amounts are available in the ledger may be utilize for payment of the eligible duties during imports or for transfer to any other importers having IEC and a valid IECGATE registration.

Major benefits of the RoDTEP Scheme:

(i) The RoDTEP scheme will now be refunded the embedded central excise duty, madi tax, VAT, Coal cess on fuel or generation of electricity, which are used in the manufacture of export goods and services for the distribution of export goods.

(ii) The refund would be credited in an exporter's ledger account with Customs and used to pay Basic Customs duty on imported goods.

(iii) The refund will be issued in the form of transferable electronic scrips. These duty credits will be maintained and tracked through an electronic ledger.

(iv) The credits can also be transferred to other importers just like MEIS / SEIS scrips.

The RoDTEP scheme is the export subsidy scheme has been launched by the Government as a WTO (World Trade Organisation) compliant scheme. The new scheme of exports benefit has been announced by the Government through press release on 31'st Deceber'2020, w.e.f 1'st January'2021 for all export goods. The rate of duty of remission for the export products under

RoDTEP scheme is not yet notified by the Government. The immediate announcement of the RoDTEP rates for the entire product so as to remove uncertainty and help the exporters to reworking with such rate while negotiating or executing new export orders. Hence, the implementation of the Scheme is awaited for issuance Notifications from the DGFT and the Ministry of Finance, in the Government of India to avail benefits from the scheme from 1'st January'2021. Further, there is need of clarification by the Government with regard to exports made by EOUs and exports under Advance Authorisation, Jobbing, etc., which are kept outside the scheme. It is hoped that implementation of RoDTEP scheme replacing MEIS scheme would make India a compliant exporter and export products will be competitive price in the international market by giving incentives of refund of taxes on export products at the manufacturing stages.

B15 : STATUS HOLDER ('SH') SCHEME

Objective

- To grant privileges to exporters with high export performance

Eligibility

- Status holders are business leaders who have excelled in

nternational trade and have successfully contributed to country's foreign exchange

- All exporter of goods or services having IEC on the date of application
- Recognition granted by DGFT/Development Commissioner
- FOB value of exports in convertible foreign exchange or in Indian rupees considered
- 'Double weightage' of exports allowed for One Star Status Holder category
- 'Double weightage' also allowed to MSME, BIS/ISO certified units, unit in NE states & JK, export of fruits and vegetables

Privileges

☐ Exemption from furnishing of bank guarantee for schemes under FTP unless otherwise specified

☐ Authorization and Customs clearances for both imports and exports on self-declaration basis

☐ Exemption from compulsory negotiation of documents through banks

☐ Two star and above category permitted to set up export warehouse

☐ Priority treatment in handling of consignment by the authorities

☐ Manufacturers who are three start or above will be enabled to self-certify their goods as originating from India

☐ FOC samples allowed subject to annual limit of INR 1 Crores or 2% of average annual export realization during the last three years, whichever is lower

☐ Fixation of SION within 60 days of the application

☐ DTA sale permission not required to STP units; only intimation

STATUS CATEGORY

Under FTP 2015-20		Under FTP 2023
Threshold export performance to be achieved in during current and previous three financial years		
Status Category	Exports Performance FOB/FOR Value (in US $ million)	Exports Performance FOB/ FOR Value (in US $ million)
One Star Export House	3	3
Two Star Export House	25	15
Three Star Export House	100	50
Four Star Export House	500	200
Five Star Export House	2000	800
Export performance is necessary in at least two out of four years For deemed exports, FOR value shall be converted into US $ at the exchange rate notified by CBIC as on 01 April each year.		Export performance is necessary in all the three financial years For deemed exports, FOR value shall be converted into US $ at the exchange rate notified by CBIC as on 01 April each year.
Validity- 5 Years		

B16 : AUDIT

1. Introduction:

1.1 Central Board of Indirect Taxes and Customs (CBIC), In exercise of the powers conferred by clause(k) of section 157, read with section 99A and clause(ii) of sub-section(2) of section 158, of the Customs Act, 1962(52 of 1962) and in supersession of the On-site Post Clearance Audit at the Premises of Importers and Exporters Regulation, 2011,has notified the Customs Audit Regulations, 2018, vide Notification No. 45/2018-Customs (N.T.) dated 24th May 2018.

[Notification No. 45/2018-Customs (N.T.) dt. 24th May 2018.]

1.2 A new Chapter XII A with heading 'AUDIT' was introduced in Customs Act, 1962, after Section 99. A new Section 99A (under Chapter XII A) has been introduced to provide a statutory framework for the procedure for conducting post clearance audit.

Section 99A: the proper officer may carry out the audit of assessment of imported goods or export goods or of an auditee under this Act either in his office or in the premises of the auditee in such manner as may be prescribed. Explanation of said Section 99A defines "auditee" as under:

Explanation. — For the purposes of this section, "auditee" means a person who is subject to an audit under this section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods.

It means, scope of auditee has been enlarged significantly by aforesaid definition.

[Inserted by Finance Act, 2018 (Act No. 13 of 2018), dt. 29-3-2018.]

1.3 A new clause (k) has been inserted in section 157 of the Customs Act [vide Finance Act, 2018 (Act No. 13 of 2018)] to enable the Board to frame regulations in accordance with the new section 99Aof the said Act.

Clause (k) of section 157 reads as: (k) the manner of conducting audit;

[Inserted by Finance Act, 2018 (Act No. 13 of 2018), dt. 29-3-2018.]

Customs Audit Regulations, 2018 has been issued in terms of power conferred by Clause (k) of section 157and the same is in accordance with global best practices, which is aimed at creating an environment of increased compliance while allowing the Department the flexibility to increase the facilitation for importers and exporters. Customs Audit Regulations, 2018 mark a fundamental shift in the functioning of the Indian Customs since the legal compliance and correct assessment of Customs duties will be verified by the Customs at the premises of importers and exporters. The earlier 'On-site Post Clearance Audit at the Premises of Importers and Exporters Regulations, 2011' (OSPCA regulation)was applicable in relation to imported / export goods that were cleared after the enactment of the Finance Bill, 2011, i.e. 08.04.2011. The said OSPCA regulation, empowered the proper officer for verification of correctness of assessment of duty on imported or export goods at the premise of importer or exporter and also prescribed the manner of conducting audit.

1.4 As per Customs Audit Regulations, 2018, "audit" includes examination or verification of declaration, record, entry, document, import or export license, authorization, scrip, certificate, permission etc., books of account, test or analysis reports, and any other document relating to imported goods or export goods or dutiable goods, and may include inspection of sample and goods, if such sample or goods are available and where necessary, drawl of samples. Further, for the purpose of the section 99A, "auditee" means a person who is subject to an audit under the section and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods. Further, "premises" includes the registered office, branch office, warehouse, factory, or any other premises at which, imported goods or export goods or dutiable goods or books of account or records of transaction or other related documents, in relation to the said goods are ordinarily kept, for any purpose by an auditee.

2. Customs Audit Regulations, 2018:

2.1 Customs Audit Regulations,2018 prescribes the methodology of Selection for Audit which states that **t**he selection of auditee or the selection of import declarations or export declarations, as the case may be, for the purposes of audit shall primarily be based on risk evaluation through appropriate selectivity criteria. Thus, "risk based selection" is at the core of Customs Audit.

2.2 Customs Audit Regulations, 2018 also prescribe the manner of conducting audit at the premises of importer or exporter. It also stipulates the responsibilities and compliance on the part of auditee.

3. Auditee to preserve and make available relevant documents:

3.1 The auditee shall preserve and on request by the proper officer make available in a timely manner, for the purposes of audit, true and correct information, records including electronic records, documents or accounts maintained in compliance of the provisions of the Act, rule or regulations, made there under or any other law for the time being in force, maintained for a minimum period of five years in relation to imported goods or export goods or dutiable goods.

3.2 The auditee shall render assistance to the proper officer and his team of officers in the discharge of their official duty and shall in no case refuse or obstruct the proper officer or his team of officers in discharge of their official duty.

4. Manner of conducting audit–

4.1 Following guidelines are prescribed under the Customs Audit Regulations, 2018:

(1) The proper officer may conduct audit either in his office or in certain cases at the premises of an auditee.

(2) The proper officer may, where considered necessary, request the auditee to furnish documents, information or record including electronic record, as may be relevant to audit.

(3) The proper officer shall give not less than fifteen days advance notice to the auditee to conduct audit at the premises of the auditee.

(4) The proper officer may, where considered necessary, inspect the imported goods or export goods or dutiable goods at the premises of the auditee or request the auditee to produce sample, if available, with him.

(5) The proper officer shall inform the auditee of the objections, if any, before preparing the audit report to provide him an opportunity to offer clarifications with supporting documents.

(6) Where the auditee is in agreement with the audit findings, he may make voluntary payments of duty, interest or other sums, due, if any, in part or in full and the proper officer shall record the same in the audit report.

(7) Where the proper office has asked the auditee to furnish

information, document, record or sample for the purposes of audit, it shall be mandatory for the proper officer to inform outcome of such audit to the auditee.

(8) The proper officer shall complete audit in cases where it is conducted at the premises of the auditee within thirty days from the date of starting of the audit. The jurisdictional Commissioner of Customs may extend the period of completion of audit from thirty days to sixty days, by an order in writing.

5. Assistance of professionals.

5.1 If the proper officer, having regard to the nature and complexity of the audit, is of the opinion that the audit has to be done with the assistance of a professional like Chartered Accountant, Cost Accountant, an expert in the field of computer sciences or information technology etc., may do so, with the previous approval of the Principal Commissioner/Commissioner of Customs.

6. Penalty.

6.1 Any auditee, who contravenes any provision of these regulations or abets such contravention or fails to comply with any provision of these regulations with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand Indian rupees."

Officers of Customs Audit

The Board vide Notification No. 39/2018-Customs (N.T.) dated 11thMay, 2018 has appointed officers of Customs of specified ranks as officers of Customs Audit for the purpose of carrying out audit under section 99A of the Customs Act, 1962. The specified officers have also been empowered under Section 17 and Section 28 of the Customs Act, 1962 vide Notification No. 40/2018-Cus (NT) dated the 11thMay, 2018 which shall enable them to issue necessary show cause notices based on the findings of audit.

[Refer Notification No 39/2018-Cus (NT)., dated 11-05-2018 & Notification No 40/2018-Cus (N1), datedll-05-2018]

CUSTOMS AUDIT REGULATIONS, 2018

[Notification No. 45/2018-Cus. (N.T.), dated 24-5-2018]

In exercise of the powers conferred by clause (k) of section 157, read with section 99A and clause (ii) of sub-section (2) of section 158, of the Customs Act, 1962 (52 of 1962) and in supersession of the On-site Post Clearance Audit at the Premises of Importers and Exporters Regulation, 2011, except as respect things done or omitted to be

done before such supersession, the Central Board of Indirect Taxes and Customs hereby makes the following regulations, namely:-

Short title and commencement. 1. — These regulations may be called the Customs Audit Regulations, (1) 2018.

They shall come into force on the date of (2) their publication in the Official Gazette.

Definitions. 2. — In these regulations, unless the context otherwise requires, -

(a) *"Act"* means the Customs Act, 1962 (52 of 1962);

(b) *"audit"* includes examination or verification of declaration, record, entry, document, import or export licence, authorisation, scrip, certificate, permission, etc., books of account, test or analysis reports, and any other document relating to imported goods or export goods or dutiable goods, and may include inspection of sample and goods, if such sample or goods are available and where necessary, drawl of samples;

"auditee" means a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods;

(c) *"audit report"* includes the audit findings in the report prepared after the audit containing details about objections raised by the proper officer and explanation given by the auditee, if any;

(d) *"books of account"* includes ledgers, day-books, cash books, account- books, other accounts related record whether kept in written or printed form or stored electronically;

(e) *"electronic records"* means data or record stored in any form and manner relevant for the purpose of Audit under section 99A of the Act;

(f) *"premises"* includes the registered office, branch office, warehouse, factory, or any other premises at which, imported goods or export goods or dutiable goods or books of account or records of transaction or other related documents, in relation to the said goods are ordinarily kept, for any purpose by an auditee.

Words and expressions used and not defined (h) herein but defined in the Act, shall have the same meaning respectively, assigned to them in the Act.

Auditee to preserve and 3. make available relevant documents. The auditee — (1) shall preserve and on request by the proper officer make available in a timely manner, for the purposes of audit, true and correct information, records including electronic records, documents or accounts maintained in compliance of the provisions of the Act, rule or regulations, made there under or any other law for the time being in force, maintained for a minimum period of five years in relation to imported goods or export goods or dutiable goods.

The auditee shall render assistance to the proper officer and his (2) team of officers in the discharge of their official duty and shall in no case refuse or obstruct the proper officer or his team of officers in discharge of their official duty.

Selection for 4. Audit. — The selection of auditee or the selection of import declarations or export declarations, as the case may be, for the purposes of audit shall primarily be based on risk evaluation through appropriate selectivity criteria.

Manner of conducting 5. audit. The proper officer may conduct audit—

(1) either in his office or in certain cases at the premises of an auditee.

The proper officer may, where considered **(2)** necessary, request the auditee to furnish documents, information or record including electronic record, as may be relevant to audit.

The proper officer shall give not less **(3)** than fifteen days advance notice to the auditee to conduct audit at the premises of the auditee.

The proper officer may, where considered **(4)** necessary, inspect the imported goods or export goods or dutiable goods at the premises of the auditee or request the auditee to produce sample, if available, with him.

The proper officer shall inform the **(5)** auditee of the objections, if any, before preparing the audit report to provide him an opportunity to offer clarifications with supporting documents.

Where the auditee is in agreement with **(6)** the audit findings, he may make voluntary payments of duty, interest or other sums, due,

if any, in part or in full and the proper officer shall record the same in the audit report.

Where the proper office has asked the **(7)** auditee to furnish information, document, record or sample for the purposes of audit, it shall be mandatory for the proper officer to inform outcome of such audit to the auditee.

The proper officer shall complete audit **(8)** in cases where it is conducted at the premises of the auditee within thirty days from the date of starting of the audit:

Provided that the jurisdictional Commissioner of Customs may extend the period of completion of audit from thirty days to sixty days, by an order in writing.

Assistance of professionals. 6. If — (1) the proper officer, having regard to the nature and complexity of the audit, is of the opinion that the audit has to be done with the assistance of a professional like Chartered Accountant, Cost Accountant, an expert in the field of computer sciences or information technology etc., may do so, with the previous approval of the Principal Commissioner/Commissioner of Customs.

Penalty. - Any auditee, who contravenes any provision of these regulations or abets such contravention or fails to comply with any provision of these regulations with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand Indian rupees.

SEARCHES, SEIZURE AND ARREST UNDER CUSTOMS ACT, 1962

The provisions of searches, seizure and arrest have been prescribed under Customs Act, 1962 to control improper import or export goods. Customs officers are empowered to search any premises or conveyances, X-ray any person and effect search and seizure in cases where they have reason to believe that goods are of a contraband nature are stored. The customs officers also have the power to investigate or interrogate a person in connection with any inquiry under the Customs Act and arrest him.

Section 100 to Section 110A of the Customs Act, 1962 deals with the subject of searches, seizure and arrest.

Section 100. Power to search suspected persons entering or leaving India, etc. - If the proper officer has reason to believe that (1) any person to whom this section applies has secreted about his

person, any goods liable to confiscation or any documents relating thereto, he may search that person.

This section applies to the following (2) persons, namely :-

(a) any person who has landed from or is about to board, or is on board any vessel within the Indian customs waters;

(b) any person who has landed from or is about to board, or is on board a foreign-going aircraft;

(c) any person who has got out of, or is about to get into, or is in, a vehicle, which has arrived from, or is to proceed to any place outside India;

(d) any person not included in clauses (a), (b) or (c) who has entered or is about to leave India;

(e) any person in a customs area.

Section 101. Power to search suspected persons in certain other cases.

- Without prejudice to the provisions of section (1) 100, if an officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs, has reason to believe that any person has secreted about his person any goods of the description specified in sub-section (2) which are liable to confiscation, or documents relating thereto, he may search that person.

The goods referred to in sub-section (1) (2) are the following :- gold; (a) diamonds; (b) manufactures of gold or (c) diamonds; watches; (d) any other class of goods which the Central (e) Government may, by notification in the Official Gazette, specify.

Section 102. Persons to be searched may require to be taken before gazetted officer of customs or magistrate. - When any officer of **(1)** customs is about to search any person under the provisions of section 100 or section 101, the officer of customs shall, if such person so requires, take him without unnecessary delay to the nearest gazetted officer of customs or magistrate.

If such requisition is made, the officer of **(2)** Customs may detain the person making it until he can bring him before the gazetted officer of customs or the magistrate.

The gazetted officer of customs or the **(3)** magistrate before whom

any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made.

Before making a search under the provisions **(4)** of section 100 or section 101, the officer of customs shall call upon two or more persons to attend and witness the search and may issue an order in writing to them or any of them so to do; and the search shall be made in the presence of such persons and a list of all things seized in the course of such search shall be prepared by such officer or other person and signed by such witnesses.

No female shall be searched by any one **(5)** excepting a female.

Section 103. Power to screen or X-ray bodies of suspected persons for detecting secreted goods. - Where the proper officer has reason to (1) believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body, he may detain such person and shall, -

with the prior approval of the Deputy **(a)** Commissioner of Customs or Assistant Commissioner of Customs, as soon as practicable, screen or scan such person using such equipment as may be available at the customs station, but without prejudice to any of the rights available to such person under any other law for the time being in force, including his consent for such screening or scanning, and forward a report of such screening or scanning to the nearest magistrate if such goods appear to be secreted inside his body; or

produce him without unnecessary delay **(b)** before the nearest magistrate. A magistrate before whom any person is brought under sub-section **(2)**

(1) shall, if he sees no reasonable ground for believing that such person has any such goods secreted inside his body, forthwith discharge such person.

Where any such magistrate has reasonable ground for believing **(3)** that such person has any such goods secreted inside his body and the magistrate is satisfied that for the purpose of discovering such goods it is necessary to have the body of such person screened or X-rayed, he may make an order to that effect.

Where a magistrate has made any order under sub-section **(3)**, in **(4)** relation to any person, the proper officer shall, as soon as

practicable, take such person before a radiologist possessing qualifications recognized by the Central Government for the purpose of this section, and such person shall allow the radiologist to screen or X-ray his body.

A radiologist **(5)** before whom any person is brought under sub-section **(4)** shall, after screening or X-raying the body of such person, forward his report, together with any X-ray pictures taken by him, to the magistrate without unnecessary delay.

Where on receipt of **(6)** a report from the proper officer under clause **(a)** of sub-section **(1)** or from a radiologist under sub-section **(5)** or otherwise, the magistrate is satisfied that any person has any goods liable to confiscation secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered medical practitioner and such person shall be bound to comply with such direction :

Provided that in the case of a female no such action shall be taken except on the advice and under the supervision of a female registered medical practitioner.

Where any person is **(7)** brought before a magistrate under this section, such magistrate may for the purpose of enforcing the provisions of this section order such person to be kept in such custody and for such period as he may direct.

Nothing in this **(8)** section shall apply to any person referred to in sub- section (1), who admits that goods liable to confiscation are secreted inside his body, and who voluntarily submits himself for suitable action being taken for bringing out such goods.

Explanation. - For the purposes of this section, the expression "registered medical practitioner" means any person who holds a qualification granted by an authority specified in the Schedule to the Indian Medical Degrees Act, 1916 (7 of 1916), or notified under section 3 of that Act, or by an authority specified in any of the Schedules to the Indian Medical Council Act, 1956 (102 of 1956).

Section 104. Power to Arrest. - If an officer of Customs **(1)** empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs has reason to believe that any person has committed an offence punishable under section 132 or section 133 or section 135 or section 135A or section 136, he may arrest such person and shall, as soon as may be, inform

him of the grounds for such arrest.

Every person arrested under sub-section **(1) (2)** shall, without unnecessary delay, be taken to a magistrate.

Where an officer of customs has arrested **(3)** any person under sub-section **(1)**, he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer- in-charge of a police-station has and is subject to under the *Code of Criminal Procedure, 1898* (5 of 1898).

Notwithstanding anything contained in the (4) *Code of Criminal Procedure, 1973* (2 of 1974), any offence relating to -

(a) prohibited goods; or

(b) evasion or attempted evasion of duty exceeding fifty lakh rupees; or,

(c) fraudulently availing of or attempting to avail drawback or any exemption from duty provided under this Act, where the amount of drawback or exemption from duty exceeds fifty lakh rupees; or fraudulently obtaining an instrument for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, and such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds fifty lakh rupees, shall be cognizable.

Save as otherwise provided in sub-section **(5) (4),** all other offences under the Act shall be non-cognizable.

Notwithstanding anything contained in the **(6)** Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 135 relating to — (Non-bailable offences) evasion or attempted evasion of duty (a) exceeding fifty lakh rupees; or smuggling of prohibited goods notified (b) under section 11 which are also notified under sub-clause (c) of clause (i) of sub-section (1) of section 135; or import of concealed or export of any goods (c) which have not been declared in accordance with the provisions of this Act and the market price of which exceeds one crore rupees; or

fraudulently availing of or attempt to (d) avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds fifty lakh rupees; or

fraudulently obtaining an instrument for (e) the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992, and

such instrument is utilised under this Act, where duty relatable to such utilisation of instrument exceeds fifty lakh rupees, shall be non-bailable.

Save as otherwise provided in sub-section **(7) (6)**, all other offences under this Act shall be bailable.

The officers are under instructions to make arrest in bailable offences only in exceptional situations that may include :-

(a) *Baggage cases* – Outright smuggling of high value goods such as gold, silver, restricted or prohibited items or goods notified under Section 123 or foreign currency where the value of the offending goods exceeds ₹ 20 lakh.

(b) Appraising cases (relating to trade goods) involving wilful mis-declaration in description of goods/concealment of goods/goods notified under Section 123 where the CIF value of the offending goods exceeds ₹ 2 crores.

(c) Fraudulent drawback cases where the amount of drawback is ₹ 1 crore or more.

(d) In cases related to exportation of trade goods (i.e. appraising cases) involving (i) wilful misdeclaration in value/description; (ii) concealment of restricted goods or goods notified under Section 11 of the Customs Act, 1962, where FOB value of the offending goods is ₹ 2 crores or more.

(e) The above criteria of value mentioned would not apply in cases involving offences relating to FICN, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna.

In bailable offence cases, the arresting officer is bound to release the arrested person on bail and accept the bail bond. Finance Act, 2013 provides for grant of bail only in non-cognizable cases. The C.B.E. & C., Circular No. 38/2013-Cus., dated 17-9-2013, [2013 (295) E.L.T. T134], (amendments to Section 104 of the Customs Act), Specify all offences are bailable other than the categories of offences punishable under Section 135 of the Act ibid.

Every arrest should be intimated to the Chief Commissioner/DGRI who will further inform the concerned Board Member.

Section 105. Power to search premises. - If the Assistant **(1)** Commissioner of Customs or Deputy Commissioner of Customs, or in

any area adjoining the land frontier or the coast of India an officer of customs specially empowered by name in this behalf by the Board, has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under this Act, are secreted in any place, he may authorise any officer of Customs to search or may himself search for such goods, documents or things.

The provisions of the Code of Criminal Procedure, 1898 (5 of (2) 1898), relating to searches shall, so far as may be, apply to searches under this section subject to the modification that sub-section **(5)** of Section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words Principal Commissioner of Customs or Commissioner of Customs were substituted.

Section 106. Power to stop and search conveyance. - Where the proper **(1)** officer has reason to believe that any aircraft, vehicle or animal in India or any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land, and -

(a) rummage and search any part of the aircraft, vehicle or vessel;

(b) examine and search any goods in the aircraft, vehicle or vessel or on the animal;

(c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.

Where for the purposes of sub-section (1) - (2)

(a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flag and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognized means, and thereupon, such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid and if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;

(b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means for stopping it, and where such means fail, the vehicle or animal may be fired upon.

Section 106A. Power to Inspect. - Any proper officer authorised in this behalf by the Principal Commissioner of Customs or Commissioner of Customs may, for the purpose of ascertaining whether or not the requirements of this Act have been complied with, at any reasonable time, enter any place intimated under Chapter IVA or Chapter IVB, as the case may be, and inspect the goods kept or stored therein and require any person found therein, who is for the time being in charge thereof, to produce to him for his inspection the accounts maintained under the said Chapter IVA or Chapter IVB, as the case may be, and to furnish to him such other information as he may reasonably require for the purpose of ascertaining whether or not such goods have been illegally imported, exported or are likely to be illegally exported.

Section 107. Power to examine person. - Any officer of customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods, -

(a) require any person to produce or deliver any document or thing relevant to the enquiry;

(b) examine any person acquainted with the facts and circumstances of the case.

Section 108. Power to summon persons to give evidence and produce documents. - Any gazetted officer of Customs shall have power to summon any **(1)** person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this Act.

A summon to produce documents or other things may be for the **(2)** production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

All persons so summoned shall be bound to attend either in person **(3)** or by an authorised agent, as such officer may direct; and all

persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required :

Provided that the exemption under section 132 of the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable to any requisition for attendance under this section.

Every such inquiry as aforesaid shall be deemed to be a judicial **(4)** proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

Section 108A. Obligation to furnish information. - Any person, being -

(a) a local authority or other public body or association; or

(b) any authority of the State Government responsible for the collection of value added tax or sales tax or any other tax relating to the goods or services; or

(c) an income-tax authority appointed under the provisions of the Income-tax Act, 1961 (43 of 1961); or a Banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934); or

(d) a co-operative bank within the meaning of clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961); or

(e) a financial institution within the meaning of clause (c), or a non-banking financial company within the meaning of clause (f), of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934); or

(f) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003 (36 of 2003), or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or

(g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); or

(h) a Registrar within the meaning of the Companies Act, 2013 (18 of 2013); or

(i) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988); or

(j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013); or

(k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or

(l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); or

(m) the Post Master General within the meaning of clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or

(n) the Director General of Foreign Trade within the meaning of clause (d) of section 2 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992); or

(o) the General Manager of a Zonal Railway within the meaning of clause (18) of section 2 of the Railways Act, 1989 (24 of 1989); or an officer of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934), who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts specified above or under any other law for the time being in force, which is considered relevant for the purposes of this Act, shall furnish such information to the proper officer in such manner as may be prescribed by rules made under this Act.

Where the proper officer considers that the (2) information furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such information and give him an opportunity of rectifying the defect within a period of seven days from the date of such intimation or within such further period which, on an application made in this behalf, the proper officer may allow and if the defect is not rectified within the said period of seven days or, further period, as the case may be, so allowed, then, notwithstanding

anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall apply.

Where a person who is required to furnish (3) information has not furnished the same within the time specified in sub-section (1) or sub-section (2), the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding thirty days from the date of service of the notice and such person shall furnish such information.

Section 108B. Penalty for failure to furnish information return. - Where the person who is required to furnish information under section 108A fails to do so within the period specified in the notice issued under sub-section (3) thereof, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such information continues

Section 109. Power to require production of order permitting clearance of goods imported by land. - Any officer of customs appointed for any area adjoining the land frontier of India and empowered in this behalf by general or special order of the Board, may require any person in possession of any goods which such officer has reason to believe to have been imported into India by land, to produce the order made under section 47 permitting clearance of the goods :

Provided that nothing in this section shall apply to any imported goods passing from a land frontier to a land customs station by a route appointed under clause (c) of section 7.

Section 109A. Power to undertake controlled delivery. - Notwithstanding anything contained in this Act, the proper officer or any other officer authorised by him in this behalf, may undertake controlled delivery of any consignment of such goods and in such manner as may be prescribed, to -

(a) any destination in India; or

(b) a foreign country, in consultation with the competent authority of such country to which such consignment is destined.

Explanation. - For the purposes of this section "controlled delivery" means the procedure of allowing consignment of such goods to pass out of, or into, the territory of India with the knowledge and under the supervision of proper officer for identifying the persons involved in the commission of an offence or contravention under this Act.

Section 110. Seizure of goods, documents and things. - If the proper officer has reason to believe that any goods are liable to (1) confiscation under this Act, he may seize such goods :

Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer :

Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.

The Central Government may, having regard (1A) to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

Where any goods, being goods specified (1B) under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin

and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of -

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

Where an application is made under (1C) sub-section (1B), the Magistrate shall, as soon as may be, allow the application.

Where any goods are seized under (2) sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized :

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified :

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.

The proper officer may seize any documents (3) or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

The person from whose custody any documents (4) are seized under sub- section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

Where the proper officer, during any (5) proceedings under the Act, is of the opinion that for the purposes of protecting the interest of revenue or preventing smuggling, it is necessary so to do, he may, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, by order in writing, provisionally attach

any bank account for a period not exceeding six months :

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified.

Section 110A. Provisional release of goods, documents and things seized [or bank account provisionally attached] pending adjudication. - Any goods, documents or things seized or bank account provisionally attached under section 110, may, pending the order of the adjudicating authority, be released to the owner or the bank account holder on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.

PART C

ACT, RULES, REGULATIONS & FORMS

TOPIC NO	NAME OF THE TOPIC
C1	THE CUSTOMS TARIFF ACT, 1975
C2	FOREIGN TRADE (REGULATION) RULES, 1993
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C1 : THE CUSTOMS TARIFF ACT, 1975

The World Trade Organization (WTO) estimates that India's applied most favored nation import tariffs are 13.8 percent and highest of any major economy.

Overview:

The GOI Foreign Trade (Development & Regulation) Act and India's Export Import policy govern the import tariffs. The office of the Director General of Foreign Trade mandates registration for all importers before engaging in import and export activities. The structure of India's customs tariff and fees system is complex and characterized by a lack of transparency in determining net effective rates of customs tariffs, GST, and other duties and charges.

Government of India's, Central Board of Indirect Taxes and Customs (CBIC or the Board) functioning under the Department of Revenue, Ministry of Finance, deals with the formulation of policy concerning levy and collection of Customs. The classification of the imports and exports of the goods are governed by the Customs Act of 1962 and Customs Tariff act of 1975.

SECTION 1. Short title, extent and commencement. —

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole ofIndia.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

SECTION 2. Duties specified in the Schedules to be levied.

- The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

SECTION 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges. — (1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article:

Provided that in case of any alcoholic liquor for human consumption imported into India, the Central Government may, by notification in the Official Gazette, specify the rate of additional duty having regard to the excise duty for the time being leviable on a like alcoholic liquor produced or manufactured in different States or, if a like alcoholic liquor is not produced or manufactured in any State, then, having regard to the excise duty which would be leviable for the time being in different States on the class or description of alcoholic liquor to which such imported alcoholic liquor belongs.

Explanation. — In this sub-section, the expression "the excise duty for the time being leviable on a like article if produced or manufactured in India" means the excise duty for the time being in force which would be leviable on a like article if produced or manufactured in India or, if a like article is not so produced or manufactured, which would be leviable on the class or description of articles to which the imported article belongs, and where such duty is leviable at different rates, the highest duty.

(2) For the purpose of calculating under sub-sections (1) and (3), the additional duty on any imported article, where such duty is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of—

(i) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include — 1[(a) the duty referred to in sub-sections (1), (3), (5), (7) and (9)];

(b) the safeguard duty referred to in sections 8B and 8C;

(c) the countervailing duty referred to in section 9; and

(d) the anti-dumping duty referred to in section 9A:

2 [Provided that in case of an article imported into India,—

(a) in relation to which it is required, under the provisions of the 3[Legal Metrology Act, 2009 (1 of 2010)] or the rules made thereunder

or under any other law for the time being in force, to declare on the package thereof the retail sale price of such article; and

(b) where the like article produced or manufactured in India, or in case where such like article is not so produced or manufactured, then, the class or description of articles to which the imported article belongs, is—

(i) the goods specified by notification in the Official Gazette under sub-section (1) of section 4A of the Central Excise Act, 1944 (1 of 1944), the value of the imported article shall be deemed to be the retail sale price declared on the imported article less such amount of abatement, if any, from such retails are price as the Central Government may, by notification in the Official Gazette, allow in respect of such like article under sub-section (2) of section 4A of that Act; or 4 [(ii) Omitted.]

Explanation. — Where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.]

Provided further that in the case of an article imported into India, where the Central Government has fixed a tariff value for the like article produced or manufactured in India under sub- section (2) of section 3 of the Central Excise Act, 1944 (1 of 1944), the value of the imported article shall be deemed to be such tariff value.

Explanation. — Where on any imported article more than one retail sale price is declared, the maximum of such retail sale price shall be deemed to be the retail sale price for the purposes of this section.

If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or not such additional duty as would counter-balance the excise duty leviable on any raw materials, components and ingredients of the same nature as, or similar to those, used in the production or manufacture of such article, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty representing such portion of the excise duty leviable on such raw materials, components and ingredients as, in either case, may be determined by rules made by the Central Government in this behalf.

(3) In making any rules for the purposes of sub-section (3), the Central Government shall have regard to the average quantum of the excise duty payable on the raw materials, components or ingredients used in the production or manufacture of such like article.

(4) If the Central Government is satisfied that it is necessary in the public interest to levy on any imported article whether on such article duty is leviable under sub-section (1) or, as the case may be, sub-section (3) or not such additional duty as would counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India, it may, by notification in the Official Gazette, direct that such imported article shall, in addition, be liable to an additional duty at a rate not exceeding four per cent of the value of the imported article as specified in that notification.

Explanation. — In this sub-section, the expression "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or, as the case may be, such charges are leviable at different rates, the highest such tax or, as the case may be, such charge.

(5) For the purpose of calculating under sub-section (5), the additional duty on any imported article, the value of the imported article shall, notwithstanding anything contained in sub-section (2), or section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of —

(i) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(ii) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include—

5[(a) the duty referred to in sub-sections (5), (7) and (9);]

(b) the safeguard duty referred to in sections 8B and 8C;

(c) the countervailing duty referred to in section 9; and

(d) the anti-dumping duty referred to in section 9A.

6[(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub- section (8) 7[or sub-section (*8A*), as the case may be].

(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of— (a) the value of the imported article determined under sub- section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and

(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section.

7[(8A) Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under sub- section (7) shall be,—

(a) where the whole of the goods are sold, the value determined under sub-section (8) or the transaction value of such goods, whichever is higher; or

(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8) or the transaction value of such goods, whichever is higher:

Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b):

Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8).

Explanation.— For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.]

(9) Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (10) 7[or sub- section (10A), as the case maybe].

(10) For the purposes of calculating the goods and services tax compensation cess under sub-section (9) on any imported article where such cess is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of— (a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and (b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

7[(10A) Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the goods and services tax compensation cess under sub-section (9) shall be,—

(a) where the whole of the goods are sold, the value determined under sub-section (10) or the transaction value of such goods, whichever is higher;or

(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (10) or the transaction value of such goods, whichever is higher:

Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last of such transaction shall be the transaction value for the purposes of clause (a) or clause (b):

Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (10).

Explanation.— For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.]

The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.

(11) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act.]

SECTION 4. Levy of duty where standard rate and preferential rate are specified.

(1) Where in respect of any article a preferential rate of revenue duty is specified in the First Schedule, or is admissible by virtue of a notification under Section 25 of the Customs Act, 1962 (52 of 1962), the duty to be levied and collected shall be at the standard rate, unless the owner of the article claims at the time of importation that it is chargeable with a preferential rate of duty, being the produce or manufacture of such preferential area as is notified under sub-section (3) and the article is determined, in accordance with the rules made under sub-section (2), to be such produce or manufacture.

(2) The Central Government may, by notification in the Official Gazette, make rules for determining if any article is the produce or manufacture of any preferential areas.

(3) For the purposes of this section and the First Schedule, preferential area means any country or territory which the Central Government may, by notification in the Official Gazette, declare to be such area.

(4) Notwithstanding anything contained in sub-section (1), where the Central Government is satisfied that, in the interests of trade including promotion of exports, it is necessary to take immediate action for discontinuing the preferential rate, or increasing the

preferential rate to a rate not exceeding the standard rate, or decreasing the preferential rate, in respect of an article specified in the First Schedule, the Central Government may, by notification in the Official Gazette, direct an amendment of the said Schedule to be made so as to provide for such discontinuance of, or increase or decrease, as the case may be, in the preferential rate.

(5) Every notification issued under sub-section (3) or sub-section (4) shall, as soon as may be after it is issued, be laid before each House of Parliament.

SECTION 5. Levy of a lower rate of duty under a trade agreement. — (1) Whereunder a trade agreement between the Government of India and the Government of a foreign country or territory, duty at a rate lower than that specified in the First Schedule is to be charged on articles which are the produce or manufacture of such foreign country or territory, the Central Government may, by notification in the Official Gazette, make rules for determining if any article is the produce or manufacture of such foreign country or territory and for requiring the owner to make a claim at the time of importation, supported by such evidence as may be prescribed in the said rules, for assessment at the appropriate lower rate under such agreement.

(2) If any question arises whether any trade agreement applies to any country or territory, or whether it has ceased to apply to India or any foreign country or territory, it shall be referred to the Central Government for decision and the decision of the Central Government shall be final and shall not be liable to be questioned in any court of law.

SECTION 6. Power of Central Government to levy protective duties in certain cases. — (1) Where the Central Government, upon a recommendation made to it in this behalf by the Tariff Commission established under the Tariff Commission Act, 1951 (50 of 1951), is satisfied that circumstances exist which render it necessary to take immediate action to provide for the protection of the interests of any industry established in India, the Central Government may, by notification in the Official Gazette, impose on any goods imported into India in respect of which the said recommendation is made, a duty of customs of such amount, not exceeding the amount proposed in the said recommendation, as it thinks fit.

(2) Every duty imposed on any goods under sub-section (1) shall,

for the purposes of this Act, be deemed to have been specified in the First Schedule as the duty leviable in respect of such goods.

Where a notification has been issued under sub-section (1), the Central Government shall, unless the notification is in the meantime rescinded, have a Bill introduced in Parliament, as soon as may be, but in any case during the next session of Parliament following the date of the issue of the notification to give effect to the proposals in regard to the continuance of a protective duty of customs on the goods to which the notification relates, and the notification shall cease to have effect when such Bill becomes law, whether with or without modifications, but without prejudice to the validity of anything previously done thereunder:

Provided that if the notification under sub-section (1) is issued when Parliament is in session, such a Bill shall be introduced in Parliament during that session:

Provided further that where, for any reason, a Bill as aforesaid does not become law within six months from the date of its introduction in Parliament, the notification shall cease to have effect on the expiration of the said period of six months, but without prejudice to the validity of anything previously done thereunder.

SECTION 7. Duration of protective duties and power of Central Government to alter them. — (1) When the duty specified in respect of any article in the First Schedule is characterised as protective in Column (5) of that Schedule, that duty shall have effect only up to and inclusive of the date, if any, specified in that Schedule.

(2) Where in respect of any such article the Central Government is satisfied after such inquiry as it thinks necessary that such duty has become ineffective or excessive for the purpose of securing the protection intended to be afforded by it to a similar article manufactured in India and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, increase or reduce such duty to such extent as it thinks necessary.

(3) Every notification under sub-section (2), insofar as it relates to increase of such duty, shall be laid before each House of Parliament if it is sitting as soon as may be after the issue of the notification, and if it is not sitting within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification

by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(4) For the removal of doubts, it is hereby declared that any notification issued under sub-section (2), including any such notification approved or modified under sub-section (3), may be rescinded by the Central Government at any time by notification in the Official Gazette.

SECTION 8. Emergency power of Central Government to increase or levy export duties. — (1) Where in respect of any article, whether included in the Second Schedule or not, the Central Government is satisfied that the export duty leviable thereon should be increased or that an export duty should be levied, and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, direct an amendment of the Second Schedule to be made so as to provide for an increase in the export duty leviable or, as the case may be, for the levy of an export duty, on that article.

(2) The provisions of sub-sections (3) and (4) of Section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of Section 7.

SECTION 8A. Emergency power of Central Government to increase import duties. — (1) Where in respect of any article included in the First Schedule, the Central Government is satisfied that the import duty leviable thereon under section 12 of the Customs Act, 1962 (52 of 1962) should be increased and that circumstances exist which render it necessary to take immediate action, it may, by notification in the Official Gazette, direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary:

Provided that the Central Government shall not issue any notification under this sub- section for substituting the rate of import duty in respect of any article as specified by an earlier notification issued under this sub-section by that Government before such earlier notification has been approved with or without modifications under sub-section (2).

(2) The provisions of sub-sections (3) and (4) of section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of section 7.

SECTION 8B. Power of Central Government to impose safeguard duty. — (1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article:

Provided that no such duty shall be imposed on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per cent or where the article is originating from more than one developing countries, then, so long as the aggregate of the imports from developing Countries each with less than three per cent. import share taken together does not exceed nine per cent of the total imports of that article into India:

Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

(2) The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry:

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected :

Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), 8 [shall not apply to

articles imported by a hundred per cent export-oriented undertaking or a unit in a special economic zone unless,—

(i) specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area and in such cases safeguard duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.]

Explanation. - For the purposes of this section, the expressions "hundred per cent. export-oriented undertaking", 9[*] and "special economic zone" shall have the meanings assigned to them in *Explanation* 2 to sub-section (1) of section 3 of Central Excise Act, 1944 (1 of 1944).

(3) The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being inforce.

(4) The duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition:

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition:

Provided further that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

(4A) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(5) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the causes of serious injury or

causes of threat of serious injury in relation to such articles may be determined and for the assessment and collection of such safeguard duty.

(6) For the purposes of this section,-

(a) "developing country" means a country notified by the Central Government in the Official Gazette for the purposes of this section;

(b) "domestic industry" means the producers -

(i) as a whole of the like article or a directly competitive article in India; or

(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article inIndia;

(c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;

(d) "threat of serious injury" means a clear and imminent danger of serious injury.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.]

SECTION 9. Countervailing duty on subsidized articles.

— (1) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Explanation. - For the purposes of this section, a subsidy shall be deemed to exist if -

(a) there is financial contribution by a Government, or any public body in the exporting or producing country or territory, that is, where-

(i) a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;

(ii) Government revenue that is otherwise due is foregone or not collected (including fiscal incentives);

(iii) a Government provides goods or services other than general infrastructure or purchases goods;

(iv) a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments; or

(b) a Government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from, or to reduce import of any article into, its territory, and a benefit is there by conferred.

The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the amount of subsidy, impose a countervailing duty under this sub-section not exceeding the amount of such subsidy as provisionally estimated by it and if such countervailing duty exceeds the subsidy as so determined,-

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such countervailing duty; and

(b) refund shall be made of so much of such countervailing duty which has been collected as is in excess of the countervailing duty as soreduced.

(1) Subject to any rules made by the Central Government, by notification in the Official Gazette, the countervailing duty under sub-section (1) or sub-section (2) shall not be levied unless it is determined that -

(a) the subsidy relates to export performance;

(b) the subsidy relates to the use of domestic goods over imported goods in the export article; or

11[(c) the subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles;]

(2) If the Central Government, is of the opinion that the injury to the domestic industry which is difficult to repair, is caused by massive imports in a relatively short period, of the article benefiting from subsidies paid or bestowed and where in order to preclude the recurrence of such injury, it is necessary to levy countervailing duty retrospectively, the Central Government may, by notification in the Official Gazette, levy countervailing duty from a date prior to the date of imposition of countervailing duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section and notwithstanding anything contained in any law for the time being in force, such duty shall be payable from the date as specified in the notification issued under this sub-section.

(3) The countervailing duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being inforce.

(4) The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(5) The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation there of under this section.

(7A)The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non- levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(6) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

SECTION 9A. Anti-dumping duty on dumped articles. — (1) Where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation. For the purposes of this section, -

(a) "margin of dumping", in relation to an article, means the difference between its export price and its normal value;

(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section(6);

(c) "normal value", in relation to an article, means-

(i) the comparable price, in the ordinary course of trade, for the like article when destined for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of

the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-

(a) comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

12[(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti- dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.]

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined:-

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) refund shall be made of so much of the anti-dumping duty which

has been collected as is in excess of the anti-dumping duty as so reduced.

(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section(2), shall not apply to articles imported by a hundred per cent, export-oriented undertaking unless, —

(i) specifically made applicable in such notifications or such impositions, as the case may be; or

(ii) the article imported is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, and in such cases anti- dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.

Explanation. — For the purposes of this sub-section, the expression "hundred per cent export-oriented undertaking" shall have the meaning assigned to it in *Explanation* 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944).

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that-

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti- dumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, itmay, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer:

Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may

be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

SECTION 9AA. Refund of anti-dumping duty in certain cases. - (1) 13 [Where upon determination by an officer authorised in this behalf by the Central Government under clause (ii) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitled to refund of such excess duty]:

Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub-section which is refundable under sub-section *(2)* of section 9A.

Explanation – for the purposes of this sub-section, the expressions, "margin of dumping", "export price" and "normal value" shall have the same meaning respectively assigned to them in the Explanation to sub-section (1) of section 9A.

(2) the Central Government may, by notification in the Official Gazette, make rules to-

(i) provide for the manner in which and the time within which the importer may make application for the purposes of sub-section (1);

(ii) authorise the officer of the Central Government who shall dispose of such application on behalf of the Central Government within the time specified in such rules; and

(iii) provide the manner in which the excess duty referred to in sub-section (1) shall be-

(A) determined by the officer referred to in clause (ii); and

(B) refunded by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, after such determination.

SECTION 9B. No levy under section 9 or section 9A in certain cases. — (1) Notwithstanding anything contained in section 9 or section 9A, -

(a) no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;

(b) the Central Government shall not levy any countervailing duty or anti- dumping duty-

(i) under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;

(ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and

(iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary findings has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation:

Provided that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India; the Central Government may not levy-

(iv) any countervailing duty under section 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;

(v) any anti-dumping duty under section 9A, at any time, upon receipt

of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

(2) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation.

SECTION 9C. Appeal.—(1) An appeal against the order of determination or review thereof regarding the existence, degree and effect of any subsidy or dumping in relation to import of any article shall lie to the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal).

(1A) An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees.

(1B) Every application made before the Appellate Tribunal,-

(a) in an appeal under sub-section (1), for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees.

(2) Every appeal under this section shall be filed within ninety days of the date of order under appeal :

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962 (52 of 1962).

(5) Every appeal under sub-section (1) shall be heard by a Special Bench constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.

SECTION 10. Rules to be laid before Parliament. — Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately followingthesession or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

SECTION 11. Power of Central Government to alter duties under certain circumstances. — (1) Where the Central Government is satisfied that it is necessary so to do for the purpose of giving effect to any agreement entered into before the commencement of this Act with a foreign Government, it may, by notification in the Official Gazette, increase or reduce the duties referred to in section 2 to such extent as each case may require:

Provided that no notification under this sub-section increasing or reducing the duties as aforesaid shall be issued by the Central Government after the expiration of a period of one year from the commencement of this Act.

(2) Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.

SECTION 11A. Power of Central Government to amend First Schedule. — (1) Where the Central Government is satisfied that it is necessary so to do in the public interest, it may, by notification in the Official Gazette, amend the First Schedule :

Provided that such amendment shall not alter or affect in any manner the rates specified in that Schedule in respect of goods at which duties of customs shall be leviable on the goods under the Customs Act, 1962 (52 of 1962).

(2) Every notification issued under sub-section (1) shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

SECTION 12. Repeal and saving — (1) The Indian Tariff Act, 1934 (32 of 1934), and the Indian Tariff (Amendment) Act, 1949 (1 of 1949), are hereby repealed.(2) Notwithstanding the repeal of any of the Acts mentioned in sub-section (1), anything done or any action taken (including any notification published and any rules and orders made or deemed to have been made under the provisions of those Acts and in force immediately before the commencement of this Act) shall, insofar as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

SECTION 13. Consequential amendment of Act 52 of 1962.

— In the Customs Act, 1962, in sub-section (1) of Section 12 and in sub-section (1) of Section 14, for the words and figures "Indian Tariff Act, 1934", the words and figures "Customs Tariff Act, 1975" shall be substituted.

Clarification regarding applicability of Social Welfare Surcharge on goods exempted from basic and other customs duties/ cesse: C.B.I&C, Circular No. 3/2022-Custom dated 01.02.2022

References have been received seeking clarification on the issue of applicability of Social Welfare Surcharge(SWS)on goods that are exempted from basic customs duty or taxes or cesses which are levied as a duty of customs. In absence of any specific exemption on Social Welfare Surcharge, certain field formations have taken a view that Social Welfare Surcharge shall be payable on notional customs duty as determined on Tariff rate.

2. The matter has been examined. Social Welfare Surcharge (SWS) is levied and collected, as a duty of customs, vide Section 110 of the Finance Act, 2018 (13 of 2018) and is calculated at the rate of 10 per cent. on the aggregate of duties, taxes and cesses which are levied and collected by the Central Governments a duty of customs on goods imported into India.

In this regard, it may be noted that at present SWS applies at the rate of 10% of the aggregate of customs duties payable on import of goods and not on the value of imported goods.

If aggregate customs duty payable is zero on account of an exemption, the SWS shall be computed as 10% of value equal to' Nil' (as aggregate amount of customs duties payable is zero). Law does not require computation of SWS on a notional customs duty calculated at tariff rate where applicable aggregate of duties of customs is zero.

3. Thus, it is clarified that the amount of Social Welfare Surcharge payable would be 'Nil' in cases where the aggregate of customs duties(which form the base for computation of SWS)is zero even though SWS has not been exempted.

C2 : FOREIGN TRADE (REGULATION) RULES, 1993

Overview:

India's foreign trade have played crucial role in the economic development in the past years. Indian economy is growing rapidly and getting significant place in international worldwide. India's Foreign Trade Policy has, conventionally, been formulated for five years at a time and reviewed annually. The focus of the FTP has been to provide a framework of rules and procedures for exports and imports and a set of incentives for promoting exports. This paper highlighted the performance of India's foreign trade and the various economic policies related to foreign trades which have contributed to its growth. It tried to focus on foreign trade, its meaning and definition, need and importance and types of foreign trade. Export of goods and services to other countries gives more foreign exchange. Similarly imports leads to expend the home currencies. So every country should concentrates on the export of their goods than the import. International trade takes place between the two or more countries. It involves different currencies of different countries and is regulated by laws, rules and regulations of the concerned countries.

Thus, International trade is more complex. This paper also deals about the Balance of Payments, Balance of trade, Disequilibrium and India's Export & Import performance.

Foreign trade may be defined as the trade between different countries of the world. It is also known as International Trade, External Trade or Inter – Regional Trade. Foreign trade plays an important and crucial role in the development of any country. Every country requires goods and services to fulfil the needs and wants of their people. Production of goods and services are not enough to satisfy the increasing demand of customers; so one country can buy the goods and services from other country. India also buys from and sells the goods and services to countries. No any one country is self-sufficient. It has to depend upon other countries for importing the goods and services which are either not available or are available in insufficient quantities. Similarly it can export goods which are in high demand from outside country. Foreign trade helps to produce those goods and services which have a cheaper cost than others. It also helps to increase the scope of market for domestic traders, who avail the benefit with overall development of their business in domestic country as well as foreign country. Foreign trade helps the manufacturers to arrange different kinds of raw materials of best quality at lowest cost from all over the world. Trade policy for the year 2015-20 announced in April 2015, the Government spelt out a framework for increasing export of goods and services as well as generation of employment and increasing value addition in the country, in line with the "Make in India" and "Digital India" programme.

Section 19 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.-

   (1) These rules may be called the Foreign Trade (Regulation) Rules, 1993.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.-

   In these rules unless the context otherwise requires, -

   (a) "Act" means the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(b) "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility;

(c) "importer" or "exporter" means a person who imports or exports goods and holds a valid Importer-exporter Code Number granted under section 7;

(d) "licensing authority" means an authority authorised by the Director General under sub-section (2) of section 9 to grant or renew a licence under these rules;

(e) "Policy" means the export and import Policy formulated and announced by the Central Government under section 5;

(f) "schedule" means a Schedule appended to these rules;

(g) "section" means a section of the Act;

(h) "special licence" means a licence granted under sub- section (2) of section 8;

(i) "value" has the meaning assigned to it in clause (41) of section 2 of the Customs Act, 1962 (52 of 1962);

(j) words and expression used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Grant of special licence.-

(1) Where the Importer-exporter Code Number granted to any person has been suspended or cancelled under sub-section (1) of section 8, the Director General may, having regard to the following factors, grant to him a special licence, namely:-

(1) that the denial of a special licence is likely to affect the foreign trade of India adversely; or

(2) that the suspension or cancellation of the Importer-exporter Code Number is likely to lead to non-fulfilment of any obligation by India under any international agreement.

(2) The special licence granted to any person under sub-rule (1) shall be non-transferable.

4. Application for grant of licence.-

A person may make an application for the grant of a licence to import or export goods in accordance with the provisions of the Policy or an Order made under section 3.

Fee.-

(1) Every application for a licence to import shall be accompanied by the fee specified in the Schedule.

(2) The mode of deposit of fee shall be as specified in the Schedule.

(3) No fee shall be payable in respect of any application made by:

(a) the Central Government, a State Government or any department or any office of the Government;

(b) any local authority for the bona fide import of goods required by it for official use;

(c) any institution set up for educational, charitable or missionary purposes, for the import of goods required for its use;

(d) an applicant for the import of any goods (other than a vehicle) if the import of the goods is for his personal use which is not connected with trade or manufacture.

(4) The fee once received will not be refunded except in the following circumstances, namely :-

(i) where the fee has been deposited in excess of the specified scale of fee; or

(ii) where the fee has been deposited but no application has been made; or

(iii) where the fee has been deposited in error but the applicant is exempt from payment of fee.

5. Conditions of licence.-

(1) It shall be deemed to be a condition of every licence for export that:-

(i) no person shall transfer or acquire by transfer any licence issued by the licensing authority except in accordance with the provisions of the Policy;

(ii) the goods for the export of which the licence is granted shall be the property of the licensee at the time of the export.

(2) The licensing authority may issue a licence for import subject to one or more of the following conditions, namely: -

(a) that the goods covered by the licence shall not be disposed of except in accordance with the provisions of the Policy or in the manner specified by the licensing authority in the licence;

(b) that the applicant for a licence shall execute a bond for complying with the terms and conditions of the licence.

(3) It shall be deemed to be a condition of every licence for import that:

(a) no person shall transfer or acquire by transfer any licence issued by the licensing authority except in accordance with the provisions of the Policy;

(b) the goods for the import of which a licence is granted shall be the property of the licensee at the time of import and upto the time of clearance through customs;

(c) the goods for the import of which a licence is granted shall be new goods, unless otherwise stated in the licence;

(d) the goods covered by the licence for import shall not be exported without the written permission of the Director General.

(4) Any person importing goods from the United States of America in accordance with the terms of the Indo-US Memorandum of Understanding on Technology Transfer shall also comply with all the conditions and assurances specified in the Import Certificate issued in terms of such Memorandum, and such other assurances given by the person importing those goods to the Government of the United States of America through the Government of India.

6. Refusal of licence.-

(1) The Director General or the licensing authority may for reasons to be recorded in writing, refuse to grant or renew a licence if -

(a) the applicant has contravened any law relating to customs or foreign exchange;

(b) the application for the licence does not substantially conform to any provision of these rules; the application or any document used in support thereof contains any false or fraudulent or misleading statement;

(c) it has been decided by the Central Government to canalise the export or import of goods and distribution thereof, as the case may be, through special or specialised agencies;

(d) any action against the applicant is for the time being pending under the Act or rules and Orders made thereunder;

(e) the applicant is or was a managing partner in a partnership firm, or is or was a Director of a private limited company, having controlling interest against which any action is for the time being pending under the Act or rules and Orders made thereunder;

(f) the applicant fails to pay any penalty imposed on him under the Act;

(g) the applicant has tampered with a licence;

(h) the applicant or any agent or employee of the applicant with his consent has been a party to any corrupt or fraudulent practice for the purposes of obtaining any other licence;

(i) the applicant is not eligible for a licence in accordance with any provision of the Policy;

(j) the applicant fails to produce any document called for by the Director General or the licensing authority;

(k) in the case of a licence for import, no foreign exchange is available for the purpose;

(l) the application has been signed by a person other than a person duly authorised by the applicant under the provisions of the Policy;

(m) the applicant has attempted to obtain or has obtained cash compensatory support, duty drawback, cash assistance benefits allowed to Registered Exporters or any other similar benefits from the Central Government or any agency authorised by the Central Government in relation to exports made by him on the basis of any false, fraudulent or misleading statement or any document which is false or fabricated or tampered with.

(2) The refusal of a licence under sub-rule (1) shall be without prejudice to any other action that may be taken against an applicant by the licensing authority under the Act.

7. Amendment of licence. -

The licensing authority may of its own motion or on an application by the licensee, amend any licence in such manner as may be necessary or to rectify any error or omission in the licence.

8. Suspension of a licence.-

(1) The Director General or the licensing authority may, by order in writing, suspend the operation of a licence granted to -

(a) any person, if any order of detention has been made against such person under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974); or

(b) a partnership firm or a private limited company, if the person referred to in clause (a) is a partner or a whole time director or managing director, as the case may be, of such firm or company:

Provided that the order of suspension shall cease to have effect in respect of the aforesaid person or, as the case may be, the partnership firm or company, when the order of detention made against such person, -

(i) being an order of detention to which the provisions of section 9 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) do not apply, has been revoked on the report of Advisory Board under section 8 of that Act or before receipt of the report of the Advisory Board or before making a reference to the Advisory Board; or

(ii) being an order of detention to which the provisions of section 9 of the Conservation of Foreign Exchange and Prevention of Smuggling Ac-tivities Act, 1974 (52 of 1974) apply, has been revoked on the report of the Advisory Board under section 8 read with sub-section (2) of section 9 of the Act or before receipt of such report;

(iii) has been set aside by a court of competent jurisdiction.

The Director General or the licensing authority may by an order in writing suspend the operation of any licence granted under these rules, where proceedings for cancellation of such licence has been initiated under rule 10.

9. Cancellation of a licence.-

The Director General or the licensing authority may by an order in writing cancel any licence granted under these rules if -

(a) the licence has been obtained by fraud, suppression of facts or misrepresentation; or

(b) the licensee has committed a breach of any of the conditions of the licence; or

(c) the licensee has tampered with the licence in any manner; or

(d) the licensee has contravened any law relating to customs or foreign exchange or the rules and regulations relating thereto.

10. Declaration as to value and quality of imported goods. -

On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

11. Declaration as to Importer-exporter Code Number. -

On the importation into or exportation out of any Customs port of any goods the importer or exporter shall in the Bill of Entry or Shipping Bill or, as the case may be, in any other documents prescribed by rules made under the Act or the Customs Act, 1962 (52 of 1962), state the Importer-exporter Code Number allotted to him by the competent authority.

12. Utilisation of imported goods.-

(1) No person shall use any imported goods allotted to him by the State Trading Corporation of India or any other agency recognised by the Central Government in a manner and for the purpose, otherwise than as declared by him in his application for such allotment or in any document submitted by him in support of such application.

(2) No person shall dispose of any goods imported by him against a licence except in accordance with the terms and conditions of such licence.

13. Prohibition regarding making, signing of any declaration, statement or documents.-

(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a licence or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

14. Power to enter premises and inspect, search and seize goods, documents, things and conveyances.-

(1) Any person authorised by the Central Government under sub-section (1) of section 10 (hereinafter called the authorised person) may, at any reasonable time enter any premises in which -

(i) any imported goods or materials which are liable to confiscation under the provisions of the Act; or

(ii) any books of accounts or documents or things which, in his opinion, will be useful for, or relevant to any proceedings under the Act, are suspected to have been kept or concealed and may inspect such goods, materials, books of accounts, documents or things and may take such notes or extracts therefrom as he may think fit.

(2) If the authorised person has reasons to believe that - any imported goods or materials liable to confiscation under the Act; or

(i) any books of accounts or documents or things which, in his opinion, will be useful for, or relevant to, any proceedings under the Act, are secreted in any premises he may enter into and search such premises for such goods, materials, books of accounts, documents or things.

(3) (a) If the authorised person has reason to believe that any imported goods or materials are liable to confiscation

under the Act, he may seize such goods or materials together with the package, covering or receptacle, if any, in which such goods or materials are found to have been mixed with any other goods or materials:

Provided that where it is not practicable to seize any such goods or materials, the authorised person may serve on the owner of the goods or materials an order that he shall not remove, part with or otherwise deal with the goods or materials except with the previous permission of the authorised person.

(b) Where any goods or materials are seized under clause (a) and no notice in respect thereof is given within six months of the seizure of the goods or materials, the goods or materials shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Director General for a further period not exceeding six months.

(c) The authorised person may seize any books of accounts or documents or things which in his opinion, will be useful for, or relevant to, any proceedings under the Act.

(d) The person from whose custody any documents are seized under this sub-rule, shall be entitled to make copies thereof or take extracts therefrom in the presence of the authorised person.

(e) If any person legally entitled to the books of account or other documents or things seized under this sub-rule objects, for any reason, to the retention by the authorised person of the books of account or the documents or things, he may move an application to the Central Government stating therein the reasons for such objection, request for the return of the books of account or documents or things.

(f) On receipt of the application under clause (e), the Central Government may, after giving the applicant an opportunity of being heard, pass such order as it may think fit.

(g) Where any document is produced or furnished by any person or has been seized from the custody or control of any person under the Act or has been received from any

place outside India in the course of the investigation for any contravention referred to in section 11 by any person and such document is tendered in evidence against the person by whom it is produced or from whom it was seized or against such person or any other person who is jointly proceeded against, the Adjudicating Authority shall, notwithstanding anything to the contrary contained in any other law for the time being in force, -

(i) presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person of which the Adjudicating Authority may reasonably assume to have been signed by or to be in the handwriting of any particular person, is under the person"s handwriting, and in the case of a document executed or attested, it was executed or attested by the person by whom it purports to have been so executed or attested;

(ii) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

(4) The authorised person, may, if he has reason to suspect that any conveyance or animal is being or is about to be used for the transportation of any imported goods or material which are liable to confiscation under the Act, and that by such transportation any provision of the Act has been, is being or is about to be contravened at any time, stop such conveyance or animal or in the case of aircraft compel it to land, and -

(a) rummage and search the conveyance or any part thereof;

(b) examine and search any goods or material in the conveyance or on the animal;

if it becomes necessary to stop any conveyance or animal, he may use all lawful means for stopping it and where such means fail, the conveyance or animal may be fired upon, and where he is satisfied that it is necessary so to do to prevent the contravention of any provision of the Act or of the rules and orders made thereunder or the Policy or condition of any licence, he may seize such conveyance or animal.

Explanation. - Any reference in this rule to a conveyance shall, unless the context otherwise requires, be construed as including a reference to an aircraft, vehicle or vessel.

15. Settlement.-

(1) The Adjudicating Authority may determine the amount of settlement to be paid by the person to whom a notice has been issued and who has opted for settlement and has admitted the contravention specified in the notice, in the following cases, namely:-

(i) where it is of the opinion that the contravention of any provision of the Act or these rules or the Policy has been made without mens rea or without wilful mistake or without suppression of facts, or without any collusion, or without fraud and forgery, or without an intent to cause loss of foreign exchange; or

(ii) where the person importing the goods has not met the requirements of the actual user conditions as specified in the Policy and has not misutilised the said imported goods; or

(iii) where the person importing the goods has not fulfilled the export obligation and has not misutilised the said imported goods.

(2) Where a person has opted for settlement under sub-rule (1), the settlement made by the Adjudicating Authority shall be final.

16. Confiscation and redemption.-

(1) Any imported goods or materials in respect of which -

(a) any condition of the licence, or letter of authority under which they were imported relating to their utilisation or distribution; or

(b) any condition relating to their utilisation or distribution, subject to which they were received from or through, an agency recognised by the Central Government; or

(c) any condition imposed under the Policy with regard to the sale or disposal of such goods or materials,has been, is being, or is attempted to be, contravened, shall

together with any package, covering or receptacle in which such goods are found, be liable to be confiscated by the Adjudicating Authority, and where such goods or materials are so mixed with any other goods or materials that they cannot be readily separated, such other goods or materials shall also be liable to be so confiscated :

Provided that where it is established to the satisfaction of the Adjudicating Authority that any goods or materials which are liable to confiscation under this rule, had been imported for personal use, and not for any trade or industry, such goods or materials shall not be ordered to be confiscated.

(2) The Adjudicating Authority may permit the redemption of the confiscated goods or materials upon payment of redemption charges equivalent to the market value of such goods or materials.

17. Confiscation of conveyance.-

(1) Any conveyance or animal which has been, is being, or is attempted to be used, for the transport of any goods or materials that are imported and which are liable to confiscation under rule 17, shall be liable to be confiscated by the Adjudicating Authority unless the owner of the conveyance or animal proves that it was, is being, or is about to be so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in-charge of the conveyance or animal and that each of them had taken all reasonable precautions against such use.

(2) The Adjudicating Authority shall permit redemption of the confiscated conveyance or animal used for the transport of goods or passengers for hire upon payment of redemption charges equivalent to the market value of such conveyance or animal.

C3 : FOREIGN TRADE (EXEMPTION FROM APPLICATION OF RULES IN CERTAIN CASES) ORDER, 1993

Overview:

Exemption from the application of rules.-

Nothing contained in the Rules shall apply to the import of any goods.- by the Central Government or agencies, undertakings owned and

controlled by the Central Government for Defence purposes;

(a) by the Central Government or any State Government, statutory corporation, public body or Government undertaking run as a Joint Stock Company through the agency of the Purchase Organisations of the Ministry of Supply, that is India Supply Mission, London and India Supply Mission, Washington;

(b) by the Central Government, any State Government or any statutory corporation or public body or Government undertaking run as a Joint Stock Company, orders in respect of which are placed through the Directorate General, Supplies and Disposals, New Delhi;

(c) by transhipment or imported and bonded on arrival for re-export as ships stores to any country outside India except Nepal and Bhutan or imported and bonded on arrival for re-export as aforesaid but subsequently released for use of Diplomatic personnel, Consular Officers in India and the officials of the United Nations Organisation and its specialised agencies who are exempt from payment of duty under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 3, dated 8th January, 1957 and the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947) respectively;

(d) imported and bonded on arrival for sale at approved duty- free shops, whether to outgoing or incoming passengers, against payments in free foreign exchange;

(e) which are in transit through India by post or otherwise, or are redirected by post or otherwise to a destination outside India, except Nepal and Bhutan provided that such goods while in India are always in the custody of the postal or customs authorities;

(f) for transmission across India by air to Afghanistan or by land, to any other country outside India, except Nepal and Bhutan under claim for exemption from duty or for refund of duty either in whole or in part :

Provided that such goods are imported by or on behalf of the Govern-ment or a country bordering on India or that the importer undertakes to produce within a specified period evidence that such goods have crossed the borders of India or in default to pay such penalty as the proper officer of customs may deem fit to impose on such goods :

Provided further that nothing contained in this item will exempt any goods from the Import Trade Regulations;

(g) by the person as passenger baggage to the extent admissible under the Baggage Rules for the time being in force except quinine exceeding five hundred tablets or 1/3 Ib powder or one hundred ampoules :

Provided that in the case of imports by a tourist, articles of high value whose re-export is obligatory under rule 7 of the Tourist Baggage Rules,1978 shall be re-exported on his leaving India, failing which such goods shall be deemed to be goods of which the import has been prohibited under the Customs Act, 1962 (52 of 1962):

Provided further that the import of gold in any form including ornaments (but excluding ornaments studded with stones or pearls) will be allowed as part of baggage by passengers of Indian origin or a passenger holding a valid passport issued under the Passports Act, 1967 (15 of 1967) subject to the following conditions, namely :-

(a) that the passenger importing the gold is coming to India after a period of not less than six months of stay abroad;

(b) the quantity of gold imported shall not exceed 5 Kilograms per passenger;

(c) import duty on gold shall be paid in convertible foreign currency; and

(d) there will be no restriction on sale of such imported gold;

(i) by any person through the post or otherwise for his personal use, or by any institution or hospital for its use except -

a. vegetable seeds exceeding one Ib. in weight;

b. beer;

c. tea;

books, magazines, journals and literature which are not allowed to be imported under the Policy for the time being in force;

d. goods, the import of which is canalised under the Policy;

e. alcoholic beverages;

f. fire arms and ammunition;

g. consumer electronic items (except hearing aids and life-saving equipments, apparatus and appliances and parts thereof):

Provided that the c.i.f. value of goods imported as aforesaid at any one time shall not exceed rupees two thousand.

(ii) by or on behalf of Diplomatic personnel, consular officers and Trade Commissioners in India who are exempted from payment of Customs duty under Notification No. 3 dated the 8th January, 1957 of the Government of India in the Ministry of Finance (Department of Revenue);

(iii) from any country, which are exempted from Customs duty on re-importation under section 20 of the Customs Act, 1962 (52 of 1962) or under Customs Notification Nos. 113 dated 16th May 1957, 103 dated 25th March, 1958, 260 and 261 dated llth October, 1958, 269, 271, 273, 274, 275 and 276 dated 25th October, 1958 and 204 dated 2nd August, 1976, of the Government of India, Ministry of Finance (Department of Revenue) or Notification No. 174, dated the 24th September, 1966 or Notification No. 103, dated the 16th May, 1978, of the Government of India, Ministry of Finance (Department of Revenue and Insurance) or Notification No. 80, dated 29th August, 1970;

(1) of Indian manufacture and foreign-made parts of such goods, exported and received back by the manufacturer from the consignee for repair and re-export:

Provided that -

(i) the customs authorities are satisfied that the goods received back by the said manufacturers are the same which were so exported; and

(ii) in the case of goods other than those exempted from customs duty on reimportation under Customs Notification No. 132, dated 9th December, 1961, a bond is executed by the importer with the customs authority at the port concerned to the effect that the goods thus imported will be re-exported after repair within six months;

(m) by officials of the United Nations Organisation and its specialised agencies who are exempted from payment of Customs duty under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947);

(n) by the Ford Foundation who are exempt from payment of Customs duty under an Agreement entered into between the Government of India and the Ford Foundation;

(o) being vehicles as defined in Article I of the Customs Convention on the Temporary Importation of Private Road Vehicles or the component parts thereof referred to in Article 4 of the said Convention and which are exempted from payment of customs duty under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 296, dated the 2nd August, 1976 :

Provided that -

(i) such vehicles or component parts are re-exported within the period specified in the said notification or within such further period as the customs authorities may allow;

(ii) the provisions of the said notification or of the «triptyque or Camel-De-Passage» permit are not contravened in relation to such vehicle or component parts:

Provided further that nothing contained in this item shall prejudice the application to the said vehicles or component parts of any other prohibition or regulation affecting the import of goods that may be in force at the time of import of such goods;

(p) being goods imported temporarily for display or use in fairs, exhibitions or similar events specified in Schedule I to the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 157/90-CUSTOMS, dated the 28th March, 1990 against ATA Carnets under the Customs Convention on the ATA Carnets for temporary admission of goods (ATA Convention) done at Brussels on the 30th July, 1963:

Provided that -

(i) such goods are exported within a period of six months from the date of clearance or such extended period as the Central Government may allow in each case; and

(ii) the provisions of the said notification or of the ATA convention are not contravened:

Provided further that nothing contained in this item shall prejudice the application to the said goods of any other prohibition or regulation affecting the import of goods that may be in force at the time of import of such goods;

(q) covered by an import licence issued by His Majesty»s Government of Nepal and the importer furnishes a bond to the proper officer of customs in the form prescribed by such officer with a Scheduled Bank

as surety to the effect that he shall pay the duty and pay penalty imposed for contravening Import Trade Regulations in respect of the whole or any portion of the goods which is not proved to have entered the territory of Nepal;

(r) of Indian manufacture or by the Central Government or any State Government for repair and re-export to Indian Embassies abroad or to any other office of the Central Government or State Government in a foreign country;

(s) being foodgrains, by Food Corporation of India:

Provided that at the time of clearance, a declaration to the effect that the import in question has been approved by the Central Government, is furnished by the importer to the Customs authorities;

(t) being articles of food and edible material, which are supplied as free gift by the agencies approved by the United Nations Organisation and which are exempted from payment of customs duty under the Notification of Government of India in the Ministry of Finance (Department of Revenue) No. GSR 766, dated 21st June, 1975.

(2) Nothing contained in the Rules shall apply to -

(a) any goods exported by or under the authority of the Central Government;

(b) any goods other than foodstuffs constituting the stores or equipment of any outgoing vessel or conveyance;

(c) any goods constituting the bona fide personal baggage of any person, including a passenger or member of a crew in any vessel or conveyance, going out of India:

Provided that the Wild Life (dead, alive or part thereof or produce therefrom) shall not be treated as part of such personal baggage;

(d) any goods exported by post or by air under the conditions specified in postal notice issued by the Postal Authorities;

(e) any goods transhipped at a port in India after having been manifested for such transhipment at the time of despatch from a port outside India;

(f) any goods imported and bonded on arrival in India for re- export to any country outside India, except Nepal and Bhutan;

(g) any goods in transit through India by post or any goods re- directed by post to a destination outside India except Nepal and Bhutan:

Provided that such goods while in India are always in the custody of the postal authorities;

(h) any goods imported without a valid import licence and exported in accordance with an order for the export of such

(i) products approved for manufacture in and export from the respective Free trade Zones/Export Processing Zones and 100 per cent Export Oriented Units except textile item covered by bilateral agreements, exports to Rupee Payment Countries under the Annual Trade Protocol and Exports against payment in Indian Rupees to former Rupee Payment Countries:

Provided that conditions imposed by the Board of Approval on an Export Oriented Unit of Export Processing Zone unit will be binding on such a unit;

(j) export of Blood group Oh (Bombay Phono type) meant for scientific research or emergency medical treatment, as life saving measure on humanitarian grounds by the Director, National Blood Group Reference Laboratory, Bombay on the basis of a certificate issued by him to this effect in each case;

(k) export of samples of lubricating oil additives. Lube Oil, crude oil and other related petroleum products and raw materials used to manufacture Lube Additives by Lubrizols India Limited, Hindustan Petroleum Corporation Limited, and Bharat Petroleum Corporation Limited, from their installation in India to Lubrizol»s Laboratories in the United States of America and the United Kingdom for evaluation and testing purposes.

C4 : CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) AMENDMENT RULES, 2007

Overview:

Customs valuation is a customs procedure applied to determine the customs value of imported goods. If the rate of duty is ad valorem, the customs value is essential to determine the duty to be paid on an imported good. Valuation Factors are the various elements which must be taken into account by addition (Dutiable factors) to the extent these are shown to be not already included in the price actually paid or payable or deduction (Non-dutiable factors) from the total price incurred in determining the Customs Value, for assessment purposes.

Dutiable Factors:

- Commissions and brokerage, except buying commissions;
- The cost of containers which are treated as being one for Customs purposes with the goods in question;
- The cost of packing whether for labour or materials;
- The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:-
- material, components, parts and similar items incorporated in the imported goods;
- tools, dies, moulds and similar items used in the production of the imported goods;
- materials consumed in the imported goods;
- engineering, developing, artwork, design work, and plans and sketches undertaken elsewhere than in the importing country and necessary for the production of imported goods;
- Royalties and license fees related to goods being valued that the buyer must pay either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;
- The value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues directly or indirectly to the seller;
- Advance payments;
- Freight charges up to the place of importation;
- Loading, unloading and handling charges associated with transporting the goods;
- Insurance.

Non-dutiable Factors:

- The following charges provided they are separately declared in the commercial invoice:-
- Interest charges for deferred payment;

- Post-importation charges (e.g. inland transportation charges, installation or erection charges, etc.);
- Duties and taxes payable in the importing country.

1. Short title, commencement and application.-

(1) These rules may be called the Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007.

They shall come into force on the 10th day of October, 2007.

(2) They shall apply to imported goods.

2. Definitions.-

(1) In these rules, unless the context otherwise requires, -

(a) "computed value" means the value of imported goods determined in accordance with rule 8.

(b) "deductive value" means the value determined in accordance with rule 7.

(c) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods;

(d) "identical goods" means imported goods -

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(da) "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse;

(e) "produced" includes grown, manufactured and mined

(f) "similar goods" means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;

(2) For the purpose of these rules, persons shall be deemed to be "related" only if -

(i) they are officers or directors of one another's businesses;

(ii) they are legally recognised partners in business;

(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

Explanation I. - The term «person» also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

3. Determination of the method of valuation.-

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted: Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the

relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

4. Transaction value of identical goods. -

(1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of

the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(1) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

5. Transaction value of similar goods.-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis,* also apply in respect of similar goods.

6. Determination of value where value can not be determined under rules 3, 4 and 5.-

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

7. Deductive value.-

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the

condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

8. Computed value.-

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods

being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

9. Residual method.-

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of -

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation;

(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

10. Cost and services. -

(1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

(a) the following to the extent they are incurred by the buyer but are

not included in the price actually paid or payable for the imported goods, namely:-

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely: -

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the Imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding

the fact that such goods may be subjected to the said process after importation of such goods.

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and shall include -

(a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;

(b) the cost of insurance to the place of importation:

Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods:

Provided further that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be twenty per cent of such sum:

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

Provided also that in the case of goods imported by sea or air and transshipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

Explanation-

The cost of transport of the imported goods referred to in clause

(a) includes the ship demurrage charges on charted vessels, lighterage or barge charges.

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

(4) No addition shall be made to the price actually paid or payable in

determining the value of the imported goods except as provided for in this rule.

11. Declaration by the importer. -

(1) The importer or his agent shall furnish -

(a) a declaration disclosing full and accurate details relating to the value of imported goods; and

(b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

12. Rejection of declared value. -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.- (1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include-

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

13. Interpretative notes.-

The interpretative notes specified in the Schedule to these rules shall apply for the interpretation of these rules.

General Note:

Use of generally accepted accounting principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations shall be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed

and how it should be disclosed and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

Notes to rules Note to rule 2

In rule 2(2)(v), for the purposes of these rules, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Note to rule 3

Price actually paid or payable

The price actually paid or payable is the *total payment* made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. *Payment may be made directly or indirectly.* An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 10, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the value of imported goods.

The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

(a) Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

(b) The cost of transport after importation;

(c) Duties and taxes in India.

The price actually paid or payable refers to the price for the imported goods. Thus, the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Rule 3(2)(a) (iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Rule 3(2)(b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include-

(a) The seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;

(b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;

(c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in India shall not result in rejection of the transaction value for the purposes of rule 3. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the value of imported goods nor shall such activities result in rejection of the transaction value.

Rule 3(3)

1. Rule 3(3)(a) and rule 3(3)(b) provide different means of establishing the acceptability of a transaction value.

2. Rule 3(3)(a) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value of

imported goods provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the proper officer of customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the proper officer of customs may have previously examined the relationship, or he may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the proper officer of customs is unable to accept the transaction value without further inquiry, he should give the importer an opportunity to supply such further detailed information as may be necessary to enable him to examine the circumstances surrounding the sale. In this context, the proper officer of customs should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of rule 2(2), buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Rule 3(3)(b) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a «test» value previously accepted by the proper officer of customs and is therefore acceptable under the provisions of rule

5. Where a test under rule 3(3)(b) is met, it is not necessary to examine the question of influence under rule 3(3)(a). If the proper officer of customs has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in rule 3(3)(b) has been met, there is no reason for him to require the importer to demonstrate that the test can be met. In rule 3(3)(b) the term «unrelated buyers» means buyers who are not related to the seller in any particular case.

Rule 3(3)(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the nature of the industry itself, the season in which the goods are imported, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in rule 3(3)(b).

Notes to rule 4

1. In applying rule 4, the proper officer of customs shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

(a) a sale at the same commercial level but in different quantities; or

(b) a sale at a different commercial level but in substantially the same quantities; or

(c) a sale at a different commercial level and in different quantities.

1.2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for :

(a) quantity factors only;

(b) commercial level factors only; or

(c) both commercial level and quantity factors.

1.3. For the purposes of rule 4, the transaction value of identical imported goods means a value, adjusted as provided for in rule 4(l) (b) and (c) and rule 4(2) which has already been accepted under rule 3.

2.4. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognised that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under the provisions of rule 4 is not appropriate.

Note to rule 5

1. In applying rule 5, the proper officer of customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. For the purpose of rule 5, the transaction value of similar imported goods means the value of imported goods, adjusted as provided for in rule 5(2) which has already been accepted under rule 3.

2. All other provisions contained in note to rule 4 shall *mutatis mutandis* also apply in respect of similar goods.

Note to rule 7

1. The term «unit/price at which goods are sold in the greatest aggregate quantity» means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1-10 units	100	10 sales of 5 units, 5 sales of 3 units	65
11-25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units, 1 sale of 50 units	80

The greatest number of units sold at a price is 80, therefore, the unit price in the greatest aggregate quantity is 90.

1. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. in this example, the greatest number of units sold at a particular price is 500, therefore, the unit price in the greatest aggregate quantity is 95.

2. A third example would be the following situation where various quantities are sold at various prices.

   (a) **Sales**

Sale quantity	Unit price
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100
(b) Totals	
Total quantity	**Unit price**
sold	
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65, therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in India, as described in paragraph 1 above to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in rule10(l)(b), should not be taken into account in establishing the unit price for the purposes of rule 7.

6. It should be noted that "profit and general expenses" referred to in rule 7(1) should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in India, of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of rule 7(l)(iii) shall be deducted under the provisions of rule 7(l)(i).

9. In determining either the commissions or the usual profits and general expenses under the provisions of rule 7(1), the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in India, of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 7 goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

1. For the purposes of rule 7(2) the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported, goods are made in sufficient quantity to establish the unit price.

2. Where the method in rule 7(3) is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

3. It is recognized that the method of valuation provided for in rule 7(3) would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to rule 8

1. As a general rule, value of imported goods is determined under these rules on the basis of information readily available in India. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside India. Furthermore, in most cases, the producer of the goods will be outside the jurisdiction of the proper officer. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the proper officer the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in clause (a) of rule 8 is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The «cost or value» shall include the cost of elements specified in clauses (1)(a)(ii) and (1)(a)(iii) of rule 10. It shall also include the value, apportioned as appropriate under the provisions of the relevant note to rule 10, of any element specified in rule 10(l) (b)

which has been supplied directly or indirectly by the buyer for use in connection with the production of the imported goods.

The value of the elements specified in rule 10(l)(b)(iv) which are undertaken in India shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The «amount for profit and general expenses» referred to in clause(b) of rule 8 is to be determined on the basis of information supplied by or on behalf of the producer unless the producer's figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India.

5. It should be noted in this context that the «amount for profit and general expenses» has to be taken as a whole. It follows that if, in any particular case, producer›s profit figure is low and his general expenses are high, the producer›s profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in India and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur for example, where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where they sell goods to complement a range of goods being produced in India and accept a low profit to maintain competitivity. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. The "general expenses" referred to in clause (b) of rule 8 covers the direct and indirect costs of producing and selling the goods for export which are not included under clause (a) of rule 8.

7. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of rule 8, sales for export to India of the narrowest group or range of goods, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of rule 8 "goods of the same class or kind" must be from the same country as the goods being valued.

Note to rule 9

1. Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.

3. Some examples of reasonable flexibility are as follows:

   (a) Identical goods. - The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

   (b) Similar goods. - The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.

(c) Deductive method. - The requirement that the goods shall have been sold in the «condition as imported» in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.

Note to rule 10

In rule 10(l)(a)(i), the term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Rule 10(l)(b)(ii)

1. There are two factors involved in the apportionment of the elements specified in rule 10(l)(b)(ii) to the imported goods - the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods

and contracts with him to buy 10000 units. By the time of arrival of the first shipment of 1000 units, the producer has already produced 4,000 units. The importer may request the proper officer of customs to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Rule 10(l)(b)(iv)

1. Additions for the elements specified in rule 10(l)(b)(iv) should be based on objective and quantifiable data. In order to minimise the burden for both the importer and proper officer of customs in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The case with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of rule 10.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of rule 10 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Rule 10(l)(c)

1. The royalties and licence fees referred to in rule 10(l)(c) may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Rule 10(3)

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of rule 10, the transaction value cannot be determined under the provisions of rule 3. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors, which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic ingredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

C5 : CUSTOMS VALUATION (DETERMINATION OF VALUE OF EXPORT GOODS) RULES, 2007

Overview:

Valuation of goods has been quite a thorny issue in Indian Customs Houses. It is good that with effect from 10th October, 2007, a

more objective and transparent law has taken the place of earlier ambiguous law in which sub-section (1) of Section 14 talked of a deemed value while its sub-section (1A) read with the earlier valuation rules said that the imported goods would be assessed to duty on the basis of their transaction value. The new Section 14 does away with this dichotomy and gives pride of place to transaction value. Read together with the new valuation rules the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the Customs Valuation (Determination of Value of Export Goods) Rules, 2007-it establishes the international valuation norms under the World Trade Organisation in India. The deemed value concept still survives but only as a residual method or the last resort method or cap value in Rule 9 when all other methods fail. There is no condition in the new Section 14 that it applies only to goods subject to ad valorem duties. Hence, it applies to all goods, whether imported or export and whether dutiable or duty free or on which export promotion benefit is claimed.

The new Rules spell out statutorily as to in what circumstances the buyer and seller would be considered related persons", they illustrate reasons for which customs may doubt declared values and give a list of items which if the buyer bears has paid for but have not been added to the declared value ought to be added. Sole distributorship in itself is not a conclusive consideration Science Ltd. Finally, the exhaustive Interpretative Notes in the Schedule appended to the import valuation rules, which are statutory, would aid in authoritative interpretation of the rules in case a valuation dispute does develop. -2015 (324) E.L.T. 17 (S.C.) CC v. Bayer Corp.

1. Short title, commencement and application.-

   (1) These rules may be called the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

   (2) They shall come into force on the 10th day of October, 2007.

   (3) They shall apply to the export goods.

2. Definitions. -

   (1) In these rules, unless the context otherwise requires, -

      (a) "goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the

same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and

(b) "transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).

(2) For the purposes of these rules, persons shall be deemed to be "related" only if -

(i) they are officers or directors of one another's businesses;

(ii) they are legally recognised partners in business;

(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

3. **Determination of the method of valuation. -**

(1) Subject to rule 8, the value of export goods shall be the transaction value.

(2) The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.

(3) If the value cannot be determined under the provisions of sub-rule (1) and sub-rule (2), the value shall be determined by proceeding sequentially through rules 4 to 6.

4. **Determination of export value by comparison**.-

(1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

(2) In determining the value of export goods under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-

(i) difference in the dates of exportation,

(ii) difference in commercial levels and quantity levels,

(iii) difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,

(iv) difference in domestic freight and insurance charges depending on the place of exportation.

5. **Computed value method. -**

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:-

(a) cost of production, manufacture or processing of export goods;

(b) charges, if any, for the design or brand;

(c) an amount towards profit.

Residual method. -

(1) Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules provided that local market price of the export goods may not be the only basis for determining the value of export goods.

6. **Declaration by the exporter.-**

The exporter shall furnish a declaration relating to the value of export goods in the manner specified in this behalf.

7. **Rejection of declared value.-**

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

2) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. - (1) For the removal of doubts, it is hereby declared that-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.

(iii) The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include -

(a) the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

(b) the significantly higher value compared to the market value of goods of like kind and quality at the time of export.

(c) the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.

C5A : BILL OF ENTRY ELECTRONIC INTEGRATED DECLARATION AND PAPERLESS PROCESSING REGULATIONS, 2018

Notification No. 36/2018-Cus. (N.T.), dated 11-5-2018]

In exercise of the powers conferred by section 157 read with sections 46 and 47 of the Customs Act, 1962 (52 of 1962) and in supersession of the Bill of Entry (Electronic Integrated Declaration) Regulations, 2011, except as respects things done or omitted to be done before such supersession, the Central Board of Indirect Taxes and Customs hereby makes the following regulations, namely :-

Regulation 1. Short title, extent and commencement. -

(1) These regulations may be called the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018.

(2) They shall apply to the import of goods through all customs stations where the Indian Customs Electronic Data Interchange System is in operation.

(3) They shall come into force on the date of their publication in the Official Gazette.

Regulation 2. Definitions.-

(1) In these regulations, unless the context otherwise requires,-

(a) "Act" means the Customs Act, 1962 (52 of 1962);

"authorised person" means an importer or a person authorised by him who has a valid licence under the Customs Brokers Licensing Regulations, 2013 or any other regulation dealing with the similar matters and it also includes an employee of the Customs broker who has been issued a photo identity card in Form G under the Customs Brokers Licensing Regulations, 2013 or any other regulation dealing with the similar matters;

(b)"bill of entry" means electronic integrated declaration accepted and a unique number generated and assigned to that particular bill of entry by the Indian Customs Electronic Data Interchange System, and includes its electronic records or print-outs;

Explanation. — For the purposes of this clause, the electronic record shall have the meaning assigned to it as in the Information Technology Act, 2000 (21 of 2000);

(c) "electronic integrated declaration" means particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System;

(d) "ICEGATE" means the customs automated system of Central Board of Indirect Taxes and Customs;

(e) "service centre" means the place specified by the Principal Commissioner or the Commissioner of Customs, as the case may be, where the data entry of an electronic integrated declaration, is carried out;

(f) "supporting documents" means the documents in the electronic form or otherwise, which are relevant to the assessment of the imported goods under sections 17 and 46 of the Act.

(2) The words and expressions used and not defined herein but defined in the Customs Act, 1962 (52 of 1962) shall have the same meaning as assigned to them in the said Act.

Regulation 3. The authorised person shall enter the electronic integrated declaration and the supporting documents himself by affixing his digital signature and enter them on the Customs Automated System and he may also get the electronic integrated declaration made on the customs automated system along with the supporting documents by availing the services at the service centre.

Explanation. — For the purposes of this regulation, the words "digital signature" shall have the meaning assigned to it in the Information Technology Act, 2000 (21 of 2000);

Regulation 4. (1) The authorised person shall file the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing.

(2) The bill of entry shall be deemed to have been filed and self-assessment completed when after entry of the electronic integrated declaration on the customs automated system or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration and the self-assessed copy of the Bill of Entry may

be electronically transmitted to the authorised person or printed out at the service centre.

(3) Where the bill of entry is not filed within the time specified in sub-regulation (1) and the proper officer of Customs is satisfied that there was no sufficient cause for such delay, the importer shall be liable to pay charges for late presentation of the bill of entry at the rate of rupees five thousand per day for the initial three days of default and at the rate of rupees ten thousand per day for each day of default thereafter :

Provided that where the proper officer is satisfied with the reasons of delay, he may waive off the charges referred to in the second proviso to sub-section (3) of section 46 of the Customs Act, 1962 (52 of 1962).

(4) The late presentation charges referred to in sub-regulation (3) above in respect of any bill of entry shall not exceed the duty payable in respect of that particular bill of entry:

Provided that where the duty or any other charges in respect of any bill of entry are not payable for any reason like exemption or otherwise, the late presentation charges shall not exceed fifty thousand rupees.

Regulation 5. After the completion of the assessment, an order permitting clearance under sub-section (1) of section 47 or section 68, as the case may be, shall be made, after examination of the imported goods if so required and the order under regulation 5 may be recorded on the customs automated system and conveyed electronically to the authorised person, the custodian, and to any other person(s) designated by the authorised person.

Regulation 6. The authorised person shall retain, for a period of 5 years from the date of presentation of the bill of entry, the assessed copy of the bill of entry, digital or otherwise, and all supporting documents in original, which were used or relied upon by him in submitting the electronic integrated declaration, and shall produce them before Customs in connection with any action or proceedings under the Act or under any other law for the time being in force.

Regulation 7. An authenticated copy of bill of entry may be generated at the request of the authorised person if possession of the said copy is required by him for compliance of provisions of law for the time being in force.

Regulation 8. Any authorised person who contravenes any provision of these regulations or who fails to comply with any provisions of these regulations shall be liable to a penalty which may extend to fifty thousand rupees.

The cited provisions of Regulation has been amended vide Notification No.34/2021-Cus.(N.T.), dated 29-03-2021 and the relevant portion is reproduced as under:

Short title and commencement. -(1) These regulations may be called the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Amendment Regulations, 2021.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 (hereinafter referred to as said regulations), In regulation 2, in sub-regulation (1), after clause (c), the following clause shall be inserted, namely: -

'(ca) "Customs Automated System" means the Indian Customs Electronic Data Interchange System;'.

3. In the said regulations, in regulations 3 and 4, for the expressions, "Customs Automated System'' and ''customs automated system'' wherever they occur, the expression "common portal'' shall be substituted.

4. In the said regulations, in regulation 4, for sub-regulation (1), the following sub regulation shall be substituted, namely:-

"(1)(a) In case of a customs port (other than inland container depot and air freight station) at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) preceding the day on which the vessel carrying the goods arrives at the customs port:

Provided that the authorised person shall file the bill of entry before the end of the day (including holidays) of said arrival of the vessel where the goods are consigned from any of the countries mentioned below:

(i) Bangladesh; (ii) Maldives; (iii) Myanmar; (iv) Pakistan; (v) Sri Lanka.

(b) In case of a customs airport at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) of the arrival of the aircraft carrying the goods at the customs airport. (c) In case of an inland container depot or air freight station at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) preceding the day on which the vehicle (which includes train) carrying the goods arrives at the inland container depot or air freight station. (d) In case of a land customs station at which goods are to be cleared for home consumption or warehousing, the authorised person shall file the bill of entry before the end of the day (including holidays) of the arrival of the vehicle (which includes train) carrying the goods at the land customs station."

C6 : CUSTOMS BROKERS LICENSING REGULATIONS, 2018

Regulation 1. Short title, commencement and application.—

(1) These regulations may be called the Customs Brokers Licensing Regulations, 2018.

(2) They shall come into force on the date of publication in the Official Gazette.

(3) These regulations shall apply to, a Customs Broker who has been licensed and such other persons who have been employed or engaged by a licensed Customs Broker under these regulations or the Customs House Agents Licensing Regulations, 1984 or the Customs House Agents Licensing Regulations, 2004 or the Customs Brokers Licensing Regulations, 2013.

(4) Every license granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licensee, and no license shall be sold or otherwise transferred.

Regulation 2. Definitions.— (1)In these regulations, unless the context other wise requires,

(a) "Aadhaar number" means an identification number issued to an individual under sub- section (3) of section 3 of The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016);

(b) "Act" means the Customs Act, 1962 (52 of 1962);

(c) "company" means a company as defined in the Companies Act, 2013 (18 of 2013);

(d) "Customs Broker" means a person licensed under these regulations to act as an agent on behalf of the importer or an exporter for purposes of transaction of any business relating to the entry or departure of conveyances or the import or export of goods at any Customs Station including audit;

(e) "firm", "firm name", "partner" and "partnership" shall have the same meanings respectively assigned to them in the Indian Partnership Act, 1932 (9 of 1932), but the expression "partner" shall also include any person who, being a minor, has been admitted to the benefits of partnership;

(f) "Form" means the form appended to these regulations;

(g) "F card holder" means a person who has passed the examination referred to in regulation 6 and has been issued a photo identity card in Form F;

(h) "G card holder" means a person who has passed the examination referred to in regulation 13 and has been issued a photo identity card in Form G;

(i) "H card holder" means a person who has not passed the examination referred to in regulation 13 and has been issued a photo identity card in Form H;

(j) "PAN" is the Permanent Account Number issued under section 139A of the Income Tax Act, 1961 (43 of 1961);

(k) "GSTIN" means a 15 digit state-wise PAN- based Goods and Services Tax Identification Number assigned at the time of issue of Goods and Services Tax registration certificate.

(l) "section" means a section of the Act.

(2) The words and expressions used herein and not defined in these regulations but defined in the Act shall have the same meanings respectively assigned to them in the said Act.

Regulation 3. Customs Brokers to be licensed.—No person shall carry on business as a Customs Broker relating to the entry or departure of a conveyance or the import or export of goods including work relating to audit at any Customs Station unless such person holds a license granted under these regulations:

Provided that no license under these regulations shall be required by-

(a) an importer or exporter transacting any business at a Customs Station solely on his own account;

(b) any employee of any person or a firm transacting business generally on behalf of such person or firm, and holding an identity card or a temporary pass issued by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and

(c) an agent employed for one or more vessels or aircrafts in order solely to enter or clear such vessels or aircrafts for work incidental to his employment as suchagent.

Regulation 4. Invitation of application.—(1) The 1[National Academy of Customs, Indirect Taxes and Narcotics (NACIN)] shall in the month of 2[August] of every year invite applications for conducting examination and subsequent grant of license to act as Customs Broker in Form A by publication in two leading national daily newspapers in English and Hindi in addition to disseminating the information on the webportal.

3[Provided that in respect of the applications invited by the Directorate General of Performance Management (DGPM) in April, 2018, the online written examination shall be conducted by the National Academy of Customs, Indirect Taxes and Narcotics (NACIN) in the first quarter of the calendar year 2019.]

(2) The application for a license to act as a Customs Broker in a Customs Station in Form A along with a fee of five hundred rupees shall be made to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, having jurisdiction over the area where the applicant intends to carry on hisbusiness.

Regulation 5. Conditions to be fulfilled by the applicants.—

(1) The applicant for a license to act as a Customs Broker in a Customs Station, shall before applying to the Principal Commissioner of Customs or Commissioner of Customs, meet the following conditions that:—

(a) he is a citizen of India;

(b) he is a person of sound mind;

(c) he is not adjudicated as insolvent;

(d) he holds an Aadhaar number;

(e) he holds a valid PAN card;

(f) he has not been penalised for any offence under the Act, the Central Excise Act, 1944 (1 of 1944), the Finance Act, 1994 (32 of 1994), the Central Goods and Services Act, 2017 (12 of 2017) and Integrated Goods and Services Tax Act, 2017 (13 of 2017);

(g) he has neither been convicted by a competent court for an offence nor any criminal proceeding is pending against him in any court of law;

(h) an individual applicant or in case the applicant is a firm, its partner or in the case of a company, its director or an authorised employee who may handle the Customs work shall—

(i) be a graduate from a recognized University; and

(ii) possess a professional degree such as Masters or equivalent degree in Accounting, Finance or Management, CA/CS/MBA/ LLM/ACMA/ FCMA or Diploma in Customs Clearance work from any Institutes or University recognised by the Government or is having at least two years' experience in transacting Customs Broker work as G - Card holder;

(1) the applicant has financial viability as evidenced by a certificate issued by a Scheduled Bank or such other proof acceptable to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, in terms of possession of assets of value of not less than five lakhs rupees.

(2) A retired Group A officer from the Indian Revenue Service (Customs and Central Excise)having a minimum of five years' experience in Group 'A' post shall also be eligible to apply for a license to act as a Customs Broker provided he satisfies the conditions specified at (a), (b), (c), (d), (e), (f), (g) and (i)of sub-regulation (1) above.

(3) The Principal Commissioner or Commissioner of Customs, as the case may be, may for the purpose of this regulation, make such enquiries to verify the eligibility of the applicant as he may deem fit before forwarding the application to 1[National Academy of Customs, Indirect Taxes and Narcotics (NACIN)].

Regulation 6. Examination of the applicant.— (1) An applicant, who satisfies the requirements of regulation 5, shall be required to appear for a written 4[***] as well as oral examination conducted

by the 1[National Academy of Customs, Indirect Taxes and Narcotics (NACIN)]:

Provided that an applicant who has already passed the examination referred to in regulation 9 of the Custom House

Agents Licensing Regulation, 1984 or regulation 8 of the Custom House Agents Licensing Regulation, 2004 or regulation 6 of the Customs Brokers Licensing Regulations, 2013 shall not be required to appear for any further examination.

5[(2) The online written examination shall be conducted by the National Academy of Customs, Indirect Taxes and Narcotics (NACIN) in the first quarter of each calendar year for which intimation shall be sent individually to applicants in advance before the date of examination and the result of the said examination shall be declared preferably within one month of the date of examination.

(3) The applicant who is declared successful in the written examination shall be called for an oral examination on specified dates in the second quarter of the same calendar year, the result of which shall be declared in the month of July of the same calendar year.]

(4) The applicant shall be required to clear both the written examination as well as corresponding oral examination.

(5) An attempt at the written exam shall be deemed to be an attempt and notwithstanding the disqualification/ cancellation of application, the fact of appearance of the applicant at the examination will count as an attempt.

(6) An applicant shall be allowed a maximum of six attempts to clear the examination.

(7) The examination may include questions on the following:

(a) preparation of various kinds of bills of entry, bills of export, shipping bills, and other clearance documents;

(b) arrival entry and clearance of vessels;

(c) tariff classification and rates of duty;

(d) determination of value of imported and export goods;

(e) conversion of currency;

(f) nature and description of documents to be filed with various kinds of bills of entry, shipping bills and other clearance documents;

(g) procedure for assessment and payment of duty including refund of duty paid;

(h) examination of goods at Customs Stations;

(i) prohibitions on import and export;

(j) bonding procedure and clearance from bond;

(k) re-importation and conditions for free re-entry;

(l) drawback and export promotion schemes including the Special Economic Zone scheme;

(m) offences under the Act;

(n) provisions of the allied Acts including the Central Goods and Services Act, 2017 (12 of 2017) and section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Indian Explosives Act, 1884 (4 of 1884), the Destructive Insects and Pests Act 1914 (2 of 1914), the Dangerous Drugs Act, 1930 (2 of 1930), the Drugs and Cosmetics Act, 1940 (23 of 1940), the Central Excise Act, 1944 (1 of 1944), the Copy Right Act, 1957 (14 of 1957), the Trade and Merchandise Marks Act 1958 (43 of 1958), the Arms Act 1959 (54 of 1959), the Patents Act, 1970 (39 of 1970), the Narcotics Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Environment (Protection) Act, 1986 (29 of 1986), the Foreign Trade (Development and Regulations) Act, 1992 (22 of 1992), the Foreign Exchange Management Act, 1999 (42 of 1999), the Design Act, 2000 (16 of 2000) and the Food Safety and Standard Act, 2006 (No. 34 of 2006) and other laws for the time being in force applicable to EXIM trade and the rules and regulations made under these Acts in so far as they are relevant to clearance of goods through Customs;

(o) provisions of the Prevention of Corruption Act, 1988 (49 of 1998);

(p) procedure for appeal and revision applications under the Act; and

(q) online filing of electronic bills of entry and shipping bills vide the Indian Customs and Central Excise Electronic Commerce or Electronic data interchange gateway (ICEGATE) and Indian Customs Electronic data Interchange System (ICES).

(r) knowledge of regulations, rules, notifications, etc. under the Customs Act and other Allied Acts.

The Principal Commissioner of Customs or Commissioner of Customs shall satisfy himself that the individual applicant or in cases where applicant is a firm or company, its partner or Director or authorised employees who may be engaged for handling the customs work shall possess satisfactory knowledge of English and the local language of the Customs Station:

Provided that in case of a person deputed to work extensively in the docks, knowledge of English shall not be compulsory and knowledge of Hindi shall be considered as desirable qualification.

Regulation 7. Grant of License.—(1)The applicant who has passed the written as well as oral examination shall make a payment of a fee of five thousand rupees within two months of the declaration of the results of the oral examination and inform the payment particulars to the Principal Commissioner or Commissioner of Customs referred to in sub-regulation (2) of regulation 4 and the said Principal Commissioner or Commissioner shall, on verification of the payment particulars grant license to the applicant within one month of the payment of the said fee:

Provided that where the successful applicant fails to make the payment of the said fee within the stipulated period, the right to be granted a license to an applicant shall be forfeited.

(2) The applicant who has paid the fee referred to in sub-regulation (1) shall be granted a license by the Principal Commissioner or Commissioner of Customs**,** as below:—

(a) An individual shall be granted the license in FormB1 if that individual has passed the examination referred to in regulation 6.

(b) A customs broker's license may be granted to any company, firm or association inFormB2 if at least one director, partner, or an authorised employee, as the case may be, has passed the examination referred to in regulation 6:

Provided that at any given time such director, partner or an authorised employee shall not engage himself for transacting business under these regulations on behalf of more than one such firm or company:

Provided further that where a company or a firm which has been granted a license under this regulation undergoes any change in the

directors, or managing director or partner, such change shall forthwith be communicated by such licensee to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, within one month of such change:

Provided also that where a company or a firm which has been granted a license under this regulation undergoes any change whereby there is a change in the PAN, the licensee shall apply for a fresh license to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, within sixty days of such change.

(3) The applicant who has been granted license under sub- regulation (2) shall be eligible to work as Customs Broker in all Customs Stations subject to intimation in Form C to the Principal Commissioner or Commissioner of Customs of the Customs Station where he intends to transact business and a copy of this intimation shall also be sent to the Principal Commissioner or Commissioner of Customs who has issued the license in Form B1 or FormB2, as the case may be.

(4) A customs broker shall be eligible to transact business under these regulations at a customs station which requires intimation under the said Form C, subject to the condition that such customs broker shall be able to transact such business only after a period of two years from the date of issue of license in Form B1 or Form B2:

Provided that the said period of two years shall be waived in respect of a license issued to a customs broker under the respective provisions of the Customs House Agents Licensing Regulations, 1984 or the Customs House Agents Licensing Regulations, 2004 or the Customs Brokers Licensing Regulations, 2013:

Provided further that the period of two years referred to in sub-regulation (4) shall not be applicable where the intimation under the said Form C is to the Principal Commissioner or the Commissioner of Customs, as the case may be, referred to in sub-regulation (2) of regulation 4.

Regulation 8. Execution of bond and furnishing of security.— (1) Before granting the license under regulation 7, the Principal Commissioner or Commissioner of Customs shall require the successful applicant to enter into a bond in Form D and where specified a surety bond in Form E for due observance of these regulations and furnish a bank guarantee, or a postal security or National Saving Certificate or a fixed deposit receipt issued by a nationalised bank, in the name of

the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, for an amount of five lakhs rupees for carrying out the business as a Customs Broker.

(2) In cases where a postal security or National Saving Certificate or a fixed deposit receipt is furnished, the benefit of interest on the instrument shall accrue to the Customs Broker concerned.

Regulation 9. Period of validity of a license.— (1) A license granted under regulation 7 shall be valid for a period of ten years from the date of issue and shall be renewed from time to time in accordance with the procedure specified in sub-regulation (2):

Provided that the renewal procedure and fees for licenses issued under the Customs House Agents Licensing Regulations, 1984 or the Customs House Agents Licensing Regulations, 2004 or the Customs Brokers Licensing Regulations, 2013 shall be in accordance with the procedure specified in sub-regulation (2) and fees specified in sub-regulation (3) respectively:

Provided further that a license granted to a Customs Broker, authorised under the Authorised Economic Operator Programme referred to in Board's Circular No. 28/2012-Customs dated 16.11.2012 or 33/2016-Customs dated 22.7.16, shall not require renewal till such time the said authorisation is valid.

(2) Subject to the provisions of regulation 7, the Principal Commissioner of Commissioner of Customs may, on an application made by the licensee before the expiry of the validity of the license under sub-regulation (1), renew the license for a further period of ten years from the date of expiration, if the performance of the licensee is found to be satisfactory with reference, *inter alia,* to the obligations specified in this regulation including the absence of instances of any complaints of misconduct within one month of the date of receipt of application.

Provided that where the Customs Broker fails to submit the application for renewal before the expiry of the validity of the license, the Principal Commissioner or Commissioner of Customs may after satisfying himself to the genuineness of the reasons of delay, renew the license upon payment of two thousand rupees as late fee by the Customs broker in addition to the fee for renewal within one month of the date of receipt of application.

(3) The fee for renewal of the license shall be fifteen thousand rupees.

Regulation 10. Obligations of Customs Broker.—A Customs Broker shall—

(a) obtain an authorisation from each of the companies, firms or individuals by whom he is for the time being employed as a Customs Broker and produce such authorisation whenever required by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe;

(b) transact business in the Customs Station either personally or through an authorized employee duly approved by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe;

(c) not represent a client in any matter to which the Customs Broker, as a former employee of the Central Board of Indirect taxes and Customs gave personal consideration, or as to the facts of which he gained knowledge, while in Government service;

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(f) not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Customs authorities, as the case may be, from a client who is entitled to such information; promptly pay over to the Government, when due, sums received for payment of any duty, tax or other debt or obligations owing to the Government and promptly account to his client for funds received for him from the Government or received from him in excess of Governmental or other charges payable in respect of cargo or baggage on behalf of the client;

(g) not procure or attempt to procure directly or indirectly, information from the Government records or other Government sources of any kind to which access is not granted by the proper officer;

(h) not attempt to influence the conduct of any official of the Customs Station in any matter pending before such official or his

subordinates by the use of threat, false accusation, duress or the offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing of value;

(i) not refuse access to, conceal, remove or destroy the whole or any part of any book, paper or other record, relating to his transactions as a Customs Broker which is sought or may be sought by the Principal Commissioner of Customs or Commissioner of Customs, as the case maybe;

(j) maintain up to date records such as bill of entry, shipping bill, transhipment application, etc., all correspondence, other papers relating to his business as Customs Broker and accounts including financial transactions in an orderly and itemized manner as may be specified by the Principal Commissioner of Customs or Commissioner of Customs or the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe;

(k) immediately report the loss of license granted to him to the Principal Commissioner of Customs or Commissioner of Customs, as the case maybe;

(l) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

(m) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN),identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

(n) inform any change of postal address, telephone number, e-mail etc. to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, of all Customs Stations including the concerned Deputy Commissioner or Assistant Commissioner of the Commissionerate who has granted the license immediately within two days;

(o) maintain all records and accounts that are required to be maintained under these regulations and preserve for at least five years and all such records and accounts shall be made available at any time for the inspection of officers authorised for this purpose; and

(p) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

Regulation 11. Change in constitution of any firm or a company.— (1) In the case of any firm or a company, granted a license under these regulations, any change in the constitution which makes the holding of such license invalid in view of the conditions specified in clause (b) of sub-regulation (2) of regulation 7 notwithstanding the continued engagement or employment of the person who has passed the examination referred to in regulation 6, then such change shall be reported by such firm or company, as the case may be, to the Principal Commissioner or Commissioner of Customs forthwith, and any such firm or a company undergoing such change shall make a fresh application to the said Principal Commissioner or Commissioner of Customs within a period of sixty days from the date of such change for the grant of license under regulation 7, and the Principal Commissioner or Commissioner of Customs may, if there is nothing adverse against such firm or company, as the case may be, grant a fresh license.

(2) The firm or company making an application as referred to in sub-regulation (1) above shall be similarly subject to condition referred to in clause (b) of sub-regulation (2) of regulation 7:

Provided that if the licensee firm or company moves an application for such changes, then such firm or company may be allowed to carry on business of Customs Broker with the approval of the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, till such time a decision is taken on the fresh application of such firm or company.

(3) Notwithstanding anything contained in sub-regulation (1), in case of any firm or a company where a license has ceased to be in force because of the death or retirement of any partner or director or an authorised employee, who has passed the examination referred to in regulation 6, the firm or the company may apply for replacement of the name of the demised person by the name of another partner, director or authorised employee who has passed the examination referred to in regulation 6:

Provided that if there is no such person in the firm or company, then such firm or company, as the case may be, may authorise any other partner, director or authorised employee who is a G card

holder, referred to in sub-regulation (5) of regulation 13, to pass the examination referred to in regulation 6 within a period of two years from the date of the demise or retirement of such person, and the firm or company may be permitted to carry on the business of a Customs Broker with the approval of the Principal Commissioner of Customs or Commissioner of Customs, as the case may be till such time such partner, director or authorized employee passes the said examination.

Provided that where the G-card holder of the firm or company or association has appeared in the written examination referred to in regulation 6 within the said two years, then notwithstanding the expiry of the said two years, the time period to clear the examination shall be deemed to be extended till the declaration of the result of the examination.

Regulation 12. Change in the constitution of a concern.—

(1) Where a license granted or renewed under these regulations in favour of a person, not being a firm or a company, changes constitution of his concern to a firm or a company, such new firm or new company may, pending the grant of a license in accordance with these regulations, be permitted to act as Customs Broker through an employee duly qualified as per regulation 6, with the approval of the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(2) Notwithstanding anything contained in sub-regulation (1), where a license granted or renewed under these regulations in favour of a person which has ceased to be in force because of the death of that person, his legal heir, who is a major and a G card holder, referred to in sub-regulation (5) of regulation 13, may be permitted to work as a Customs Broker with the approval of the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, and such legal heir shall be required to pass the examination referred to in regulation 6 within a period of two years from the date of demise of the original licensee:

Provided that where the G-card holder of the firm or company or association has appeared in the written examination referred to in regulation 6 within the said two years, then notwithstanding the expiry of the said two years, the time period to clear the examination shall be deemed to be extended till the declaration of the result of the examination:

Provided further that where such G card holder does not meet the

requisite educational qualification as specified in regulation 5, then relaxation shall be allowed only if he has been holding the G card for a minimum of five years prior to the date of demise of the original licensee.

Regulation 13. Engagement or employment of persons.—

(1) A person who has qualified the examination referred to in regulation 6 may engage himself in the work relating to the clearance of goods through customs on behalf of a firm or a company licensed under these regulations.

2) A Customs broker who has been issued a license under sub-regulation (2) of regulation 7 shall be issued a photo-identity card in Form F by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe:

Provided that in the case of the license issued under clause (b) of sub-regulation (2)of regulation 7, the photo-identity card in Form F shall be issued to the person or persons who has actually passed the examination referred to in regulation 6.

(3) A Customs Broker may, having regard to the volume of business transacted by him, employ any number of persons other than an F card holder to assist him after verifying their antecedents and identity at the declared address by using reliable, independent, authentic documents, data or information:

Provided that such an employed person shall possess the Aadhaar number issued to him and that the minimum educational qualification of such persons so employed shall be 10+2, or equivalent.

(4) Employment of a person referred to in sub-regulation (3) shall be made only after obtaining the approval of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, who shall in granting approval, take into consideration the antecedents and any other information pertaining to the character of such person.

(5) The person referred to in sub-regulation (3) shall, within four attempts from the date of his appointment, pass a written examination conducted by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, and the examination shall be such as to ascertain the adequacy of knowledge of such person regarding the provisions of the Act

subject to which goods and baggage are cleared through Customs and the person shall, on passing the examination, be issued a photo-identity card in Form G by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case maybe.

(6) Notwithstanding anything contained in sub-regulation (5), a G card holder who is employed under a Customs Broker may, on his employment under any other Customs Broker, with the approval or no objection of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, be exempted from passing of such examination.

(7) A Customs Broker shall authorise only such employee who has been issued a photo identity card in Form F or Form G as the case may be to sign the declaration on the bills of entry, shipping bills, annexure thereof or any other document generated in connection with the proceedings under the Act or the rules or regulations made thereunder.

(8) Where the Customs Broker has authorised any person employed by him in accordance with sub-regulation (7) to sign documents relating to his business on his behalf, he shall file with the Deputy Commissioner of Customs or Assistant Commissioner of Customs of each Customs Station, as the case may be, a written authority in this behalf and give prompt notice in writing if such authorisation is modified or withdrawn.

(9) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall issue a photo-identity card to every person employed by a Customs Broker in Form H in case he has not passed the examination referred to in sub-regulation (4) for a period of five years:

Provided that the minimum educational qualification of such a person shall be 10+2.

(10) Any person who has been issued a photo identity card under this regulation shall, at all times when he transacts the work at the Customs Station, carry photo identity card with him and produce it for inspection on demand by any officer of the Customs Station.

(11) Any change in the persons issued a F card or G card or H card and actually engaged in the work in the Customs Station on behalf of a licensee firm or company shall be communicated forthwith by the firm or the company, as the case may be, to the Deputy

Commissioner of Customs or Assistant Commissioner of Customs, and no new person other than 'F', 'G' or 'H' card holders, shall be allowed to work in the Customs Station as a duly authorised employee on behalf of that firm or company.

(12)The Customs Broker shall exercise such supervision as may be necessary to ensure proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment.

Regulation 14. Revocation of licence or imposition of penalty— The Principal Commissioner or Commissioner of Customs may, subject to the provisions of regulation 17, revoke the license of a Customs Broker and order for forfeiture of part or whole of security, on any of the following grounds, namely:—

(a) failure to comply with any of the conditions of the bond executed by him under regulation 8; failure to comply with any of the provisions of these regulations, within his jurisdiction or anywhere else;

(b) commits any misconduct, whether within his jurisdiction or anywhere else which in the opinion of the Principal Commissioner or Commissioner of Customs renders him unfit to transact any business in the Customs Station;

(c) adjudicated as an insolvent;

(d) of unsound mind ;and

(e) convicted by a competent court for an offence involving moral turpitude or otherwise.

Regulation 15. Prohibition.— Notwithstanding anything contained in these regulations, the Principal Commissioner or Commissioner of Customs other than those referred to in regulation 7 may prohibit any Customs Broker from working in one or more sections of the Customs Station, if he is satisfied that such Customs Broker has not fulfilled his obligations as laid down under regulation 10 in relation to work in that section or sections:

Provided that the period for which any Customs Broker may be prohibited from transacting business in one or more of the Customs Stations shall not exceed one month from the date of such prohibition:

Provided further that where the license of the Customs broker is suspended as a consequence to prohibition, the time period specified in regulation 16, shall be reckoned from the date of such suspension.

Regulation 16. Suspension of license.—(1) Notwithstanding anything contained in regulation 14, the Principal Commissioner or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the license of a Customs Broker where an enquiry against such Customs Broker is pending or contemplated:

Provided that where the Principal Commissioner or Commissioner of Customs may deem fit for reasons to be recorded in writing, he may suspend the license for a specified number of Customs Stations.

(2) Where a license is suspended under sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall, within fifteen days from the date of such suspension, give an opportunity of hearing to the Customs Broker whose license is suspended and may pass such order as he deems fit either revoking the suspension or continuing it, as the case may be, within fifteen days from the date of hearing granted to the Customs Broker:

Provided that in case the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, passes an order for continuing the suspension, further procedure thereafter shall be as provided in regulation 17.

Regulation 17. Procedure for revoking license or imposing penalty.— (1)The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the Customs Broker within a period of ninety days from the date of receipt of an offence report, stating the grounds on which it is proposed to revoke the license or impose penalty requiring the said Customs Broker to submit within thirty days to the Deputy Commissioner of Customs or Assistant Commissioner of Customs nominated by him, a written statement of defense and also to specify in the said statement whether the Customs Broker desires to be heard in person by the said Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(2) The Commissioner of Customs may, on receipt of the written statement from the Customs Broker, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), direct the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, to inquire into the grounds which are not admitted by the Customs Broker.

(3) The Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall, in the course of inquiry, consider

such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings, and he may also put any question to any person tendering evidence for or against the Customs Broker, for the purpose of ascertaining the correct position.

The Customs Broker shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings, and where the Deputy Commissioner of Customs or Assistant Commissioner of Customs declines permission to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for sodoing.

(4) At the conclusion of the inquiry, the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, shall prepare a report of the inquiry and after recording his findings thereon submit the report within a period of ninety days from the date of issue of a notice under sub-regulation (1).

(5) The Principal Commissioner or Commissioner of Customs shall furnish to the Customs Broker a copy of the report of the Deputy Commissioner of Customsor Assistant Commissioner of Customs, as the case may be, and shall require the Customs Broker to submit, within the specified period not being less than thirty days, any representation that he may wish to make against the said report.

(6) The Principal Commissioner or Commissioner of Customs shall, after considering the report of the inquiry and the representation thereon, if any, made by the Customs Broker, pass such orders as he deems fit either revoking the suspension of the license or revoking the license of the Customs Broker within ninety days from the date of submission of the report by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, under sub-regulation (5):

Provided that no order for revoking the license shall be passed unless an opportunity is given to the Customs Broker to be heard in person by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(7) Where in the proceedings under these regulations, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, comes to a conclusion that the F card holder is guilty of grounds specified in regulation 14 or incapacitated in the meaning of the said regulation, then the Principal Commissioner of Customs or Commissioner of Customs may pass an order imposing penalty as provided in regulation 18:

Provided that where an order is passed against an F card holder, he shall surrender the photo identity card issued in Form F forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

(8) Where in an offence report, charges have been framed against an F card holder in addition to the Customs Broker who has been issued a license under regulation 7, then procedure prescribed in regulations 16 and 17 shall be followed *mutatis mutandis* in so far as the prescribed procedure is relevant to the F cardholder:

Provided that where any action is contemplated against a G card holder alone under these regulations, then instead of authority referred to in sub-regulation (8), a Deputy Commissioner or Assistant Commissioner rank officer shall pass such order as mentioned in the said sub-regulation along with debarring such G card holder from transacting the business under these regulations for a period of six months from such order.

Provided further that where an order is passed against a G card holder, then he shall surrender the photo identity card issued in Form G forthwith to the Deputy Commissioner of Customs or Assistant Commissioner of Customs.

Explanation.—Offence report for the purposes of this regulation means a summary of investigation and prima facie framing of charges into the allegation of acts of commission or omission of the Customs Broker or a F card holder or a G card holder, as the case may be, under these regulations thereunder which would render him unfit to transact business under these regulations.

Regulation 18. Penalty.

(1) The Principal Commissioner or Commissioner of Customs may impose penalty not exceeding fifty thousand rupees on a Customs Broker or F card holder who contravenes any provisions of these regulations or who fails to comply with any provision of theseregulations.

(2) The Deputy Commissioner or an Assistant Commissioner of Customs may impose penalty not exceeding ten thousand rupees on a G card holder who contravenes any provisions of these regulations in connection with the proceedings against the Customs Broker.

The imposition of penalty or any action taken under these regulations shall be without prejudice to the action that may be taken against

the Customs Broker or F card holder or G card holder under the provisions of the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.

Regulation 19. Appeal.— A Customs Broker or F card holder, who is aggrieved by any order passed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under regulation 16 or regulation 17, may prefer an appeal under section 129A of the Act to the Customs, Central Excise and Service Tax Appellate Tribunal established under sub- section (1) of section 129 of the Act:

Provided that a G card holder aggrieved by any order passed by the Deputy Commissioner or Assistant Commissioner of Customs under these regulations may prefer an appeal under section 128 of the Act to the Commissioner of Customs(Appeals) against the orders of the Deputy Commissioner or Assistant Commissioner of Customs, as the case may be, who shall proceed to decide the appeal expeditiously within two months of the filing of the appeal.

Regulation 20. Membership of associations. — (1)Each Customs Broker shall enroll himself as a member of the Customs Brokers' Association, if there is one registered in the Customs Station under the Parent Customs Zone and recognised by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be.

(2) No Customs Broker shall enroll himself in more than one Association at a given time.

(3) The Principal Commissioner of Customs or Commissioner of Customs, as the case may be, at any Customs Station, may recognise more than one Customs Broker association provided that the minimum number of members of each such association shall not be less than thirty percent of the total licenses issued in Form B1 or Form B2 or intimation received in the Form C.

C7 : BAGGAGE RULES. 2016

[M.F. (D.R.) Notification No. 30/2016-Cus. (N.T.), dated 1-3-2016 as amended]

1. **Short title and commencement**. - (1) These rules may be called the Baggage Rules, 2016.

(2) They shall come into force on the 1st day of April, 2016.

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

(i) "Annexure" means Annexure appended to these rules;

(ii) "family" includes all persons who are residing in the same house and form part of the same domestic establishment;

(iii) "infant" means a child not more than two years of age;

(iv) "resident" means a person holding a valid passport issued under the Passports Act, 1967 (15 of 1967) and normally residing in India;

(v) "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non-immigrant purposes;

(vi) "personal effects" means things required for satisfying daily necessities but does not include jewellery.

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

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

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

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

(a) used personal effects and travel souvenirs; and

(b) articles other than those mentioned in Annexure- I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

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

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

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

(a) used personal effects and travel souvenirs ;and

(b) articles other than those mentioned in Annexure -I up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:

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

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

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

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

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

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

APPENDIX

Duration of stay abroad	Articles allowed free of duty	Conditions	Relaxation
(1)	(2)	(3)	(4)
From three months upto six months	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of sixty thousand rupees.	Indian passenger	-
From six months upto one year	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III, upto an aggregate value of one lakh rupees.	Indian passenger	-
Minimum stay of one year during the preceding two years.	Personal and household articles, other than those mentioned in Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of two lakh rupees.	The Indian passenger should not have availed this concession in the preceding three years.	-
Minimum stay of two years or more.	Personal and house household articles, other than those listed at Annexure I or Annexure II but including articles mentioned in Annexure III upto an aggregate value of five lakh rupees.	(i) Minimum stay of two years abroad, immediately preceding the date of his arrival	(a) For can be condoned by Deputy Commissioner of Customs or Assistant

			Commissioner of Customs if the early return is on account of:- condition (i), shortfall of upto two months in stay abroad
			(i) terminal leave or vacation being availed of by the passenger; or
			(ii) any other special circumstances for reasons to be recorded in writing.
			(b) For condition (ii), the Principal Commissioner of Customs or Commissioner of Customs may condone short visits in excess of six months in special circumstances for reasons to be recorded in writing.
		(ii) Total stay in India on short visit during the two preceding years should not exceed six months; and	No relaxation.".
		(iii) Passenger has not availed this concession in the preceding three years.	

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

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

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

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

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

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

ANNEXURE–I
(See rule 3, 4 and 6)

1. Firearms.
2. Cartridges of fire arms exceeding50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. Gold or silver in any form other than ornaments.
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

ANNEXURE II
(See rule 6)

1. Colour Television.
2. Video Home Theatre System.
3. Dish Washer.
4. Domestic Refrigerators of capacity above 300 litres or its equivalent.
5. Deep Freezer.
6. Video camera or the combination of any such Video camera with one or more of the following goods, namely:-

   (a) Television receiver;

   (b) sound recording or reproducing apparatus;

   (c) video reproducing apparatus.
7. Cinematographic films of 35mm and above.
8. Gold or Silver, in any form, other than ornaments.

ANNEXURE III
(See rule 6)

1. Video Cassette Recorder or Video Cassette Player or Video Television Receiver or Video Cassette Disk Player.
2. Digital Video Discplayer.
3. Music System.

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

C8 : CUSTOMS AUDIT REGULATIONS, 2018

1. **Short title and commencement. -** (1) These regulations may be called the Customs Audit Regulations, 2018.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions. -** In these regulations, unless the context otherwise requires,- **"Act"** means the Customs Act, 1962 (52 of1962);

(a) "**audit"** includes examination or verification of declaration, record, entry, document, import or export licence, authorisation, scrip, certificate, permission etc., books of account, test or analysis reports, and any other document relating to imported goods or export goods or dutiable goods, and may include inspection of sample and goods, if such sample or goods are available and where necessary, drawl of samples;

(b) "**auditee"** means a person who is subject to an audit under section 99A of the Act and includes an importer or exporter or custodian approved under section 45 or licensee of a warehouse and any other person concerned directly or indirectly in clearing, forwarding, stocking, carrying, selling or purchasing of imported goods or export goods or dutiable goods;

(c) "**audit report"** includes the audit findings in the report prepared after the audit containing details about objections raised by the proper officer and explanation given by the auditee, If any;

(d) "**books of account"** includes ledgers, day-books, cash books, account-books, other accounts related record whether kept in written or printed form or store delectronically;

(e) "**electronic records"** means data or record stored in any form and manner relevant for the purpose of Audit under section 99A of the Act;

(f) "**premises"** includes the registered office, branch office, warehouse, factory, or any other premises at which, imported goods or export goods or dutiable goods or books of account or records of transaction or other related documents, in relation to the said goods are ordinarily kept, for any purpose by an auditee.

(g) Words and expressions used and not defined herein but defined in the Act, shall have the same meaning respectively, assigned to them in the Act.

3. **Auditee to preserve and make available relevant documents.-** (1) The auditee shall preserve and on request by the proper officer make available in a timely manner, for the purposes of audit, true and correct information, records including electronic records, documents or accounts maintained in compliance of the provisions of the Act, rule or regulations, made there under or any other law for the time being in force, maintained for a minimum period of five years in relation to imported goods or export goods or dutiable goods.

(2) The auditee shall render assistance to the proper officer and his team of officers in the discharge of their official duty and shall in no case refuse or obstruct the proper officer or his team of officers in discharge of their official duty.

4. **Selection for Audit**. – The selection of auditee or the selection of import declarations or export declarations, as the case may be, for the purposes of audit shall primarily be based on risk evaluation through appropriate selectivity criteria.

5. **Manner of conducting audit. –** (1) The proper officer may conduct audit either in his office or in certain cases at the premises of an auditee.

(2) The proper officer may, where considered necessary, request the auditee to furnish documents, information or record including electronic record, as may be relevant to audit.

(3) The proper officer shall give not less than fifteen days advance notice to the auditee to conduct audit at the premises of the auditee.

(4) The proper officer may, where considered necessary, inspect the imported goods or export goods or dutiable goods at the premises of the auditee or request the auditee to produce sample, if available, with him.

(5) The proper officer shall inform the auditee of the objections, if any, before preparing the audit report to provide him an opportunity to offer clarifications with supporting documents.

(6) Where the auditee is in agreement with the audit findings, he may make voluntary payments of duty, interest or other sums, due, if any, in part or in full and the proper officer shall record the same in the audit report.

(7) Where the proper office has asked the auditee to furnish information, document, record or sample for the purposes of audit, it shall be mandatory for the proper officer to inform outcome of such audit to the auditee.

(8) The proper officer shall complete audit in cases where it is conducted at the premises of the auditee within thirty days from the date of starting of the audit.

Provided that the jurisdictional Commissioner of Customs may extend the period of completion of audit from thirty days to sixty days, by an order in writing.

6. **Assistance of professionals. -** (1) If the proper officer, having regard to the nature and com- plexity of the audit, is of the opinion that the audit has to be done with the assistance of a professional like Chartered Accountant, Cost Accountant, an expert in the field of computer sciences or information technology etc., may do so, with the previous approval of the Principal Commissioner/Commissioner of Customs.

7. **Penalty. -** Any auditee, who contravenes any provision of these regulations or abets such contravention or fails to comply with any provision of these regulations with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand Indian rupees.

C9 : FAQ ON WAREHOUSING

FAQ on Customs Bonded Warehouses

1. **Does a DFS operator need to apply for a warehouse licence?**

   Yes**.** Any person who is running a Duty free Shop should apply for a licence under Section 58A.The licensed premises is to be used for storage of the bonded goods, before they are removed to a Duty Free Shop.

2. **I am a new allottee of a DFS at an international airport. How should I apply to Customs authorities?**

   Please file an application in the Form prescribed under circular 26/2016- customs dated 9thJune 2016.

3. **I am an existing owner of a Duty free shop. How should I apply?**

   There is no application form prescribed for existing owners of Duty free shops. They may apply for licensing under section 58A of any premises in the precincts of the airport and / or any other premises in the city along with supporting documents regarding their existing DFS at the airport / port.

4. **By when will I have to follow procedures laid down under Special Warehouse (Custody and Handling of Goods) Regulations 2016?**

   A transitional period of three months has been provided under the aforesaid Regulations. By 13thAugust 2016 all DFS operators shall have to comply with the provisions of the Regulations.

5. **Are there any restrictions on the items that can be stored in a warehoused licensed under section 58A?**

   There is no restriction on the items that can be stored in a special warehouse under Section 58A as long as the goods are removed to a DFS under physical escort by the Bond officer.

6. **I am a DFS with a warehouse licensed under Section 58A. Can I procure goods from any other public or private bonded warehouse?**

   Yes. You will have to follow the procedure laid down in the Warehoused Goods (Removal) Regulations 2016. It will be a transfer under Section 67.

7. My warehouse under Section 58A is not large enough to store all the goods imported by me. Can I store the goods in any public bonded warehouse?

Yes. Goods imported by you can be stored in a Public Bonded warehouse licensed under section 57. As and when required, the goods shall be removed from the public bonded warehouse to the warehouse under section 58A. Such removal will be done following the procedure laid down in the Warehoused Goods (Removal) Regulations 2016. It will be a transfer under Section 67.

It is also clarified here that the goods stored in the public warehouse cannot be removed directly to the DFS.

8. Where can I get a Customs Duty insurance policy as required under the Warehouse Licensing Regulations?

Regulation 4(a) of the Public/ Private/Special warehouse Licensing Regulations 2016 states that the warehouse Licencee shall provide an all risk insurance policy, that includes natural calamities, riots, fire, theft, skillful pilferage and commercial crime, in favour of the President of India, for a sum equivalent to the amount of duty involved on the dutiable goods proposed to be stored in the warehouse at any point of time. The public sector insurance companies led by The New India Assurance Co. Ltd are offering a Customs duty insurance policy for warehouse Licensees.

9. Do I have to take separate insurance policies for transit (goods being removed from a customs station for deposit in a warehouse) and storage of goods in a customs bonded warehouse?

The Customs Duty Policy being offered by the Insurance Companies covers both transit and storage of goods. No separate policies need be taken. The licensee of the warehouse, where goods are proposed to be stored, is authorised to issue a document to cover the transit of goods from the customs station till the warehouse as well as their storage.

C10 : AUTHORIZED BANK FOR E-PAYMENT THROUGH ICEGATE

S. No	List of Banks
1.	Allahabad Bank
2.	Andhra Bank
3.	Bank of Baroda
4.	Bank of India
5.	Bank of Maharashtra
6.	Canara Bank
7.	Central Bank of India
8.	Corporation bank
9.	Dena Bank
10.	IDBI Bank
11.	Indian Bank
12.	Indian Overseas Bank
13.	Oriental Bank of Commerce
14.	Punjab National Bank
15.	State Bank of India
16.	Syndicate Bank
17.	Uco Bank
18.	Union Bank of India
19.	United Bank of India
20.	Vijaya Bank

C11 : NOMINATED BANKS FOR CUSTOMS COMMISSIONERATES (FOR PAYMENT OF DUTY)

Sr. No.	Customs Commissionerates	Nominated Banks
1.	Ahmedabad I	Bank of Baroda
2.	Amritsar	Punjab National Bank
3.	Bangalore	State Bank of India

4.	Calcutta (Port) *	United Bank of India
5.	Calcutta (Airport & Air Cargo)*	State Bank of India
6.	Calcutta (Prev)	State Bank of India
7.	Chennai (Port)*	Indian Bank
8.	Chennai (Airport & Air Cargo)*	State Bank of India
9.	Cochin *	State Bank of India
10	Delhi (Gen)	Punjab National Bank
11.	Delhi (Air Cargo)	Punjab National Bank
12.	Delhi I C D	Punjab National Bank
13.	Goa *	State Bank of India
14.	Jodhpur (at Jaipur)	State Bank of Bikaner & Jaipur
15.	Lucknow	State Bank of India
16.	Mangalore	Canara Bank
17.	Mumbai (Gen) *	Bank of India
18.	Mumbai (Import) *	Bank of India
19.	Mumbai (Exports) *	Bank of India
20.	Mumbai (Prev.)	Bank of India
21.	Mumbai Int. Airport *	Bank of India
22.	Mumbai Air Cargo Complex*	State Bank of India
23.	Kandla *	State Bank of India
24.	Nhava Sheva *	State Bank of India
25.	Patna	Punjab National Bank
26.	Pune	Punjab National Bank
27.	Shillong	State Bank of India
28.	Trichy	Indian Overseas Bank
29.	Visakhapatnam *	State Bank of India

Note : * These Places also have departmental treasuries.

C12 : FOREIGN EXCHANGE MANAGEMENT (EXPORT OF GOODS AND SERVICES) REGULATIONS, 2015

[RBI Notification No. FEMA 23(R)/2015-RB, dated 12th January 2016 as amended]

In exercise of the powers conferred by clause (a) of sub-section (1), sub-section (3) of Section 7 and sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of its Notification No. FEMA. 23/2000-RB, dated May 3, 2000 as amended from time to time, Reserve Bank of India makes the following Regulations in respect of Export of Goods and Services from India, namely :

REGULATION 1. Short title and commencement. — (i) These Regulations may be called the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

(ii) They shall come into force from the date of their publication in the Official Gazette.

REGULATION 2. Definitions. — In these Regulations, unless the context requires otherwise, -

(i) 'Act' means the Foreign Exchange Management Act, 1999 (42 of 1999);

(ii) 'authorised dealer' means a person authorised as an authorised dealer under sub-section (1) of section 10 of the Act, and includes a person carrying on business as a factor and authorised as such under the said section 10;

(iii) 'EXIM Bank' means the Export-Import Bank of India established under the Export-Import Bank of India Act, 1981 (28 of 1981);

(iv) 'export' includes the taking or sending out of goods by land, sea or air, on consignment or by way of sale, lease, hire- purchase, or under any other arrangement by whatever name called, and in the case of software, also includes transmission through any electronic media;

(v) 'export value' in relation to export by way of lease or hire-purchase or under any other similar arrangement, includes the charges, by whatever name called, payable in respect of such lease or hire-purchase or any other similar arrangement;

(vi)'form' means form annexed to these Regulations;

(vii)'schedule' means schedule appended to these Regulations;

(viii)'software' means any computer programme, database, drawing, design, audio/video signals, any information by whatever name called in or on any medium other than in or on any physical medium;

(ix)'specified authority' means the person or the authority to whom the declaration as specified in Regulation 3 is to be furnished;

(x) the words and expressions used but not defined in these Regulations shall have the same meanings respectively assigned to them in the Act.

REGULATION 3. Declaration of exports. — (1) In case of exports taking place through Customs manual ports, every exporter of goods or software in physical form or through any other form, either directly or indirectly, to any place outside India, other than Nepal and Bhutan, shall furnish to the specified authority, a declaration in one of the forms set out in the Schedule and supported by such evidence as may be specified, containing true and correct material particulars including the amount representing -

(i) the full export value of the goods or software; or

(ii) if the full export value is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods or the software in overseas market, and affirms in the said declaration that the full export value of goods (whether ascertainable at the time of export or not) or the software has been or will within the specified period be, paid in the specified manner.

(2) Declarations shall be executed in sets of such number as specified.

(3) For the removal of doubt, it is clarified that, in respect of export of services to which none of the Forms specified in these Regulations apply, the exporter may export such services without furnishing any declaration, but shall be liable to realise the amount of foreign exchange which becomes due or accrues on account of such export, and to repatriate the same to India in accordance with the provisions of the Act, and these Regulations, as also other rules and regulations made under the Act.

(4) Realization of export proceeds in respect of export of goods/ software from third party should be duly declared by the exporter in the appropriate declaration form.

REGULATION 4. Exemptions. — Notwithstanding anything contained in Regulation 3, export of goods/software may be made without furnishing the declaration in the following cases, namely :

(a) trade samples of goods and publicity material supplied free of payment;

(b) personal effects of travellers, whether accompanied or unaccompanied;

(c) ship's stores, trans-shipment cargo and goods supplied under the orders of Central Government or of such officers as may be appointed by the Central Government in this behalf or of the military, naval or air force authorities in India for military, naval or air force requirements;

(d) by way of gift of goods accompanied by a declaration by the exporter that they are not more than five lakh rupees in value;

(e) aircrafts or aircraft engines and spare parts for overhauling and/or repairs abroad subject to their reimport into India after overhauling/repairs, within a period of six months from the date of their export;

[*(ea) re-export of leased aircraft/helicopter and/or engines/ auxiliary power units (APUs) re-possessed by overseas lessor and duly deregistered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under 'Cape Town Convention' subject to permission by DGCA/Ministry of Civil Aviation for such export/s.]* goods imported free of cost on re-export basis;

(f) the following goods which are permitted by the Development Commissioner of the Special Economic Zones, Electronic Hardware Technology Parks, Software Technology Parks or Free Trade Zones to be re-exported, namely:

(1) imported goods found defective, for the purpose of their replacement by the foreign suppliers/collaborators;

(2) goods imported from foreign suppliers/collaborators on loan basis;

(3) goods imported from foreign suppliers/collaborators free of cost, found surplus after production operations.

(ga) goods listed at items (1), (2) and (3) of clause (i) to be re-exported by units in Special Economic Zones, under intimation to the Development Commissioner of Special Economic Zones/ concerned Assistant Commissioner or Deputy Commissioner of Customs

(g) replacement goods exported free of charge in accordance with the provisions of Foreign Trade Policy in force, for the time being.

(h) goods sent outside India for testing subject to re-import into India;

(i) defective goods sent outside India for repair and re-import provided the goods are accompanied by a certificate from an authorised dealer in India that the export is for repair and re-import and that the export does not involve any transaction in foreign exchange.

(j) exports permitted by the Reserve Bank, on application made to it, subject to the terms and conditions, if any, as stipulated in the permission.

REGULATION 5. Indication of importer-exporter code number. — The importer-exporter code number allotted by the Director General of Foreign Trade under Section 7 of the Foreign Trade (Development & Regulation) Act, 1992 (22 of 1992) shall be indicated on all copies of the declaration forms submitted by the exporter to the specified authority and in all correspondence of the exporter with the authorised dealer or the Reserve Bank, as the case may be.

REGULATION 6. Authority to whom declaration is to be furnished and the manner of dealing with the declaration:-

A. Declaration in Form EDF

(1) (i) The declaration in form EDF shall be submitted in duplicate to the Commissioner of Customs.

(ii) After duly verifying and authenticating the declaration form, the Commissioner of Customs shall forward the original declaration form/ data to the nearest office of the Reserve Bank and hand over the duplicate form to the exporter for being submitted to the authorised dealer.

B. Declaration in Form SOFTEX

(i) The declaration in Form SOFTEX in respect of export of computer software and audio/video/ television software shall be submitted in triplicate to the designated official of Ministry of Information Technology, Government of India at the Software Technology Parks of India (STPIs) or at the Free Trade Zones (FTZs) or Special Economic Zones (SEZs) in India.

(ii) After certifying all three copies of the SOFTEX form, the said designated official shall forward the original directly to the nearest office of the Reserve Bank and return the duplicate to the exporter. The triplicate shall be retained by the designated official for record.

C. Duplicate Declaration Forms to be retained with Authorised Dealers

On the realisation of the export proceeds, the duplicate copies of export declaration forms viz. EDF and SOFTEX and Exchange Control copies of the shipping bills shall be retained by the Authorised Dealers.

REGULATION 7. Evidence in support of declaration. — The Commissioner of Customs or the postal authority or the official of Department of Electronics, to whom the declaration form is submitted, may, in order to satisfy themselves of due compliance with Section 7 of the Act and these regulations, require such evidence in support of the declaration as may establish that - the exporter is a person resident in India and has a place of business in India;

(a) the destination stated on the declaration is the final place of the destination of the goods exported;

(b) the value stated in the declaration represents -

(1) the full export value of the goods or software; or

(2) where the full export value of the goods or software is not ascertainable at the time of export, the value which the exporter, having regard to the prevailing market conditions expects to receive on the sale of the goods in the overseas market.

Explanation :

For the purpose of this regulation, 'final place of destination' means a place in a country in which the goods are ultimately imported and cleared through Customs of that country.

REGULATION 8. Manner of payment of export value of goods. — Unless otherwise authorised by the Reserve Bank, the amount representing the full export value of the goods exported shall be paid through an authorised dealer in the manner specified in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2000 as amended from time to time.

Explanation :

For the purpose of this regulation, re-import into India, within the period specified for realisation of the export value, of the exported goods in respect of which a declaration was made under Regulation 3, shall be deemed to be realisation of full export value of such goods.

REGULATION 9. Period within which export value of goods/ software/ services to be realized. — (1) The amount representing the full export value of goods/software/services exported shall be realised and repatriated to India within [nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time] from the date of export, provided

(a) that where the goods are exported to a warehouse established outside India with the permission of the Reserve Bank, the amount representing the full export value of goods exported shall be paid to the authorised dealer as soon as it is realised and in any case within [fifteen months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time] from the date of shipment of goods;

(b) further that the Reserve Bank, or subject to the directions issued by that Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the [said period].

(2) (a) Where the export of goods/software/services has been made by Units in Special Economic Zones (SEZ)/Status Holder exporter/ Export Oriented Units (EOUs) and units in Electronics Hardware Technology Parks (EHTPs), Software Technology Parks (STPs) and Bio-Technology Parks (BTPs) as defined in the Foreign Trade Policy in force, then notwithstanding anything contained in sub-regulation (1), the amount representing the full export value of goods or software shall be realised and repatriated to India within [nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time] from the date of export :

Provided further that the Reserve Bank, or subject to the directions issued by the Bank in this behalf, the authorised dealer may, for a sufficient and reasonable cause shown, extend the [said period].

(b) The Reserve Bank may for reasonable and sufficient cause direct that the said exporter/s shall cease to be governed by sub- regulation (2) :

Provided that no such direction shall be given unless the unit has been given a reasonable opportunity to make a representation in the matter.

(c) On such direction, the said exporter/s shall be governed by the provisions of sub-regulation (1), until directed otherwise by the Reserve Bank.'

Explanation :

For the purpose of this regulation, the "date of export" in relation to the export of software in other than physical form, shall be deemed to be the date of invoice covering such export.

REGULATION 10. Submission of export documents. — The documents pertaining to export shall be submitted to the authorised dealer mentioned in the relevant export declaration form, within 21 days from the date of export, or from the date of certification of the SOFTEX form :

Provided that, subject to the directions issued by the Reserve Bank from time to time, the authorized dealer may accept the documents pertaining to export submitted after the expiry of the specified period of 21 days, for reasons beyond the control of the exporter.

REGULATION 11. Transfer of documents. — Without prejudice to Regulation 3, an authorised dealer may accept, for negotiation or collection, shipping documents including invoice and bill of exchange covering exports, from his constituent (not being a person who has signed the declaration in terms of Regulation 3) :

Provided that before accepting such documents for negotiation or collection, the authorised dealer shall -

(a) where the value declared in the declaration does not differ from the value shown in the documents being negotiated or sent for collection, or

(b) where the value declared in the declaration is less than the value shown in the documents being negotiated or sent for collection, require the constituent concerned also to sign such declaration and thereupon such constituent shall be bound to comply with such requisition and such constituent signing the declaration shall be considered to be the exporter for the purposes of these Regulations to the extent of the full value shown in the documents being negotiated or sent for collection and shall be governed by these Regulations accordingly.

REGULATION 12. Payment for the Export. — In respect of export of any goods or software for which a declaration is required to be furnished under Regulation 3, no person shall except with the permission of the Reserve Bank or, subject to the directions of the Reserve Bank, permission of an authorised dealer, do or refrain from doing anything or take or refrain from taking any action which has the effect of securing -

(i) that the payment for the goods or software is made otherwise than in the specified manner; or

(ii) that the payment is delayed beyond the period specified under these Regulations; or

(iii) that the proceeds of sale of the goods or software exported do not represent the full export value of the goods or software subject to such deductions, if any, as may be allowed by the Reserve Bank or, subject to the directions of the Reserve Bank, by an authorised dealer :

Provided that no proceedings in respect of contravention of these provisions shall be instituted unless the specified period has expired and payment for the goods or software representing the full export value, or the value after deductions allowed under clause (iii), has not been made in the specified manner within the specified period.

(iv) Export of services to which no Form specified in these Regulations apply, the exporter may export such services without furnishing any declaration, (i), (ii) & (iii) above shall apply.

REGULATION 13. Certain Exports requiring prior approval:- Exports under trade agreement/rupee credit etc. —

(i) Export of goods under special arrangement between the Central Government and Government of a foreign state, or under rupee credits extended by the Central Government to Govt., of a foreign state shall be governed by the terms and conditions set out in

the relative public notices issued by the Trade Control Authority in India and the instructions issued from time to time by the Reserve Bank.

(ii) An export under the line of credit extended to a bank or a financial institution operating in a foreign state by the Exim Bank for financing exports from India, shall be governed by the terms and conditions advised by the Reserve Bank to the authorised dealers from time to time.

REGULATION 14. Delay in Receipt of Payment. — Where in relation to goods or software export of which is required to be declared on the specified form and export of services, in respect of which no declaration forms has been made applicable, the specified period has expired and the payment therefor has not been made as aforesaid, the Reserve Bank may give to any person who has sold the goods or software or who is entitled to sell the goods or software or procure the sale thereof, such directions as appear to it to be expedient, for the purpose of securing,

(a) the payment therefor if the goods or software has been sold and

(b) the sale of goods and payment thereof, if goods or software has not been sold or reimport thereof into India as the circumstances permit, within such period as the Reserve Bank may specify in this behalf :

Provided that omission of the Reserve Bank to give directions shall not have the effect of absolving the person committing the contravention from the consequences thereof.

REGULATION 15. Advance payment against exports.

— (1) Where an exporter receives advance payment (with or without interest), from a buyer/third party named in the export declaration made by the exporter, outside India, the exporter shall be under an obligation to ensure that -

(i) the shipment of goods is made within one year from the date of receipt of advance payment;

(ii) the rate of interest, if any, payable on the advance payment does not exceed the rate of interest London Inter-Bank Offered Rate (LIBOR) +100 basis points and

(iii) the documents covering the shipment are routed through the authorised dealer through whom the advance payment is received:

Provided that in the event of the exporter's inability to make the shipment, partly or fully, within one year from the date of receipt of advance payment, no remittance towards refund of unutilized portion of advance payment or towards payment of interest, shall be made after the expiry of the period of one year, without the prior approval of the Reserve Bank.

(2) Notwithstanding anything contained in clause (i) of sub-regulation (1), an exporter may receive advance payment where the export agreement itself duly provides for shipment of goods extending beyond the period of one year from the date of receipt of advance payment.

REGULATION 16. Issue of directions by Reserve Bank in certain cases. — (1) Without prejudice to the provisions of Regulation 3 in relation to the export of goods or software which is required to be declared, the Reserve Bank may, for the purpose of ensuring that the full export value of the goods or, as the case may be, the value which the exporter having regard to the prevailing market conditions expects to receive on the sale of goods or software in the overseas market, is received in proper time and without delay, by general or special order, direct from time to time that in respect of export of goods or software to any destination or any class of export transactions or any class of goods or software or class of exporters, the exporter shall, prior to the export, comply with the conditions as may be specified in the order, namely;

(a) that the payment of the goods or software is covered by an irrevocable letter of credit or by such other arrangement or document as may be indicated in the order;

(b) that any declaration to be furnished to the specified authority shall be submitted to the authorised dealer for its prior approval, which may, having regard to the circumstances, be given or withheld or may be given subject to such conditions as may be specified by the Reserve Bank by directions issued from time to time.

(c) that a copy of the declaration to be furnished to the specified authority shall be submitted to such authority or organisation as may be indicated in the order for certifying that the value of goods or software specified in the declaration represents the proper value thereof.

(2) No direction under sub-regulation (1) shall be given by the Reserve Bank and no approval under clause (b) of that sub- regulation

shall be withheld by the Authorised Dealer, unless the exporter has been given a reasonable opportunity to make a representation in the matter.

REGULATION 17. Project exports. — (1) Where an export of goods or services is proposed to be made on deferred payment terms or in execution of a turnkey project or a civil construction contract, the exporter shall, before entering into any such export arrangement, submit the proposal for prior approval of the approving authority, which shall consider the proposal in accordance with the guidelines issued by the Reserve Bank of India from time to time.

(2) In case a guarantee is required to be given prior to post award approval, the same may be issued by an authorized dealer bank/a person resident in India being an exporting company, for performance of a project outside India, or for availing of credit facilities, whether fund-based or non-fund based, from a bank or a financial institution outside India in connection with the execution of such project, provided that the contract/Letter of Award stipulates such requirements.

Explanation: For the purpose of this Regulation, 'approving authority' means the EXIM Bank of India or the authorised dealer

C13: CUSTOMS (APPEALS) RULES, 1982

[Notification No. 212-Cus. dated 10-9-1982 as amended]

In exercise of the powers conferred by sub-section (1) of section 156 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely:

CHAPTER I

PRELIMINARY

1. Short title and commencement. — (1) These rules may be called the Customs (Appeals) Rules, 1982.

(2) They shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions. — In these rules, unless the context otherwise requires, —

(a) "Act" means the Customs Act, 1962 (52 of 1962);

(b) "Form" means a form appended to these rules;

(c) "Section" means a section of the Act.

CHAPTER II

APPEALS TO [COMMISSIONER] (APPEALS)

3. Form of appeal to [Commissioner] (Appeals). — (1) An appeal under sub-section (1) of section 128 to the [Commissioner (Appeals)] shall be made in Form No. C.A.-1.

(2) The grounds of appeal and the form of verification as contained in Form No. C.A.-1 shall be signed :-

(a) in the case of an individual, by the individual himself or where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) in the case of a Hindu undivided family, by the *Karta* and, where the *Karta* is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or some person competent to act on his behalf.

(3) The form of appeal in Form No. C.A.-1 shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

4. Form of application to the [Commissioner] (Appeals). — (1) An application under sub-section (4) of Section 129D to the [Commissioner] (Appeals) shall be made in Form No. C.A.-2.

(2) The form of application in Form No. C.A.-2 shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified appeal copy) and a copy of the order passed by

the [Commissioner] of Customs directing such authority to apply to the [Commissioner] (Appeals).

5. Production of additional evidence before the [Commissioner] (Appeals). — (1) The appellant shall not be entitled to produce before the [Commissioner] (Appeals) any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the adjudicating authority, except in the following circumstances, namely :-

(a) where the adjudicating authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by that authority; or

(c) where the appellant was prevented by sufficient cause from producing before the authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Commissioner] (Appeals) records in writing the reasons for its admission.

(3) The [Commissioner] (Appeals) shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity-

(a) to examine the evidence or documents or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the powers of the [Commissioner] (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal.

CHAPTER III

APPEALS TO APPELLATE TRIBUNAL

6. Form of Appeals, etc., to the Appellate Tribunal. — (1) An appeal under sub-section (1) of section 129A to the Appellate Tribunal shall be made in Form No. C.A.-3.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (4) of section 129A shall be made in Form No. C.A.-4.

(3) Where an appeal under sub-section (1) of section 129A or a memorandum of cross-objections under sub-section (4) of that section is made by any person other than the [Commissioner] of Customs, the grounds of appeal, the grounds of cross-objections and the forms of verification as contained in Form Nos. C.A.-3 and C.A.-4, as the case may be, respectively shall be signed by the person specified in sub-rule (2) of rule 3.

(4) The form of appeal in Form No. C.A.-3 and the form of memorandum of cross-objections in Form No. C.A.-4 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

[**Form of appeal or application to the 7. Appellate Tribunal.**

— An appeal under sub-section (2) of section 129A or (1) an application under sub-section (4) of section 129D of the Act to the Appellate Tribunal shall be made in Form No. C.A.-5.

(2) The **appeal** or application in Form No. C.A.-5 shall be filed in quadruplicate accompanied by an equal number of copies of the decision or order (one of which at least shall be a certified copy) passed by :-

(a) the Appellate Commissioner of Customs under section 128 of the Act, as it stood immediately before the appointed day, or by the Commissioner (Appeals) under section 128A of the Act and a copy of the order passed by the Committee of Commissioners of Customs under sub-section (2) of the section 129A of the Act.

The Commissioner of Customs and a copy of the order passed by (b) the Committee of Chief Commissioners of Customs under sub-section (1) of section 129D of the Act.]

[8. Form of application to the High Court. — (1) An application under sub-section (1) of section 130A requiring the High Court to direct the Appellate Tribunal to refer to the High Court any question of law shall be made in Form No. C.A.-6 and such application shall be filed in quadruplicate.

(2) A memorandum of cross-objections under sub-section (3) of section 130A to the High Court shall be made in Form No. C.A.-7 and such memorandum shall be filed in quadruplicate.

(3) Where an application under sub-section (1) of section 130A or a memorandum of cross-objections under sub-section (3) of that section is made by any person other than the Commissioner of Customs, the application, the memorandum or form of verification, as the case may be, contained in Form No. C.A.-6 or Form No. C.A.-7 shall be signed by the person specified in sub- rule (2) of rule 3.]

CHAPTER IIIA

REVISION BY CENTRAL GOVERNMENT

8A. Form of revision application to the Central Government.

- 1. (1) A revision application under sub-section (1) of section 129DD to the Central Government shall be in Form No. C.A.-8.

(2) The grounds of revision application and the form of verification, as contained in Form C.A.-8, shall be signed by the person specified in sub-rule (2) of rule 3.

2. Where the revision application is signed by the authorised representative of the applicant, the document authorising such representative to sign and appear on behalf of the applicant shall be appended to such revision application.

3. The revision application in Form No. C.A.-8 shall be filed in duplicate and shall be accompanied by an equal number of copies of the following documents, namely :-

(i) order passed by the [Commissioner] of Customs (Appeals) under section 128A; and

(ii) decision or order passed by the Customs Officer which was the subject-matter of the order referred to in clause (i).

8B. Procedure for filing revision application. — (1) The revision application in Form No. C.A.-8 shall be presented in person to the Under Secretary, Revision Applications, Ministry of Finance, Department of

Revenue, Central Secretariat, New Delhi-1, or sent by registered post addressed to said Under Secretary.

(2) The revision application sent by registered post under sub- rule (1), shall be deemed to have been submitted on the date on which it is received in the office of the said Under Secretary.]

CHAPTER IV

AUTHORISED REPRESENTATIVES

9. **Qualifications for authorised representatives.** — For the purposes of section 146A, an authorised representative shall include a person who has acquired any of the following qualifications, being the qualifications specified under clause (d) of sub-section (2) of the said section 146A, namely :-

(a) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or

(b) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or

(c) a Company Secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980), who has obtained a certificate of practice under section 6 of that Act; or

(d) a post-graduate or an Honours degree holder in Commerce or a post-graduate degree or diploma holder in Business Administration from any recognised University; or

(e) a person formerly employed in the Departments of Customs or Central Excise or Narcotics and has retired or resigned from such employment after having rendered service in any capacity in one or more of the said Departments for not less than ten years in the aggregate.

Explanation. — In this rule, "Recognised University" means any of the Universities specified below, namely :-

I. *Indian Universities*

Any Indian University incorporated under any law for the time being in force in India;

II. *Rangoon University*

III. *English and Welsh Universities*

The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales;

IV. *Scottish Universities*

The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews;

V. *Irish Universities*

The Universities of Dublin (Trinity College), the Queen's University, Belfast and the National University of Dublin;

VI. *Pakistan Universities*

Any Pakistan University incorporated under any law for the time being in force;

VII.*Bangladesh Universities*

Any Bangladesh University incorporated under any law for the time being in force.

10. **Authority under section 146A(5)(b).** — The [Commissioner] of Customs having jurisdiction in the proceedings in which a person who is not a legal practitioner is found guilty of misconduct in connection with that proceeding under the Act shall be the authority for the purposes of clause (b) of sub- section (5) of section 146A.

C14 : CUSTOMS AUTHORITY FOR ADVANCE RULING REGULATIONS, 2021

Notification No. 1/2021-Cus. (N.T.), dated 4-1-2021]

In exercise of the powers conferred by section 157 read with sub-section (1) of section 28H, sub-section (1) of section 28KA and sub-section (1) of section 28M of the Customs Act, 1962 (52 of 1962) and in supersession of the Authority for Advance Rulings (Customs, Central Excise and Service Tax) Procedure Regulations, 2005, in so far as they relate to the matters pertaining to the Customs Act, 1962 (52 of 1962), except as respects things done or omitted to be done before such supersession, the Board hereby makes the following regulations, namely :-

1. **Short title and commencement.** - (1)These regulations may be called the Customs Authority for Advance Rulings Regulations, 2021.

(2)They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions.** - In these regulations, unless the context otherwise requires, -

(a) "Act" means the Customs Act, 1962 (52 of 1962);

(b) "authorised representative", -

(i) in relation to an applicant means an authorised representative as defined in sub-section (2) of section 146A of the Act;

(ii) in relation to a Principal Commissioner or Commissioner, means a person -

(A) authorised in writing by the Principal Commissioner or Commissioner to act as an authorised representative; or

(B) appointed by the Central Government as authorised representative or authorised by the Central Board of Indirect Taxes and Customs to appear, plead and act for the Principal Commissioner or Commissioner in any proceeding before the Authority;

(c) "petition" means any petition of interlocutory, incidental or ancillary nature or representation filed in a pending or disposed of application;

(d) "Principal Commissioner or Commissioner", in respect of an application, means-

(i) the Principal Commissioner or Commissioner of Customs, specified in the application; or

(ii) the Principal Commissioner or Commissioner of Customs designated by the Board in respect of the application;

(e) "Secretary" means an officer, not below the rank of Assistant Commissioner of Customs or Assistant Commissioner of Central Tax designated as Secretary by the Board;

(f) "section" means section of the Act;

(g) words and expressions used in these regulations and not defined but defined in the Act shall have same meanings respectively assigned to them in the Act.

3. **Language of Authority.** - (1)The language of the Authority shall be Hindi or English.

(2) Where any document is in a language other than Hindi or English, a Hindi or English translation thereof duly attested shall be filed along with the original document.

4. **Powers of Authority.** - (1)The Authority shall have the power to hear and determine all applications and petitions.

(2) The Authority may, if any difficulty arises in giving effect to its order or advance ruling, either *suo motu* or on a petition made by the applicant or the Principal Commissioner or Commissioner, within a period of one month of noticing the difficulty, by appropriate order remove such difficulty, and pass such other order as it considers just and necessary in the circumstances of the case.

(3) The Authority may reopen the hearing of any case, before pronouncement of its order or advance ruling, for sufficient cause.

(4) The Authority may, in an appropriate case, direct -

(i) examination of any records and submission of report;

(ii) conduct of any technical, scientific or market enquiry of any goods or services and submission of report and may also call for reports from experts and order such further investigation as may be necessary for effectual disposal of the application.

(5) The Authority shall have all the powers of a civil court in regard to the following matters, namely :-

(i) discovery and inspection;

(ii) enforcing the attendance of any person and examining him on oath;

(iii) issuing commissions; and

(iv) compelling production of books of account and other records.

5. **Powers and functions of Secretary.** - (1)The Secretary shall be in overall charge of the office of the Authority and shall function under direct supervision of the Authority.

(2)The Secretary shall -

(a) have custody of the records and the official seal of the Authority;

(b) receive all applications and petitions filed before the Authority;

(c) scrutinise applications and petitions and point out omissions and defects in the application or petition and require the applicant

or petitioner to make good the omissions or remove the defects within the time granted by the Secretary and in case of non-compliance, place such application or petition before the Authority for appropriate orders;

(d) forward a copy of the application along with its enclosures to the Principal Commissioner or Commissioner of Customs to transmit records of the case, if any, and to offer his comments on the application;

(e) place all the applications before the Authority for appropriate orders under sub-section (2) of section 28-I;

(f) issue notices or other processes, as may be ordered by the Authority;

(g) verify service of notices or other processes on the parties to the application or petition and obtain necessary orders of the Authority in case of defective service;

(h) requisition records from the custody of any person, on the orders of the Authority;

(i) return original records to the person from whose custody they were requisitioned;

(j) allow inspection of the records of the Authority;

(k) carry out any amendment of the records of the Authority to conform to its directions;

(l) grant to the parties to the application or petition certified copies of the orders or advance rulings and documents filed in the proceedings before the Authority;

(m) preserve records of every application or petition and other materials for a period of five years from the date of disposal of the application and weed out or destroy the same thereafter unless otherwise directed by the Authority; and

(n) discharge any other function as may be assigned by the Authority by special or general order.

6. **Form and manner of application before Authority for Advance Ruling.** - (1)An application for obtaining an advance ruling shall be made in Form CAAR-1 before the jurisdictional Authority as per the jurisdiction specified in column (3) of the Table below :-

Sl. No.	Customs Authority for Advance Rulings.	Jurisdiction to hear applications for Advance Rulings (State-wise and Union territory-wise).
(1)	(2)	(3)
1.	Customs Authority for Advance Rulings, Delhi.	Jammu & Kashmir, Himachal Pradesh, Punjab, Chandigarh, Uttar Pradesh, Delhi, Haryana, Uttarakhand, Bihar, Jharkhand, West Bengal, Andaman and Nicobar Islands, Sikkim, Odisha, Rajasthan, Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and Ladakh.
2.	Customs Authority for Advance Rulings, Mumbai.	Andhra Pradesh, Telangana, Karnataka, Kerala, Lakshadweep, Puducherry, Tamil Nadu, Gujarat, Dadra and Nagar Haveli and Daman and Diu, Maharashtra, Goa, Madhya Pradesh and Chhattisgarh.

(2) The jurisdiction shall be determined in terms of the address provided by the applicant while making the application, and the Authority for an applicant providing an address other than that of within the territory of India, shall be the Authority situated at Delhi.

(3) The Board shall pass an order specifying therein the address, phone number and other details related to the concerned Authority.

(4) The application shall be deemed to have been submitted to the concerned Authority on the date on which it is received in the office of the said Authority.

The application referred to in sub-rule (1), the (5) verification contained therein and all relevant documents accompanying such application shall be signed, -

(a) in the case of an individual, by the individual himself, or where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) in the case of a Hindu undivided family, by the Karta of that family and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of that family;

(c) in the case of a company or local Authority, by the principal officer thereof authorised by the company or the local Authority, as the case may be, for such purpose;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in the case of an association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or some person competent to act on his behalf.

(6) Every application shall be filed in quadruplicate and shall be accompanied by a fee of ten thousand rupees in the form of demand draft drawn in favour of "Customs Authority for Advance Rulings, Delhi" or "Customs Authority for Advance Rulings, Mumbai", as the case may be.

7. **Procedure for filing applications.** - (1)Applications shall be received between 10:00 a.m. and 1:00 p.m. and between 2:00 p.m. and 5:00 p.m. on any working day at the respective office of the Authority.

(2) Every application, its verification, annexures, statements and supporting documents shall be signed in the manner set out in these regulations.

(3) The application shall be accompanied by evidence that the person who has signed the application, verification and other documents is authorised or competent to sign under these regulations.

Every application, its verification, annexures, statements (4) and supporting documents shall be on A-4 size paper and should be neatly and legibly written, typed or printed leaving a left margin of five centimeters and only on one side of a page in double-line spacing.

(5) If the applicant is not based in India, he shall, *inter alia*, indicate in a separate annexure to the application -

(a) his postal and e-mail address abroad;

(b) the name and address including e-mail address of his representative in India, if any, authorised to act on his behalf and to receive notices or other documents sent by the Authority.

8. **Procedure on receipt of application.** The officer receiving the application shall put his - (1) initials and the stamp of the Authority thereon together with the date and time of receipt thereof and shall also acknowledge its receipt and he shall also enter the particulars of the application in the register of daily filing, maintained for that purpose.

(2)The application shall be scrutinised by the officer authorised by the Secretary for that purpose for any deficiency or defect and any deficiency or defect noticed in the application or annexures thereof shall be communicated to the applicant at the earliest.

The applicant shall be required to rectify the deficiency (3) or defect within the time granted by the Secretary and such application shall be deemed to have been received on the date when it is re-submitted after removal of such deficiency or defect, for the purposes of sub-section (6) of section 28-I.

(4)Date of receipt of an application free from any defect or deficiency in the secretariat of the Authority shall be deemed to be the date of the application for the purposes of sub-section (4) of section 28H.

(5)When an application is free from any defect or deficiency, an endorsement "examined and registered" shall be made thereon and a serial number allotted thereto.

In case the defect or deficiency is not removed or made (6) good within the time granted under sub-rule (3), the application shall be placed before the Authority for appropriate orders.

(7)On allotment of serial number to an application under sub- rule (5), a copy of the application shall be forwarded to the concerned Principal Commissioner or Commissioner of Customs for furnishing relevant records with comments, if any.

On receipt of the relevant records or comments from the (8) Principal Commissioner or Commissioner concerned under sub- rule (7) or after expiry of two weeks or such further period as may be allowed by the Authority, the application shall be placed before the Authority for passing orders in terms of sub-section (2) of section 28-I.

(9)In a case where the Authority considers that *prima facie* the application is liable for rejection, a notice shall be issued to the applicant indicating the reasons therefor together with the comments, if any, of the Principal Commissioner or Commissioner concerned, giving an opportunity to the applicant of being heard in person or

through an authorised representative and a copy of the notice shall be endorsed to the Principal Commissioner or Commissioner concerned.

On the date fixed for hearing or such other date to which (10) the case is adjourned, the Authority may pass an order either allowing or rejecting the application under sub-section (2) of section 28-I and a copy of the order passed by the Authority shall be sent to the applicant and the Principal Commissioner or Commissioner concerned.

(11) Where an application is allowed, the comments of the Principal Commissioner or Commissioner concerned and further material, if any, shall accompany a copy of the order sent to the applicant drawing his attention to the statutory provisions that he has a right to be heard, if he so desires, before pronouncement of advance ruling and the response of the applicant should reach the Authority within two weeks of receipt of the copy of the order.

(12) Hearing of the application shall normally be held between 11:00 a.m. and 5:00 p.m. on a working day in the office of the Authority or an alternative place fixed by the Authority.

(13) In the absence of the request for personal hearing from the applicant, advance ruling shall be pronounced after hearing the Principal Commissioner or Commissioner concerned or his authorised representative, if present, on the date of hearing and on the basis of records available with the Authority.

(14) Where the Authority reserves an application for consideration, the advance ruling or such other order as the Authority may deem fit shall be pronounced in the open court under intimation to the applicant and the Principal Commissioner or Commissioner concerned and a copy of the advance ruling or order shall be served upon the parties to the application.

9. **Appeal against advance ruling.** – The Principal Commissioner or Commissioner of shall be authorised to file appeal against the advance ruling in terms of sub-section (1) of section 28KA.

10. **Form and manner of appeal to Appellate Authority** An appeal against the advance ruling issued under . – (1) sub- section (6) of section 28-I shall be made by the applicant in Form CAAR-2 and shall be accompanied by a fee of fifteen thousand rupees.

An appeal against the advance ruling issued under (2) sub- section (6) of section 28-I of shall be made by the Principal Commissioner or Commissioner in Form CAAR-3 and no feel shall be payable by the said officer for filing the appeal.

(3)An appeal shall be deemed to have been submitted to the Appellate Authority on the date on which it is received in the office of the Appellate Authority.

11. **Signing of notices, etc.** - Every requisition, direction, letter, authorisation, or notice to be issued (1) on behalf of the Authority, shall be signed by the Secretary or by any other officer authorised by him.

(2)Nothing contained in sub-rule (1) shall apply to any direction which the Authority may issue to an applicant or a Principal Commissioner or Commissioner or an authorised representative present during the course of the hearing.

12. **Mode of service of notices, etc. -** The service of every notice or other document required to be (1) served on or delivered to, any person in compliance with the orders of the Authority shall be in the manner specified in these regulations.

(2)The service of notice or document shall be made by hand delivery or by registered post with acknowledgement due or by speed post or by courier service or by any other means of transmission of documents including e-mail or fax.

Notices or documents required to be served on the parties (3) to the application or petition shall be deemed to have been served, if delivered at the address indicated in the application or petition and in the case of a Principal Commissioner or Commissioner, at the office of the Principal Commissioner or Commissioner concerned.

13. **Commissioner to be designated by Board.** - Where in an application there is no Principal Commissioner or Commissioner specified by the applicant, a copy of the application and enclosures thereto shall be forwarded by the Authority to the Board calling upon them to designate, within two weeks of receipt of such copy, a Principal Commissioner or Commissioner for the purposes of the said application, failing which the application shall be proceeded with in the absence of a Principal Commissioner or Commissioner.

14. **Additional facts by way of petition.** The Authority may, at its discretion, either - (1) *suo motu* or on a petition made to this effect by a party to the application, permit or require the applicant or the Principal Commissioner or Commissioner to submit such additional facts as may be necessary to enable it to pronounce its advance ruling.

(2)The additional facts sought to be brought on record, by the

petitioner shall be supported by necessary documents, if any, duly verified.

15. **Questions not specified in application.** - (1)The applicant shall not, except with the leave of the Authority, urge or be heard in respect of any question other than the question specified in the application, but in pronouncing an advance ruling on the question set forth in the application, the Authority may at its discretion consider such other aspects as may be necessary to pronounce the advance ruling on the question specified in the application.

(2)On a petition made by an applicant, the Authority may permit amendment of a question, in appropriate cases.

16. **Authorisation to be filed.** An authorised representative appearing for the applicant or the Principal - (1) Commissioner or Commissioner, as the case may be, shall, before the commencement of the hearing, file before the Secretary, a document authorising him to appear for the said applicant or the Principal Commissioner or Commissioner.

(2) Every such authorised representative appearing shall notify to the Secretary the address of his office, before the commencement of the hearing.

(3) Any change of an authorised representative shall be intimated by the concerned party to the Secretary as well as to the other party to the application.

(4) No person other than an applicant or the concerned Principal Commissioner or Commissioner or their authorised representative, shall be heard in person save by special leave of the Authority.

17. **Continuation of proceedings after death, etc., of applicant.** - Where the applicant, being an individual, dies, or being a company or association of persons, whether incorporated or not, is wound up or dissolved or disrupted or amalgamated or succeeded to by any other person or otherwise comes to an end, the application shall not abate and the proceedings in the application may be continued by the executor, administrator, liquidator, receiver or assignee or other legal representative of the applicant, as the case may be, on a petition made in this behalf, if the Authority considers that the circumstances so justify.

18. **Hearing of application. - (1)On the day fixed for hearing** or any other day to which the case is adjourned, the Authority shall hear the applicant or his authorised representative in cases where it

is proposed to reject the application or where the applicant seeks an opportunity of being heard; the Authority may also hear the Principal Commissioner or Commissioner or his authorised representative, if it considers it necessary, before pronouncing its advance ruling.

(2) In an appropriate case, the Authority may call upon any person to depose or to supply such material or document, as it may consider necessary to arrive at a decision.

(3) The Authority may, in an appropriate case where an important question of law arises, make a reference to a law officer of the Central Government including the Attorney-General and Solicitor General to furnish his opinion to the Authority in the matter, as per the extant procedure in this regard.

(4) The Authority may, on such conditions as the circumstances of the case require, adjourn the hearing of the application.

19. **Hearing of application ex parte.** - Where on the day fixed for hearing or any other day to which the case is adjourned, the applicant or the Principal Commissioner or Commissioner does not appear in person or through an authorised representative when the application is called for hearing, the Authority may dispose of the application *ex parte* on merits :

Provided that where an application has been disposed of under this rule and the applicant or the Principal Commissioner or Commissioner, as the case may be, applies within seven days of receipt of a copy of the order or advance ruling and the Authority is satisfied that there was sufficient cause for his non-appearance when the application was called for hearing, the Authority may, after allowing the opposite party a reasonable opportunity of being heard, make an order setting aside the *ex parte* order or advance ruling and restore the application for fresh hearing.

20. **Withdrawal of application.** - The applicant may withdraw his application within two weeks from the date of the application and thereafter only with the leave of the Authority.

21. **Modification of order or advance ruling.** - The Authority may *suo motu* or on a petition by the applicant or the Principal Commissioner or Commissioner, but before pronouncement of an advance ruling or before an advance ruling pronounced has been given effect to, on being satisfied that an order or advance ruling was pronounced under mistake of law or fact, modify such order or

advance ruling in such respects as it considers appropriate, after allowing the applicant and Principal Commissioner or Commissioner concerned a reasonable opportunity of being heard.

22. **Rectification of mistakes.** The Authority may, with a view to rectifying any mistake apparent from the - (1) record, amend any advance ruling pronounced by it before such ruling has been given effect to.

(2)Such amendment may be made *suo motu* or when the mistake is brought to the notice of the Authority by the applicant or the Principal Commissioner or Commissioner, but only after allowing the applicant and the Principal Commissioner or Commissioner a reasonable opportunity of being heard.

23. **Amendment of records.** - If at any stage of the proceedings it is brought to the notice of the Authority that there is any factual or material error in the records, the Authority may permit amendment of the records after hearing the applicant and the Principal Commissioner or Commissioner or their authorised representative.

24. **Supply of certified copies.** - The Secretary may grant certified copies of documents, orders or advance rulings to the applicant or the Principal Commissioner or Commissioner on a written request.

25. **Inspection of records.** - The applicant or the Principal Commissioner or Commissioner or his (1) authorised representative may be allowed to inspect the records of an application or petition on making a written request to the Secretary subject to the condition that only those documents shall be made available for inspection that are relied upon in the proceedings before the Authority.

(2) Inspection shall be allowed only in the presence of an officer of the Authority and taking of notes and not copies of the documents shall be permitted.

26. **Declaration of advance ruling to be void in certain circumstances.** - (1)Where it is brought to the notice of the Authority on a representation made by the Principal Commissioner or Commissioner concerned or otherwise that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, the matter shall be examined by the Authority and any such representation shall be supported by an affidavit duly attested and accompanied with attested copies of documents relied upon.

If the Authority after examining the representation is (2) prima facie

of the view that the advance ruling appears to have been obtained by the applicant by fraud or misrepresentation of facts, the applicant shall be given a notice to explain as to why the ruling should not be declared void *ab initio* under sub-section (1) of section 28K.

(3) The notice referred to in sub-regulation (2) to the applicant shall be in writing -

(a) informing him of the grounds on which it is proposed to declare the advance ruling as *void ab initio*;

(b) enclosing copies of the documents, if any, sought to be relied upon;

(c) giving an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for declaring the advance ruling *void ab initio*; and

(d) giving a reasonable opportunity of being heard in person or through an authorised representative in the matter.

A copy of the notice with enclosures shall also be (4) forwarded to the Principal Commissioner or Commissioner for comments, if any, and a reasonable opportunity shall also be given to the Principal Commissioner or Commissioner or his authorised representative of being heard before passing any order.

(5) Where the Authority finds that the advance ruling was obtained by the applicant by fraud or misrepresentation of facts, the same shall be declared *void ab initio.*

27. **Publication of orders or advance rulings.** - Such of the orders or advance rulings of the Authority, as the Authority deems fit for publication in any authoritative report or the press, may be released for such publication on such terms and conditions as the Authority may specify.

28. **Authentication and communication of orders or advance rulings.** Every order or advance - (1) ruling of the Authority shall be duly signed by the Authority pronouncing the order or advance ruling and bear the official seal of the Authority.

A certified copy of order or advance ruling of the (2) Authority shall be communicated to the applicant and the Principal Commissioner or Commissioner under the signature of the Secretary or an officer of the Authority authorised by the Secretary in this behalf and bear the official seal of the Authority.

29. **Proceedings of Authority.** - When the Authority is unable to discharge his functions owing to absence, illness or any other cause

or in the event of occurrence of any vacancy, the Board, may specify any other Authority situated elsewhere to act as the said Authority.

30. **Procedure in case of petition.** - The provisions contained in these regulations for hearing and disposal of an application shall apply, *mutatis mutandis*, to the hearing and disposal of all petitions before the Authority.

31. **Procedure in case of transferred application and proceeding.** – The provisions contained in these regulations for hearing and disposal of an application shall apply, *mutatis mutandis*, to the hearing and disposal of all transferred application and proceeding, referred to in sub-section (3) of section 28F.

32. **Dress regulation.** - (1)An authorised representative shall appear before the Authority in dress specified for the members of his profession by the competent professional body, if any.

(2) All other persons appearing before the Authority shall be properly dressed.

33. **Prohibition of arms, mobile phones, etc.** - No person shall be allowed to bring mobile phones, sticks, arms or other weapons in the room where the Authority conducts the proceedings

FORM CAAR-1

[See regulation 6(1)]

Application form for Advance Ruling

1.	**Details of Applicant**
	(i) Full name
	(ii) Complete address
	(iii) Telephone number (with STD/ISD code)
	(iv) Fax number (with STD/ISD code)
	(v) E-mail address
	(vi) Postal address [to be provided if different from (ii) above]
	(vii) Permanent Account Number (Income Tax) of the applicant (if any).
2.	**Importer-Exporter Code number of the applicant (if any).**
3.	**Jurisdictional Authority (Tick whichever is applicable)** **(i) CAAR, New Delhi** **(ii) CAAR, Mumbai**

4.	**Details of Authorized Representative (if any)** (i) Full name (ii) Complete address (iii) Telephone number (with STD/ISD code) (iv) Fax number (with STD/ISD code) (v) E-mail address (vi) Postal address [to be provided if different from (ii) above]

5.	**Status of the Applicant (Tick whichever is applicable)** (i) Holding a valid Importer-Exporter code number granted under section 7 of the Foreign Trade (Development and Regulation Act), 1992 (22 of 1922) (ii) Exporting any goods to India (iii) Any justifiable cause to the satisfaction of the Authority (elaborate that cause)
6.	**Nature of activity (proposed/present) on which Advance Ruling is sought**
7.	**Present status of activity**
8.	Question of Law or fact on which Advance Ruling required (Tick whichever is applicable and provide details against ticked item): (i) classification of goods under the Customs Tariff Act, 1975; (ii) applicability of a notification issued under sub-section (1) of section 25 of the Customs Act, 1962, having a bearing on the rate of duty; (iii) the principles to be adopted for the purposes of determination of value of the goods under the provisions of the Customs Act, 1962; (iv) applicability of notification issued in respect of duties under the Customs Act, 1962, the Customs Tariff Act, 1975 and any duty chargeable under any other law for the time being in force in the same manner as duty of Customs leviable under the Customs Act; (v) determination of Origin of goods in terms of the regulations notified under the Customs Tariff Act, 1975 and matters relating thereto.

9.	Statement of relevant facts having a bearing on the question(s) raised.
10.	Statement containing the applicant's interpretation of law and/or facts, as the case may be, in respect of the aforesaid question(s) (i.e. applicants view point and submissions on issues on which the advance ruling is sought).
11.	Whether the question(s) raised is pending in the applicant's case before any officer of Customs, Appellate Tribunal or any Court of Law? If so, provide relevant details.

12.	Whether a similar matter as raised in the question(s) by the applicant has already been decided by the Appellate Tribunal or any Court?
13.	Jurisdictional Principal Commissioner/Commissioner of Customs i.e. from where import/export is proposed to be undertaken.
14.	List of documents/statement attached (attach the list on a separate sheet, if necessary)
15.	Particulars of the fee paid.

(Signature of Applicant/Authorized Representative)

VERIFICATION

I, _____ (name in full and in block letters), son/daughter/wife of _____ do hereby solemnly declare that to the best of my knowledge and belief information and statements furnished in above format and in the annexure(s) thereto including the documents enclosed are correct. I am making this application in my capacity as ____ (designation). I am competent to make and verify this application.

2.I also declare that the question(s) on which the advance ruling is sought is/are not pending in my case before any officer of Customs, Appellate Tribunal or any Court.

Place :

Date:

(Signature of Applicant/Authorized Representative)

FORM CAAR-2

[See regulation 10(1)]

Appeal to the Appellate Authority for Advance Rulings

1.	**Advance Ruling/Order Number with the Date & the Authority**
2.	**Date of Communication of the Ruling/Order**
3.	**Details of Appellant**
	(i) Full name
	(ii) Complete address
	(iii) Telephone number (with STD/ISD code)
	(iv) Fax number (with STD/ISD code)
	(v) E-mail address
	(vi) Postal address [to be provided if different from (ii) above]
	(vii) Permanent Account Number (Income Tax) of the applicant (if any).
4.	**Details of Authorized Representative (if any)**
	(i) Full name
	(ii) Complete address
	(iii) Telephone number (with STD/ISD code)
	(iv) Fax number (with STD/ISD code)
	(v) E-mail address
	(vi) Postal address [to be provided if different from (ii) above]
5.	**Brief facts of the case**
6.	**Grounds of Appeal**
7.	**Jurisdictional Principal Commissioner/Commissioner of Customs in respect of the Ruling/Order**
8.	**List of documents/statement attached (attach the list on a separate sheet, if necessary.**
9.	**Particulars of the fee paid.**

	Prayer In view of the foregoing, it is respectfully prayed that the Ld. Appellate Authority, New Delhi may be pleased to: a. set aside/modify the impugned advance ruling/order passed by the Authority for Advance Ruling as prayed above; b. grant a personal hearing; and c. pass any such further or other order(s) as may be deemed fit and proper in facts and circumstances of the case. And for this act of kindness, the appellant, as is duty bound, shall ever pray.

(Signature of Applicants/Authorized Representative)

VERIFICATION

I, _____ (name in full and in block letters), son/daughter/wife of _____ do hereby solemnly declare that to the best of my knowledge and belief information and statements furnished in above format and in the annexure(s) thereto including the documents enclosed are correct. I am making this application in my capacity as

_____ (designation). I am competent to make and verify this appeal.

Place :

Date :

(Signature of Applicant/Authorized Representative)

FORM CAAR-3

[See regulation 10(2)]

Appeal to the Appellate Authority for Advance Ruling

1.	**Advance Ruling/Order Number with the Date & the Authority**
2.	**Date of Communication of the Ruling/Order**
3.	**Details of the Appellant Principal Commissioner/ Commissioner of Customs.**
4.	**Details of Applicant**
	(i) Full name
	(ii) Complete address
	(iii) Telephone number (with STD/ISD code)
	(iv) Fax number (with STD/ISD code)
	(v) E-mail address
	(vi) Postal address [to be provided if different from (ii) above]
	(vii) Permanent Account Number (Income Tax) of the applicant (if any).
5.	**Details of Authorized Representative (if any)**
	(i) Full name
	(ii) Complete address
	(iii) Telephone number (with STD/ISD code)
	(iv) Fax number (with STD/ISD code)
	(v) E-mail address
	(vi) Postal address [to be provided if different from (ii) above]
6.	**Brief facts of the case**
7.	**Grounds of Appeal**
8.	**List of documents/statement attached (attach the list on a separate sheet, if necessary.**

	Prayer In view of the foregoing, it is respectfully prayed that the Ld. Appellate Authority, New Delhi may be pleased to : a. set aside/modify the impugned advance ruling/order passed by the Authority for Advance Ruling as prayed above; b. grant a personal hearing; and c. pass any such further or other order(s) as may be deemed fit and proper in facts and circumstances of the case. And for this act of kindness, the appellant, as is duty bound, shall ever pray.

(Signature of Appellant Principal Commissioner/Commissioner of Customs)

VERIFICATION

I, _____(name in full and in block letters), son/daughter/wife of _____ do hereby solemnly declare that to the best of my knowledge and belief information and statements furnished in above format and in the annexure(s) thereto including the documents enclosed are correct. I am making this application in my capacity as (designation). I am competent to make and verify this appeal.

Place :

Date :

(Signature of Appellant Principal Commissioner/Commissioner of Customs)

The Finance Act, 2021 (Customs & Customs Tariff)

Customs

89. Amendment of section 2. - In the Customs Act, 1962 (hereinafter referred to as the Customs Act), in section 2, after clause (7A), the following clause shall be inserted, namely:–

'(7B) "common portal" means the Common Customs Electronic Portal referred to in section 154C;'.

90. Amendment of section 5. In section 5 of the Customs Act, in sub-section (3), for the words and figures "Chapter XV and section 108", the words, figures, brackets and letter "Chapter XV, section 108 and sub-section (1D) of section 110" shall be substituted.

91. Amendment of section 25. In section 25 of the Customs Act, after sub-section (4), the following sub-section shall be inserted, namely:––

"(4A) Where any exemption is granted subject to any condition under sub-section (1), such exemption shall, unless otherwise specified or varied or rescinded, be valid up to 31st day of March falling immediately after two years from the date of such grant or variation: Provided that in respect of any such exemption in force as on the date on which the Finance Bill, 2021 receives the assent of the President, the said period of two years shall be reckoned from the 1st day of February, 2021."

92. Insertion of new section 28BB. After section 28BA of the Customs Act, the following section shall be inserted, namely:––

"28BB. (1) Any inquiry or investigation under this Act, culminating in the issuance of a notice under sub-section (1) or sub-section (4) of section 28 shall be completed by issuing such notice, within a period of two years from the date of initiation of audit, search, seizure or summons, as the case may be:

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, on sufficient cause being shown and for reasons to be recorded in writing, extend the said period to a further period of one year.

(2) For computing the period under sub-section (1), the period during which stay was granted by an order of a court or tribunal, or the period for seeking information from an overseas authority through a legal process, shall be excluded.

Explanation.––For the removal of doubts, it is hereby declared that nothing contained in this section shall apply to any such proceeding initiated before the date on which the Finance Bill, 2021 receives the assent of the President."

93. Amendment of section 46. In section 46 of the Customs Act, in sub-section (3),––

(i) in the opening portion, for the words and brackets "before the end of the next day following the day (excluding holidays)", the words and brackets "before the end of the day (including holidays) preceding the day" shall be substituted;

(ii) for the words "Provided that", the following shall be substituted, namely:––

"Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that";

(iii) for the words "Provided further that", the words "Provided also that" shall be substituted.

94. Amendment of section 110.- In section 110 of the Customs Act, after sub-section (1C), the following sub-section shall be inserted, namely:––

"(1D) Where the goods seized under sub-section (1) is gold in any form as notified under sub-section (1A), then, the proper officer shall, instead of making an application under sub-section (1B) to the Magistrate, make such application to the Commissioner (Appeals) having jurisdiction, who shall, as soon as may be, allow the application and thereafter, the proper officer shall dispose of such goods in such manner as the Central Government may determine.".

95. Amendment of section 113.-Amendment of section 113.- In section 113 of the Customs Act, after clause (j), the following clause shall be inserted, namely:––

"(ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;".

96. Insertion of new section 114AC. -After section 114AB of the Customs Act, the following section shall be inserted, namely:––

Insertion of new section 114AC. 12 of 2017. '114AC. Where any person has obtained any invoice by fraud, collusion, wilful misstatement or suppression of facts to utilise input tax credit on the basis of such invoice for discharging any duty or tax on goods that are entered for exportation under claim of refund of such duty or tax, such person shall be liable for penalty not exceeding five times the refund claimed.

Explanation.––For the purposes of this section, the expression "input tax credit" shall have the same meaning as assigned to it in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017.'.

97. Amendment of section 139. - In section 139 of the Customs Act, in the Explanation, for the words, brackets, figures and letter "a Magistrate under sub-section (1C) of section 110", the words, brackets, figures and letters "a Magistrate under sub- section (1C), or Commissioner (Appeals) under sub-section (1D), of section 110" shall be inserted.

98. Amendment of section 149. -In section 149 of the Customs Act, after the proviso, the following provisos shall be inserted, namely:––

"Provided further that such authorisation or amendment may also be done electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria:

Provided also that such amendments, as may be specified by the Board, may be done by the importer or exporter on the common portal.".

99. Amendment of section 153- In section 153 of the Customs Act, in sub-section (1), after clause (c), the following clause shall be inserted, namely:–

"(ca) by making it available on the common portal;".

100. Insertion of new section 154C. - After section 154B of the Customs Act, the following section shall be inserted, namely:––

"**154C. Common Customs Electronic Portal**.-The Board may notify a common portal, to be called the Common Customs Electronic Portal, for facilitating registration, filing of bills of entry, shipping bills, other documents and forms prescribed under this Act or under any other law for the time being in force or the rules or regulations made thereunder, payment of duty and for such other purposes, as the Board may, by notification, specify.".

Customs Tariff

101. Amendment of section 8B. -In the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act), in section 8B, in sub-section (6),

(i) in clause (i), for the word "unit;", the words "unit; or" shall be substituted;

(ii) for the Explanation, the following Explanation shall be substituted, namely:

'Explanation.––For the purposes of this sub-section,—

(a) the expression "hundred per cent. export-oriented undertaking" shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944;

(b) the expression "special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.'(28 of 2005).

102. Amendment of section 9. -In section 9 of the Customs Tariff Act,––

(i) in sub-section (1A), after the words "such other article also", the words "from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify" shall be inserted;

(ii) after sub-section (1A), the following sub-section shall be inserted, namely:––

'(1B) Where the Central Government, on such inquiry as it considers necessary, is of the opinion that absorption of countervailing duty imposed under sub-section (1) has taken place whereby the countervailing duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation.––For the purposes of this sub-section, "absorption of countervailing duty" is said to have taken place,-

(a) if there is a decrease in the export price of an article without any commensurate change in the resale price in India of such article imported from the exporting country or territory; or

(b) under such other circumstances as may be provided by rules.';

(iii) after sub-section (2), the following sub-section shall be inserted, namely:—

'(2A) Notwithstanding anything contained in sub-sections (1) and (2), a notification issued under sub-section (1) or any countervailing duty imposed under sub-section (2) shall not apply to article imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone, unless,—

(i) it is specifically made applicable in such notification or to such undertaking or unit; or

(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, countervailing duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation.– For the purposes of this sub-section,–

(a) the expression "hundred per cent. export-oriented undertaking" shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944; the expression "special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.';

(iv) in sub-section (6),––

(a) in the first proviso, for the words "of five years", the words "up to five years" shall be substituted;

(b) after the second proviso, the following proviso shall be inserted, namely:––

"Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time."

103. Amendment of section 9A. -In section 9A of the Customs Tariff Act,––

(i) in sub-section (1A), after the words "as the case may be", the words ", from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify" shall be inserted;

(ii) after sub-section (1A), the following sub-section shall be inserted, namely:––

'(1B) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti-dumping duty imposed under sub-section (1) has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation.––For the purposes of this sub-section, "absorption of anti-dumping duty" is said to have taken place,––

(a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or

(b) under such other circumstances as may be provided by rules.';

(iii) for sub-section (2A), the following sub-section shall be substituted, namely:––

'(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section(1) or any anti-dumping duty imposed under sub-section (2) shall not apply to articles imported by a hundred per cent. export-oriented undertaking or a unit in a special economic zone, unless,—

(i) it is specifically made applicable in such notification or to such undertaking or unit; or

(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation.––For the purposes of this section,––

(a) the expression "hundred per cent. export-oriented undertaking" shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944;

(b) the expression "special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.';

(iv) in sub-section (5),––

(a) in the first proviso, for the words "of five years", the words "up to five years" shall be substituted;

(b) after the second proviso, the following proviso shall be inserted, namely:—

"Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time."

104. Amended of First Schedule. - 104. In the Customs Tariff Act, the First Schedule shall,––

(i) be amended in the manner specified in the Second Schedule;

(ii) with effect from the 1st April, 2021, be also amended in the manner specified in the Third Schedule; and

(iii) with effect from the 1st January, 2022, be also amended in the manner specified in the Fourth Schedule. Excise Amendment of Fourth Schedule.

C15 : THE FINANCE ACT, 2021 (CUSTOMS & CUSTOMS TARIFF)

Customs

1. Section 86 of the Finance Act has amendment to modify section 2. — In the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Customs Act), in section 2, in clause (34), after the words "Principal Commissioner of Customs or Commissioner of Customs", the words and figure "under section 5" shall be inserted.

2. *Section 87 of the Finance Act. Substitution of new section for section* 3. — For section 3 of the Customs Act, the following section shall be substituted, namely: —

"3. Classes of officers of customs. — There shall be the following classes of officers of customs, namely :—

Principal Chief Commissioner of Customs or ***(a)*** Principal Chief Commissioner of Customs (Preventive) or Principal Director General of Revenue Intelligence;

(b) Chief Commissioner of Customs or Chief Commissioner of Customs (Preventive) or Director General of Revenue Intelligence;

Principal Commissioner of Customs or ***(c)*** Principal Commissioner of Customs (Preventive) or Principal Additional Director General of

Revenue Intelligence or Principal Commissioner of Customs (Audit);

(d) Commissioner of Customs or Commissioner of Customs (Preventive) or Additional Director General of Revenue Intelligence or Commissioner of Customs (Audit);

(e) Principal Commissioner of Customs (Appeals);

(f) Commissioner of Customs (Appeals);

(g) Additional Commissioner of Customs or Additional Commissioner of Customs (Preventive) or Additional Director of Revenue Intelligence or Additional Commissioner of Customs (Audit);

(h) Joint Commissioner of Customs or Joint Commissioner of Customs (Preventive) or Joint Director of Revenue Intelligence or Joint Commissioner of Customs (Audit);

Deputy Commissioner of Customs or Deputy (i) Commissioner of Customs (Preventive) or Deputy Director of Revenue Intelligence or Deputy Commissioner of Customs (Audit);

(j) Assistant Commissioner of Customs or Assistant Commissioner of Customs (Preventive) or Assistant Director of Revenue Intelligence or Assistant Commissioner of Customs (Audit);

(k) such other class of officers of customs as may be appointed for the purposes of this Act.".

3. Section 88 of the Finance Act. Amendment of section 5. — In section 5 of the Customs Act, —

(a) after sub-section (1), the following sub-sections shall be inserted, namely:—

Without prejudice to the provisions "(1A) contained in sub-section (1), the Board may, by notification, assign such functions as it may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.

Within their jurisdiction assigned by the (1B) Board, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, by order, assign such functions, as he may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.";

(b) after sub-section (3), the following sub-sections shall be inserted, namely:

In specifying the conditions and "(4) limitations referred to in sub-section (1), and in assigning functions under sub-section (1A), the Board may consider any one or more of the following criteria, including, but not limited to —

(a) territorial jurisdiction;

(b) persons or class of persons;

(c) goods or class of goods;

(d) cases or class of cases;

(e) computer assigned random assignment;

(f) any other criterion as the Board may, by notification, specify.

(5) The Board may, by notification, wherever necessary or appropriate, require two or more officers of customs (whether or not of the same class) to have concurrent powers and functions to be performed under this Act.".

4. Section 89 of the Finance Act. Amendment of section 14. — In section 14 of the Customs Act, in sub-section (1), in the second proviso, after clause (iii), the following clause shall be inserted, namely: —

"(iv)the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria:".

5. Section 90 of the Finance Act. Amendment of section 28E. — In section 28E of the Customs Act, —

(a) in clause (c), the *Explanation* shall be omitted; (b)clause (h) shall be omitted.

6. Section 91of the Finance Act. Amendment of section 28H. — In section 28H of the Customs Act, —

(a) in sub-section (1), after the words "an application in such form and in such manner", the words "and accompanied by such fee" shall be inserted;

(b) sub-section (3) shall be omitted;

(c) in sub-section (4), for the words "within thirty days from the date of the application", the words "at any time before an advance ruling is pronounced" shall be substituted.

7. Section 92 of the Finance Act. Amendment of section 28-I. — In section 28-I of the Customs Act, in sub-section (7), the words "by the Members" shall be omitted.

8. Section 93 of the Finance Act .Amendment of section 28J. — In section 28J of the Customs Act, for sub-section (2), the following sub-section shall be substituted, namely :—

The advance ruling referred to in "(2) sub-section (1) shall remain valid for three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier :

Provided that in respect of any advance ruling in force on the date on which the Finance Bill, 2022 receives the assent of the President, the said period of three years shall be reckoned from the date on which the said Finance Bill receives the assent of the President.".

1. ***Section 94 of the Finance Act.Insertion of new section 110AA.***

— After section 110A of the Customs Act, the following section shall be inserted, namely :—

"110AA.Action subsequent to inquiry, investigation or audit or any other specified purpose. — Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that —

(a) any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made;

(b) any duty has been erroneously refunded;

(c) any drawback has been erroneously allowed; or (dany interest has) been short-levied, not levied, short-paid or not paid, or erroneously refunded, then such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing — to the proper officer having jurisdiction,

(a) as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or

(b) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5, and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5.".

2. ***Section 95 of the Finance Act. Insertion of new section 135AA.***

— After section 135A of the Customs Act, the following section shall be inserted, namely :—

'135AA. Protection of data. If a person publishes any information, that is furnished to — (1) customs by an exporter or importer under this Act, relating to the value or classification or quantity of goods entered for export from India, or import into India, along with the identity of the persons involved or in a manner that leads to disclosure of such identity, unless required so to do under any law for the time being in force or by specific authorisation of such exporter or importer, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both.

(2) Nothing contained in this section shall apply to —

(a) any publication made by or on behalf of the Central Government;

(b) data sourced from any publication made by or on behalf of the Central Government for analysis of trends in India's international trade and dissemination thereof.

Explanation. – For the purposes of this section, the expression "publishes" includes reproducing the information in printed or electronic form and making it available for the public.'.

11. Section 96 of the Finance Act. Amendment of section 137. — In section 137 of the Customs Act, in sub-section (1), after the words, figures and letter "or section 135A", the words, figures and letters "or section 135AA" shall be inserted.

12. *Section 97 of the Finance Act. Validation of certain actions taken* under Customs Act. — Notwithstanding anything contained in any judgment, decree or order of any court, tribunal, or other authority, or in the provisions of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Customs Act), —

anything done or any duty performed or any (i) action taken or purported to have been taken or done under Chapters V, VAA, VI, IX, X, XI, XII, XIIA, XIII, XIV, XVI and XVII of the Customs Act, as it stood prior to its amendment by this Act, shall be deemed to have been validly done or performed or taken;

(ii) any notification issued under the Customs Act for appointing or assigning functions to any officer shall be deemed to have been validly issued for all purposes, including for the purposes of section 6;

(iii) for the purposes of this section, sections 2, 3 and 5 of the Customs Act, as amended by this Act, shall have and shall always be deemed to have effect for all purposes as if the provisions of the Customs Act, as amended by this Act, had been in force at all material times.

Explanation. — For the purposes of this section, it is hereby clarified that any proceeding arising out of any action taken under this section and pending on the date of commencement of this Act shall be disposed of in accordance with the provisions of the Customs Act, as amended by this Act.

Customs Tariff

13. Section 98 of the Finance Act. Amendment of First Schedule. — In the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), the First Schedule shall, —

(a) be amended in the manner specified in the Second Schedule;

(b) with effect from the 1st May, 2022, be also amended in the manner specified in the Third Schedule.

C16 : CUSTOMS (ELECTRONIC CASH LEDGER) REGULATIONS, 2022)

Short title and commencement -

These regulations may be called the Customs (Electronic Cash Ledger) Regulations, 2022.(2) They shall come into force with effect from the 1stJune, 2022. 2. Definitions.-(1) In these regulations, unless the context otherwise requires,

(a) "Act" means the Customs Act, 1962 (52 of 1962);

(b) "authorised bank" means a bank or a branch of a bank authorised by the Government to collect duty or any other amount payable under the Act;

(c) "electronic cash ledger" means the ledger in the customs automated system relating to a person who deposits the amount in the said ledger in accordance with section 51Aof the Act;

(d) "Form" means a form appended to these regulations;

(e) "Jurisdictional Commissioner of Customs" means the Commissioner having jurisdiction over the customs station where the person intends to make payment.

(1) The words and expressions used in these regulations and not defined but defined in the Act shall have the same meanings as assigned to them in the Act.

3. Manner of maintaining Electronic Cash Ledger.-(1) The electronic cash ledger shall be maintained in FORM ECL-1 on the common portal for each person in regard to every deposit made towards duty, interest, penalty, fee or any other sum payable by the person under the provisions of the Act or under the Customs Tariff Act, 1975 (51 of 1975), or the rules and regulations made thereunder or any duties of customs, including cesses and surcharges levied as duties of customs under any other law for the time being in force, for the purpose of crediting the deposit and for debiting when the amount available in the electronic cash ledger is used for making payment towards duty, interest, penalty, fee or any other amount.

(2) The deposit made in the electronic cash ledger shall not accrue any interest.

(3) A unique identification number shall be generated at the common portal when a credit or debit, as the case may be, is made to the electronic cash ledger.

(4) The unique identification number relating to such debitor credits hall be indicated in the relevant Customs declaration.

(5) Any deposit into the electronic cash ledger shall be made by a person by generating a deposit challan inFORM-ECL-2 on the common portal:

Provided that the deposit challan as so generated in FORM-ECL-2 shall be valid for a period of fifteen days.

(6) The deposit under sub-regulation (5) shall be made through any of the following authorised modes, namely:-

(a) internet banking through an authorised bank;

(b) National Electronic Fund Transfer or Real Time Gross Settlement from any bank;

(c) over the counter payment through an authorised bank: Provided that the limit of the over the counter payment, in case of a person, shall not exceed ten thousand rupees in a day:

Provided further that the said limit of ten thousand rupees shall not apply to deposit made by the Government Department or where the Jurisdictional Commissioner of Customs authorises a higher amount to be deposited.

Explanation.— For the removal of doubts it is hereby clarified that for making deposit of any amount indicated in the deposit challan, the commission, if any, payable to the bank in respect of such payment shall be borne by the person making such deposit.

Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of the deposit challan.

(8) Upon use of an authorised mode to make deposit, on successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the deposit challan as generated in FORM ECL-2.

(9) On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect. (10) Where the bank account of the person concerned or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or such number is generated but not communicated to the common portal, the said person may represent electronically through the common portal to the bank or electronic gateway through which the deposit was initiated.

Manner of making payment from the electronic cash ledger .-(1)A person may use the amount available in the electronic cash ledger for making payment towards duty, interest, penalty, fee, or any other sum payable by such person under the provisions of the Act or under the Customs Tariff Act, 1975 (51 of 1975), or the rules and regulations made thereunder, or any duties of customs, including cesses and surcharges levied as duties of customs under any other law for the time being in force, through payment challan in FORM ECL-

3generated,-(i)by the customs automated system in accordance with provisions of the Act, rules or regulations made thereunder; or(ii)by the person on the basis of his own ascertainment of the amount of duty or sum payable by such person.

(2) The person shall select the payment challan so generated under sub- regulation (1) on the common portal for debit of the amount shown in the payment challan from electronic cash ledger of such person: Provided that, the amount shown in the payment challan shall be automatically debited from the electronic cash ledger by the customs automated system,– (a)in the case where consent for auto-debit of specified amount has been provided in the customs declaration by the person; and(b)The amount available in the electronic cash ledger is sufficient for the payment of the entire amount of the payment challan.

(3) The successful debit under sub-regulation (2), shall be visible on electronic cash ledger and the credit shall be shown in the Electronic Duty Payment Ledger (Cash) maintained in FORM ECL-4.

5. Refund.-(1) The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be applied for refund by the person on the common portal in FORM ECL-5.

(2) Upon receipt of application under sub-regulation (1), the amount applied for from the balance shall no longer be available for use by the person and its refund shall be decided within thirty days from the date of application on the common portal and the amount to be refunded shall thereafter be credited to the bank account of the person registered with customs automated system.

6. Intimation of discrepancy in electronic cash ledger.-A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same on the common portal. Vide C.B.I &C, Notification No.20/2022-cus. (N.T), dated 30-03-2022.

Implementation of automation in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 with effect from 01.03.2022

Reference is drawn to the Customs (Import of Goods at Concessional Rate of Duty) Amendment Rules, 2022 notified vide Notification No. 07/2022-Customs (N.T.) dated 01.02.2022 so as to make certain amendments in existing Customs (Import of Goods at Concessional

Rate of Duty) Rules, 2017 (hereinafter referred to as "IGCR Rules, 2017"). These changes come into effect from 1st March, 2022.

2. The amendments are aimed at simplifying the procedures with a focus on automation and making the entire process contact-less.

3. These include:

a) The process is being automated. The Rules prescribe the submission of the necessary details electronically, through the common portal. (The common portal is the one notified vide notification 33/2021 dated 29-03-2021 and accessible at the URL www.icegate.gov.in).

b) The various forms have been standardized and notified for the purpose of electronic submission of details.

c) Individual transaction based permissions and intimations, such as - intimation of the intent to import goods at a concessional rate of duty, intimation of the receipt of goods, permission to re-export or clear goods domestically etc, are all being done away with.

d) A monthly statement would to be submitted by the importer on the common portal

e) A procedure for inter-unit transfer of the imported goods has been provided for.

f) An electronic option for voluntary payment through the common portal, as specified in the Rules, is also being developed for implementation.

4. Procedure to be followed by an importer For ease of understanding, the procedure set out in the IGCR Rules, 2017 and the clarifications for smooth implementation are summarized below: One-time prior intimation of intent to avail IGCR Benefit:

a) An importer who intends to import goods at a concessional rate of duty shall give a one-time prior information of such goods being imported. This information shall be provided on the common portal in form IGCR-1. (refer rule 4).

b) Subsequently, upon acceptance of such information on the common portal, a unique IGCR Identification Number (IIN) shall be generated. This information is also made available through the common portal to the jurisdictional customs officer as well as the officers at the respective port of import. The importer also has an

option to update the form IGCR-1 in case of any change in the details.

c) It is clarified that in the case of units already covered under the existing provisions of IGCR Rules, 2017, the importers shall record electronically such details of intimation given in form IGCR-1 on the common portal and generate an IIN against the same.

d) The importer is required to furnish a one-time continuity bond, in a format provided in annexure-I to this Circular, to cover all the imports undertaken under this procedure. The bond details such as amount of the bond etc. shall be filled up by the importer on the common portal in part B of the form IGCR-1.

e) Subsequently, the physical copy of the bond and bank guarantee, wherever applicable, shall be submitted by the importer to the jurisdictional officer. Upon acceptance, the jurisdictional customs officer shall approve the bond request on the Customs Automated System.

f) The details of the bond number and bank guarantees will then be available for the importer to see on the common portal. The importer shall also have an option of topping up the amount of the bond and adding the details of the bank guarantee on the common portal and by providing bond addendum to the bond for adding bank guarantee as per the format given in Annexure-II.

g) It is clarified that if the bond/bank guarantee has already been furnished to the jurisdictional officer, there is no requirement to give a fresh bond/ bank guarantee. The jurisdictional officer shall enter the details of such bond/bank guarantee in the customs automated system and generate the bond number.

Import of goods at concessional rate

The importer shall mention the IIN and the continuity bond number and details while filing the bill of entry at the port of import. On the basis of the same, the Deputy Commissioner or Assistant Commissioner of Customs at the port of importation shall allow the benefit of exemption notification. Once a bill of entry is cleared for home consumption, the bond submitted by the importer gets debited automatically in the customs automated system. These details shall be available to the jurisdictional customs officer through the common portal. (refer rule 5) Receipt of goods.

1.1 These Rules cover the receipt of goods in three scenarios: (a) Goods are received in the premises of the importer; (b) Goods are directly received at the premises of the job -worker; or (c) Goods are partly received at the importer's and partly sent to the job worker's premises In all such cases, the requirement of intimating the receipt of the goods has been done away with. However, any non-receipt or short-receipt of the goods shall be intimated by the importer immediately on the common portal through form IGCR2. This intimation shall be on the basis of the IIN and details shall be provided against each bill of entry, invoice and item. (refer rule 6) Goods sent for job work from importer's premises:

1.2 In cases where the goods are first received at the premises of the importer and are then to be sent for job work therefrom, the importer shall send the goods under the cover of an invoice or wherever applicable, through an e-way bill specifying the description and quantity of goods. It is clarified that the requirement of an intimation when sending goods for job work, has been done away with. The importer shall maintain a record and mention such details in the monthly statement.

1.3 The maximum period for which the goods can remain with the job worker shall be six months from the date of invoice or e-way bill.

Receipt of goods from the job worker:

1.4 After the completion of job work, there can be three scenarios - (a) the goods are received back in the premises of the importer, or, (b) the goods are cleared directly from the premises of the job worker, or (c) the goods are sent by the job worker to another job worker. In all such cases, the goods shall be sent under an invoice or wherever applicable, e-way bill. The importer shall maintain a record of such movement of goods and mention the details in the monthly statement.

Inter-Unit transfer of goods

A separate provision has been included for unit transfer of goods, where goods are sent to a different unit of the same importer. The goods, in such cases shall be sent under an invoice or wherever applicable, e-way bill, mentioning the description and quality of goods.

Utilization of goods for intended purpose:

1.5 It is clarified that the importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions specified in the exemption notification within six months from the date of import. In case of goods that have not been utilized or defective goods, the importer has an option to either re export such goods or clear the same for home consumption within the said period of six months.

Further, in all cases where the import at concessional rate is governed by condition no. 108 of the notification 50/2017-Customs, the export of manufactured goods should be completed within six months from the date of import.

Re-Export or clearance for home consumption:

1.16 In case an importer opts to re-export such goods, he shall record the details of export documents such as shipping bill number, shipping bill date and the port of export. These details shall be specified against the bill of entry, invoice and item details of the goods imported.

1.17 In case the importer intends to clear the un-utilized or defective goods on payment of requisite duty and interest, the import duty payable would be equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest rate as fixed by notification under section 28AA. The period for calculation of interest would start from the date of import of such goods and end with the date of actual payment.

1.18 An option is available to the importer to clear the capital goods imported, on payment of duty along with interest, at a depreciated value, after they have been put to use.

1.19 The particulars of such clearances and duty payments shall be recorded by the importer in the monthly statement. The importer shall pay such duties and interest using manual challan at the port of import. An option for voluntary payment through the common portal, as specified in the Rules, is under development for being enabled shortly.

Monthly statement and maintenance of account

Instead of the quarterly return prescribed earlier, the importer shall submit a monthly statement by the tenth day of the following month, on the common portal in the form IGCR-3 prescribed. (refer rule 6). It is clarified that the first monthly statement under the changed procedures shall be submitted by the importers in the month of April 2022.

1.20 The importer shall, with respect to the goods imported, maintain an account as prescribed in rule 6. Further, with respect to inter-unit transfer of goods, the importer shall maintain an account as prescribed in rule 6B. These accounts shall be produced by the importer to the jurisdictional Deputy /Assistant Commissioner of Customs as and when required by the said officer

1.21 The job-worker shall also maintain an account as prescribed in rule 6A which shall be produced to the jurisdictional customs officer, as and when required by the said officer.

5. An importer or the job worker who contravenes the provisions of these rules shall be liable to a penalty as prescribed in the said rules (refer rule 8A). It is clarified that, this is in addition to any other action taken under the Customs Act, 1962 for recovery of duties.

Transitional measures

1.1 In order to account for the stock of goods imported under IGCR that are already existing in the premises of the importer or job worker on the date of transition to the new procedure, an option is being provided to the importer to record the details of all such goods according to the bills of entry, invoice and item, in the monthly statement by linking their past bills of entry in the common portal.

1.2 The details of the existing bonds under IGCR shall be entered into the customs automated system by the jurisdictional officers and the amount of surety/bank guarantee shall be determined in accordance with the Customs circular 48/2017 dated 08.12.2017.

1.3 While the system architecture to provide information in the forms prescribed shall be in place from 01-03-2022 , to enable a smooth transition, importers shall have an option to submit procurement certificates for import of goods at the port of import for availing the exemption benefit till 13-03-2022.

Currently there is a requirement for EOUs to follow Rule 5 of Customs (IGCR) Rules, 2017 to be eligible for claiming exemption of duties/

taxes on the import of goods. The system architecture with respect to above rule in respect of EoUs is under development. The same shall be implemented in due course. Till such date, procurement certificates can continue to be submitted by the EOUs for import of goods in lieu of generating IIN in the system.

7.For ease of reference of the importers, the district wise list of jurisdictional customs officers, their contact details and their jurisdictions have been mapped and published on the CBIC website. The same can be accessed at https://www.cbic.gov.in/htdocscbec/home_links/enquiry-points-home.

8. The Board Circulars Nos. 25/2017- Cus (N.T.) dated 30.06.2017, 29/2017

-Cus (N.T.) dated 17.07.2017 and 10/2021 – Cus (N.T.) dated 17.05.2021 may be considered modified to that extent. The DG Systems is also requested to issue system advisory to the Trade and Officers on the system implementation aspects.

9. Suitable Public Notices may please be issued to guide the trade/ industry. The trade should be proactively assisted during the transition period keeping in view the resolve to provide an enabling environment for manufacturing. Standing Orders may be issued for the officers and staff. Difficulty, if any, faced in the implementation may be brought to the notice of Board immediately at the email id dircus@nic.in

C.B.I &C, Circular No. 04/2022-Customs. Dated 27.02.2022

Reducing compliance burden regarding registration of Authorised Couriers:

As part of reducing the compliance burden on stakeholders, the Central Board of Indirect Taxes and Customs has taken measures to simplify the registration requirements of Authorised Couriers. In this regard, attention is invited to Notifications no.86/2021-Customs (N.T.) and 85/2021-Customs (N.T.) both dated 27.10.2021, which have amended the Courier Imports and Exports (Clearance) Regulations, 1998 and the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 respectively.

1. In brief, these amendments provide lifetime validity to a registration, in place of the existing system of validity-periods and renewals. They also provide for voluntary surrender of registration. While enabling

a deemed invalidity of registration in case the Authorised Courier is inactive for a continuous period of 1 year, at a time, these also empower the Principal Commissioner or Commissioner to renew such a registration. Such deemed invalidation provision will be applied prospectively. These aspects are expected to bring greater certainty to the Authorised Couriers and support them to focus on their core business and spur trust-based compliance.

It has also been decided that the Board will review (in April 2022) these aspects to bring modifications, if found necessary.

1.1 An aspect which has come to notice is that an Authorised Courier after getting registered at one/the first Customs Station, has also been registered at other Customs Stations for transacting business at such other Customs Stations.

1.2 In this matter, the existing regulations are clear that once registered at a particular Customs Station, the Authorised Courier, for transacting business elsewhere, needs to only give the appropriate intimation to the Principal Commissioner or Commissioner of Customs having jurisdiction over the other Customs Station and furnish Bond/ Security as prescribed at each such location. Herein, attention is drawn to Regulation 7(2) read with Regulation 12 of the Courier Imports and Exports (Clearance) Regulations, 1998 or Regulation 10(7) read with Regulation 11(2) of the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010.

1.3 The duplication/existence of multiple registrations under either Regulation i.e., the Courier Imports and Exports (Clearance) Regulations, 1998 or the Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010 needs to be rationalised such that the first of such registrations under the respective Regulation is taken as the single registration and the others are regularised in terms of the intimation procedure under those regulations. While reviewing and rationalising this aspect, the process and procedure adopted should be smooth, facilitative and not dislocative to the normal business of the Authorised Couriers.

In this regard the DG Systems has been requested to assist the Commissioners in identifying multiple and the first registrations insofar as the ECCS is concerned. Due coordination with other locations maybe kept by the Principal Commissioner or Commissioner concerned. In this connection, it is also informed that instances have come to notice where a revocation of the registration of an Authorised

Courier has not been intimated to other Customs Stations. It is guided that the practise of communicating such decisions to other Customs Stations notified for Courier operations should be put in place apart from informing the Nodal Officer(s) designated by DG Systems and DG ARM

C.B.I&C, CIRCULAR NO. 24/21-CUSTOMS., DATED 27.10.2021

SHIPPING BILL (POST EXPORT CONVERSION IN RELATION TO INSTRUMENT BASED SCHEME) REGULATIONS, 2022 [Notification No. 11/2022-Cus. (N.T.), dated 22-2-2022]

In exercise of the powers conferred by section 157 read with section 149 of the Customs Act, 1962 (52 of 1962), the Board, hereby makes the following regulations, namely :-

REGULATION 1. Short title and commencement. —

(1) These regulations may be called the Shipping Bill (Post Export Conversion in Relation to Instrument Based Scheme) Regulations, 2022.

(2) They shall come into force on the date of their publication in the Official Gazette.

(3) These regulations shall apply to shipping bills or bills of export filed on or after the date of publication of these regulations in the Official Gazette.

REGULATION 2.Definitions. —

(1) In these regulations, unless the context otherwise requires, -

(a) "Act" means the Customs Act, 1962 (52 of 1962);

(b) "Conversion" means amendment of the declaration made in the shipping bill or bill of export to any other one or more instrument based scheme, after the export goods have been exported.

(c) "Instrument based scheme" means a scheme involving utilization of instrument referred to in explanation 1 to sub-section (1) of section 28AAA of the Act.

(d) "Jurisdictional Chief Commissioner of Customs" means the Principal Chief Commissioner or Chief Commissioner of Customs who has jurisdiction over the Customs station from where the export has taken place.

(e) "Jurisdictional Commissioner of Customs" means the Principal Commissioner or Commissioner of Customs who has jurisdiction over the Customs station from where the export has taken place.

(2) Words and expressions used in these regulations and not defined but defined in the Act, shall have the meanings as assigned to them in the Act.

REGULATION 3.Manner and time limit for applying for post export conversion of Shipping Bill in certain cases. —

(1) The application for conversion shall be filed in writing within a period of one year from the date of order for clearance of goods under sub-section (1) of section 51 or section 69 of the Act, as the case may be :

Provided that the jurisdictional Commissioner of Customs, having regard to the circumstance under which the exporter was prevented from applying within the said period of one year, may consider and decide, for reasons to be recorded in writing, to extend the aforesaid period of one year by a further period of six months :

Provided further that the jurisdictional Chief Commissioner of Customs, having regard to the circumstances under which the exporter was prevented from applying within the said period of one year and six months, may consider and decide, for reasons to be recorded in writing, to extend the said period of one year and six months by a further period of six months.

(2) For the purpose of computing the period of one year under sub-regulation (1), the period, during which stay was granted by an order of a court or tribunal, shall be excluded.

(3) The jurisdictional Commissioner of Customs, may, in his discretion, authorize the conversion of shipping bill, subject to the following, namely:

(a) on the basis of documentary evidence, which was in existence at the time the goods were exported;

(b) subject to conditions and restrictions provided in regulation 4;

(c) on payment of a fee in accordance with Levy of fees (Customs Documents) Regulations,1970.

(4) Subject to the provision of sub-regulation (1), the jurisdictional Commissioner of Customs shall, where it is possible so to do, decide every application for conversion within a period of thirty days from the date on which it is filed.

REGULATION 4.Conditions and restrictions for conversion of Shipping Bill. —

(1) The conversion of shipping bill and bill of export shall be subject to the following conditions and restrictions, namely :-

(a) fulfilment of all conditions of the instrument based scheme to which conversion is being sought;

(b) the exporter has not availed benefit of the instrument based scheme from which conversion is being sought;

(c) no condition, specified in any regulation or notification, relating to presentation of shipping bill or bill of export in the Customs Automated System, has not been complied with;

(d) no contravention has been noticed or investigation initiated against the exporter under the Act or any other law, for the time being in force, in respect of such exports;

(e) the shipping bill or bill of export of which the conversion is sought is one that had been filed in relation to instrument based scheme.

C17 : SPECIAL ECONOMIC ZONE ACT AND RULES

Special Economic Zones Act, 2005

The act has 8 Chapters and 58 sections.

CHAPTER I

- PRELIMINARY

CHAPTER II

- ESTABLISHMENT OF SPECIAL ECONOMIC ZONE

CHAPTER III

- CONSTITUTION OF BOARD OF APPROVAL

CHAPTER IV

- DEVELOPMENT COMMISSIONER

CHAPTER V

- SINGLE WINDOW CLEARANCE

CHAPTER VI

- SPECIAL FISCAL PROVISIONS FOR SPECIAL ECONOMIC ZONES

CHAPTER VII

- SPECIAL ECONOMIC ZONE AUTHORITY

CHAPTER VIII

- MISCELLANEOUS

SPECIAL ECONOMIC ZONE RULES 2006

Chapter I Preliminary

Chapter II Procedure for Establishment of Special Economic Zone

Chapter- III Procedure for Establishment of a Unit

Chapter- IV Terms and conditions subject to which entrepreneur and developer shall be entitled to exemptions, drawbacks and concessions

Chapter- V CONDITIONS subject to which goods may be removed from a Special Economic Zone to the Domestic Tariff Area

Chapter - VI Foreign Exchange Earning - Requirements and Monitoring

Chapter- VII Appeal

Chapter- VIII Miscellaneous

Rules

Rule 1 Short title and commencement

Rule 2 Definitions

Rule 3 Proposal for setting up of Special Economic Zone

Rule 3 A Proposal for approval as Co-developer

Rule 4 Forwarding of Proposal to Board

Rule 5 Requirements for establishment of a Special Economic Zone Rule 5 A Infrastructure requirements relating to information technology, Biotechnology, Research and Development facilities, Fabless Semi-conductor Industry and Electronic Manufacturing Services

Rule 6	:	Letter of Approval to the developer
Rule 6A	:	Power of Central Government to review letter of approval
Rule 7	:	Details to be furnished for issue of notification for declaration of an area as Special Economic Zone
Rule 8	:	Notification of Special Economic Zone
Rule 9	:	Grant of Approval for Authorized Operations:-
Rule 10	:	Permission for procurement of items
Rule 11	:	Processing and non-processing area
Rule 11A	:	Bifurcation of non-processing area
Rule 11B	:	Non-processing areas for Information Technology or Information Technology Enabled Services Special Economic Zones
Rule 12	:	Import and procurement of goods by the Developer
Rule 13	:	A Developer may export or transfer capital goods and spares including construction equipment
Rule 14	:	Procedure applicable on import or procurement of goods and services, their admission, and clearance of goods.
Rule 15	:	Monitoring
Rule 16	:	Transfer of Letter of Approval of Developer
Rule 17	:	Proposal for approval of Unit
Rule 18	:	Consideration of proposals for setting up of Unit in a Special Economic Zone
Rule 19	:	Letter of Approval to a Unit
Rule 19A	:	Unit deemed to be in International Financial Services Centre
Rule 20	:	Administrative Control of Special Economic Zones
Rule 21	:	Offshore Banking Unit.
Rule 21A	:	Setting up of Unit by Multilateral or Unilateral or International agencies in International Financial Services Centre
Rule 21B	:	Units dealing with aircraft or ship leasing activities

Rule 22	:	Terms and conditions for availing exemptions, drawbacks and concessions to every Developer and entrepreneur for authorized operations.-
Rule 23	:	Supply from DTA
Rule 24	:	The procedure for grant of drawback claims and Duty Entitlement Pass Book credit to a Developer or Unit
Rule 25	:	Consequences of non utilization of goods or services
Rule 26	:	General Conditions of Import and Export
Rule 27	:	Import and Procurement.
Rule 28	:	Import of Goods
Rule 29	:	Procedure for Import
Rule 29A	:	Procedure of import or export or procurement from or supply to Domestic Tariff Area of aircraft by a Unit in International Financial Services Centre
Rule 29B	:	Procedure of import or export or procurement from or supply to Domestic Tariff Area of ship by a Unit in International Financial Services Centre
Rule 30	:	Procedure for procurements from the Domestic Tariff Area
Rule 31	:	Omitted
Rule 32	:	Omitted
Rule 33	:	Admission of goods
Rule 34	:	Utilization of goods
Rule 35	:	Co-relation of import consignment with corresponding export consignment.-
Rule 36	:	Filing of documents for admission and removal
Rule 37	:	Duration of goods in a Special Economic Zone
Rule 38	:	Transfer of ownership and removal of goods
Rule 39	:	Destruction of goods
Rule 40	:	Movement of goods to and from non-processing area.
Rule 41	:	Sub-Contracting
Rule 42	:	Procedure for sub-contracting in Domestic Tariff Area or in a Unit in other Special Economic Zones or in Export Oriented Unit or in Electronic Hardware Technology Park unit or in Software Tech.....

Rule 43	:	Sub-contracting for Domestic Tariff Area unit for export
Rule 43A	:	Hybrid working
Rule 44	:	Contract Farming
Rule 45	:	Exports
Rule 46	:	Procedure for Export
Rule 47	:	Sales in Domestic Tariff Area
Rule 48	:	Procedure for Sale in Domestic Tariff Area.-
Rule 49	:	Domestic Tariff Area removals - abatement of duties in certain cases
Rule 50	:	Temporary Removals to Domestic Tariff Area
Rule 51	:	Procedure for temporary removals in Domestic Tariff Area.-
Rule 52	:	Other Entitlements
Rule 53	:	Net Foreign Exchange Earnings
Rule 53A	:	Exemption
Rule 54	:	Monitoring of performance
Rule 55	:	Form of Appeal
Rule 56	:	Time within which appeal is to be preferred
Rule 57	:	Payment of fees
Rule 58	:	Contents of appeal
Rule 59	:	What to accompany form
Rule 60	:	Filing of affidavits
Rule 61	:	Rights of Appellant to appear before the Board
Rule 62	:	Authorisation to be filed
Rule 63	:	Procedure for filing appeal
Rule 64	:	Furnishing of information and documents
Rule 65	:	Date and place of hearing of appeal to be communicated. -
Rule 66	:	Hearing of appeal
Rule 67	:	Orders by the Board
Rule 68	:	Order to be signed and dated
Rule 69	:	Order to be communicated to the party
Rule 70	:	Identity Cards

Rule 71	:	Foreign Exchange Remittances.-
Rule 72	:	Revival of sick units
Rule 73	:	Specified Officer
Rule 74	:	Exit of Units
Rule 74A	:	Transfer of Assets by Special Economic Zone Units upon their exit.
Rule 75	:	Self Declaration
Rule 76	:	The "services" for the purposes of sub-clause (z) of section 2 shall be the following, namely
Rule 77	:	Procedure for withdrawal or cancellation of exemptions, concessions, drawbacks or any other benefits to a Unit
Rule 78	:	E-filing
Rule 79	:	Audit in Special Economic Zones for indirect taxes
Rule 80	:	Regularisation of shortfall in New Foreign Exchange

PART D
EXPORT UNDER GST

TOPIC NO	NAME OF THE TOPIC
D1	EXPORT UNDER GST
D2	EXPORT UNDER BOND & LUT WITHOUT PAYMENT OF TAX
D3	PROCESS OF CLAIMING REFUND
D4	DIFFERENT TYPES OF EXPORT UNDER GST
D5	FORMS FOR REFUND
D6	OVERALL RISK FOR NON COMPLIANCE OF CHECKLIST FACED BY COST ACCOUNTANTS (CMA)
D7	INVOICING FOR EXPORTS
D8	MERCHANT EXPORTER & INTERMEDIARY SERVICES
D9	CASE LAW
D10	FAQS
D11	BODY OF CHECKLIST TO BE FOLLOWED
D12	RELEVANT SECTIONS, RULES, NOTIFICATIONS, CIRCULARS
D13	RELEVANT FORMS AND STATEMENTS UNDER CUSTOMS
D14	SINGLE AUTHORITY DISBURSEMENT OF REFUND
D15	STANDARD OPERATING PROCEDURE (SOP) TO BE FOLLOWED BY EXPORTERS
D16	LETTER OF UNDERTAKING (LUT) AND BOND UNDER GST
D17	NTEREST ON DELAYED REFUNDS UNDER CUSTOMS AND GST

CHANGES MADE IN THE FINANCE ACT, 2021

Section 16 of the IGST Act is being amended so as to:

(i) zero rate the supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit only when the said supply is for authorised operations;

(ii) restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services; and

(iii) link the foreign exchange remittance in case of export of goods with refund.

By this amendment specified that only supplies to SEZ or developer of SEZ qualify as zero-rated, which are used for the authorised operations. Further, it is restricted the zero-rated supply on payment of IGST only to a notified class of taxpayers or notified supplies of goods or services and link non realisation of export sales proceeds of goods exported liable for refund so received along with interest after expiry of prescribed time under Foreign Exchange Management Act, 1999.

The Suppliers of zero rated supplies (other than the notified class or categories) shall now have to mandatorily make supplies without payment of IGST (under LUT or Bond) and then, claim refund of unutilised ITC of inputs and input services as per Rule 89(4) of the CGST Rules.

Now, the notified class of taxpayer of goods/services eligible to export on payment of IGST and claiming refund unlike all persons under Rule 96(10) of the CGST Rules and other option left to claim refund of the accumulated ITC under Section 54 of the CGST Act and Rules made thereunder.

D1 : EXPORT UNDER GST

"Export" means when goods or services are sent from one country to another country against monetary consideration and realization

of foreign exchange earnings. As per section 2 (18) of Customs Act, 1962. "Export means taking goods out of India to a place outside India".

Exporting goods and services have been one of the most crucial industry that helps in developing and enormously increase the capital inflows, economic growth hereafter, giving rise to employments and stabilizing the economy, purchasing power of the nation in the global market.

GST on Exports

From time to time the government has paid attention to boost the trading and exporting for the overall betterment. Under GST, certain tax saving reliefs and facilities has been provided to the exporters. The export of goods or services is considered as a zero-rated supply. GST will not be levied on export of any kind of goods or services.

Under GST regime, the exporter has either of the two options: Export under bond without payment of tax Export along with tax payment and claim refund later.

Thus, there is no incidence of the tax (net effect) in a case where an exporter exports' goods/services from India.

Note: Export of goods to Nepal or Bhutan fulfils the condition of GST Law regarding taking goods out of India. Hence, export of goods to Nepal and Bhutan will be treated as zero rated and consequently will also qualify for all the benefits available to zero rated supplies under the GST regime.

When we talk of exports under GST, we have to understand the laws and regulations applicable to the import and export of both services and goods. (GST)

Sub-Section 5 of section 2 of IGST Act, 2017 defines – "Export of Goods", with its grammatical variations and cognate expressions, means taking out of India to a place outside India.

Sub-Section 10 of section 2 of IGST Act, 2017 defines – "Import of the goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

D2 : EXPORT UNDER BOND & LUT WITHOUT PAYMENT OF TAX

Difference between Bond & LUT

CRITERION	BOND	LETTER OF UNDERTAKING (LUT)
Concept	It is a financial instruent in which the issuer of bond owes the holders a debt and is obliged to pay them interest or to repay the principal at a later date.	In the international banking system, a letter of undertaking is a provision of bank guarantee, under which a bank allows its customer to raise money from another Indian bank's foreign branch in the form of short-term credit.
Eligibility	For all the other assesses (along with the ones who have been prosecuted for tax evasion of ₹ 2.5 Crores or above under the GST laws), bonds should be furnished if the export is being made without payment of IGST.	Any registered taxpayer exporting goods can utilize the benefit of the letter of undertaking.
Format	On a non–judicial stamp paper in hard copy IS to be submitted.	The LUT's are required to be submitted online on the GST common portal.
Use under GST	The bonds issued under GST is not separate for each consignment, but a running bond is issued so that terms and conditions are the same for each consignment.	In the international banking system, a letter of undertaking is a provision of bank guarantee, under which a bank allows its customer to raise money from another Indian bank's foreign branch in the form of short-term credit.

Validity	If the conditions mentioned in LUT are not satisfied within the time-limit, the privileges are revoked and the exporter will have to furnish bonds.	The validity of LUT is for one financial year. For every new financial year, a fresh LUT should be applied. If any discrepancies found in the application for LUT are not corrected within the prescribed time, then the LUT will be cancelled.
Bank Guarantee	An amount not exceeding 15% of the bond amount at the discretion of the jurisdictional Deputy / Assistant Commissioner	Bank Guarantee is not required

Example of transactions for which LUT/Bonds can be used:

- ☐ Providing
- ☐ Zero-rated supply to SEZ without payment of IGST
- ☐ Export of goods to a country outside India without payment of IGST
- ☐ Providing services to a client in a country outside India without payment of IGST

Format of LUT and Bonds in RFD-11

Form for LUT:

- ☐ Registered Name
- ☐ Address
- ☐ GST No.
- ☐ Date of furnishing
- ☐ Signature, date and place
- ☐ Details of witnesses (Name, address and occupation)

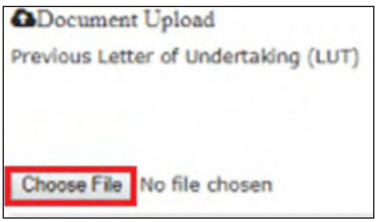
How to apply for LUT

Login to GST Portal

Then go to Service ☐ Click on "Furnish Letter of Undertaking"

Then select the Financial Year for which "LUT Applied"

Note: If Letter of undertaking has been already furnished manually for any of the previous periods, then please upload the same by Clicking on 'Choose File' option on the same window.



Fill up the necessary details on the Letter of Undertaking Form/GST RFD-11 that appears on the screen

The following needs to be done on the form:

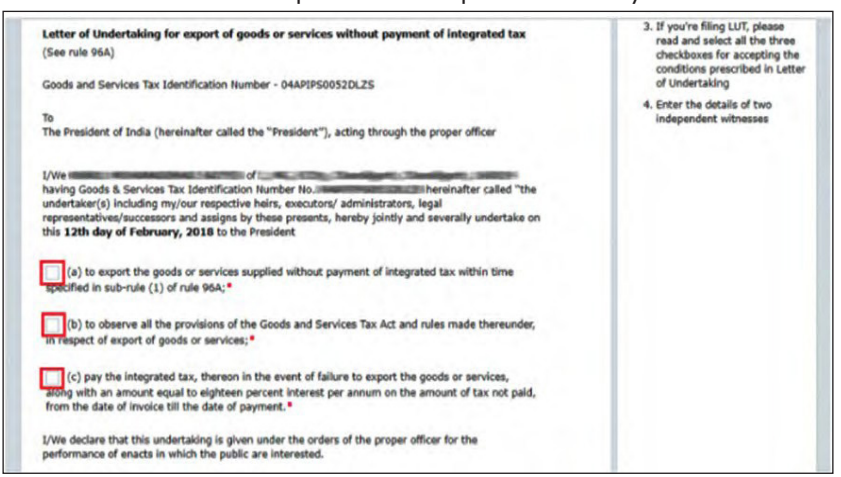
Self-Declaration Tick mark by clicking against each of the three boxes By doing this, Exporter undertakes the following :

a) Export of goods/services will be completed within a period of three months from the date of issue of Export invoice or further period allowed by the Commissioner if any.

b) To abide by GST law in respect of exports

c) To pay IGST along with Interest* if failed to Export

* Interest must be paid at the rate of 18% per annum for the period From date of issue of export invoice upto date of Payment of IGST



Letter of Undertaking for export of goods or services without payment of integrated tax
(See rule 96A)

Goods and Services Tax Identification Number - 04APIPS0052DLZS

To
The President of India (hereinafter called the "President"), acting through the proper officer

I/We [redacted] of [redacted]
having Goods & Services Tax Identification Number No. [redacted] hereinafter called "the undertaker(s) including my/our respective heirs, executors/ administrators, legal representatives/successors and assigns by these presents, hereby jointly and severally undertake on this **12th day of February, 2018** to the President

(a) to export the goods or services supplied without payment of integrated tax within time specified in sub-rule (1) of rule 96A;*

(b) to observe all the provisions of the Goods and Services Tax Act and rules made thereunder, in respect of export of goods or services;*

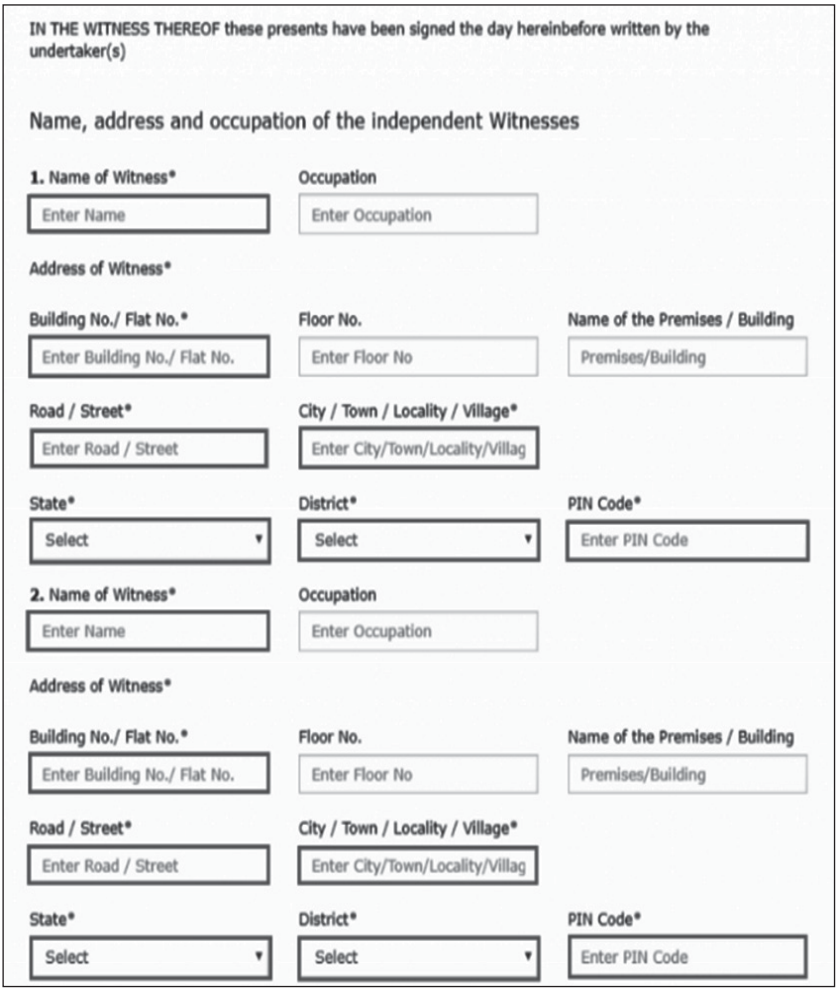
(c) pay the integrated tax, thereon in the event of failure to export the goods or services, along with an amount equal to eighteen percent interest per annum on the amount of tax not paid, from the date of invoice till the date of payment.*

I/We declare that this undertaking is given under the orders of the proper officer for the performance of enacts in which the public are interested.

3. If you're filing LUT, please read and select all the three checkboxes for accepting the conditions prescribed in Letter of Undertaking

4. Enter the details of two independent witnesses

Give Independent Witnesses Information: Mention the Name, Occupation and Address of two independent witnesses in the boxes highlighted in red color mandatorily.


IN THE WITNESS THEREOF these presents have been signed the day hereinbefore written by the undertaker(s)

Name, address and occupation of the independent Witnesses

1. Name of Witness* | Occupation
Enter Name | Enter Occupation

Address of Witness*

Building No./ Flat No.* | Floor No. | Name of the Premises / Building
Enter Building No./ Flat No. | Enter Floor No | Premises/Building

Road / Street* | City / Town / Locality / Village*
Enter Road / Street | Enter City/Town/Locality/Villag

State* | District* | PIN Code*
Select | Select | Enter PIN Code

2. Name of Witness* | Occupation
Enter Name | Enter Occupation

Address of Witness*

Building No./ Flat No.* | Floor No. | Name of the Premises / Building
Enter Building No./ Flat No. | Enter Floor No | Premises/Building

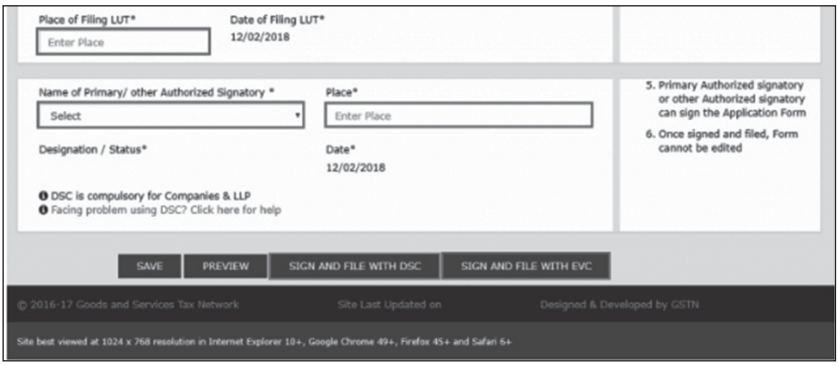
Road / Street* | City / Town / Locality / Village*
Enter Road / Street | Enter City/Town/Locality/Villag

State* | District* | PIN Code*
Select | Select | Enter PIN Code

Witnesses declared in the Letter of Undertaking (LUT) are the ones declared on the running Bond/ Bank guarantee.

Enter the Place of filing > Click on 'SAVE' > click on 'PREVIEW' to verify the correctness of the form before submission

Note that currently, the revision of a signed/submitted form is not possible.



Sign and file the form using either of the below options:

Who Should sign?- The Primary authorized signatory/ any other authorized signatory can sign the Letter of Undertaking.

Authorized signatory can be the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorized by such working partner or Board of Directors of such company or proprietor to execute the form.

There are two modes of Submission -

☐ **Submit with DSC:** Sign the application using the registered Digital Signature Certificate of the selected authorized signatory.

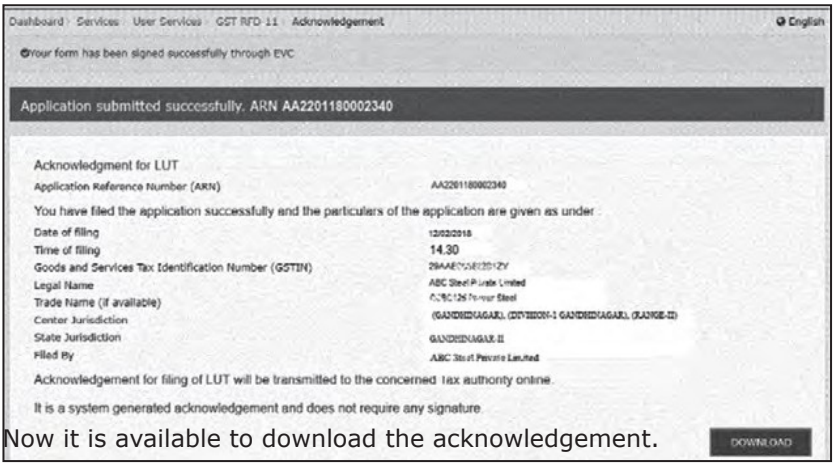
To use this option, Click on 'SIGN AND FILE WITH DSC' > Warning message box appears > Click 'PROCEED'> System generates a unique ARN (Application reference number)**

OR

☐ **Submit with EVC:** To use this option, Click on 'SIGN AND FILE WITH EVC' > The system will trigger an OTP to the registered mobile phone number and e-mail address of the authorized signatory. Enter that OTP in the pop-up to sign the application > Warning message box for submission appears > Click 'PROCEED'> System generates a unique ARN (Application reference number)**

Note: Companies and LLPs can file only using DSC

** A confirmation message appears. GST Portal sends this ARN at registered email and mobile of the Taxpayer by e-mail and SMS.



Now it is available to download the acknowledgement.

Form for Bonds:

- ☐ Registered Name
- ☐ Address
- ☐ Amount of bond furnished
- ☐ Date of furnishing
- ☐ Amount of bank guarantee furnished
- ☐ Signature, date and place
- ☐ Details of witnesses (Name, address and occupation)

Export along with Tax Payment and claim Refund later

- ☐ The exporter has option to pay IGST on exports and then claim refund of the same.
- ☐ The exporter charges IGST on the invoice for export at the applicable rate
- ☐ On payment of IGST the refund can be claimed for the following two elements:

1. Input tax credits on goods and services which remained unutilized;
2. IGST paid on export of goods or services.

- ☐ There is no need to file refund application (GST RFD-01) separately for export of goods or services**.**

- ☐ The shipping bill filed by the exporter is a refund claim in itself.
- ☐ The law specifies that shipping bill is to be considered as a refund claim on satisfying following two conditions.

I. The person carrying export goods should file an export manifest or export patent and

II. The applicant should have filed the return GSTR-3B appropriately. A refund is initiated on filing table 6A in Form GSTR-1

On filing the above documents appropriately, the refund is processed by the department.

D3 : PROCESS OF CLAIMING REFUND

Documents Required for Claiming Refund on Exports Here is a list of documents required for claiming refund –

1. Copy of return evidencing payment of duty
2. Copy of invoice
3. Document proving that the burden of paying tax has not been passed on
4. Any other document required by the government.

The registered taxable person (or exporter) is required to file an application for the refund on the common portal either through the facilitation center notified by the GST commissioner or can do so directly. An export manifest is required to be filed under the existing Customs Act before filing an application for refund.

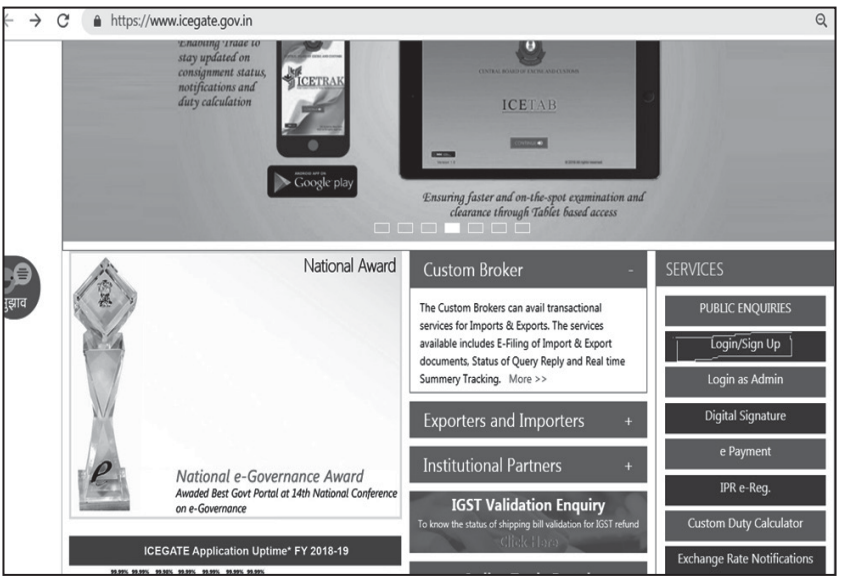
An exporter needs to file a shipping bill/other transport bills for the goods being exported to a place outside India. Under this case, the shipping bill/ transport bill so filed is treated as a "deemed application" for the refund of the tax paid. The deemed application shall be deemed to have been filed only if the person in charge of the shipment files/ other way bill the export manifest or report, mentioning the number and date of the shipping bills/ other transport bills.

How to claim Refund of IGST paid on Exports

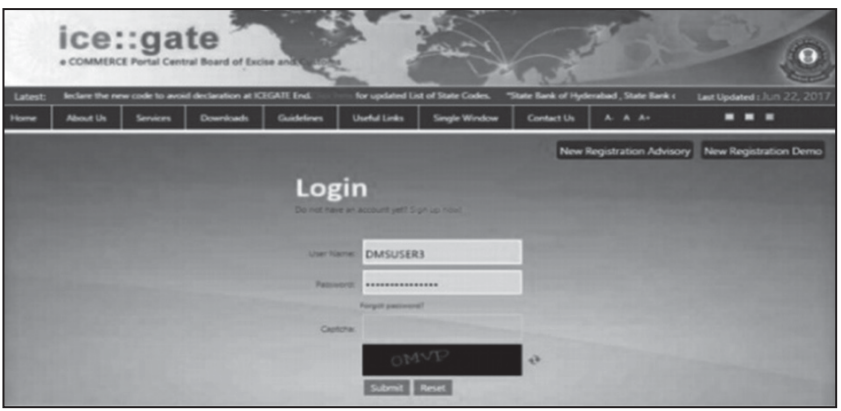
The details as entered in Table 6A should match the details of invoices and shipping bill uploaded on ICEGATE portal by exporters.

Step-1: Prepare documents in specified formats (PDF) for upload to the portal

Step-2: Login to the ICEGATE portal (DSC is required to upload documents)



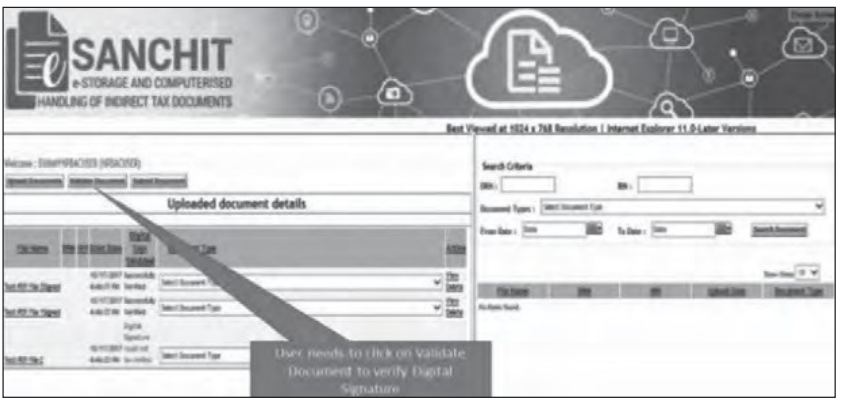
Step-3: Go to *e-SANCHIT* tab for uploading the documents.



Step-4 : Click on the upload documents button. At a time, a batch of maximum 5 documents can be uploaded.

Step-5: Select documents to be uploaded from the drop-down list. All the documents should be digitally signed before uploading.

Step-6: Validate the DSC on the documents by clicking on Va lidate Document button for each document.



Step-7: Click on submit documents. Click the OK button on a disclaimer that will appear to accept the responsibility for the genuineness of the documents uploaded.

Step-8: On successful submission, a unique IRN number will be generated which can be used for future reference.

D4 : DIFFERENT TYPES OF EXPORT UNDER GST

Deemed Exports

Indian suppliers of services and manufacturers of goods have to quote in competition with foreign suppliers of goods and services. Such Bids evaluation is done without considering the customs duty. Since such supply of goods and services are financed for specific projects (projects financed) with the free foreign exchange, these supplies are considered as 'deemed exports'.

"Deemed exports" generally refer to those transactions under which supply of goods do not leave the country. The payment for such supplies is received either in Indian rupees or convertible foreign exchange.

All supplies notified as supply for deemed export will be subject to levy of taxes, i.e. such supplies can be made only by payment of tax, provided that goods are manufactured or produced in India.

The supply of goods or services to the following would be treated as Deemed Exports under GST -

1. Supply of goods by a registered person against Advance Authorization/ DFIA
2. Supply made to an Export oriented undertaking (EOU) or Hardware Technology Park unit, Software Technology Park unit, Biotechnology Park unit
3. Supply of capital goods by a registered person against Export Promotion Capital Goods Authorization

4. Supply of gold by a bank or Public Sector Undertaking against Advance Authorization as per Customs law
5. Supply of goods to mega power projects against International Competitive Bidding
6. Supplies to United Nation Agencies
7. Supply of marine freight containers
8. Supplies against EPCG authorization
9. Supply of gold by a bank or Public sector Undertaking specified in the notification No. 50/2017-Customs dated the 30th June 2017 (as amended) against Advance Authorization.

Procedure for Refund of Deemed Exports

The refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the recipient. The deemed exporters can either:

- ☐ To levy of GST on supply and collect it from the recipient. In this case, the recipient shall apply for a refund.
- ☐ To levy of GST on supply and not to collect it from the recipient. In this case, the supplier shall apply for a refund through GST RFD 01. In this case, a declaration is also required from the recipient to the effect that he does not avail any input tax credit of the same.

Zero Rated Supply

The concept of zero rated supplies is very crucial specially to foster exports in India. To boost exports, the government provides certain reliefs and benefits to business houses. One such relief provided under the GST regime is called Zero rated supplies in GST.

Zero-Rated Supply means goods and services sold by the companies are free from Goods and Services Tax (GST). For company and business, GST paid on the assets, purchases or expenses for their businesses can be claimed as Input Tax Credit.

Any supplies made by a registered dealer as an export (both goods and services) or supply to an SEZ qualifies for Zero Rated Supplies in GST. The rate of tax on such supplies is 'Zero' or we can say the supplies are tax-free.

The supplies to a developer of an SEZ is also covered under Zero-

Rated Supplies in GST as no tax is levied on these supplies as well.

Features of Zero Rated Supply –

Meaning - Goods or services which are exported or supplied to SEZ. It is different from Nil Rated Supplies, Non-Taxable Supplies, and Exempt Supplies.

GST applicability- Falls within GST ambit *Input credit availability*-

Available *Example*- Export of shoes to South Africa

Procedure for Refund for Zero-rated Supplies

The suppliers making Zero-rated supplies are entitled to claim refunds. The refunds are for the input tax paid on the goods and services which are used for such Zero-rated supplies (including non-taxable and exempt supplies).

For example:- An exporter supplies shoes to Dubai and uses soles in the production of such shoes. The exporter has an option of claiming Input tax credit of GST paid on the purchase of soles.

There are two options available with a dealer to claim refunds:

Situation A: If Bond / LUT has been furnished in form RFD 11:

☐ The taxpayer is not required to make payment of taxes at the time of exports in case the bond / LUT have been furnished before exporting the goods/services. Therefore, he will not be required to claim any refund in respect of outward supply (export) of goods or services.

Situation B: If a Bond / LUT has not been furnished:

☐ If the taxpayer has made the payment of GST on the export of goods, then the shipping bill filed by the exporter at the time of export would itself constitute the refund claim subject to two conditions:

a. The person in charge of the conveyance carrying the export goods (Example: shipping agency) has filed an export general manifest

b. The applicant has filed a valid return in form GSTR 3B and GSTR 1 accurately specifying all the details relating to the export of goods/ services

Therefore, the dealers are provided with a flexibility to choose between any two options as per their convenience.

Zero-rated supply has been specifically provided to include two categories of supplies of goods and services or both:

- ☐ Supplies of goods/service for export
- ☐ Supplies of goods/service to an SEZ Unit / Developer

1. Supplies of Goods/Service for Export

These are such supplies on which the tax rate is fixed as zero whatever the tax rate in Tariff, and because of export it tends to zero. The supplier can avail and even claim the refund of the credit of inputs availed for making such supplies.

Refund procedures in case of Supplies for Export of Goods & Services

☐ **Refund procedures in case of Supplies for Export of Goods**

There is no need to file refund application (GST RFD-01) separately. The shipping bill filed by the exporter is sufficient to claim refund.

The law specifies that shipping bill is to be considered as a refund claim on satisfying following two conditions:

I. A person carrying the export goods should file an export manifest; and

II. Applicant should have filed the returns GSTR-3 or GSTR-3B appropriately.

Once the above two documents are filed appropriately, the refund is processed by the department.

☐ **Refund procedures in case of Supplies for Export of Services**

The option to pay IGST and claim a refund is always available. In this case, the refund claim has to be filed in Form GST RFD-01.

For exporters of services, the following are also required to be filed along with the refund claim:

I. A Statement containing Number and Date of Invoices; and

II. Bank Realization Certificates / Foreign Inward Remittance Certificates

2. Supplies to Special Economic Zones:

These are the areas having different economic laws than the rest

of the country regarding duties and taxes. These benefits have been provided as the SEZ units manufacture and supplies goods/ services to foreign entities and help reduce current account deficit by earning foreign exchange for the country. Supplies to SEZ unit or SEZ developer have been accorded the status of inter-State supplies under the IGST Act. Thus, anyone making a supply to an SEZ unit or SEZ developer has to necessarily obtain GST Registration and charge IGST irrespective of whether the supply is made in the same state.

The benefit available for exporters is also applicable for the exports to Special Economic Zones (SEZs). This benefit is extended up to processing zones of the SEZs, but the supplies from this SEZ Areas to Domestic Tariff Area (DTA) is liable to describe as a taxable trade under the scope of GST rules and regulations.

As per section 7(5), (b) of IGST Act, the supplies of Goods or Services or both to or by a developer or Unit Holder of SEZ will be termed as the supplies within the state and IGST would be chargeable with further refund mechanism.

Example -A taxpayer living in Bhuj supplies to Kandla SEZ in Gujarat. Bhuj & Kandla both are situated in Gujarat.

As per section 7(5), (b) of IGST Act this supply must be termed as interstate supply despite of supply from one place to another place within same state and IGST will be charged.

Supplies made in reference to a bond or a letter of undertaking to SEZ areas will be tax-free and other supplies to this area will attract the IGST, which will be claimed further for refunds.

Refund procedures for Export of Services and Supplies to SEZ

According to CGST laws, the supplies made with the payment of IGST to an SEZ Developer or SEZ Unit holder, he is liable for the payment of IGST at applicable rates. The export invoice will be generated in Indian currency with a proclamation that 'Supply is meant for SEZ developer / unit with payment of integrated tax'. The declaration made with the mentioned option will make the refund procedure fast. The IGST mentioned in the invoice is not charged from the customer, it is just for the acknowledgement purposes.

The supplier of goods or services to an SEZ are required to file the following along with the refund claim:

I. A Statement containing Number and Date of Invoices; and

II. Proof of Receipt of goods or services which is authorized by the specified officer of SEZ

III. Details of payment made

IV. The declaration that the SEZ or developer of SEZ has not claimed the input tax credit of the taxes paid by the supplier

Example- ABC Pvt. Ltd. supplies the Goods (whose purchase price is ₹ 2 lakh) for ₹ 2.5 lakh to XYZ Pvt. Ltd located in Kandla SEZ.

The applicable IGST will be charged at 18%. The invoice will look like:

Sale Price –	₹ 2.50 lakh
Add – IGST @ 18%	₹ 0.45 Lakh
Invoice Value	₹ 2.95 Lakh

Particulars	IGST
Output Tax (18% on ₹ 2,50,000)	45,000
Less - Input Tax (18% on ₹ 2,00,000)	36,000
Payment to be made in cash	9,000

ABC Pvt. Ltd. will release the tax liability of ₹ 45,000 by using Input Credit of ₹ 36,000 which is available on an account and cash payment of remaining ₹9,000. So, ABC Pvt Ltd. will get a refund which is the real net worth of input tax credit.

Provisional Refund in case of Supply to SEZ

The exporters and suppliers of SEZ are entitled to a 90% refund on a provisional basis. Provisional refund is granted within seven (7) days of the refund claim. The amount of provisional refund is credited directly to the claimant's bank account.

There is a condition attached to provisional refunds. The provisional refund is not granted if the applicant has been prosecuted for any offense under the GST law or earlier law within past five (5) years. The amount of tax evaded in such prosecution shall be more than Rupees Two Hundred and Fifty Lakhs (₹ 2.5 Crores).

Supplies which do not form part of Export of Goods or Services

- ☐ Where the place of supply of service is within India but to a person located outside India. For an instance – a property located in Delhi rented out to a person residing in New York; agent residing in India and providing service to a person in Dubai exporting goods to China.
- ☐ Where the consideration for the supply of services is received in Indian currency or in such a currency other than convertible currency. For an instance, supply of service (consultancy service) by a consulting firm in India to an entity outside India, where the payment made by Indian branch of overseas entity is in Indian rupees excluding the supply to Nepal & Bhutan..
- ☐ Supply of services to the foreign branch would not be covered as export of services due to specific exclusion as "export of service". This could involve reversing the input credits as such supply of service would be considered as non-taxable and not as zero-rated.

D5 : FORMS FOR REFUND

The Goods and Services Tax Network (GSTN) has introduced a utility Table 6A in the Form GSTR-1 used to claim refunds by exporters.

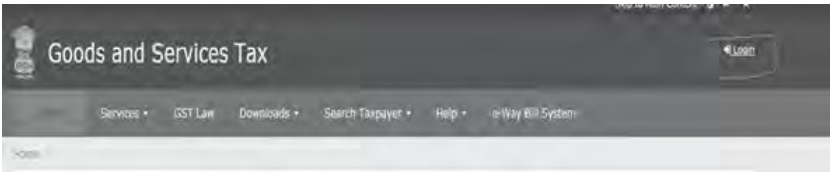
This Table 6A of Form GSTR1 lets assesses file export related data for the relevant period that permits processing of the GST refund on the basis of the declaration made under Form GSTR 3B and Table 6A of GSTR-1.

An exporter of goods or services or both can claim the refund of Integrated GST paid at the time of export by filling the details of the tax paid GST invoice and shipping bill in his Form GSTR1 in the relevant month.

Form No.	Rule	NARATION OF THE SUBJECT
RFD-01	89(1)	Refund Application Form Annexure – 1 in respect of details of Goods Annexure – 2 Certificate of CMA/CA (presently not required)
RFD-01A	89(1)	Manual Filing of Refund Application Annexure – 1 in respect of details of Goods Annexure – 2 Certificate of CMA/CA (presently not required)
RFD-01B	91(2), 92(1), 92(3), 92(4), 92(5) & 97A	Details of Refund Order
RFD-02	90(1),90(2) & 95(2)	Acknowledgement
RFD-03	90(3)	Notice of deficiency on application for Refund
RFD-04	91(2)	Provisional Refund Sanctioned Order
RFD-05	91(3), 92(4), 92(5) & 94	Payment Advice
RFD-06	92(1), 92(3), 92(4), 92(5) & 96(7)	Refund Sanctioned/Rejection Order
RFD-07	92(1), 92(2) & 96(6)	Order for adjustment of Refund claimed
RFD-08	92(3)	Show cause notice for rejection of Refund application
RFD-09	92(3)	Reply to Show cause notice for rejection of Refund application
RFD-11	96A	Furnishing of LUT for export of Goods

Steps to apply for RFD-01 and RFD-01A for GST refund

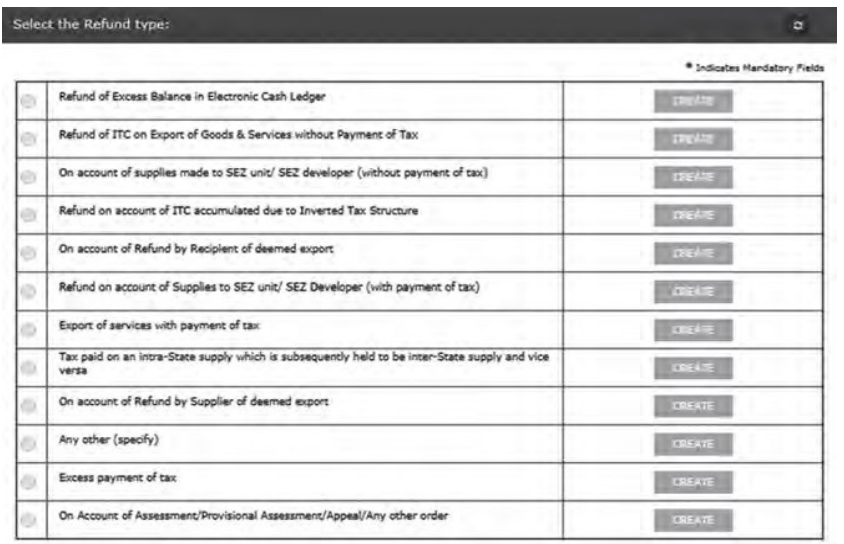
☐ Login to GST portal.



OVERALL RISK FOR NON COMPLIANCE OF CHECKLIST FACED BY COST ACCOUNTANTS (CMA)

☐ Select the Refund tab-> Application for Refund Option.

☐ Select the type of refund and Fill the necessary details and submit.



☐ ARN number gets generated.

☐ Later take a print out along with the ARN number mentioned thereon.

- ☐ Submit this along with the applicable annexure to the respective Jurisdictional GST officer.
- ☐ The Officer can be Central tax authority or State/UT tax Authority as may be notified for processing of refund shall be intimated through the Acknowledgement in RFD-02.

The following types of refunds under GST are currently being manually processed:

1. IGST paid on zero-rated supplies
2. ITC on exports under letter of undertaking or bond
3. Claims in case of deemed exports
4. Refund claims on account of inverted duty structure
5. Excess balance in Electronic cash ledger

In the above cases, RFD-01A is to be filed instead of RFD-01.

Format of Refund forms RFD-01 and RFD-01A

Format of RFD-01

☐ Basic Form (Sl. No. 1-10 of the form)

(1) The GSTIN/ Temporary ID allotted

(2) Legal name

(3) Trade name if any

(4) Address of principal place of business

(5) Tax period for which the claim of refund is made if applicable,

(6) Mention the amount of IGST, CGST and SGST, Interest or cess if any

(7) Select the Grounds for the claim of refund as per the list given.

(8) Details of Bank account into which you want the refund to be credited

Wherever applicable- This field is auto-populated from Registration Data. So, if you want to alter the Bank account, then make necessary changes in Registration Data and then apply for the refund.

(9) Select 'Yes' if the Documentary evidence required to be submitted in Annexure 1 for the reason selected at (7). Else select 'No' The Points at 1, 2, 3, 4 are auto-populated on the GST portal.

(10) Verification: the Authorized person has to sign this in all cases confirming the correctness of information and declarations given.

FORM-GST-RFD-01

[See rule 89(1)]

Application for Refund

(Applicable for casual or non-resident taxable person, tax deductor, tax collector, un-registered person and other registered taxable person)

1.	GSTIN / Temporary ID							
2.	Legal Name							
3.	Trade Name, if any							
4.	Address							
5.	Tax period (if applicable)	From <Year><Month> To <Year><Month>						
6.	Amount of Refund Claimed (Rs.)	Act	Tax	Interest	Penalty	Fees	Others	Total
		Central tax						
		State / UT tax						
		Integrated tax						
		Cess						
		Total						
7.	Grounds of refund claim (select from drop down)	(a)	Excess balance in Electronic Cash Ledger					
		(b)	Exports of services- with payment of tax					
		(c)	Exports of goods / services- without payment of tax (accumulated ITC)					
		(d)	On account of order					
			Sr. No.	Type of order	Order no.	Order date	Order Issuing Authority	Payment reference no., if any
			(i)	Assessment				
			(ii)	Provisional assessment				
			(iii)	Appeal				
			(iv)	Any other order (specify)				
		(e)	ITC accumulated due to inverted tax structure [clause (ii) of first proviso to section 54(3)]					
		(f)	On account of supplies made to SEZ unit/ SEZ developer (with payment of tax)					
		(g)	On account of supplies made to SEZ unit/ SEZ developer (without payment of tax)					
		(h)	Recipient of deemed export supplies/ Supplier of deemed export supplies					
		(i)	Tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued (tax paid on advance payment)					
		(j)	Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice versa(change of POS)					
		(k)	Excess payment of tax, if any					
		(l)	Any other *(specify)*					
8.	Details of Bank account	Name of bank	Address of branch	IFSC	Type of account	Account No.		
9.	Whether Self-Declaration filed by Applicant u/s 54(4), if applicable	☐ Yes ☐ No						

10. Verification

I/We *<Taxpayer Name>* hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.

I/We declare that no refund on this account has been received by me/us earlier.

Place **Signature of Authorised Signatory**

Date **(Name)**

Designation/ Status

☐ **Declarations and Verification:**

The declarations are required to assert the fact that the tax burden is upon the claimant of refund and no other person can claim.

Annexure-1 :

Different Declarations in Statements as documentary evidences have to be made or submitted under different types of refund claims.

There are total 11 statements prescribed for different types of refund application in RFD-01.

The Statements in 1, 1A, 3, 5A and 5B only are applicable in case of filing **RFD-01A**, depending on type of refund claim

Note Documentary evidences are not required to be submitted -if the amount of refund claimed is falling below ₹ 2 lakhs. Rather, a self- declaration that the ITC benefit is not claimed by the recipient of goods or services is sufficient.

Annexure-2 :

A Certificate issued by Chartered Accountant/ Cost Accountant needs to be annexed along with the Refund application in RFD- 01/RFD-01A.(presently not required)

Format for RFD-01A

Format of RFD-01A remains same except that the grounds of refund covered are limited here and the Bank details and self- declaration at points (8) and (9) are not present in the form.

The following Grounds of refund that are not covered while filing through RFD-01A:

a) On account of an Assessment order

b) Tax paid on supply not provided and for which the invoice is not issued

c) Tax paid on Intra State supply which is subsequently held to be Inter- State supply and vice-versa

d) Refund of Excess tax paid

Procedure of furnishing of LUT for export of Goods

It has been discussed earlier.

Refund of Accumulated ITC on Exports

It may be noted that the refund of accumulated unutilized input tax credit (ITC) would be required to be applied irrespective of the fact that whether bond or LUT has been furnished or not while making the exports.

In respect of the refund of accumulated unutilized input tax credit on account of exports, an online application in form RFD – 01 A is required to be filed on the common portal providing the details about:

- ☐ Turnover of zero-rated supply of goods and services
- ☐ Adjusted total turnover
- ☐ Net Input tax credit

The portal automatically calculates the maximum refund amount to be claimed on entering the details mentioned above, and after entering the details of bank accounts, application for a refund may be made.

Note: A registered taxpayer is making an online application in form RFD – 01A will also be required to submit a physical copy of the application filed to the concerned jurisdictional officer for further proceedings and refund.

Credit of Refund to the Taxpayer

After the processing of the application of refund claim, 90% of the amount claimed as refund shall be credited to your bank account within 7 days of the date of claim. The remaining 10% refund will be credited on due verification of documents furnished by the applicant.

The refund process will halt if:

A request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax due to the person claiming a refund by the provisions of sub-section (10) or sub- section (11) of section 54; or

The proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

If the applicant is not found guilty for the above-mentioned reasons, the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order in FORM GST RFD-06.

BASIC FORMS RELEVANT FOR EXPORTS IN GST

- ☐ **GSTR1 –** Details of Outwards supplies of goods or services (This needs to be filled by 11th of next month)
- ☐ **GSTR 2A –** Auto drafted Details of supplies auto drafted GSTR1 or GSTR5 to recipient
- ☐ **GSTR 3B** - Filing GSTR 3B form is mandatory for all those who have registered with GST. (To be filled every month before 20th)
- ☐ **GSTR 9 –** Annual GST Returns (To be filled once in a year before 31st December)

D6 : OVERALL RISK FOR NON COMPLIANCE OF CHECK LIST FACED BY COST ACCOUNTANTS (CMA)

The basic risks which the cost accountants would face are elucidated below

Reputational Risk - The CMA would face risk of damage of reputation. This might affect his client base and loss of faith in market. In severe cases a may lose his membership

Financial Loss - The CMA might have to suffer for financial lose due to non compliance at the time of issue of export credit certificate to the exporter as well as to the tax authorities

Tax Liability - Due to providing wrong tax credit or no credit a CMA might be subject to penalty or imprisonment for wrong tax credits

Compliance Risk - Non compliance may lead to penalty or fines under different provisions of GST Act, Customs Act or any other Act prevalent in force.

D7 : INVOICEING FOR EXPORTS

The invoice rules clearly stipulates that in case of exports, the invoice shall carry an endorsement **supply meant for export on payment of IGST** or **supply meant for export under bond without payment of IGST** and among other details shall also contain:-

(i) Name and address of the recipient,

(ii) Address of Delivery,

(iii) Name of the Country of Destination, and

(iv) Number and date of application for removal of goods for export [ARE-1]

Computation of Refund on Zero rated Supply

Example: X Ltd. has exported taxable goods amounting ₹100 crore besides sales of exempted goods in domestic market amounting ₹25 crore and Nil rated goods amounting ₹50 crore, The ITC availed for the taxable and exempted goods amounting ₹40 crore. Out of which ITC on capital goods ₹ 4 crore.

Calculate the quantum of maximum amount eligible for Refund.

Maximum quantum of Refund = Zero rated turnover/Adjusted Total Turnover x ITC Elegible excluding ITC on capital goods = 100/175*(40-4)

D8 : MERCHANG EXPORTER & INTERMEDIARY SERVIES

Merchant Exporter: When the trader is exporting the entire goods received as such from the supplier, such supplier is called as Merchant Exporter and eligible to charge only 0.05% GST irrespective of the rate of tax under the Tariff. The conditions are narrated below.

Condition to be satisfied by supplier and Merchant Exporter.

As per the notification, following condition has been prescribed.

(i) The registered supplier shall supply the goods to the registered recipient on a tax invoice.

(ii) The registered recipient shall export the said goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier;

(iii) The registered recipient shall indicate the Goods and Services Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill to bill of export, as the case may be;

(iv) The registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce;

(v) The registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;

(vi) The registered recipient shall move the said goods from place of registered supplier-

(a) Directly to the port, Inland Container Deport, Airport or Land Customs station from where the said goods are to be exported; or

(b) Directly to a registered warehouse from the said goods shall be move to the Port, Inland Container Deport, Airport or Land Customs station from where the said goods are to be exported;

(vii) If the registered recipient intends to aggregate suppliers from multiple registered suppliers and then export, the goods from each registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Deport, Airport or Land Customs Station from where they shall be exported;

(viii) In the case of situation referred to the condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgement of the warehouse operator and the endorsed tax invoice and the acknowledgement of the warehouse operator shall be provided to the registered suppliers as well as to the jurisdictional tax officer of such supplier; and

(ix) When goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of the export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

Whether Intermediary Services are Export of Services What is intermediary service?

Under section 2(13) of IGST Act, 2017, intermediary has been defined to mean a broker, an agent or any other person, by whatever name called, who arranges to facilitate the supply of goods or services or both, between two or more persons, but does not include a person who supplies such goods or services or both on his own account.

Certain ingredients that have been observed in the definition are:

a. An intermediary is only a facilitator of the goods and services; it can be a broker or agent or any other person.

b. The act of facilitation gives rise to two supplies:

   i. Supply between the principal and the third party.

   ii. Supply of the intermediaries' services for a commission/fee (this transaction is under debate)

c. If the intermediary is supplying the goods/services in his own name/ title, then the status of 'intermediary' cannot be accrued to the agent.

Though the term 'broker' and 'agent' are fundamentally different; broker being a middleman whose job is only to facilitate whereas agent acts on behalf of the principal; yet under the Act these terms have been put together under one umbrella of 'intermediary'.

D9 : CASE LAW

A recent ruling of the Maharashtra Advance Ruling Authority has held that back office support services do not qualify as "export of services" as they are in the nature of "intermediary services".

Fact of the Case

- ☐ The Applicant (Vservglobal Private Limited) ("Vserv") is primarily engaged in providing back office support services to overseas clients and had applied to the advance ruling authority seeking a confirmation on whether the activities performed by it qualify as exports and are therefore zero- rated supplies.
- ☐ In the application, Vserv had submitted that it fulfilled all the conditions required for services to qualify as "export of services".
- ☐ Importantly, it was also submitted that where supply of goods are facilitated in the course of provision of such service, the same was only incidental to the principal supply and that it therefore did not qualify as an intermediary. Since Vserv was providing such services on a principal-to-principal basis it was clearly excluded from the definition of "intermediary".
- ☐ However, the AAR has ruled that all activities performed by applicant for its client indicate that the applicant is engaged in

'arranging / facilitating' supply of goods or services between client and its customers and therefore, qualifying as an intermediary.

Observation

The applicant is registered person under GST ACT who is supplier of Services, which is a corporate entity incorporated in India and having its registered office in Mumbai. The orders for supply of said services are received in its Mumbai office and also services are executed from it office situated in Mumbai.

The applicant has submitted sample copy of service agreement entered into between the parties, Tax invoices issued, bank statements etc. to represent the transactions effected between the parties.

The relevant clauses of the agreement for the present purpose are as below:

1. This service agreement is made between the party M/s. Vikhuda Overseas Corporation Ltd. Hong Kong (Herein referred party A) and M/s. Vservglobal Pvt. Ltd. Andheri, (Herein referred party B). This agreement is executed on 30.12.2017 of the office of party A situated in Hong Kong. Party A is global firm specializing in trading and distribution of chemical and Agricultural/Consumer products in different geographies. Party B is an India based corporate entity and has started its operation in the year 2017.
2. Party A is desirous of obtaining back office administrative and accounting service and party B is having necessary competence to provide the said services. As such the party A has agreed to hire the party B to provide the said services and the Party B agreed to render the same in accordance with the provision of this contract.

Article-1: Object of contract: This service agreement aims to establish terms and conditions under which the party B commits to provide for party A for the services of back office administrative and accounting support. The nature and details of services to be provided to the party A by the party B throughout this are specified in Article 2 of this contract.

Article 2: Nature and scope of work: The Party B will coordinate with buyer, seller and other necessary parties for execution of purchase and sale contracts entered into by the party A. The party B will also maintain accounting of all these transactions. Party A will

provide access to its software "VOSS" to the Party B for rendering the agreed services. The major service activities to be undertaken by the Party B for and on behalf of party A

Article 3: Obligation of parties:

- ☐ The party B commits itself carrying out hereby services in accordance with the instruction of party A.
- ☐ Party B commits not to disclose business dealing of party A to any third party/ parties. .
- ☐ The party B commits no to allow access "VOSS" to anybody except its employees entrusted with the job of working on it.
- ☐ Both the parties commit not to represent each other before a third party/ parties as an agent/principal of the other parties and entered in to any kind of binding agreements.

Article 4: The Service Fee and Invoicing: In return for the performance of services entrusted on the basis of the terms of this contract, the party B shall receive a remuneration of US$ 380 per purchase/sale transaction handled, subject to minimum of US$ 10,000/- per month. Rates may be 10% or less depending upon man hours involved in each transaction. The services performer will be invoiced by 7th day of the following month. This invoice thus issued shall be payable by the end of the month in which the invoice is issued.

On the basis of this service agreement applicant submits that the services proposed to be rendered such as back office administrative and accounting support services, a Pay roll processing and maintenance of records of employees of the client satisfy all the elements of "export of services as defined under the GST Act and therefore qualify as zero rated supply as per section 16 of the IGST Act.

This proposition of law is strongly opposed by the jurisdictional officer. The jurisdictional officer has collected information about M/s Vikudha Overseas Corporation Limited Hong Kong China (the client), sister concern, etc. M/s Vikudha India Trading Limited., having registered office at DHANTAK PLAZA, 201, OPP. WAMAN CENTLR MAKWANA ROAD, MAROL, ANDHERI

EAST Mumbai City MH 400059 IN (AS per Website of ministry of Commerce), and The Applicant of this ARA M/s Vserv Global Pvt Ltd, is private Limited company situated at 201, Dhantak Plaza, Opp. Waman Center, Makwana Road Andheri (E), Mumbai-400059. The

officer has collected this information from the website of the client. He has also collected information pertaining to the promoters of the client and the sister concern. Based on this information the officer submits that all the above firms are related companies. He further has drawn a conclusion that the applicant is providing services to M/s. Vikudha India Trading Limited, a sister concern located in India and thus the provision of services is in India and not as export of services contended by the applicant.

ORDER:

(Under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

ORDER NO.GST-ARA-03/2018-19/B-59

Mumbai, dt. 07.07.2018

For reasons as discussed in the body of the order, the questions are answered thus –

Question: The Applicant Vserv request this Hon'ble Authority to decide as to whether the aforesaid services proposed to be rendered qualify as 'Zero Rated Supply in terms of Section 16 of the Integrated Goods & Service Tax Act, 2017 or not.

Answer: Answered in the negative.

D10 : FAQs

Q 1. Can unutilized Input Tax Credit be allowed as refund? Ans. Unutilized input tax credit can be allowed as refund in accordance with provisions of sub–section (3) of section 54 in the following situations:-

(i) Zero rated supplies made without payment of tax;

(ii) Where credit has accumulated on account of rate of tax on inputs being higher than the rate of taxes on output supplies (other than nil rated or fully exempt supplies)

However, no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty, and also in the case where the suppliers of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Q 2. Can unutilized ITC be given refund, in case goods Exported outside India are subjected to export duty?

Ans. Refund of unutilized input tax credit is not allowed in case where the goods exported out of India are subjected to export duty – as per the second proviso to Section 54(3) of CGST/SGST Act.

Q 3. What is the time limit for taking refund?

Ans. A person claiming refund is required to file an application before the expiry of two years from the "relevant date "as given in the Explanation to Section 54 of the CGST/SGST Act.

Q 4. In case the tax has been passed on the consumer, where refund will be sanction?

Ans. Yes, the amount so refunded shall be credited to the consumer Welfare Fund Section 57 of the CGST/SGST Act.

Q 5. Is there any time limit for sanctioning of refund?

Ans. Yes, refund has to be sanctioned within 60 days from the date of receipt of application complete in all respects. If refund is not sanctioned within the said period of 60 days, interest at the rate notified not exceeding 6% will have to be paid in accordance with section 56 of the CGST/SGST Act.

However, in case where provisional refund to the extent of 90% of the amounting claimed is refundable in respect of zero rated supplies made by certain categories of registered person in term of sub-section (6) of section 54 of the CGST/SGST Act, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

Q 6. Can refund be withheld by the department?

Ans. Yes refund can with held in the following circumstances:

If the person have failed to furnish any return till he files such returns;

If the registered person is required to pay any tax, interest and penalty which has not been stayed by the appellate authority/ tribunal/ court , till he pays such tax interest or penalty:

The proper officer can also deduct unpaid taxes, interest, penalty, late fee, if any from the refundable amount –Section 54(10) (b) of the CGST/SGST Act.

The commissioner can withhold any refund, if, the order of refund is under appeal and he is of the opinion that grant of such refund will adversely affect revenue in the said appeal of account of malfeasance or fraud committed- Sec.54 (11) of the CGST/SGST Act.

Q 7. Where the refund is withheld under section 54(11) of the CGST/SGST Act, will the taxable person be given interest?

Ans. When as a result of appeal or further any proceeding the registered person becomes entitled to refund, then the shall also be entitled to avail interest at the rate notified not exceeding 6% [Section 54 (12) of the CGST/ SGST Act].

Q 8. Is there any minimum threshold for refund?

Ans. No refund shall be granted even if the refundable amount is less than ₹ 100/- [Sec. 54(14) of the CGST/SGST Act.

Q 9. How will the refunds arising out of existing law be paid?

Ans. The refund arising out of existing law will be paid as per the provisions of the existing law and will be made in cash and will not be available as ITC.

Q 10. Where refund can be made before verification of documents?

Ans. In Case of any claim of refund to a registered person on account of zero rated supplies of goods or services of both other than registered person as may be notified), 90% refund may be granted on provisional basis before verification subject to such conditions and restrictions as may be prescribed in accordance with sub- section 6 of section 54 of the CGST/ SGST ACT.

Q 11. In case of refund under export, whether BRC is necessary for granting refund?

Ans. In case of refund on account of export of goods, the refund rules do not prescribe BRC as a necessary document for filling of refund claim. However, for export of services details of RBC is required to be submitted along with the application for refund.

Q12. Will the principle of unjust enrichment apply to export and supplies to SEZ Units?

Ans. The principle of unjust enrichment would not be applicable to Zero- rated supplies (i.e. export and supplies to SEZ units.)

Q 13. How will the applicant prove that the principle of unjust enrichment does not apply in his case?

Ans. Where the claim of refund is less than ₹ 2 Lakh, a self- declaration by the application based on the documentary or other evidences available with him, certifying that the incidence of tax has not been passed on to any other person would make him eligible to get refund. However, if the claim of refund is more than ₹ 2 Lakh, the applicant is required to submit a certificate from a Chartered Accountant or a Cost Accountant to the effect that the incidence of tax has not been passed on to any other person.

Q 14. Today under VAT/ CST merchant exporter can purchase goods without payment of tax on furnishing of a declaration form. Will this system be there in GST?

Ans. There is no such provision in the GST law. They will have to procure goods upon payment of tax and claim refund of the unutilized input tax credit in accordance with section 54(3)/564(3) of the CGST/ SGST Act.

Q 15. Presently under central law, exporters are allowed to obtain duty paid inputs, avail ITC on it and export goods upon payment of duty (after utilizing the ITC) and thereafter claim refund of the duty paid on exports. Will this system continue in GST?

Ans. Yes. In terms of section of the IGST Act, a registered person shall have the option either to export goods/services without payment of IGST under bond or letter of undertaking and claim refund of IRC or he can export goods/ services on payment of IGST and claim refund of IGST paid.

Q 16. What is the time period within which an acknowledgement of the refund claim has to be given?

Ans. Where an application relates to a claim for refund from the electronic cash ledger as per sub section (6) of section 49 of the CGST/ SGST Act made through the return furnished for the relevant tax period the acknowledgement will be communicated as soon as the return is furnished and in all other cases of claim of refund the acknowledgement will be communicated to the applicant within 15 days from the date of receipts of application complete in all respect.

Q 17. What is the time period within which provisional refund has to be given?

Ans. Provisional refund to the extent of 90% of the amount claimed on account of zero rated supplies in term of sub section (6) of section 54 of the CGST/SGST Act has to be given within 7 days of acknowledgement of complete application for refund claim.

Q 18. Is there any specified format for filling refund claim?

Ans. Every claim of refund has to be filed in form GST RFD 1. However, claim of refund of balance in electronic cash ledger can be claimed through furnishing of monthly/quarterly returns in form GSTR 3, GSTR4, or GSTR 7 as the case may be of the relevant period.

Q 19. Is there any specified format for filling sanction of refund claim?

Ans. The claim of refund will be sanctioned by the proper offer in form GST RFD 06 if the claim is found to be in order any payment advice will be issued in from GST RFD 05. The refund amount will then be electronically credited to the applicants given bank account.

20. What happens if there are deficiencies in the refund claim?

Ans. Deficiencies, if any in the refund claim has to be pointed out within 15 days. A form GST RFD 03 will be issued by the proper officer to the applicant pointing out the deficiencies through the common portal electronically requiring him to file a refund application after rectification of such deficiencies.

21. Can the refund claim be rejected without assigning any reasons?

Ans. No. when the proper officer is satisfied that the claim is not admissible he shall issue a notice in Form GST RFD 08 to the applicant requiring him to furnish a reply in GST RFD 09 within fifteen days and after consideration of the applicant's reply, he can accept or reject the refund claim and pass an order in Form GST RFD 06 only.

22. In respect of export of goods on payment of IGST, will the exporter need to file a separate refund claim?

Ans. No. The shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when :

The person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export ; and

The applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B and GSTR -1 or Table 6A of the said GSTR-1.

23. Is it necessary to execute a bond for effecting zero rated supply?

Ans. No. The facility to export under Letter of Undertaking (LUT) has been extended to all zero rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of ₹ 2.5 crore) vide Notification No. 37/2017- Central Tax dated 04/10/2017 Circular No. 8/82017 – GST dated 04/10/2017 may also be referred to.

24. Is there any provision for filing manual refund claims under GST?

Ans. Yes. Circular No. 17/17/2017- GST dated 15/11/2017 has been issued clarifying the procedure for filing of manual refund claims. The circular mandates that due to the non-availability of the refund module on the common portal, it has been decided by the competent authority, on the recommendations of the council, that the applications / documents/forms pertaining to refund claims on account of zero-rated suppliers shall be filed and processed manually till further orders.

25. Whether the exporter besides export is selling goods in domestic market at a inverted tax structure and can the exporter separately eligible to apply refund once for export and other for inverted tax structure ?

Ans. Yes. Even if the applicant is applying for refund for balance ITC due to export but has to apply separately for refund arises due to inverted tax structure for the same period.

The checklist should be used by the cost accountant/firm of cost accountants at the time of issuing the certificate to the exporter so as to allow him to claim tax credit in absence of proper filling of GSTR returns.

D11 : BODY OF CHECKLIST TO BE FOLLOWED

Sl No	Documents Needs	Select whichever is applicable	Risk for Non Compliances to exporter and CMA
COMMON FOR ALL EXPORTS			
1	Name, address of exporter and registration number of exporter	Yes/No/NA	Incorrect credit of input tax to wrong assess/ exporter. The CMA may face reputational or financial penalties or liabilities.
2	Checking of IEC (importer Exporter Code). In case the IEC is pending to check if any application is made to DGFT or not	Yes/No/NA	Wrong IEC Code or not making any application to DFGT might make the input of tax credit to wrong assesse. The CMA may face reputational or financial penalties or liabilities.
3	Checking of Export order/ Contract, shipping bills, Bill of Lading (and/ or Airways Bills/ Receipts). Customs/ Bank attested Invoices dangerous goods certification, insurance certification, shipper's letter of instruction, export packing list, generic cerficate of origin, Forward Inward Remittance Certificates (FIRCs). The list is just illustrative in nature	Yes/No/NA	Wrong bill or invoice will lead to extra credit or wrong credit. The CMA may face reputational or financial penalties or liabilities.

4	Has any Letter of Credit (L/C) been provided? If so is the L/C amount and currency (and if applicable the tolerance) in conformity with the contract. To check the details of Letter of Credit and all the clauses of the same.	Yes/No/NA	Non compliance of LC might lead to wrong credit or difficulties to the exporter in international trade
5	To check the nature of business the assesse (exporter) is entered into. Whether the exporter manufactures the same or the same has been manufactured by a third party.	Yes/No/NA	Wrong GST rates or incorrect refund would affect the exporter. The assesee might be subject to wrong rates of tax. The CMA may face reputational or financial penalties or liabilities.
6	Exports are not being made to sanction countries or any countries on which restrictions are being imposed by the Government of India	Yes/No/NA	This might cause reputational risk or financial penalties in case the exporter exports goods to sanctioned countries. The CMA may face reputational or financial penalties or liabilities.
7	To check GSTN number of the exporter and details regards GSTN1, GSTR 9 and GSTN 3B returns submitted. In case the same are incomplete to look into the reasons behind the same.	Yes/No/NA	Non compliance might lead to incomplete or incorrect returns file and this might cause issues in input credit

8	All relevant provisions of GST Rules, laws and sections regards Exports have been covered under GST	Yes/No/NA	Non compliance might lead to cancellation of input tax credit to exporter.
9	To check whether the input tax to be claimed is in lines with export. There is no over credit to be claimed.	Yes/No/NA	Non compliance may lead to fine to CMA.

FOR DEEMED EXPORTS			
1	Supply of goods against Advance Authorization Acknowledgment by the jurisdictional Tax officer which states that the said Advance Authorization holder has received the deemed export supplies.	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments.
2	Supply of capital goods against Export Promotion Capital Goods Authorization Acknowledgment by the jurisdictional Tax officer which states that the deemed export supplies have been received by the said Export Promotion Capital Goods Authorization holder	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments

3	Supply to Export Oriented Unit A copy of the tax invoice which is duly signed by the Export Oriented Unit stating that the deemed export supplies have been received	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments.
ZERO RATED SUPPLIES			
1.	To see the list applicable for zero rated supplies and see the exported goods fall under that category	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments
2.	Filing of GSTR9 and other GSTR as applicable	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments

FOR SEZ EXPORTS			
1.	Request Letter on Letter Head for adopting for LUT (letter of undertaking)	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments
2.	GST RFD-11	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments

3.	Bond on ₹ 100/- Stamp Paper	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments
4.	GST Registration Certificate, IEC Code, Copy of return filed under DVAT or Service tax for the preceding financial year	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments
5.	Bank Guarantee of 15% of tax involved	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments
6.	Export Bills and Invoice	Yes/No/NA	Non compliance may lead to wrong GST rates and wrong input credit. This may lead to fines to CMA for incorrect treatments

Signature/Seal Details -

Name:

Membership Number:

Place:

Date:

Signature/Seal of the Cost Accountant/Firm of Cost Accountants:

D12 : RELEVANT SECTIONS, RULES, NOTIFICATIONS, CIRCULARS

SECTION 2, 33, 37, 49, 54, 55, 56, 57, 77

Section 2 – Definitions of Customs

Section 33 – Unloading and loading of goods at approved places only Section 37 - Power to board conveyances

Section 49 - Storage of imported goods in warehouse pending clearance

Section 54 - Transshipment of certain goods without payment of duty

Section 55- Liability of duty on goods transited under section 53 or transhipped under section 54

Section 56- Transportation of certain classes of goods subject to prescribed conditions

Section 57- Appointing of public warehouses Section 77- Declaration by owner of baggage RULES 89- 97 OF CGST RULES

Rule 89 -Application for Refund of Tax, Interest, Penalty, Fees or any Other Amount

Rule 90 - Acknowledgement for Refund Application Rule 91 - Grant of Provisional Refund

Rule 92 - Order Sanctioning Refund

Rule 93- Credit of the Amount of Rejected Refund Claim Rule 94- Order Sanctioning Interest on Delayed Refunds Rule 95- Refund of Tax to certain Persons

Rule 96- Refund of IGST on Exported Goods

Rule 96A - Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking

Rule 97- Consumer Welfare Fund

Rule 97A - Manual filing and processing

Notifications and Relevance There of

NOTIFICATION NO.	DATE	MATTER
13/2017 CENTRAL	28/06/2017	Seeks to prescribe rate of interest under CGST Act 2017
39/2017 CENTRAL	13/10/2017	Seeks for cross empowerment for processing refund to State Tax Officer
49/2017 CENTRAL	18/10/2017	Seeks to notify the evidences required to be produced by the vendors of the Deemed Exporter for claiming Refund under Rule 89(2)(g) of the CGST Rules 2017
10/2018 CENTRAL	23/01/2018	Amendment of Notification No. 39/2017 dt. 13/10/2017
06/2017 INTEGRATED	28/06/2017	Seeks to prescribe the rate of interest under the CGST Act, 2017
11/2017 INTEGRATED	13/10/2017	Seeks to Cross empowerment of State Tax Officer for processing and grant of refund
01/2018 INTEGREATED	23/10/2017	Amendment of Notification No. 11/2017 dt. 13/10/2017
10/2017 UNION TERRITORY	30/06/2018	Notifies fixing rate of interest P.A.
05/2017 CENTRAL (Rate)	28/06/2017	Supplies of goods where no refund is allowed on ITC U/s 54(3) of the CGST Act, 2017
06/2017 CENTRAL (Rate)	28/06/2017	Refund of 50% of CGST on supplies to CSD U/s 55 of the CGST Act, 2017
15/2017 CENTRAL (RATE)	28/06/2017	To notify the supplies of goods where no refund is allowed on ITC U/s 54(3) of the CGST Act,2017
16/2017 CENTRAL (Rate)	28/06/2017	To notify the specialized agencies entitled to claim a refund of taxes paid on goods or services received by themselves under the CGST Act, 2017

29/2017 CENTRAL (Rate)	22/09/2017	Seeks to amend the notification no. 05/2017 dt. 28/06/2017 on restrict of refund on Corduroy Fabrics.
44/2017 CENTRAL (Rate)	14/11/2017	Seeks to amend the Notification no. 05/2017 dt. 28/06/2017 2017 on restriction of refund on Certain Fabrics.
05/2017 INTEGRATED (Rate)	28/06/2017	Supplies of goods where no refund on unutilized ITC is allowed
06/2017	28/06/2017	Notification in respect of prescribed refund @ 50% of IGST on supplies to CSD U/s 20 of IGST Act, 2017
12/2017 INTEGRATED (Rate)	28/06/2017	To notify the supplies of goods where no refund is allowed on unutilized ITC under IGST
13/2017 INTEGRATED (Rate)	28/06/2017	To notify the specialized agencies entitled to claim a refund of taxes paid on goods or services received by themselves under IGST Act
29/2017 INTEGRATED (Rate)	22/09/2017	Seeks to amend the Notification No. 05/2017 Integrated dt. 28/06/2017 on restriction of ITC on Corduroy fabric
46/2017 INTEGRATED (Rate)	14/11/2017	Seeks to amend the Notification no. 05/2017 dt. 28/06/2017 2017 on restriction of refund on Certain Fabrics.
05/2017 UNION TERRITORY (Rate)	28/06/2017	Supplies of goods where no refund on unutilized ITC is allowed U/s 54(3) of the CGST Act, 2017
06/2017 UNION TERRITORY (Rate)	28/06/2017	Notification in respect of prescribed refund @ 50% of UTGST on supplies to CSD U/s 55 of the CGST Act,2017
15/2017 UNION TERRITORY (Rate)	28/06/2017	To notify the supplies not eligible for refund of unutilized ITC under UTGST Act

16/2017 UNION TERRITORY (Rate)	28/06/2017	To notify the specialized agencies entitled to claim a refund of taxes paid on goods or services received by themselves under the UTGST Act
29/2017 UNION TERRITORY (Rate)	22/09/2017	Seeks to amend the Notification no. 05/2017 dt.28/06/2017 2017on restriction of refund on Corduroy Fabrics.
44/2017 UNION TERRITORY (Rate)	14/11/2017	Seeks to amend the Notification no. 05/2017 dt.28/06/2017 2017 on restriction of refund on certain Fabrics
20/2018 CENTRAL	28/03/2018	Extension of due date of filing of application of refund U/s 55 by Notified Agencies

The Recent amendments are as follows.

01/2019	15/01/19	Seeks to amend notification No. 48/2017 to amend the meaning of Advance Authorisation.	ITC on inputs used in manufacture of deemed exports, shall be utilised taxable supply (other than nil rated or fully exempted goods) and a CA certificate is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply.
31/2019	28/06/19	Changes to the CGST Rules 2017- Central Goods and Services Tax (Fourth Amendment) Rules, 2019	1.A time limit has been specified for new registrants under GST to furnish bank account details on GST portal earlier of due date of filing first GST return applicable to them or within 45 days from the grant of GST registration. 2.Value of supply in cases where Kerala Flood cess is applicable. 3.There are changes to Rule 66 and 67 of CGST Rules Form and manner of submitting TDS and TCS returns.

			4. Changes have been made to Rule 87 governing electronic cash ledger(ECL)- Introduction of PMT- 09 for transfer of cash from one ECL to another. 5. New rule for GST refund has been prescribed covering Refund of taxes to the retail outlets established in departure area of an international Airport. 6. A new format for GSTR-4 is notified to be filed by 30th April for a given financial year. 7. A new format for DRC-03 is notified.
Central Goods and Services Tax (Fourth Amendment) Rules, 2019	18/7/19	Changes to the CGST Rules- Central Goods and Services Tax (Fifth Amendment) Rules, 2019	Following changes are made in the CGST rules: 1. The GST registration rules are now amended to include reference to TDS deduction provision Section 52 of CGST Act. 2. e-ticketing introduced for exhibition of cinematograph films in multiplex screens. 3. A new rule for Surrender of enrolment of goods and services tax practitioner. 4. A new rule is introduced for Application for unblocking of the facility for generation of E-Way Bill and order thereof 5. The declaration statement in Statement 5B while applying for GST refund for deemed exports is changed.

39/2019	31/8/19	Section 103 of the Finance (No. 2) Act, 2019 comes into force from 1st September 2019	The Central Government has appointed 1st September 2019 as the date from which the provisions of section 103 of the Finance (No. 2) Act, 2019 comes into force. Section 103 reads as- "In section 54 of the Central Goods and Services Tax Act, after sub-section (8), the following sub-section shall be inserted, namely: (8A) **The Government may disburse the refund of the State tax in such manner as may be prescribed."**
56/2019	14/11/19	Seeks to carry out Seventh amendment (2019) in the CGST Rules, 2017. (Primarily related to Simplification of the Annual Return or Reconciliation Statement)	Following amendments are made to the CGST Rules: (1) Changes are made in the Statement or declarations to be given along with the refund applciation. (2) Changes have been made to simplify GSTR-9 and GSTR-9C forms. HSN-wise reporting of inward supplies is made optional. Read our article to find out more about these changes.
56/2019	14/11/19	Seeks to carry out Seventh amendment (2019) in the CGST Rules, 2017.	Following amendments are made to the CGST Rules: (1) Changes are made in the Statement or declarations to be given along with the refund application.

		(Primarily related to Simplification of the Annual Return or Reconciliation Statement)	(2) Changes have been made to simplify GSTR-9 and GSTR-9C forms. HSN-wise reporting of inward supplies is made optional. Read our article to find out more about these changes.
1/2018	1/23/2018	Amendment of notification No. 11/ 2017-Integrated Tax dated 13.10. 2017 for cross-empowerment of State tax officers for processing and grant of refund	In case of refund, tax paid on goods exported out of India has restrictions on its sanctioning authority.
3/2018	1/23/2018	First Amendment 2018, to CGST Rules	1.Period to file the statement in FORM GST ITC-03 (Declaration for intimation of ITC reversal/payment of tax on inputs held in stock, inputs contained in semifinished and finished goods held in stock and capital goods) icreased to one hundred and eighty days. 2.The Rate of tax under composition levy for registered persons in case of Manufacturers, other than manufacturers of such goods as may be notified by the Government changed to half percent of the turnover in the State or Union territory.

			3. The Rate of tax under composition levy for registered persons in case of Suppliers making supplies referred will be two and a half per cent. of the turnover in the State or Union territory. 4. The Rate of tax under composition levy for registered persons in case of Any other supplier eligible for composition levy will be half half per cent. of the turnover of taxable supplies of goods in the State or Union territory. 5. The value of supply of lottery authorised or run by the State government shall be he face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher. 12. Before movement of goods, the details have to be filled in Part A of FORM GST EWB-01. 13. When the goods are transported one can generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01 14.EWB guidelines are notified.

10/2018	1/23/18	Amending notification No. 39/ 2017- Central Tax dated 13.10.2017 for cross-empowerment of State tax officers for processing and grant of refund	In case of refund, tax paid on goods exported out of India has restrictions on its sanctioning authority.
20/2018	3/28/18	Extension of due date for filing of application for refund under section 55 by notified agencies	The perioid for application for refund of tax paid on inward supplies shall be mad before the expiry of eighteen months from the last date of the quarter in which such supply was received
21/2018	4/18/18	Notification seeks to make amendments (Fourth Amendment) to the CGST Rules, 2017.	1. Refund on account of inverted duty structure, refund of input tax credit – Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services. 2. Consumer welfare fund will have credits based on this notification.

26/2018	6/13/18	Seeks to make amendments (Fifth Amendment, 2018) to the CGST Rules, 2017.	1. To be eligible to remain enrolled as a GST tax practitioner a person has to be a sales tax practitioner or tax return preparer under the existing law for a period of not less than five years and answer the prescribed exam within 18 months. The time period was 12 months before this notification. 2. The formula to calculate refund on account of inverted duty structure, refund of input tax credit changed to – Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services.
53/2018	9/10/18	Seeks to make amendments (Eleventh Amendment, 2018) to the CGST Rules, 2017. This notification restores rule 96(10) to the position that existed before the amendment carried out in the said rule by notification No. 39/2018- Central Tax dated 04.09.2018.	Amending the CGST rules 2017 to restore rule 96(10) i.e refund of IGST paid on exports out of India.
54/2018	9/10/18	Seeks to make amendments (Twelfth Amendment, 2018) to the CGST Rules, 2017. This notification amends rule 96(10) to allow exporters who have received capital goods under the EPCG scheme to claim the refund of the IGST paid on exports and align rule 89(4B) to make it consistent with rule 96(10).	Exporters who have received capital goods under the EPCG scheme are allowed to claim the refund of the IGST paid on exports.

74/2018	31/12/18	Seeks to make amendments (Fourteenth Amendment, 2018) to the CGST Rules, 2017.	1. A person applying GST registration in REG-7 as TCS deductor must mention the name of the State/UT of a place he chooses where he does not have physical presence in India in Part-A and the principal place of business in Part-B. 2. Reporting in ITC-04 will now exclude any challans issued with regards to goods supplied between two job workers. 3. Supplier or his representative need not put a signature or use DSC for the issue of the invoice issued electronically in adherence to IT Act 2000. 4. Supplier or his representative need not put a signature or use DSC for the issue of the bill of supply issued electronically in adherence to IT Act 2000. 5. Supplier or his representative need not put his signature or use DSC for the issue of the consolidated tax invoice by Bank or Ticket by supplier involved in passenger services which are in adher- ence to IT Act 2000. 6. In Rule 89(5) governing provisions of refund of GST under inverted duty structure, the words 'adjusted total turnover' and 'relevant period' must be same as defined under Rule 89(4).

			7. Audit under rule 101 can be made applicable to part of the financial year too. 8. A new rule 109B for revision order and notice to person is inserted. 9. Handicraft goods has been clearly defined under Rule 138 - e-way bill rules giving reference to Central tax notification 56/2018. 10. A new rule 138E - Restriction on furnishing of information in PART A of FORM GST in inserted: Now taxpayers not filing GST returns for two tax periods consecutively, cannot generate Part - A slip of e-way bill. 11. Section 75(12) - Tax remaining unpaid on GST returns filed has been given reference to in Rule 142(5) - Tax demand cleared in Form DRC - 07. 12. A new form RFD- 01 and RFD-01A now replace the old forms. 13. Formats of GSTR - 9, GSTR - 9A and GSTR - 9C are now revised to accommodate changes recommended at 31st GST Council meeting.

CIRCULARS

CIRCULAR NO.	DATE	MATTER
08/2017	04/10/2017	Clarification on issuance for furnishing Bond/LUT
17/2017	15/11/2017	Manual filing and processing of Refund claims in respect of Zero-rated supplies
18/2017	16/11/2017	Refund on unutilized ITC on GST paid on inputs for fabric exporter
36/2018	13/03/2018	Processing of Refund applications for UIN entities
37/2018	15/03/2018	Issus in respect of Export
05/2018 CUSTOMS	23/02/2018	Refund of IGST on export invoice mismatch – Alternative mechanism with Officers interface
42/2017 CUSTOMS	07/11/2017	Refund of IGST paid on Export of goods under Rule 96 of CGST Rules 2017
43/2018		Clarification for refund to UIN
45/2018		Clarification for exporter related to refund
06/2018 CUSTOMS	16/03/2018	Refund of IGST on Exports-EGM error related cases
08/2018 CUSTOMS	23/03/2018	Refund of IGST paid on Export-Extension of date in SB005- Alternate mechanism and clarification thereof

D13 : RELEVANT FORMS AND STATEMENTS UNDER CUSTOMS

Sl. No.	Forms/ Appendix	Subject of Forms/Appendix
1	Appendix – 2L	Certificate for Offsetting of Export Proceeds https://www.ibef.org/download/Appendices-and-ANF-of-FTP-(2015-2020).pdf
2	Appendix – 4H	Register for accounting the consumption and stocks of duty free imported or Domestically procured raw materials, components etc. Allowed under advance Authorisation / DFIA http://files.indiantradeportal.in/download.aspx?file=uploads/General%20Documents/Alert/18-01-2018/DGFT_PN_52_Dtd_12-01-2018.pdf
3	Appendix – 5B	For Issue of EPCG Authorisation http://dgft.gov. in/sites/default/files/P.N.%20 08%20 dated%20 06.05.16%20English.pdf
4	Appendix – 5C	For redemption of EPCG authorization / issuance of post export EPCG duty Credit Scrip http:// dgft.gov.in/sites/default/files/P.N.%20 08%20 dated%2006.05.16%20 English.pdf
5	Appendix – 6E	Form of Legal Agreement for EOU/EHTP/STP/BTP https://dgft.gov.in/sites/default/files/pn36_0.pdf
8	Appendix – 6H	Procedure to be followed for reimbursement of Central Sales Tax (CST) on supplies made to Ex- port Oriented Units (EOUs) and units in Electron- ic Hardware Technology Park (EHTP) and Soft- ware Technology Park (STP)

9	Appendix – 7E	Format for Fixation of Drawback Rate
10	Appendix – 8A	Application for certification of export performance of units in the Pharmaceutical and Biotechnology sectors by the regional offices of the DGFT as per customs notification no 12/2012 dated 17.03.2012 (erstwhile notification No. 21/2002 dated 01.03.2002)
11	Appendix – 8B	Application Performa for certification of export performance of units in Agro Chemicals sectors by the Regional Offices of the DGFT as per cus- toms Notification no 12/2012 dated 17.3.2012
12	ANF – 2M	Application Form for Import of Restricted Items (Para 2.50 of HBP)
13	ANF – 4A	Application for issue of Advance Authorization /Advance Authorization for Annual Requirement / Invalidation Letter / Advance Release Order (ARO)
14	ANF – 4B	Application for Fixation/ Modification/Revision of Standard Input Output Norms (SION)
15	ANF – 4F	Application for Redemption / No Bond Certificate against Advance Authorization
16	ANF – 4H	Application for GEM REP Authorization
17	ANF – 4I	Application for Issue of Nominated Agency Certificate (NAC)/ Renewal of Nominated Agency Certificate

CONCLUSION

The above checklist is illustrative and not exhaustive. The checklist just acts as a guideline which will be helpful to the cost accountants to give a true and fair

View while providing the export exemption certificate to the exporter. There are no restrictions anywhere to prevent the issuer of the

certificate (cost Accountants/Firms) from performing further checks as may be applicable depending on the situation encountered.

The checklist should be used as a guidance tools to facilitate the certificate issuance as per Circular 12/2018 Customs dated 29.05.2018 to help the exporter Claim input tax credit after paying the taxes or in absence of complete GSTR1 and 3.

The aim to prepare the checklist is to have uniformity in the checks to be followed by all cost accountants/firm of cost accountants and to avoid basic Misses while issuing the same.

D14 : SINGLE AUTHORITY DISBURSEMENT OF REFUND

The suggestion of different members would be highly appreciated for the successful implementation of the guidance checklist across GST Council in its 37'th meeting has taken decision of Integrated refund system with disbursal by single authority and the same has been successfully deployed from 26'th September, 2019 on the Common portal. It is pertinent to mention that vide Finance (No. 2) Act, 2019 in Section 54 of the CGST Act, after sub-section (8), 8A has been inserted and by which the Central Government may disburse the refund amount to the taxpayers in respect of refund of the State tax as well.

Since the implementation of GST, there has been dual system of disbursal of refund amount to the taxpayers or claimants. The Central tax authority has been sanctioning the Central tax (CGST), whereas State tax (SGST) by the State tax authority. So the taxpayers were required to approach to the both central and state tax authorities to get his refund amount. The dual authority for refund is very time consuming and slow disbursal of refund amount to the claimants. For which the Government has taken initiative for 100% online refund process and disbursal through a single authority, successfully deployed on GST portal from 26'th September,2019. C.B.I & C has clarified refund procedures vide its master Circular No. 125/44/2019-GST dated 18-11-2019 in suppression of earlier Circulars. However, the provisions of the said Circulars shall continue to apply for all refund applications filed on the common portal before 26-09-2019.

Filing of refund applications in FORM GST RFD-01

With effect from 26-09-2019, the applications for the following types of refunds shall be filed in FORM GST RFD-01 on the Common portal

and the same shall be processed electronically:

a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;

b. Refund of tax paid on export of services with payment of tax;

c. Refund of unutilized ITC on account of supplies made to SEZ Unit/ SEZ Developer without payment of tax;

d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;

e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;

f. Refund to supplier of tax paid on deemed export supplies;

g. Refund to recipient of tax paid on deemed export supplies;

h. Refund of excess balance in the electronic cash ledger;

i. Refund of excess payment of tax;

j. Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;

k. Refund on account of assessment/provisional assessment/ appeal/any other order;

l. Refund on account of "any other" ground or reason.

Online refund processing and single authority disbursement:

The online processing of refund applications and single authority disbursement has been implemented. The taxpayers have to follow the changes in various forms. The following modalities shall be followed for all refund applications filed in FORM GST RFD-01 on the common portal with effect from 26-09-2019.

Procedure of Refund Application: (FORM GST RFD-01):

The applicants were required to file refund application in FORM GST RFD-01 on the Common portal. The facility of uploading these other documents / invoices shall be available on the common portal where each of maximum 5MB, may be uploaded along with the refund application. No requirement to take print out of application and submit it physically to the jurisdictional tax office along with all supporting documents. The Application Reference Number (ARN) will be generated only after application completed process. The bank

account details mentioned in the refund application shall be validated by PFMS after fling of FORM GST RFD-01. The taxpayers must ensure that the bank account details selected in the refund application are valid and correct. As soon as the ARN is generated, the refund application along with all supporting documents shall be transferred electronically to the jurisdictional proper officer who shall be able to view it on the system.

Compliance of Returns filing for refund:

Any refund claim for a tax period may be filed only after furnishing all the returns in FORM GSTR-1 and FORM GSTR-3B which were due to be furnished on or before the date on which the refund application is being filed. In case of composition taxpayers, a non-resident taxable person, or Input Service Distributor (ISD), shall have to furnished returns in FORM GSTR-4 (along with FORM GST CMP-08), FORM GSTR-5 or FORM GSTR-6 as the case may be.

Acknowledgement: (FORM GST RFD-02)

The proper officer shall issue acknowledgement in FORM GST RFD-02 electronically to the taxpayer within 15 days of generation of ARN. The taxpayer shall be able to view the acknowledgement in FORM GST RFD-02 on his dashboard. The taxpayer will also receive communication through email and SMS.

Deficiency memo: (FORM GST RFD-03)

The proper officer shall issue deficiency memo in FORM GST RFD-03 electronically to the taxpayer in case of incomplete application within 15 days of deficiencies are noticed. With the issuance of FORM GST RFD-03, the ITC/ cash will get recredited to the electronic credit/cash ledger of the taxpayer. The taxpayer has to file fresh application and distinct ARN shall be generated. It is also clarified that after correction of deficiencies, fresh application shall be filed within 2 years of the relevant date.

Provisional refund Order: (FORM GST RFD-04)

The proper officer shall issue **FORM GST RFD-04** electronically to the tax payer for provisional refund of 90 per cent. There is no prohibition under the law preventing a proper officer from sanctioning the entire amount within 7 days of issuance of acknowledgement through issuance of **FORM GST RFD-06.** No further scrutiny is not

required; if the proper officer is fully satisfied that refund claim on account of zero-rated supplies is in order.

No adjustment of Refund:

It is clarified that no adjustment or withholding of refund, shall be allowed refund which has been provisionally sanctioned. In cases where there is an outstanding recoverable amount due from the applicant, the proper officer, instead of granting refund on provisional basis, may process and sanction refund on final basis at the earliest and recover the amount from the amount so sanctioned.

Scrutiny of Application:

In case of refund claim on account of export of goods without payment of tax, the shipping bill details shall be checked by the proper officer through ICEGATE SITE and check details of EGM, shipping bill number and date. While processing refund claims, information contained in Table-9 of **FORM GSTR-1** of the relevant tax period and FORM GSTR-3B, if any correction or deficiency of data furnished by the taxpayer.

Payment Order: (FORM GST RFD-05)

The proper officer shall issue payment order in FORM GST RFD-05 electronically to the taxpayer. The sanctioned refund amounts, as entered in the payment orders issued by the Central and State / UT tax officers, shall be disbursed through the Public Financial Management System (PFMS) of the Controller General of Accounts (CGA), Ministry of Finance, Government of India. The bank account details mentioned in the refund application shall be validated by PFMS after issuance of FORM GST RFD-05 by the proper officer. If the bank account details mentioned by an applicant in the refund application submitted in FORM GST RFD-01 are invalidated, an error message shall be transmitted by PFMS to the common portal. On receiving such an error message, an applicant can rectify invalidated bank account details filing a non-core amendment in FORM GST REG-14. The proper officer will be able to issue payment order in FORM GST RFD-05 only after the selected bank account has been validated.

Final Refund Sanction / Rejection Order: (FORM GST RFD-06)

In case of rejection of refund claim of unutilized / accumulated ITC due to ineligibility of the input tax credit under CGST Act and rules made thereunder, the proper officer shall have to issue show cause notice in FORM GST RFD-08. If the reply of the taxpayer is not satisfactory then by following the principles of natural justice the proper officer shall

issue FORM GST RFD-06 electronically to the taxpayer for rejection of refund. The amount so rejected shall be re-credited to electronic credit ledger of the applicant using FORM GST PMT-03.

Withholding Order: (FORM GST RFD-07B)

The proper officer shall issue withholding order in FORM GST RFD-07B electronically to the taxpayer. The taxpayer shall able to view the withhold order in FORM GST RFD-07B on his dashboard. The taxpayer will receive communication through email and SMS.

Show Cause Notice: (FORM GST RFD-08)

The tax officer shall issue FORM GST RFD-08 electronically to the taxpayer. The taxpayer shall be able to view the show cause notice in FORM GST RFD-08 on his dashboard. The taxpayer is expected to give reply to the SCN within 15 days of receipt of the SCN. If the taxpayer doesn't respond within 15 days of the issuance of SCN, the tax officer can take action on the refund application. The taxpayer will receive communication through email and SMS.

Reply to Show Cause Notice by the Taxpayer: (FORM GST RFD-09)

The taxpayer is required to reply the SCN electronically / online in FORM GST RFD-09 form which would be available on his dashboard. The taxpayer shall be able to reply to the SCN and upload supporting documents electronically through FORM GST RFD-09. The proper officer may not process the reply to the SCN if not given electronically in FORM GST RFD-09 by the taxpayer.

Order for Recredit of Rejected Amount: (FORM GST PMT- 03)

The proper officer shall issue order for recredit of rejected amount in FORM GST PMT-03 electronically. With the issuance of FORM GST PMT-03, the inadmissible ITC shall get recredited to the electronic credit ledger of the taxpayer automatically. The taxpayer is required to give an undertaking that he will not file an appeal against the refund order if he/she desires to get a recredit of the rejected amount. This undertaking has to be submitted to the tax officer manually. The taxpayer shall be able to view the recredit order in FORM GST PMT-03 on his dashboard.

Processing of Refunds at the level of Central DDO:

Once the records (FORM GST RFD-05) in R1 form (after bank account

validation by PFMS) are received by the DDO, the Bill will be prepared by DDO. The designated DDO will prepare the electronic bill in the PFMS system putting his digital signature before forwarding the same to the e-PAO (Refund) of Pr. CCA (CBIC).

Processing at the level of e-PAO (Refunds):

The e-PAO (Refund) of Pr. CCA (CBIC) will process the Bills for refund payment and its disbursement by issuing Payment authorization to the accredited bank (SBI) of CBIC for putting his digital signature. The Voucher will be sent to SBI by PFMS for payment.

Processing by Accredited Bank of CBIC:

SBI which is integrated with PFMS will honour the payment authorization made by e-PAO GST (Refund) and will make payments in the Taxpayers/Applicant Bank account as per the following schedule:

1. If the payment authorization is received by SBI from e-PAO GST Refund during the working hours of the bank, the same will be further pushed to the beneficiary's bank during the same day.
2. If SBI receives the payment/authorization after the close of the working hours during the day, the same will be processed for payment on the next working day. In no case, it will be postponed without any valid reasons which will be communicated to the e-PAO GST (Refund) immediately.
3. The SBI after making the payments in the banks accounts of Taxpayer/Applicant will seek reimbursement from the Govt. account in RBI. The reimbursement will be sought after getting successful confirmation of the transactions from the beneficiary's bank and not before that. SBI will provide the confirmation/ status of the payment transactions to e-PAO GST Refund by one of the following messages:
    1. Confirmation of successful credit in the taxpayer's/applicant's bank account,
    2. Failure of the transactions at the end of the taxpayer's/ applicant's bank along with the specific reasons/failure code.

The unsuccessful/failed transaction at the end of taxpayer's/ applicant's bank will be treated as cancelled upon information received from SBI. SBI will not claim reimbursement of such failed transaction from the Govt. Account in RBI.

C.B.I&C, Circular No. 125/44/2019-GST dated 18-11-2019- Annexure

– A: Specified the list of all statements / declarations/undertakings/ certificates and other supporting documents to be provided along with the refund application.

Annexure-B - The manner of statement of invoices to be submitted with application for refund of unutilized ITC.

D15 : STANDARD OPERATING PROCEDURE (SOP) TO BE FOLLOWED BY EXPORTERS

Several cases of monetisation of credit fraudulently obtained or ineligible credit through refund of Integrated Goods & Service Tax (IGST) on exports of goods have been detected in past few months. On verification, several such exporters were found to be non-existent in a number of cases. In all these cases it has been found that the Input Tax Credit (ITC) was taken by the exporters on the basis of fake invoices and IGST on exports was paid using such ITC.

To mitigate the risk, the Board has taken measures to apply stringent risk parameters-based checks driven by rigorous data analytics and Artificial Intelligence tools based on which certain exporters are taken up for further verification. Overall, in a broader time frame the percentage of such exporters selected for verification is a small fraction of the total number of exporters claiming refunds. The refund scrolls in such cases are kept in abeyance till the verification report in respect of such cases is received from the field formations. Further, the export consignments/shipments of concerned exporters are subjected to 100 % examination at the customs port.

While the verifications are caused to mitigate risk, it is necessary that genuine exporters do not face any hardship. In this context it is advised that exporters whose scrolls have been kept in abeyance for verification would be informed at the earliest possible either by the jurisdictional CGST or by Customs. To expedite the verification, the exporters on being informed in this regard or on their own volition should fill in information in the format attached as Annexure 'A' to this Circular and submit the same to their jurisdictional CGST authorities for verification by them. If required, the jurisdictional authority may seek further additional information for verification. However, the jurisdictional authorities must adhere to timelines prescribed for verification.

Verification shall be completed by jurisdiction CGST office within 14 working days of furnishing of information in proforma by the exporter. If the verification is not completed within this period, the jurisdiction

officer will bring it the notice of a nodal cell to be constituted in the jurisdictional Pr. Chief Commissioner/Chief Commissioner Office.

After a period of 14 working days from the date of submission of details in the prescribed format, the exporter may also escalate the matter to the Jurisdictional Pr. Chief Commissioner/ Chief Commissioner of Central Tax by sending an email to the Chief Commissioner concerned (email IDs of jurisdictional Chief Commissioners are in Annexure B).

The Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax should take appropriate action to get the verification completed within next 7 working days.

In case, any refund remains pending for more than one month, the exporter may register his grievance at www.cbic.gov.in/issue by giving all relevant details like GSTIN, IEC, Shipping Bill No., Port of Export & CGST formation where the details in prescribed format had been submitted etc.. All such grievances shall be examined by a Committee headed by Member GST, CBIC for resolution of the issue.

(Circular No.131/1/2020-GST, dated 25'th January' 2020)

D16 : LETTER OF UNDERTAKING (LUT) AND BOND UNDER GST

Letter of Undertaking (LUT) or Bond is a document prescribed to execute a guarantee given to the department prior to export and it protects the Government revenue and allows the registered person to export goods or services without payment of IGST. The concept of LUT or Bond is not new concept and was borrowed from erstwhile provision of Central Excise. In the GST regime export is governed under IGST Act, 2017 & Customs Act, 1962.

Exports under GST:

In the GST regime, as per the provisions of IGST Act, 2017 supplies of goods and services for exports are to be treated as" Zero rated supplies" implying that a registered taxable person exporting goods and services shall follow the procedure of export under bond or letter of undertaking without paying Integrated tax and with right to claim refund of unutilized input tax credit or on payment of integrated tax if he does so.

Export procedure:

1.1.E. & C has issued Circular No.26/2017-Customs., dated 1'st July'2017[2027(351) E.L.T. (T22)] and Notification No.16/2017-Central Tax 1'st July'2017 read with Circular No.4/4/2017-GST, dated 7'th July'2017 [2017(2) G.S.T.L.564] regarding Export procedure. The details of export procedures as under:

Any person making zero-rated supply (i.e. any exporter) shall be eligible to claim refund under either of the following options, namely:-

(a) he may supply goods or services or both under bond or letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 (Refunds) of the Central Goods and Services Tax Act, 2017 or the rules made there under (i.e. the Central Goods and Service Tax Rules, 2017).

For the option (a) above, as per rule 96A of the CGST Rules, 2017 any registered person exporting goods and services without payment of integrated tax is required to furnish bond or a letter of Undertaking (LUT) in FORM GST RFD-11 on the common portal online to the jurisdictional Deputy Commissioner / Assistant Commissioner as per power has been delegated vide Circular No. 2/2/2017-GST, dated 4.7.2017[2017(2) G.S.T.L.313).

The facility of export under LUT has been now extended to all registered persons who intend to supply goods or services for export without payment of integrated tax except those who have been prosecuted for any offence under the CGST Act or the Integrated Goods and Services Tax Act, 2017 and not satisfy conditions prescribed vide Notification No.16/2017-Central Tax dated 01-07-2017.

Eligible exporter to execute LUT:

The category of exporters who are eligible to export under LUT has been specified along with the conditions and safeguards vide Notification No.16/2017-Central Tax dated 01-07-2017. The following conditions for a registered person to be eligible for submission of Letter of Undertaking in place of a bond.

(a) any registered person who has received a minimum foreign inward remittance of 10% of export turnover in the preceding financial

year is eligible for availing the facility of LUT provided that the amount received as foreign inward remittance is not less than rupees one crore. This means that only such exporters are eligible to LUT facilities who have received a remittance of rupees one crore or 10% of export turnover, whichever is a higher amount, in the previous financial year.

(b) a status holder as specified in paragraph 5 of the Foreign Trade Policy 2015-2020; or

(c) Further, the registered person has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or under any of the erstwhile laws in case where the amount of tax evaded exceeds two hundred and fifty lakh rupees. However, the above requirement has been relaxed with effect from 04th October, 2017 vide Notification No. 37/2017 – Central Tax dated 04.10.2017 has extended the facility of Letter of Undertaking to all registered tax payers.

Who can avail Letter of Undertaking?

Any registered person availing the option to supply goods or services for export without payment of Integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner (vide circular no 2/2/2017-GST [2017-GST [2017(2) G.S.T. L.313] the power has been delegated to Deputy/ Assistant Commissioner).

Execution of LUT:

LUT to shall be submitted on portal by exporters in FORM GST RFD-11 on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond as per Notification No. 37/2017-C.T., then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected *ab initio*. No document needs to be physically submitted to the jurisdictional office for acceptance of LUT. (Circular No. 40/14/2018-GST dated 06.04.2018[2018(11) G.S.T.L.C39])

Validity of LUT:

LUT is valid for the whole financial year in which it is tendered and

get expire on 31'st March for that year. Hence, exporter has to furnish fresh LUT in beginning of the each financial year on common portal. Exporter is required to apply for LUT prior to export of goods and services hence LUT should be applied on common portal before 31'st of March for the subsequent financial year.

However, in case the goods are not exported within the time specified in sub-rule (1) of Rule 96A of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable Integrated Tax or under bond with bank guarantee.

It is clarified that LUT shall be valid for twelve months. If the exporters fails to comply with the conditions of the LUT he may be asked to furnish a bond. The exporters follow the procedure of option (a), shall file refund claim of unutilized input tax credit by an application electronically through Common portal with all supporting documents as prescribed in the said rules.

Form of LUT: Till the time **FORM GST RFD-11** is available on the common portal, the registered person (exporters) may download the **FORM GST RFD-11** from the website of the Central Board of Excise and Customs (*www. cbec.gov.in*) and furnish the duly filled form to the jurisdictional Deputy/ Assistant Commissioner having jurisdiction over their principal place of business. The LUT shall be furnished on the letter head of the registered person, induplicate, and it shall be executed by the working partner, the Managing Director or the Company Secretary or the Proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor. The bond, wherever required, shall be furnished on non-judicial stamp paper of the value as applicable in the State in which the bond is being furnished.

Documents for LUT: Self-declaration to the effect that the conditions of LUT have been fulfilled shall be accepted unless there is specific information otherwise. That is, self-declaration by the exporter to the effect that he has not been prosecuted should suffice for the purposes of Notification No. 37/2017-C.T., dated 4th October, 2017. Verification, if any, may be *post-facto* basis.

Time for acceptance of LUT and deemed acceptance: As LUT is a prior requirement for export, including exports to a SEZ developer or a SEZ unit, the LUT should be processed on top most priority. Thus, in exercise of the powers conferred by sub-section (3) of Section 5 of the CGST Act, 2017, it is hereby stated that the acceptance of the Bond/ Letter of Undertaking required to be furnished by the exporter under rule 96A of the said rules shall be done by the jurisdictional Deputy/ Assistant Commissioner vide Circular No.2/2/2017-GST dated 4'th July, 2020. It is clarified that LUT should be accepted within a period of three working days of its receipt along with the self-declaration as stated in para 2(d) above by the exporter. If the LUT is not accepted within a period of three working days from the date of submission, it shall be deemed to be accepted.

Requirement of Bond:

All exporters, who are not covered by the notification no. 16/2017-Central Tax, dated 07-07-2017, would execute bond to clear export of goods and services without payment of tax.

The procedure for submission and acceptance of bond has been prescribed vide circular No.2/2/2017-GST dated 4'th July'2017. The bond shall be furnished on non-judicial stamp paper of the value as applicable in the State in which bond is being furnished. It is further clarified vide Circular No.4/4/2017-GST dated 7.07.2017 that the exporters shall furnish a one- time bond (a running bond). In case the bond amount is insufficient to cover the tax liability in yet to be completed exports, the exporters shall furnish a fresh bond to cover such liability.

The Bond/LUT shall be accepted by the jurisdictional Deputy/ Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the bond/LUT before Central Tax Authority or State Tax Authority till the administrative mechanism for assigning of taxpayers to respective authority is implemented. However, if in a State, the Commissioner of State Tax so directs, by general instruction, to exporter, the Bond/ LUT in all cases be accepted by Central tax officer till such time the said administrative mechanism is implemented. Central Tax officers are directed to take every step to facilitate the exporters.

Further, the Board vide Circular No.4/4/2017-GST dated 07.07.2017 has clarified the following additional points as per request of the exporters and filed formations due to difficulties are being faced in

complying with the procedure prescribed for making exports of goods and services without payment of IGST.

With regard to furnishing of bank guarantee with bond in terms of rule 96A of the CGST Rules, 2017, it is directed that the Jurisdictional Commissioner may decide about the amount of bank guarantee depending upon the track record of the exporters. If Commissioner is satisfied with the track record of an exporter then furnishing of bond without bank guarantee would suffice. In any case the bank guarantee should normally not exceed 15% of the bond amount. It is expected that this provision would be implemented liberally. Some of the instances of liberal interpretation are as follows:

i. an exporter registered with recognized Export Promotion Council can be allowed to submit bond without bank guarantee on submission of a self-attested copy of the proof of registration with a recognized Export Promotion Council

ii. In the GST regime, registration is State-wise which means that the expression 'registered person' used in the said notification may mean different registered persons (distinct persons in terms of sub-section (1) of section 25 of the Act) if a person having one Permanent Account Number is registered in more than one State. It may so happen that a registered person may not satisfy the condition regarding foreign inward remittances in respect of one particular registration, because of splitting and accountal of receipts and turnover across different registered person with the same PAN. But the total amount of inward foreign remittances received by all the registered persons, having one Permanent Account Number, maybe ₹1 crore or more and it also maybe 10% or more of total export turnover. In such cases, the registered person can be allowed to submit bond without bank guarantee.

Running Bond: The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding Integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit / credit entries of Integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

Acceptance of LUT / Bond by Jurisdictional authority:

LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

LUT for supplies to Nepal and Bhutan:

Acceptance of LUT for supplies of goods to Nepal or Bhutan or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines. It may also be noted that the supply of services to SEZ developer or SEZ unit under LUT will also be permissible irrespective of whether payments are made in Indian currency or convertible foreign exchange as long as they are with the applicable RBI guidelines. The supply of services, however, to Nepal or Bhutan will be deemed to be export of services only if the payment for such services is received by the supplier in convertible foreign exchange. [Circular 8/8/2017 dated 4-10-17]. Supply of services having place of supply in Nepal or Bhutan against payment in Indian rupees is exempt under Notification 9/2017-IGST inserted vide Notification No. 42/2017-Integrated Tax (Rate), dated 27-10-2017.

Requirement of LUT/Bond for Non-GST and exempt goods:

As per section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per Section 2 (47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of integrated tax. However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/ bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or

under the Customs Act, 1962, if any. Further, the exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, Integrated tax and Compensation cess in such cases vide Circular No. 45/19/2018 dated 30.05.2018[2018(13) G.S.T.L.C3].

Conclusion: In brief, with the implementation of GST regime, w.e.f 1'st July'2017, the Government has issued number of Circulars and Notifications for smooth operation of export of goods and services. In view of the difficulties are being faced by exporter for execution of LUT / Bond for export of goods and services without payment of IGST, the C.B.E. & C has issued clarificatory Circular No.2/2/2107-GST dated 02.02.2017,Circular No. 4/4/2017-GST dated 07.07.2017, Circular No. 5/5/2017- GST, dated 11.8.2017 , Circular No. 8/8/2017-GST, dated 4.10.2017 and Notification No.16/2017-Central Tax, dated 07.07.2017 and Notification No. 37/2017-Central Tax, dated 4.10.2017 to overcome the issues related to execution of LUT/ Bond. Hence, in the initial period of GST regime, Government had given relaxation for execution of LUT on common portal and exporters were permitted to execute LUT manually until available of FORM GST RFD-11 on common portal and LUT was permitted to execute on the letter head of the registered person, in duplicate and it was signed by the working partner, the managing Director or authorised person of the company. It is pertinent to mention that it is not mandatory to execute LUT/ Bond for export, even if an exporter having option of export of goods or services on payment of IGST and subsequent go for refund of tax. The LUT/ Bond is required to execute for export goods or services without payment of IGST. The LUT / Bond facilitate exporters to control outflow of cash towards payment of tax and minimise transaction cost of the exporter.

D17 : INTEREST ON DELAYED REFUNDS UNDER CUSTOMS AND GST

Interest means the additional amount is required to be paid by the taxpayers beyond the stipulated date as per the rates provided under statutes due to delayed payment of taxes. Similarly, tax provision also prescribes interest to be paid by the department due to delayed payment of refund amount to the claimants as per statutes. The said provision is available both in direct as well as in indirect taxes, the author wishes to analyse the provisions of interest on delayed refund under indirect taxes.

Statutory Provision under Customs:

Refund of duty: Section 27 of the Customs Act, 1962 prescribes the provision of refund of duty and any person claiming refund of any duty or interest,-

(a) paid by him or

(b) borne by him,

may make an application in such form and manner as may be prescribed for such refund to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, before the expiry of one year, from the date of payment of such duty or interest:

Interest on delayed refunds:

Section 27A of the Customs Act, 1962 prescribes the provision of interest on delayed refunds and if any duty ordered to be refunded under sub- section (2) of section 27 to an applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate , not below 5% and not exceeding 30% per annum as is for the time being fixed by the Central Government by notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:

Provided that where any duty, ordered to be refunded under sub-section (1) of section 27 in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund such duty.

The above cited provision is very clear that the relevant date of interest to be paid to the applicant shall be date of application of refund received by the department and interest shall be payable after completion of three months from that date of submission of refund application by the claimant.

Case Laws:

The decision of the Hon'ble Supreme Court in the case of Union of India v. Orient Enterprises, reported in 1998 (99) E.L.T. 193 (S.C.) held "In the present case also till the insertion of Section 27A in the

Act by Act 22 of 1995 there was no right entitling payment of interest on delayed refund under the Act. Such a right was conferred for the first time by the said provision. Act 22 of 1995 also inserted Section 28AA which provides for payment of interest on delayed payment of duty by a person who is liable to pay the duty. Thus at relevant time there was no statutory right entitling the respondents to payment of interest on delayed refund and the writ petition filed by them was not for the enforcement of a legal right available to them under any statute. The claim for interest was in the nature of compensation for wrongful retention by the appellants of money that was collected from the respondents by way of customs duty, redemption fine and penalty. In view of the law laid down by this Court in *Suganmal* (supra) a writ petition seeking the relief of payment of interest on delayed refund of the amount so collected could not, in our opinion, be maintained. The decisions on which reliance has been placed by Shri Rawal were cases where the legality of the orders requiring payment of tax or duty were challenged and the High Court in exercise of its jurisdiction under Article 226 of the Constitution, while setting aside the said orders, has directed the refund of the amount so collected with interest. The direction for payment of interest in these cases was by way of consequential relief along with the main relief of setting aside the order imposing the tax or duty. Those cases stand on a different footing and have no application to the present case. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondents before the High Court is dismissed. No order as to costs. (Para 8)

The decision of the Hon'ble High Court of Mumbai in the case of Garden silk Mills Ltd. v. Union of India reported in 2016 (338) E.L.T. 670 (Bom.), it held that this is a clear case of a statutory interest and which is payable in the event the refund claims are not granted. This serves as a deterrent for holding up sums which are legitimately due and payable. Therefore, the refund of duty must follow in the event there is a declaration in favour of the assessee that the amount was not payable. Once that amount is payable /refundable and a refund application was also made, which was allowed, what the respondents have done is only paid the sum, namely, the principal sum. The interest component for the delayed payment or refund has not been paid. The writ petition is filed so as to claim this crystallized amount. There is no denial of the statutory provision, nor the mandate flowing therefrom is questioned. The decisions relied upon by Mr. Jetly do not refer to the statutory prescription and which is specific in terms. It

is not as if any such request and as is being made is considered for the first time. Upon the *parimateria* provision emerging from Section 11BB of the Central Excise Act, 1944, a Division Bench of this Court to which one of us (S.C. Dharmadhikari, J.) was a party held that the Revenue must, therefore, pay the amount in time. If the amount is not refunded in time, it must carry interest. The period from the time the refund application was made and the amount of actual refund is the time period within which the obligation to pay the interest arises and precisely this is the interest which is being claimed. Ordinarily, the parties like the petitioner should not be required to make application for refund. Further, there is no *lis*or adjudication for the duty amount is not payable. The duty is not payable but has been paid already and, then, that sum is required to be refunded, provided all the conditions in that behalf are satisfied. Once there is a refund order, as has been made in the present case in favour of the petitioner and even the implementation thereof is delayed, then, that must carry interest and that is why Section 27A [subsection (1)] provides for payment of interest. It is now that sum which is directed to be payable. (Para 7)

The decision of the Hon'ble High Court of Delhi in the case of Principal Commissioner of Customs. v. Riso India Pvt. Ltd reported in 2016 (333) E.L.T. 33 (Del.), held that " In the context of the present case, Sections 27 and 27A of the Act form a statutory scheme for grant of refunds. Section 27A unambiguously states that where there is a delay in making the refund, interest would be payable on the amount of refund, in the manner stipulated under Section 27A of the Act. A collective reading of Section 3(8) of the CTA and Sections 27 and 27A of the Act leads to the conclusion that the provisions in the Act concerning refunds and interest on delayed refunds, would equally apply to refund of SAD leviable under Section 3 of the CTA. Circular No. 6/2008 to the extent that it seeks to deny a successful applicant for refund of SAD, in terms of Notification No. 102/2007, interest on such refund in terms of Section 27A of the Act, is inconsistent with and *ultra vires* Section 27A of the Act.(Para 20)

The recent judgement of the Hon'ble High Court of Andhrapradesh in the case of Commissioner of Customs. v. Gaytri Timber Pvt.Ltd, reported in 2019 (367) E.L.T. 772 (A.P.), has held that "In any case, the last portion of the substantial part of the Section 27A of the Act makes it clear that the starting point for calculation of interest is the expiry of three months from the date of receipt of the application. The date of commencement of the liability for payment of interest

is not relatable to either the date of the original order or the date of the order of the appellate authority but relatable only to the date of expiry of three months from the date of application. Therefore, it leaves no iota of doubt that the assessee in this case became entitled to interest from the date of expiry of 3 months of the date of application. Hence, the question, of law raised by the Revenue is answered against them and the four appeals are dismissed".

Statutory Provision under GST:

Refund of tax: Section 54 of the CGST Act, 2017 prescribes that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed.

Interest on delayed refunds:

Section 56 of the CGST Act, 2017 prescribes that if any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within 60 days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding 6% as may be specified in the notification issued by the Government on the recommendation of the Council shall be payable in respect of such refund from the date immediately after the expiry of 60 days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within 60 days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding 9% as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund.

Order sanctioning interest on delayed refunds:

Rule 94 of the CGST Rules, 2017 prescribes that where any interest

is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in FORM GST RFD-05, specifying therein the amount of refund which is delayed , the period of delay for which interest is payable and the amount of interest payable , and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

As per the cited statutory provision under GST, interest on delayed refund to be paid to the claimants on completion of 60 days from the date of receipt of application and such amount of interest shall be electronically credited to any of the bank accounts of the applicant.

Case Law:

M/s Saraf Natural Stone. v. Union of India, Special Civil Application No.15925 of 2018 (C/SCA/ 15925/2018 (C/ SCA/15925/2018[2019(28) G.S.T.L.385(Guj.)].

The Hon'ble High Court of Gujarat, while disposing the above application, Court has directed the authorities to pay interest for delay in paying GST refunds. The authorities were asked to pay the interest at the rate of nine percent per annum.

Brief facts: **Saraf Natural Stone, a partnership firm, had filed a claim of GST refund.** However, there was substantial delay by the authorities in granting of refund. **Following this, the firm approached the High Court by way of writ and demanded interest from the authorities for the delay.** Where it has submitted that the authorities are required to grant a provisional refund of 90 percent of the amount claimed within seven days of the filing of the claim. **The firm said the authorities have not provided any reason for the delay and it was never in receipt of any deficiency notice, which could have transpired such a delay.** It was further submitted that the delay has impacted its working capital and hence it is entitled to receive interest on such delayed payment.

Contention of the Respondent: The Revenue department, the Central Board of Indirect Taxes and Customs (C.B.I.&C.) and the GST

Network submitted that there was no express provision made for entitlement of interest to the firm and hence there was no merit in this petition.

Order of the Court: The Hon'ble High court held that the position of law is quite well settled wherein the provisions relating to interest on delayed payment of refund have been consistently held as beneficial and non-discriminatory.

Conclusion:

The provisions of interest on delayed refunds have been provided in Customs as well as GST statutes. Under Customs interest amount shall be calculated on completion of three months from the date of submission of refund application by the claimants till the date of payment of such refund whereas under GST interest on delayed payment of refund shall be calculated on completion of 60 days from the date of receipt of application to till the date of refund sanctioned by the GST authorities. The statutory provisions has made mandatory for the department to pay interest on delayed payment of refunds to avoid litigation between assessees and tax authorities.

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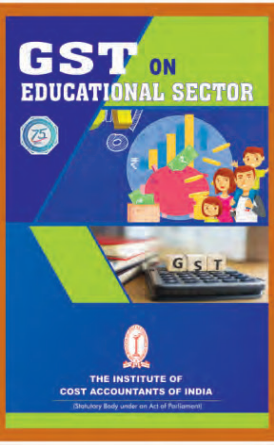

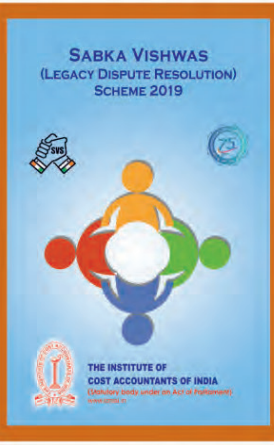

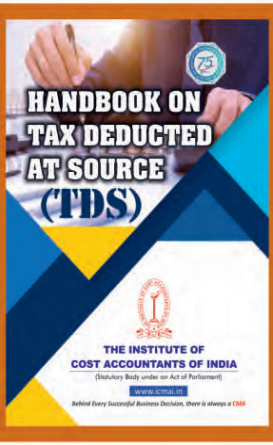

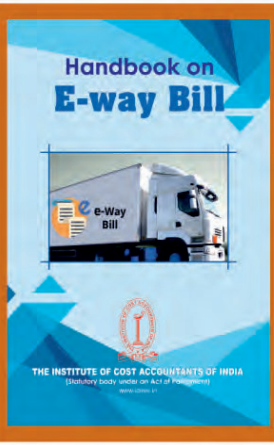

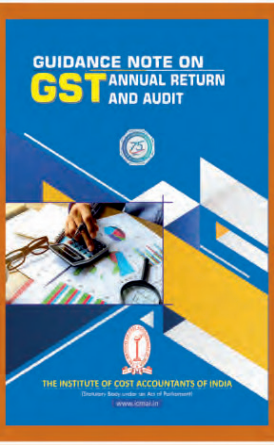

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