## IMPORTS & VALUATION OF IMPORTS

#### Import of Goods

- Import of Goods in India are governed by many laws. Prime among these are
- Foreign Trade (Development & Regulation Act) 1992
- The Objective of the act is to make provision for development and regulation of foreign trade by facilitating imports and increasing exports.
- Customs Act 1962 and Customs Tariff Act 1975
- The main objective is to make provision for collection of revenue through customs duty on imported goods.
- Foreign Exchange Management Act 1999
- The objective of FEMA Act 1999 is to facilitate external trade and payments
- Special Economic Zone Act 2005
- SEZ are specifically designated areas within India that are deemed to be Foreign territory for certain limited purposes

## Meaning & Scope of Imports

| CGST Act 2017   | Customs Act 1962   | Foreign Trade Act<br>1992   | SEZ Act 2005  |
|---|--|---|---|
| Import of goods with its grammatical variations and cognate expression means bringing into India from a place Outside India | Import with its grammatical variations and cognate expression bringing into India from a place Outside India | Import means in relation to goods, bringing into India any goods by land sea or air | (i) Bringing goods or Receiving services, In a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or |
|   |  |   | (ii) Receiving goods, or<br>Receiving services By, Unit or<br>Developer from another Unit<br>or Developer of the same<br>Special Economic Zone or a<br>different Special Economic<br>Zone;          |

#### Scope Of Import

- The common misconceptions of the law of Customs seem to be that it is applicable only if goods are brought into India:
- Ø for commercial transactions; or
- Ø if some form of consideration or payment is involved
- Ø if it is not of personal nature; or

- Under the Customs Act, all the transactions listed above constitute import. Does it mean on all those transactions duty of customs has to be paid?
- What is the scope of levy? Let us examine

|  | SI.<br>No. | Illustrations  | Common answers   |  |
|--|------------|--|--|--|
|  | 1          | Indian Co. imports machinery from<br>Germany   | It is import, because there is some<br>'payment' involved  |  |
|  | 2          | Indian garment manufacturer receives a parcel by courier containing sample from a prospective customer | It is import, because it is for 'business purpose' even though payment is not required for samples |  |
|  | 3          | On my birthday an uncle who lives in UK sends a watch as gift to India                                 | It is not import, because the gift is 'not for sale'   |  |
|  | 4          | When on a holiday in New York I purchase a T-shirt and brought it back to India                        | It is not import, because it is for 'own use' and it was purchased 'outside India                  |  |
|  | 5          | What about the aircraft that I boarded on my journey back to India                                     | No, the aircraft is not 'for sale', it is only for travel  |  |

#### Levy of Tax – Customs Duty

- Taxability or levy of duty or tax under each taxing statute has different ingredients.
- The process of levy of tax, need to be examined in three phases, namely:
- Taxable event
- One of the crucial ingredients of taxability is what is commonly known as "taxable event"
- Quantification of liability
- is the next sequential question of computing the tax
- It involves determination of Taxable value and the rate of tax on the imported goods

#### Discharge of liability

- Custom duties, are not paid by the manufacturer or supplier.
- It is paid by the customer of such (overseas) manufacturer or supplier.
- Importer is 'named' as person liable to discharge the taxes/duties on import
- When goods are imported into India, IGST would be levied under Customs Tariff Act and not under IGST Act.
- This is enabled by a proviso to section 5 of IGST Act and a corresponding sub-section for levy under section 3 of Customs Tariff Act.
- Hence, IGST levied under Customs Tariff Act is a tax not in the nature of GST but in the nature of a duty of customs

#### Taxable Event for Payment of Duty

- 'Taxable event' under Customs Act can be said to have occurred when the goods are 'imported' into India.
- India begins at the point of entry in the territorial waters and extends all the way upto the point when they cease to be called 'imported goods'.
- Section 2(25) states that when goods are cleared for 'home consumption' they cease to be 'imported goods'.
- Goods brought into India become 'imported goods' no sooner than they cross the territorial waters of India but they remain so until they are 'cleared for home consumption'.
- the liability to duty arises as soon as they entered the 'territorial waters' of India.

Examples of Customs Duty Calculation

|                                |      | Imported Goods |                  | Identical |
|--------------------------------|------|----------------|------------------|-----------|
|                                |      |                |                  | Domestic  |
| Description                    | Rate | International  | International    | Goods     |
|                                |      | (No dumping)   | Dumping of Goods |           |
| Assessable Value of an         |      |                |                  |           |
| imported article               |      | 90             | 45               | 100       |
| Countervailing duty u/s 9 of   |      |                |                  |           |
| CTA                            | 100% | 0              | 45               |           |
| Customs duty under section 12  |      |                |                  |           |
| of CA                          | 10%  | 9              | 9                |           |
| Social Welfare Surcharge @ 10% |      |                |                  |           |
| on BCD of Rs.9                 | 10%  | 0.9            | 0.9              |           |
| Total value                    |      | 99.9           | 99.9             |           |
| "Duty equivalent IGST" under   |      |                |                  |           |
| section 3(7) of CTA            | 18%  | 17.98          | 17.98            | 18        |
| Landed Cost                    |      | 117.88         | 117.88           | 118       |

#### Valuation of Imported Goods Under Customs Act

Value: Can either be Tariff Value or Transaction Value

#### Tariff Value:

- For any class of imported goods or export goods, 'Tariff Value' can be fixed by CBI&C (Board)
- Tariff Value under GATT (General Agreement on trade and tariff
- Can Transaction value be adopted if tariff value has been notified?

#### Transaction Value

- Section 14(1) of Customs Act states that 'value' of imported goods will be 'transaction value' of such goods i.e.
- the price actually paid or payable for the goods
- when sold for export to India for delivery at the time and place of importation,
- 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.

- Price should be at the time and place of importation.
- Place of importation 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 – rule 2(da) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2017 as amended on 26-9-2017.
- Price should be for delivery at the place of importation Value at the place of importation does not mean that only expenses till goods enter Indian Customs water should be included.
- Price must be the sole consideration

Price should be sole consideration for sale. If there is other consideration, it should be added to the transaction value.

#### Addition to transaction value:

- First proviso to section 14(1) states that transaction value in the case of imported goods shall include,
- in addition to the price as aforesaid
- any amount that the buyer is liable to pay 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 manners specified in the Rules.

#### Rate of Foreign Exchange

- In case of Goods Cleared for Home Consumption
- Third proviso to section 14(1) states that such price 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 as the case may be, is presented under section 50.

#### In Case of Warehoused Goods

Exchange rate prevailing on the date on which Bill of Entry is presented u/s 46 of Customs Act is to be considered and not when Bill of Entry is presented u/s 68 for clearance from customs warehouse.

#### If Transaction Value not determinable

If conditions applicable to adoption of transaction value is not satisfied i.e.

Value to be determined as per Valuation Rules

# Determination of the method of valuation – Rule 3

- Rule 3(1)
- Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;
- Rule 3(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;

## Rule 3(2)

- (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.

## Rule 3(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:

#### Rule 3(3)

 (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.

#### Rule 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;
- (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
- -/(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
- **(**3)
- if more than one transaction value of identical goods is found,

## Rule 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

#### Rule 6 - Where value can not be determined

- 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.

#### Rule 7 - Deductive value

- 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.
- 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,

#### Rule 7(3)

- (3) (a) If neither the imported goods
- nor identical
- nor similar imported goods
- are sold in India in the condition as imported ---

#### Rule 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

#### Rule 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;

#### Rule 10(1) - 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, of the goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost in connection with the production and sale for export of imported goods,:-
- (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,
- (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

#### Rule 10 (2)

- For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include –
- (a) the cost of transport of the imported goods to the place of importation;
- (b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
- (c) the cost of insurance:

## Exports & GST

#### **Basic Premise**

- Exports have been the area of focus in all policy initiatives of the Government
- Government don't want tax to be exported and make domestic products noncompetitive due to taxes
- Therefore exports continue to enjoy this special treatment
- On the other hand, GST demands that the <u>input-output chain</u> not be broken and any exemption to outward supply breaks this chain.
- As GST law requires reversal of Input tax credit for raw material used in exempted or non-taxable supplies.
- Therefore, in order to avoid the reversal of Input tax credit Government has adopted the method of Zero-rated supply

#### **Export of Goods**

- As per IGST Act Section 2(5):
- Export of goods with its grammatical variations and cognate expressions, means
- taking goods out of India to a place outside India.
- Export means trading or supplying of goods and services outside the domestic territory of a country.
- Inter State V/s Intra State
- IGST V/s CGST & SGST

#### **Export of Services**

- As per IGST Act Section 2(6) "Export of services" means the supply of any service when,
- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; or in Indian rupees wherever permitted by RBI, and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person. if place of supply is out of India.

#### Zero Rated Supply

- "zero rated supply" means any of the following supplies of goods or services or both, namely:—
- (a) Export of goods or services or both; or
- (b) Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone

Export V/s Deemed Export

- Export of goods, in common parlance, means taking goods outside India.
- However, the Central Government may notify certain categories of supplies of goods, which would be treated as deemed exports.
- This means that such supplies shall be treated as exports even if such goods are not taken outside India.
- Deemed Export Applicable only for the supply of goods (not applicable to services).
- Sych supplies cannot be made under Bond / LUT.
- The tax must be paid at the time of supply. Refund of tax paid on such supplies can be claimed.
- Payment can be received in Indian Rupees or in convertible foreign exchange.

### Zero Rated Supply - Explanation

- Zero-rated supply does not mean that the goods and services have a tariff rate of '0%'
- but the recipient to whom the supply is made is entitled to pay '0%' GST to the supplier.
- the disqualification that input tax credit will not be available in respect of supplies that have a '0%' rate of tax does not apply to zero-rated supplies covered by this section.
- These provisions of zero-rated supplies are introduced in the statute on the basis of the prevalent Central Excise and Service Tax laws.
- this provision will benefit the supplier wherein exemption of goods or services or both will result in export competitiveness.
- This provision also specifically expresses that taxes are not exported.
- Care must be exercised that while paying taxes, such taxes are not collected from the recipient of goods or services or both. This would result in unjust enrichment.

## Options for Exporter Under GST

- 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

#### LUT - Some Basic Questions on LUT

- LUT Applicable to both supply of Goods or Services?
- When LUT needs to be furnished at the beginning of each F.Y. or at the time of each export?
- To Whom to be furnished GST Officers or custom officers
- Time limit for export Compliance and consequence of non-compliance

### Non Compliance to LUT

- in case the goods are not exported within the time specified in 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.

■ Back

# 2) Export with payment of IGST

- When an exporter sends goods and services out of the country on payment of IGST at the applicable rate,
- they can claim a refund of the tax under Rule 96 of the CGST Rules, 2017.
- The refund process is different for goods and services.
- An exporter of goods or services or both can claim the refund of Integrated GST in his Form GSTR1 in the relevant month.
- Table 6A of Form GSTR1 AND declaration made under Form GSTR 3B and Table 6A of GSTR-1 are used for refund processing

#### Export with payment of IGST....Contd...

- The shipping bill filed by an exporter of goods shall be deemed to be an application for refund
- The details of the export invoices in FORM GSTR-1 shall be transmitted electronically to Customs (ICEGATE) and
- a confirmation by ICEGATE system to electronically transmit to the common portal,.

## Mandatory Information in Shipping Bill

- Shipping Bill cannot be filed without
- GSTIN/UIN/PAN
- Taxable value and Tax amount should be mentioned against each item in the Shipping bill for processing the refund amount
- Shipping bill to contain details of GST Invoices else refund of IGST paid on export will be stucked.

### Merchant Exporter

- WHO are they?
- A merchant exporter is a person who is involved in trading activity and exporting or intending to export.
- They do not have a manufacturing unit.
- They buy goods from a manufacturer-exporter and then ship them to foreign customers.
- Supply by Manufacturer to Merchant Exporter Taxable or Zero Rated Supply
- Process:
- 1) Purchase Order by the Merchant Exporter to Manufacturer
- 2) goods shall be moved from the place of the manufacturer directly to the Port

- Merchant Exporter Contd..
- 3) goods should be exported out of India within 90 days
- A merchant exporter can export the goods under LUT/Bond only. He cannot export under the IGST payment route.
  - 5) When merchant exporter exports the goods, it is a Zero-Rated Supply;
  - 6) tax@0.1% IGST [or CGST 0.05% + SGST 0.05%] paid by manufacturer
  - 7) Merchant exporter will be eligible to take credit of the tax @ 0.1% IGST [or CGST 0.05% + SGST 0.05%]
  - 8) After export of goods, a copy of the shipping bill or bill of export shall be submitted to jurisdictional tax officer

## Merchant Exporter – Contd..

- 9) If the merchant exporter fails to export the said goods within a period of ninety days from the date of issue of the tax invoice-
- 10) The option may or may not be availed by the supplier and/or the recipient and the goods may be procured at the normal applicable tax rate.
- 11) The supplier who supplies goods at the concessional rate is also eligible for a refund on account of the inverted tax structure
- 12) Applicable for Goods & Services both?

#### FORM GST RFD - 11

[See rule 96A]

#### Furnishing of Letter of Undertaking for export of goods or services

#### Applicant Details:

Goods and Services Tax Identification Number

Trade Name

Legal Name

Address

#### **LUT details:**

LUT Applied for financial year

2023-24

Document Upload Previous Letter of Undertaking (LUT)

Document

#### Letter of Undertaking for export of goods or services without payment of integrated tax

[See rule 96A]

Goods and Services Tax Identification Number - [

To
The President of India (hereinafter called the "President"), acting through the proper officer

I/We having Goods & Services Tax

Identification Number No. 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 26th day of March, 2023 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.

IN THE WITNESS THEREOF these presents have been signed the day hereinbefore written by the undertaker(s)

- Name of Witness
   Address of Witness
- 2. Name of Witness

Address of Witness

Place of Filing LUT

Occupation

Occupation

Date of Filing LUT 26/03/2023

Verification details:

#### High Sea Sales

- The HIGH Sea is the open ocean, not part of the exclusive economic zone, territorial sea or internal water of any Country.
- According to UN Convention high sea means all parts of the sea that are not included in the territorial sea or in the territorial waters of a State.
- Can transaction like High Sea Sale be done for goods imported via air ?
- For example, Amit located in Chennai procures goods from vendor Binod of USA. The goods are exported from the Europe and when the goods are in transit, Amit enters into a contract with Charan of Nagpur, and sells these goods to Charan, before the goods cross the customs frontier of India.
- The sale of goods by Amit of Chennai to Charan of Nagpur, while they are in transit is called high sea sale.

There is no bar on the same goods being sold more than once on high seas. The same consignment of goods in transit can be sold multiple times before such goods cross customs frontier and enter into the territory of India

In the case of HSS, the end HSS buyer would be treated as an importer.

He clears the goods from customs on payment of applicable import duties.

Further, if there is any end user-based exemptions in respect of the goods, then such end HSS buyer who uses such goods, for specified purposes can claim such exemptions/concessional tax benefits when he presents the bill of entry for home consumption at customs.

## GST & High Sea Sales

IGST on the imported goods is levied and collected in accordance with the Customs.

Since BCD is not payable on the HSS, even IGST is not payable on HSS.

Clause 8 (b) of Schedule III to CGST Act 2017 read as follows:

- "Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption."
- and treat the above transaction as neither as a supply of goods nor a supply of services

# Valuation for the purpose of duty payment under Customs - HSS

- Assessment of duties and tax payment are made when the when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time
- Actual HSS contract price paid by the HSS buyer would constitute the transaction value under Rule 4 of Customs Valuation Rules

Where the same goods are being sold more than once on high seas the last HSS value is to be considered for the payment of BCD and IGST.

 IGST on HSS of imported goods, whether one or multiple, shall be levied and collected only at the time of importation

#### Procedure of High Sea Sales

- The HSS seller buys goods from an overseas supplier against POs received from its customer in India i.e., HSS buyer. That is, it will be a back to back PO. As against the PO given by the HSS seller, the overseas supplier will export the products.
- The export documents such as the bill of lading will show the HSS seller as the buyer of the goods.
- After the goods are dispatched from the port of the exporter country and before the goods reach/ cross the customs frontier of India and is entered for customs clearance, the goods will be sold by the HSS seller to its HSS customer by entering into HSS contract/ agreement.
- HSS contract should be entered on stamp paper, signed by both the HSS buyer and HSS seller and should be duly notarised.
- In the cases where the HSS Contract is not notarised, the same is required to be attested by the authorized signatory of bankers.

- The sale is to be effected by endorsing the bill of lading, invoice and packing list in favor of the HSS buyer.
- The endorsement should read "Transferred on High Sea Sales basis to M/S ----- for a sales consideration of Rupees -----".
- Such endorsement should be stamped and signed by the HSS seller.
- The Import General Manifest [IGM] is to be filed in the name of HSS buyer as the consignee of the goods by the shipping line if such shipping line is aware of the HSS contract before filing IGM.

Where the IGM is already generated by the shipping line and has mentioned the HSS seller as the consignee of the goods in the IGM, then the shipping line would be required to amend the IGM in order to change the consignee as the HSS buyer

#### **Bonded Warehouse**

Meaning of Warehouse



A warehouse is a place where products or materials can get stored before they move to another location

Or

 a large building where raw materials or manufactured goods may be stored prior to their distribution for sale.

#### Need for Warehousing

 Customs warehousing is a procedure under which imported goods are stored under customs control in designated place without payment of import duties.

Warehouses are facilities setup to avail the benefit of customs duty deferment.

Imported goods can be stored in a warehouse without payment of duty and the applicable duty is required to be paid only at the stage of their clearance from the warehouse.

Goods might not be immediately required Market price fluctuations

Saleability issues
Not required in production

- Paucity of funds
- Goods for supply to EOU/EHTP/STP/SEZ also allowed to be warehoused
- Goods for sale in Duty Free shops

- Customs Bonded Warehouse is a facility where imported goods can be stored and further manufacturing as well as associated activities like packing, re-packing, labelling, etc. can be carried out.
- The customs duty is deferred at the time of import of goods and is payable at a later stage only upon clearance of manufactured goods for home consumption.
- If goods are exported directly from the warehouse, no Customs duty is payable.
  The warehouse can be used to store locally procured domestic goods for processing.

# Declaration of Public Warehouse or License to Private Warehouse

- Public Warehouses are appointed by the Asst./Dept. Commissioner at the customs stations.
- Container freight stations (CFS) and Inland container depots (ICD) are essentially custombonded facilities located either near the service port (in the case of CFS), or inland (as in the case of ICD).
- Upon an application being made to license a private warehouse, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may issue a licence to the applicant

either for depositing his own goods or to carry out any manufacturing activity

Any licence granted shall remain valid until and unless it is cancelled.

Types of Warehouse & Difference thereof
Three types of warehousing - Public warehouses
Private warehouses & Special warehouses

| Public Warehouse                       | Private Warehouse  |
|--|--|
| Managed by the warehousing corporation | Owned by the owner of goods                                      |
| Appointed by the department            | Licensed by the department                                       |
| No question of cancellation of license | License can be cancelled for violation of warehousing provisions |
| Goods of any person can be deposited   | Owners goods only to be deposited                                |

#### Rate of Duty/ Value for Assessment:

- The rate of duty applicable is as per provisions of Section 15 of the Customs Act i.e. on the date on which the goods are actually removed from the warehouse.
- However, when the warehousing period or the extended warehousing period has expired, the duty payable is with respect to the date when the warehousing/extended warehousing period expired and not the actual date of removal.
- Insofar as value for assessment of duty for warehoused goods is concerned, it is not required to be re-determined and it is the original value as determined at the time of filing of into Bond Bill of Entry and assessments before warehousing.

## Furnishing of Warehousing Bond

The importer or his representative is required to present to the Customs a Bill of Entry for warehousing and shall execute a bond

- for sum equal to thrice the amount of the duty assessed for such goods
- and to pay all duties and interest payable and to pay all fines
- and penalties incurred for the contravention of any provisions under this Act.
- The AC of Customs or DC of Customs may permit an importer to execute a general bond for such amount as approved by them within a specified period.
- Additionally, a security has to be furnished by the importer.

#### Storage Period in Warehouse

- Any goods deposited in a warehouse may be stored upto a period of one year in the Bonded Warehouse.
- In the case of capital goods intended for use in any 100% EOU, such goods can, however, be stored up to a period of 5 years.
- The warehousing period can be extended by the Commissioner of Customs for a of 6 months
  - and
- by the Chief Commissioner of Customs for such further period as is deemed fit by him.
- The importers should file their applications for extension well before the expiry of the initial/extended period of warehousing.
- Extensions in warehousing period are not meant to be granted routinely but only in such cases where the goods have to be kept in the warehouse under circumstances beyond the control of the importer.

# Export / Clearance for Home Consumption from Bonded Warehouse

#### **Export**

- No customs duty on goods exported without clearance in India.
- Refund of IGST payable on export can be availed.

#### Clearance for Home Consumption

Applicable Customs duties payable

Applicable GST is payable on purchase of local goods

Applicable GST is payable on clearance of manufacture goods

Applicable GST is payable on Scrap/Waste generated

## Rent & Interest for Storage of Goods

- The rent has to be paid by the owner of the warehoused goods to the warehousekeeper at the rates fixed under any law for the time being in force or
- where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs.
- In cases where the capital goods for 100% EOUs remain in a warehouse beyond a period of 5 years, interest shall be charged on the customs duty payable at the time of clearance of the goods for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods.
- In the case of all other goods,, interest is payable after the expiry of thirty days in the warehouse.

# Non Compliance to Warehousing Provision

- Customs Officers may demand from the owner of bonded goods the full amount of duty chargeable on such goods, along with all penalties, rent, interest and other charges payable in the following cases:
- (a) Where any warehoused goods are removed in contravention of the Customs Act, 1962;
- (b) Where such goods have not been removed from a warehouse at the expiry of the period permitted under section 61;
- (c) Where any warehoused goods have been taken under section 64 as samples without payment of duty; and
- (d) Where any bonded goods have not been cleared for home consumption or exportation or are not duly accounted for to the satisfaction of the Customs.

In case the owner fails to pay the amount as demanded above, Customs may detain and sell, after notice to the owner,

such sufficient portion of the bonded goods as may be selected.