

Chapter 5: Import and Export Procedure

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Learning objectives

- Process involved in import and export procedure
- Meaning of goods cleared for home consumption
- Features of warehousing
- Contents of General Import Manifest

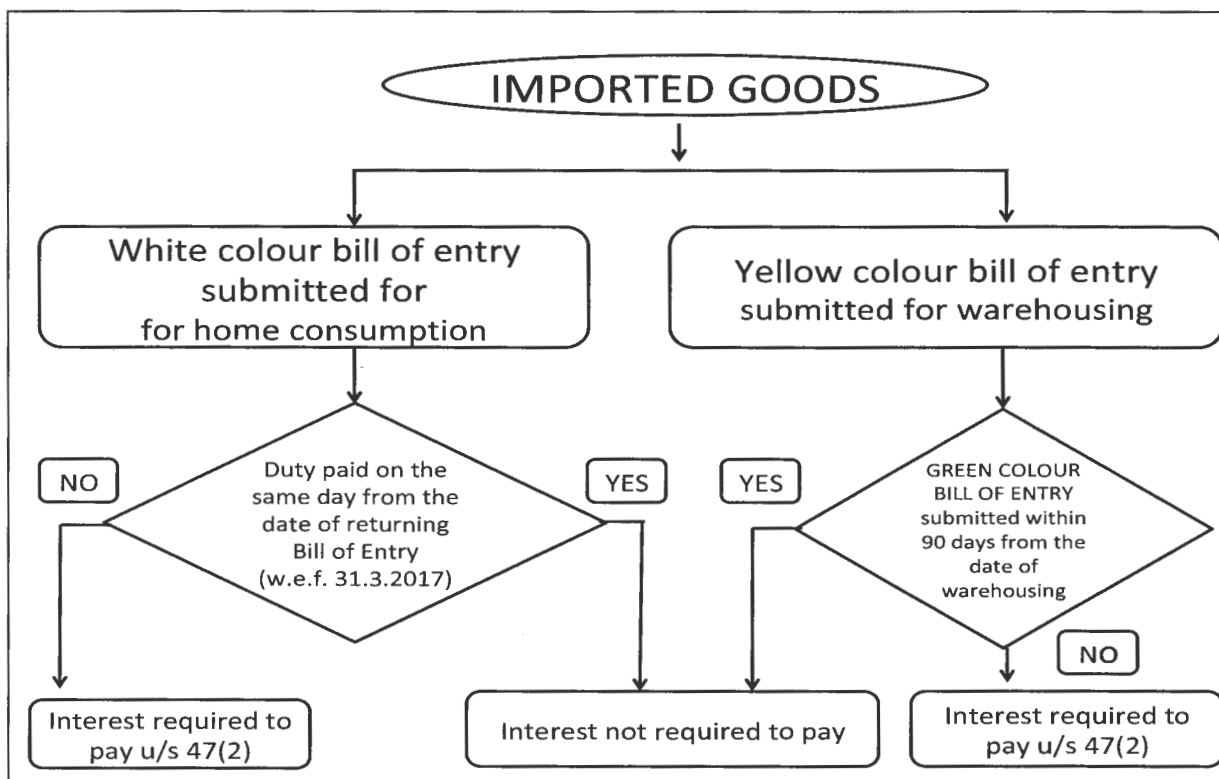
5.1 Introduction

Customs Duty is on import and on export. Hence, it is essential to have better understanding of the provisions of import and export. Import may take place in any of the following modes:

- By Sea
- By Air
- By Land
- By Post
- By Passengers as their Baggage
- By way of Ship stores considered as import

5.2 Import Procedure

Imported goods can be cleared by the importer either for home consumption by paying customs duty on the value of imported goods or he may request to the Customs department for warehousing. If the goods are warehoused, later they will be cleared for Domestic Tariff Area (DTA) or for export as the case may be.



“Domestic Tariff Area” means the whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones (Section 2(i) of Special Economic Zones Act, 2005), 100% Export Oriented Units (EOUs)/Electronic Hardware Technology Park (EHTP)/Software Technology Park (STP)/Bio Technology Park (BTP).

5.2.1 Goods cleared for Home Consumption

Importer has to pay the import duty on the value of goods imported by him before clearing from the Customs Authorities by submitting the Bill of Entry after the entry inwards granted to the Vessel or 30 days before the entry inwards granted to the vessel. The importer files Bill of Entry for all imported goods under section 46(1) of the Customs Act, 1962. No Bill of Entry for Transit Goods and Transshipment Goods.

5.2.1.1 Time limit for filling Bill of Entry:

As per Section 46(3) of the Customs Act, 1962 a bill of entry may be presented at any time after the delivery of import manifest or import report. Therefore, no time limit has been fixed. Hence, no penalty can be imposed if there is delay in submission of Bill of Entry.

However, goods should be cleared for home consumption, or warehoused or transshipped within 30 days from the date of the unloading thereof at the Customs Station.

The importer is required to declare in the Bill of Entry amongst other things the following:

- The particulars of packages,
- The description of the goods,
- The description given in the Customs Tariff.

According to section 46(3) a bill of entry is to be normally filed after the delivery of the Import manifest (vessel/aircraft)/import report (vehicle). However, the bill of entry can be presented even before the delivery of the import manifest if vessel is expected to arrive within 30 days from the date of such presentation.

Bill of Entry consists of the following copies:

- Original meant for the customs authorities for assessment and collection of duty;
- Duplicate, indented as an authority to the custodian of the cargo to release cargo;
- Triplicate, as a copy for record for the importer; and
- Quaduplicate, as a copy to be presented to the bank

Types of Bill of Entry:

- Form I (white) - for home consumption
- Form II (yellow) - for warehousing
- Form III (green) - for ex-bond clearance for home consumption (from the warehousing)

Bill of Entry must be submitted electronically, unless manual submission is specifically permitted by Commissioner of Customs (w.e.f. 8-4-2011).

W.e.f. 31-3-2017 Finance Act, 2017 Section 46(3) amended:

Submission of Bill of entry:

The importer shall have presented the bill of entry under section 46(1) of the Customs Act, 1962 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 for warehousing.

Provided that a bill of entry may be presented (w.e.f. 29.03.18 at any time not exceeding 30 days prior to) the expected arrival of the aircraft or vessel or vehicle, by which the goods have been shipped for importation into India.

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for the late presentation of the bill of entry as may be prescribed.

Furthermore, by Notification No. 26/2017-Customs, dated 31-3-2017 and Notification 27/2017-Customs, dated 31-3-2017 Bill of Entry (electronic Integrated Declaration) Regulations, 2011 and Bill of Entry (Forms) Regulations, 1976 has been amended to prescribe late charges for delayed filing. Entry Inwards date at sea ports and date of arrival of cargo at the ICD, airport, Land Port (i.e. Land Customs Station) etc., would be the relevant date for determination the said charges, if any. It has also been clarified in both the regulations that no charges for late presentation of Bill of Entry shall be liable to be paid where the goods have arrived before the enactment of Finance Bill, 2017 (i.e. 31-3-2017).

Notification No. 24/2017-Customs, dated 31-3-2017:

As per the Handling Cargo in Customs Area Regulations, 2009 it is mandatory for the Customs Cargo Service providers to provide the information about arrival of cargo to the Customs.

As per Notification No. 25/2017 Customs dated 31-3-2017, Additional/Joint Commissioner as the proper officer considering the request for waiver of late charge under second proviso to Section 46(3) of the Customs Act, 2017.

Furthermore, section 47(2) has been amended so as to provide the manner of payment of duty and interest thereon in the case of self-assessed Bill of Entry or as the case may be assessed, reassessed, provisionally assessed Bill of Entry. Now, the importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry (vide Circular No. 12/2017, dated 31-3-2017).

Clearance of goods for home consumption [Section 47(1) of the Customs Act, 1962]

w.e.f. 14-5-2016, Section 47(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:

Provided that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty [i.e. duty payable under section 47(1)] or any charges in such manner as may be provided by rules (w.e.f. 14-5-2016).

Interest for late payment of duty @15% [Section 47(2) of the Customs Act, 1962]

The duty should be paid within five working days after the 'Bill of Entry' is returned to the importer for payment of duty. w.e.f. 10-5-2013 the time reduced to two working days.

Now, w.e.f. 31-3-2017 Finance Act, 2017 section 47(2) further amended:

Importer shall have to make payment of duty on the same day in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry.

As per section 47(2) of Customs Act, the importer is liable to pay interest where—

- the importer fails to pay the import duty under this section **on the same day** in case of self-assessed Bill of Entry and in case of re-assessment or provisional assessment, within one day after the return of Bill of Entry from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest @ 15% p.a. on such duty till the date of payment of the said duty.
- w.e.f. 14-5-2016: in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf, he shall pay interest @15% p.a. on the duty not paid or short-paid till the date of its payment.

Note: if the CBIC satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

Problem 1: X Pvt. Ltd. imported goods in the month of April 2021 and submitted 'Bill of Entry' on 9th April 2021 for home clearances. After verification bill of entry has been returned by the department on 10th April 2021 for payment of customs duty of ₹1,03,000. However, duty has been paid on 30th April, 2021. There are five holidays from 11th April 2021 to 30th April 2021. Find the interest under section 47(2) of the Customs Act, 1962.

Answer:

INTEREST IS ₹677

No. of days from 10th April 2021 to 30th April, 2021 = 21 days

No. of days delay = 21-5 = 16 days

Interest = $1,03,000 \times 15/100 \times 16/365 = ₹677$

Problem 2: A bill of entry was presented on 4th August 2021. The vessel carrying goods arrived on 11th August 2021. Entry inwards was granted on 13th August 2021, and the bill of entry was assessed on that date and was also returned to the importer for payment of duty on that date. The duty amounting to ₹5,00,000 was paid by the importer on 22nd August 2021.

Calculate the amount of interest payable under section 47(2) of the Customs Act, 1962, given that there were four holidays during the period from 14th August to 22nd August 2021.

Answer:

Interest Rate = 15% p.a.

No. of days delay =

from 13th Aug 2021 to 22nd Aug 2021

= 10 days

No. of days delay

= 10 days

Less: No. of holidays

= -4 days

Net No. of days delay for interest

= 6 days

Interest

= ₹1,233

$₹5,00,000 \times 15/100 \times 6/365$

= ₹1,232.88

5.2.2 Import General Manifest

Import General Manifest is a very important document for the in charge of the conveyance, without which the Customs Authorities generally not allowed entry inwards to the vessel. IGM to be submit to the Customs authorities for getting entry inwards to the vessel. It contains details regarding goods description, origin and destination place, name and address of the exporter and importer and so on. This a primary document, which can be compared with Bill of Entry, submitted by the importer. On satisfaction the Customs authorities will grant the entry inwards to the vessel.

The IGM also gives the following particulars—

- Name of the Vessel
- Nationality
- Tonnage
- Name of the shipping line
- Last port of call
- Port arrival and date and time of arrival,
- Name of the master,
- Nationality of the master,
- Name and address of the local steamer or shipping agent
- Port called during the present voyage,
- Number of crew
- Number of passengers, etc.

The importer also required to submit the following documents the Customs Authorities, to assess the import duty on the value of imported goods.

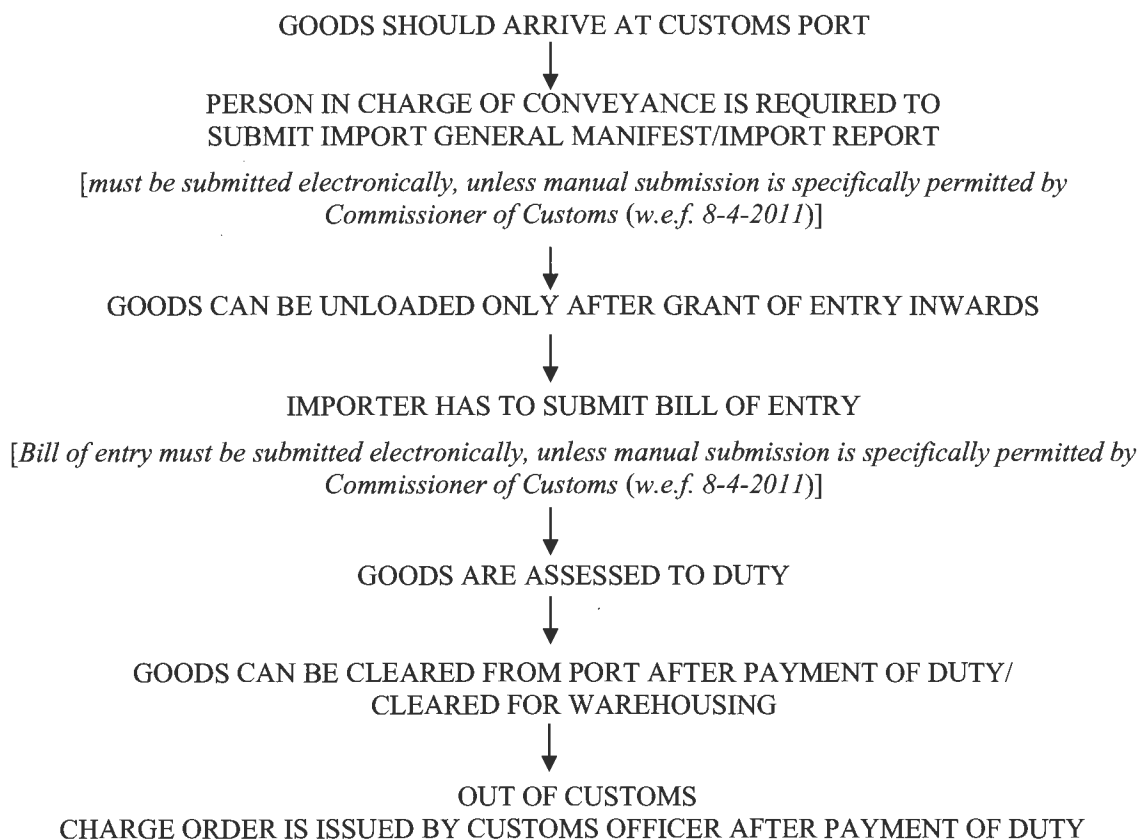
- Invoice copy
- Contract copy
- Product literature
- Packing lists
- Import license
- Any other documents which may be required by the Customs Authorities.

5.2.2.1 Time Limit for submission of Import General Manifest or Import Report:

As per Section 30(1) of the Customs Act, 1962, the person-in-charge of the conveyance shall deliver import general manifest or import report to the proper officer as stated below:

Mode of Transport	Document	Time Limit	Penalty for non-submission within the prescribed time-limit
Vessel (Sea port)	Import General Manifest	Before arrival of the Vessel	≤ ₹50,000
Aircraft (Airport)	Import General Manifest	Before arrival of the Aircraft	≤ ₹50,000
Vehicle (Land Customs Station)	Import Report	Within 12 hours after arrival	≤ ₹50,000

5.2.3 The entire import procedure has been explained in the following lines



MCQ. Outline the stepwise procedure of import of goods into India.

- (i) Filing of Import General Manifest
 - (ii) Arrival of vessel
 - (iii) Grant of entry inwards to vessel
 - (iv) Unloading of goods
 - (v) Assessment of goods
 - (vi) Filing of Bill of Entry
 - (vii) Payment of duty
- (a) (i), (ii), (iii), (iv), (v), (vi) and (vii)
 - (b) (ii), (iii), (i), (iv), (v), (vi) and (vii)
 - (c) (iii), (ii), (i), (vi), (v), (vii) and (iv)
 - (d) (ii), (i), (iii), (iv), (vi), (v) and (vii)

(CA Final RTP May 2020)

Answer: (d)

5.2.4 Warehousing

Under the Customs Act, 1962, there are two types of warehousing namely Public warehouse and Private warehouse (Section 2(43) of the Customs Act). Warehouse means a place where goods after landing are permitted to be removed without payment of duty. However, the duty is collected at the time of clearance from the warehouse. A public warehouse is owned and managed by a Government body like Central Warehousing Corporation. A private warehouse is a warehouse licensed to store dutiable imported goods of the licensee or on behalf of licensee, in case of public warehouses is not available.

5.2.5 Warehousing bond

An importer can be cleared for warehousing without payment of import duty. It means the duty liability is postponed to the date of actual clearance from the warehouse to home consumption. Hence, such an importer shall execute a bond binding himself in a sum equal to *twice* the amount of the duty assessed on such goods to cover all duties and interest if any payable. The Assistant Commissioner of Customs or Deputy Commissioner of Customs may insist on a part of the bond amount secured by way of bank guarantee.

w.e.f. 14-5-2016, As per Section 2(43) of the Customs Act, 1962, "warehouse" means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 OR Special Warehouse license u/s 58A.

Licensing of public warehousing:

Section 57 The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.

Licensing of private warehouses:

Section 58 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.

Licensing of Special Warehousing:

Section 58A (1) 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.

Section 58A (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).

Consequently, CBIC, *vide* Notification No. 66/2016-Cus (NT), dated 14.05.2016 has notified the following class of goods which shall be deposited in a special warehouse:

- (i) gold, silver, other precious metals and semi-precious metals and articles thereof;
- (ii) goods warehoused for the purpose of:
 - supply to DFS (Duty Free Shops) in a customs area;
 - supply as stores to vessels/aircrafts under Chapter XI of the Customs Act, 1962;
 - supply to foreign privileged persons in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

Note:

- (1) Privileged person means a person entitled to import/purchase locally from bond goods free of duty for his personal use/for the use of any member of his family/for official use in his Mission, Consular Post or Office or in Deputy High Commission/Assistant High Commission.
- (2) A Duty-Free Shop (DFS) in the airport need not be a licensed as warehouse under section 58A.
 - (a) DFS located in customs area should not be treated as a warehouse.
 - (b) In fact, it is a point of sale for the goods which are to be ex-bonded and removed from a warehouse for being brought to a DFS in the customs area for sale to eligible persons, namely international passengers arriving or departing from India.

Cancellation of License Section 58B, w.e.f. 14-5-2016:

- (1) 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 licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A.
Provided that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.
- (2) 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 in force, suspend operation of the warehouse during the pendency of an enquiry under sub-section (1).
- (3) 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.
- (4) Where the licence 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.

5.2.6 Features of warehousing

- Importer can defer payment of import duties.
- Importer can store the goods in a safe place.
- Importer allowed to do manufacture in bonded warehouse and then re-export from it.
- The importer can be allowed to keep the goods up to one year without payment of duty from the date he deposited the goods into warehouse.
- The importer minimises the charges by keeping in a warehouse, otherwise the demurrage charges at port is heavy.
- As per Section 9 of the Customs Act, 1962, the Central Board of Excise and Customs, may, by notification in the Official Gazette, declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.
- The Commissioner of Customs or Principal Commissioner of Customs are competent to appoint a warehouse as public bonded warehouse.
- The Commissioner of Customs or Principal Commissioner of Customs may license private warehouse. As per section 58(2)(b) of the Customs Act, 1962, Commissioner or Principal Commissioner of Customs is not required to give a notice to the licensee while cancelling the license of a private warehouse if he has contravened any provision of the said Act. Otherwise, the license to private warehouse can be cancelled by giving ONE-month notice.
- Only dutiable goods can be deposited in the warehouse.
- Green Bill of Entry has to be submitted by the importer to clear goods from warehouse for home consumption.
- Rate of duty is applicable as on the date of presentation of Bill of Entry (i.e. sub-bill of entry or ex-bond bill of entry) for home consumption.
- Reassessment is not allowed after the imported goods originally assessed and warehoused.
- The exchange rate is the rate at which the Bill of Entry (i.e. 'into bond') is presented for warehousing. That is the date on which the Bill of Entry is submitted for warehousing not the Ex- Bill of Entry which is required to be submitted at the time of clearing the goods from warehouse.
- If the goods which are not removed from warehouse within the permissible period, would be deemed to have been improperly removed on the day it should have been removed. Hence, duty applicable on such date (i.e. last date on which the goods should have been removed) is applicable, and not the actual date on which goods are removed. [*Kesoram Rayon v Commissioner of Customs (1996)*]
- Relevant date when goods are warehoused can be summarized hereunder.

S. No.	Goods warehoused under Bond	Relevant date	Remarks
(i)	Rate of exchange	At the time of submission of 'into bond' bill of entry	When goods are removed for home consumption
(ii)	Rate of duty	As on the date of submission of sub-bill of entry	When goods are removed for home consumption
(iii)	Rate of duty	The rate of duty prevails on the date on which the goods should have been removed is to be considered	When the goods are not removed from warehouse within the permissible period and permission is also not obtained for the extended period – Improper removal.

5.2.6.1 Warehousing period

As per section 61 of the Customs Act, 1962 period of warehousing has been suggested in the following lines:

Importer	Normal warehousing period	Remarks
Other than EOU	One year	From the date of issuing the order by Customs Officer permitting deposit of goods in a warehouse.

Importer	Normal warehousing period	Remarks
EOU	Three years – for inputs, spares and consumables	In the case of EOU units, the whole factory is treated as a bonded warehouse.
	Five years –for capital goods	

The power to extend the warehousing period beyond 5 years/3 years has been delegated to the Commissioner of Customs for such further period as he may deem fit. The period of 1 year can be extended by the Commissioner of Customs for further 6 months. However, for extending it further, authorization of Chief Commissioner of Customs is required.

In the case of goods warehoused by other than EOU, if they are likely to deteriorate, the normal warehousing period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit.

W.e.f. 14-5-2016:

(1) Section 59 of the Customs Act, 1962, Bond amount has been increased from twice of the duty amount to **thrice of the duty** amount and security also will have to be given.

(2) Now, rent charges claimable will not be pre-requisite for non-compliances of any of the provisions, since it is the issue of custodian i.e. owner of the warehouse.

Period for which goods may remain warehoused w.e.f. 14-5-2016

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 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:

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.

(2) Where any warehoused goods specified in clause (c) of sub-section (1) 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:

Provided 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 of 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 section 60.

W.e.f. 14-5-2016 Control over warehoused goods has been omitted:

Now there will be a record based control on such warehouses except for warehouses setup under section 58A and hence there is no need of payment of MOT charges by EOU except for class of goods which is notified under section 58A.

Section 43 of the Customs Act, 1962, Payment of rent and warehouse charges.

Prior to 14-5-2016	W.e.f. 14-5-2016	Remarks
<p>The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charges at the rates fixed under any law for the time being in force or where no rates are so fixed, at such rates as may be fixed by the Commissioner of Customs.</p> <p>(2) If any rent or warehouse charges are not paid within ten days from the date when they became due, the warehouse-keeper may, after notice to the owner of the warehoused goods and with the permission of the proper officer cause to be sold (any transfer of the warehoused goods notwithstanding) such sufficient portion of the goods as the warehouse-keeper may select.</p>	Omitted	This was the issue of the custodian i.e. owner of warehouse and not the custom officers.

Section 64 of the Customs Act, 1962, Owner's right to deal with warehoused goods:

W.e.f. 14-5-2016 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.

Note: Since physical control has been abolished, there is no need of obtaining sanction on payment of MOT charges.

Section 65 of the Customs Act, 1962 Manufacture and other operations in relation to goods in a warehouse.

Prior to 14-5-2016	w.e.f. 14-5-2016	Remarks
With the sanction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.	With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to such conditions and on payment of such fees as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.	It is upward delegation. Now EOU, EHTP Units will have to be obtained license u/s 58/65 from Principal Commissioner/Commissioner

Custody and removal of warehoused goods (New Section 73A, w.e.f. 14-5-2016)

- (1) All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.
- (2) The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.
- (3) Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.

Note: The provision has been inserted so as to recover the duty either from custodian or importer as may be prescribed to protect the revenue.

Liability of duty interest fine will be on importer and or custodian, as the case may be.

This will cause more responsibility on custodian.

5.2.7 Interest on warehoused goods

If the importer after warehousing the goods does not clear within 90 days from the date of deposit of the goods, the interest @15% p.a. is to be paid on the value of total duty payable. However, in case of Anti-Dumping Duty interest has to be paid at the time of importation. If the Anti-Dumping Duty is not levied at the time of import however, subsequently imposed on warehoused goods then no such duty is required to be paid by the importer at the time of clearance from the warehouse. Therefore, no interest on the part of Anti-Dumping duty will be imposed.

No interest, if no customs duty is payable on warehoused goods.

While calculating the interest in number of days delay, we should take into account by including the date of payment of duty. [MF(DR) Circular No. 48/2002-Customs]

► **Example 1**

An importer imported some goods in February 2021 and the goods were cleared from Mumbai port for warehousing on 8th February, 2021 after assessment. Assessable value was ₹4,86,000 (US \$ 6250 at the rate of exchange ₹77.76 per US \$). The rate of duty on that date was 20% (assume that no additional duty is payable). The goods were warehoused at Pune and were cleared from Pune warehouse on 4th March, 2021, when rate of duty was 12% and exchange rate was ₹78.75 = 1 US \$. What is the duty payable while removing the goods from Pune on 4th March, 2013?

(ICSI Final June 2003 modified)

Answer:

The rate of exchange will be ₹77.76 per USD

Assessable value = ₹ 4,86,000

(i.e. US \$ 6250 at ₹77.76 per US \$)

Rate of duty = @ 12%.

Basic customs duty payable = ₹ 58,320

social welfare surcharge 10% = ₹ 5,832

Total Duty payable = ₹ 64,152

► **Example 2**

Certain goods were imported in February 2021. "Into bond" bill of entry was presented on 14th February 2021 and goods were cleared from the port for warehousing. Assessable value was \$3,22,000. Customs officer issued the order under section 60 permitting the deposit of the goods in warehouse on 21st February 2021 for 3 months. Goods were not cleared even after warehousing period was over, i.e., 21st May 2021 and extension of time was also not obtained. Customs officer issued notice under section 72 demanding duty and other charges. Goods were cleared by importer on 28th June 2021. What is the amount of duty payable while removing the goods? Compute on the basis of following information (assume that no additional duty or special additional duty payable), social welfare surcharge 10% is applicable.

	14.02.2021	21.05.2021	28.06.2021
Rate of Exchange per USD	₹75.00	₹76.25	₹78.15
Basic customs duty	35%	12%	25%

(ICSI Final December 2003)

Answer:

Rate of duty applicable = @ 12%

Exchange rate = ₹ 75.00

Assessable value 3,22,000 USD @ ₹75.00 = ₹ 2,41,50,000

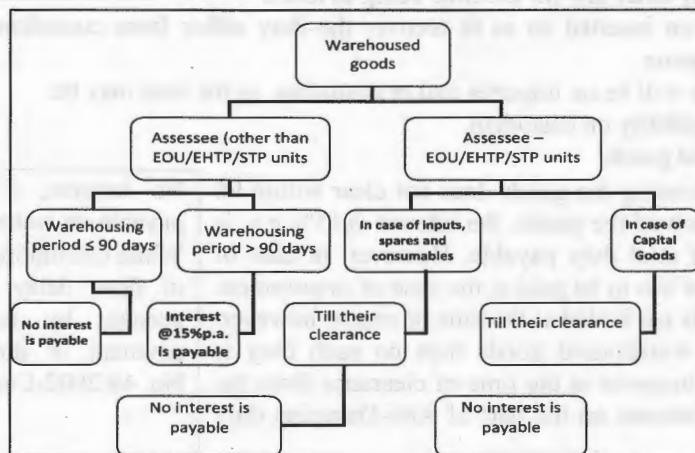
Customs Duty @12% x 2,41,50,000 = ₹ 28,98,000

Social welfare surcharge 10% = ₹ 2,89,800

Total Customs duty payable = ₹ 31,87,800

Note: Goods not removed from the warehouse within the permissible period, is considered as deemed to be removed **improperly** on the due date, even though, the goods actually removed at a later date. The rate of duty prevailing on the date on which the goods should have been removed is to be considered i.e. 12% (21-5-2021) [Kesoram Rayon v Commissioner of Customs (1996)]

5.2.7.1 Applicability of interest on warehoused goods:

Applicability of interest on warehoused goods 14-5-2016:

5.2.7.2 Waiver of interest

Waiver of interest can be granted by the Chief Commissioner of Customs upto ₹2 crores, and the C.B.E. & C. can waive part or full interest under exceptional circumstances without any upper limit beyond ₹2 crores.

5.2.7.3 Custodian under section 45 of the Customs Act, 1962

All imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the Commissioner of Customs until they are cleared for home consumption or are warehoused or are transshipped. This person is called the custodian. The Port Trust Authority and the Notional Airport Authority can be considered as custodian.

Custodian has the following responsibilities under section 45(2):

- Keep proper record of goods received from the carriers
- Sending a copy of the same to the customs authorities
- Removal of goods from the customs area with specific permission of the Customs Authorities

Liability of the custodian under section 45(3):

If any imported goods are pilfered after unloading in any customs area, while in the custody of the custodian, such custodian shall be liable to pay duty on such goods. *International Airport Authority of India v Ashok Dhawan* 1999(106) ELT 16 (SC).

Port Trust authorities are not liable for payment of duty in respect of pilfered goods:

The Bombay High Court differently interpreted the liability of the Custodian. As per section 45 of the Customs Act, the person referred to in sub-section (1) thereof can only be the person approved by the Commissioner of Customs. It excludes a body of persons, who by virtue of a law for the time being in force, is entrusted with the custody of goods by incorporation of law under another enactment, (for example, the Port Trust Act in the given case). The recovery of duty in respect of pilfered goods could only from the approved person and the Port Trust is not liable to pay duty on goods pilfered while in their possession [*Board of Trustees of the Port of Bombay v UOI* 2009 (241) ELT 513 (Bom)]

5.2.7.4 A 100% EOU has to be treated as a Customs Bonded Warehouse

The entire premises of a 100% EOU has to be treated as a Customs bonded warehouse if the licence granted u/s 58 is in respect of the entire premises. Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing/processing by the 100% EOU in bond as authorized u/s 65 cannot **be treated to have been removed for home consumption** accordingly, filing or non-filing of ex-bond bill of entry before using the goods by the 100% EOU is not relevant. The Tribunal expressed the same view in the case of *Paras Fab International v CCE* 2010 (256) ELT 556 (Tri.-LB). **This point elaborated under the case studies Q15.**

Example:

A 100% EOU in Alwar, filed 'into Bond Bill of Entry' for warehousing the imported goods. The impugned goods were warehoused in their 100% EOU in Alwar and subsequently used in the factory within the premises of the 100% EOU for manufacture of the finished goods. The Department demanded customs duty on the impugned goods.

Answer:

Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing/processing by the 100% EOU in bond as authorized u/s 65 cannot **be treated to have been removed for home consumption** accordingly customs duty not required to pay.

5.2.8 Goods improperly removed from warehouse

In any of the following cases, we can say the goods were improperly removed as per section 72 of the Customs Act, 1962:

- Warehoused goods taken out of a warehouse (except on clearance for home consumption or re-exportation, or for removal to another warehouse etc.)
- Warehoused goods have not been removed from a warehouse at the expiry of the period during which such goods are permitted
- Warehoused goods taken as samples without payment of duty but not returned
- Warehoused goods for which a bond has been executed and have not been cleared goods for home consumption or export.

5.2.9 Clearance of warehoused goods for exportation

Warehoused goods may be exported without payment of import duty by satisfying the following:

- A shipping bill or a bill of export has been presented in respect of such goods in the prescribed form
- The export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- An order for clearance of such goods for exportation has been made by the proper officer.

Powers of proper officer to take samples for the purpose of examination or testing (Section 144)

The proper officer may,

- on the entry or clearance of any goods or at any time while such goods are being passed through the customs area,
- take samples of such goods in the presence of the owner thereof,
- for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.

Return/Disposal of samples

- After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner.
- But if the owner fails to take delivery of the sample within three months from the date the sample was taken, it may be disposed of in such manner as the Commissioner of Customs may direct.

No duty on samples destroyed

Prior to 10th May, 2013	W.e.f. 10th May, 2013
No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof, if such duty amounts to five rupees or more.	No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof.

5.2.10 Imported goods not cleared within 30 days (Section 48 of the Customs Act, 1962)

As per Section 48 of the Customs Act, 1962 the imported goods brought into India are allowed to stay not more than 30 days on the wharf. Therefore, these imported goods should be cleared for home consumption, or warehoused or transhipped within 30 days from the date of the unloading thereof at the Customs Station or within such further time as the proper officer may allow.

If the goods are not cleared within 30 days from the date of unloading or if the title to any imported goods is relinquished by the importer, such goods can be sold by the Custodian with customs permission and after notice to the importer.

However, in case of animals, perishable goods, hazardous goods, they can be sold any time with the permission of proper officer.

Arms and ammunition fall under Arms Act, 1959 they can be sold at the time/place/manner prescribed by the Central Government of India.

HOWEVER, Section 46 of the Customs Act, 1962 prescribes no time limit for filing a bill of entry by an importer upon arrival of goods.

5.2.11 Warehousing without warehousing (Section 49 of the Customs Act, 1962)

Imported goods are kept in customs bonded warehouse after being assessed to duty. However, occasionally, it may happen that assessment of duty may take time for want of some clarification/reports etc. In such cases, goods lying in docks may incur heavy demurrage. There is a provision that customs department can issue detention certificate and on the basis of such certificate, port trust authorities may remit demurrage.

If the assessment is delayed, then those goods can be stored in public warehouse without executing the bond.

W.e.f. 10th May, 2013.

Prior to 10th May, 2013	W.e.f. 10th May, 2013
There is no time limit to remove the goods from warehouse where the goods have been stored under section 49 of the Customs Act, 1962 i.e. warehousing without warehousing	There is a time limit of 30 days to remove the goods from warehouse where the goods have been stored under section 49 of the Customs Act, 1962 i.e. warehousing without warehousing. However, the Commissioner of Customs may extend the period of storage for a further period not exceeding 30 days at a time.

Extension of warehousing and acceptance of Letter of undertaking in place of Bank Guarantee for export warehousing [Circular No. 976/10/2013-CX, dated 12.12.2013]:

1. Warehousing of goods shall initially be allowed for a period up to 6 months, which may be further extended by Assistant/Deputy Commissioner, each extension being for a period not exceeding 6 months, subject to verification that the goods have not deteriorated in quality.
2. The maximum period, for which goods may be left in the warehouse in which they are deposited, or in any warehouse to which such goods have been removed, shall be **three years** from the date on which such goods were first warehoused.

3. Excisable goods shall be deemed to be cleared for home consumption on expiry of warehousing period including extensions granted, if any.
4. Duty and interest @15% p.a. (w.e.f. 1-4-2106) shall be charged on such deemed removal. Prior to 1-4-2016 interest @ 24% per annum.
5. W.e.f. 12.12.2013, where exporter is a manufacturer and a Status Holder with a clean track record, requirement to furnish security equal to 25% of bond amount shall be replaced by the requirement of furnishing an LUT initially for a period up to 6 months which may be extended by a further period not exceeding 6 months.

Further, extensions in the warehousing period shall be allowed to such exporter only on furnishing security of 25% of the bond amount

Warehoused Goods (Removal) Regulations, 2016 (NT 67/2016-Cus., dated 14.5.2016):

1. Owner of warehoused goods make a request:

Where the warehoused goods are to be removed from one warehouse to another warehouse or from a warehouse to a customs station for export, the owner is required to make a request in prescribed Form for transfer of goods.

2. Conditions for transport of goods: Where the goods are removed:

- 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 transport of the goods shall be under one-time lock (OTL), affixed by the proper officer or licensee or bond officer [i.e. an officer of customs in charge of a warehouse], as the case may be. However, the Principal Commissioner/Commissioner of Customs may dispense with the condition of one-time lock and allow transport of the goods without affixing the one-time-lock, having regard to the nature of goods or manner of transport.

3. Acknowledgement of receipt of goods at the destination, to be produced by the owner of goods:

The owner of the goods shall produce to the proper officer at customs station of import or the bond officer, within ONE month [or extended period allowed], an acknowledgement issued by the licensee or the bond officer of the warehouse to which the goods have been removed or the proper officer at the customs station of export, as the case may be, stating that the goods have arrived at that place. In case the owner fails to provide the acknowledgment, he shall pay the full amount of duty chargeable on account of such goods together with interest, fine and penalties payable under section 72(1).

One Time Lock (OTL):

When the goods are removed from the customs station of import for warehousing, the proper officer affixes a one-time lock (OTL) on the container or means of transport (closed trucks). The serial number of OTL along with date and time of its affixation needs to be endorsed upon Bill of Entry for warehousing and transport document.

All customs stations are required to maintain records incorporating the number of the OTL, bill of entry, truck number, container number (if applicable), date & time of affixing the OTL and the name, designation & telephone number of the officer affixing the OTL.

A similar procedure has been provided under Warehoused Goods (Removal) Regulations, 2016 for removal of goods from one warehouse to another and from a warehouse to customs station for export.

However, the Principal Commissioner of Customs/Commissioner of Customs may permit movement of goods without affixation of such OTLs, where the nature of goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo transported through Pipeline & Over Dimensional Cargo)

Transfer of goods to another warehouse:

Warehouse – Private or Public	Special warehouse
(1) Licensee (namely in-charge of warehouse) shall transfer warehoused goods to another warehouse only when the owner of the goods produces the form for transfer of goods bearing the orders of the bond officer permitting such transfer.	(1) Licensee (namely in-charge of warehouse) shall transfer warehoused goods to another warehouse only with the permission of the Bond Officer on the form for transfer of goods.
(2) After the goods are removed and loaded on "means of" transport, licensee would: <ul style="list-style-type: none"> (a) affix a one-time-lock to the means of transport, (b) endorse the number of one-time lock on prescribed form for transfer of goods and on transportation documents, 	(2) Once bond officer permits removal of goods from warehouse, licensee shall, in the presence of Bond Officer: <ul style="list-style-type: none"> (a) cause the goods to be loaded onto the means of transport, and (b) affix a one-time-lock to the means of transport.

Warehouse – Private or Public	Special warehouse
(c) cause one copy of each of these documents to be delivered to bond officer and (d) record the removal of goods	
Monthly return: A licensee shall file with the Bond Officer a monthly return in prescribed form, of the receipt, storage, operations and removal of the goods in the warehouse, within 10 days after the close of the month to which such return relates. However, such return shall be furnished on/before the 10th day of the month immediately preceding the month in which the warehousing period would expire.	

Online filing of Ex-bond bill of entry and EDI based monitoring of warehouses at customs station of import (w.e.f. 31.05.2015)

The filing of ex-bond bills of entry on ICES will provide the benefits of automation to importers availing the warehousing facility and lend efficiency to the process of clearance of the warehoused goods.

On receipt of copy of the ex-bond bill of entry, jurisdictional bond officer shall verify its details from ICEGATE (Indian Customs Electronic Commerce/Electronic Data interchange (EC/EDI) Gateway) to check that, the order of clearance for home consumption has been made by the proper officer. In case of any discrepancy, he shall not permit the removal of goods from the warehouse and immediately inform his Deputy or Assistant Commissioner for resolution of the same.

Example 1: Explain the validity of the following statements with reference to Chapter IX of the Customs Act, 1962 containing the provisions relating to the warehousing:

- The proper officer is not authorized to lock any warehouse with the lock of the Customs Department.
- The Commissioner of Customs (Appeals) may appoint public warehouses wherein dutiable goods may be deposited.
- The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act.

Answer:

- The given statement is invalid:** Section 58A(1) 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.
- The given statement is invalid:** The Commissioner of Customs or the Principal Commissioner of Customs can appoint public warehouse, wherein dutiable goods can be deposited under Section 57 of the Customs Act, 1962.
- The given statement is valid:** The Commissioner of Customs or Principal Commissioner of Customs is not required to give a notice to the licensee while canceling the license of a private warehouse if he has contravened any provision of the said Act, as per section 58(2)(b) of the Customs Act, 1962. **Amendment Section 58B of the Customs Act, 1962.**

Example 2: An importer imported some goods on 1st January, 20XX and the goods were cleared from Mumbai port for warehousing on 8th January, 20XX by submitting Bill of Entry, exchange rate was ₹50 per US \$. FOB value US \$ 10,000. The rate of duty on 8th January, 20XX was 20%. The goods were warehoused at Pune and were cleared from Pune warehouse on 31st May, 20XX, when rate of basic customs duty was 12% and exchange rate was ₹68.75 per 1 US \$. IGST @12% is applicable.

You are required to find:

- The total Customs duty payable?
- The interest if any payable?

Answer:

	USD	
FOB	10,000	
ADD: 20% Freight on FOB	2,000	
ADD: 1.125% Insurance on FOB	112.5	
CIF (AV)	12,112.50	
	₹	
ASSESSABLE VALUE	6,05,625	(i.e. 12,112.50 x ₹50)
Add: BCD 12%	72,675	(i.e. 6,05,625 x 12%)
Add: 10% SWS	7,268	(i.e. 72,675 x 10%)

Transaction value subject to GST	6,85,568	
Add: IGST	82,268	(i.e. 6,85,568 x 12%)
Value of import	7,67,836	
Value of Customs duties	1,62,211	
Interest:	3,600	
(i.e. $1,62,211 \times 15\% \times 54/365$)		

Working Note:

From 8th January, 20XX to 31st May, 20XX = $144 - 90 = 54$ days

Example 3: Vipul imported certain goods in December 2020. A 'Thrice the duty bond' bill of entry was presented on 14th December 2020 and goods were cleared from the port for warehousing. Assessable value on that date was US \$1,00,000. The order permitting the deposit of goods in warehouse for four months was issued on 21st December 2020. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 20th April 2021.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty, interest and other charges. Vipul cleared the goods on 14th May 2021. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of following information:

Particulars	14-12-2020	20-4-2021	14-5-2021
Rate of exchange per US \$ (as notified by Central Board of Indirect Taxes & Customs)	₹65.20	₹65.40	₹65.50
Basic Customs Duty	15%	10%	12%

No other customs duty is payable except basic customs duty.

Answer:

Assessable value ₹65,20,000/-

Customs duty is ₹7,17,200/-

(USD 1,00,000 x ₹65.20) x 11% = ₹7,17,200 (includes BCD + SWS)

Interest payable is ₹16,211/-

$(7,17,200 \times 15/100) \times 55 \text{ days}/365 = ₹16,211/-$

Working note:

Month	No. of days delay
From 21st Dec 2020 to 31st Dec 2020	11
Jan 2021	31
Feb 2021	28
Mar 2021	31
April 2021	30
May 2021	14
Total	145
Less: No. of days for which no interest	-90
No. of delay for interest	55

5.3 Export Procedures

The master of a vessel shall not permit the loading of any export goods, other than baggage and mail bags, until an order has been given by the proper officer granting entry-outwards to such vessel. The steamer agent is required to file an application for entry outwards 14 days in advance from the date of original export.

The person-in-charge of a conveyance shall not permit the loading at a customs station of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter. The person-in-charge of a conveyance shall not permit the loading at a customs station of baggage and mail bags, unless their export has been duly permitted by the proper officer [Section 40 of the Customs Act, 1962].

5.3.1 Export General Manifest now called as departure manifest or an export manifest

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

The person-in-charge of a conveyance who has loaded any export goods at a customs station shall not permit the conveyance to depart from that customs station until a written order to that effect has been given by the proper officer.

Let export order shall not be given until

- The person-in-charge of the conveyance has answered the questions put to him
- The provisions of section 41 have been complied with;
- The shipping bills or bills of export, the bills of transshipment, if any, and such other documents as the proper officer may require have been delivered to him;
- All duties leviable on any stores consumed in such conveyance, and all charges and penalties due in respect of such conveyance or from the person-in-charge thereof have been paid;
- The person-in-charge of the conveyance has satisfied the proper officer that no penalty is leviable on him under section 116 of the Customs Act, 1962.
- In any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods, such goods have been unloaded, or
- The Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India

Either the Guarantee Receipt (GR) or Statutory Declaration Form (SDF) requires filing by the exporter to meet the requirements of the Reserve Bank of India. The purpose of these forms is to ensure that export proceeds are received in India through the authorized banking channels.

Export General Manifest now called as departure manifest or an export manifest:

w.e.f. 1-8-2019, "The person-in-charge of a conveyance carrying export goods or imported goods or any other person as may be specified by the Central Government, by notification, shall, before departure of the conveyance from a customs station, deliver to the proper officer in the case of a vessel or aircraft, a departure manifest or an export manifest by presenting electronically, and in the case of a vehicle, an export report, in such form and manner as may be prescribed and in case, such person-in-charge or other person fails to deliver the departure manifest or export manifest or the export report or any part thereof within such time, and the proper officer is satisfied that there is no sufficient cause for such delay, such person-in-charge or other person shall be liable to pay penalty not exceeding fifty thousand rupees".

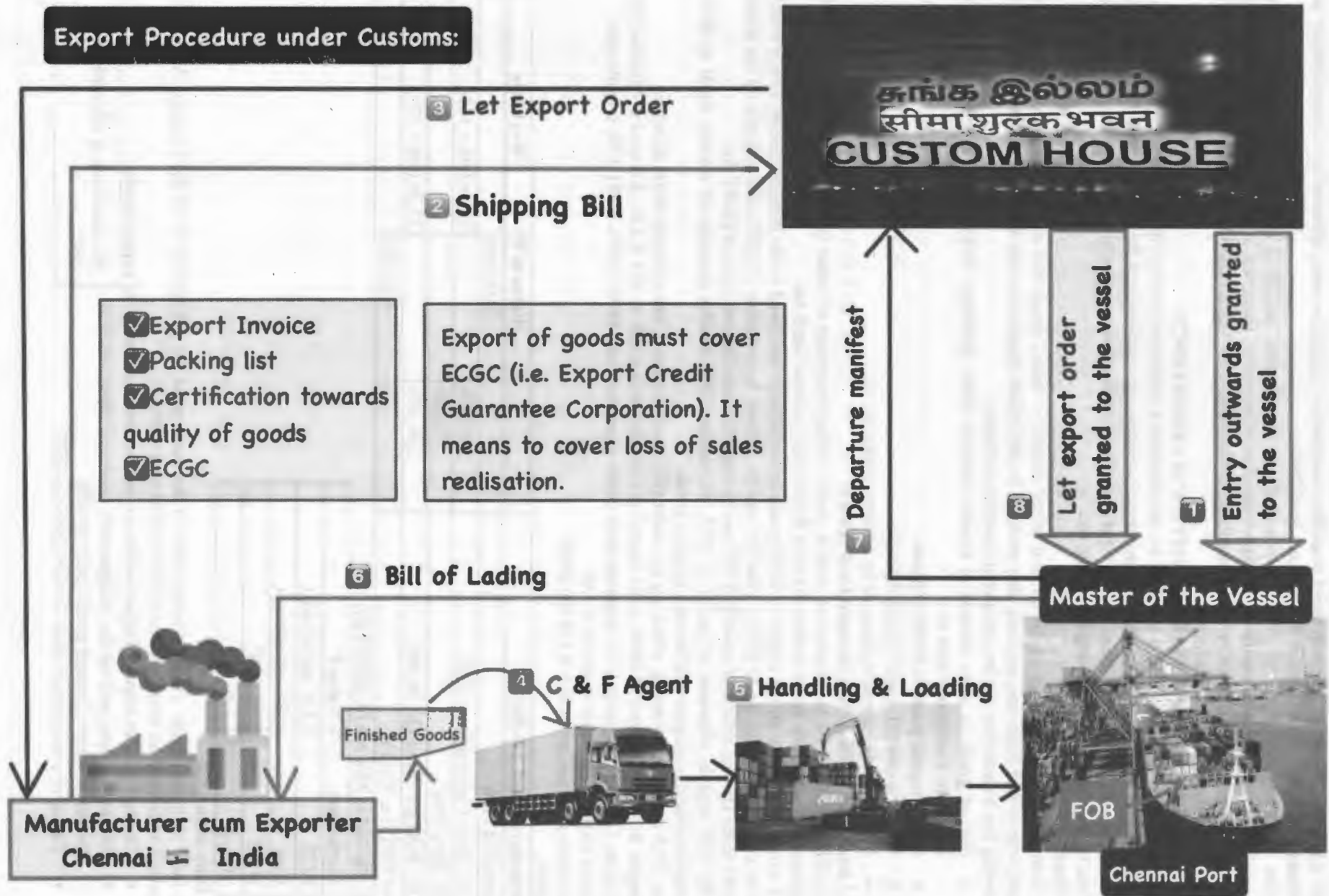
w.e.f. 1-8-2019 VERIFICATION OF IDENTITY AND COMPLIANCE

The proper officer, authorised in this behalf by the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, may, for the purposes of ascertaining compliance of the provisions of this Act or any other law for the time being in force, require a person, whose verification he considers necessary for protecting the interest of revenue or for preventing smuggling etc.,

The entire concept of export procedure has been explained in the following lines:

⇒ ⇒ ⇒

Export Procedure under Customs:



Note: Electronic filing of import/export manifest mandatory except in cases allowed by Commissioner of Customs [Section 30(1) & Section 41(1)] w.e.f. 10-5-2013:

Section 30(1) and section 41(1) have been amended *vide* the Finance Act, 2013 to provide for the mandatory electronic filing of the import manifest and export manifest respectively. However, in cases where it is not feasible to deliver import/export manifest by presenting them electronically, the Commissioner of Customs may, allow the same to be delivered in any other manner.

w.e.f. 1-8-2019 VERIFICATION OF IDENTITY AND COMPLIANCE

The proper officer, authorised in this behalf by the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, may, for the purposes of ascertaining compliance of the provisions of this Act or any other law for the time being in force, require a person, whose verification he considers necessary for protecting the interest of revenue or for preventing smuggling etc.

5.4 Deemed Exports

The term Deemed Exports an export without actual export, it means goods and services are sold and provide respectively within India and payment also received in the Indian Rupees. As per the Foreign Trade Policy the following few transactions can be considered as deemed exports.

- Sale of goods to units situated in Export Oriented Units, Software Technology Park, and Electronic Hardware Technology Park etc.
- Sale of capital goods to fertilizer plants
- Sale of goods to United Nations Agencies
- Sale of goods to projects financed by bilateral Agencies, etc.

5.4.1 Imports by 100% Export Oriented Units (EOU):

EOUs/EHTPs/STPs will be allowed to import goods without payment of basic customs duty (BCD) as well additional duties leviable under Section 3(1) and 3(5) of the Customs Tariff Act.

GST would be leviable on the import of input goods or services or both used in the manufacture by EOUs which can be taken as input tax credit (ITC). This ITC can be utilized for payment of GST taxes payable on the goods cleared in the DTA or refund of unutilized ITC can be claimed under Section 54(3) of CGST Act.

In the GST regime, clearance of goods in DTA will attract GST besides payment of amount equal to BCD exemption availed on inputs used in such finished goods.

Note: DTA clearances of goods, which are not under GST, would attract Central Excise duties as before.

Example: M/s X Ltd (a unit of 100% EOU located in Chennai) sold goods to M/s A Ltd. (Located in Mumbai) for ₹20 lakhs. If M/s X Ltd being EOU imported these goods exempted from BCD @10%. IGST 12% is applicable.

Find the total GST is liable to pay by X Ltd.

How much input tax credit M/s A Ltd can avail?

Answer:

Particulars (w.e.f. 1-7-2017)		Value in ₹	Workings
Assessable value		20,00,000	
ADD: Basic Customs Duty 10%	2,00,000		20,00,000 × 10%
Add: SWS 10%	20,000		
ADD: IGST@12% on ₹22,20,000	2,66,400		22,20,000 × 12%
Total GST (i.e. IGST)		4,86,400	

ITC allowed to M/s A Ltd. (BUYER):

Particulars	Value ₹
BCD	ITC not allowed
Cess	ITC not allowed
IGST	2,66,400
TOTAL	2,66,400

5.5 Duty drawback

The term 'duty drawback' means drawing back of the duties paid. As per section 75 of the Customs Act, 1962, drawback is given as an amount to the exporter which represents:

- The duty paid on imported inputs which are used in the manufacture of export goods
- The excise duty paid on the indigenously produced inputs used in the manufacture of export goods (prior to GST).
- The service tax paid on input services (prior to GST).

No drawback is allowed on GST

However, the amount of drawback paid would not exactly relate to the actual import duty and excise duty components. It is determined by the government on the basis of an average amount of duty having regard to all the circumstances and facts of the manufacturing industry. Such a rate is called 'all industry rates' which may vary from time to time depending upon the duty prevalent on the inputs.

Brand rate of duty drawback is applicable in either of the following circumstances.

- When individual rate fixed in respect of goods on which all industry rate is not applicable
- Or

- All industry rate does not cover 80% of the drawback amount due

The Brand Rate of Duty Drawback fixed by the Central Government after necessary verification of the manufacturing processes and the documents provided giving details of input output ratio, duty paid on inputs, etc.

5.6 Special Brand Rate of duty drawback

As per Rule 7 of Drawback Rules the special brand rate of duty drawback can be applied based on the satisfaction of following conditions:

- Exporter has to apply for fixation of special brand rate within 30 days from the date of export.
- All industry rates do not cover 80% of the duties paid by the exporter.
- Rate of Duty Drawback should not be less than 1% of Free on Board.
- Amount of Drawback should not be less than ₹500 per shipment, in case rate of Duty Drawback is less than 1% of FOB.
- Exported goods value is more than the value of imported goods.

Example

An exporter exported 2,000 pairs of leather shoes @ ₹750 per pair. All industry rate of drawback is fixed on average basis i.e. @ 11% of FOB subject to maximum of ₹80 per pair. The exporter found that the actual duty paid on inputs was ₹1,95,000. He has approached you, as a consultant, to apply under Rule 7 of the drawback rules for fixation of 'special brand rate'. Advise him suitably. (CS Dec., 2003)

Answer:

- Drawback Amount ₹1,65,000 (i.e. $2,000 \times 750 \times 11\%$) or ₹1,60,000 (i.e. $₹80 \times 2,000$) whichever is less.
- Therefore, duty drawback allowed is ₹1,60,000.
- All Industry duty drawback rate = $@82.05\% [(1,60,000/1,95,000) \times 100\%]$
- Exporter is not eligible to apply for Special Brand rate.
- Therefore, exporter is eligible for claiming All Industry Duty Drawback.

Note: special brand rate of duty is applicable only when all industry rates do not cover 80% of the duties paid by the exporter.

5.6.1 All Industry Rates

Generally, these rates are fixed by the Drawback Directorate once in every year on 1st June. The **Brand rate** is fixed for those products in respect of which All Industry Rate is not announced. In that case, the manufacturer or exporter must get the brand rate fixed by furnishing the prescribed data within 3 months from the relevant date for determination of rate of duty and tariff valuation to the Commissioner of Central Excise and Customs.

As per Rule 3(2) of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, all industry rate of duty drawback will be determined by the Drawback Directorate shall have regard to

- The average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.
- The average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods;
- The average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods.
- The average amount of duties paid on materials wasted in the process of manufacture.
- The average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods;
- The average amount of tax paid on taxable services which are used as input services for the manufacturing or processing or for containing or packing the export goods.
- Any other information, which the Central Government considers relevant or useful.

Types of duty drawbacks concept and its applicability explained here in a simplified manner:



Where the exporter has already filed a duty, drawback claim under All Industry Rates (AIR) Schedule, he cannot request for fixation of Special Brand Rate of drawback. Thus, the exporter should determine prior to export of goods, whether to claim drawback under AIR or Special Brand Rate. [w.e.f. 22.11.2014]

5.7 Duty Drawback on Re-Export

Section 74 of the Customs Act, 1962, provides facility of claiming duty drawback on the re-export of duty paid goods.

- Originally the goods should have been imported into India;
- Customs duty on import should have been paid.
- The imported goods should be capable of being easily identifiable as the same goods which were originally imported.
- The goods have been exported after proper examination of the goods and after ensuring that there is no prohibition or restriction on their export by the proper officer.
- The goods should have been identified to the satisfaction of the Assistant or Deputy Commissioner of Customs as the goods, which were imported, and
- The goods should have been entered for export within **two years** from the date of payment of duty on the importation thereof.

Drawback of import duty paid is not allowed if these goods are exported: Wearing apparel (after being used), Tea chests, Exposed cinematograph film passed by the Board of Film Censors in India, Unexposed photographic films, paper and plates and X-Ray films.

The Central Board of Indirect Taxes and Customs has the power to extend the period of two years. Once these conditions are satisfied, then 98% of the import duty paid on such goods at the time of importation shall be repaid as drawback. 98% duty drawback is allowed only when these goods are re-exported without being used in the industry. If the goods are taken into use after importation then the duty drawback is allowed based on the period of usage as per section 74(2) of the Customs Act, 1962.

► Example:

ABC Ltd., who is an exporter, finds that the amount of drawback refunded to it is less than what it is entitled to, on the basis of the rates of drawback announced by the Central Government. Briefly discuss whether ABC Ltd. can claim the difference of drawback short refunded and procedure to be followed in this regard. [CA Final Nov'2000]

Answer:

Yes, ABC Ltd. is eligible for claiming the difference of the drawback on the basis of the amount of rate of drawback determined by the Central Government of India for claiming the difference by filing a supplementary claim in the prescribed form under rule 15 of the Customs Act and Central Excise Duties Drawback Rules, 1995 within a period of 3 months.

The said 3 months period further extended for a period of nine months for filing a supplementary claim under rule 15, by making an application accompanied with fees of 1% of the FOB value of exports or ₹1000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/ Commissioner of Customs and Central Excise on an application accompanied with fees of 2% of the FOB value or ₹2000/- whichever is less.

5.7.1 Drawback rates on re-export if the goods are taken into use after importation (NT No. 23/2008-Cus., dated 1-3-2008)

The following duty drawback rates have been notified by the Central Government under section 74(2) of the Customs Act, 1962. These rates are applicable if the goods are re-exported only after being used in the business.

<i>Length of period between the date of clearance for home consumption and the date when goods are placed under Customs control for export.</i>	<i>% of import duty to be paid as Drawback</i>
Not more than 3 months	95%
More than 3 months but not more than 6 months	85%
More than 6 months but not more than 9 months	75%
More than 9 months but not more than 12 months	70%
More than 12 months but not more than 15 months	65%
More than 15 months but not more than 18 months	60%
More than 18 months	NIL

5.7.2 Duty drawback rates on personnel goods under section 74(2) of the Customs Act

The following duty drawback rates are allowable on goods imported for personal use (like Motor cars or other goods) after payment of duty and subsequently re-exported: These rates are applicable if the goods are re-exported after being used.

Year	Quarter or part thereof	Rate of drawback to be reduced	Cumulative reduction	Allowable drawback
1	1st Quarter	4%	4%	96%
	2nd Quarter	4%	8%	92%
	3rd Quarter	4%	12%	88%
	4th Quarter	4%	16%	84%
2	1st Quarter	3%	19%	81%
	2nd Quarter	3%	22%	78%
	3rd Quarter	3%	25%	75%
	4th Quarter	3%	28%	72%
3	1st Quarter	2.50%	30.5%	69.5%
	2nd Quarter	2.50%	33%	67%
	3rd Quarter	2.50%	35.5%	64.5%
	4th Quarter	2.50%	38%	62%
4	1st Quarter	2%	40%	60%
	2nd Quarter	2%	42%	58%
	3rd Quarter	2%	44%	56%
	4th Quarter	2%	46%	54%

Part of the quarter is also considered as full quarter for allowing duty draw back rate.

Motor car or goods used more than 2 years:

where the period of usage is more than 2 years, drawback shall be allowed only if the CBIC, on sufficient cause being shown, has in that particular case extended the period beyond 2 years and also that no drawback shall be allowed if such motor car has been used for more than 4 years.

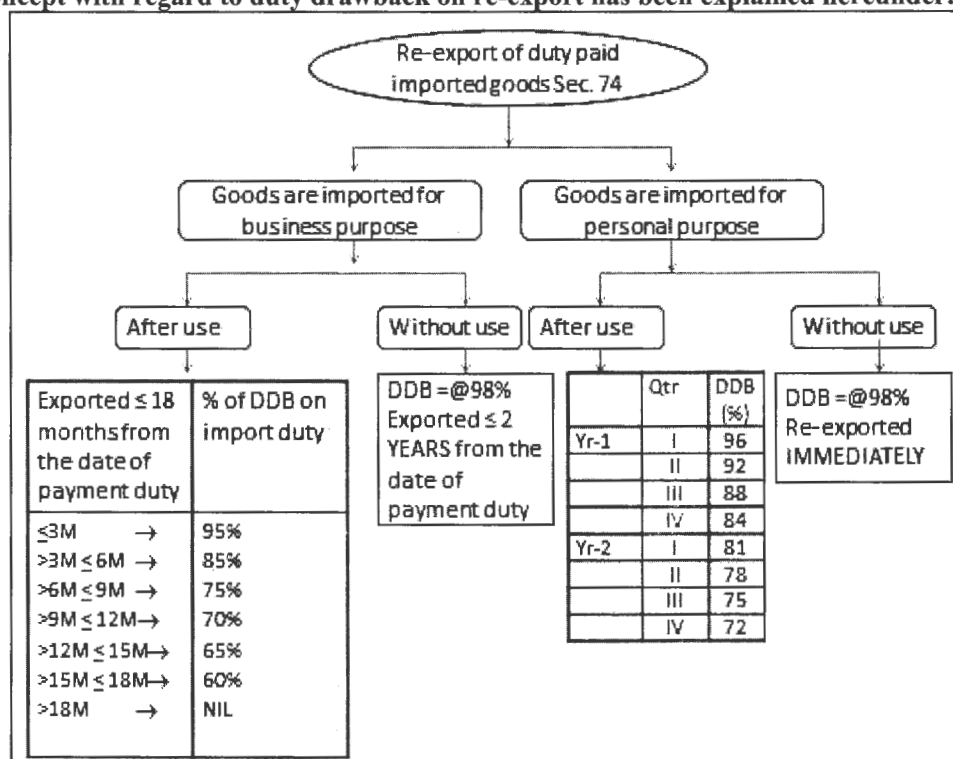
► Example 1

Mr. Ram wants to take back with him (i.e. re-export) a car that he was imported on duty payment, when came to India. Can he get any duty drawback from the government? He has imported motor car for his personal use and paid ₹2,50,000 as import duty. Car used in India for 3 months and 2 days.

Answer:

Yes, he can claim the duty drawback @92% on the value of import duty i.e. ₹2,30,000

The entire concept with regard to duty drawback on re-export has been explained hereunder:



	Qtr	DDB (%)
Yr-3	I	69.5
	II	67
	III	64.5
	IV	62
Yr-4	I	60
	II	58
	III	56
	IV	54

Example 1: Calculate the amount of duty drawback allowable under section 74 of the Customs Act, 1962 in following cases:

- Salman imported a motor car for his personal use and paid ₹5,00,000 as import duty. The car is re-exported after 6 months and 20 days.
- Nisha imported wearing apparel and paid ₹50,000 as import duty. As she did not like the apparel, these are re-exported after 20 days.
- Super Tech Ltd. imported 10 computer systems paying customs duty of ₹50 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 2 months without using them at all.

Answer:

- The amount of duty drawback is ₹4,40,000 (i.e. ₹5,00,000 @ 88%), since these goods are used in India.
- Duty drawback is ₹nil, assumed that wearing apparels are re-exported after being used.
- Duty drawback is ₹49,00,000 (i.e. 50,00,000 x 98%), since these good are re-exported without being used.

Example 2: With reference to drawback on re-export of duty paid imported goods under section 74 of the Customs Act, 1962, answer in brief the following questions:

- What is the time limit for re-exportation of goods as such?
- What is the rate of duty drawback if the goods are exported without use?
- Is duty drawback allowed on re-export of wearing apparel without use?

Answer:

- As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation.

This period can be extended by CBIC if the importer shows sufficient reason for not exporting the goods within two years.

- (ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.
- (iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used.

5.7.3 Statements/Declaration to be made on export other than by post

As per Rule 4 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, the exporter shall at the time of export of the goods—

- State on shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback under section 74 and make a declaration on the relevant shipping bill or bill of export the following:
 - the export is being made under a claim for drawback under section 74 of the Customs Act;
 - that the duties of customs were paid on the goods imported;
 - that the imported goods were, or were not, taken into use after importation;
- furnish to the proper officer of customs, copy of bill of entry, import invoice, Documentary evidence of payment of duty, export invoice and packing list and permission from Reserve Bank of India to re-export the goods, wherever necessary

5.7.4 Time limit for claiming the duty drawback

As per Rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 a claim for drawback, in case of goods exported other than by post, shall be filed in the specified form at Annexure II **within three months** from the date on which an order permitting clearance and loading of goods for exportation under section 51 is made by proper officer of customs.

In case of delay in filing the claim, the proper officer namely the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, if he satisfied that the exporter was prevented by sufficient cause to file his claim within the aforesaid period of three months, allow the exporter to file his claim within a **further period of three months**.

5.7.4.1 Extension of time period for filing drawback claim under rule 5 of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995

Proviso to rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 has been substituted with a new proviso. Rule 5(1) provides that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.

The new proviso lays down that the said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ₹1,000/- whichever is less and a further period of six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹2,000/- whichever is less. [Notification No. 48/2010-Cus. (NT), dated 17.06.2010]

5.7.4.2 Change in time periods available under rules 6, 7, 15 and 16A of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995

Following amendments have been made in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995: [Notification No. 49/2010-Cus.(NT), dated 17.06.2010]

- (i) The time period for the following has been extended from sixty days to three months:
 - (a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback, if no, All Industry Rate is specified [Rule 6].
 - (b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low (i.e. All Industry Rate is lower than 80% of the duty or tax paid) [Rule 7].

Further, the aforesaid periods of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1% of the FOB value of exports or ₹1000/- whichever is less and a further period of six months by Commissioner of Central Excise/ Commissioner of Customs and Central Excise on an application accompanied with a fees of 2% of the FOB value or ₹2000/- whichever is less.

5.7.4.2.1 SUPPLEMENTARY CLAIM [Rule 15]:

Where an exporter finds that the amount of duty drawback paid to him is less than what he is entitled to on the basis of amount or rate of duty drawback as determined by the Commissioner of Central Excise/ Commissioner of Customs and Central Excise, he may prefer supplementary claim in prescribed form:

The claim shall be made within 3 months of the following dates—

- Where rate of duty drawback is determined or revised under Rule 3 or 4, date of publication of such date
- Where the rate is determined under Rule 6 or 7, the date of communication of rate to person

The said 3 months period further extended for a period of nine months for filing a supplementary claim under rule 15, by making an application accompanied with fees of 1% of the FOB value of exports or ₹1,000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with fees of 2% of the FOB value or ₹2,000/- whichever is less.

5.7.4.2.2 RECOVERY OF DUTY DRAWBACK WHERE EXPORT PROCEEDS ARE NOT REALIZED RULE 16A:

Where the duty drawback has been paid to the exporter but the sale proceeds in respect of such goods have not been realized by the exporter within the period permissible by the Foreign Exchange Management Act, 1999 (FEMA), such duty drawback shall be recovered by the Government except under circumstances or conditions specified in rule 16A(5).

Where the sale proceeds are realized by the exporter after the amount of drawback has been recovered from him and the exporter produces evidence about such realization within a period of 3 months from the date of realization of sale proceeds provided the sale proceeds have been realized within the period permitted by the Reserve Bank of India. The amount of drawback so recovered shall be repaid the Assistant Commissioner or Deputy Commissioner of Customs to the exporter.

Further, the aforesaid period of three months may be extended by a period of nine months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with fees of 1% of the FOB value of exports or ₹1000/- whichever is less.

5.7.4.2.3 DRAWBACK SHALL NOT BE RECOVERED (NOTIFICATION No. 30/2011-CUS., DATED 11-4-2011):

As per Rule 16A (5) the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 where sale proceeds are not realized by an exporter within the period allowed under the FEMA, the amount of drawback paid to the exporter or the claimant shall not be recovered if—

- such non-realisation of sale proceeds is compensated by the Export Credit Guarantee Corporation of India Ltd. (ECGC), under an insurance cover; and
- the Reserve Bank of India writes off the requirement of realisation 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.

5.7.5 Documents to be filed for claiming of duty drawback on re-export

As per Rule 5(2) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995, the claim shall be filed along with the following documents, namely

- Triplicate copy of the Shipping Bill bearing examination report recorded by the proper officer of the customs at the time of export.
- Copy of Bill of Entry or any other prescribed document against which goods were cleared on importation;
- Import invoice;
- Evidence of payment of duty paid at the time of importation of the goods;
- Permission from Reserve Bank of India for re-export of goods, wherever necessary;
- Export invoice and packing list;
- Copy of Bill of lading or Airway bill;
- Any other documents as may be specified in the deficiency memo.

As per Rule 5(3) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 the date of filing of the claim for the purpose of section 75A shall be the date of affixing the Dated Receipt Stamp on the claims, which are complete in all respects, and for which acknowledgement shall be issued in the form prescribed by the Commissioner of Customs.

As per Rule 5(4)(a) of the Any claim which is incomplete in any material particulars or is without the documents specified above shall not be accepted for the purpose of section 75A and such claim shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

Incomplete claim if any shall not be accepted for the purpose of section 75A and the same shall be returned to the claimant with the deficiency memo in the form prescribed by the Commissioner of Customs within fifteen days of submission and shall be deemed not to have been filed.

Where the exporter complies with requirements specified in deficiency memo within thirty days from the date of receipt of deficiency memo, the same will be treated as a claim filed under Rule 5(1).

5.7.6 Payment of erroneous or excess payment of duty drawback and interest

Where an amount of drawback and interest, if any, has been paid erroneously or amount so paid in excess of what the claimant is entitled to, the claimant shall, on demand by an officer of customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in Section 142(1) of the Customs Act, 1962 namely recovery of sums due to Government. As per section 75A(2) of the Customs Act, 1962, the claimant (assessee) is liable to pay the excess amount of drawback, he is liable to pay interest as well. No notice need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid. [*CPS Textiles P Ltd. v Joint Secretary* 2010 (255) ELT 228 (Mad)]

Example: Abdul Overseas Pvt. Ltd. was erroneously refunded a sum of ₹ 30,000 in excess of actual drawback on 16-6-2017. A demand for recovery of the same was issued by the Department on 24.08.2017. Abdul Overseas Private Limited returned the erroneous refund to the Department on 16-10-2017. You are required to calculate the amount of interest chargeable from Abdul Overseas Pvt. Ltd. Provide brief reasons for your answer. 4 Marks

Answer: Interest = ₹1,516/- (30,000 x 15% x 123/365)

Computation of duty drawback:

Example 1: 'A' exported a consignment under drawback claim consisting of the following items—

Particulars	Chapter Heading	FOB value ₹	Drawback rate
200 pieces of pressure stores mainly made of beans @ ₹80/piece	74.04	16,000	4% of FOB
200 Kgs. Brass utensils @ ₹200 per Kg.	74.13	40,000	₹24/Kg.
200 Kg. Artware of brass @ ₹300 per Kg.	74.22	60,000	17.50% of FOB subject to a maximum of ₹38 per Kg.

On examination in docks, weight of brass Artware was found to be 190 Kgs. and was recorded on shipping bill. Compute the drawback on each item and total drawback admissible to the party.

Answer:

The drawback on each item and total drawback admissible to the party shall be—

Particulars	FOB value ₹	Drawback rate	Drawback Amount (₹)
200 pcs, pressure stoves made of brass	16,000	4% of FOB	640
200 Kgs. Brass utensils	40,000	₹24 per Kg.	4,800
200 kgs. Artware of brass, whose actual weight was 190 Kgs. only. (60,000 x 190/200) x 17.5% = 9975 190 kgs x ₹38 = ₹7,220		17.50% of FOB subject to maximum of ₹38 per Kg. (₹9,975 or ₹7,220 whichever is less)	7,220
Total Drawback admissible (in ₹)			12,660

Example 2: X Ltd has exported following goods to USA. Discuss whether any duty drawback is admissible under section 75 of the Customs Act, 1962.

Product	FOB Value of Exported goods	Market Price of goods	Duty drawback rate
A	2,50,000	1,80,000	30% of FOB
B	1,00,000	50,000	0.75% of FOB
C	8,00,000	8,50,000	3.50% of FOB
D	2,000	2,100	1.50% of FOB

Note: Imported value of product C is ₹9,50,000.

Answer:

Duty draw back amount for all the products are as follows:

Product A:

Drawback amount = 2,50,000 x 30% = ₹75,000 or ₹1,80,000 x 1/3 = ₹60,000

Allowable duty draw back does not exceed 1/3 of the market value.

Hence, the amount of duty drawback allowed is ₹60,000

Product B:

Drawback amount allowed is ₹750 (i.e. ₹1,00,000 x 0.75%).

Since, the amount is more than ₹500 even though the rate is less than 1%.

Product C:

No duty drawback is allowed, since the value of export is less than the value of import (i.e. negative sale)

Product D

No duty drawback is allowed, since the duty drawback amount is ₹30 (which is less than ₹50).

Though rate of duty drawback is more than 1%, no duty drawback is allowed.

Example 3: Calculate the amount of duty drawback allowable under the Customs Act, 1962 in the following cases:

- Jaggi Mehta imported a car from U.K. for his personal use and paid ₹4,50,000 as import duty. However, the car is re-exported immediately without bringing it into use.
- Meenakshi imported a music player from Dubai and paid ₹12,000 as import duty. She used it for four months but re-exports the same after four months.
- XYZ Ltd. exported 1000 kgs of a metal of FOB value of ₹1,00,000. Rate of duty drawback on such export is ₹60 per kg. Market price of goods is ₹40,000 (in wholesale market).

Answer:

- Jaggi Mehta can claim duty drawback of ₹4,41,000 (98% of ₹4,50,000).
- Meenakshi can claim duty drawback of ₹10,200 (i.e. 85% of ₹12,000)
- XYZ Ltd. is not entitled to claim duty drawback in this case.
Since, market value of exported goods is less than the value of Duty Drawback.

5.7.7 Re-export of Imported Goods by POST

Procedure to claim the duty drawback when import duty paid on imported goods which are taken for re-export:

- The parcel carrying the address of the consignee shall also carry in bold letters the words "DRAW BACK EXPORT";
- The exporter shall deliver to the competent Postal Authority, along with the parcel of package, a claim, in quadruplicate, duly filled in specified form.
- The relevant date for filing of drawback claim in such a case shall be the date of receipt of the aforesaid 'claim form' by the proper officer of customs from the postal authorities. This date is important for the purpose of calculation of interest on drawback under Section 75A of the Act.
- An intimation of the same shall be given by the proper officer of customs to the exporter in the form prescribed by the Commissioner of Customs.
- Deficiencies, if any, in the claim form shall be intimated to the exporter within 15 days of its receipt by postal authorities through a deficiency memo. In such circumstances such claim shall be deemed not to have been received.
- Where the exporter complies with the requirements specified in deficiency memo, within 30 days of receipt of the deficiency memo, he shall be issued an acknowledgement by the proper officer. The date of such acknowledgement shall be deemed to be the date of filing the claim for purposes of section 75A.

5.8 Negative list of Duty Drawback

Section 76 of the Customs Act, 1962 contains the provisions in respect of prohibition and regulation of drawback and no drawback shall be allowed in the following circumstances:

- In respect of any goods, the market price of which is less than the amount of drawback due thereon.
- If the Central Government is of the opinion that goods of any specified description in respect of which drawback is claimed under this Chapter are likely to be smuggled back into India.
- CENVAT credit claim is on inputs and input services then no duty drawback is allowed. However, if the goods have already suffered the customs duty then duty drawback is allowed to the extent of customs duties.
- Duty drawback is not allowed if the exporter has already availed the Duty Entitlement Pass Book (DEPB) or other export incentives.
- If the sale proceeds not received within the time period allowed by Reserve Bank of India.
- Export to Nepal and Bhutan and the export proceeds are not received in hard currency (it means USD, GBP or Pounds).
- drawback in respect of iron and steel, cement and rice is not allowed. [w.e.f. 29-5-2008]
- duty drawback is more than 1/3rd of market value of exported goods, then amount of duty drawback is restricted to 1/3rd of market value.

- (i) No amount or rate of drawback is to be determined except where the amount of drawback exceeds or equal to ₹500/- or it is 1% or more of the FOB value of export
- (j) Where the amount of drawback in respect of any goods is less than ₹50.
- (h) Duty drawback amount exceeds market value of exported goods.

Example:

Particulars	Situation 1	Situation 2	Situation 3	Situation 4
Free On Board (FOB) in ₹	1,000	10,000	1,00,000	1,00,000
Duty Draw Back (DDB) in ₹	40	200	450	750
DDB (%)	4%	2%	0.45%	0.75%
DDB	Not allowed	Allowed	Not allowed	Allowed
Remarks	Since, DDB is < ₹50	Since, DDB ≥ 1% and amount also ≥ ₹50	Since, DDB < 1% and DDB amount also < ₹500	Since, DDB amount is ≥ ₹500 even though DDB < 1%

The above list is only illustrative but not exhaustive.

► Example 1:

XYZ Company Limited exported a consignment of manufactured goods. The company has paid import duty and central excise duty on the components used in the manufacture. A duty drawback rate has been fixed for these goods. The ship carrying the consignment runs into trouble and sinks in the Indian territorial waters. The customs department refused to grant drawback for the reason that the goods did not reach their destination. As a consultant for M/s XYZ Limited you are required to prepare a brief note with the reason whether the stand taken by the customs department is correct in law. [CA Final Nov'2002, CA Final Nov'2005]

Answer:

The term "export" means "taking out of India to a place outside India". The term "taking out of a place outside India" would also mean a place in high seas, if that place is beyond territorial waters of India. If the goods cross the territorial waters of India, then it is an export and duty drawback cannot be denied.

In the given case, the vessel sunk within territorial waters of India and therefore there is no export. Accordingly, no duty drawback shall be available in this case. [Union of India v Rajindra Dyeing & Printing Mills Ltd. 2005 (180) ELT 433 (SC)]

► Example 2:

Sun industries sent certain goods by a ship from Kolkatta to Colombo in Sri Lanka under claim for drawback on the said goods under section 75 of the Customs Act, 1962 against shipping bill. The ship had passed beyond the territorial waters of India and the engine developed trouble while the ship was on high seas falling within the ambit of the expression 'taking out a place outside India'. The ship returned back and ran aground in Indian territorial waters at the port of Paradeep. The fittings, stores and cargo were salvaged. Discuss the admissibility of claim for drawback by the company. [CA Final Nov'1999, CA Final May'1996]

Answer:

In the given case it is apparent that the goods are exported. The fact that the ship was brought back to India because of the damages in the ship does not affect the position. The assessee was entitled to the benefit of section 75 of the Customs Act, 1962. Once the ship carrying goods crosses the territorial waters, export is complete and duty drawback is allowable and its running aground in India due to engine trouble makes no difference.

5.8.1 Upper limit of drawback money or rate

As per the Rule 8A of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 the drawback amount or rate determined under rule 3(i.e. the all industry rate) shall not exceed 1/3rd of the market price of export product.

5.8.2 Interest on draw back amount

Any drawback payable to a claimant u/s 74 or 75 is not paid within specified time period (i.e. one month from the date of filing of drawback claim), the @6% per annum interest is payable to the claimant after the expiry of said one month till the date of payment of such drawback.

Drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or rules made there under, within two months from the date of demand has to pay back. Otherwise, @13% per annum interest will be levied from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

5.9 Duty deferment [provisions of this section have been omitted w.e.f. 10.05.2013]

The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit clearance of material under an import licence without payment of duty leviable thereon. This is permissible subject to satisfaction of the following conditions [Section 143A of the Customs Act, 1962].

- While permitting clearance, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may require the importer to execute a bond with such surety or security as he thinks fit.
- The duty payable on the material imported shall be adjusted against the drawback of duty payable under this Act
- If the imported goods are not exported within the period specified in Advance Authorisation or within such extended period not exceeding six months by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, be liable to pay the amount of duty not so adjusted together with simple interest thereon at the rate of twelve per cent per annum from the date the said permission for clearance is given to the date of payment.

5.9.1 Drawback on export of Milk, Rice & Wheat:

W.e.f. 13-2-2015 Duty drawback on rice allowed

w.e.f. 23-11-2015 DUTY DRAWBACK ALLOWED ON Wheat.

Prior to 21-9-2013	W.e.f. 21-9-2013
No drawback was allowed on milk products	Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, drawback will be allowed in respect of milk products.
Duty Drawback Allowed on Wheat	Duty Drawback not Allowed on Wheat
Duty Drawback not Allowed on Rice, casein, caseinates and other casein derivatives; casein glues	Duty Drawback not Allowed on Rice, casein, caseinates and other casein derivatives; casein glues

Drawback is allowed in respect of milk products

Prior to 21-9-2013	W.e.f. 21-9-2013
No drawback was allowed on milk products	Rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, drawback will be allowed in respect of milk products

New Customs and Central Excise Duties Drawback Rules, 2017:

Any goods are produced or manufactured from imported materials or excisable materials, on some of which only the duty chargeable thereon has been paid and not the rest, or only a part of the duty chargeable has been paid, or the duty paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the customs Act, 1962 or the Central Excise Act, 1944, the drawback admissible on the said goods shall be reduced taking into account the lesser duty paid or the rebate, refund or credit obtained.

1. No drawback in certain cases:

- if the said goods, except tea chests used as packing material for export of blended tea, have been taken into use after manufacture;
- if the said goods are produced or manufactured, using imported materials or excisable materials in respect of which duties have not been paid;
- on jute batching oil used in the manufacture of export goods, namely, jute (including Bimlipatam jute or mesta fibre) yarn, twist, twine, thread, cords and ropes;
- if the said goods, being packing materials have been used in or in relation to the export of -
 - jute yarn (including Bimlipatam jute or mesta fibre), twist, twine, thread and ropes in which jute yarn predominates in weight;
 - jute fabrics (including Bimlipatam jute or mesta fibre), in which jute predominates in weight;
 - jute manufactures not elsewhere specified (including Bimlipatam jute or mesta fibre) in which jute predominates in weight.

2. Factors considered while determining amount/rate of drawback:

In determining the amount or rate of drawback under this rule, the Central Government shall have regard to—

- the average quantity or value of each class or description of the materials from which a particular class of goods is ordinarily produced or manufactured in India.
- the average quantity or value of the imported materials or excisable materials used for production or manufacture in India of a particular class of goods.
- the average amount of duties paid on imported materials or excisable materials used in the manufacture of semis, components and intermediate products which are used in the manufacture of goods.

- (d) the average amount of duties paid on materials wasted in the process of manufacture and catalytic agents.

However, if any such waste or catalytic agent is re-used in any process of manufacture or is sold, the average amount of duties on the waste or catalytic agent re-used or sold shall also be deducted.

- (e) the average amount of duties paid on imported materials or excisable materials used for containing or, packing the export goods.

- (f) any other information which the Central Government may consider relevant or useful for the purpose.

3. Cases where amount or rate of drawback has not been determined [Rule 6]:

Where no amount or rate of drawback has been determined in respect of any goods, any exporter of such goods may, within 3 months from the date relevant for the applicability of the amount/rate of drawback, apply to the Principal Commissioner/Commissioner of Customs, as the case may be, having jurisdiction over the place of export, for determination of the amount or rate of drawback thereof stating all the relevant facts including 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.

However, in case an exporter is exporting the aforesaid goods from more than one place of export, he shall apply to the Principal Commissioner/Commissioner of Customs, having jurisdiction over any one of the said places of export.

On receipt of an application, the Principal Commissioner/Commissioner of Customs, as the case may be, shall, after making or causing to be made such inquiry as it deems fit, determine the amount or rate of drawback in respect of such goods.

Provisional drawback:

While making an application under above rule 6, an exporter may apply for a provisional amount of drawback pending determination of the amount or rate of drawback.

The Principal Commissioner/Commissioner of Customs, may, after considering the application, allow provisionally payment of an amount not exceeding the amount claimed by the exporter in respect of such export

For the said purpose, he may require the exporter to enter into a **general bond** for such amount, and subject to such conditions, as he may direct; or to enter into a bond for an amount not exceeding the full amount claimed by such exporter as drawback in respect of a particular consignment and binding himself to refund the amount so allowed provisionally, if for any reason, it is found that the duty drawback was not admissible; or to refund the excess, if any, paid to such exporter provisionally if it is found that a lower amount was payable as duty drawback. **The bond may be required to be furnished with prescribed surety or security.**

When the amount or rate of drawback payable on such goods is finally determined, the amount provisionally paid to such exporter shall be adjusted against the drawback finally payable and if the amount so adjusted is in excess or falls short of the drawback finally payable, such exporter shall repay to the Principal Commissioner/Commissioner of Customs, as the case may be, the excess or be entitled to the deficiency, as the case may be..

4. Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 amended Effective from 01.07.2017:

Under the GST regime, goods upon import shall be subject to integrated tax and compensation cess in terms of sections 3(7) and 3(9) respectively of the CTA, 1975. Further, in terms of section 3(12) of the CTA, 1975, the provisions of the Customs Act, 1962 and rules and regulations made thereunder relating inter alia to drawback shall apply to integrated tax and compensation cess also. Accordingly, drawback under section 74 would include refund of integrated tax and compensation cess along with basic customs duty, etc.

MCQ. Which of the following is not correct in relation to claim of duty drawback under section 75 of the Customs Act, 1962?

- (i) The upper limit for drawback is one third of market price of export product.
- (ii) Countervailing duties and safeguard duties are included in all industry rates of drawback.
- (iii) Countervailing duties and safeguard duties are included while determining all industry rates of drawback and thus can be claimed in application for fixing brand rate
- (iv) Provisions of section 75 are not applicable on goods exported by post.
 - (a) (i), (ii) and (iv)
 - (b) (i), (iii) and (iv)
 - (c) (ii) and (iv)
 - (d) (iii) and (iv)

(CA Final RTP May 2020)

Answer: (c)

5.10 Export incentives in lieu of duty drawback

The following are the export promotion schemes available to the exporters

- Duty Exemption Entitlement Certificate (DEEC) (Advance Licence),
- The Duty Free Replenishment Certificate (DFRC) Scheme,
- The Export Promotion Capital Goods Scheme (EPCG),
- Duty Exemption Passbook Scheme (DEPB scheme).
- MEIS & SEIS, EPCG (please refer lesson FTP)

5.10.1 Duty Exemption Entitlement Certificate (DEEC)(Advance Licence)

Under the DEEC (Advance Licence) scheme, exporters are permitted to import raw materials, required for export goods, without payment of duty on import (i.e. duty free imports). Such duty free imports can be effected in advance and exports made subsequently. The advance licences are issued by Director General of Foreign Trade (DGFT) with actual user condition and are not transferable.

All the exporters intending to file Shipping Bills under the DEEC scheme should first get their DEEC licence registered with the EDI system in the licensing section. The original DEEC licence has to be produced at the time of registration of licence. The export obligation shall be discharged by exporting the resultant products within the period specified in the Annual Advance Licence.

Advance Licence can be issued for the following:

- Physical exports;
- Intermediate supplies
- Deemed exports.

5.10.2 Duty Free Replenishment Certificate (DFRC) Scheme

This scheme permits duty free import of raw materials/inputs against exports. The exporter while filing shipping bill has to declare that the export is under DFRC scheme. Based on proof of export, the DGFT issues DFRC licence for raw materials as per standard input output norms.

Duty Free Replenishment Certificate (DFRC) is issued to a merchant-exporter or manufacturer-exporter for the import of inputs, used in the manufacture of goods, without the payment of basic customs duty and special additional duty. However, such inputs shall be subject to the payment of additional customs duty, equal to the excise duty at the time of import.

The Duty Free Replenishment Certificate shall be issued only in respect of export products that are covered under the SIONs (Standard Input Output Norms) as notified by (Directorate General of Foreign Trade) DGFT.

Difference between DEEC and DFRC

- Under advance licence scheme (DEEC), the duty free imports can be made before exports whereas DFRC is issued only after exports and imports can be made only after exports.
- The advance licence (DEEC) is not transferable whereas the DFRC is transferable.
- DFRC is permitted only for goods listed under SION while it is not so in case of DEEC

5.10.3 Export Promotion Capital Goods Scheme (EPCG)

The Export Promotion Capital Goods Scheme enables for exporters to procure capital goods at concessional rate of duty. The exporters have to fulfill the export obligation within the prescribed period.

The manufacturers, Exporters and Merchant Exporters are eligible to avail of this Scheme.

Both new and second-hand capital good may be imported. Second hand capital goods at permitted subject to the condition that such goods have a minimum of residual life of 5 years and the importer furnishing to the customs at the time of clearance of goods a self-declaration to the effect that the second-hand capital goods being imported have a minimum residual life of five years in the prescribed form.

Licences are issued, under this scheme by the DGFT or his regional officers depending upon the value of the licence subject to execution of legal undertaking and bank guarantee by them undertaking among other things to fulfill their export obligation within the specified period

5.10.4 Duty Exemption Passbook Scheme (DEPB scheme)

Under the DEPB scheme, the exporters are allowed a duty exemption passbook credit against exports. It is a post-export scheme. The exporter while filing the shipping bill has to declare that exports are under DEPB scheme. Based on the proof of export, the exporters are issued DEPB licence which can be used for payment of Customs duties on any imports.

5.11 Customs Brokers

The term Custom House Agents are known by different names namely Customs Clearing Agent, Freight Forwarding Agent, Customs Broker and Shipping and Forwarding Agent.

A Customs House Agent (CHA) is a person who carries on business as an agent relating to the entry or departure of a conveyance or the import or export of goods at any customs-station unless such person holds a licence granted in this behalf in accordance with the regulations of the Central Board of Excise and Customs [Section 146 of the Customs Act, 1962].

Custom House Agent's (CHA) main job responsibility is to study the laws governing the export and import and interpreting the levies payable and incentives receivable by clients. They also assist their clients in preparation of document according to expectation of customs authorities.

Change of nomenclature of “customs house agents” to “customs brokers” [Section 146 and section 146A(2)(b)] [Effective from 10.05.2013]

Considering the global practice and internationally accepted nomenclature, nomenclature of “customs house agents”, wherever used in the Customs Act, 1962, has been replaced with “customs brokers”. Consequently, reference to “customs house agents”, in section 146 and 146A(2)(b) in the Customs Act, 1962, has been substituted with “customs brokers”.

5.11.1 Activities of CHA

- Processing of documents, shipping bills etc. for export.
- Carting of goods/cargo to Container Freight Station.
- Arranging of physical examination of goods
- Collection of measurement certificate
- Handover goods/cargo to carrier i.e., shipping line
- Personally, attending stuffing of cargo in container
- Collection of Bill of Lading from shipping line

Collection of documents from Customs such as duplicate copy of shipping bill, attested copy of Invoice & Packing List etc.

5.12 Inland Container Depot (ICD) and Container Freight Station (CFS)

Generally, an exporter or import placed far away from the gateway port for clearance of import or export of goods. However, irrespective of distance from the servicing gateway port, prefers to move cargo by road to CFS (a transit facility where he stuffs cargo in containers and containers are transported to port for loading on board the ship). Both ICD and CFS is an infrastructure facility, owned and operated by public or private authority, especially designed for offering services of handling, storage and movement of containerized cargo and cargo under Customs supervision.

5.12.1 Distinction between ICD and CFS

Inland Container Station (ICD)	Container Freight Station (CFS)
It is a place where containers are aggregated for onward movement to or from the ports	It is a place where containers are stuffed, unstuffed and aggregation/segregation of cargo takes place.
ICD's are located outside the port towns	No site restrictions apply for CFS
An ICD may have a CFS attached to it	CFS is treated as an extension of a port/ICD/air-cargo complex.
Movement of shipment by road and rail	Movement of shipment by road

5.12.2 Activities of ICD and CFS

- Transfer of cargo into truck, Storage of cargo in truck, Road (truck) journey
- Breaking out of cargo from truck
- Transfer of cargo from truck to storage point/shed/yard in CFS
- Unpacking for customs examination
- Repacking for customs examination
- Consolidation of cargo according to destination
- Stuffing of cargo in the container
- Locking and sealing of container
- Loading of container on truck
- Transportation of loaded container to container yard in port
- Unloading of container in container yard in port
- Stacking of container in container yard in port
- Loading of container on truck to move container alongside ship, etc.,
- Truck journey from Container Yard to alongside ship i.e., Quay.
- Loading of container from truck to cellular hold of ship etc.

5.12.3 Services offered By ICD and CFS

ICD and CFS handle only containerized shipment, thus special kind of facilities are provided like:

- Sheds for temporary storage of cargo and container yard for temporary storage of container,
- Customs clearance facility
- Cargo handling equipment and container handling equipment
- Arranging manpower for stuffing the cargo into container and destuffing the cargo from container
- Road/rail connectivity to and from serving gateway port.
- Bonded warehousing facility
- Maintenance and repair of container unit
- Packaging, palletisation (i.e. a portable platform on which goods can be moved, stocked, and stored) fumigation (i.e. disinfect with chemical fumes).

Person who has committed offence under the Finance Act, 1994 also disqualified to act as authorized representative [Section 146A(4)(b)] [Effective from 10.05.2013]

Erstwhile position

Hitherto, any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excises and Salt Act, 1944, or the Gold (Control) Act, 1968 was disqualified from acting as an authorized representative in customs matters.

New position

Clause (b) to section 146A(4) has been substituted with new clause (b) to provide that any person who was convicted of an offence connected with any proceeding under the Customs Act, 1962, the Central Excise Act, 1944, or the Gold (Control) Act, 1968 or the Finance Act, 1994 is disqualified from acting as an authorized representative in customs matters. Hence, a person convicted under the Finance Act, 1994 has also been disqualified from acting as an authorized representative in customs matters.

5.13 Stores

As per Section 2(38) of the Customs Act, 1962 stores means goods for use in a vessel or aircraft and includes fuel and spare parts and other articles of equipment, whether or not for immediate fitting. However, goods as per Section 2(22) of the Customs Act, 1962 includes stores. When the vessel enters into Indian territorial waters, stores get imported as goods. Hence, statutory provisions relating to stores are contained in Section 85 to 90 of the Customs Act, 1962 which are as follows:

5.13.1 Stores may be allowed to be warehoused without payment of import duty (Section 85 of the Customs Act, 1962)

Goods are imported for use as stores can be kept in the warehouse temporarily without following warehousing procedure. Therefore, this is also called as 'warehousing without warehousing'. Importer of these goods (i.e. stores) has no intention of clearing them for home consumption or for export as cargo. Hence, the proper officer takes physical stock of the goods and orders warehousing without warehousing. Thereby, these goods are not assessed to duty under section 17 of the Customs Act, 1962. Subsequently importer can clear these imported goods as stores to foreign going vessels/aircraft without payment of duty. Moreover, consumable stores can be stored in a warehouse for a maximum period of 30 days and non-consumable stores upto one year.

5.13.2 Transit and Transshipment of Stores without payment of import duty (Section 86 of the Customs Act, 1962)

Transit of goods means any goods imported in any conveyance will be allowed to remain on the conveyance and to be transited without payment of duty, to any place out of India or any customs station.

Transshipment of goods means transfer from one conveyance to another with or without payment of duty.

As per section 86(1) of the Customs Act, 1962 any goods (i.e. stores) imported in any vessel/aircraft will be allowed to remain on the vessel/aircraft without payment of duty while foreign going vessel/aircraft is in India.

As per section 86(2) of the Customs Act, 1962 any goods (i.e. stores) imported in a vessel/aircraft can be transferred, with the permission of the proper officer, to any foreign going vessel or aircraft for consumption without payment of duty under section 87 of the Customs Act, 1962 or to an Indian naval vessel for consumption without duty under section 90 of the Customs Act, 1962.

5.13.3 Imported stores may be consumed on board a foreign going vessel/aircraft without payment of import duty (Section 87 of the Customs Act, 1962)

Imported stores on board a foreign going vessel/aircraft may also be consumed on board without payment of import duty, during the period such vessel/aircraft is a foreign going vessel or aircraft. As long as such vessel or aircraft is foreign going vessel or aircraft, stores consumed on board within the Indian Territory are exempted from duty.

Example: A Big Ship carrying merchandize and stores enters the territorial waters of India, but it cannot enter the port. In order to unload the merchandize lighter ships are employed. Stores are consumed on board the ship as well as by the small ships. Examine whether such consumption of stores attracts customs duty. Quote relevant section

and case law if any. Stores are supplied to the above ships. Will such supplies be treated as exports and be entitled to draw back? (CMA Final Dec 2013 Old Syl.)

Answer: 'Stores' means goods for use in a vessel and includes diesel and spare parts and other articles and equipments. Bringing of 'stores' is treated as import. However, there is special provision for stores under section 87. Imported stores consumed on board an ocean going vessel (i.e. foreign going vessel) are exempt from import duty under Section 87. Since the ship is ocean going, stores consumed on board will not attract customs duty.

Regarding the smaller ships which are employed to unload the cargo from the mother ship, they are termed as "Tran shippers". These are also treated as ocean going vessels as was decided in **UOI v V M Salgaoncar AIR 1998 SC 1367: 99 ELT 3 (SC)**. Hence stores consumed by small vessels would also be exempt from customs duty. Stores supplied to the vessel will be treated as export as per Section 89 of Customs Act and hence will be eligible for duty drawback.

However, the oil rigs proceeding to or carrying out operations in, continental shelf/exclusive economic zones of India, which are deemed to be a part of Indian territory, would not be foreign going vessels, as the oil rigs proceed from the territory of India to an area which also is deemed to be a part of the territory of India. Therefore, the supply of imported spares or goods or equipments to the rigs by a ship will attract import duty. [**Aban Lloyd Chilies Offshore Ltd. v UOI (2008) 227 ELT 24 (SC)**]

Thereby, the stores transshipped to the oil rigs and consumed thereon were not entitled to exemption under section 87 of the Customs Act, 1962.

5.13.4 Warehoused goods cleared without payment of import duty (Section 88(a) of the Customs Act, 1962)

Warehoused goods may be cleared for issue as stores on board to foreign going vessels and aircraft without payment of import duty. Section 69 of the Customs Act, 1962 will be applicable if warehoused goods are exported; no duty is leviable on their import. Section 69 is also extended to the stores taken on board foreign going vessel or aircraft.

W.e.f. 10-5-2013, as per section 69(1)(a) of the Customs Act, 1962, permits export of warehoused goods under postal export documents [as referred to in section 82] also.

Note: In the case of goods exported by post, any label or declaration accompanying the goods, which contains the description, quantity and value thereof, is deemed to be an entry for export.

5.13.5 Imported goods issued as stores to foreign going vessel/aircraft considered as export (Section 88(b) of the Customs Act, 1962)

The benefit of drawback under section 74 of the Customs Act, 1962 is extended to imported goods issued as stores to foreign going vessel/aircraft, provided stores had suffered import duty.

5.13.6 Stores to be free of export duty (Section 89 of the Customs Act, 1962)

Goods required as stores on any foreign going vessel or aircraft are permitted to be exported free of export duty, provided the following conditions to be satisfied:

- Goods should have been produced or manufactured in India,
- The quantity shall be determined by the proper officer and
- The basis for such determination will be the size of conveyance, men on board (passengers and crew) and length of voyage.

5.13.7 Concessions in respect of imported stores for the Navy (Section 90 of the Customs Act, 1962)

Imported stores may be consumed on board a ship of the Indian Navy without payment of import duty. The imported stores supplied from customs bonded warehouse to the ships of Indian Navy are not subject to import duty. The imported stores taken on board any ship of Indian Navy is allowed 100% drawback, if import duty levied on these stores.

5.14 Coastal Goods

As per section 2(7) of the Customs Act, the term coastal goods means goods, other than imported goods, transported in a vessel from one port in India to another.

5.14.1 Bill of Coastal Goods (Section 92(1) of the Customs Act, 1962)

The consignor of any coastal goods shall make an entry thereof by presenting to the proper officer a bill of coastal goods in the prescribed form.

This bill contains the following details:

- Port of landing,
- Port at which the goods are to be delivered and
- Other relevant details

Every such consignor while presenting a bill of coastal goods shall, at the foot thereof, make and subscribe to a declaration as to the truth of the contents of such bill.

5.14.2 Coastal Goods not to be allowed until bill relating thereto is passed by the proper officer (Section 93 of the Customs Act, 1962)

The master of a vessel shall not permit the loading of any coastal goods on the vessel until a bill relating to such goods presented under section 92 has been passed by the proper officer and has been delivered to the master by the consignor.

5.14.3 Clearance of coastal goods at destination (Section 94 of the Customs Act, 1962)

The master of a vessel carrying any coastal goods shall carry on board the vessel all bills relating to such goods delivered to him under section 93 and shall, immediately on arrival of the vessel at any customs or coastal port, deliver to the proper officer of that port all bills relating to the goods which are to be unloaded at that port.

Where any coastal goods are unloaded at any port, the proper officer shall permit clearance thereof if he is satisfied that they are entered in a bill of coastal goods delivered to him.

5.14.4 Master of a coasting vessel to carry an "advice book" (Section 95 of the Customs Act, 1962)

The master of every vessel carrying coastal goods shall be supplied by the Customs authorities with a book to be called the "advice book" as per section 95(1).

The proper officer at each port of call by such vessel shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel at that port as per section 95(2).

The master of every such vessel shall carry the advice book on board the vessel and shall on arrival at each port of call deliver it to the proper officer at that port for his inspection as per section 95(3).

5.14.5 Loading and unloading of coastal goods at customs port or coastal port only (Section 96 of the Customs Act, 1962)

No coastal goods shall be loaded or unloaded at any port other than a customs port or a coastal port appointed under section 7 of the Customs Act, 1962 for the loading or unloading of such goods.

5.14.6 No coasting vessel to leave without written order (Section 97 of the Customs Act, 1962)

The master of a vessel which has brought or loaded any coastal goods at a customs or coastal port shall not cause or permit the vessel to depart from such port until a written order to that effect has been given by the proper officer.

The master of a vessel should fulfil following conditions for getting 'departure permission':

- (a) the master of the vessel has to answer all the questions put to him.
- (b) all charges and penalties due in respect of that vessel has been paid
- (c) no penalty is leviable on master of the vessel under section 116 (i.e. if the goods on a vessel are not landed or short landed, penalty is leviable which is not more than twice the export duty leviable had they been exported).
- (d) the provisions of this Chapter and any rules and regulations relating to coastal goods and vessels carrying coastal goods have been complied with.

5.15 Project Imports

This concept has been introduced by the Government under the heading 9801 of the Customs Tariff to cover all machinery, instruments apparatus and appliances, components or raw materials for initial setting up or expansion of existing units for the purpose of following eligible projects:

(i) Industrial plant, (ii) Irrigation project, (iii) Power project, (iv) Mining project, (v) Oil & other mineral exploration project (vi) Other projects as notified by the Central Government. The spare parts of machinery and raw material etc., can be imported upto 10% of value of good can be imported.

The duties on project imports are as follows:

Basic Customs Duty (BCD) 5% (whereas normal rate of BCD @10%)

IGST as applicable has to pay.

BCD is 'NIL' for mega power projects, nuclear power projects and water supply projects for agricultural and industrial use.

There is no minimum investment requirement for project Imports with effect from 2.01.2007.

In case of project imports requirement of security deposit has been replaced by a bank guarantee of maximum Rs. One crore w.e.f. 8-4-2011.

Currently 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 does not exist. Therefore, under the Central Excise Tariff, each item is getting classified in a heading as per its description and duty is paid on merit.

In the GST regime, for the purpose of levying IGST all the imports under the project import scheme will be classified under heading 9801 and duty shall be levied @ 18%.

5.16 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.

Supplies made to an SEZ unit or a SEZ developer is zero rated. The supplies made to an SEZ unit or a SEZ developer can be made in the same manner as supplies made for export:

Either on payment of IGST under claim of refund;

Or

under bond or LUT without payment of any IGST.
