

CUSTOMS PREVENTIVE MANUAL (CENTRAL)
VOLUME I (GENERAL)
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CHAPTER - ONE

INTRODUCTION

PRELIMINARY

The history of Customs can be traced back to the adoption of the concept of trans-border trade by the human civilization. It was a 'custom' in ancient trading world that whenever a merchant entered a Kingdom with his merchandise, he had to make a suitable offering of gifts to the King. In course of time, the modern State formulised this 'custom' into Customs Duty which it collects on goods Imported into or Exported out of its frontiers. Customs Duties now form a major source of revenue for all countries especially developing countries like India.

The collection of revenue through Customs is known in our country for the last 2000 / 3000 years and laws for collection of revenue and punishments for violations thereof are indicated as early as in Kautilya's "Arthashastra". The growth and development of modern system of taxation is, however, based on the British pattern. It was in England during the reign of King John in the 13th century that the 'customary dues', which were then being collected by local Sheriffs and chieftains as protection money for the Police services provided to the foreign traders, came to be collected as revenue to the State Exchequer.

In our country, the Customs in its modern pattern was introduced soon after the consolidation of the British rule. During the days of the British, even the items of daily requirements were being imported. The export consisted mainly of agricultural produce. The trade in the country then was mainly through sea-routes confined only to England and other European countries.

OBJECTS AND FUNCTIONS OF MODERN DAY CUSTOMS

Traditionally, the main function of Customs has been collection of revenue and implementation & enforcement of the laws related thereto.

Over the period, the Customs organisation has also been entrusted with the task of collection and verification of payment of cess, fees and other dues leviable under various other statutes. The Customs Department is also required to assist the Port, Shipping and Naval authorities in enforcing certain provisions of the respective statutes of those Departments besides observing the relevant provisions of the Central Excise Act, 1944, and the Foreign Trade (Development & Regulations) Act, 1992.

Since the attainment of Independence, the Government of India has, from time to time, framed new policies in the Economic, Commerce and Industry sectors in order to safeguard its Economy & domestic trade, to boost the industrial and other developments in the country and to keep pace with the progress made by the modern world in these spheres. For a sustained growth of the economy and multi-dimensional progress of the country, new policies are not only to be formulated but implemented meticulously also. Further, the new challenges and responsibilities in the fields of Economy and Commerce, have to be shouldered and a canvass with broader perspectives has also to be created to accomplish these multi-proportional tasks in this highly competitive age. In the era of globalisation, these tasks assume all the more significance given the pace and magnitude of changes and advancements taking place in all the spheres around the world.

Thus, in the changed scenario, the role of the Customs has not only been confined to the collection of revenue or detection and prevention of smuggling, but also has diversified into multi-functional responsibilities.

CUSTOMS LAWS

An enactment, known as The Sea Customs Act, 1878 and subsequently the Inland Bonded Warehouses Act, 1896, were brought forth by the British for collection of revenue and to control the movement of goods into and out of India. This was followed by The Land Customs Act, 1924, to cover the movement of goods through land routes. The Indian Aircraft Act, 1934, covered the import / export of goods via aviation services, which by then had made a beginning. All these laws, which had been designed with a view to protect the British interests only, continued till 1963, when The Customs Act, 1962, repealing all the earlier enactments (only Section 16 of the Indian Aircraft Act, 1934) on the subject was passed by the Government of India.

The Constitution of India delegates the taxation powers between the Union and the States through specific references and by virtue of entry no. 83 in the List – I to the Seventh Schedule to the Constitution, the Union of India is empowered to levy " Duties of Customs including export duties". The basic legislation on the subject of levy of Customs duties is the Customs Act, 1962, read with the Customs Tariff Act, 1975. Section 12 of the Customs Act, 1962, is the enabling section empowering levy of the Customs duties on goods imported into or exported from India. However, the rates at which the different import or export goods are leviable to duties of customs have been specified in the First and Second Schedule to the Customs Tariff Act, 1975 – called the Import Tariff or the Export Tariff respectively.

The law on the subject of Imports into and Export out of India is contained in the Foreign Trade (Development and Regulation) Act, 1992 and Rules made thereunder. The Central Government, under this Act, is vested with powers – to make provisions for the development and regulation of the foreign trade; to formulate and announce the Export and Import policy and procedures therefor; and to make provisions for prohibiting, restricting or otherwise regulating the import & export of goods. All such goods, which are so prohibited, restricted or otherwise regulated under this Act shall be deemed to be the goods, the import & export of which is prohibited, restricted or otherwise regulated under Section 11 of the Customs Act, 1962.

The Customs department, while dealing with the issue of Import & Export of goods, has also to enforce and observe the current Export/ Import Policy and procedures prescribed therefor in the Handbook of Procedures.

The Customs Act, 1962

The Customs Act, 1962, enacted to consolidate and amend law relating to Customs, came into force on the 1st February, 1963, and extends to the whole of India, which includes the Territorial Waters of India. This Act and the allied Customs Tariff Act, 1975, were also extended to the designated areas in the Continental Shelf and the Exclusive Economic Zone of India with effect from 15.01.1987.

The Customs Act, 1962, is a compact piece of legislation covering the entire ambit of provisions for movement of goods & people into and out of the country, collection of revenue from import / export of goods and the penal provisions for contravention of the laws in force. The Act has since been amended from time to time to accommodate the new policies framed by the Government in the economic and foreign trade sectors.

The Customs Act, 1962, is a self-contained Act comprising of 161 Sections grouped into 17 chapters.

Chapter I of the Act consists of only two sections. While Section 1 indicates ' short title, jurisdiction and commencement of the Act, Section 2 contains ' definitions' thereunder. There are in all 45 definitions, which are important for interpreting the various provisions of the Act.

Chapter II of the Act comprises of 4 Sections dealing with classes of ; appointment of ; and powers of the Officers of the Customs and also entrustment of functions of Customs to certain other officers of the Central and State Governments.

In order to regulate imports and exports effectively, the entry / exit points for goods are required to be limited and earmarked specifically. Section 7 to 10 enconced in Chapter III of the Act empowers the Central Government to declare certain places to be the 'customs stations' where alone goods can be imported or exported.

Chapter IV of the Act, containing Sections 11 & 11A to 11N, outlines the powers of the Central Government to prohibit import or export of the goods.

Chapter V of the Act, expanding from Sections 12 to 28 & 28A, covers the issue of assessment, levy of, exemption from and refund of Customs Duties. Section 12 is the charging section of the Duties leviable at the rates specified under the Customs Tariff Act, 1975. Sections 13, 22 and 23 details the remission or abatement of Duty on goods pilfered, damaged, deteriorated, lost, destroyed or abandoned. Section 26 & 27 deal with how to claim refund of duty paid in excess. Similarly, Section 28 provides for the recovery of duty not levied, short levied or erroneously refunded, by the Department.

Chapter VI, distending in Sections 29 to 43, enlists the provisions relating to proper control over conveyances carrying imported or export goods and unloading / loading of such goods. Section 30 and 41 of the Act mandate filing of Import Manifest and Export Manifest respectively.

Chapter VII, which includes Sections 44 to 51, outlines the provisions relating to clearance of imported and export goods. These provisions exclude baggage and goods imported or exported by Post. Under section 45 of the Act, custodian of the Cargo is appointed. The person desirous of clearing imported goods has to file a Bill of Entry under Section 46 of the Act. Likewise, exports are effected by filing a Shipping Bill under Section 50 of the Act. Sections 48 & 49 contain provisions for storage of imported goods whereas Section 47 deals with the clearance of goods for home consumption and the clearance of export goods is dealt with in Section 51.

Chapter VIII deals with Transit and Transhipment of the goods, an important aspect in international trade. Sections 52 to 56 in this Chapter specify the manner, conditions and procedures in this regard excluding baggage, postal articles and the stores.

Chapter IX of the Act deals exclusively with the subject of warehousing of the goods in public and private warehouses, a facility extended to the trade for deferred payment of Duty. The Sections 57 to 73 of this Chapter enumerate the procedures for licensing of Warehouses, deposit, storage and removal of goods therefrom, etc.

Chapter X made up of Sections 74 to 76 of the Act treats the issue of Drawback which, in common parlance, means drawing back of Duty paid on the goods when the same are exported. Section 74 contains provisions for granting Drawback when imported goods are exported whereas Section 75 deals with the goods manufactured in India and exported. Section 76 outlines some restrictions and prohibitions of Drawback in certain cases.

Chapter XI of the Act, extending from Sections 77 to 90, stipulates the statutes, rules and procedural requirements for clearance of baggage, import / export of goods by Post and the stores. Stores means goods for use in a vessel or aircraft and includes fuel, spare parts and other articles of equipment.

Chapter XII of the Act, consisting of Sections 91 to 99, details provisions regarding coastal goods and other aspects of the coastal trade, an important merchant activity. Baggage and stores are excluded from the purview of the provisions of this Chapter.

Chapter XIII of the Act, comprising of Sections 100 to 110 outlines the powers of search, seizure and arrest in the cases of violations of the various provisions of the Customs Act, 1962. Sections 100 and

101 relate to search of suspect persons in certain cases , Section 105 to search of certain premises and Section 106 to search of conveyances. Section 104, most significant in punitive Sections of the Act gives power to arrest. Sections 107 & 108 relate to examination and summoning of persons for investigation purpose. Section 110 details about the seizure of goods.

Chapter XIV of the Act, consisting of Sections 111 to 127, deals with the punitive provisions such as confiscation of goods and conveyances and imposing of penalties for violations of various laws stipulated for import / export of goods. The goods imported or attempted to be exported in contravention of the Customs Act or any other Act are liable to confiscation under Section 111 and Section 113 respectively and penalties for the same can be imposed respectively under Sections 112 and 114. Section 115 to 121 outline confiscation of various offending goods & items and imposition of penalty in such cases. The adjudication of cases is done under Section 122 while show cause notice before confiscation is issued under Section 124 of the Act. An option to pay fine in lieu of confiscation has been provided under Section 125.

Chapter XV, in Sections 128 to 131C, contains provisions for appeals & revisions against various orders passed by the Officers. There are three stages of Appeal. The first is to the Commissioner (Appeals), the second to the Tribunal or Revision by the Central Government. The third stage is appeal before the High Court or the Supreme Court.

Chapter XVI, consisting of Sections 132 to 140A, deals with offences and prosecutions in various kinds of violations of the Act and Allied Acts.

Chapter XVII contains Sections 141 to 161 which enumerate miscellaneous provisions not specified elsewhere. One of the important provision is the power and modalities for recovery of Government dues under Section 142. The Custom House Agents are regulated under Sections 146 to 148 of the Act. Sections 151 & 152 deal with delegation of powers whereas Section 153 lays the manner of communication of any order under the Act. Section 156 and 157 endow general power to the Central to make Rules and Regulations respectively for enforcing the provisions of the Customs Act. Section 160 specifies repeals and savings while Section 161 deals with removal of difficulties.

The Customs Tariff Act, 1975

Prior to August 1976, the scheme of levy of duties of Import goods was specified in the First Schedule to the Indian Customs Tariff Act, 1934, wherein all important goods were classified into a limited number of specified headings – with a specified Heading to take care of all goods not otherwise specified.

Later the International system of classification of the goods for customs purposes known as Brussels Tariff Nomenclature (or Customs Co-operation Council Nomenclature) was adopted by a large number of developed and developing countries including India as the basis of their National customs Tariff. Briefly stated, in this system the items are codified, arranged commodity wise and grouped into Chapters. In addition to this, Section and Chapter Notes alongwith general rules for the Interpretation of the nomenclature are also included. The onus to establish the Tariff classification of goods is on the Department. The classifications are to be determined by reading together the wordings of the relevant Section Notes, Chapter Notes and headings / sub-headings. In case of any doubt or ambiguity, General Rules for interpretation of the Schedule and / or Explanatory Notes may be referred to.

The Government of India enacted the Customs Tariff Act, 1975, repealing the earlier Indian Tariff Act, 1934, and the Indian Tariff (Amendment) Act, 1949. The Customs Tariff Act, 1975, enacted to consolidate and amend the law relating to Customs Duties, came into force from 2nd August, 1976, and contains First and Second Schedules, known as Import Tariff and Export Tariff, specifying the rates of Customs Duties leviable on Import and Export goods respectively.

The said nomenclature is updated periodically and concurrently all the contracting countries have also to amend and update their Customs Tariffs accordingly. The revisions and amendments to the Harmonised System of Nomenclature are necessitated to accommodate the changes in trade practices and patterns, technological advancements - as well as to keep pace with the political, social and environmental changes taking place all over the world. India too, being a party to the Harmonised System Convention, is under obligation to align its Customs Tariff with the Harmonious System of Nomenclature of commodities.

Accordingly, the erstwhile Import Tariff was replaced by a new Tariff Schedule based on the C.C.C.N. which came in force from 2nd August, 1976. From 28th February, 1986, the Import Schedule to the Customs Tariff Act, has been replaced by a new Schedule based on international convention of Harmonised Commodity and Coding system commonly known as Harmonised System.

Export duties are very few and are levied occasionally to mop up excess profitability in international prices of goods in respect of which domestic prices may be low at the given time. But the ambit of the import duties is very vast including all the items except a few goods like foodgrains, fertilisers, life saving drugs and equipment etc.

The other salient features of the Customs Tariff Act, 1975, are – levy of additional duty equal to the excise duty; powers of the Central Government to levy, withdraw and alter protective and other special duties and specify the rates of duty, etc.

It may not be out of place to mention here that each Custom House should have a Technical Section, comprising of officers from various wings of the Customs Deptt., for analysis, interpretation and clarification of various laws, rules, regulations, Board's / Ministry's guidelines, etc. for the purpose of uniformity in working of the Department.

ORGANIZATIONAL SET-UP

The economic affairs in our country are managed by the Ministry of Finance, an all important constituent of the Union Government. The Ministry, headed by Finance Minister who is assisted by Minister of Finance for State, is chiefly responsible for formulating the economic policies and other aspects of fiscal administration in the country. The administrative and functional set-up percolates down to the field formations through Secretaries of various Departments, assisting the Finance Secretary, in the Ministry.

The Central Board of Excise & Customs

The functional network of the Customs at the field formation levels throughout the country is administered directly by the Secretary of Department of Revenue in the Ministry of Finance through the Central Board of Excise & Customs – consisting of (6) Members - headed by a Chairman. These Members have been assigned the charges of – Personnel & Vigilance; Budget, Anti-smuggling; Legal & Judicial; Customs and Excise, respectively. Besides this, there are other Officers under the aegis of the Central Board of Excise & Customs who control and oversee the ancillary works of statistics compilation, accounts matters, economic offences' investigating agencies, training and welfare of the staff, co-ordination with various departments, judicial matters, etc.

The Central Board of Excise & Customs is the chief executive authority, which administers Customs & Central Excise Acts, Narcotics and Gold (Control) laws. As separate entity, it came into being with enactment of the Central Board of Revenue Act in 1963. This followed recommendations of the Direct Taxes Administration Enquiry Committee (1958-59) and the Central Excise Re-organisation Committee (1963). It also performs secretariat functions as an integral part of Department of Revenue in the Ministry of Finance.

The Board has Chairman and six Members. Under the Central Board of Excise & Customs (Regulation of Transaction of Business) Rules, 1964, the Chairman of the Board may distribute the business of the Board among himself and other Members and specify cases which shall be considered jointly by the Board.

Cases considered jointly by the Board include policy regarding discharge of statutory functions of the Board, general policy relating to tax planning, re-organisation of field formations, personnel management and training, procedures, proposals relating to legislation, etc.

Co-ordination and overall supervision of the work of the Board lies with the Chairman. Member (Personnel & Vigilance) deals with personnel management of all field formations under the Board, and exercises administrative control over Directorate of O & M Services and Directorate of Training. Formulation of budget proposals, tax research, exemptions, monitoring of revenue realisations, computerisation, etc. are with Member (Budget). He also exercises control of Directorate of Statistics and Intelligence and the Office of the Chief Controller of Accounts. Member (Customs) exercises control over Customs Houses, Chemical Laboratories and Directorate of Drawback. Member (Central Excise) deals with Central Excise Act and Rules, valuation, tariff classification, arrears of revenue, etc. and has administrative control over Excise Commissionerates, Directorate general of Anti-Evasion and Directorate of Audit. Member (Central Excise) also deals with Excise procedures, audit, and exercises control over Commissioners (Appeals), and the Directorate of Publications. There is a separate Member for Anti-smuggling and Narcotics work. Directorate General of Revenue Intelligence, Directorate of Preventive Operations, Narcotics Commissioner, Chief Controller of Factories, Anti-smuggling Commissionerates, etc. are under his control.

A member of the Board is competent to take decision in respect of matters allocated to him. Every such order is deemed to be the order of the Board.

The Board is assisted mainly by the following attached and subordinate offices:

(1) **Directorate – General of Inspection and Audit:**

It studies the working of the departmental machinery throughout the country, suggests measures for improvement of its efficiency and rectification of important defects in it through inspections and audit and by laying down procedures for smooth functioning. It also advises the Board in technical as well as administrative matters.

(2) **Directorate – General of Revenue Intelligence:**

It is the apex intelligence organisation. It is responsible for study and dissemination of intelligence against smuggling, identifying organised gangs of smugglers and areas vulnerable to smuggling, maintaining liaison with intelligence and enforcement agencies in India and abroad, in depth investigation of important cases, etc.

(3) **Directorate – General of Anti-Evasion:**

It is entrusted with collection and dissemination of intelligence relating to evasion of Central Excise duties, study of price structure, marketing patterns and identification of commodities vulnerable to evasion, investigation of major cases, etc.

(4) **Directorate – of Training:**

It imparts training to direct recruits and arranges refresher courses to departmental officers.

(5) **Directorate of Organisation & Management Services:**

It carries out studies in methods, staffing, work measurement and provides management services including manpower planning.

(6) **Directorate of Statistics and Intelligence:** It collects and consolidates data and statistics pertaining to revenue receipts and advises the Board in forecasting budget estimates.

(7) Directorate of Preventive Operations:

It monitors the progress in adjudications, prosecutions and rewards and plans the need for staff training, equipment, vehicles, vessels, communications, etc.

(8) Directorate of Publications:

It publishes statutory and departmental manuals, important judgements etc. and undertakes publicity about indirect taxes through brochures and the media.

(9) Central Revenues Control Laboratory:

It analyses the goods and renders technical advice to the Board and its field formations in regard to dutiability or otherwise of goods.

Field Formations

Our country has vast amplitude of borders through which the foreign trade and movement of people take place. It has long stretches of land as well as sea frontiers besides numerous airports, which cater to the air traffic through the country. To man this vast territorial expanse is a gigantic exercise. In order to have effective control over the import / export activities, the points of entry and exit have to be limited. Therefore, to effectively monitor the entire gamut of the Customs work along the borders and across the country, field formations in the form of Land Customs Stations, Customs Ports and Customs Airports, Customs areas, Warehousing and Boarding Stations, Export Processing Zones, Inland Container Depots and Freight Stations, etc., have been appointed by the Government under Sections 7, 8, 9 and 10 of the Customs Act, 1962.

The establishments of Customs at these field formations operate under the administrative and functional jurisdiction of various Commissionerates located across the length and breadth of the country. Each Commissionerate is headed by a Commissioner who is assisted by an assortment of officers in the lower cadre. All the Commissionerates of Customs located in a Zone are placed under a Chief Commissioner of Customs for the purpose of supervisory control and co-ordination.

JURISDICTION OF CHIEF COMMISSIONERS OF CUSTOMS / CENTRAL EXCISE

S. No.	Chief Commissioners (posted at)	Commissioner of Central Excise	Commissioner of Customs	Commissioner of Customs / Central Excise (Appeals)
1.	DELHI	Delhi – I Delhi – II Delhi – III Chandigarh – I Chandigarh – II	Commissioner (General) Commissioner (Air cargo) Commissioner (ICD) Amritsar	Delhi C. Excise – 1 Delhi Customs – 2 Chandigarh
2.	KANPUR	Meerut – I Meerut – II Kanpur – I Kanpur – II Allahabad	Lucknow	Meerut Allahabad
3.	JAMSHEDPUR	Patna Jamshedpur Bhubaneshwar – I Bhubaneshwar – II	Patna	
4.	CALCUTTA	Calcutta – I Calcutta – II Calcutta – III Calcutta – IV Bolpur Shillong	Calcutta (Port) Calcutta (Airport) West Bengal Shillong	Calcutta (Customs) Calcutta (Central Excise) Guwahati

5.	HYDERABAD	Hyderabad – I Hyderabad – II Hyderabad – III Guntur Visakhapatnam	Visakhapatnam	Hyderabad
6.	CHENNAI	Chennai – I Chennai – II Chennai – III Madurai Trichy Coimbatore	Chennai (Port) Chennai (Air Port) Trichy	Chennai (Gen.Excise) Chennai (Cus.) Trichy
7.	BANGALORE	Bangalore – I Bangalore – II Bangalore – III Belgaum Cochin – I Cochin – II	Bangalore Mangalore Cochin	Bangalore Cochin
8.	PUNE	Pune – I Pune – II Aurangabad Nagpur Goa	Goa Pune	Pune
9.	Mumbai (Customs)		Custom House – General Imports Exports Sahar - General Air cargo Nhava Sheva Mumbai (Preventive)	Mumbai – 2
10.	MUMBAI (CENTRAL EXCISE)	Mumbai – I Mumbai – II Mumbai – III Mumbai – IV Mumbai – V Mumbai – VI Mumbai - VII		Mumbai – 3
11.	VADODARA	Vadodara Rajkot Ahmedabad – I Ahmedabad – II Surat – I Surat – II	Ahmedabad Kandla	Ahmedabad Vadodara
12.	JAIPUR	Jaipur – I Jaipur – II Indore – I Indore – II Raipur	Jaipur/Jodhpur	Bhopal

The Commissionerates of Customs

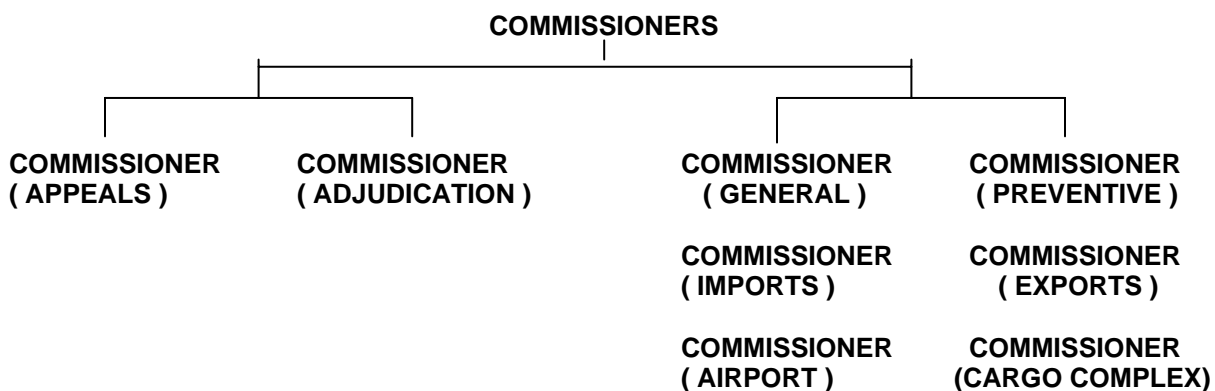
The set-ups to monitor and control the Customs work in a specific area / region is known as the Commissionerate. A Commissionerate is a full-fledged establishment having its own structure of manpower, equipment and other paraphernalia to run the administration for effective transaction of Customs work.

There are at present six Custom Houses or exclusive Customs Commissionerates in the country, situated at Mumbai, Calcutta, Chennai, Cochin, Vishakhapatnam and Goa. These Customs Houses, predominantly overseeing the movement of people and goods through the respective harbours and minor ports under their jurisdiction, are manned entirely by the Customs staff in the 'B', 'C' and 'D' cadres supervised by the various level Group 'A' staff from the Indian Customs and Excise Services. The Customs functions at other places (such as Land Customs stations, ICDs, CFSs, EOUs, EPZs, etc.) are discharged in the capacity of Customs Officers by respective cadres of Central Excise Commissionerate having jurisdiction over the area.

Most of the Customs Airports in the country are manned, in addition to Group 'A' officers of the I C & E Services, by a mixed strength of Superintendents (Prev.), Preventive Officers, Group 'D' staff of Custom and Superintendents and Inspectors of Central Excise, drawn from various Customs and Central Excise Commissionerates as per the quota apportioned to them under the Airpool Policy delineated by the Finance Ministry.

Division Of Work

Though, depending upon the requirements, there may be other variations, yet the broad classification of Commissioners of Customs according to the distribution of work in a Commissionerate, can be as indicated in the following chart :



The brief description of the jurisdictions and functions usually assigned to the Commissioners is given below :

COMMISSIONER (APPEALS) All the work related to the appeals filed by the department, trade and individuals against adjudication orders passed by lower authorities.

COMMISSIONER (ADJUDICATION) All the work related to the adjudication of the cases specially assigned by the Board / Ministry.

COMMISSIONER (GENERAL) All work related to the cadre control, establishment & general administration of the Commissionerate, service matters, deployment of staff, legal matters, warehouses, disposal, co-ordination with Board / Ministry, statistics compilation, disposal, sports & training, accounts, Custom House Agents, audit, electronic data interchange, revenue control laboratory, manifest clearance, vigilance matters, welfare measures, staff quarters, Customs office buildings, etc.

COMMISSIONER (PREVENTIVE) All work related to anti-smuggling, surveillance over sea, land and other formations, collection and working out of Intelligence, disposal, Marine & Preventive wing, court matters, investigations, etc.

COMMISSIONER (IMPORT) All work related to import of goods, control over movement of conveyances in the customs area, refunds, CFSs & ICDs, coastal trade, stores, bonded goods, etc.

COMMISSIONER (EXPORT) All work related to export of goods, drawback, DEEC, DEPB and other export promotion schemes, 100% Export Oriented Units, export related imports, etc.

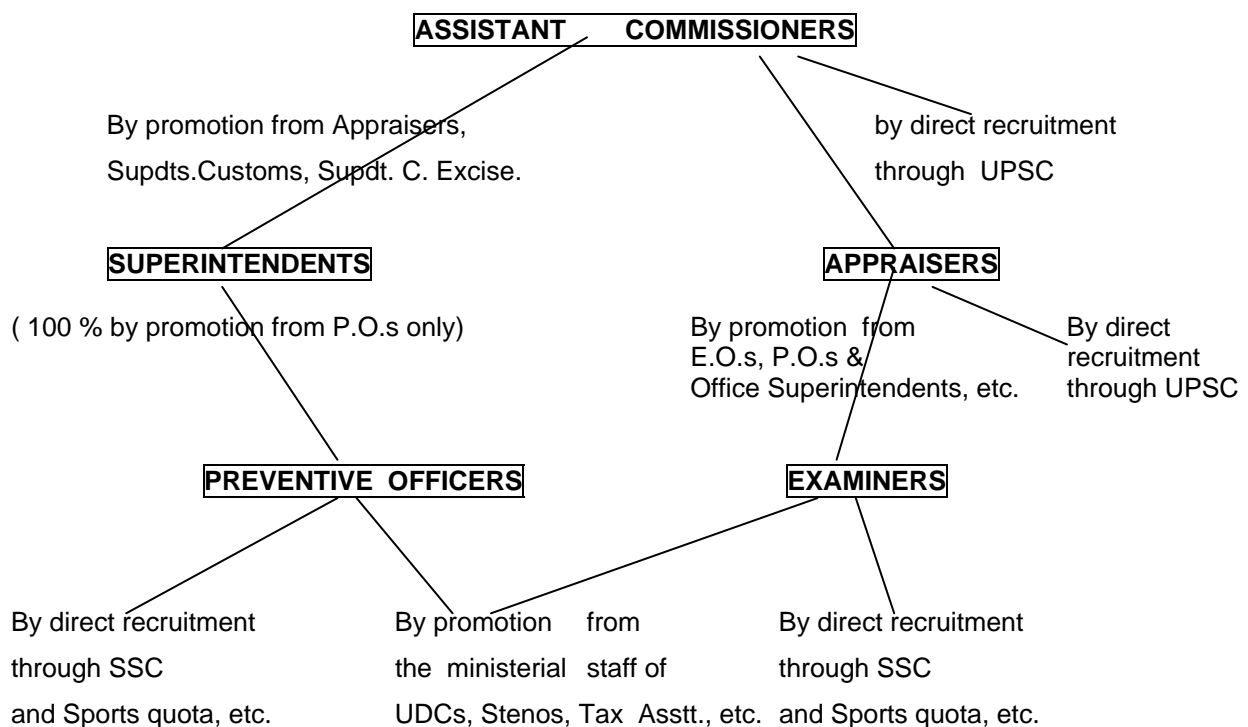
COMMISSIONER (AIRPORT) All work related to movement of Aircrafts, incoming / outgoing passengers and baggage at the airport, anti-smuggling work at airport, import / export of goods by courier mode, etc.

COMMISSIONER (AIR CARGO COMPLEX) All work related to import / export of goods and unaccompanied baggage by Air, etc.

The Commissioners execute various Customs functions with the assistance of Additional Commissioners, Joint Commissioners, Deputy / Assistant Commissioners, lower cadres staff and other officers of the Central or State Government or a local authority. All these abovementioned officers and staff are appointed by the Government under Sections 3, 4 and 6 of the Customs Act, 1962.

The two most important wings in the lower cadres of Customs in the Commissionerates are a) the Appraising Department – comprising of Appraisers & Examiners and b) the Preventive Department – comprising of Superintendents and Preventive Officers, assisted by Group 'D' staff . Though these two wings can be broadly classified as Departments engaged in collection of revenue and prevention of smuggling respectively, yet in many places and areas of Customs work, the two wings have inter-mingled together.

The broad framework of composition of these two important cadres i.e Appraising and Preventive Departments is as follows :



Besides the abovementioned staff, there are other cadres of the Department which render assistance to the Preventive Department in carrying out their assignments specially in Anti-smuggling operations. The most important cadres among these are the Boat Establishment and the Communication wing. These Departments, consisting of various level officers and other utility hands, looks after the upkeep, operation, etc. of the fleet of the Speed Boats and the Communication equipment of the Department. They play an important role in the anti-smuggling operations on-shore and off-shore.

In many Custom Houses, there are Special dog-squads which help in detecting concealed Narcotics. These dogs, handled by specialist dog-handlers, also play an important role as far as anti-narcotics operations concerned.

In addition to the abovementioned cadres of Customs Officers, there are some officers from other Central/State Departments, who perform the Customs functions. Section 151 of the Customs Act, 1962,

stipulates that the following officers are empowered and required to assist officers of Customs in the execution of the provisions of the Act:

- (a) officers of the Central Excise Department;
- (b) officers of the Navy;
- (c) officers of Police;
- (d) officers of the Central or State Governments employed at any port or airport;
- (e) such other officers of the Central or State Governments or a local authority as are specified by the Central Government in this behalf.

Functions of the Preventive Department

India has a long coastline stretching over 5,000 Kilometers and as much of land routes. Keeping vigil on these long frontiers is a daunting task. Equally important is the task of combating the challenge of unscrupulous elements causing injury to the national economy by way of smuggling activities. With globalisation, the trafficking in narcotic drugs has assumed a menace of international stature afflicting almost all the countries in the world. These can rationally be dealt with by sustained efforts through a compact system of collecting intelligence, maintaining surveillance and enforcing the laws strictly. These efforts call for a dedicated, efficient and skilled service. The Preventive Department forms one of the most important constituent of such a compact system.

The main function of the Preventive Department, as is evident from the name itself, is prevention of smuggling of dutiable, prohibited and restricted goods. In addition it also has to aid and supplement the activities of some other departments in enforcing the provisions of the Customs Act and various allied Acts, relating to arrival & departure of the vessels and aircrafts; discharge, landing and clearance of imported and warehoused goods, shipment & transshipment of goods at the docks, airports and other stations.

Even in the case of regular import / export of goods through the normal trade channel, though the procedures connected therewith are attended to by the Appraising Section, it is the Preventive wing which ensures the total observance of law by the trade & public by effecting proper checks at the points of entry / exit. In short there is no aspect of Customs functioning with which the Preventive Service is not directly or indirectly associated.

The Preventive Officer of Customs is the first to greet any visitor arriving in India and the last to see him off on his departure from India. In the process, he has to shoulder dual responsibility. On the one hand, he has to conduct himself to the visitor as an Ambassador of India. On the other, being a soldier on the economic front, he has to ensure the proper observance of the laws of the land by the visitor.

In all the situations, he is expected to carry out these dual responsibilities effectively.

OFFICERS OF CUSTOMS

Section 3 of the Customs Act, 1962, as amended by the Finance Act, 1995 and the Finance Act, 1999 prescribes the following classes of officers of Customs, namely;

- (a) Chief Commissioners of Customs;
- (b) Commissioners of Customs;
- (c) Commissioners of Customs (Appeals);
- (cc) Joint Commissioners of Customs;
- (d) Deputy Commissioners of Customs;
- (e) Assistant Commissioners of Customs; and
- (f) Such other classes of officers of customs as may be appointed for the purpose of this Act.

Section 4 of the Customs Act, 1962, empowers the Central Government to appoint such persons as it thinks fit to be officers of customs. In addition to that, the Central Government may authorise the Board, a Commissioner of Customs or a Deputy or Assistant Commissioner of Customs to appoint officers of customs below the rank of Assistant Commissioner of Customs.

Further, under Section 6 of the Customs Act, 1962, the Central Government may, by notification in the Official Gazette, entrust either conditionally or unconditionally to any officer of the Central or the State Government or a local authority any functions of the Board or any officer of customs under this Act.

Designation of Customs Authority- Change of

(1) In exercise of the powers conferred by sections 4, 156 and 157 of the Customs Act, 1962 and of all other powers enabling it in this behalf the Central Government hereby directs that references to the authorities specified in column 2 of the Table below in the rules, regulation, notifications, decisions orders or notices made or issued under the said Act, unless the context otherwise requires, be construed as references to the authorities specified in the corresponding entry in column 3 of the said Table:

TABLE

<u>Sl. No.</u>	<u>Existing Reference</u>	<u>Substituted Reference</u>
1.	Deputy Commissioner of Customs	Joint Commissioner of Customs
2.	Assistant Commissioner of Customs	Assistant Commissioner of Customs or Deputy Commissioner of Customs
3.	Deputy Commissioner of Central Excise	Joint Commissioner of Central Excise
4.	Assistant Commissioner of Central Excise	Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise
5.	Deputy Director	Joint Director
6.	Assistant Director	Assistant Director or Deputy Director

[Notification No. 29/99-Cus. (NT), dated 11.5.1999]

(2) In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 and section 3A of the Customs Tariff Act, 1975 and of all other powers enabling in this behalf, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby directs that the references to the Government of India in the Ministry of Finance (Department of Revenue), issued under sub-section (1) of section 25 of the said Customs Act, and section 3A of the said Customs Tariff Act, shall, unless the context otherwise requires, be constructed as references to the authorities specified in the corresponding entry in column (3) of the said Table.

TABLE

<u>S. No.</u>	<u>Existing authorities</u>	<u>Substituted authorities</u>
1.	Deputy Commissioner of Customs	Joint Commissioner of Customs
2.	Assistant Commissioner of Customs	Assistant Commissioner of Customs or Deputy Commissioner of Customs

S. No.	Section of Customs Act, 1962	Brief Subject
<u>Assistant Commissioner of Customs</u>		
1	18 (1)	Ordering provisional assessment of duty.
2	18 (2) (b)	Provisional assessment – warehoused goods taking of bond (without bank surety) where the duty finally assessed is in excess of that provisionally assessed.
3	21	Derelict, Jetsam, etc. goods imported – admissible duty free
4	22 (3) (b)	Sale of damaged goods
5	30 (3)	Amendment of import manifest / report except in cases of amendments of a trifling nature which may be permitted by the S / Import
6	32	Unloading of imported goods without manifesting them.
7	34 (Proviso)	Unloading / loading without Customs supervision.
8	35	Landing / shipment without boat note – permission in particular case.
9	42 (1)	Order for departure of conveyance after loading, unloading (i.e. port clearance).
10	42 (2)	Delivery of Shipping Bills etc., - before port clearance.
11	46 (1) (Pro)	Depositing in warehouse of imported goods, pending production of documents / information (see under the head Appraisers, also)
12	46 (2)	Admission of part Bill of Entry.
13	46 (5)	Substitution of a Bill of Entry for home consumption for a Bill of Entry for bond or <i>vice versa</i> .
14	48	Extension for clearance after two months of unloading. Also, permitting sale after the lapse of the period.
15	48 (a) (Pro)	Sale of animals, perishable goods, etc.
16	54 (3) (b)	Order permitting clearance for transshipment, in cases of transshipment to ports / airports other than major ports or airports specified by the Board under 54 (3) (a)
17	59 (Pro)	Acceptance of fresh bond when whole or part of the warehoused goods are transferred to another person.
18	61 (Pro)	Action pursuant to cancellation of licence in respect of a private warehouse where the goods are deposited.
19	63 (2)	Sale of the warehoused goods by the warehouse keeper for non-payment of the charges or rent.
20	64	Inspection by the owner of warehoused goods – permission for
21	67	Removal from one warehouse to another – permission for
22	72 (1) (d)	Payment of duty, charges, etc. on warehoused goods not properly accounted for.
23	72 (2)	Sale for non-payment of duty – warehoused goods.
24	73	Cancellation after action of bond executed for warehousing goods.
25	80	Temporary detention of prohibited baggage imported for return on leaving India.

26	85	Allowing stores to be warehoused without assessment to duty.
27	142 (1) (a)	Deduction of amount due from a person from money owing to him.
		II – Appraisers
31	17 (1)	Assessment of duty – examination / testing of imported or exported goods.
32	17 (3)	Assessment of duty – Production of relevant documents.
38	47 See Sec. 13, 17 (4) & 26 (c) also	Order permitting clearance of imported goods for home-consumption.
39	51 (Sec. 40 (a) also)	Order permitting clearance for shipment.
		III – Preventive Inspectors (Prev. Superintendents) (For matters relating to the Prev. Dept.)
40	27 (3)	Refund of duty over – levied, wrong levied, - admitting appeal.
41	45 (2) (b)	Permission to remove or deal with imported goods.
42	64	Inspection by owner of warehoused goods – permission of
43	69 (c)	Clearance for export from warehouse (could be P. O. Grade – I)
44	80	Temporary detention of dutiable baggage import for return on leaving India.
45	86 (2)	Transfer of stores from one conveyance to another (could be P. O. Grade – I)
46	129 (2)	Refund of duty / penalty admitted in appeal.
		IV – Preventive Officers
47	30 (1)	Delivery of import manifest / report (Aircraft)
48	34	Customs – Supervision – unloading / loading.
49	37	Going on board, conveyance.
50	38	Requiring the person in charge of conveyance produce documents / answer questions.
51	40 (b)	Order for shipment of mail bags and baggage.
52	41 (1)	Delivery of export manifest by agent after departure of conveyance on furnishing security. (Aircraft)
53	41 (3)	Amendment of Export Manifest (Aircraft).
54	42 (1) & (2)	Order for departure of aircraft after loading, unloading.
55	51	Order permitting clearance for shipment in special cases.
56	62 (1) to (4)	Control over the warehouse goods.
57	69 (c)	Clearance for export from warehouse where p. O.s are posted on permanent basis.
58	77	Declaration of baggage by owner.
59	79 (1)	Passing of baggage – duty free.
60	95 (2)	Making of entries in the advice book.
61	95 (3)	Production of advice book for inspection.
62(a)	101 & 107	Search and recording of Statement. All officers except Clerks and Class IV Officers, of the Preventive

62(b)	104	<p>Department. (Office order No. 5, dated 01.02.1963, C.1086/63) Arrest – All Preventive Officers, Gr. I and other Officers (of Prev. Dept.) of higher rank.</p>
62(c)	100, 106 and 110	<p>(Office order No. 5, dated 01.02.1963 – C. 1086/63) Search of Passengers and Conveyance and Seizure – All Officers except Clerks of the Prev. Dept.</p>
62(d)	103	<p>(Office order No. 4, dated 01.02.1963 – C. 1088/63) Screening and X-raying of Bodies of suspected persons for detecting smuggling goods – All Officers, except Clerks and Class IV Officers of the Preventive Department.</p>
63	31 (1) and (2)	<p>(Office order No. 4, dated 01.02.1963 – C. 1088/63) Grant of entry inwards after office hours and during holidays.</p>
64	41 (1) (Pro)	<p>(Amendment No. 3, dated 25.02.1967 to S. O. No. 6202) Delivery for Export Manifest by agent after departure of conveyance on furnishing security after office hours and during holidays. (Amendment No. 3, dated 25.02.1967, to S. O. No. 6202)</p> <p>N. B. : Under section 37 and 38, Class – IV Sepoys (Outdoor) are also authorised to accompany the P. O. s</p>

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CHAPTER - TWO

THE PREVENTIVE DEPARTMENT

PRELIMINARY

In the earlier days, the trans-border trade was less diversified and fairly limited in terms of amplitude, media and destinations. The items of trade were few and the governing laws for the same were simple. Violations of the regulations in force were few and far between. The job of collection of admissible dues for the foreign trade was entrusted to the Revenue Officers who were also responsible for enforcing the existing statutes and for taking procedural actions in the cases of violations thereof.

Over the passage of time, however, the foreign trade developed into a multitudinal activity assimilating various aspects of national and international importance. This necessitated the formulation of new trade policies and laws on the part of the State as well as the International trading fraternity. With this came the new aspects of tax management and its violations. So, it became necessary to expand the functional network for collection of revenue and enforcement of laws. New departments were established to administer the same. Further, aggrandisement of foreign trade posed operational difficulties for the staff which were assigned multi-functional responsibilities.

It, thus, became inevitable to bifurcate the Customs manpower machinery into two wings for the two main streams of activity. One wing has been entrusted the job of collection of revenue while the other has been assigned the task of enforcement of the statute related thereto. Thus the Appraising and Preventive Departments came into existence.

Every country has formulated its own Customs and Excise Laws to protect its national economy, natural resources, culture and environment. This entails putting ban, restriction and prohibition on the import / export of certain items. In addition to this, extensive and continuous vigil is also required to be maintained along the international land, sea and air frontiers of the country.

Banned, restricted or prohibited goods attract lucrative premiums. The premiums entice unscrupulous businessmen, traders, merchants, tourists and other category of travellers to clandestinely bring into or take out of country, such goods. Individuals, organised groups or international gangs can indulge in this activity, known as smuggling. Tracking and immobilising such offenders is one of the primary tasks of Customs Department in general and of Preventive Department in particular.

(A) SET-UP OF THE PREVENTIVE DEPARTMENT

As described in earlier chapter, the founding blocks of the Preventive Department consist of the Superintendents, Preventive Officers, the Group 'D' staff, staff car Drivers, the Boat Staff and the Communication Staff.

Recruitment to the Group 'D' cadre is either directly through Employment Exchange and Sports quota etc. or by promotion from the menial staff of Loaders and Hamals etc., as per the existing recruitment policy.

Similarly, the recruitment to the cadre of Preventive Officers is through the Staff Selection Commission as well as by promotion from the ministerial staff such as Tax Assistants, U D Cs and Stenos, as per the rules framed in this regard.

Recruitment at the level of Superintendent, however, is done entirely by promotions from the cadre of Preventive Officers. The next promotional avenue for the Superintendents cadre is the post of Assistant Commissioner. The Group A officers of the level of Assistant Commissioners and above have a common cadre of Indian Customs & Excise Services.

UNIFORMS & ACCOUTREMENTS

The Preventive Service, owing to the nature of its job, is a distinctive and disciplined service like the Police, the Navy, the Coast Guards and other like services. Evidently, it has to have its own characteristic Uniform and accoutrements for the purpose of identity, establishment and enforcement.

As most of the assignments and operations carried out by the Preventive department are on or near the sea, its Uniform for Superintendents and Preventive Officers has been designed on the pattern that of the Navy and on the pattern that of the Police for the Group 'D' staff.

In order to maintain and encourage a proper sense of discipline and to ensure proper turn out, all Preventive Staff of and below the rank of Assistant Commissioner must wear uniform when on duty, both in their offices and on tour. Where it is considered necessary for an officer to conceal his identity in connection with any special job, the officer must obtain prior permission of his controlling officer to be on duty without wearing uniform. Where, however, it may not be possible due to unforeseen circumstances to obtain prior immediate superior must be informed immediately and on such occasions the Officer must carry with him the identity card issued to him. Permission in such cases should be restricted to specified occasions and general relaxation from wearing uniforms should not be permitted for any grade of officers without the Board's prior approval. Officers in Headquarters and Divisional Offices are responsible for ensuring that their field staff wear prescribed uniforms at all times when on duty. The Customs Officers employed on Preventive Intelligence work are exempt from

wearing uniform except on special and ceremonial occasions. They will, however, continue to get the uniform allowance at the rates normally admissible to them.

All officers should be trained and encouraged to develop a sense of pride in their uniform. This is not likely to be facilitated without insistence that articles of uniform are kept clean: and emphasis must, therefore, be laid on periodical washing and cleaning of articles of clothing and polishing of foot-wear brass buckles, buttons, etc.

The following paragraphs describe the Uniforms and accoutrements for the Superintendents, Preventive Officers and the Group 'D' staff (Havildars & Sepoys) of the Preventive Service:

PREVENTIVE OFFICERS (MEN)

Summer Uniform –

The summer uniform of Preventive Officers shall consist of shirt with epaulettes, brooch and name plate; trousers with belt or buckles; peak cap, shoes and socks.

Shirt:

The shirt of the uniform shall be of spotless white colour stitched in half sleeves in the following manner: Bond – Terex collar, pocket with flap (two curves pointed in the middle) and plated middle flap and white buttons, loops or eyelets for fixing epaulettes.

The material should be preferably the same as that of the trousers. Preferred material- suiting.

Trousers:

Trousers shall be of spotless white colour stitched in loose parallels. The lower end should cover the eyelets of shoes white standing in attention. A white belt shall be used. If not, side buckles should be used. Belt, however, is preferable.

Shorts stitched in admiralty style could also be used; existing upto 2 inch above the knee. White stockings should be used along with shorts.

Cap:

Peak caps in white, with 'IC' crest are to be used. This white top should be a perfect circle and its rim should not be bent. Sikh Officers are allowed to wear white turbans with 'IC' crest affixed thereon.

Epaulettes:

The epaulettes prescribed for Preventive Officers is 2 stripes in golden braid of ½ inch thickness along with golden Ashoka Pillar in the middle and a golden brass half-ball button with Ashoka emblem at the pointed end on a black background. The words 'Customs' shall be inscribed in golden braid at the broad end. The Preventive Officers who have completed 10 years of continuous service in the grade shall wear 3 stripes on the epaulettes. [Note – for deployments at the International Airports, the background of epaulettes shall be blue]

Badge

A golden badge carrying an Ashoka emblem and words "CUSTOMS" immediately below it shall be worn on the shirt above the left pocket.

Socks:

Socks spot less white in colour, made of cotton, nylon or wool may be used.

Shoes:

Shoes shall be of buckskin, white in colour, made in oxford style. There shall be at least 5 pairs of eyelets. The shoes are to be cleaned with a wet sponge and Zinc Oxide paste is to be applied with a sponge onto them. No other polish is to be used. The sides of the sole shall be polished with dark tan or burgundy shoe polish.

Black shoes are not a part of the summer uniform. They are permitted to be used in inclement weather. Each year, the Asstt. / Dy. Commissioner (Preventive) (General) and the Asstt. / Dy. Commissioner (Airport) shall bring about a circular notifying the period during which the black shoes may be worn. In extremely bad conditions, like those in Bunders and at Gates, blue socks/stockings may be used. This too, is to be notified, stating clearly the dress code change, the place of work and the period.

Winter uniform

The winter uniform consists of a 2 piece suit to be worn with a peak cap and black shoes with blue socks.

The suit should be of Navy Blue colour made of woollen/Terry wool suiting. The coat should be double breasted with golden buttons. The stripes shall be on the sleeves and the Ashoka Pillar on the lapel.

A white coloured full sleeve shirt is to be worn with a Navy Blue tie under the coat.

PREVENTIVE OFFICERS (WOMEN)

Though lady officers are supposed to wear the same uniform as men, they may wear saris or dresses in white, with provision to wear epaulettes, cap, name plate and the badge. In all variations of uniform, wearing of prescribed socks and shoes is a must.

PREVENTIVE SUPERINTENDENTS

The uniform for the Preventive Superintendent is identical to that of Preventive Officer except that the number of stripes on the epaulettes shall be four and the colour of the badge shall be silver white.

HAVILDARS & SEPOYS (MEN)

Summer uniform

Trousers: Khaki Terrene cotton trouser stitched in parallels with two crossed side pockets.

Shirt: Khaki Terrene cotton half sleeve shirt, with collar, shoulder flaps and two pockets secured with flaps.

Cap: Blue woollen forage cap with triangular red bands on the sides & two brass half-ball buttons in centre front with Ashoka emblem embossed on them. Sikh officers may wear khaki turbans with the same attachments.

Shoes: Black leather shoes of flat/heal sole, with provision of five eyelets.

Socks: Brown nylon/woollen socks.

Accoutrements

Belt: Brown leather waist-belt fastening with an oblong brass plate buckles bearing name of the Custom House and Sepoy's roll no., worn with trousers.

Shoulder Badge: A metal shoulder badge carrying words "Indian Customs" worn on both the shoulders.

Lanyard and whistle – Nylon lanyard (cord) with a whistle, worn around the left shoulder.

Name Plate – White letter inscription on a ½ inch strip of black background worn above right shirt pocket.

Chevron – As an identification badge, the havaldars in the Customs Department shall wear four stripe chevron (V) in red cloth stitched on the right hand sleeve of the Shirts & Tunics (jersey). The chevrons will shall be made of straps of red cloth or red cotton ribbon ½ inch wide, being 2 ½ inches long forming an angle of 120°. The point of the (V) should reach 8 – 9 inches below the seam at the shoulders.

HAVILDARS & SEPOYS (WOMEN)

Summer Uniform

The uniform and accoutrements shall be same as for men except with the following changes –

- 1) In the place of khaki trousers/shirts, lady officer may wear i) Khaki sari with khaki full sleeve plain blouse and black lady's shoes, or ii) khaki salwar khaki kameez and khaki dupatta.
- 2) Instead of belt with buckle, the lady officer shall wear on left chest, badge bearing name of the Custom House and her roll no.
- 3) They shall not wear lanyard (cord) for whistle.

Winter Uniform Will be the same as described above except that the material used for uniform shall be woollen. In addition, male officers may wear khaki full sleeve jersey (army type) with full sleeve shirt and lady officer may wear khaki full sleeve pullover (lady's pattern).

Appearance and Conduct – when in Uniform

In the case of male officers, the face shall be clean shaven or moustached. Beards can be kept with due permission. Crew cut is prescribed hair style, and long hair should not be seen outside the cap; as also side whiskers.

Nails should be cut short, and one should not wear more than one ring on each hand. Sikh officers are allowed to wear a metallic bangle.

Officers entitled to wear medals or medal ribbons shall wear only the ribbons of ½ inch above the flap of the left pocket of the shirt.

It is the duty of every officer to ensure that uniforms are not only worn on duty but also worn correctly. Class IV employees particularly should be instructed in wearing uniforms correctly.

- (a) Head Quarters and Divisional Officers are responsible to instruct their subordinates in correct deportment when in uniform.
- (b) Habits like chewing of pan and lounging around and talking to one's colleagues or superior with one's hands in the pockets, go ill with uniforms and all officers should be taught to develop a proper sense of smartness when in uniform.

Salutation

Every officer must invariably pay compliments due to rank, especially when he is in uniform. Thus every officer must salute every other officer of a higher rank when he meets him whether he is his own superior officer or belongs to any other formation. It must be appreciated that the system of saluting a superior officer in uniform is not a barbaric custom but is as important for proper

maintenance of discipline as the numerous formal rules governing the conditions of service of officers and their conduct and discipline. It is essentially a symbol of recognition that the person who salutes and the person who is saluted are both members of a team working together towards a common objective and of the mutual dependence of one upon the other for success in their common endeavour. The officer receiving the salute must return all salutes in the proper manner.

Saluting by hand is not permitted when the officer who salutes is not wearing the proper headgear. The correct method of showing respect and discipline on such occasions is to stand to attention or, if passing the officer to be saluted, smartly turn the head and eyes towards the officer. The officer receiving the salute should return all salutes by hand when wearing a headgear. Without head-gear, the officer receiving the salute should stand to attention. Headquarter and Divisional officers should ensure that all the subordinates in their charges are trained in the proper method of saluting and of receiving and acknowledging salutes.

The salute is essentially NAVAL. The salute is to be presented to a senior officer, who holds a higher rank. In uniform, the salute has to have the following elements:

- **Posture:** attention (Savdhan)
- **Procedure:**
 1. The right hand has to go the shortest way up, parallel to the chest, just touching the black portion of the cap. The shoulder and the upper arm will be straight, horizontal and at right angles to the right side of the body.
 2. The palm shall be open and held tight, towards the face at an obtuse angle.
 3. The salute is to be offered when the giver is stationary.
 4. The hand has to come the shortest way down, back to attention position.
- **Duration:**

The salute normally lasts about 3 to 5 seconds. However, the salute should last till the senior officer has put down his hand. No greetings are to be exchanged while saluting.

Saluting while walking:

While walking, salute is to be offered to a senior officer either standing or coming towards you, in the same way as explained above, and the salute is to be withdrawn after the officer has passed by or has been passed by.

The cap is to be worn at all times during duty hours, except when the officer is seated on his own seat, when the cap could be removed and placed on the table with its crest facing away from him.

If by any reason, the officer happens to pass by his senior without a cap but in uniform, he should stand aside and click his heels, and should not salute. The senior officer could return the salute even if he is without a cap.

While going on a two wheeler, an officer has to salute his senior by straightening his hands and turning his head towards the senior officer.

DEPLOYMENTS OF THE PREVENTIVE STAFF

The Preventive staff forms the backbone of the all the anti-smuggling operations executed by the Commissionerates. Besides this, its services are also utilised for general duties like guarding of Customs stations, escorting of import / export goods from one place to another, boarding of vessels, patrolling Customs areas, clearance of passengers and baggage, supervision of loading / unloading of export / import goods, supervision of etc.

Thus the deployment of Preventive staff can broadly be divided into two categories –

- a) General duties - where the tasks performed are of Supervisory nature and for implementation of the Customs Laws,
- b) Special duties - where the tasks executed are of Operative nature and for detection and prevention of violations of Customs Laws - popularly known as Preventive or Intelligence Duties.

(a) General duties

The broad spectrum of areas where the Preventive Staff may be deployed for performing duties of general nature is briefly outlined below –

(i) Offices – in Personnel & Establishment section, Vigilance section, Maintenance section, Preventive and Group 'D' service sections, sports & training sections, P R section, outstanding dues recovery section, etc., for assisting the superiors in maintaining general administration and for carrying out other tasks in the Commissionerate.

(ii) Docks – the docks are enclosed and guarded areas normally utilised as berthing places of ships / vessels for loading, unloading and storage of export / import goods. The dock is generally divided into Divisions which are sub-divided into Sections for the purpose of better supervision and control of Customs work by the Customs staff. Further, customs Boarding Offices are also situated inside the docks which monitor the arrival and departure of vessels and ships. Also, there are some places out of the docks limits which are used for stuffing / destuffing of the export / import cargo.

Besides this, there are bunders, fish wharves and minor ports, normally located near and adjacent to the main docks. These stations, not enclosed

normally, are under general supervision of Customs and cater mainly to the coastal trade.

Preventive staff is extensively deployed at these Divisions, Sections, Boarding offices, Docks' entry / exit gates, Bunders, Fish-wharves and Minor ports, etc., to supervise and execute customs work and to deter any illegal activity at these places.

(iii) Airports- major airports and Air Cargo Complexes are other important formations for the deployment of the Preventive staff. At Air Cargo Complexes, the main activity being import / export of goods by Air, most of the duties performed here by the Preventive staff are similar to those executed for import / export arenas at the sea port. At the Airports, however, the duties assigned to the Preventive staff are multifunctional.

The main job of the Preventive staff at Airports is that of clearance of incoming / outgoing passengers and their baggage. Besides this, clearances of goods imported / exported by the courier mode, monitoring of the arrival / departure of Aircrafts and functioning of Airlines' catering units also come under the purview of the duties of the Preventive staff.

Another indispensable sphere of duties of Preventive staff at Airport is that of Air Intelligence Unit wherein the nature of work is similar to that in other Intelligence Sections, described in later paragraphs.

(iv) Imports – some of the important jobs assigned to the Preventive staff in the import side are clearance of goods imported / exported by Post, import of oil & petroleum, monitoring of the cargo containers, unaccompanied baggage, working in CFSs, EOUs, EPZs, private & public warehouses, etc.

(v) Exports- the tasks assigned to the Preventive staff in the exports are the supervision of export of goods from various export terminals, documentation thereof, processing of drawback, etc.

(vi) Investigating Units- the Preventive staff also forms an integral part of various local investigation units like Special Intelligence & Investigation Branch, Central Intelligence Unit, Special Task Force, etc., primarily investigating into violations of various sections of the Customs Act by the trade.

The jurisdiction, functions and duties of the Preventive staff have been dealt with in detail in the related Chapters of this manual.

(b) Intelligence duties

The assignment of Intelligence duties to the Preventive staff is of primeval importance. The Preventive Service forms the main mass of the Anti-smuggling machinery. The principal object of these assignments is detection & prevention of

smuggling. This entails the tasks of identification and surveillance over sensitive places, suspected persons and movements of conveyances. Equally vital is collection of intelligence about unscrupulous operators, vulnerable places, smuggled commodities, modus operandi adopted by the smugglers and their associates, disposal outlets for smuggled goods and other relevant aspects of smuggling activities. Besides this, surprise checks, patrolling of sensitive places feedback from the trade and similar other measures also are of paramount importance in gathering information about smugglers and their activities.

To accomplish these tasks for anti-smuggling operations, the following Units are usually contrived under the aegis of the Preventive (Intelligence) Commissionerates:

(i) Administration Units – these units co-ordinate among the staff of various Preventive Units in maintaining general administration, availability of required manpower and equipment and its management, etc.

(ii) Surveillance Units – these Units are created to keep vigil and surveillance on the movements of goods, persons and conveyances in and around the places vulnerable to smuggling activities. These Units may also be deployed to patrol the sensitive areas and also utilise other methods for collection of Intelligence about any violations of the laws in force.

(iii) Seizing Units – these Units normally carry out searches and seizures of contraband goods, goods illegally imported or attempted to be exported, and also execute post-seizure formalities including arrests.

(iv) Investigation Units – these Units are engaged in pre-seizure, post-seizure or on the spot investigations of the cases initiated under the Customs Act.

(v) Rummaging Units – these Units are constituted specially to perform the job of rummaging the vessels, aircraft and other conveyances to search for the concealed contraband goods.

(vi) Narcotics Units – these Units are assigned the specific job of detection and seizure of narcotic substances.

(vii) Legal Units – these Units are responsible for following up the legal aspects of the cases. They also maintain liaison with courts and other judicial authorities and render assistance to the department in completion of judicial proceedings.

(viii) Disposal Units – these Units look after the detention, storage and disposal of the confiscated and other goods.

(ix) Other Units – in addition to the above mentioned Units or amalgamations thereof, there may be other Units in the Preventive (Intelligence) Commissionerate attending to the jobs of cash rewards to the informants & staff,

post-seizure documentation and processing of case files, handling of seized documents and exhibits, etc.

Many a times, functions of these Units are inter-related and some or all of the above said functions can be executed by a Unit and vice versa.

Besides this, there may be other Units in a Commissionerate- depending on the nature of work, topographical conditions, trends in smuggling, deployed equipment, etc.

[**Note** : In some Zones, in addition to their normal Customs work, the Preventive staff is also deployed on diversion to various other wings under the C B E C like Directorates of - Revenue Intelligence, Anti - Evasion, Vigilance, Service Tax ; offices of - Settlement Commission, Chief Departmental Representative, Central Bureau of Investigation, etc.. The functions of most of these Departments are of Investigative nature and are beyond the realm of this Manual]

Periodical Shifts of the Preventive Staff

Like any other law-enforcing department, the Preventive service has to perform diversified tasks in enforcing the statutes in force. In the process, at times it comes across many situations and cases which are unique and dealt with in particular manner. As the deployments are varied in terms of nature and place of work, so are the actions taken and experiences gained. The same can be utilised for similar situations at other places of deployment gainfully.

In order to give maximum exposure to the widespread Customs work and to utilise the experience so gained optimally, the Preventive staff is shuffled periodically among the aforesaid Sections / formations. The frequency of rotation, tenure of the staff in a particular deployment, distribution of the charges, etc., are stipulated by the cadre controlling Commissioner.

Other aspect of the periodical shift is to discourage any unhealthy acquaintance and mixing up of the bad elements with the staff at a given formation which may lead to any kind of nexus or connivance.

In some Commissionerates, the set-up, sanctioned strength of staff and functions of certain Sections have been specified by the Ministry / Board. However, depending upon the requirements, the concerned Commissioners may use their discretion for creating new Sections and restructuring the existing ones.

Prescribed Working Hours

At present it has been stipulated that the Preventive staff shall render services 8 hours per day on all days except on Sundays and holidays. Preventive staff is entitled to receive Overtime allowance for the service rendered beyond prescribed working hours or on Sundays and holidays. The Heads of Department have full discretion to prescribe working hours for a particular formation and to adjust the shift timings of the staff working under them subject to the condition that the staffs concerned gives an effective service of 8 hours per day. But in order that the staffs are not put to any inconvenience, every effort should be made to adjust the shift timings in such a manner that the staffs are not relieved at night after 12 midnight.

Deployment beyond working hours

The movement of people and goods through the land, sea and air routes continues round the clock. With that, the Customs functions have also to be executed by the Customs staff day in and day out. More so is the case with the Preventive staff who have also to attend to anti-smuggling duties. This entails posting of the Preventive staff beyond normal working hours and on Sundays and holidays.

Section 36 of the Customs Act stipulates that no loading / unloading of export / import cargo shall take place on Sundays / holidays and on any other day beyond normal working hours except after giving the prescribed notice and on payment of prescribed fees with the exception of baggage accompanying a passenger or a member of crew, and mail bags. Vide notification no. 4 – Cus., dated 21.01.1950, issued by the Board under section 72 of the erstwhile Sea Customs Act, the hours between 6 a.m. and 6 p.m. has been appointed for all Customs ports to be the hours between which goods other than passenger's baggage may be discharged from any vessel or be shipped or water borne to be shipped without written permission of the Customs Commissioner.

Further, there are many other works related to the clearance of import / export cargo which require Preventive supervision during as well as beyond the normal working hours. The services rendered by the Preventive staff in this regard can be on two counts –

- a) Deployment for Government duties,
- b) Deployment for services requisitioned by the trade.

MERCHANT OVERTIME FEES

As discussed earlier, the services of the Preventive staff can be requisitioned by the trade beyond normal working hours, on Sundays and holidays and also at a place away from the normal place of work, on payment of prescribed fees.

The rates and other aspects of Merchant Overtime postings of the Preventive Staff have been discussed in Chapter Four of this Manual.

Overtime Allowance to the Preventive Staff

The Preventive staff rendering services beyond normal working hours of duty and also on Sundays and holidays are entitled to receive Overtime Allowance as per the guidelines issued by the Government. The staff, in this regard is entitled to claim the Government Overtime as well as Merchant overtime. The criteria for admissibility, rates per hour, night weight-age, ceiling on O T A etc., issued by the Govt. from time to time, are enumerated in the ' Miscellaneous' Chapter of this Manual.

(B) FUNCTIONS & DUTIES OF THE PREVENTIVE STAFF

The duties of the Preventive Staff in relation to a particular formation have been described in the respective Chapters, the duties of a few Preventive Superintendents and Preventive Officers have been described below:

(1) Superintendent (Preventive)/ Postings –

For effective control over the working of the Preventive Service a Superintendent (Preventive) is generally posted in every Customs House to assist the Assistant Commissioner of Customs, incharge of Preventive Department for posting of the Preventive Staff and distribution of overtime work at night and on Holidays.

He generally attends to:

- (a) Posting and attendance register of the floating staff.
- (b) Distribution of O.T. Work to the staff every day out of officer hours, and on Sundays and Holidays.
- (c) Posting of Preventive staff for examination of passengers' baggage and of crew baggage.
- (d) Posting of Preventive staff for supervising ships in streams, break bulk of hazardous cargo, guard and bandobast duties.
- (e) To assist divisional Superintendents in various Divisions.
- (f) Posting of Officers for escorting/receiving/delivery of bonded goods in the docks/private bonded warehouses etc.
- (g) To depute staff as and when required according to the exigency of work.
- (h) Posting of the floating staff in the docks, dock gates on rotation basis.
- (i) To attend to the work of correspondence with steamer agents, shipping agents, ship chandlers, Port Trust Authorities regarding the preventive matters of Customs as and when required.
- (j) Posting of officers in shifts at various places and points according to the tenure of the posts.

(k) To assist Asstt./Dy. Commissioner (Preventive) is framing and implementing policies regarding Preventive Deptt.

(2) Superintendent (Preventive)/Administration –

Besides Supdt (Preventive)/Postings, there is another important posting, that of Supdt. (Preventive)/Administration, who assists Asstt./Dy. Commissioner (Preventive) (General) in running day to day administration and in dealing with policy matters related to administration of the Preventive service. The main functions of Supdt. Preventive/Administration are -

- (a) Matters pertaining to administration of Preventive Service.
- (b) Integration of policy matters, laws, regulations, etc., in terms of their application in day-to-day work.
- (c) Issuance of Public Notices regarding policy matters like notification of Warehousing Stations, Customs Areas, etc., under the Customs Act, 1962.
- (d) Updating of Preventive Manual – Compilation of orders.
- (e) Statistical statements in respect of all preventive work.
- (f) Control over the ministerial work involved in Preventive section, pay bill section etc. in the preventive Service (Main) Department.
- (g) During the absence of Posting Superintendent, Supdt. Administration has to attend his duties in addition to his usual functions.
- (h) Attending to correspondence from trade regarding matters pertaining to Preventive Deptt., its functions & jurisdiction.
- (i) Any other work assigned by AC/DC (Preventive).

Escorting of Dutiable Goods by Preventive Officers- Instructions.

The following instructions are issued for the guidance of Preventive Officers deputed for escorting jobs:-

(1) The Preventive Officers should acquaint themselves with the provisions of Customs Act, 1962 and instructions given in the Preventive Service Manual and Bond Department Manual on the subject.

(2) Before the escorting job is taken in hand by the Preventive Officer, he should ensure that the documents produced by the party, i.e. Into Bond Bill of Entry, Shipping Bill, Transshipment Permit, Transfer application or any other document – are completed by the concerned, department of the Custom House.

(3) Before starting the job, it should be ensured that description, marks and numbers etc. given in the document tally with the goods to be escorted by him. He should also see that the packages are in sound condition and in case they are sealed as per document, he should check up whether the seals are in tact.

(4) At the time of escort the Preventive Officers should as far as possible see that a closed vehicle is made available by the party especially in case of sensitive goods. If closed vehicle is not available, the goods like Cigarette, Whisky, Films, etc. should be covered by tarpaulin to avoid public attention.

(5) The Preventive Officers will as far as possible sit in the vehicle in which the goods are kept unless it is against traffic regulations. In case it is not possible to sit in the vehicle, the Preventive Officer should follow closely the vehicle in another conveyance. However, under no circumstances the vehicle containing the goods should be lost sight off.

(6) On reaching the place (bond) where the goods are to be stored it should be seen that the necessary entries are made into the Bond Register and receipt from the bonder is obtained on the duplicate copy of the B/E as well as the O.T. application form in token of completion of the job.

The Preventive Officer will also see that the packages are properly stacked in the Bond keeping space between the two rows and a 'Stack Card' giving particulars of B/E, Bond No. etc. is placed on the lot.

If it is observed that the goods are not stored properly and no stack cards are maintained by the Bonders, a report in this regard should be submitted to Asst. Commissioner, Bond through Supdt, Bond.

(7) In the case of ex-bond supplies of liquor, cigarettes etc. the Preventive Officer should ensure that the packages are marked with the name of the ship on which the bonded goods are being supplied and also with the bonders particulars. The ex-bond supplies are to be entered in the register kept for this purpose in the Section Office and the Preventive Officer should as far as possible take the Section Officer along with him at the time of actual shipment, who will place the goods in the Bonded Locker of the ship and seal the locker. In case the section officer is not available, the Preventive Officer escorting the goods should keep the goods in a separate room/cabin and seal the place. Under no circumstances the bonded goods should be left unsealed on board the vessel.

(8) In case of transshipment cargo the P.O. should enter the particulars of the T.P. cargo in the register maintained for the purpose by the B.P.T. at the gate.

(9) In case of 're-shipment cargo after endorsing the relevant documents, i.e. file, B/E, Shipping Bill etc. the P.O. will enter the papers in the Register maintained for the purpose in the Section Office.

(10) When goods are being sent in Bond to other Commissionerates, the P.O. should ensure that the Railway Receipt, Roadway Bill or Air consignment note is made in the name of the concerned Collector and not in the name of the party.

The R.R., Road-way bill, Air consignment Note should be brought to the Custom House and handed over to Superintendent in-charge of Postings, who should sent it under despatch to the concerned section.

(11) After completion of the job, the P.O. should report to the Posting Section and not to waste his time anywhere else. In case the Custom House is closed, he should keep the Bond keys at prescribed Station.

The entire job should be done in proper uniform.

[Circular No. 170/16.07.1977 issued by Asst. Collector, Preventive (General), Mumbai in F.NO. S/43-1582/77P]

Conveyance Allowance for services rendered to the Trade:

The attention of the preventive staff is drawn to sub-para (4) of Para 474 pages, 553/54 of the Preventive Service Manual Vol.II wherein it has been made clear that it is incumbent on the party requisitioning the services of a Preventive staff for escorting jobs to provide them with motor-transport to-and-fro or pay the conveyance charges in Custom House at the time of requisition.

In view of the above the preventive staffs posted for the jobs are hereby informed that they should not receive any cash from the parties in lieu of conveyance.

The preventive staff can claim the conveyance allowance in case transport is not provided by the party from the Custom House as per the instructions enclosed-

“[(4) Transport charges to officers for journeys from Custom House to bonded factories or warehouses and back. – It has been decided by the Government of India that shipping agents or merchants who apply for the services of the Custom Officer for work in private bonded warehouse or for escorting dutiable cargo from bonded factories or warehouses to the ships and vice-versa provide conveyance free of charge. Staff are despatched on duty to places at some distances from the Custom House concerned. It is considered equitable to allow them to draw the actual cost of conveyance charge. The President is, therefore, pleased to decide that officers both gazetted and non-gazetted should be granted the conveyance allowance in respect of their journeys from Custom House to bonded factories, warehouses etc. and back subject to the following conditions: -

- (1) The amount claimed should within the schedule scale of charges fixed by the local authorities.
- (2) No free conveyance was provided by the bonder nor so any conveyance hire drawn by the Government servant directly from bonders (a certificate to this effect should be furnished by the Government Servant along with the claim).

- (3) The journey was not performed in the Government Servant's own conveyance or in conveyance of another person without payment of its usual expenses.
- (4) Payment of conveyance hire to the officers will not affect their entitlement of overtime even if otherwise admissible to them.
- (5) The Government Servant drawing the conveyance hire under these orders will not be entitled to any T. A. under the rules in force. (2) The expenditure involved should be debited to contingency in the case of non-gazetted separate and the allowance and travelling allowance in the case of gazetted officers. The amount of expenditure should, therefore, be recovered from the bonders etc. and credited as Customs miscellaneous vide M. F. D. B. No. 12/45/56 Adm. III, dated the 5th Dec., 1957.

Casual work – The persons requesting for posting of officers should give on the overtime application one of the following declarations: -

“We shall provide motor transport to the Officer” or “We shall pay the taxi charges”.

In the latter case the money should be paid along with the application for overtime to the Custom House and not to the Officer who may be posted. The Officer concerned should claim the conveyance charges from the Government.]”

(C) DUTIES OF SEPOYS AND HAVALDARS

1. In supersession of this Department's letter F. No. 11019/31/89-Ad. IV dt.27.12.89 on the above subject, of this is to say that the matter regarding nature of duties of Sepoys/Havaldars, as raised by the staff –side member representing them in the Departmental Council of this Ministry has been re-considered by the Board. Duties of Sepoys/Havaldars are well understood. Sepoys/Havaldars attached to an officer are required to assist them in their work and also perform duties which are incidental to the official work of the officers.
2. In this connection, it may be observed that Sepoy and Havaldars of these Departments are deployed in the office to perform duties as exigencies demand and also in the field formations to assist executive officers in carrying out their functions. In performance of these functions, they are required to act under and in accordance with the orders of such executive officers. The duties of such executive officers are of multifarious nature.
3. In the Customs field formations, the duties of such executive officers (in performance of which Sepoy/Havaldars assist them) are: check of import/export cargo in docks/Air-cargo sheds, check of baggage of out-going/in-coming passengers at airport/ports, guarding of entry/exit points at Airports, docks and warehouses, rummaging etc. of vessels, guarding of

goods in custom custody, escorting of seized goods and detained persons, raids and surveillance duties etc.

4. In the Central Excise field formations, the duties of such executive officers are: stock-verification in factories, warehouses, etc. road-checks, escorting of seized goods and detained persons, raids and surveillance duties, etc.
5. Likewise, in the field formations of the Central Bureau of Narcotics, they are required to assist the executive officers in their functions like issue of licence for poppy cultivation, crop survey, weighment and collection of opium, escorting of opium consignments, road-checks, escorting of detained persons, road-surveillance duties etc.
6. It may, however, be mentioned that as in the case of other officers, Sepoys/Havaldars are also required to attend to such other duties as may be assigned to them by their higher officers.
7. The Havaldars besides supervising the work of Sepoys will, where required, also attend to the work of Sepoys.
8. Annexure I & II give illustrative lists of duties of such officers of the Customs, Central Excise and Narcotics Departments.

Annexure I

Illustrative list of Duties of Sepoy/Hawaldar in the Customs & Central Excise Departments

Some illustrations of specific items of duties which are generally performed by Sepoys/Hawaldar in the customs Department are indicated below:-

- (i) **Guarding of Exit Gate etc. at Customs' Stations :-**
Sepoys have to guard entry/exit gates at Airports, docks, bunders and other check-points at Customs Stations to check passengers/vehicles to ensure that only authorised goods are allowed. Similarly, they have to guard detained conveyances and persons suspected to have committed offences under the Customs Law.
- (ii) **Arms duties :-**
 - (a) **Guarding:** Sepoys have to carry out armed guard duties in Warehousing where detained/confiscated goods are stored.
 - (b) **Patrolling:** Sepoys carry out patrolling, keeping watch over incoming and out-going passengers, intelligence gathering, etc. in the vulnerable towns docks/sea areas as part of anti-smuggling exercises under the supervision of Customs Officers.

- (c) **Escort duty:** Sepoys have to perform escort duty in respect of seized/confiscated or other goods moving from one Customs station to another pending clearance thereof from Customs and/or lodging of the same at the destination in proper condition.
- (iii) **Customs seal duty:** Sepoys put seals on goods to be forwarded from one Customs Station to another Customs Station (where escort is not possible).
- (iv) **Search:** Sepoys accompany and assist the Customs Officers in carrying out search of suspected premises/persons, and in rummaging duties.
- (v) **Indoor duties:** To attend to the Customs Officers, receipt and despatch work, carrying files from one Department to another and generally to perform duties as are required to be performed in the office.
2. The above illustrations apply, mutatis mutandis, to sepoy working in the Central Excise Departments.

Annexure II

Duties of Sepoys of Narcotics Department

Assisting Executive Officers in regulation of poppy cultivation, e.g. measuring of fields, weighing and collection of yields etc. On the preventive side assist the Preventive Officer in gathering intelligence, trailing the suspects, conducting road-blocks, participating in raids, preventing trafficking in opium/smuggling, etc.

[M. F., D.R., letters F. No. B-12014 / 6 / 90 – Ad IV dated 15.3.1991 and dated 19. 8.1992]

Escorting by Sepoys of Lorries carrying dutiable goods

In this connection, it is informed that as per the prevailing practice and the rules, a Sepoy has to escort one lorry only. But if there is a convoy of trucks, a Sepoy is permitted to escort maximum three lorries at a time, provided the three lorries go together.

[Excerpts from letter F. No. S/43 – 157/94 P, of Assistant Commissioner (Preventive Deptt.), New Custom House, Mumbai]

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CHAPTER - THREE

CUSTOMS DUTIES, EXEMPTIONS & PROHIBITIONS

PRELIMINARY

As mentioned in the earlier Chapters, one of the main functions of Customs is collection of Revenue for State Exchequer. Customs duties now form a significant part of the revenue for the country.

Every country formulates its own statutes for regulating the collection of revenue, movement of goods across its frontiers, etc., in order to safeguard its economy, industry and culture etc. But, at the same time, the requirements of the International and National protocol and conventions; educational, charitable and developmental projects; prevalent trade practices and patterns, anti-smuggling measures; etc., have also to be taken into account while framing these statutes.

The two Acts viz. the Customs Act, 1962 & the Customs Tariff Act, 1975, under the umbrella of the Constitution of India, empower the Central Government to levy and collect Customs duties on import / export of goods to / from the country. Customs machinery plays a significant role in this regard.

Section 12 of the Customs Act, 1962, stipulates that duties of Customs shall be levied as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into or exported from India. Thus, the Section 12 of the Customs Act, 1962, is the charging section whereas the details of the duties to be levied are specified in Schedules to the Customs Tariff Act, 1975.

The Customs Tariff Act, 1975, endows the Central Government with wide-ranging powers of levy, withdrawal, modification of Customs duty & many other kinds of duties on any goods or class of goods in order to safeguard the interests of the indigenous economy, industry and trade. This Act has, as appendage, two Schedules namely the Import Tariff and the Export Tariff.

The Import Tariff contains commodity-wise classification of goods grouped into 99 Chapters (with distinctive Heading Nos.) based on the Harmonised System of Nomenclature adopted by countries signatory to the Customs Co-operation Council Nomenclature (C.C.C.N.) or the Brussels Tariff Nomenclature (B.T.N.), and rates of basic Customs duty leviable on import thereof. Other special duties on imports or exports are usually specified under the provisions of the Customs Tariff Act, 1975.

The Export Tariff consists of details of certain goods and rates of export duties leviable on export thereof, along with exemptions therefrom. Further, it also contains list of goods and rates of various Cesses currently leviable on export thereof, under – the Indian Cotton Cess Act, 1923; Agriculture Produce Cess Act, 1940; Coir Industry Act, 1953 ; Tea Act, 1953 ; Produce Cess Act, 1966 ; Iron Mines & Manganese Ore Mines Labour Welfare Cess Act, 1976 ; Spices Cess Act, 1986 ; and the Agricultural & Processed Food Products Export Cess Act, 1985.

TYPES OF CUSTOMS DUTIES

Customs Duties can be broadly divided into two categories viz. Import duties and Export duties

(A) IMPORT DUTIES:-Following are the Customs Duties which are at present levied on the imported goods under the provisions of the Customs Tariff Act, 1975 -

(i) Basic duty – this duty is specified against each Heading of Sub-heading in the First Schedule of the CTA,1975. There may be different rates of duty for different class of goods. The Basic Customs duty may be a percentage of the value of the goods (when it is called ad-valorem duty) or at a specific rate. There also may be different rates of duty for goods imported from certain countries in terms of bilateral or

other agreements – which are called preferential rates of duties.

(ii) **Additional duty** – this duty, levied under Section 3 of the CTA, 1975, is equivalent to the Central Excise duty leviable on like goods produced or manufactured in India. This duty is commonly referred to as Countervailing Duty (CVD). If such duty is on ad-valorem basis then the value for this purpose is the total of CIF value, basic customs duty and the auxiliary duty, if any, leviable. This CVD is eligible for CENVAT credit under the Central Excise Rules, 1944.

(iii) **Special Additional duty** –in the Budget of 1998-99, a Special Additional duty of Customs has been introduced with the objective of bringing imported goods on par with local goods having a burden of sales tax / local tax. This is not applicable to the goods which are chargeable to additional duty levied under sub-section (1) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. For this purpose, a new Section 3A has been inserted in the Customs Tariff Act, 1975.

(iv) **Safeguard duty**- a new Section 8 (B), providing for levy of Safeguard duty was introduced in the Customs Tariff Act, 1975 in the 1996-97 Budget, for the protection of domestic industry (presently imposed on Carbon Black and Acetylene Black).

(v) **Countervailing duty**- may be levied on bounty-fed articles under Section 9 of the Customs Tariff Act, 1975. No such duty, however, is being levied at present.

(vi) **Anti-dumping duty**- is levied on select goods imported from specified countries to protect indigenous industry from injury resulting from dumping of goods. Such duty has been levied at present on PVC resins imported from USA, Korea etc.

(B) **EXPORT DUTY** – as per Section 12 of the Customs Act, 1962, goods exported from India are chargeable to duty at the rates stipulated in the Second Schedule to the Customs Tariff Act, 1975 or the Export Tariff. However, these duties are levied on very few items and are mainly symbolic. Normally these duties are levied to counter balance the profitability in case the prices of a commodity are very low in India at the given time. The Central Government has now phased out these duties in order to sustain and improve the competitive aspects of Indian goods in the International markets. At present, the Export duties are very few and practically non-existent.

(C) **CESSES** – as mentioned earlier, certain cesses are leviable on specified items under various statutes. These Cesses are also collected as Duties of Customs and are subsequently forwarded to the respective Administering Authorities.

ASSESSMENT OF IMPORTED GOODS

For the purpose of Customs clearance of imported goods, assessment of the goods has to be done. Assessment includes the classification of the goods, determination of the valuation & the rate of duty applicable, physical examination, if any, of the goods besides verification of the importability of the goods as per current Import / Export policy and Procedures stipulated thereunder. There is stipulation, under Section 18 of the Customs Act, 1962, for provisional assessment of imported goods.

a) Classification -

The classification of the goods and rates of duty applicable are determined as per the Import Tariff and notes & explanations contained therein.

b) Valuation –

The valuation of the goods is a very important aspect for assessment of duty as most of the Customs Duties are ad-valorem.

Section 14 of the Customs Act. 1962, inter-alia prescribes that –

i) value of the goods shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of International trade, provided the seller and buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer of sale;

ii) the price referred to above shall be determined in accordance with the rules made in this behalf.

The Central Government has framed the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, which follow the GATT provisions. Accordingly, the norm is the transaction value or invoice price, but the value to be acceptable should be a fully commercial and genuine price. The freight and insurance charges are to be added, if not already included, to it for arriving at the 'Cost, Insurance & Freight' (CIF) price. The landing charges realised by the port authorities have also to be added to it.

Further, as per Section 15 of the Customs Act, 1962, the rate of duty & tariff valuation is taken to be as the rate of duty & tariff valuation prevalent on the date of filing of Bill of Entry in respect of goods for home consumption while on the date of actual removal from warehouse in case of warehoused goods. It will be the date of payment of duty in other cases. These provisions, however, do not apply to baggage or goods imported by post.

REMISSION OF DUTY

Remission of duty is permitted (under Section 23 of the Customs Act, 1962) if the imported goods are lost (otherwise than as a result of pilferage) or destroyed at any time before clearance for home consumption. In the case of goods pilfered before ' out of charge ' given by the customs, the importer is not liable to pay duty except in case such goods are resorted to him. The owner of the imported goods has also the right to relinquish his title to the goods at any time before an order for clearance of the same for home consumption or warehousing has been made and thereupon his liability to duty ends. Further, there is also provision (under Section 22 of the Customs Act, 1962) for abatement of duty on damaged or deteriorated goods.

DEMANDS AND REFUNDS OF CUSTOMS DUTY

If the Customs duty happens to be short-levied or paid in excess, there are provisions in the Customs Act, 1962, to demand from, or refund to , the importer the differential amount provided the demand or claim for refund is made within six months from payment of duty (within one year in the case of personal imports or imports by the Government etc.). However, in case of a wilful mis-statement or suppression of facts by the importer or collusion, the time limit for demands is extended to five years. There is also provision for charging / payment of interest if such payments are delayed beyond three months. Section 28 provides for a demand notice by the Department to the payee for recovery of any duty / interest not levied, short levied, erroneously refunded, to be issued within six months or one year, as the case may be.

Refund Application

In exercise of the powers conferred by sub-section (1) of section 157, read with Cl. (aa) of sub-section (2) of the said section of the Customs Act, 1962 (52 of 1962) hereinafter referred to as the Act, and in supersession of the Customs Application (Form) Regulations, 1991, except as respect things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby makes the following regulations, namely: -

1. **Short title and commencement.** – (1) These regulations may be called the Customs Refund Application (Form) Regulation, 1995.

(2) They shall come into force with effect from the date of their publication in the Official Gazette.

2. **Form and manner of filling application for refund.** – (1) An application for refund shall be made in the prescribed Form append to these regulations in duplicate to the Assistant Commissioner of Customs, having jurisdiction over the customs port, customs airport, land customs station or the warehouse where the duty of customs was paid.

(2) The application shall be scrutinised for its completeness by the Proper Officer and if the application is found to be complete in all respects, the applicant shall be issued an acknowledgement by the proper officer in the prescribed Form appended to these regulations within ten working days of the receipt of the application.

(3) Where on scrutiny, however, the application is found to be incomplete, the proper officer shall, within ten working days of its receipt, return the application to the applicant, pointing out the deficiencies. The applicant may be submit the application after making goods the deficiencies, for scrutiny.

Explanation: - *For the purpose of payment of interest under Sec. 27 A of the Act, the application shall be deemed to have been received on the date on which a complete application, as acknowledged by the proper officer, has been made.*

APPLICATION FOR REFUND OF DUTY / INTEREST

PART – A

To

The Assistant Commissioner of Customs,
.....

I / We wish to lodge this claim for refund of customs duty / interest which have been paid in excess by me / us as per details given below:

1. Import / Export document (Bill of Entry, Shipping Bill etc.) / Purchase Invoice Number and Date
2. Duty deposit reference (Cash No. / Deposit No.) and date
3. Description of goods
4. Name and address of
 - (a) Importer
 - (b) Customs House Agent
 - (c) Applicant
5. Refund Claim under Sec. 27 (1) (a)/Sec. 27(1) (b) of the Act
6. Ground of claim*

[*Specify with details whether the claim is on account of re-assessment of rates of duty/valuation, Shortage/short landing, pilferage, appellate order, arithmetical/clerk error, any other ground (specify)].

7. Amount of refund claim
8. Amount of MODVAT credit availed from the additional duty of customs paid and now covered by the refund claim
9. Enclosures* (in original) in support of refund claim

[*please put a tick mark against the document being enclosed)

(a) Letter of authorisation from the importer/buyer in case the applicant is an agent.

(b) Triplicate copy of Bill of Entry/Post parcel wrapper/Shipping Bill/Baggage Receipt or the Purchase Invoice

- (c) Duty Challan/Other document as evidence of duty payment
 - (d) Signed working sheet for the amount of refund claimed.
 - (e) Customs attested invoice
 - (f) Customs attested packing List
 - (g) Documents for establishing the applicant's eligibility to receive the refund amount in terms of the proviso to sub-section (2) of Sec. 27 of the Act, including documents for the purpose of Sec. 28 – C and 28 – D of the Act.
 - (h) Contract and Purchase order
 - (i) Modvat credit certificate from Central Excise authorities
 - (j) Order in original/in revision/in Appeal/any other order
 - (k) Short delivery certificate from custodian
 - (l) Short shipment certificate from supplier
 - (m) Survey report
 - (n) Insurance claim settlement certificate
 - (o) Catalogue/Technical Write-up/Literature
 - (p) Bills for Freight/Insurance/Other charges
 - (q) Certificate of origin
 - (r) Any other document considered necessary in support of the claim (specify)
 - (s) Total number of documents enclosed
10. Any further details deemed necessary and relevant to the refund claim
11. Whether any other refund claim filed/pending against the same Yes/No
 Import / Export document (Bill of Entry, Shipping Bill etc.) If yes, give details
12. Whether personal hearing required or not before the case is decided Yes/No
13. (a) Whether the duty has been paid under protest Yes/No
 (b) If yes, Custom House protest registration No.

Declaration

I / Wehereby declare that –

- (a) the contents of the refund claim as per form above are true and correct to the best of my / our information and behalf;
- (b) the amount and the ground for which this refund claim has been filled has not been previously claimed and paid; and that
- (c) the excess duty claimed as refund has not been passed on to any other person by the importer / the buyer.

Date

.....

Signature of the applicant

PART B

ACKNOWLEDGEMENT

(for Custom House use)

FILE NO.....

Refund claim of Mr/Ms.....for Rs.....against Bill of Entry / Post Parcel / Baggage Form / Shipping Bill No..... Datedreceived in complete manner on admitted for examination vide Custom Refund Registration No.....dated

.....

for Assistant Commissioner of Customs

Date

ACKNOWLEDGEMENT

(to be issued to the applicant)

FILE NO.....

Refund claim of Mr/Msfor Rs..... against Bill of Entry / Post Parcel /
 Baggage Form / Shipping Bill No. Datedreceived in complete manner on
 admitted for examination vide Custom Refund Registration No. dated.....

.....
 for Assistant Commissioner of Customs

PART C**CLAIM SCRUTINY**

(for Custom House use)

File No.....

Refund claim of Mr/Msfor Rs..... against Bill of Entry / Post Parcel / Baggage
 Form/ Shipping Bill No.Datedhas been scrutinized and found deficient in the
 following manner for purpose of examination under Sec. 27 of the Customs Act, 1962. Import/Custom
 House Agent/Applicant is required to make good the deficiency and re-
 submit the claim at the earliest.

- 1.
- 2.
- ..

Date.....

.....
 Proper Officer of Customs

(to be issued to the applicant)

FILE NO.....

Refund claim of Mr/Msfor Rs.against Bill of Entry/Post Parcel/Baggage
 Form/Shipping Bill No.....Dated.....has been scrutinized and found deficient in the
 following manner for purpose of examination under Sec. 27 of the Customs Act, 1962. Import/Custom
 House Agent/Applicant is required to make good the deficiency and resubmit the claim at the earliest.

- 1.
- 2.
- ..

Date

Proper Officer of Customs

[Note : In the Finance Act, 2000, vide clauses no. 87 & 88, the MODVAT Scheme has been
 replaced by the CENVAT Scheme with effect from 1st April, 2000]

EXEMPTIONS & PROHIBITIONS

Chapter IV of the Customs Act, 1962, also deals with the issue of prohibitions on import & export of goods, prevention and detection of illegally imported goods & export goods.

The Central Government is empowered under Section 11 of the Customs Act, 1962, to prohibit importation or exportation of goods of any specified description. In view of the sub-section (3) of Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, the goods prohibited, restricted or otherwise regulated under sub-section (2) of the said Section shall also be deemed to have been prohibited, restricted or otherwise regulated under Section 11 of the Customs Act, 1962. Further, by virtue of Section 67 of the Foreign Exchange Regulation Act, 1973, the restrictions imposed upon import and export of Indian currency and foreign exchange shall be deemed to be restrictions under Section 11 of the Customs Act, 1962.

Similarly, Chapter V of the Customs Act, 1962, provides for the levy of and exemptions from various Customs duties chargeable under the Customs Tariff Act, 1975.

Section 25 of the Customs Act, 1962, empowers the Central Government to grant exemptions generally either absolutely or subject to some conditions, to goods of any specified description from the whole of or any part of duty of Customs leviable thereon. This Section comprises of three distinctive parts:

Section 25(1) confers power upon the Central Government to exempt the goods from the levy of duty itself. So, when the power is exercised under sub-section (1), the duty leviable under Section 12 is wholly exempt and the fact that the goods are still included in the Schedule as chargeable under the Customs Tariff Act, 1975, does not render the goods subject to levy of duty. The Schedule to the Customs Tariff Act ceases to apply to the Customs Act no sooner than the notification under sub-section (1) is issued.

While an exemption under sub-section (1) of Section 25 exempts goods from levy of duty itself, the exemption sub-section (2) of the section provides exemption from payment of duty. In the former case, the goods cease to be dutiable goods under Section 12 of the Customs Act and in the latter case while goods remain dutiable under Section 12, they are only exempt from payment of duty.

Sub-section (3) of Section 25 empowers the Central Government to grant exemption from statutory Customs duty by providing for levy of duty on such goods in a form or method different from the form or method in which the statutory duty is leviable. The form or method envisaged in the 'Explanation', means a different basis of valuation also.

However, the onus to establish the eligibility to an exemption rests on the assessee. An exemption, being an exception, is interpretable strictly and in case of doubt or ambiguity, it is to be resolved in favour of the Revenue. But if there is no doubt or ambiguity, the exemption need not be interpreted strictly. If more than one exemption is applicable to a given situation, benefit of all is allowable to the assessee.

Accordingly, the Central Government has also framed certain laws for importation of some goods falling in this exempted category, viz. Imports by - privileged persons & organizations; educational & charitable institutions; developmental projects; handicapped persons; tourists, etc.

(A) EXEMPTIONS

A few of the relevant General Exemptions have been detailed below :

1) Imports by United Nations Organization and it's agencies & their officials.-

The relevant Articles of the U.N (P& I.) Act, 1947 under which exemptions from Customs duty is allowed to the U.N.O. and their officials, are reproduced below:

Article II, Section 7, The specialised agency assets, income and other property shall be-

- (b) exempt from Customs duties and prohibitions and restrictions on imports and export in respect of articles imported or exported by the specialised agency for its official use;
- (c) exempt from Customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Article IV, Section II. Representatives of Members at Meeting convened by a special agency shall, while exercising their functions and during their journey to and from the place of meeting, enjoy the following privileges and immunities –

- (f) the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable ranks of diplomatic missions.

Article V, Section 18 (g). Officials of the specialised agency shall –

- (g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Article V, Section 19. In addition to the immunities and privileges specified in section 18, the Executive Head of each specialised agency including any official acting on his behalf during his absence from duty shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law.

Article VI, Section 22 (f). Experts (other than officials coming within the scope of article V) performing missions for the specialised agency shall be accorded—

- (f) the same immunities and facilities in respect of the personal baggage as are accorded to diplomatic envoys.

Article VII, Section 27. The Executive Heads, Assistant Executive Heads, Heads of Departments and other officials of rank not lower than that of a Head of a Department of the specialised agencies travelling on UN laissez-passer on the business of the specialised agency shall be granted the same facilities for travel as are accorded to officials of a comparable rank in diplomatic missions.

These concessions have also been extended to the following International Organizations and their representatives (known as specialised agencies) and officials subject to the modifications and extensions mentioned below as laid down in the Government of India, Ministry of External Affairs, Notification No. 55 U. N. I, dated 21-2-1950 and N. 163 U.N.I. / 52 , dated 26-4-1952.

- (i) International Civil Aviation Organization
- (ii) World Health Organization.
- (iii) International Labour Organization.
- (iv) U. N. International Children's Emergency Fund.
- (v) The Joint Enterprise Aid in mass Vaccination against T. B. in India.
- (vi) Food and Agriculture Organization of the United Nations.
- (vii) U. N. Educational, Scientific and Cultural Organization.
- (viii) International Monetary fund.
- (ix) International Bank for Reconstruction and Development.
- (x) Universal Postal Union.
- (xi) International Tele-communication Union.
- (xii) World Meteorological Organization.

(xiii) U.N.T.A. Board.

(xiv) UNICEF.

Article IV has been extended to : The Chairman of the Council of the F.A.O., President of the Conference and Members of Executive Board of U. N. E. S. C. O., their substitutes and advisers, persons designated to serve on the Executive Board of the W. H. O., the Employer and Worker's Members and Deputy Members of Governing Body of the International Labour Organization and their substitutes.

Article V, Section 19 shall also be accorded to the President of the Council of the International Civil Aviation Organization, Deputy Director General of the International Labour Office and any Assistant Director General of the International Labour Office and to the Deputy Director General of U. N. E. S. C. O., his spouse and minor children.

Article VI, Section 22(f) shall not apply to the International Civil Aviation Organization, W. H. O., I. L. O., F. A. O., U. N. E. S. C. O., I. M. F., International Bank for Reconstruction, the Universal Postal Union, International Tele-communication Union and World Meteorological Organization.

Note 1. The concession in respect of the Joint Enterprise Aid in Mass Vaccination against T. B. in India vide Item (v) above, shall remain in force until the work of the team is deemed to have been completed by mutual agreement of the Government of India and the Enterprise.

Note 2. Articles imported by the United Nations Information Centre, New Delhi, for its official use may be granted exemption from customs duty and other customs formalities as may be admissible under the United Nations (Privileges and Immunities) Act, 1947.

World Health Organization – Agreement between World Health Organization and the Government of India :

The Government of India have decided that –

- (1) Medical supplies or any other articles or goods imported or exported by the World Health Organization for its official use and the publication of the said organization shall be exempt from customs duties prohibitions and restrictions on import and exports.
- (2) Officials of the World Health Organization shall –
 - (a) have the right to import free of duty their furniture and effects at the time of taking up their posts in India or upon their permanent appointment to it, and
 - (b) once in every three years have the right to import free of duty a motor car, it being understood that the duty will become payable in the event of this exemption within three years upon its importation.
- (3) In addition to the immunities and privileges specified in (2) above, the Director General, the Regional Director in India and if the Director General should so desire and Communicate their names to the Government of India certain officials, of a Director's status, shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law.

2) Imports by United Nations or International Organizations for projects in India – In exercise of the powers conferred by sub section (1) of section 25 of the Customs Act, 1962 (52 of 1962), read with sub – section (4) of section 68 of the Finance (No. 2) Act, 1996 (33 of 1996), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all the **goods imported into India by the United Nations or, an International Organization** for execution of the projects financed by them and approved by the Government of India, from the **whole of the duty of customs** leviable thereon under First Schedule to the Customs Tariff Act, 1975 (51 to 1975), the **whole of the additional duty of customs** leviable under section 68 of the Finance (No. 2) Act 1996 (33 of 1996) :

Provided that the importer, at the time of clearance, produces a Duty Exemption Certificate issued by an officer, and not below the rank of Deputy Secretary to the Government of India in the concerned nodal Ministry, dealing with the United Nations or the said International Organization, that the importer is an organization entitled for privileges under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947)) or declared to be eligible for exemption contained under section 7 of Article II of Schedule to the said Act No. 46 of 1947 and the goods are required for execution of the projects financed by such organization and that such project has been approved by Government of India in the respective nodal Ministry and is financed by such organization.

Explanation – For the purpose of this notification, “International Organization” means an Organization declared under section 3 of United Nations (Privileges and Immunities) Act, 1947 (46 of 1947) to be an organization eligible for privileges contained under section 7 of Article II of Schedule to the said Act.

[Notification No. 84/97-Cus., dated 11-11-97]

3) Imports by Ford Foundation.- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all the goods including automobiles , imported into India by the Ford Foundation for their official use from the whole of the duty of customs leviable thereon under First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and from the whole of the additional duty of customs leviable thereon under section 3 of the Customs Tariff Act.

[Notification No. 66/96-Cus., dated 2-9-1996]

4) Imports by Diplomats, Trade Representatives, etc.- In exercise of the powers conferred by Section 23 of the Sea Customs Act, 1878 (8 of 1878), the Central Government hereby exempts each of the following categories of goods imported into India and specified in column (2) of the table below from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the **whole of the additional duty** leviable thereon under Section 3 of the said Customs Tariff Act, subject to the conditions and limitations specified against each such category in column (3) of the said Table, namely : -

TABLE

<u>S.No</u>	<u>Goods</u>	<u>Conditions and limitations</u>
01	All goods, including motor vehicles, imported or purchased from bond, for the personal use by the following, classes of members of the Diplomatic Missions in India and their families or on their behalf- (i) Ambassador, High Commissioner, Envoys, Extraordinary and Ministers, Plenipotentiary Charge-d' Affairs, Counsellors First Secretaries, Second Secretaries, Third Secretaries and Attaches. (ii) Articles of office equipment and all other goods, including motor vehicles, imported or purchased from bond by Ambassadors, High Commissioners, Envoys, Extraordinary and Ministers, Plenipotentiary and Charged' Affairs or any officer of the half of their Missions. (iii) Calendars imported by the	Provided that- (a) a corresponding exemption is allowed to Indian Officers of the same status by the Government of the Diplomatic Mission concerned, and (b) the exemption of goods imported or purchased from bond under this concession is also subject to the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957.

	<p>officers mentioned in item (i) for free distribution to the various agencies / public, if they are the product or manufacture of the country the officer represents.</p>	
02	<p>(i) Personal and household effects, excluding motor vehicles imported by the officials of the Diplomatic Mission in India, other than those holding diplomatic status, and by their families for their personal use on their first arrival to take up their appointments in India.</p> <p>(ii) One motor vehicle each imported by the officers of the Diplomatic Mission in India, other than those holding diplomatic status, for their personal use on their first arrival to take up their appointments in India.</p>	<p>Provided that-</p> <p>(a) the goods are imported within the time-limit fixed under the Baggage Rules made under Section 75 1 of the Sea Customs Act; (now Section 79 of the Customs Act, 1962.)</p> <p>(b) a corresponding exemption is allowed to Indian officers of the same status by the Government of the Diplomatic Mission concerned;</p> <p>(c) the claimants are nationals of the State employing them, are not normally resident in India, are sent by their respective Governments to posts in India and are not engaged in any gainful private occupation in India; and</p> <p>(d) the exemption of goods imported under this concession is also subject to the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957.</p>
03	<p>(i) Personal and household effects and other articles, including motor vehicles, imported by or on behalf of the following classes of career Consular Officers of Foreign States and their families, Consuls-General, Consuls (including Additional Consuls) and Vice - Consuls.</p> <p>(ii) Articles of office equipment including motor vehicles, imported for official use in a Consulate of a Foreign State to which a Career Consular Officer entitled to exemption under item (I) is posted.</p> <p>(iii) Calendars imported by the officers mentioned in item (i) for free distribution to the various agencies / public, if they are the product or manufacture of the country the officer represents.</p>	<p>Provided that-</p> <p>(a) the goods are imported at any time during the period the Consular Officer concerned holds his appointments in India;</p> <p>(b) a corresponding exemption is allowed to Indian Consular Officers of the same status by the Government which the Consular Officer represents;</p> <p>(c) the Consular Officer concerned is normally resident in India;</p> <p>(d) the Consular Officer is not engaged in any gainful private occupation in India; and</p> <p>(e) the exemption of goods imported under this concession is also subject to the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957.</p> <p>Provided that -</p> <p>(a) a corresponding exemption is allowed in respect of similar goods imported by the Indian Consulate in those States;</p> <p>(b) the goods are the property of the Government of that State and imported for use in their Consulate in India; and</p> <p>(c) the exemption of goods imported under this concession is subject to the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957.</p>
3A.	<p>(i) Personal and household effects and other articles including motor vehicles, imported by or on behalf of the following classes of privileged officers of Foreign States in India, stationed outside Delhi, and their families. Deputy High Commissioners, First Secretaries, Second Secretaries, Third Secretaries and Attaches.</p> <p>(ii) Articles of office equipment including motor vehicles, imported for</p>	<p>Provided that –</p> <p>(a) the goods are imported at any time during the period the privileged officer concerned holds his appointment in India;</p> <p>(b) a corresponding exemption is allowed to Indian Officers of the same status by the Government which the privileged person concerned represents;</p> <p>(c) the privileged officer concerned is normally resident in India;</p> <p>(d) the privileged officer is not engaged in any gainful private occupation in India; and</p>

	<p>official use in a Foreign Mission to which a privileged officer entitled to exemption under (i) above is posted.</p> <p>(iii) Calendars imported by the officers mentioned in item (i) for free distribution to the various agencies / public, if they are the product or manufacture of the country the officer represents.</p>	<p>(e) the exemption of goods imported under this concession is also subject to the Foreign Privileged Persons'(Regulation of Customs Privileges) Rules. 1957. Provided that - (a) a corresponding exemption is allowed in respect of similar goods imported by the Indian Mission of similar status in the country represented by the mission; and (b) the goods are the property of the Government of their country and imported for use in their Mission concerned; (c) the exemption of goods imported under this concession is subject to the Foreign Privileged Person's (Regulation of Customs Privileges) Rules, 1957.</p>
04	<p>(i) Personal and household effects, excluding motor vehicles, imported by the official of a Consular of Foreign State other than the Career Consular Officers mentioned in Serial No. 3 for their personal use, on their first arrival to take up their appointments in India.</p> <p>(ii) One motor vehicle each imported by the officials of a Consulate of Foreign State other than those holding diplomatic status (other than the career Consular Officers mentioned in S. No. 3) for their personal use, on their first arrival to take up their appointments in India.</p>	<p>Provided that- (a) the goods are imported within the time-limit fixed under the Baggage Rules made under Section 75 1 of the Sea Customs Act;(Now Section 79 of the Customs Act, 1962.) (b) a corresponding exemption is allowed to Indian Officers of the same status by the Government of the Consulates concerned: (c) the claimants are nationals of the State employing them, are not normally resident in India, are sent by their respective Governments to posts in India and are not engaged in any gainful occupation in India; and (d) the exemption of goods imported under this concession is also subject to the Foreign Privileged Person's (Regulation of Customs Privileges) Rules, 1957.</p>
4A	<p>(i) Personal and household effects, excluding motor vehicles, imported by the official of a Deputy High Commission or an Assistant High Commission of a foreign country in India outside Delhi, other than the privileged officers mentioned in Serial No. 3A(i) above for their first arrival to take up their appointments in India.</p> <p>(ii) One motor vehicle each imported by the officers of the Deputy High Commission in India, outside Delhi, other than those holding diplomatic status, for their personal use on their first arrival to take up appointments in India.</p>	<p>Provided that- (a) the goods are imported within the time-limit fixed under the Passengers' (Non-Tourist) Baggage Rules, 1960; (b) a corresponding exemption is allowed to Indian Officers of the same status by the Government of the country concerned; (c) the Claimants are nationals of the State employing them, are not normally resident in India, are sent by their respective Governments to posts in India and are not engaged in any gainful occupation in India; and (d) the exemption of goods imported under this concession is also subject to the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957.</p>
05	<p>(i) Personal and household effects and all articles including motor vehicles intended for personal use imported by a Trade Commissioner, Trade Representative or a Trade Agent appointed by the Government of a foreign or Commonwealth county and the members of their families.</p> <p>(ii) All articles, including motor vehicles, imported for the official use of the officers mentioned in item (i).</p>	<p>Provided that- (a) a corresponding exemption is allowed to Indian Officers of the country concerned ; and, (b) the exemption of goods imported under this concession is also subject to the Foreign Privileged Persons' (Regulation of Customs Privileges) Rules, 1957.</p>

06	<p>(iii) Samples (including advertising literature, if any) imported by the officers mentioned in item (i), if they are the produce or manufacture of the country the officer concerned represents and are intended solely for display in the office of the officer concerned.</p> <p>(iv) Calendars, publicity posters and booklets imported by the officers mentioned in item (i) for free distribution to the various agencies / public, if they are the product or manufacture of the country the officer represents.</p> <p>Personal and household effects excluding motor vehicles, imported by the officials in the office of a Trade Commissioner, Assistant Trade Commissioner, Trade Representative or a Trade Agent mentioned in Serial No. 5 for their personal use on their first arrival to take up their appointments in India.</p>	<p>Provided that-</p> <p>(a) the goods are imported within the time-limit fixed under the Baggage Rules made under Section 75 of the Sea Customs Act; (See Section 79 of the Customs Act, 1962.)</p> <p>(b) a corresponding exemption is allowed to officers of the same status by the Government which Trade Commissioner, Assistant Trade Commissioner, Trade representatives or the Trade Agent concerned represents;</p> <p>(c) claimants are nationals of the State employing them, are not normally resident in India, are sent by their respective Governments to posts in India and are not engaged in any gainful occupation in India; and</p> <p>(d) the exemption of goods imported under this concession is also subject to the Foreign Privileged Person's (Regulation of Customs Privileges) Rules, 1957.</p>
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[Notification No. 3-Cus., dated 8-1-1957 as amended by Notifications No. 159-Cus., dated 27-8-1966; No. 112-Cus., dated 26-7-1969; No. 135-Cus., dated 20-9-1969; No. 56-Cus., dated 7-6-1975; No. 128/ 86-Cus., dated 17-2-1986 and No. 36/90-Cus. (N.T.), dtd 27-6-1990]

i) THE FOREIGN PRIVILEGED PERSONS (REGULATION OF CUSTOMS PRIVILEGES) RULES, 1957

In exercise of the powers conferred by clause (c) of section 9 of the Sea Customs Act, 1878 (VII of 1878), the Central board of Excise and Customs hereby makes the following rules for the purpose of laying down the procedure for the recovery of customs duty on goods imported free of such duty in the first instance and sold or otherwise disposed of later on in India by the officers referred to in Serial Nos. 1,2,3,3A,4,4A,5 and 6 in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 3-Customs, dated the 8th January, 1957.

1. Short title, commencement and application. (1) These rules may be called the Customs Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

(2) They shall come into force on the 8th January, 1957.

(3) They shall apply to the goods exempt from Customs duty in accordance with the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 3 – Customs, dated the 8th January, 1957.

2. Definitions. (1) In these rules, unless the context otherwise requires,-

- (a) "goods" means all articles imported or purchased locally from bonded stocks free of duty in accordance with the notification referred to in sub-rule (3) of rule 1 and includes-
- (i) motor vehicles so imported or purchased; and
 - (ii) all articles including motor vehicles purchased by any privileged persons from another privileged person, on which customs duty has not been paid;
- (b) "privileged person" means a person entitled to import or purchase locally from bond goods free of duty for his personal use or for the use of any member of his family or for official use in his mission, Consular Post or Office or in Deputy High Commission / Assistant High Commission;
- (c) "non-privileged persons" means a person other a privileged person.

3. Formalities to be observed at the time of clearance of the goods. (1) No goods shall be allowed to be cleared free of duty unless in addition to the formalities required to be observed ordinarily for clearing them, exemption from duty is claimed in writing at the time of clearance of the goods through customs and such claim is accompanied by an exemption certificate in triplicate in the prescribed Forms.

(2) Such certificate shall be assigned by-

- (a) the Head of the Diplomatic Mission concerned or, in the case of a Diplomatic Mission having more than fifteen Diplomatic Officers, a Diplomatic Officer, duty authorised by the Head of the Mission; or
- (b) the Consular Officer or Deputy High Commissioner / Assistant High Commissioner or Trade Commissioner in charge of the Consular Post or Deputy High Commission / Assistant High Commission or Trade Represents – action, or in the case of a Consular Post or Deputy High Commission / Assistant High Commission or Trade Representation having more than ten privileged persons a Consular Officer or a Diplomatic Officer or an Officer of the Deputy High Commission / Assistant High Commission or Trade Representation, authorised for this purpose by the Head of the Consular Post or Deputy High Commission / Assistant High Commission or Trade Representation, as the case may be, if the goods are meant for official use in the Consular Post or Deputy High Commission / Assistant High Commission or Trade Representation: or
- (c) the privileged person concerned if the goods are meant for his person use or for the use any member of his family;

Provided that the certificate is countersigned by the Head of the Mission or the Consular Post or the Deputy High Commission / Assistant High Commission or Trade Representation, as the case may be, and if the privileged person is attached to a Diplomatic Mission or Consular Post or Deputy High Commission or Assistant High Commission or Trade Representation having more than ten privileged persons, by a Diplomatic Officer or Consular Officer or an officer of the Deputy High Commission / Assistant High Commission or of the Trade Representation, as the case may be, who is duly authorised.

(3) Two of the three copies of the exemption certification referred to in sub-rule (1) shall be sent to the Commissioner of Customs of the port of importation of the goods and the other copy shall be sent to the Protocol Division, Ministry of External Affairs, Government of India.

(4) Where exemption from duty is claimed in respect of a motor vehicle, an exemption certificate in triplicate in the prescribed Form shall be given. The provisions of sub-rules (2) and (3) shall apply in relation to the signature, counter-signature and transmission of copes of India.

4. Permission for the sale or disposal of the goods.- (1) No privileged person shall, without obtaining the prior concurrence of the Central Board of Excise and Customs, sell, or otherwise dispose of,

to any privileged person or to any non-privileged person, any goods in respect of which exemption from customs duty was given at the time of their importation or clearance from bond, within three years from the date on which they are imported.

(1A) Where the privileged person-

- (a) relinquishes his post, or
- (b) is transferred out of India,

within the period of three years referred to in sub-rule (1) he shall with the prior concurrence of the Central Board of Excise and Custom effect the sale, or the disposal otherwise, of such goods before the expiry of three months form the date of the relinquishment of his office or, as the case may be, of his departure out of India or within such longer period as the Central Board of Excise and Customs may allow:

(1B) Nothing contained in sub-rule (1A) shall be deemed to affect the right of the privileged person to take away the goods with him on relinquishing his office or, as the case may be, on being transferred out of India.

(2) Every application for such concurrence shall be made by the privileged person in the prescribed Form to the Central Board of Excise and Customs through the Protocol Division, Ministry of External Affairs, Government of India.

(3) A copy of the communication of the Central Board of Excise and Customs giving its concurrence to the sale or disposal of the goods shall be sent to the Commissioner of Customs nearest to the headquarters of the privileged person concerned in taking if any, were sent under rule 3.

(4) Nothing in this rule shall apply to the sale or disposal otherwise of a motor vehicle in respect of which exemption from customs duty was given at the time of its importation or clearance from Bonds.

4A. Permission for the sale or disposal of motor vehicles. (1) No privileged persons shall sell or otherwise dispose of any motor vehicle in respect of which exemption from customs duty was given at the time of its importation or clearance from bond except in accordance with sub-rule (2).

(2) Any privileged person –

- (a) may sell or otherwise dispose of any motor vehicle referred to in sub-rule (1) to another privileged person, with the permission of the Central Board of Excise and Customs through the Ministry of External Affairs;
- (b) may re-export the motor vehicle, with the permission of the Ministry of External Affairs;
- (c) without prejudice to his rights under clauses (a) and (b) may offer the car for sale or otherwise dispose of to the State Trading Corporation on relinquishing his post or on his transfer out of India, with the permission of the Ministry of External Affairs;

Provided that in case of accidented / totally damaged motor vehicle, where the State Trade Corporation has declined to accept the offer for sale or the offer of the State Trading Corporation on is not acceptable to the privileged person, such motor vehicle, with the permission of the Central Board of Excise and Customs, may be sold or otherwise disposed of to the Insurance Company, with whom the motor vehicle was insured without prejudice to his rights to sell or otherwise dispose of the motor vehicle in terms of the provisions of clauses (a) and (b).

Provided further that in case such insurance company also declines to accept the offer for sale of such motor vehicle, the motor vehicle, with the permission of Central Board of Excise and Customs, may be sold to the Metal Scrap Trading Corporation or any suitable disposal agency for scrapping.

- (d) may, notwithstanding any thing contained in clauses (a), (b) and (c), sell or otherwise dispose of any motor vehicle to any non privileged person, with the permission of Central Board of Excise and Customs through the Ministry of External affairs, on payment of appropriate

custom duty, on expiry of three years from the date on which such motor vehicle was imported.

- (3) (i) every application for sale or disposal otherwise of a motor vehicle to a privileged person or re-export, under clause (a) or clause (b) or sub-rule (2), shall be made in the Form in Appendix V (Form No. 20, Appendix 'C');
- (ii) Every application for sale or disposal otherwise of a motor vehicle to the State Trading corporation, under clause (c) of sub rule (2), shall be made to the Ministry of External Affairs shall remit the application to the Central Board of Excise and Customs, if the State Trading Corporation and the insurance company have declined the offers so made or the offers of the State Trading corporation and the insurance company are not acceptable to the Privileged Person.
- (4) Any special purpose vehicle such as communication vehicle or armoured vehicle may only be;
- (a) sold to another privileged person; or
- (b) re-exported, or
- (c) surrendered to the nearest Custom House, for scrapping or authorising a suitable Indian agency for scarping and the sale proceeds, of scarp so obtained, if any, shall be reimbursed to the privileged person after deducting the duty leviable for such vehicle;

4B. Permission to retain the motor vehicle after retirement, etc. (1) Where a privileged person on retiring from service or relinquishing his post in India decides to stay in India and retains the motor vehicle, in respect of which exemption from customs duty was given at the time of its importation or purchase from bond, for his bonafide use, the Central Board of Excise and Customs may, on an application made to it in this behalf, allow the person concerned to do so without payment of customs duty subject to the condition that the said motor vehicle has been used in India for a period of three years or more on the date on which the said person ceases to be a privileged person or relinquishes his post in India (hereinafter referred to as the relevant date).

(2) Where the said motor vehicle has not been used in India for a period of three years or more on the relevant date or if the said person chooses to sell or otherwise dispose of the motor vehicle at a later date, customs duty shall become payable.

(3) Where the said person proposes to sell or otherwise dispose of the motor vehicle, he shall offer the same to the State Trading Corporation for the said purpose with the permission of the Central Board of Excise and Customs.

- (5) The provisions of rule 5 shall apply mutatis mutandis to the Customs duty payable under this rule.

5. Recovery of goods sold or disposed of to non-privileged persons. (1) Where goods, other than motor vehicle, are cleared from of customs duty by a privileged person and they are sold or otherwise disposed of by him (other than re-exported) to a non-privileged person within three years from the date of their importation, customs duty shall be recovered from such privileged person by the Commissioner of Customs nearest to the headquarters of the privileged person concerned.

The duty to be recovered shall be assessed in consultation with the Commissioner of Customs nearest to the headquarter of the privileged person in India.

(1A) Any motor vehicle may also be sold or otherwise disposed of to a non-privileged person on expiry of three years from the date of its importation.

(1B) The Custom duty on any vehicle sold or otherwise disposed of under sub-rule (1A) shall be paid to the Commissioner of Customs nearest to the headquarters in India of the privileged person concerned. The duty to be recovered for such motor vehicle, except in case of accidented or totally damaged vehicle, shall be assessed on the depreciated value arrived after providing for depreciation at the scales specified by the Central Board of Excise and Customs in case of import of second hand motor vehicle. The rate of duty on such vehicle and the exchange rate for conversion of foreign Currency into Indian currency shall be taken as applicable on the date of approval of such sale or otherwise disposal by the said Board under clause (d) of sub-rule (2) of rule 4A.

(1C) In case of any accidented or totally damaged vehicle referred to in sub-rule (1B), the value shall be the transaction value and rate of custom duty shall be taken as that applicable to such motor vehicles, if it had not been so accidented or damaged at the time of such sale.

(2) The privileged person concerned shall furnish such relevant information and documents relating to the goods as the officer who is to recover duty under sub-rule (1) may require and shall also arrange to produce the goods desired to be sold or sold before that officer or any customs officer for inspection so as to enable that officer to make a correct appraisalment of the value of the goods for the purpose of assessing them to duty.

(3) As soon as the amount of duty leviable has been paid, all the other authorities who received copies of the certificate together with the undertaking if any, in respect of the goods, shall be informed of this fact by the Commissioner who makes the recovery.

(4) (i) In respect of a motor vehicle sold or otherwise disposed of to the State Trading Corporation under clause (c) of sub-rule (2) of rule 4A, that Corporation shall pay the customs duty leviable thereon when the Corporation purchases or otherwise acquires the motor vehicle from any privileged person within three years from the date of its importation and the provisions of sub-rules (1), (2) and (3) shall apply mutatis mutandis.

(ii) In case of accidented / totally damaged motor vehicle sold or otherwise disposed of to the Insurance Company within 3 years from the date of its importation and the provisions of sub-rules (1), (2) and shall apply mutatis mutandis.

6. Sale or disposal of goods to privileged person. (1) Where goods which were cleared free of customs duty by a privileged person are sold or otherwise disposed of by him in favour of any other privileged person within

a period of three years from the date of their importation, it shall be the duty of the privileged person selling or disposed of such goods to obtained from the privileged person buying or taking them, an exemption certificate in duplicate, as required by sub-rules (1) and (2) of rule 3, and in the case of a motor vehicle, also an undertaking in duplicate as required by sub-rule (3) of that rule and in every such case, a report shall be sent to the Central Board of Excise and Customs by the privileged persons selling or disposing of the goods as well as by the privileged persons buying or taking them.

(2) The provisions of this rule shall apply to the goods sold or disposed of under sub-rule (1) as often as they are sold or otherwise disposed of by a privileged person to another privileged person:

Provided that this rule shall cease to apply to such goods other than motor vehicles after the expiry of three years from the date of their importation.

7. Powers of Commissioners. A Commissioner of Customs may such procedure as he thinks necessary for the giving effect to these rules.

[Notification No. 4/57-Cus, dt.8.1.1957, as amended by 15/57-Cus, dt.19.1.1957, 177/62-Cus, dt.29.11.1962, 124/63-Cus, dt.11.5.1963, 221/63/63-Cus, dt.30.9.1963, 91/65-Cus, dt.17.7.1965, 151/65-Cus, dt.2.10.1965, 160/66-Cus, dt.27.6.1966, 111/69-Cus, dt.26.7.1969, 163/78-Cus, dt.18.8.1978, 32/79-Cus, dt.9.2.1979, 34/85-Cus, dt.20.2.1985:35/99-Cus.(N.T) dated 8-6-99 43/99-Cus., (N.T.), dated 2-7-1999]

ii) PRIVILEGES AND EXEMPTIONS ALLOWED TO DIPLOMATS

Excerpts from the Agreements reached in Vienna Convention 1965

Article 27- Diplomatic Bag

- 3 The diplomatic bag shall not be opened or detained.
- 4 The packages constituting the diplomat bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for Official use.
- 5 The diplomatic courier, who shall be provided with an Official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
- 6 The sending State of the mission may designate diplomatic couriers ad hoc. In such cases, the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.
- 7 A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorised port of entry. He shall be provided with an official document indicating the number of packages considered to be a diplomat courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

Excerpts from the Resolutions Passed in U. N. Conference on Consular Relations

Article 35 – Freedom of Communication:

The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

- 2 The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.
- 3 The Consular Bag shall be neither opened nor detained. Nevertheless, if the Competent Authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorities of the sending State, the bag shall be returned to its place of origin.
- 4 The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.
- 5 The Consular courier shall be provided with an Official Document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
- 6 The sending State, its diplomatic missions and its consular posts may designated consular couriers ad hoc. In such cases, the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7 A consular Bag may be entrusted to the captain of a ship or of a commercial aircraft, scheduled to land at an authorised port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the Captain of the ship or of the aircraft.

Article – 36

1 The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services on:

- (a) articles for the Official use of the Mission;
- (b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2 The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 2.1 of this Articles, or Articles the import or export of which is prohibited by the law or controlled by the guarantee regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorised representative.

Article 37 –

1 The members of the family of a Diplomatic Agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2 Members of the Administrative and technical staff of the mission, together with members of their families forming part of their respective household, shall, if they are not nationals of or permanently resident in the receiving State enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3 Members of the Service staff of the Mission who are not nationals of or permanently resident in the receiving State, shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4 Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 41 – **Personal inviolability of Consular Officers**

1 Consular Officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2 Except in the case specified in paragraph 1 of this Article, Consular Officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

3 If criminal proceedings are instituted against a Consular Officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of Consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a Consular Officer, the proceedings against him shall be instituted with the minimum of delay.

Article 42 - Notification of Arrest, Detention or Prosecution:

In the event of the arrest or detention, pending trial, of a member of the Consular Staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the Head of the Consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

Article 44 – Liability to give Evidence:

1 Members of a Consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A Consular employee or a member of the service staff shall not, except in the case mentioned in paragraph 3 of this Article, decline to give evidence. If a Consular Officer should decline to do so, no coercive measure or penalty may be applied to him.

2 The authority requiring the evidence of a Consular Officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the Consular post, or accept a statement from him in writing.

3 Members of a Consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

Article 50 – Exemption from Customs Duties and Inspection:

1 The Receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the Official use of the Consular post;
- (b) articles for the personal use of a Consular Officer or Members of his family, forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2 Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3 Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in sub - paragraph (b) of para. 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular Officer or members of his family concerned.

4 Members of the family of a member of the Consular post forming a part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with para. 1 of

this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

- 5 When the functions of a member of the Consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in para. 2 of this Article their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of a Consular post, provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.
- 6 However, with respect to acts performed by a Consular Officer or a consular employee in the exercise of his functional immunity from jurisdiction shall continue to subsist without limitation of time.
- 7 In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

Article 62 – **Exemption from Customs Duties**

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than changes for storage, cartage and similar services on the following articles, provided that they are for the official use of a Consular post headed by an honorary Consular Officer; coats of arms, flags, sign boards, seals, and stamps books official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of sending State to the Consular post.

Article 63 – **Criminal Proceedings:**

If criminal proceedings are instituted against an honorary Consular Officer, he must appear before the competent authorities. Nevertheless, the proceedings, shall be conducted with the respect due to him by reason of his official position and except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary Consular Officer, the proceedings against him shall be instituted with the minimum of delay.

iii) GRANT OF CUSTOMS FACILITIES TO VARIOUS CATEGORIES OF FOREIGN MISSIONS POSTED IN INDIA –

For some time past, the Government of India have been considering the question of issuing a consolidated set of instructions regarding Customs facilities to be extended to the various classes of foreign distinguished personages arriving in, passing through, or leaving India, and they have now

decided that in supersession of all the existing orders on the subject, the various classes of personages mentioned below should be granted Customs facilities as indicated against them.

Sl. No.	Category Personages	Extent of Customs facilities
1	2	3
1	Heads of Foreign and Commonwealth States.	Exemption from Customs duty, examination and signing of baggage declarations and exemption from the formality of making declaration in respect of currency.
2	Members of the entourage of the Heads of Foreign and Commonwealth States when accompanying them.	Ditto
3	Prime Ministers and Ministers of Foreign and Commonwealth Countries.	Ditto
4	Members of Royal families of Afghanistan and Nepal, holding diplomatic passports and diplomatic visas for India.	Ditto
5	The Sultan of Muscat and the Sheikhs of Bahrain, Kuwait and Qatar and the members of their families (when travelling with them) to whom the Ministry of External Affairs extend diplomatic courtesies.	Ditto
6	Heads of Foreign and Commonwealth Diplomatic Mission accredited to India.	Ditto
7	Diplomatic Officers of the Foreign and Commonwealth Diplomatic Missions accredited to India.	Exemption from Customs duty examination and signing of baggage declarations but no exemption from making declarations in respect of Currency if any held.
8	Foreign Consular Officers de carriere posted in India.	Exemption from Customs duty and examination from making declarations in respect of baggage or currency, (the latter to be taken only if any currency is held).
9	Trade Commissioners of Foreign and Commonwealth countries posted in India.	Ditto
10	Diplomatic and Consular Officers and / other officials of Afghanistan and Nepal holding diplomatic passports and diplomatic visas for India.	Exemption from Customs duty and examination in respect of personal effects and other articles in transit to and from Afghanistan, Nepal but no exemption from making declarations in respect of baggage or currency, (the latter to be taken only if any currency is held).

11	Diplomatic Officers (other than those covered by item 10) of Foreign and commonwealth countries accredited to countries other than India.	Unless ad hoc instructions are issued in any case, normally reasonable assistance in the clearance of their baggage and personal effects through Customs speedily, should be extended.
12	Persons (other than those covered by item 10) holding Commonwealth and Foreign diplomatic passport and diplomatic visas for India.	Exemption from Customs examination and facilities for speedy clearance of their baggage through Customs but no exemption (i) from duty, unless the articles imported as baggage are otherwise exempt, or (ii) from making declaration in respect of baggage or currency (the latter to be taken only if any currency is held).
13	Personal attendants and servants accompanying Heads of Missions mentioned against S. No. 6 above.	Exemption from Customs examination and duty. Only oral declarations in respect of baggage should be passed without any other formality unless there is any ground for suspicion.

2. The above facilities can be granted as a matter of course by the Customs authorities at the various sea and airports to any personage falling within the categories specified.

3. In the case of persons falling under categories 7, 8, 9, 10, 11 and 12 if they are travelling by air, oral declarations in respect of baggage should be taken, as is done in the case of the ordinary passengers travelling by air instead of written declarations. Written declarations should be taken from them only if they have any dutiable articles or if their unaccompanied baggage is to follow separately by sea or otherwise.

4. Where any facilities are desired for any person not coming under any of the above categories, ad hoc instructions will be issued to the Customs authorities in each case.

5. The facilities indicated in paragraph 1 above should be extended to the personages concerned at the time of their departure also.

5. These instructions do not affect the existing position in regard to the prohibitions and restrictions under the various other regulations, e.g. Indian Arms Act, etc.

[M. F. (D. R.) F No. 6 / 18 / 55-Cus. IV, dated 23-8-56. Inst. No. 16-Privileges 1956]

5) Exemption to foodstuffs and provisions, imported by foreigners

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 135/66-Customs, dated 20th June, 1966, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts foodstuffs and provisions (excluding fruit products, alcohol and tobacco), when imported into India by a person residing in India, not being a citizen of India, from the **whole of the duty of customs** leviable thereon under section 3 of the said Customs Tariff Act;

Provided that –

(i) the aggregate c.i.f. value of such foodstuffs and provisions so imported by any such person in a year shall not exceed Rs.50,000; and

(ii) the importer secures the foreign currency required for importing such foodstuffs and provisions from the funds available to him in the foreign country.

[Notfn. No, 207/89-Cus., dated 17-7-1989 as amended by Notfn. No. 45/92-Cus., dated 1-3-1992]

6) Imports by the dignitaries of the Union of India & the Government of India

i) Grant of exemption from Customs formalities regarding baggage – the President of India, the Vice-President of India, the Governors of States, the Prime Minister and other Ministers of Union Government and of States.

The Government of India have decided that the President of India, the Vice President of India, the Governors of States and Cabinet ministers etc. should be granted Customs facilities both at the time of exit from and entry into India and the facilities should be regulated as follows:-

(1) **The President of India.**- The President should be exempted from Customs examination, Customs duty and signing of Baggage Declaration.

(2) **The Vice-President of India**- In addition to exemption from payment of Customs duty granted in the Ministry of Finance (R. D's) Notification No. 106 Customs dated, 29-3-58 he should be exempted from Customs examination, Customs duty and signing of Baggage Form.

(3) **The Governors of States**- The Governors should be exempted from Customs examination, Customs duty and signing of Baggage Declaration.

(4) **The Prime Minister, Cabinet Ministers, Minister of State and Deputy Ministers of the Indian Union Governments--** There will be no exemption from signing of Baggage Declaration, Customs duty or Customs Examination. They will, however, be given every assistance in the matter of clearance of their baggage though they will not strictly be exempt from examination of their baggage, it should not be necessary in practice to examine the same.

[Govt. of India, Ministry of Finance (R. D.) letter No. 5(244)-Customs. IV / 51, dated 28-5-52, dated 4-8-52. C. No. 3737 / 52 and G.O.I., M.F., (D. R.) F. No. 4/10/59-Cus.IV, dated 7-7-60 F. 12-17/60C.]

ii) Exemption to imports by the Vice-President. – The Government of India have decided to exempt from payment of Customs duty the articles specified below, if imported or purchased out of bond by the Vice – President of India on election or during his tenure of office-

- (a) articles for the personal use, wear or consumption of the Vice-President or any member of his family;
- (b) food, drink and tobacco for consumption by members of the Vice-President's household or by his guests, whether official or not;
- (c) articles for the furnishing of any of the Vice-President's official residences;
- (d) motor cars provided for the Vice-President's use.

[Notification No. 106-Cus., dated 29-3-1958]

(2) The following procedure is laid down by the Government of India for claiming the exemption referred to above: -

(i) The exemption from payment of duty will be supported by a certificate, signed by the Private Secretary to the Vice – President, giving full description of the goods and declaring that they are entitled to exemption under the Notification of Government of India. The certificate should be produced by the importer or the Clearing Agent at the time of entry or clearance from bond as the case may be. The importer or clearing agent should also make declaration in the Bill of Entry for home consumption or Ex. Bond Bill of Entry, as the case may be, that no portion of the goods covered by certificate referred to

above has already been supplied from duty paid stocks. A separate certificate should be submitted in respect of each consignment. In the case of goods purchased from bond the certificate should be in the attached form and may cover goods warehoused under more than one Bill of Entry.

In the case of articles imported by Post, if the addressees are aware of or are expecting the arrival of these articles, the certificate should be sent direct to the Collector of Customs, concerned, in time to reach him before the date on which the parcel is expected to arrive at the port. If, however, the certificate in respect of these articles (imported in Post parcels) addressed to the Vice-President or members of his family are not received in advance. The parcels should be passed free of duty provisionally pending the production of necessary certificate within three months of the date of delivery of the parcel. In case of articles imported or purchased out of bond also, the same procedure should be followed.

(ii) As in the case of purchases from bond, the Government of India have decided that the goods purchased by the Vice-President whilst the goods are aboard-ship or after they have been landed but before duty has been paid should also be exempted from customs duty.

(iii) Separate instructions will be issued in respect of motor spirit for use in motor cars etc. whether State or private of the Vice-President or of any members of his family.

(iv) Half yearly returns showing the amount of duty foregone under each of the clauses (a) to (d) mentioned in para one above should be furnished to the Deputy Commissioner in charge, S & I Branch, Central Revenues Building, New Delhi. For this purpose Exemption Section in Appraising (Main) and Air Unit and Postal Units should maintain registers in the appended form. The Half Yearly Return will be compiled by Suptd. Correspondence and will be forwarded to the Dy. Commissioner in charge, S & I Branch, Central Revenue Building, New Delhi.

[Government of India, Ministry of Finance (Deptt. of Rev.) Notification Nos. 106/F. No. 4/5/58-Cus. IV, dated 29-3-58 and Government of IV, dated 7-5-58. Customs House file No. F. 14-48/58-C.]

FORM OF CERTIFICATE FOR GOODS PURCHASED FROM BOND

Certificate that the goods, particulars of which are mentioned below, ordered by me for supply by Messrs. -----from their bonded stock are for the use of Vice-President, of India and are exempted from the payment of Customs duty under Notification No. 106-Customs, dated the 29th March, 1958.

Private Secretary
to the Vice-President of India.

Dated-----

Item No.	Particulars to be filed by the Secretary		Bond No. (to be filed in) By the Bonder	Remarks
	Description	Quantity		

Note. – Please draw a line after the last item shown in the list. This certificate should bear the official stamp or seal.

(iii) Imports by the Governors of States

In pursuance of powers conferred by Section 73 of States Reorganization Act, 1956 (37 of 1956), the President hereby makes the following Order:-

1. (1) This order may be called the States Reorganization (Governors Allowances and Privileges) Order, 1957.
(2) It shall be deemed to have come into force on the 1st day of November, 1956.
2. The General Clauses Act, 1897, applies for the interpretation of this Order as it applies for the interpretation of a Central Act.
3. In this order -
 - (a) "acting Governor" means a person appointed by the President to discharge the functions of a Governor ;
 - (b) "Governor" means the Governor of the State of Andhra Pradesh, Bombay, Kerala, Madras, Madhya Pradesh, Mysore, Punjab or Rajasthan.

"No customs duties, shall be levied on the following articles if imported or purchased out of bond by Governors on appointment or during their tenure of office: -

 - (a) articles for the personal use, wear or consumption of the Governor or any member of his family ;
 - (b) food, drink and tobacco for consumption by members of the Governor's household or by his guests, whether official or not ;
 - (c) articles for the furnishing of any of the Governor's official residences;
 - (d) motor-cars provided for the Governor's use. "

iv) Import of articles of gifts as baggage by Union or State Ministers, Public Servants and foreign dignitaries

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the late Department of Revenue and Banking (Revenue Wing) No. 125-Customs, dated the 1st July, 1977, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts articles of gift received from any foreign Government by a person belonging to any class of persons specified in the Schedule annexed hereto and imported by the said person into India as part of his baggage, and articles of gift imported into India by a foreign dignitary, visiting India for any official purposes, as part of his baggage and to be gifted to persons belonging to any class of persons specified in the aforesaid Schedule, from-

- (a) the **whole of the duty of customs** leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975); and
- (b) the **whole of the additional duty** leviable thereon under section 3 of the said Customs Tariff Act,

subject to the conditions that –

- (i) a declaration is made by the concerned person or foreign dignitary, as the case may be, in accordance with the provisions of section 77 of the Customs Act, 1962 (52 of 1962); and
- (ii) (a) in the case of articles of gift received from any foreign Government by a person belonging to any class of persons specified in the said Schedule and imported by the said person into India as part of his baggage, the said person, at the time of clearance of such articles of gift makes a declaration to the Assistant Commissioner of Customs that he is a person belonging to any class of persons specified in the said Schedule; and
- (b) in the case of articles of gift imported into India by a foreign dignitary, visiting India for any official purpose, as part of his baggage and such articles of gift are to be gifted to persons belonging to any class of persons specified in the said Schedule, such foreign dignitary, at the

time of clearance of such articles of gift, makes a declaration to the Assistant Commissioner of Customs that such articles of gift are to be gifted to persons belonging to any class of persons specified in the said Schedule.

THE SCHEDULE

- (1) Ministers of the Union or a State or of a Union Territory.
- (2) Persons holding any appointment in any public service or post in connection with the affairs of the Union or of any State, but not being persons appointed in any corporation established by or under any law or any corporation owned or controlled by the Government.

[Notfn. No. 326-Cus., dated 23-12-1983 as amended by Notfn. No. 101/95-Cus., dated 26-5-1995]

6) Goods imported for display or use at fair, exhibition, demonstration, seminar, congress, and conferences or similar events

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 116/79-Customs, dated the 1st June, 1979, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods described in Schedule I annexed hereto, when imported into India for display or use at an event specified in Schedule II annexed hereto, from the **whole of the additional duty of Customs** leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the **whole of the additional duty of customs** leviable thereon under section 3 of the said Customs Tariff Act, subject to the conditions that –

(1) (a) in the case of any event of exhibition, fair or similar show or display, a certificate from an officer of a rank not below that of an Under Secretary to the Government of India in the Ministry of Commerce or an officer of the India Trade Promotion Organization duly authorised by its Chairman in this behalf, is produced to the Assistant Commissioner of Customs at the time of clearance of the goods, to the effect that such exhibition, fair or, as the case may be, similar show or display, -

(i) has been approved or sponsored by the Government of India in the Ministry of Commerce or the India Trade Promotion Organization;

(ii) is being held in the public interest, and

(iii) is open to the general public or to a particular section of the general public or delegates to the particular event for which it has relevance;

(b) in the case of any event, other than the event of exhibition, fair or similar show or display, a certificate from an officer of a rank not below that of an Under Secretary to the Government of India in the Ministry administratively concerned with that event is produced to the Assistant Commissioner of Customs at the time of clearance of the goods, to the effect that such event –

(i) has been approved or sponsored by the Government of India,

(ii) is being held in the public interest, and

(iii) is open to the general public or to a particular section of the general public or delegates to the event for which it has relevance;

(2) the importer undertakes through the execution of a bond or an instrument to the satisfaction of the Assistant Commissioner of Customs to re-export the goods within a period of six months from the date of official closure of the concerned event or within such extended period as the Assistant Commissioner of Customs may allow and, in the event of failure to re-export as aforesaid, to pay the duty which would have been levied thereon but for the exemption contained herein :

Provided that-

(i) the requirement of re- export shall not apply to the following goods, namely :-

- (a) small samples which are representative of foreign goods displayed at an event, including such samples of foods and beverages, either imported in the form of such samples or produced from imported bulk materials at that event, subject to the conditions that –
- (A) they are supplied free of charge to the visiting public at the event, for individual use or consumption by the persons to whom they are distributed,
- (B) they are identifiable as advertising samples and are individually of little value,
- (C) they are unsuitable for commercial purpose and are where appropriate, packed in quantities appreciably smaller than the smallest retail package,
- (D) samples of foods and beverages which are not distributed in packs as provided in condition (C) above are consumed at the event, and,
- (E) the aggregate value and quantity of the samples are, in the opinion of the Assistant Commissioner of Customs, reasonable having regard to the extent of the exhibitor's participation therein;
- (b) goods imported solely for demonstration or for the purpose of demonstrating the operation of a foreign machine or apparatus displayed at an event and consumed or destroyed in the course of such demonstration, subject to the condition that the aggregate value and quantity of such goods are, in the opinion of the Assistant Commissioner of Customs, reasonable having regard to the nature of the event, the number of visitors to it and the extent of the exhibitor's participation therein;
- (c) products of low value used up in constructing, furnishing or decorating the temporary stands of foreign exhibitors at an event, such as paint, varnish and wallpaper;
- (d) printed matter, catalogues, trade notices, price lists, advertising posters, calendars, whether or not illustrated and unframed photographs which are demonstrably publicity material for the foreign goods displayed at an event, subject to the condition that-
- (A) they are supplied free of charge from abroad and are used solely for distribution free of charge to the visiting public at the event, and
- (B) the aggregate value and quantity of such goods are, in the opinion of the Assistant Commissioner or Customs reasonable having regard to the nature of the event, the number of visitors to it and the extent of the exhibitor's participation therein;
- (ii) the provisions of proviso (1) to condition (2) above shall not be applicable to alcoholic beverages, tobacco goods and fuels;
- (iii) in the case of goods referred to in proviso (i) to condition (2) above which are not used for the purpose mentioned therein shall be re-exported by the importer within the period specified in this condition and shall not be sold by him under any circumstances;
- (3) the goods shall not be loaned or used in any way for hire or reward, or be removed from the place of the event, without the permission of the Assistant Commissioner of Customs;
- (4) the goods are capable of identification on re-exportation and any procedure for the proper listing and identification of the goods, that may be specified by the Commissioner of Customs, is adhered to;
- (5) the requirement of re-exportation shall not be required in the case of badly damaged goods, goods of little value and perishable goods, provided that the goods-
- (i) (a) are subjected to the duties of customs to which they are liable; or
- (b) are abandoned free of all expense to the Assistant Commissioner of Customs, concerned;
- or
- (c) are destroyed, after intimation to the Assistant Commissioner of Customs concerned and under customs supervision.

(ii) goods imported under this notification may be disposed of otherwise than by re-exportation, and in particular may be entered for home consumption, under and in accordance with any law applicable to such goods and on payment of the duties of customs which are payable in respect of such goods.

2. Nothing contained in this notification shall apply in respect of the following goods imported as samples in accordance with proviso (I) to condition (2) of paragraph 1 above, namely: -

1. Gems and jewellery, all types.
2. Drugs and medicines.
3. Consumer electronic goods, all types.
4. Textiles and readymade garments.
5. Clocks and watches.

SCHEDULE I

GOODS

- (a) Goods intended for display or demonstration at an event.
- (b) Goods intended for use in connection with the display of foreign products at an event, including –
- (i) goods necessary for the purpose of demonstrating foreign machinery or apparatus to be displayed;
- (ii) construction and decoration material, including electrical fittings, for the temporary stands of foreign exhibitors;
- (iii) advertising and demonstration material which is demonstrably publicity material for the goods displayed, for example, sound recording, films and lantern slides, as well as apparatus for use therewith.
- (c) Equipment including interpretation apparatus, sound recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses.
- (d) Goods specified in sub-clauses (a) to (d) of proviso (I) to condition (2) of paragraph 1 above.
- (d) Files, records, forms and other documents which are imported for use as such at or in connection with international meetings, conferences or congresses.

SCHEDULE II

EVENTS

1. Trade, industrial, agricultural or crafts exhibition, fair, or similar show or display.
2. Exhibition or meeting which is primarily organised for a charitable purpose.
3. Exhibition or meeting which is primarily organised to promote any branch of learning, art, craft, sport or scientific, educational or cultural activity, to promote friendship between peoples, or to promote religious knowledge or worship.
4. Meeting of representatives of any international group of organizations.
5. Representative meeting of an official of commemorative character.

Explanation.- The events specified in this Schedule do not include exhibitions organised for private purpose in ships or business premises with a view to the sale of foreign goods.

[Notification No. 3/89-Cus., dated 9-1-1989 as amended by Notifications No. 66/95-Cus., dated 16-3-1995 and No. 101/95-Cus., dated 26-5-1995.]

8) Specified goods imported for display or use at any specified event such as meetings, exhibitions, fairs or similar show or display.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods described in Schedule I annexed hereto, when imported into India for display or use at any event specified in Schedule II, from the **whole of the duty of customs** leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the **whole of the additional duty** leviable thereon under section 3 of the said Customs Act, subject to the conditions that:-

- (1) the event specified in Schedule II is being public interest and is sponsored or approved by the Government of India or the India Trade Promotion Organization;
- (2) the said goods are imported under an ATA Carnet issued in accordance with the Customs Convention on ATA Carnet for temporary admission of goods (hereafter referred to as the ATA Carnet) and the Carnet is guaranteed by the Federation of Indian Chamber of Commerce & Industry, which has been appointed as the guaranteeing association for ATA Carnet in India (hereafter referred to as the Federation);
- (3) the said goods in all respects conform to the description, quantity, quality, value and other specifications given in the ATA Carnet duly certified by the Customs authorities at the country of exportation;
- (4) the said goods shall be exported within a period of six months from the date of importation:

Provided that where the goods are exported within the said period of six months and again reimported, the period of six months shall be computed from the date of first importation;

Provided further that when the Central Government is satisfied that it is necessary in the public interest so to do, it may extend the said period of six months by a further period not exceeding six months;

- (5) in the event of failure to export the goods within the period specified in condition (4), the customs duty leviable on the goods as on the date of clearance shall be paid by the Federation :

Provided that the Federation shall not be liable to pay the customs duty in cases where the said goods are sold in exhibitions or fairs or otherwise disposed of in India on payment of customs duty with the prior approval of the Government of India in the Department of Revenue.

1. Nothing contained in this notification shall apply to goods imported through the medium of post.
2. This notification shall come into force on the 1st day of May, 1990.

SCHEDULE I

- (a) Goods intended for display or demonstration.
- (b) Goods intended for use in connection with the display of foreign products, including –
 - (i) goods necessary for the purpose of demonstrating machinery or apparatus to be displayed :
 - (ii) construction and decoration material including electrical fittings, for the temporary stands of foreign exhibitors;
 - (iii) advertising and demonstration material which is demonstrably publicity material for the goods displayed, for example, sound recording, films and lanterns, slides and apparatus for use therewith
 - (iv) equipment including interpretation, apparatus, sound recording apparatus and films of an educational, scientific or cultural character intended for use at international meetings, conferences or congresses.

**SCHEDULE II
EVENTS**

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

2. Exhibition or meeting which is primarily organised for a charitable purpose.
3. Exhibition or meeting which is primarily organised to promote any branch of learning, art, craft, sport or scientific, educational or cultural activity to promote friendship between peoples, or to promote religious knowledge or worship.
4. Meeting of representatives of any international group of organizations.
5. Representative meeting of an official of commemorative character.

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

[Notification No. 157/90-Cus., dated 28-3-1990 as amended by Notification No. 66/95-Cus., dated 16-3-1995.]

[Import/Export of jewellery under Notification No.157/90-Cus.- Imports of jewellery will be allowed free duty, under Notification No. 157/90-Cus. Through the International Airport / Air Cargo Complexes at Sahar, Bombay and New Dehli, subject to the observance of the procedures. – **Based on Board's F. No. 528/220/91-Cus. (TU) ICD, dated 23-6-1994]**

9) Import of golf equipment, adventure sports equipment, firearms and ammunition

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods (hereafter referred to as the said goods) of the description specified in column (2) of the Table hereto annexed and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from so much of that portion of the duty of customs leviable thereon, which is specified in the said First Schedule, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the said Table subject to the conditions specified in column (4) against each serial number in column (1) of the said Table.

TABLE

S No.	Description of Goods	Rate	Conditions
1.	The following goods:- (a) Golf equipment falling under heading No.95.06 of the said First Schedule (b) Adventure Sports Equipments	30% ad valorem	(a) The said goods are imported into India by the Ministry of Tourism, a State Tourism Corporation, or hotel, tour operator or travel agent approved by the Director General of Tourism in the Ministry of Tourism, Government of India; (b) The CIF value of the said goods imported under this notification by an importer does not exceed rupees one crore; and (c) The importer, at the time of import produces before the Assistant Commissioner of Customs – (i) in case of imports of Adventure Sports Equipments, a certificate from the Director General of Tourism in the Ministry of Tourism of the Government of India (hereafter referred to as the said Director General), to the effect that the said equipments are required for adventure sports; and (ii) a recommendation from the said Director General for the grant of exemption

2.	Firearms and ammunition	and 50% ad valorem	<p>under this notification for the said goods.</p> <p>(i) The goods have been imported as personal baggage, or as gifts exempted from the Import Trade Control restrictions, or covered by Customs Clearance Permit or Import Licence issued by the Director General of Foreign Trade; and</p> <p>(ii) the goods are for the use of a renowned shot.</p> <p>Explanation. – “renowned shot” means a person certified by the National Rifle Association as ranking within the first ten in the National Championship held immediately preceding the importation.</p>
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[Notfn. no. 147/94-Cus., dated 13-7-1994 as amended by Notfn. No. 101/95-Cus. dated 26-5-1995]

10) Re-import of catering cabin equipment, etc. by Indian Airlines.

In exercise of the powers conferred by section 23 of the Sea Customs Act, 1878 (8 of 1878), as in force in India and as applied to the State of Pondicherry, the Central Government hereby exempts from **imported duty** catering cabin equipments and food and drink on re-importation by the aircrafts of the Indian Airlines Corporation from foreign flights, provided –

- (a) the goods were not taken on board at any foreign port of place; and
- (b) the Indian Airlines Corporation executes an undertaking with the Chief Customs Officer concerned to abide by the conditions as may be laid down by such Customs Officer for segregating the goods from other goods uplifted abroad, payment of duty on the latter category of goods, and maintenance and scrutiny of records in this behalf.

[Notification No. 26-Cus., dated 19-2-1962]

11) Used bonafide personal and household effects belonging to a deceased person

As per Notification No. 20/99-Customs dated 28-2-1999 the goods classified under any Chapter if imported into India as 'Used bona fide personal and household effects belonging to a deceased person' are exempt from Customs duty subject to the condition that a certificate from the Indian Mission concerned, about the ownership of the goods by the deceased person, is produced at the time of clearance of the goods through Customs station.

(B) In addition to the above mentioned exemptions , the Central Government, vide Notification no. 49/96 dated 23-7-1996, has prescribed concessional rates of duty for the following goods when imported by a passenger in his baggage. The details of the same has been enumerated in the Chapter on 'Baggage'. –

- a) Re-import of Private Personal Property
- b) Articles supplied free under warranty as replacement for defective ones
- c) Certain free gifts, donations, relief and rehabilitation material by charitable organizations, Red Cross Society, C A R E, and Govt. of India
- d) Samples, Price-lists, Commercial Samples or Prototypes, etc.
- e) Research equipment imported by public funded and non-commercial research institutes, IITs etc.
- f) Printed books and printed manuals
- g) Life saving drugs
- h) Tags, labels, printed bags, stickers, belts, buttons or hangers by bonafide exporters
- i) Plans, drawings and designs
- j) Blank travelers cheques,
- k) Specified Audio and Video apparatus and accessories imported by an accredited News Agency
- l) Personal Computer including lap top personal computer, typewriters and fax machine by an accredited journalist
- m) Specified Medical equipments, accessories, parts and spare parts thereof
- n) Goods for Tubal Occlusion

o) Foodstuff and provisions imported by foreigners

(B) PROHIBITIONS AND RESTRICTIONS

The main object of the Customs Act is to regulate imports as well as exports besides collection of revenue. However, the intention of the Parliament behind the enactment is not merely realisation of revenue through imports and exports but also to safeguard the interests of the Nation. e. g. security of India, maintenance of public order and standard of decency, prevention of smuggling, conservation of foreign exchange, protection of human, animal and plant life or health etc. For this purpose, provision has been made under Chapter – IV of the Act empowering the Central Govt. to prohibit import or export of goods of any description. Sub-section 2 of Section 11 lays down purposes for such prohibitions. For example, in order to maintain public order or standards of decency or morality, the Central Govt. vide Notification No. M. F.(DR) No. 1- Cus. dt. 18.1.64 has prohibited import of obscene books, drawings, paintings, figures or articles which may deprave or corrupt those who are open to such immoral influences.

There are number of legislations which prohibit import or export of a product or item which is prohibited or restricted under certain conditions. (e. g. export of antiquities is prohibited / restricted under Antiquities and Art Treasures Act, 1962). The effective machinery to enforce / implement these prohibitions/restrictions on import/export is the Customs administration. To enforce prohibitions/restrictions of other enactments, the Customs Officers are required to be empowered to do so under the Customs Act, 1962. The Govt. is empowered under clause (u) of Sub-section 2 of Section 11 of the Act to issue notifications to prohibit absolutely or allow conditionally the import/export of goods when the import/export of such goods is prohibited/restricted under any other enactment.

In certain enactments there is a deeming provision by which the prohibitions and restrictions imposed under the said Act are deemed to be prohibition and restrictions under Sec. 11 of the Customs Act, 1962. E. g. Section 3(3) of the Foreign Trade (Development and Regulations) Act, 1992 and Section 67 of the Foreign Exchange Regulations Act, 1973. In such situation, no separate notification is issued under Section 11 of the Act.

MAJOR ALLIED ACTS

1. The Arms Act, 1959
2. The Tea Act, 1953
3. The Agricultural Produces Cess Act, 1940
4. The Copy Right Act, 1957
9. Narcotics Drugs and Psychotropic Substances Act, 1985
10. The Drugs and Cosmetics Act, 1940
12. Indian Port Office Act, 1898
13. The Trade and Merchandise Marks Act, 1958
14. The Foreign Trade (Development & Regulation) Act, 1992
2. The Antiquities and Art Treasures Act, 1972
4. The Coffee Act, 1942
6. The Coir Industry Act, 1953
8. Foreign Exchange Management Act, 1999
11. The Indian Light House Act 1927

Details of a few prohibited / restricted items are given Below:-

SCHEDULE - A **Importation**

Sl No.	Description of goods	Nature of Prohibition or restriction	Authority
(1)	(2)	(3)	(4)
1.	Labels impressed with designs in imitation of full or half currency notes and of goods	Bringing into India by sea or by land.	G. of I., Deptt. of C. & I., Notification No. 5896, dated the 18 th July, 1914.

	bearing such labels.		
2.	<p>(i) Armoured cars (that is, vehicles specially designed and fitted for offensive purposes and provided with armour).</p> <p>(ii) Protected cars (that is, vehicles specially designed and fitted for offensive purposes and provided with armour).</p>	<p>Bringing into India.</p> <p>(2) The prohibition does not apply to armoured and protected cars for the importation of which a permit has been granted by the Government of India in the Defence Department or which are imported by or on behalf of Government.</p>	<p>G. of I., F. D. (C. R.) Notification No. 44-Cus., dated the 31st August, 1929.</p>
3	Toy, dummy or imitation revolvers or pistols.	<p>Bringing into India restricted to cases in which a permit for import has been granted by the Commissioner of Police in the case of import at any of the ports of Calcutta, Madras and Bombay and the District Magistrate in the case of import elsewhere.</p> <p>3) The restriction does not apply to revolvers or pistols which in the opinion of the Commissioner of Customs are of such construction and character as to render them incapable of being used otherwise than as toys or of being converted into lethal weapons.</p>	<p>G. of I., F. D. (C. R.) Notification No. 35-Cus., dated the 6th September, 1930 as amended by M. F. (R. D.) Notification No. 15-Cus., dated 22nd January, 1952.</p>
4.	Fictitious stamps as defined in sub-section (3) read with sub-section (4) of section 263-A of the Indian Penal Code.	Bringing into India.	<p>G. of I., F. D. (C. R.) Notification No. 42-Cus., dated 9th July, 1932.</p>
5.	Explosives as defined in the Indian Explosives Act, 1884 (4 of 1884)	Bringing into India by sea or by land save in accordance with the provisions of that Act and of the rules and orders for the time being in force thereunder.	<p>G. of I., F. D. (C. R.) Notification No. 64-Cus., dated 17th September, 1932.</p>
6.	Appliances (including pistols, pistol-pens, pistol-pencils, hand-grenades, cartridges, etc.) for discharging gas.	Bringing into India by sea or by land, except by or on behalf of Government.	<p>G. of I., F. D. (C. R.) Notification No. 26-Cus., dated 20th May, 1933.</p>
7.	Import of dutiable goods by letter, packet or parcel post.	<p>Bringing into India restricted to cases where-</p> <p>(a) such letter or packet</p> <p>(i) bears on the front a declaration stating the nature, weight and value of the contents of the letter or packet; or</p>	<p>G. of I., F. D. (C. R.) Notification No. 78-Cus., dated 2nd April, 1938 as amended by Notifications No. 151-Cus., dated 24th December, 1938 and No. 44-Cus., dated 26th July, 1941.</p>

		<p>(ii) is accompanied by a declaration as aforesaid either enclosed therein or fastened to the outside by a string tied crosswise and, in the former case, bears on the front a label indicating that the letter or packet may be opened for Customs examination;</p> <p>(b) such parcel complies with clause (l) of condition (a) except when the declaration separately attached to the parcel bills; and</p> <p>(c) The Customs Commissioner is satisfied that the nature, weight and value of the contents of such letter, packet or parcel are correctly stated in the declaration.</p>	
8.	Any narcotic drugs .	<p>Prohibition, subject to the provisions of the Dangerous Drugs (Import, Export and Transhipment) Rules, 1933 of bringing into India or taking out of India to any place outside India through the medium of Post Office:</p> <p>Provided that-</p> <p>(i) those which are dangerous drugs within the meaning of the Dangerous Drugs Act, 1930; and</p> <p>(ii) the medicinal preparations which have been declared by a notification for the time being in force under clause (g) of section 2 of the Dangerous Drugs Act, 1930 (2 of 1930) not to be manufactured drugs may be brought into or taken out of India through the medium of Post Office.</p> <p>This prohibition is in addition and not in derogation of the prohibitions and restrictions imposed by the Dangerous Drugs (Import, Export and Transhipment) Rules, 1933.</p>	G. of I., F. D. (C. R.) Notification No. 54-Cus., dated 9 th September, 1939.
9.	<p>Goods as are under :</p> <p>(i) counterfeit coin or coin made under the Native Coinage Act, 1876, or Indian Coin, which is not of the established standard in weight or fineness.</p> <p>(ii) any obscene book, pamphlet, paper, drawing, painting,</p>	Import prohibited.	M. F. (D. R.) Notification No, 1-Cus., dated 18 th January, 1964.

	<p>representation, figure or article.</p> <p>(iii) goods having applied there to a false trade mark within the meaning of section 77 of the Trade and Merchandise Marks Act, 1958.</p> <p>(iv) goods having applied thereto a false trade description within the meaning of clause (f) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958, otherwise than relation to any of the matter specified in sub-clauses (ii) and (iii) of clause (u) of that sub-section.</p> <p>(v) goods made or produced beyond the limits of India, and having applied thereto any name or trade-mark being, or purporting to be, the name or trade-mark of any person who is a manufacturer, dealer or trader in India unless-</p> <p>(a) the name of trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of India, and</p> <p>(b) the country in which that place is situated is indicated in letters as large and conspicuous as any letter in the name or trade mark in the English language.</p> <p>(vi) piece-goods manufactured outside India, such as are ordinarily, sold by length or by the piece, if each piece has not been conspicuously marked –</p> <p>(a) with the name of the manufacturer, exporter, or wholesale purchaser in India, of the goods, and</p> <p>(b) with the real length of the piece in standard yards or standard metres inscribed in the international form of numerals.</p> <p>(vii) goods made or produced beyond the limits of India and</p>		
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	<p>intended for sale, and having applied thereto a design in which copyright exists under the Indian Patents and Designs Act, 1911, in respect of the class to which the goods belong or any fraudulent or obvious imitation of such design except when the application of such design has been made with licence or written consent of the registered proprietor of the design.</p> <p>(viii) goods which are required by a notification under section 117 of the Trade and Merchandise Marks Act, 1958, to have applied to them an indication of the country or place in which they were made or produced or the name and address of the manufacturer or the person for whom the goods were manufactured, unless such goods show such indication applied in the manner specified in the notification.</p> <p>(ix) cotton yarn, manufactured outside India, such as is ordinarily imported in bundles, if each bundle containing such yarn has not been conspicuously marked: -</p> <p>(a) with the name of the manufacturer, exporter or wholesale purchaser in India, of the goods, and</p> <p>(b) with an indication of the weight and the count of yarn contained in it, in accordance with the rules made under section 75 of the Trade and Merchandise Marks Act, 1958.</p> <p>(x) cotton sewing, darning, crochet or handicraft thread manufactured outside India, if each of the units in which the thread is supplied has not been conspicuously marked: -</p> <p>(a) with the name of the manufacturer, exporter or wholesale purchaser</p>		
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10.	in India, of the goods, and (b) with the length or weight of the thread contained in it and in such other manner as is required by the rules made under section 75 of the Trade and Merchandise Marks Act, 1958. Arms and Ammunition as defined in Arms Act, 1959 (54 of 1959) (i) other than those imported by or on behalf of Government; and (ii) save in accordance with the provisions of Arms Act, 1959 (54 of 1959) and of the rules and orders made thereunder for the time being in force.	Import prohibited absolutely.	M. F. (D. R. & I.) Notification No. 40-Cus., dated 6 th June, 1970.
11.	Counterfeit currency notes or fake currency notes.	Import into India absolutely prohibited.	M.F., D.R., Notfn. No.23 / 99-Cus. (N.T.) dated 13.4.1999.

SCHEDULE - B

Exportation

Sl. No.	Description of goods	Nature of prohibition	Authority
(1)	(2)	(3)	(4)
12.	Maps on a scale of one-fourth inch or more equal to mile and the micro-films obtained from such maps depicting any part of India including its international boundaries and showing topographical features by contours.	Exporting out of India.	M. F. (D. R.) Notification No. 227-Cus., dated 29-11-1980.
13	Arms and Ammunition as defined in the Arms Act, 1959, save in accordance with the provisions of the Arms Act, 1959 and of the Rules and Orders made thereunder for the time being in force.	Export prohibited absolutely	M.F., (D.R. & I.), Notification No. 40-Cus. dated 6 th Jun 1970.

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CHAPTER - FOUR

IMPORTS AND EXPORTS BY SEA

PRELIMINARY

The modern age is an age of technological and scientific advancements. Outstanding progress has been made in the last few decades especially in the fields of Communications. This has tremendously helped the people across the world to come together and exchange information. With this, new vistas in the field of international trade have been opened. Further, developments and growth in the sphere of sea, air and land transportation have also been constantly taking place all over the world. This has extensively helped the movement of goods and people in terms of volume as well as speed. Today we see innumerable aircrafts, vessels, trains & other surface transport carrying people & goods in gigantic magnitudes from one place to another. International trade is one of the biggest beneficiaries of these developments.

Our country is a signatory to a number of international trade treaties, trade councils & organisations and other commercial institutions and has a momentous presence on the international trade scenario. It has trade links with many prominent countries of the world. The foreign trade in our country is effected through numerous sea, air and land routes scattered across its vast and stretched frontiers. To effectively regulate the movements of goods and people across such huge amplitude of borders, it is imperative that the points of entry and exit should be limited. For this, the Central Government has notified Customs areas such as ports, airports, land customs stations, ICDs, CFSSs, FPOs, etc., under Sections 7 and 8 of the Customs Act, 1962. These places only are the authorised places for loading / unloading, warehousing and clearance of imported / export goods or coastal goods.

This Chapter deals with the provisions envisaged in the Customs Act, 1962, for arrival, departure and stay in a customs area, of vessels carrying imported or export goods. The procedures regulating arrival / departure of aircrafts are discussed in the Chapter on Airport.

Section 141 of the Customs Act, 1962, lays down that all conveyances & goods in a customs area shall, for the purposes of enforcing the provisions of the Act, be subjected to the control of the officers of Customs.

ARRIVALS OF VESSELS IN PORT / HARBOUR

Each country has its own fleet of vessels / ships, both in public as well as private sectors, which ply across the harbours all over the world. The bulk of the import / export of the goods in India is still handled through the sea routes which is catered to by the vessels owned by Indian companies as well as foreign companies. The various formalities related to the arrival / departure including documentation, of these vessels are handled by the owner or appointed shipping companies.

Anchorage Lines

Every port/harbour has its own limits of area clearly defined by the various statutory bodies controlling the maritime traffic & trade in the country. Anchorage line is an imaginary line on the bordering sea of the port /harbour which defines and demarcates the outer and inner limits of the port/harbour.

a) Inner Anchorage- the inner anchorage is the notional extension of the port/harbour where anchoring positions are assigned to the vessels before their entry into the port/harbour/docks. It extends approximately one nautical mile from the shore and is regarded as the limits of the port/harbour, wherein the entry of the vessels is declared to be as entry into the port/harbour. Accordingly, the various statutes of the Central and State Government come into force at this point.

This is the area where the Customs Boarding Officer has to board the vessel and take the Arrival Report from the Master of the vessel. Further, the requirements of giving prescribed notice and of paying the prescribed fees under the Customs Act, 1962, are applicable to loading / unloading of any export/imported goods within this limit.

b) Outer Anchorage- just like Inner Anchorage, the Outer Anchorage is the demarcated place between the Inner Anchorage and the entrance channel of the port/harbour. The vessels anchored in this area are beyond the jurisdiction of the Boarding Officer as the entry of the vessel into this area is not regarded as entry into the port/harbour.

PREVENTIVE CONTROL IN THE PORT / HARBOUR

The movement of conveyances carrying imported & export goods within and around docks areas is a continuous activity. It is therefore important to monitor, control, regulate and keep watch on the movements of these conveyances not only for implementation of various rules and laws governing such movements but also to check any illegal activity in which these conveyances may indulge in.

Preventive staff functioning as Section Officers are empowered under Sections 37, 38, 106 and 141 of the Customs Act, 1962, to board any conveyance carrying imported / export goods, inspect or search it or require the person-in-charge to produce any documents and answer any questions in respect of such goods.

Boarding Of Vessels

As per Section 10 of the Customs Act, 1962, the Commissioner of Customs is empowered to appoint, in or near any customs port, a boarding station for the purpose of boarding of, or disembarkation from, vessels by officers of Customs. Though the appointment of Boarding Station has been restricted to the ports, but the same is not necessary in the case of airport or a land customs station.

A number of vessels engaged in foreign trade, normally, after arrival anchor in the outer stream area awaiting a berth in the docks for unloading / loading of goods. Sometimes, a port may not have facilities to handle a vessel of larger tonnage and such vessels are also anchored at the stream for loading / unloading of the cargo. All the vessels arriving into India have to report their arrival immediately to the Customs and Port Authorities. This is done by the Master of the vessel by submitting an ' Arrival Report ' to the Boarding Officer of the Customs.

The Boarding Officer is required to board all the vessels on their first arrival in India. The main purpose of boarding a vessel, inter-alia, is to collect the Arrival Report and putting the bond stores of the vessel under Customs seals. The Boarding Officer has wider responsibilities to shoulder, as he is the first representative of the Customs department to deal with the vessel and to initiate the Customs procedures and other formalities.

Arrival Report

The Arrival Report is the first document which gives details about the vessel, its stores, cargo and personnel carried on board. It usually consists of (all documents in duplicate)-

- a) General declaration,
- b) Vessel's store list
- c) Crew list
- d) Private property list of the members of Crew,
- e) In case of passenger ships, a list of all disembarking / embarking passengers at the port and in transit to other foreign / Indian ports.

The other documents to be collected (in duplicate) alongwith the Arrival Report are-

- i) list of same bottom cargo,
- ii) list of deck cargo, vessel's currency declaration,

- iii) list of arms & ammunition on board,
- iv) list of permissible dangerous drugs for the use of vessel and its crew,

If the vessel has arrived from a foreign port via an Indian port, a ' Circulating Copy ' of the documents listed at a) to e) above, placed on board in a sealed cover by the Section Officer of the last Indian port of call, is also to be collected.

Duties of the Boarding Officer

As the Boarding Officer is the first Government Official to deal with the vessel on its first arrival, he has manifold responsibilities to shoulder. On the one hand he has to act as an Ambassador to the country, on the other he has to initiate Customs formalities and procedures. Following are the broad duties of the Boarding Officers-

- a) He shall keep an updated record of arrival / departure programmes of all the vessels in the port and shall maintain a register for all the vessels arrived, anchored in the stream or taken berth in the docks, indicating all the details therein.
- b) He shall board all the vessels immediately on their first arrival in the port in a voyage and collect the Arrival Report thereof in the manner described above and endorse the same.
- c) He shall verify the consumable stores of the vessel with declarations and put the items like liquor, cigarettes & tobacco, arms & ammunitions and other sensitive items, belonging to the vessel as well to the crew, under Customs seal, as prescribed in the Regulations above.
- d) He shall carry out a percentage check (minimum 5 %) of the property in possession of the Crew vis-à-vis their declarations and liquor and cigarettes in excess of permissible quantity shall also be kept under seal.
- e) He shall forward without delay, the Arrival Report and other documents collected by him to the Import Department / Manifest Clearance Department of the Custom House and keep a record of despatch of the same.
- f) After obtaining the documents, he should physically check the " Deck and load line " of the vessel to the effect that they are clearly marked and well preserved and should make an endorsement accordingly on the Arrival Report.
- g) He shall verify if any gift / favour parcels have been declared on board and check the nature of contents, port of delivery, consignee / consignor's particulars, etc, shall the same and direct the master of the vessel to get them cleared through Customs at the Divisional Office.
- h) He shall check the shops or the ' slopchest ' as the case may be in accordance with the list provided by the master in selective manner and place them under paper seals.
- i) He shall also ascertain that undeclared and prohibited goods have not been placed or secreted on board the vessel by taking casual strolls around the deck, crew cabins etc.
- j) Any discrepancies in quality or quantity in the stores of the vessel or the property of the crew should be reported to the Asstt. / Dy. Commissioner (Preventive) through Divisional Superintendent as these anomalies attract the penal provisions of the Customs Act, 1962.
- k) He shall regularly intimate the Rummaging Section of the Preventive Commissionerate of the Custom House about the arrival/departure of the vessels into/from the port/harbour.

While carrying out the above duties by the Boarding Officers, care should be taken to show utmost courtesy and maturity while entering cabins, checking the private belongings of the Officers and other Crew members. Needless to say that the members of the crew, who may be sleeping after night-duty should not be disturbed as far as possible. This, however, does not imply that the Boarding Officer should be negligent or lenient or should in any way compromise while carrying out his duties.

ENTRY OF VESSELS AND CARGO

Once the vessels calls at any port, it has to comply with certain requirements in respect of its arrival, as prescribed in the Customs Act, 1962. In this liberalised era, the Government has permitted some of these formalities to be completed even before the actual arrival of the vessel in the port/docks.

Entry Inwards

Section 31 and 32 of the Customs Act, 1962, stipulate that imported goods shall not be unloaded unless an 'entry inwards' has been granted and the goods are mentioned in the Import Manifest or Import Report. To obtain 'entry inwards', the Shipping or Steamer Agents file an application for the same alongwith Import Manifest in the Import Department of the Custom House. As the Customs Act, 1962, also provides for the submission of Import Manifest before the arrival of the vessel, normally the Steamer Agents submit before the arrival of the vessel, a 'prior entry manifest' and obtain a 'prior entry inwards' which facilitates the processing of documents by the Steamer Agents and the importers of the goods. The 'prior entry inwards' is granted by the Import Department of the Custom House on the undertaking by the Steamer Agents to produce all the prescribed documents within 24 hours of the arrival of the vessel.

Import Manifest

Section 29 of the Customs Act, 1962, prescribes that the person-in-charge of a vessel or aircraft entering India from a place outside India shall not cause or permit the vessel or aircraft to call or land at any place other than a Customs Port or Customs Airport for the first time after arrival in India or at any time while it is carrying passengers or cargo brought in that vessel or aircraft. However, subject to certain conditions, these restrictions are relaxed in relation to any vessel or aircraft which is compelled by accident, stress of weather or other unavoidable cause.

As per Section 30 of the Customs Act, 1962, after arrival, the person-in-charge of a vessel or an aircraft is required to deliver to the proper officer, an Import Manifest and in the case of a vehicle, an Import Report, within 24 hours in the case of a vessel and within 12 hours in the case of an aircraft or a vehicle. In case of delay, on sufficient cause being shown, the Import Manifest or Import Report may be accepted by the proper officer any time thereafter. In the case of a vessel or an aircraft, there is provision to deliver the Import Manifest before arrival of the vessel or the aircraft. Further, if there is no fraudulent intention, the proper officer may allow amending or supplementing the Import Manifest. The Import Manifest or Import Report, consists of , inter alia , details of all the goods including the goods to be unloaded at the port.

Import Manifest (Vessels) Regulations, 1971

In exercise of the powers conferred by section 157 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations, namely:-

- 1. Short title and commencement.** – (1) These regulations may be called the Import Manifest (Vessels) Regulations, 1971.
- 2. Definition.** – In these regulations, unless the context otherwise requires, "Form" means a Form appended to these regulations.
- 3. Import Manifest.** - Every import manifest shall –
 - (a) be delivered in duplicate;
 - (b) cover all the goods carried in a vessel; and
 - (c) consist of –

- (i) an application for entry inwards in Form I
- (ii) a general declaration in Form II
- (iii) a cargo declaration in Form III
- (iv) a vessel's stores list in Form IV
- (v) a list in Form V of private property in the possession of the Master, officers and crew

4. Sizes of Forms I, II, III, IV, and V.- Each of the Forms, I, II, III, IV and V shall be on paper of durable quality and the forms shall have the following sizes, namely :-

Forms I, II, IV and V – 210 x 297 millimetres.

Forms III - 430 x 340 millimetres.

5. Manner of declaring cargo. - (1) The cargo declaration shall be delivered in separate sheets in respect of each of the following categories of cargo, namely:-

- (a) cargo to be landed;
- (b) unaccompanied baggage;
- (c) goods to be transhipped;
- (d) same bottom or retention cargo:

Provided that in respect of cargo to be landed as also in respect of unaccompanied Baggage the details shall be set out in the order of the ports of loading:

Provided further that in respect of same bottom or retention cargo it will be sufficient if details relating to the nature of the cargo and number of the packages are declared.

(2) (a) Notwithstanding anything contained in sub-regulation (1), the cargo declaration in respect of –

- | | |
|----------------------|------------------|
| (i) arms; | (ii) ammunition; |
| (iii) explosives; | (iv) narcotics; |
| (v) dangerous drugs; | (vi) gold; |
| (vii) silver, | |

irrespective of whether for landing, for transhipment, or for being carried as same bottom cargo, shall be delivered in separate sheets and shall be set out in the order of the ports of loading.

(b) If a vessel does not carry any of the cargoes referred to in clause (a), a nil declaration shall be delivered.

6. Delivery of vessel's stores list and list of private property.- The vessel's stores list and list of private property in the possession of the Master, officers and crew may be delivered along with the cargo declaration; but shall not in any case be delivered later than twenty-four hours after the arrival of the vessel at the port.

[Notfn. No. 35-Cus., dtd 17-4-1971, as amended by Notfn. No. 17/95 – Cus., (N. T.), dated 13-3-1995]

FORM I

APPLICATION FOR ENTRY INWARDS

To ,
Assistant Commissioner of Customs,
.....

I / We request permission for entry inwards of the Vessel having following particulars-

- (i) Name of the Vessel and shipping line –
- (ii) Rotation No. and year
- (iii) Agency Certificate No. – (enclosed)

2. I / We enclose herewith the following documents with this application:-

- (i) General Declaration in Form II containing – pages

- (ii) Cargo declaration in Form III containing – pages
- (iii) Vessel's stores list in Form IV containing – pages
- (iv) A list in Form V of private property in the possession of the Master, Officers and Crew containing - pages
- (v) Crew list containing – pages
- (vi) Passenger list containing – pages
- (vii) Maritime declaration of health

3. I / We do hereby declare that:-

- (a) the cargo declaration contains a full and true account of the particulars of the goods imported in the vessel;
- (b) no imported goods have been unloaded or delivered out of this vessel since her departure from the last port of call; and
- (c) all the particulars furnished in this manifest and documents submitted with it are true and correct to the best of my / our knowledge.

(Signature of person-in-charge of Vessel or Agent)

For office use

Import Manifest delivered under section 30(1) of the Customs Act, 1962, on

Entry inwards permitted on

Cash / deposits / w. r. No. -----

Signature and stamp of

Proper officer. -----

Manifest closed on -----

Signature and stamp of Supdt. (MCD) -----

FORM II

GENERAL DECLARATION

Name of shipping line, agent, etc.

1. Name and description of ship
2. Port of arrival
3. Date and Time of arrival
4. Nationality of ship
5. Name of Master
6. Port arrived from
7. Certificate of registry (port, date, number)
8. Name and address of ship's Agent
9. Gross tonnage
10. Net tonnage

11. Position of the ship in the port (berth or station)
12. Brief particulars of voyage (Previous and subsequent ports of call, underline where remaining cargo will be discharged).
13. Brief description of the cargo
14. Number of crew (including Master)
15. Number of Passengers
16. Remarks
Attached documents (indicate number of copies)
17. Cargo Declaration
18. Ship's Stores Declaration
19. Crew List
20. Passenger List
21. Date and signature by Master, authorised agent or officer
22. Crew's Effects Declaration
23. Maritime Declaration of Health

For official use.

FORM III

CARGO DECLARATION

Name of the shipping line, Agent, etc.

1. Name of Ship
2. Port where report is
3. Nationality of Ship
4. Name of the Master
5. Port of loading
6. Line No
7. Bill of lading No
8. Number and kinds of Packages e. g. cases, cartons, bags bales, pieces,
9. Marks and numbers
10. Gross weight
11. Description of goods
12. Name of consignee/ importer, if different
13. Date of presentation of bill of entry
14. *Name of Custom House Agent
15. Rotation No..... Year

- a) Cash/* deposit W. R No.
- b) No. of packages on* which duty Collected or Warehoused
- c) (to be filled by Port Trust) No. of packages discharged

* to be filled by the Custom House

Date and signature of Master,
Authorised agent or officer

FORM IV**SHIP'S STORES DECLARATION**

Name of the shipping line, agent etc.

1. Name of Ship
2. Port of arrival
3. Date of arrival
4. Nationality of Ship
5. Port arrived from
6. Number of persons on Board
7. Period of stay
8. Place of storage
9. Name of article
10. Quantity

For official use

FORM V**CREW'S EFFECTS DECLARATION**

Name of shipping line, agent etc.

1. Name of ship
2. Nationality of Ship
3. No.
4. Family name Given name
5. Rank or Rating
6. Effects which are dutiable or subject to prohibitions or restrictions * or effects having value exceeding Rs. 3,000/- (*e.g. wines, spirits, cigarettes, tobacco, currency, etc.)
7. Signature

Certified that no private property
included in this list on Board.

Date and signature by Master,
Authorised agent or officer.

PREVENTIVE CONTROL IN DOCKS / BUNDERS

Once a berth has been allotted, the vessel moves inside the docks for loading / unloading of the cargo.

India has a long stretch of coast-line alongwith which many customs ports have been located which cater to the International as well as local sea-traffic. With the increase in the volume of sea-traffic, new ports with modern equipment and facilities are being added to the list.

These ports have special facilities for berthing of the vessels called 'jetties' or wharves. These wharves or jetties often have enclosed areas alongside for storage of and equipment for loading / unloading of export / import cargo. There are also some specific docks, known as ' Dry docks ', for repairing etc. of the vessels. The docks are enclosed and guarded areas wherein all the activities related to the shipping are mainly concentrated. The Docks have several Gates through which movement of goods, ships stores, personnel, etc. takes place. These Gates are always manned by the Security staff, Port staff and the Customs staff also. Some of these Gates operate round the clock whereas some Gates have specific timings and restrictions about the nature of Cargo moving through the same. The Preventive staff posted at these Dock Gates have to perform multi-faceted duties in relation to transaction of Customs work in the Docks. Besides this, they also have to be alert towards unauthorised removal of any goods, ship stores etc. from the Docks.

The vessels carrying imported or export goods berth into these docks depending upon the nature of cargo, facilities and availability of the berths. For loading and discharging of oil, petroleum and hazardous cargo, there are special jetties, usually at a secluded place, having special facilities and equipment for handling the same. Besides this, there are special berths & jetties for embarkation / disembarkation of the passengers & vessels' personnel within the docks.

Similarly, there are Bunders and Minor Ports near or outside the docks. These formations are guarded but normally not enclosed and generally cater to the coastal trade. They also have the storage and loading / unloading facilities more or less like docks.

Divisions & Sections

On berthing in a Section, the vessel remains under the Preventive control of Section Officers who are supervised by the Divisional Superintendents (Preventive).

A dock normally consists of several wharves or jetties for berthing of vessels and having equipment & enclosed storage areas (Sheds) for loading / unloading of cargo. For customs administration purposes, the entire docks area under preventive control is divided into ' Divisions ', each of which is supervised by a Preventive Superintendent, assisted by Preventive Officers. These Divisions are subdivided into ' Sections ' comprising of a number of jetties & their Sheds. The Sections are manned by Section Officers, normally Superintendents (Preventive) assisted by Preventive Officers.

Divisional Superintendents - Duties

For administrative purposes, the areas of Docks are divided into Divisions and each Division is placed under the charge of a Superintendent (Preventive) according to the need and sanctions at the respective ports. The Superintendents (Preventive) attend their duties at these Divisions according to the timings prescribed by the local Custom House. Following is the broad spectrum of the duties of Divisional Superintendent :-

- a) Each Divisional Superintendent is primarily responsible for ensuring adequate arrangements for dealing promptly and efficiently with all transactions of Customs work related to the Preventive Department within the limits of the Division and he should ensure that the provisions of the law and regulations in force are well understood and intelligently applied by the staff under his control. He

should take special care to satisfy himself that no irregularities are being committed by any member of the staff.

- b) The Divisional Superintendent is responsible for the proper execution of the Customs work by the Preventive Staff under their charge. He should exercise effective and vigilant supervision within his jurisdiction and maintain a record of all checks carried out by him, in his diary.
- c) While visiting the stations in his Division, the Superintendent should ensure that all the Officers and Sepoys posted at various stations and beats are present at their posts and are alert. He should not confine his attention only to the stations where staff is posted, but should also visit the stretches of foreshore in his Division where no special guard is provided.
- d) He should supervise the transactions that take place in the sheds at the time of his visit and should check the cargo vis-à-vis documents. He should pay particular attention to bonded, drawback, and transhipment cargo and to the goods landed at and cleared from docks and bunders. Occasionally, he should also check Cart Chits or a Bill of Entry to see that the goods are properly accounted for.
- e) He should pay surprise visits to vessels in his Division and see that firearms, wines and spirits, cigarettes, etc., have been placed under seal. He should also visit vessels after all the passengers have disembarked and see that no baggage has been left on board or elsewhere – which may be irregularly passed out once examination and clearance of baggage has been completed in the ordinary course.
- f) The Divisional Superintendent is also required to check at least once during a vessel's stay in Port, the account of the stock of Bonded stores on board. He should thereafter suitably endorse the store list of the vessel every time he carries out such checks.
- g) He should regularly check the work of Officers posted at the Gates and other Stations and should endorse their Station diaries indicating the time & other details of his visits and also mentioning therein any special or important observations. He should check all the records maintained at the Gates and other Stations and initial the same in token of having checked them.
- h) Divisional Superintendent supervising the Baggage work shall be responsible for the smooth and efficient clearance and avoidance of delay & harassment to the passengers or vessels' crew. He should ensure that all the Officers & other staff posted for clearing baggage do not leave their places of posting without proper relief and should also keep watch over suspected passengers and persons.
- i) Appropriate entries should be made in brief in Divisional Superintendents' diary to indicate the extent of his supervision, visits made and any irregularities noticed by him in his jurisdiction.
- j) Any irregularities noticed by them should be reported immediately to the Asstt. / Dy. Commissioner of Customs (Preventive)(General).
- k) Divisional Superintendents' diary should also give the following information and should be submitted to the Asstt. / Dy. Commissioner (Prev.) periodically as may be prescribed from time to time by the local Custom House :
 - i) time of attendance in the Division,
 - ii) details of vessels in the Division,
 - iii) time of visit to each section and shed with names of officers and nature of their duties at the time of visit.
- l) He should also indicate in his diary any special information acquired and achievements of individual officers in his Division.
- m) When the Superintendent (Preventive) in charge of a Division is away from the Divisional Office, he should leave instructions with the senior most Preventive Officer available , to look after the work during his absence.

FAVOUR PARCELS – DELIVERY OF

Before any favour parcel entered in store list is delivered to the owner, the Commander or other responsible officer of the vessel, shall obtain a written authority from the Divisional Superintendent's Office permitting such articles to be handed over to the owner. The parcel so delivered shall be removed under Preventive escort to the Divisional Office where the owner will be required to declare the description, quantity and value of the contents of the parcel. After the duty leviable has been assessed and recovered, the parcel will be returned to the owner for clearance. In all such cases a note of the name of the owner and of the receipt number and date of credit of Duty will be entered against the relative item in the Store List.

Gift / Favour Parcel – Clearance of

The following instructions regarding clearance of Gift/Favour Parcels brought by Crew of Steamers and Air Crafts will come into force with immediate effect -

(1) The Gift/Favour Parcels must be separately declared as such in the Crew's Private Property List delivered to the Customs Officer on first arrival of the vessel. If any other gift parcels are desired to be landed at a later stage an application for supplementing the, aforesaid declaration should be made to Asstt./Dy. Commissioner (Preventive) through the Divisional Superintendent concerned for necessary orders. Before any Gift/Favour Parcel is delivered, the Commander/Captain or any other responsible Officer on the vessel shall obtain a written authority from the Divisional Superintendent's Office, permitting such articles to be landed. The articles so landed shall be removed under Preventive Supervision to the Divisional Superintendent's Office where the owner will be required to declare the description, quantity and value of the contents of the parcels. After the duty leviable has been assessed and recovered, the parcel will be released to the owner. In all such cases, the Duty receipt No. and date will be shown against the relative item in the Private Property List.

(2) No articles from the Ship's Stores will be allowed to be landed as Favour Parcels. Both Gift/Favour Parcels should be intended for bona fide use of an individual and there should be no Foreign Exchange involved. Articles intended for use of companies and firms can be allowed clearance only on Bills of Entry to be dealt with by the Appraising Department.

(3) (i) Recommendations for waiver of Import Trade Control restrictions should be made by Divisional Superintendents to Asstt./ Dy. Commissioner(Preventive) in respect of bona fide Gift/Favour Parcels where the value of the Gift/Favour Parcel imported by a Ship's Officer does not exceed Rs.50/- and about Rs. 20/-in the case of a member ship's crew. After adjudication by the Asstt./Dy. Commissioner(Preventive), the articles may be released on payment of duty if I. T. C. requirements are waived by him.

(ii) Air Crews.- Air Customs Superintendent may, in his discretion, release Gift/Favour Parcels upto a value of about Rs.10/- per trip on payment of duty but without Customs Clearance Permit. It is not necessary to require them to fill a Baggage Declaration Form for this purpose. Duty Receipt No. and Date should be shown against the relative item in their Private Property Declaration.

(4) If the values of these Parcels exceed the prescribed limits, bona fide cases may be put up to Additional Commissioner through Asstt./Dy. Commissioner. In all other cases, such articles can be cleared only under cover of proper Customs Clearance permit. Cases where trade goods are imported in the guise of Gift/Favour Parcels or where Foreign Exchange is involved, should be dealt with rigorously.

(5) In cases where discrepancies have been found in the number of parcels shown in the manifest or the store list of the vessel, the Board has ordered that Steamer's Agents' statement regarding erroneous entries in the manifest should not be accepted without proper documentary evidence accounting for the non-arrival of the parcels shown in the manifest or the store list as intended to be landed. [C.B.R. letter D. Dis. No. 1366-Cus.1/39 dated 27.12.1939 and Collr's C. No. 69/40]

Superintendent's Patrol at Nights and on Sundays / Holidays

The Divisions, where Superintendents are not posted in shift duties, shall be patrolled by Superintendents (Preventive) on the nights of all the working days and on Sundays and holidays to the extent decided by the respective Customs House, for the purpose of supervising the work of the staff posted for duties at various stations in these Divisions.

The Superintendent in-charge postings shall depute the Superintendents for such night patrols on all working days and for day and night patrols on Sundays / holidays with the approval of the Asst. / Dy. Commissioner (Preventive). The posting for patrols on Sundays and holidays and for night patrols on working days shall be made on the previous working day.

The patrolling Superintendent (Preventive) shall perform duties of Divisional Superintendents as described above, so far as supervision of the staff is concerned. He shall keep record of his visits and any observation made, in a register prescribed for the purpose and the same shall be submitted to Asstt. / Dy. Commissioner (Preventive) in the morning of next working day for perusal.

Duties Of The Section Officers

As described earlier, the unloading / loading of goods or embarkation / disembarkation of passengers on a vessel takes place at the wharves or jetties which have equipment and other facility for the same. Thus the Sections are the areas where all the important activities related to a vessel or the goods take place. This is the place wherefrom the vessel's personnel and staff of various other agencies move around. Thus, the Section Officer has to perform some very important multi-functional duties.

Some of the duties of the Section Officers are summarised below-

- a) He shall be responsible of all the work and all the documents relating to the vessels in his jurisdiction and in the event of any vessel changing berths between Sections, shall forward all the papers relating to the vessel to the concerned Section.
- b) He shall patrol in and around his Sections and be on alert so as to detect and prevent any unlawful activity like unauthorised loading / unloading of dutiable, prohibited or restricted goods.
- c) He shall keep a watch on the gangway and examine, wherever necessary, all the hawkers, vessel's personnel, staff of Steamer Agents and other agencies and any suspect person- boarding or leaving the vessel.
- d) He shall exercise general supervision in respect of discharge or shipment of the cargo and shall ensure that nothing is placed on board without a duly passed shipping bill except for stone ballast, passengers' accompanied baggage, crew belongings, fresh vegetables, fruits and common stores, in reasonable quantities, required for daily use on the vessel.
- e) In case of any vessel berthing in his Section directly or which has not been boarded, he shall perform all the duties of the Boarding Officer as detailed in the previous paragraphs.
- f) He shall ensure that the shipments of dutiable, drawback, reshipment, transshipment and ex-bond goods are covered by proper documents.
- g) He should board the vessels in his Sections in order to ensure that the bonded stores put under seals are not dealt with in any manner by anyone except as provided under the rules. He shall also check other stores randomly.

- h) He shall ensure that all the fresh supplies of bonded stores received by the vessel in port are duly entered in the Section records and in the vessel's stores list and circulating copy, and are kept under the seal of Customs on board.
- i) During the vessel's stay in the port, he shall issue the bonded stores for the consumption of vessel's personnel in accordance with manner described in next paragraph.
- j) He shall ensure that no imported goods / equipment of the vessel for repairs, discharged from the vessel, leave the shed without proper covering of documents.
- k) He shall not only verify the covering documents but also check all drawback, re-shipment, transshipment and ex-bond cargo to be shipped.
- l) After the shipments of the goods is complete, he shall certify the Shipping Bills and A R 4 forms in the case of excisable goods, to that effect on the basis of Mate Receipts issued by the Agents, with clear endorsements.
- m) He shall make necessary authentication of any change in the vessel's crew list, store list, property list and any other documents.
- n) In the case of movement of vessel's equipment for repairs, aerated water bottles, vessel's linen, the procedures described in the Chapter on 'Ship's Stores' of this Manual, should be followed.
- o) At the time of departure, he shall board the vessel and after having ensured that the Master of the vessel has complied with all the Customs formalities, shall grant the Port Clearance, issued by the Export department, to the Master of the vessel and shall collect required departure documents.
- p) He shall make entries in the Section Register for all the Bonded Cargo/ Transshipment Cargo etc. brought under Preventive escort and ensure that the same is duly received by the vessels' Agents / Master.
- q) He shall forward all the Bonded Cargo / Transshipment Cargo etc., duly sealed, under Preventive escorts and keep a record of the same.
- r) In cases, where the Shipping Bills for the cargo shipped through his Section have been processed electronically, he shall complete the certification of shipment and other formalities in respect of such cargo, as has been discussed in the Chapter ' Electronic Data Interchange '

Issue From Ship's Bonded Stores

Officers and other members of the crew of all foreign going vessels during their stay in the port as well Indian customs waters, are entitled, for personal consumption, to the bonded liquor, cigarettes, etc. as follows –

- a) two pegs of hard liquor or two bottles of beer per day,
- b) 200 cigarettes or 50 gms. of tobacco per week.

The items to be issued as stated above, shall be given every week to the person in-charge of the bonded stores of the vessel, usually the Chief Steward, on a written request made by him. The quantities so issued shall be endorsed by the Section Officer in the duplicate and circulating copies of the store-list with dated initials and the remaining quantities shall be re-sealed. Items from the slopchest may also be issued in reasonable quantities to the Master of the vessel on a written request without any daily or weekly restrictions. Entries shall be made in the store lists to that effect.

Under Section 43 of the Customs Act, 1962, the Central Government may exempt conveyances- a) belonging to the Central Government or a foreign Government, b) vessels and aircraft which temporarily enter India by reason of an emergency- from any or all the provisions of the Chapter VI of the Act. Therefore, they are entitled for the facilities of consumption of the bonded stores including liquor and tobacco products, and the question of sealing of their bonded stores does not arise.

Duties Of Docks' Gate Officers

The efficiency of the Preventive control in the docks depends to a great extent on the alertness and vigilance of the Gate Officers and on their knowledge of the regulations and orders applicable to the different classes of goods and persons with which they have to deal. They should therefore be thorough with the latest rules, regulations and standing orders. Following is the summary of the duties, which they are required to perform. –

- (a) The Gate Officer must satisfy himself that no dutiable goods are passed out except under proper authority and for this purpose shall examine any package brought by any person or by any vehicle (other than cargo). When any goods liable to duty are found, the person or vehicle shall be directed to the Divisional Superintendent's office under the escort of a Sepoy. If the detection is made at night or on Sundays or holidays when the office is closed, he shall detain the articles and give the owner or person-in-charge of the goods a detention receipt with instructions to attend the Divisional Superintendents office on the following working day.
- (b) In the case of imported cargo delivered to consignees by the Port Trust and brought to the gate for passing out into town, he shall occasionally, check the contents of vehicles and verify that the numbers, marks and descriptions of the packages correspond with the particulars shown in the relative cart chits and Bills of Entry. He shall also see that the Bills of Entry bear the signature of the proper officers of Customs authorising removal of the goods. A record of the cases in which this check has been applied shall be kept in the prescribed form.
- (c) In the case of cargo brought to the docks for shipment he shall occasionally, satisfy himself that the goods are covered by shipping bills and that the packages do not contain any goods, the export of which is prohibited.
- (d) Baggage imported by passengers shall only be passed through the Gates authorised for this purpose after the officer concerned has satisfied himself that the goods have been dealt with as required by the Baggage regulations.
- (e) No special check need be applied in the case of passengers' accompanied baggage brought to the docks for shipment. Unaccompanied baggage must, however, be covered by a shipping bill.
- (f) Motor cars and carriages when going in or out of the docks gates through which such traffic is authorised, shall be stopped and searched if necessary, by the Gate officer concerned in order to verify that no dutiable goods or contraband are being removed in such vehicles or on the persons of the passengers. When such vehicles are carrying women in purdah, arrangements should be made for the search to be made by Lady Officer, if such examinations is considered necessary. The right to stop and search need not be exercised in the case of motor cars belonging to and conveying Government and Port Trust officials of superior status well known to officers of the Department except when there is special reason for believing that dutiable goods or contraband have been concealed in such vehicles. All cases of failure of any vehicle to stop at the Gates when required should be reported to the Assistant / Dy. Commissioner through the Divisional Superintendent.
- (g) The Gate Officer should exercise a special surveillance over all persons passing through the Gate with a view to prevent the smuggling of contraband e.g. arms, dangerous drugs, etc. on the persons of suspicious characters. When any goods cause for suspicion exists, he should search such persons in the presence of 2 witnesses.
- (h) In dealing with the following classes of articles, the Gate Officer shall be guided by the instructions in the respective paragraphs of this Manual. –
 - (1) Official property of the Port Trust.
 - (2) Ship's stores, provisions and daily bazar.
 - (3) Private personal property of ship's Officers and crew.

- (i) He should keep a record of all searches of suspects made and of examination of vehicles done by him at the gates. The record of his activities should be so maintained as to enable the Divisional Superintendents or the other superior officers to check the work of the gate officer at any time.
- (j) When a member of the staff, including a sepoy brings to the notice of the gate or other officer any matter in which his suspicion has been roused, he should let the officer concerned deal with the matter immediately and submit a report to the Superintendent detailing the circumstances as observed by him and the name of the officer, the information that was passed on to, including the action taken by the officer concerned if such information is available. The officer concerned should similarly submit a report immediately to the Superintendent stating the information furnished to him and the action taken by him. Both these reports should be submitted to Assistant / Dy. Commissioner (Preventive) in due course.
- (k) As regards aerated water bottles, ship's linen, ship's gear & machinery parts, etc. being passed in and out of the gate the instructions in Chapter on Stores should be followed.
- (l) Officers are not supposed to enter docks if not on duty without the prior permission of Divisional Superintendent.

UNLOADING AND LOADING OF GOODS

As discussed earlier, Section 31 stipulates that no imported goods shall be unloaded from any vessel until an entry inwards for the same has been granted by the proper officer. This restriction, however, does not apply to unloading of accompanied baggage of a passenger or a crew, mail bags, animals, perishable goods and hazardous goods.

Further, Section 32 requires that no imported goods, which are required to be mentioned in the import manifest or import report shall be unloaded at any customs station unless the same are mentioned in the said import manifest or import report.

Section 33 of the Customs Act, 1962 prescribes that except with the permission of the Proper Officer no imported goods shall be unloaded and no export goods shall be loaded at any place other than a place approved under Section 8 (a) of the Customs Act, 1962, for the purpose.

Section 34 stipulates that imported goods shall not be unloaded from and export goods shall not be loaded on any conveyance except under the Supervision of the proper officer. The proviso to the Section permits the Board to grant general permission and the proper officer to grant special permission in any particular case for unloading or loading of goods without the supervision of the proper officer.

Loading / Unloading in Stream

Many a times the vessel carrying imported/export goods do not take berth in docks due to various reasons. Sometimes, the cargo imported or to be exported is of hazardous nature. In such cases, the imported goods are unloaded from and export goods are itself, with special permission for the same like the unloading/loading of good in docks, the discharge/shipment of goods in the stream has also to be done under the supervision of proper officer of customs.

Section 35 of the Customs Act, 1962, specifies the restriction that no imported goods shall be water-borne for being landed from any vessel and no export goods, which are not accompanied by a shipping bill, shall be water-borne for being shipped, unless the goods are accompanied by a boat-note in the prescribed format. The proviso to the Section empowers the board to give general permission and the proper officer to grant special permission in any particular case for any goods to be water-borne without accompanied by a boat-note.

Discharge / loading of cargo in stream –

The Importers, Exporters, Steamer Agents, Custom House Agents and all other concerned are hereby informed that hereinafter permission to discharge or load cargo in stream will be granted under the following circumstances.

1. Vessels arriving with draft exceeding the permissible limits of the respective docks or vessels with large/odd dimensions and vessels in distress.
2. defence cargo/Hazardous cargo/petroleum products.
3. Liquid cargo to be sent through pipelines and discharged into barges/vessels.
4. Berthing delay due to congestion in port.

2. The permission for stream discharge/loading would be considered by A.C.P. (G) only in cases where I.G.M. is filed and the vessel/barge, into which the cargo is to be discharged is a coastal vessels/barge. The request for stream discharge, on the ground of berthing delay due to congestion would be considered only after the Mumbai Port Trust authorities certify the congestion in port/berthing delay. The cargo permitted to be discharged/loaded in stream will be discharged/loaded under laid down boat note procedure and only under preventive supervision.

3. Permission for discharge/loading of Transshipment cargo, in stream, should be obtained from Asstt. Commissioner of Customs, Import Department.

[Public Notice No. 73/96 dtd 8.4.96 of Commissioner of Customs, Mumbai in F. No. S/43-227/96P]

The Boat Notes Regulations, 1976

In exercise of the powers conferred by section 157 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations, namely: -

1. Short title and commencement. (1) These regulations may be called the Boat Notes Regulations, 1976.

(2) They shall come into force on such date as the Central Board of Excise and Customs may, by notification in the Official Gazette, appoint. (*Regulations came into force from 1.1.1978*).

2. Definitions. In these regulations, unless the context otherwise requires-

- (a) "Act" means the Customs Act, 1962 (52 of 1962);
- (b) "Board" means the Board as defined in clause (6) of section 2 of the Act;
- (c) "Boat Note" means the Boat Note as indicated in Form I, Form II, or Form III as the case may be;
- (d) "Commissioner of Customs" means the Commissioner of Customs as defined in clause (8) of section 2 of the Act;
- (e) "Form" means a form appended to these regulations;
- (f) "Proper officer" means the officer as defined in clause (34) of section 2 of the Act.

3. Issue of Boat Note. (1) Every boat note shall be issued by the proper officer.

(2) (a) Notwithstanding anything contained in sub-regulation (1), where the Commissioner of Customs is satisfied that it is necessary so to do, he may authorise an exporter or his authorised agent to issue a boat note.

(b) Every person who is authorised by the Commissioner of Customs under clause (a) to issue boat notes shall maintain a proper account of boat notes issued by him and furnish to the proper officer such information as may be specified by the Commissioner of Customs in this behalf.

(3) The boat notes shall be, -

- (a) of such dimension and colour as are indicated in the forms appended to these regulations;
- and

(b) maintained in duplicate and machine numbered.

4. Boat notes when to be issued. The boat notes shall be issued in all cases of –

- (i) export cargo, in Form I
- (ii) import cargo, in Form II
- (iii) transshipment cargo, reshipment cargo or same bottom cargo, in Form III

FORM I
Export Cargo
(I)

(ASHOKA EMBLEM)

BOAT NOTE NO.
 TIME AND DATE OF ISSUE EXPORT / EGM. NO. & DATE.....
 PLACE OF ISSUESB NO. & DATE

THE FOLLOWING PACKAGES / GOODS HAVE BEEN DELIVERED TO THE TINDAL OF CARGO-BOAT NO. / BARGE NO./ LIGHTER NO. FOR THE PURPOSE OF BEING SHIPPED ON BOARD S. S. OF M/S BERTHED AT

(1) NO. OF PKGS.	(2) DESCRIPTION OF GOODS	(3) MARKS & NOS.	(4) NAMES OF THE CONSIGNEES

SIGNATURE OF P. O.

SIGNATURE OF SHIP'S OFFICER
SHIPPER'S REPRESENTATIVE

AGENTS SIGNATURE

(II)

TIME COMMENCED
 TIME COMPLETED
 SHIPPED ON BOARD RECEIVED ON BOARD

SIGNATUER OF P. O. SIGNATURE OF SHIP'S OFFICER

FORM II
Import Cargo
(I)

(ASHOKA EMBLEM)

BOAT NOTE NO.
 TIME AND DATE OF ISSUE IMPORT / IGM. NO. & DATE
 PLACE OF ISSUE

THE FOLLOWING PACKAGES / GOODS HAVE BEEN DELIVERED TO THE TINDAL OF CARGO-BOAT NO. /BARGE NO./ LIGHTER NO. FOR THE PURPOSE OF BEING LANDED. . . . FROM S. S. OF M/S BERTHED AT

(1)	(2)	(3)	(4)
NO. OF PKGS.	DESCRIPTION OF GOODS	MARKS & NOS.	NAMES OF THE CONSIGNOR(S)

SIGNATURE OF P. O.

SIGNATURE OF SHIP'S OFFICER
SHIPPER'S REPRESENTATIVE

AGENTS SIGNATURE

(II)

IMPORT

THE PACKAGES/GOODS MENTIONED OVERLEAF HAVE BEEN LANDED/RECEIVED AT

.....

MUKADAM
P.O.

FORM III

Transhipment / Reshipment / Same Bottom Cargo

(I)

(ASHOKA EMBLEM)

BOAT NOTE NO. MPORTING VESSELS

TIME AND DATE OF ISSUE IGM. /ITEM NO. & DATE

PLACE OF ISSUE EXPORTING VESSEL

BOAT NO. EGM NO. AND DATE

1. THE FOLLOWING PACKAGES /GOODS HAVE BEEN TRANSHIPED/RESHIPED PER S.S. ON BEHALF OF M/S
2. THE FOLLOWING SAME BOTTOM PACKAGES/GOODS HAVE BEEN DISCHARGED OVERSIDE/ON WHARF

(1)	(2)	(3)	(4)
NO. OF PKGS.	DESCRIPTION OF GOODS	MARKS & NOS.	REMARKS

SIGNATURE OF P. O.

SIGNATURE OF SHIP'S OFFICER
SHIPPER'S REPRESENTATIVE

(II)

TIME COMENCED.....

TIME COMPLETED

I TRANSHIPPED ON BOARD S/S

II RESHIPPED ON BOARD S/S

SIGNATUER OF P. O.

RECEIVED ON BOARD S/S
SIGNATURE OF SHIPS OFFICER

[Notification No. 426/76-Cus. dt.23.10.1976, as amended by 226/77-Cus. dt.22.10.1977]

Unloading / Loading of goods on Sundays / holidays etc.

The transaction of Customs work at many Seaports, Airports and Land Customs Stations is a continuous activity. The arrival/departure of conveyance, discharging & shipment of imported & export goods, etc. takes place at these Customs Stations around the clock. Section 36 of the Customs Act, 1962, however puts some restrictions on the loading/unloading of goods beyond normal working hours & on holidays.

As per Section 36 of the Customs Act, 1962, no imported goods shall be unloaded from and no export goods shall be loaded on any Conveyance on Sundays or on any Customs holiday or on any other day after the working hours, except after giving the prescribed notice and on payment of prescribed fees, if any. However, the Section exempts the loading and unloading of accompanied baggage of a passenger or crew and mail bags, from payment of such fees.

It is pertinent to note that vide CBR notification no. 47-Cus dated 13.8.1949 and no 121-Cus dated 18.11.1961, discharge and shipping of cargo is prohibited on the Independence Day, the Republic Day and Mahatma Gandhi's Birthday.

Further, vide CBR notification no. 4-Cus dated 21.1.1950, the time between 6 AM and 6 PM has been fixed for all the Customs Ports for discharge or shipment or cargo other than passengers' baggage.

The Preventive wing of the Custom House is main functional machinery to implement the provisions contained by Chapter VI of the Customs Act, 1962. As the Shipping and allied activities in the Ports/airports take place round the clock, the trade has to obtain necessary permission from the proper officer and has to pay the prescribed fees for requisitioning the services of different categories of Customs officers for performing Customs work on Sundays/holidays and beyond normal working hours.

The Regulations detailing the prescribed fees chargeable in this regard are mentioned below: -

Customs (Fees for Rendering Services by Customs Offices) Regulations, 1998

In exercise of the powers conferred by section 157 and section 158 of the Customs Act, 1962 (52 of 1962) and in supersession of the Customs (Fees for Rendering Services by Customs Officers) Regulations, 1968, except as respects things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby makes the following Regulations, namely: -

1. Short title and commencement. - (1) These regulations may be called the Customs (Fees for Rendering Services by Customs Officers) Regulations, 1998.

(2) They shall come into force on the 15th October, 1998.

2. Definitions. – In these Regulations, unless the context otherwise requires –

(a) “Customs Officer” includes such officers as are appointed under section 4 of the Customs Act, 1962 (52 of 1962);

(b) “Customs work” means functions to be performed by Customs officers under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force;

(c) “rendering services by Customs officer” means –

(i) performance of Customs work by the Customs officer beyond the working hours but within the Customs area; and

(ii) performance of Customs work by the Customs officer beyond the Customs area at any time, and includes: -

(A) examination of the goods and related functions,

(B) loading and unloading of the goods whether generally or specially,

(C) escorting goods from one Customs area to the other, and

(D) any other customs work authorised by the Commissioner of Customs;

(d) “Working hours” means the duty hours prescribed by the Commissioner of Customs in his jurisdiction for normal customs work and where different working hours have been prescribed by the said Commissioner for different items of customs work or for different places within his jurisdiction, such working hours.

3. Levy of fees for rendering of services. – (1) On a request made in that behalf by any person, a fee as given in the Table below shall be levied for rendering of services by the Customs Officers.

TABLE

Category of Officers	Fee per hour or part thereof		Fee per hour or part thereof	
	<u>on Working days</u>		<u>on Holidays</u>	
	6 AM	8 PM	6 AM	8 PM
	to	to	to	to
	8 PM	6 AM	8 PM	6 AM
	Rs.	Rs.	Rs.	Rs.
(1)	(2)	(3)	(4)	(5)
1.Appraisers, Superintendent Customs (Preventive) and Superintendent Central Excise	85	125	140	180
2.Air Customs Officers, Examiners, Preventive Officers & Inspectors of Central Excise	75	100	105	145
3.Class IV Staff	35	45	55	60

(2) The fees levied under sub-regulation (1) shall be payable by the person requesting for rendering of services or on whose account such services has been requested.

(3) The fees levied under sub-regulation (1) shall be subject to the following conditions, namely: -

The levy of fees as aforesaid shall be for a minimum of 3 hours in each case, except in cases of overtime postings immediately preceding or immediately following the working hours of the concerned

cadre of officers.

- (a) The period between midnight and 6 A.M. shall be treated as a block whether the services are required for the entire block or for a portion thereof.
- (b) In relation to jobs to be performed by any Customs officer during the working hours, there shall be two blocks - one before lunch and the other after lunch respectively and fees shall be charged for the entire block whether the request for the services of such officer relates to the entire block or a portion thereof.

Short Landed Goods

In the case of *Shaw Wallace & Co. Ltd. v. Assistant Collector of Customs* (in Writ Petition Nos.1236/1981 and 1354/1984), the Bombay High Court have laid down the general guidelines to be followed by Customs authorities, Bombay Port Trust authorities and persons-in-charge of conveyances and their agents, while determining the liability of penalty for the short landing of goods, so as to provide for smooth exercise of functions under the provisions of the Customs Act as well as to ensure that injustice is not caused to any of the authorities or to the persons-in-charge of the conveyance. Following are the guidelines: -

(A) Liquid Cargo in bulk: -

- (i) The quantity shown in the Bill of lading reflected in the Import General Manifest should be prima facie accepted as the cargo on board the vessel brought for unloading at the Port of Bombay.
- (ii) In case, the person-in-charge of the ship or his Agent produces the ullage survey report prepared at the Port of loading and certified by an independent Surveyor, then the quantity mentioned in the ullage survey report should be accepted as the correct quantity brought by the vessel for unloading.
- (iii) The vessel should be permitted to discharge liquid cargo after a ullage survey is carried out under the supervision of the Customs Officer and such survey report is signed by the Customs Officer, by the ship owner and the consignee.
- (iv) After the discharge of the liquid cargo from the vessel, a fresh survey should be carried out in the presence of the Customs Officer and this discharge completion survey report should be signed by the Customs Officer, the ship-owner, and the consignee.
- (v) In case of any difference between the bill of landing, quantity and the discharge port ullage survey report quantity, then such difference shall be considered as short landed quantity and for which the ship owner should be held responsible.

(B) Cargo brought in container: -

(a) F.C.L. Container (Full Container Load)

- (i) A full container load when unloaded from the vessel and the seals are found intact, then the vessel owner shall not be held responsible for any short landing or be made liable to pay penalty.
- (ii) In case where the seal is found broken, the survey report will be prepared of the contents of such container in the presence of Customs Officer and this survey should be carried out within 72 hours after the container is unloaded and seal is found broken. The Customs Officer and the Port Trust authorities should ensure that the container is re-sealed after completion of the survey reports of the contents. Any shortage noticed in such survey report will have to be accounted for by the carrier and the liability for such shortage will be solely of the carrier.

(b) L.C.L. Container (Less Container Load): -

- (i) At the time of unloading of the L.I.C. container, if the seals are intact and again at the time of de-stuffing of the container, the seals are found intact, then the carrier should be responsible to account for the difference between the manifested quantity and the de-stuffing tally.

- (ii) In case, the seals of the L.C.L. containers at the time of unloading are found to be intact, but are broken or tampered with at the time of de-stuffing then the responsibility for difference between the manifested quantity and de-stuffing quantity would be that of the Port Trust authorities and not of the carrier.

(C) Dry Bulk Cargo: -

- (i) In respect of dry bulk cargo, an independent survey report should be prepared by the carrier and the consignee and such report should be counter-signed by the Customs Officer before discharge of the Cargo. Such report should be accepted for the purpose of ascertaining the actual cargo unloaded.
- (ii) The Bombay Port Trust authorities should not issue out turn report on the basis of actual weighment after landing in cases where the survey report is prepared and counter-signed by the Customs Officer, carrier and the consignee.

(D) General Cargo: -

- (i) The Port Trust authorities shall maintain tally at the time of landing of the cargo with appropriate marks in respect of cargo without any remarks or numbers.
- (ii) A copy of the tally sheets shall be furnished to the carrier or its agent and the Customs Officer at the earliest. The tally sheets shall be rectified or amended, if any discrepancy is brought to the attention of the Port Trust authorities and the customs authorities.
- (iii) The Customs authorities shall ascertain whether any cargo was short landed on the basis of the copy of the tally sheets furnished by the Port Trust authorities and not on the basis of any out turn report forwarded by the Port Trust authorities long thereafter.
- (iv) In respect of bulk cargo in bags, if the bags or packages are found in intact condition, it should be so shown in the tally sheets. If the packages or bags are found in damaged or torn condition, the survey shall be carried out immediately and the survey report should indicated the short landed quantity. Such survey report should be carried out as far as possible within 48 hours of unloading.
- (v) In the case of cargo containing the packages or bags and found damage, the Customs authorities shall also take into consideration the sweepings on the wharf and in the ship for ascertaining whether the quantity could be accounted for.
- (vi) Even if the cargo is landed without any makes or numbers, it should be accepted on account of the cargo referred to in the manifest, it is established that the cargo landed from the particular vessel.

(E) Hazardous Cargo Discharged in Barges & Lighters: -

- (i) In case where the hazardous cargo is discharged in lighters and barges, the stevedore who unload the cargo shall prepare the tally sheets and unloading in lighters and barges shall place under the supervision of the Customs Officer.
- (ii) Such tally sheets should be included in the boat-note signed by the Master of the ship, the Master of barge, the stevedores and the Customs Officer.
- (iii) The boat note along with the tally sheet shall be the basis for ascertaining whether the cargo has been short landed and the quantum thereof.

These guidelines should be carried out by all the concerned parties both in its letter and spirit so that the problems would be reduced, if not totally eliminated.

On the merit of the case, Bombay High Court has held -

- (a) Penalty proceeding under Sec. 116 are quasi judicial proceeding hence to be commenced by device of a show cause notice.
- (b) Penalty imposition solely on basis of out turn report and other facts not at all considered, the High Court held the order passed by adjudicating authority bad in law.

DEPARTURE OF VESSELS

Once the imported goods to be unloaded at a Customs Station have been unloaded and other procedures have been complied with, the vessel prepares for loading of Export goods. Usually, the Customs and other formalities are completed beforehand by the master/agent of the vessel during the stay of vessel in the port. The first step towards the completion of procedures for Customs clearance of Export of goods, is the filing of Entry Outwards for the vessel.

Entry outwards

According to the provisions of Section 39 of the Customs Act, 1962, the Master of a vessel shall not permit the loading of any Export goods, other than baggage and mail bags, until an 'Entry Outwards' has been granted to such vessel by the proper officer.

Export Manifest

Section 41 of the Customs Act, 1962, stipulates that the person in-charge of a conveyance carrying Export goods shall, before departure from a Customs Station, deliver to the proper officer, an Export Manifest or an Export Report in the prescribed format. There are provisions in this Section for acceptance of such Manifest or Report by the proper officer, within seven days from the departure of the conveyance, if the Agent or person-in-charge of the conveyance furnishes required security in this regard to the proper officer.

This Section also makes it mandatory for the person delivering the Export Manifest or Export Report to make and subscribe, at the foot thereof, a declaration as to the truth of its contents.

Further, this Section also permits the Export Manifest or Export Report to be amended or supplemented if the proper officer is satisfied that the same is in any way incorrect or incomplete and that there has no fraudulent intention.

Export Manifest (vessel) Regulations, 1976

In exercise of the powers conferred by section 157, read with section 41, of the Customs Act, 1962 (52 of 1962), the Central Board of Excise & Customs hereby makes the following regulations, namely:-

1. Short title and commencement – (1) These regulations may be called the Export Manifest (Vessels) Regulations, 1976.
 - (2) They shall come into force on such date as the Central Board of Excise & Customs may, by notification in the Official Gazette, appoint.
2. Definition – In these regulations, " Form" means a form appended to these regulations.
3. Export Manifest – (1) Every export manifest shall –
 - (a) be delivered in duplicate and shall be signed by the person-in-charge of the vessel;
 - (b) consist of –
 - (i) a cargo manifest, in Form I
 - (ii) a vessel's stores list, Form II
 - (iii) a list of private property in the possession of the Master, officers and crew, in Form III
 - (c) contain particulars in respect of –
 - (i) (a) goods shipped,
 - (b) goods transhipped at the port,
 - (c) goods lying in the vessel but not landed or transhipped (same bottom cargo), and
 - (d) dutiable goods, including arms and ammunition forming part of the ordinary equipment of a vessel;

NOTE - In respect of item (d), arms and ammunition forming part of the ordinary equipment of a vessel shall be shown separately.

- (ii) the names of the ports for which the goods are intended and whether the vessel herself is proceeding to such ports or not;
 - (iii) the names of the ports from which and the vessels by which the goods arrived, in case the goods are transhipped.
- (2) The manifest shall be delivered in separate sheets in respect of cargo on which drawback has been claimed.
- (3) The export manifest for all goods shipped and transhipped and endorsed by the person-in-charge of the vessel as to the quantities shipped and transhipped, shall be delivered to the proper officer in the Export Department, before the departure of the vessel or within seven days from the date of departure of the vessel:

Provided that where the export manifest is delivered within seven days from the date of departure of the vessel, the agent of the person-in-charge of the vessel shall furnish such security as the proper officer deems sufficient for that purpose.

[Notfn. No. 420/76, dtd. 23.10.1976 as amended by Notfn. No. 220-Cus, dtd. 22.10.1977 and No. 261-Cus dtd. 29.12.1977]

FORM I

Export General Manifest (Cargo Manifest) for Vessels

Rotation No.

Port of destination

Manifest of all goods exported per Tonnes Commander under Colour to

Index (Line) No.	Marks, number and kind of packages	Description of goods	By whom shipped	To whom shipped	Shipping Bill No.	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Light House Certificate No.

Port Dues Receipt No.

Cleared Inward as per General Manifest Register No.

Cleared outward theof (month / year).....

I do hereby declare the contents of this Manifest to be truly stated.

Thisday of(month/year).....

Assistant Commissioner of Customs

Commander.

FORM II**Vessel's Stores List**

Name of vessel

ROTATION NO.
YEAR

Name of person-in-charge

Agents

Arrived at the port ofon the day of(month/year).....
(From last port of call).

N.B.: - Person-in-charge should ensure that this list must be correctly filled and delivered to the proper officer of customs, together with cargo declaration. Special care must be taken to see that all arms or ammunitions or both have been declared and are presented to the officer of customs boarding the vessel.

Person-in-charge is warned that before handing over any fire-arms to an officer of customs for examination, he should satisfy himself that the same are not charged and that the magazines are empty.

PART A

I. Alcoholic Beverages :

Description of Stores	<u>Foreign</u> Indian	No. and size of bottles etc. on arrival	No. and size of bottles, etc. issued for consumption	Fresh stock received in Port
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II. Tobacco and Tobacco Products :

Description of Stores	<u>Foreign</u> Indian	Quantity in stock on arrival	Quantity issued for consumption	Fresh stock received in Port
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III. Mineral Oils :

Description of Stores	<u>Foreign</u> Indian	Quantity in stock on arrival	Quantity issued for consumption	Fresh stock received in Port
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IV. Arms, Ammunitions and Explosives Arms and Ammunitions :

Description of arms	Arms		Ammunition	
	Identification Marks	Maker's name	Calibre	Rounds

Explosives:

Description of Stores	Quantity in stock on arrival	Remarks
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V. Vessel's Currency On arrival Issued Taken on Board

VI. Dangerous Drugs in Stock

VII. Wireless Transmission Apparatus:

FORM III**List of Private Property in the Possession of the Master of the Vessel and Crew**

[Such of the articles declared therein as are to be landed, should be specified separately in these columns.]

Total Number of Crew :

Vessel departed for.....

Arrived from.....

Name of the crew member	Position held	Currency			Tobacco products	Alcoholic liquors	Watches	Jewellery	Any other article, not enumerated	Signature	Remarks
		Indian	Foreign	Travellers', Cheques, etc.			S.NO., Make, Brand				
1	2	3			4	5	6	7	8		

Certified that the above declaration is true to the best of my knowledge.

Signature of Master of the vessel.

Loading Of Export Goods

Section 40 of the Customs Act, 1962, makes it mandatory for the person-in-charge of a conveyance not to permit loading of Export goods, other than baggage and mail bags, unless a Shipping Bill or a Bill of Export or a Bill of Transshipment, duly passed by the proper officer, has been handed over to him by the Exporter of the goods. Also he shall not permit loading of Mail bags & Baggage, unless their Export has been duly permitted by the proper officer.

Under this Section, loading of export goods is prohibited till the time the same are duly examined & permitted Clearance by the proper officer of Customs. An obligation has been cast on a person-in-charge of the conveyance not to permit loading of Export goods unless he verifies this position from the documents handed over to him by the Exporter.

Transshipment of goods is allowed provided they are mentioned in the Import Manifest or Report as for Transshipment, and a transshipment application has been made and duly allowed by the proper officer. Loading of dutiable or prohibited goods on a conveyance without the permission of proper officer, renders such goods liable for confiscation under Section 113 (g) of the Customs Act, 1962, attracting penal provisions under Section 114 of the Act.

Departure of Vessels from the port

Once all the unloading of imported goods & loading of export goods has been completed and all the formalities of Customs, Port authorities and other Government agencies have been complied with, the vessel is ready to leave the port.

Section 42 of the Customs Act, 1962, prescribes that no conveyance shall leave any Customs station until a written order to that effect has been given by the proper officer.

The conditions of grant of such order are as follows –

- (a) the person-in-charge of the conveyance has answered the questions put to him under Sec. 38;
- (b) the provisions of Sec. 41 have been complied with;
- (c) 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;
- (d) 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 or the payment secured by such guarantee or deposit of such amount as the proper officer may direct;
- (e) the person-in-charge of the conveyance has specified the proper officer that no penalty is leviable on him under Sec.116 or the payment of any penalty that may be levied upon him under that section has been secured by such guarantee or deposit of such amount as the proper officer may direct;
- (f) 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,-
- (i) such goods have been unloaded, or
 - (ii) where the Assistant 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.

Port Clearance –

The written order referred to in Section 42 is called “Port Clearance”, which is issued by the Assistant/ Deputy Commissioner, Export Department, on a written application made by the Owner, Master or the Agent of the vessel, subject to the fulfilment of the conditions laid down in the Section 41 and 42 of the Customs Act, 1962.

The Section Officer shall board the vessel one hour before its departure for granting the port clearance to the Master of the Vessel. He should ascertain that the vessel has completed loading of all export cargo/stores etc. and all the hatches are closed. He should verify and check that the load lines are well above the water level and visible. This is to ensure that the vessel is not overloaded, endangering the vessel and its crew members.

He should verify that the seal on the bonded stores is intact and not tampered with. He should carry out percentage check of the private property list of the members of the crew. He should ascertain that the balance of the Indian Currency received by the Master for disbursement to the crew of the vessel from the agents, if any, has been returned back to town. If any discrepancies are noticed while checking the above they should be reported to the Divisional Supdt. immediately. On the other hand if everything is found in order he should deliver the Port Clearance to the Master alongwith the Circulating copy of the vessel's store list in a sealed cover -if the vessel is proceeding to an Indian Customs Port. He should obtain the following documents -

- 1) Receipt for the Port Clearance in duplicate.
- 2) List of deck cargo in duplicate.
- 3) List of ships currency in duplicate.

After the vessel has departed, he should despatch the receipt for the P C and copy of Deck Cargo memo to Export department in the Custom House, Passenger list and Currency declaration to the Baggage Section in the Custom House.

Exemptions to Certain Vehicles and Conveyances

Chapter VI envisages the provisions under Customs Act, 1962, for regulating the movements of the conveyances carrying imported or export goods.

Section 43 of the Customs Act, 1962, however, outlines certain exemptions granted to certain classes of conveyances from the provisions of Chapter VI. These exemptions under Section 43 stipulates that –

- a) Provisions of Section 30, 41 & 42 shall not apply to a vehicle that carries no goods other than baggage of its occupants.
- b) The central Government may exempt the following class of conveyance from all or any of the provisions of Chapter VI of Customs Act, 1962 –
 - (i) Conveyances belonging to the Government or any foreign government.
 - (ii) Vessels & aircraft which temporarily enter India by reason of emergency.

PREVENTIVE CONTROL IN BUNDERS

As discussed earlier, Bunders are small ports mainly catering to the Coastal Trade and the goods carried by native / country crafts. The Bunders are normally un-enclosed but guarded areas. The Preventive supervision on loading / unloading of goods and other activities carried in and around Bunders is necessary from the point of view of prevention of smuggling and other illegal activities at these places. A contingent of Preventive staff is always posted at these Bunders to oversee these requirements.

(A) Bunders

Although the volume of work at the Bunders is considerably less than that in the docks, the scope for evading the requirements of the law and the prohibitions and restrictions imposed is greater owing to the fact that the Port Trust undertake no responsibility for the custody and delivery of goods landed at or brought for shipment at any of the Bunders and that any of these places are not provided with barriers in the form of surrounding wall of fencing to prevent the surreptitious removal of goods. There is therefore a need for a continuous Preventive vigilance over the whole area covered by these Bunders. For carrying out the necessary preventive measures and for dealing with the transactions at these Bunders, a staff of Preventive Officers and Sepoys is provided which are supervised by the concerned Divisional Superintendents. The duties of the staff at a bunder, in relation to the arrival and departure of vessels and the importation, warehousing, exportation and transhipment of goods are described in the related chapters of this Manual.

Duties of Guard duty officers at Bunders

All members of the Preventive Service posted for Guard duty at various Bunders are expected to be alert during the entire time they are on duty in addition to making systematic and intelligent patrols as required by the relevant orders in force at each station. On leaving to visit another Bunder and to patrol the intermediate portion of the foreshore, they must enter the fact in their diaries and state the time of their departure and return. A similar entry must be made in the diary at the Bunder visited.

(B) Boarding Office for Native / Country crafts

This Office normally referred to as Anchorage Office, is usually situated outside the docks area preferably at a centrally located place. This is the place provided for dealing with all transactions connected with the arrival and departure of country crafts carrying imported/export goods, which are required, on arrival in port –

- (a) To report arrival / departure at the port,

- (b) To unload imported goods / load export goods,
- (c) to anchor at the places appointed by the Notifications issued under Customs Act, and
- (d) to comply with any other Rules and Regulations as to the discharge and shipment of cargo at these places.

At many Ports, the Anchorage Officer is also given charge of some Bunders where such goods are loaded / unloaded. In such cases, the Anchorage Officer has to function also as Bunder Officer in addition to his Anchorage duties.

Functions of Preventive Staff at Anchorage Office

The staff from Preventive department is posted for dealing with the Preventive & clerical duties and supervisory functions connected with the transactions at this Office. The Anchorage office is supervised by the Superintendent (P) in- charge, who is responsible for seeing that the procedures and instructions laid down from time to time in this regard, are properly understood and intelligently applied and for taking effective measures to prevent the smuggling of dutiable goods or contraband from the vessels moored in the anchorage lines.

The primary function of the Anchorage Officer is to act as the Boarding Officer for country / native crafts arriving and departing from / to foreign destinations at the port / Bunder.

The duties of Superintendent and Preventive Officer at the Anchorage Office are as follows:-

Duties of Superintendent / Anchorage

1. Supervision of the work of Preventive staff at Anchorage Office
2. Occasional examination of vessels-
 - (a) on arrival from foreign or Indian ports in for arms, ammunition, contrabands, etc.
 - (b) from which cargo is jettisoned,
 - (c) with dutiable cargo proceeding to a Bunder for discharge,
 - (d) for measurement of Deck cargo on export.
 - (e) which has brought passengers.
 - (f) Country crafts which have been compelled to return after grant of Port Clearance due to unforeseen circumstances.
3. Occasional checking of imported bond and other stores, and also when a country craft is converted from the foreign to coasting trade.
4. General supervision of :-
 - (a) shipment of ex-bond goods,
 - (b) shipment of drawback goods,
 - (c) transshipment of dutiable goods.
5. Patrolling the Bunder / port for occasional check of –
 - (a) loading operations.
 - (b) Discharge operations,
 - (c) Transshipment and drawback cargo,
 - (d) Cargo boats, barges, etc., and

Duties of P. O. In-charge / Anchorage

1. He grants Arrival Report for all Sailing Vessels arriving from foreign ports and going to foreign ports.
2. He checks Import Cargo Manifest, Deck Cargo Manifest, if any, stores list, Private property list of crew of such vessels and receives copies of these documents in triplicate.

3. He boards the vessels and perform the duties of Boarding Officer and deals with the papers accordingly and maintains Arrival Register and physically verifies the declaration made in above documents.
4. He carries out the examination / inspection of the abovesaid vessels (a) for arms/ammunition (b) the cargo jettisoned (c) for dutiable cargo for discharge at the port/bunder (d) for checking of Stores List (e) for check of Private property of the crew (f) for measurement of deck cargo ,if any.
5. He boards the vessels again, after the final reports, completion of discharge of cargo and after examination of the vessel, endorses the Import Manifest accordingly.
6. He grants permission to the Tindal to take his vessel for oiling and painting or loading with export cargo to designated place, after obtaining application in quadruplicate. The 1st copy is for his record, 2nd copy for information of Division office, 3rd copy for information to the Division, where the vessel is leaving for oiling and painting and 4th copy for the Tandel of the vessel.
7. He patrols the wharves of Bunder(s) under his control, where, cargo is being unloaded from country crafts plying on foreign routes and does occasional check of discharge operations. He also keep does occasional check on discharge of cargo from Cargo Boats and Barges in the wharf.
8. He carries out examination of vessels and check of stores when a vessel is converted from the foreign to coastal trade and vice versa.
9. He also carries out the examination of vessels whenever cargo is reported to have been jettisoned or which have returned back after grant of port clearance, due to unforeseen circumstances, such as, bad weather, engine trouble, services sickness of any crew member etc. In such cases, the P. O. in-charge will record the statement of the Tindal and submit his report to Asstt ./ Dy. Commissioner(P)(G) through Superintendent /Anchorage.
10. He issues Boat Notes for local or transhipment cargo and makes appropriate endorsements in these documents after completion of functions and endorses Import Manifest accordingly for goods transhipped. He maintains Register for Boat notes issued.
11. He takes Arrival Report of Cargo Boats, Barges and maintains Registers of such arrivals at the Bunder under his charge. He patrols the wharves under his charge to ensure that no unauthorised shipment or landing is taking place and also to prevent smuggling from country crafts, etc.
12. He supervises unloading, if any, of Import Cargo landed by Cargo Boats, Barges or from foreign going country crafts and maintains Cargo Boat/Barges Register.
13. He assists Superintendent / Anchorage in disposal of references from other departments / ports regarding transactions dealt with at Anchorage Office.
14. He forwards Monthly statements of Arrival of Country Crafts plying on foreign routes and other statements, as per orders from Custom House.
15. He also submits report regarding cargo Short Landed or Excess Landed from country crafts plying on foreign routes, Cargo Boats/Barges and maintenance of Register regarding to Asstt./ Dy. Commissioner (P) (G) through Superintendent / Anchorage.

(C) Fishing jetties / wharves

In all the Indian ports, fishing constitutes an important activity. The fishing crafts of various sizes & capacity, alongwith their fishing and other gear depart from the ports and return to the port after few days with their catch. In each port, certain jetties / wharves are earmarked for departure / arrival of fishing crafts and unloading of fish.

Fishing activity is regarded as a 'coastal trade' activity. Accordingly, the customs formalities in respect of arrival / departure have been relaxed, except the issuance of the seasonal passes to such crafts. Before issuance of such passes, the owners / tindels of these crafts have to observe certain rules / regulations issued by the Mercantile Marine Department and concerned local authorities of the State governments.

A Standing Order issued by the Mumbai Customs on the subject of issuance of Passes to fishing crafts is reproduced below -

1. Apropos Govt. of India Notification No. 43/97-Customs (N.T.) dated 11.09.97 and followed by Ministry of Finance, Department of Revenue Circular No. 40/97 in F. No. 450/86/92 Cus. IV dated 19.09.97 issued under Section 98 of Customs Act, 1962, the vessels carrying coastal goods exclusively are hereby exempted from the provisions of Section 92, 93, 94, 97 and 98 (1) of the said Act.
2. Applying the same analogy to the fishing trade, a Public Notice has been issued, according to which the fishing activity will be treated as coastal trade. As such, the Public Notice No. 40 dated 15.03.1999 (reproduced in Chapter on " Coastal Trade " of this Manual) becomes applicable to the fishing trade. In terms of the said Public Notice, Entry Inward on arrival and Entry Outward at the time of departure now have been dispensed with. The fish shall be landed at appointed places only.
3. Henceforth, the officer posted at the said fishing wharf will not make any entry in the 'Shera Book' on arrival / departure or accept arrival report / grant Port Clearance to fishing crafts.
4. The Preventive Officer posted at these places shall carryout occasional checks only and make an entry in the advice book of the craft, if anything adverse is noticed. Discrepancies of serious nature may be brought to the notice of the Assistant Commissioner of Customs/Preventive (General) through their Divisional Superintendent, which will then be dealt with as per merits of the case.
5. As laid down earlier, seasonal passes shall be issued in the prescribed proforma as was done earlier but the duration of the passes shall be as follows: -

(a) Non-mechanised crafts/vessels/trawlers	:	One Year : (From 1 st Oct. to 30 th Sept.)
(e) Mechanised fishing crafts/vessels/trawlers:		From 15 th Aug. or Narli Poornima date, whichever is earlier, to 10 th June of next year.

[Standing Order No. 7479 dated 17.07.1999, issued by Commissioner of Customs (G), Mumbai, in file no. S / 43 – 37 / 99 P]

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CHAPTER - FIVE

IMPORTS AND EXPORTS BY AIR

PRELIMINARY

India has an important presence on international scenario not only as an Exporter/Importer of large number of commodities but also occupies an Importance place on the civil aviation map. Everyday, numerous International and domestic flights operate from Indian Airports carrying large no. of passengers and goods within India and outside India.

The modern day aircrafts carry passengers as well as cargo in sizeable quantities to many destinations in a single journey. Now a days, most of the countries in the world have their own airlines which operate their aircrafts in accordance with requirements, trade policies, international aviation laws, international relations, etc. Sometimes, there are flights, which cater only to cargo movements.

With the advancements in the field of aviation, the traffic through air-routes all over the world has increased manifold in the recent years. Aircrafts, which are capable of carrying large number of people, cargo, equipment etc. with faster speeds and to greater distances, have descended on the international civil aviation scene. The facilities of greater speed and capacity provided by these modern aircrafts have made them popular for transportation of cargo across the countries via air-routes.

AIR CARGO COMPLEX

Almost, all the International Airports in our country have an Air Cargo Complex, normally situated adjacent to these airports for the sake of convenience. These complexes are enclosed and guarded Customs stations notified under sections 7 & 8 of the Customs Act, 1962, for unloading/loading/storage and clearance of Imported / Export / Transshipment Cargo. Normally, the Airports Authority of India, under Section 45 of the Customs Act, 1962, are appointed as custodians of cargo Imported at the Airport and stored & cleared from the Air Cargo Complex. However, at some Air Cargo Complexes like at Mumbai, the Custodians job at the Cargo Complex has been entrusted to both Air India Ltd. and the Airports Authority of India.

The Customs and others formalities to be completed by the owners / commander or agents of the aircraft at the time of its Arrival and Departure have been discussed in the Chapter under the heading 'Airport' of this Manual.

As soon as an aircraft arrives at the airport, various agencies providing different services for the operations of the aircraft, swiftly attend to it. The passengers and their baggage is diverted to the Passenger Terminal for Immigration and Customs clearance. The cargo carried by the aircraft is diverted to the Air Cargo Complex for further procedures.

The owner or handling agency of the aircraft executes the work of unloading of Imported goods and loading of Exports goods under general supervision of Customs. The Imported goods, after having been unloaded are stored first in the warehouses of the concerned airlines and subsequently shifted to the warehouses of the custodian and serially entered in their Registers as per the Import Manifest. Thereafter, the freight forwarder or the concerned airline intimates the consignees, about the arrival of goods and after collecting the charges, issues a "delivery" order. The Importer of goods, either self or through a Custom House Agent, presents a Bill of Entry under Section 46 of the Customs Act, 1962, to the Customs Authorities at the Cargo Complex, for clearance of the same.

On the Export side, the Export goods are carted to the Air Cargo Complex and Export documents like Shipping Bill, etc., are filed there. The goods have to be booked with the concerned Airlines and then presented to the Customs for examination/inspection.

The goods are then cleared through Customs in the same manner as described in the Chapters on "Import Clearance" and "Export Clearance" of this Manual.

TYPES OF AIR CARGO

The cargo carried by the aircrafts and handled at the Air Cargo Complex can be broadly categorised as –

A) Import Cargo

B) Export Cargo

A) Import Cargo – The Import cargo carried by an aircraft on an International flight can be sub-divided into the following categories –

- (1) Cargo meant to be cleared at Cargo Complex of Import.
- (2) Cargo to be unloaded and then transhipped either to foreign or to an Indian airport / Customs Station.
- (3) Direct delivery cargo.
- (4) Airlines Stores and Mails.
- (5) Cargo booked by freight forwarders and arrived as consolidation.
- (6) Cargo to be transitted in same aircraft.

(B) Export Cargo – Similarly , the Export cargo to be carried by an International flight can be sub-divided into three broad categories –

- 1) Cargo booked by the Airlines or by their General Sales Agents at the Station of Air Cargo Complex t.
- 2) Cargo booked by the local freight forwarders and handed over to the Airlines as consolidated cargo.
- 3) Cargo arrived from other stations for Export through the Air Cargo Complex.
- 4) Cargo booked by the Airlines or their GSAs at the Station of Air Cargo Complex and transferred, after clearance, to other International Airports for final shipment.

MOVEMENT AND CLEARANCE OF CARGO AT AIR CARGO COMPLEX

Following is the broad Structure for movement of above mentioned types of Cargo right from receipt at the Air Cargo Complex till their final clearance for home consumption / transhipment / Export-

a) **Import Cargo** – The entire cargo is unloaded from the aircraft and shifted to the warehouse of the concerned Airline under Customs Supervision. In the Airline warehouse, the cargo is segregated into the six Categories mentioned above and entered into the Warehouse Registers Categorywise, separately.

(i) The Import cargo meant to be cleared at the Cargo Complex of Import is forwarded by the I F O (Airline Warehouse) under a challan and is received into the Warehouse of the Custodian by the I. F. O. (Air Cargo Complex). The Cargo is then entered into the Register of the Custodian and after all the necessary Import procedure have been completed by the Importer for the Customs Clearance of the goods, the same are delivered to him and removed through specific exit Gates for home consumption.

(ii) The Import Transhipment Cargo can be of two types –

- 1) Cargo to be transhipped to a foreign destination, and,
- 2) Cargo to be transhipped to a local/inland destination.

1) The Foreign to Foreign Transhipment cargo, on arrival, is shifted from the warehouse of the Importing Airlines under Cargo Transfer Manifest to the Warehouse of the Exporting Airlines and subsequently shipped, under Customs Supervision, to the airport of destination.

2) Similarly, the Foreign to Local transhipment cargo, on arrival, is shifted from the warehouse of the Airline under CTMs to the warehouse of the Domestic Carrier Airline and subsequently despatched under Customs Supervision, to the airport of destination, with accompanied Advice letters.

The Foreign to Local transshipment cargo to be delivered at local/inland Customs stations by Rail/Road, is cleared under Transshipment Permit procedure at the Air Cargo Complex itself.

(iii) The Direct Delivery Cargo is also shifted under challans to the Direct Delivery Warehouse of the Air Cargo Complex and cleared as per Direct Delivery procedures.

(iv) The Airlines Stores and mails are also shifted to appropriate places from the warehouse of the concerned Airlines under Challans/Preventive Escort.

(v) Import Cargo booked as Consolidation cargo by the freight forwarders abroad, is shifted to the Break-bulk warehouse of the Custodian under Challans. In this Warehouse, the break-bulk cargo is segregated and despatched categorywise in the same manner as Import cargo directly booked by the Airline.

(vi) Goods to be transited in the same aircraft are normally not unloaded and are allowed to be so transitted.

b) Export Cargo – The movement and clearance of the aforesaid (4) categories of Export cargo is as under –

(i) The cargo booked for Export by the Airlines or by their GSAs locally is carted to Export Shed of the Air Cargo Complex for examination / inspection by Customs for clearance and subsequent Export. After the cargo has been cleared for Export, the same is moved from Air Cargo Complex to the Warehouse of the concerned Airline under Challans and shipped under Customs Supervision.

(ii) The cargo booked for Export by local freight forwarders is presented to the concerned Airline and booked as consolidated cargo. The same is carted to Air Cargo Complex and cleared for Export as (i) above.

(iii) Export Cargo carried by the authorised Domestic Carrier Airline is first entered and stored in its Warehouse. Such cargo is then transferred to the Warehouse of the concerned International carrier airline under CTMs and Preventive Escort. Thereafter the same is shipped under Customs Supervision. The Shipping Bills/ Advices are to be suitably endorsed regarding Export of subject goods and despatched to the airport of origin of such cargo.

(iv) The cargo booked for Export by the Airlines or by their GSAs locally is carted to the Export Shed of the Air Cargo Complex for examination / inspection by the Customs for clearance and subsequent Export from other International Airports. After the cargo has been cleared for Export, the is moved from the Air Cargo Complex to the warehouse of the concerned Domestic Airlines under Preventive escort and transferred under Bond same Domestic Airline to other International Airport under the cover of an Export General Manifest for onward shipment. The said EGM is duly endorsed by the Customs Officer regarding the export of the subject goods to the final destination and returned alongwith a copy of the EGM of the foreign going carrier, to the Customs Officer / Domestic Airline Warehouse through the same Domestic Airlines for closing the entries and canceling the Bond.

Movement of Imported Cargo by Containers / Trucks from Airport / ACCs to ICDs / CFSs / Airports /ACCs

Attention is invited to the subject mentioned above that a number of references have been received from the trade and the Ministry of Commerce for allowing movement of Imported cargo in containers/trucks from the airports / ACCs to ICDs / CFSs / Airport / ACCs. It has been stated that the movement of Import cargo from the airports / ACCs to the ICDs / CFSs / Airports / ACCs is required in view of the fact that the number of flights at most of the airports other than the gateway airports are restricted and there is loss of time involved in waiting for the cargo / Passenger flights as per a available schedule.

2. The matter has been examined. With a view to supplementing the existing flights and providing adequate flexibility to the trade in the choice of modes of transport, it has been felt that movement of Imported cargo in containers / trucks should be allowed between airport / ACCs and airport / ACCs / CFSs / ICDs. Accordingly the following procedure is laid down for transshipment of Imported cargo under bonded trucking facility from airports / ACCs to ICDs / CFSs / Airports / ACCs.

(i) On the basis of the request made by the Airlines and in pursuance of powers vested under Section 45 (1) of the Customs Act, 1962, the Commissioner of Customs will appoint the Airlines or their duly approved agent as the custodian of all cargoes to be transhipped under bonded cargo trucking facility from airports / ACCs to ICDs / CFSs / Airport / ACCs in hinterland by road. The permit will be valid for one year from the date of issue initially and shall be renewed for every three years subsequently.

(ii) The transshipment of Import cargo will be governed by the provisions of Chapter VIII of Customs Act, 1962 and the Goods Imported (Conditions of Transshipment) Regulations, 1995.

(iii) The cargo to be transhipped should have been manifested as for transshipment in the incoming international carrier who has landed the cargo. In respect of console cargo where the Master Airway Bill does not show the final destination, the Airlines filing transshipment application should keep a copy of both Master Airway Bill and House Airway Bill to indicate that the particular consignment sought for transshipment is for other inland customs Airport / ICD / CFS / ACC.

(iv) The Custodian should execute a suitable running bond with a bank guarantee for an amount approved by Commissioner of Customs concerned for proper account of cargo. The amount will be debited from this bond when the transshipment cargo is taken by the custodian and it will be credited when the proof of handing over of the cargo to customs at final destination is produced. The custodian will be responsible for any shortage or pilferage of the cargo. The custodian will insure such goods for full value as well as the customs duty involved.

(v) The Custodian will submit a list of trucks together with registration numbers to be used for movement of each transshipment cargo. The trucks so deployed for transport should be specially secured to avoid pilferage of cargo and there should be a provision of affixing of Customs "Bottle Seals" on these trucks.

(vi) The Airlines / Custodian should have a transshipment warehouse within the Airport Apron area so that the goods on unloading can be shifted to the transshipment warehouse without having to be moved outside the Airport area. The concerned Airlines / Custodian warehouse should have double locking arrangement, one key of which will be with the Airlines / custodian and the other with Customs, for storage of transshipment cargo Preventive Officers will be posted at the Airlines / Custodian warehouse on cost recovery basis.

(vii) If the Airlines / Custodian does not have a transshipment warehouse, the Import cargo for transshipment duly passed with transshipment application will be received by them from the Airport Authority of India" (AAI) custody to their make-up area specially earmarked for the purpose of palletisation / containerisation on the same day under customs supervision and if for any reason the goods cannot be transhipped immediately, the same should be handed over to AAI.

(viii) The custodian so appointed and deciding to tranship the cargo will present transshipment application (5 copies) along with the copy of Airway Bill (both Master copy and House Airway Bill wherever applicable) to the Customs office incharge of transshipment clearance. The original transshipment copy must be affixed with Rs. 20 stamp as T.P. fees. The transshipment application should contain details such as (a) name and address of the Importer; (b) name and address of the Exporter; (c) country of origin; (d) Airport of destination; (e) flight No. and date; (f) Import Manifest No. and date; (g) description of goods; (h) value of the goods; (I) Nos. of packages; (j) weight gross / net; and (k) details of container / Palletised vehicle on which the cargo consignment is to be carried.

(ix) After scrutiny of T.P. application the T.P. Officer will issue Customs Bottle Seal and hand it over to the Customs Officer supervising the loading of the cargo in container / truck. T.P. Officer will mention Sl. No. of Customs Bottle Seal on all copies transshipment applications.

(x) On getting the transshipment permission the Custodian / Airlines will shift the goods from AAI warehouse to the make – up area earmarked for the purpose into the container / truck within the premises of the warehouse under the supervision of the Customs Officer posted for the purpose. After loading of the goods, the Customs Officer will seal the container / truck with Customs Bottle Seal and endorse all T.P.copies as :-

Supervised the loading ofNo. of packages non container / truck No.destined to Airport / ACC / CFS / ICD and sealed with Customs Bottle Seal No.....on (date) covered by Transshipment Permit No.

Name and Signature of Customs Officer

(xi) Original copy of T.P. application will be forwarded to the Import Freight Officer (IFO) of Customs at the Inland Airport / ACC / ICD / CFS of destination. Duplicate copy will be retained by T.P. Officer. Triplicate copy of T.P. application will be handed over to the Airlines / custodian. The 4th copy will remain with the Customs Officer posted in the Airlines / Custodian warehouse and supervising the loading of cargo. The 5th copy will be sent in sealed cover along with the truck / container to IFO of Customs at the Airports / ACC / CFS / ICD of destination who will retain it after verification of cargo.

(xii) The Import Freight Officer of Customs at the Inland Airport / ACC / CFS / ICD of destination will check the Customs Bottle Seals and description of packages as per T.P. copy. He will tally the packages with the copies of the manifest received and will ensure that the packages are in good condition. The safety and security of the packages is the responsibility of the custodian. In case of any damage at the time of internist, it should be clearly indicated in all copies of manifest and attested by custodian. The IFO at the airport / ACC / CFS / ICD of destination after receiving the cargo shall give a suitable endorsement on the original T.P. copy.

Checked Customs Bottle Seal and packages as per T.P. application No. dated.....arrived on Container / Truck No.on (date).

Name and Signature of IFO Customs

The IFO will retain the T.P. copy sent with the truck for record.

(xiii) The endorsed original T.P. copy will be presented by the Airlines / Custodian as evidence of handing over of the cargo to the transshipment officer at the Air Cargo Complex / Airport from where the transshipment permission was granted.

On receiving such endorsed T.P. copy the transshipment officer will close the entry in the register.

(xiv) The Airlines / Custodian shall make necessary arrangements at the airport / ACC / ICD /CFS of destination to remove the cargo and deposit the same with custodians appointed under Section 45 of the Customs Act, 1962, under Customs supervision.

(xv) The Airlines / Custodian shall produce the evidence of handing over of the cargo at the Inland Airport / ACC /CFS / ICD of destination within 30 days from the despatch of goods failing which suitable action will be taken.

(xvi) The Airline / Custodian will be required to bear the expenditure on cost recovery basis over the preventive staff to be provided exclusively for this purpose.

PROCEDURES FOR MOVEMENT AND CLEARANCE OF CARGO AT AIR CARGO COMPLEX

The following paragraphs outline the procedures for movement and clearance of Cargo at Air Cargo Complex-

Unloading / loading, checking, escorting and storage of Air Cargo

In terms of Sec. 45 of Customs Act, 1962, the Airports Authority of India has been appointed as the Custodians of the Import cargo at the Air Cargo Complexes. However, all the cargo remains under Customs control and supervision and the AAI / custodian will be accountable to the Customs Department in respect of the Cargo in terms of the provisions of the said section.

Import Cargo meant for clearance at the Air Cargo Complex of Import shall be stored in and cleared from the Air Cargo Complex upto a period of 14 days from its arrival. Thereafter, if necessary, the cargo will be removed under Customs supervision for storage in and clearance from the Warehouse controlled by A.A.I. Import Cargo not cleared within one month of its arrival will be disposed of by the A.A.I. in terms of Section 48 of the Customs Act, 1962.

The A.A.I. / custodians will maintain registers and records in the manner indicated hereunder and forward such returns to the Customs as may be prescribed from time to time.

Procedure for clearance and examination of Export and Import cargo at Air Cargo Complexes

In order to examine the procedures involved in clearance of export and import cargo at the Air Cargo Complexes, the 16th Meeting of Export Promotion Board was held at International Cargo Terminal, IGI Airport, New Delhi on 23rd October, 1998. It was presided over by the Cabinet Secretary. The Export Promotion Board visited the cargo handling area with a view to see the various process/operations involved in clearance of export and import cargo.

2. Pursuant to the decisions in Export Promotion Board, the Board has ordered the following: -
 - (a) All airlines may be directed to submit their Import General Manifest immediately on arrival of the flight, even though Section 30 of the Customs Act provides for submission within 24 hours. Suitable standing order be issued by Commissioners.
 - (b) On arrival of export cargo, the Computer or the A. C. shall select the package numbers which would be retained for examination. Those packages from the consignment may be kept at the examination area and rest of the packages may be directly taken to nation area/palletisation area. Retained packages would be examined and later on transfer to Bonded area.
 - (c) Henceforth export cargo will be received in the Delhi Cargo Terminal up to 9.00 PM and the delivery of import cargo will also be allowed up to 8.00 P. M.
 - (d) In terms of instructions contained in Circular No. 33/96-Cus., dated 17th June, 1996, export consignments of perishable goods like fruits, vegetables and flowers would not be subjected to routine customs examination at Airports and Air Cargo Complexes.
 - (e) The Customs Departments would make available an officer for supervision of segregation of import cargo which mainly arrive in the night and has to wait for 12 to 36 hours for the segregation work to be taken up.

[Board's Circular No. 89/98-Cus., dated 03.12.1998 from F. No. 450/147/98-Cus. IV]

(A) IMPORT CARGO

On arrival of the aircraft , the entire Import Cargo will be shifted to the warehouse of the respective Airlines under Customs supervision and the Airlines will present to the concerned Import Freight Officer (I. F. O.) of Customs, in-charge of Airline's Warehouse, two copies of the Import General Manifest duly numbered, stamped and signed by the Station Duty Officer at the Airport.

The Airlines representative will then open the pallets/containers, in presence of the Import Freight Officer (Airlines' warehouse), and sort the cargo in their warehouse into the following categories (1) for clearance through Air Cargo Complex (including excess landed cargo), (2) for transshipment to other Customs Ports/Airports, (3) for transshipment to Foreign Ports, (4) Airlines Stores and (5) for Direct delivery.

The Airlines representative will then prepare break-up statements of Cargo in respect of each flight, in proforma at Annexure 'A', which will be endorsed by the concerned I.F.O.(W/H). The I.F.O.(W/H) will also endorse a copy of the I.G.M. (called Master copy) in token of having checked the particulars. He will enter particulars like Air Way Bill No., no. of packages, etc., of the short-landed and/or excess-landed packages on the reverse of Master copy of I.G.M. The Air lines representative will then make challans for each type of cargo indicating the I.G.M. No. /Flight No./Air sway Bill No. of each package and the total number of packages. These challans, if prepared by some agency other than the Airlines, should also be countersigned by the Airlines officials. These challans will be countersigned by the I.F.O.(W/H).

The Airlines representative, taking a route inside the Airport ,will then forward the cargo to the Air Cargo Complex in closed vans. If the cargo is of the type/size that it cannot be place in closed vans, the same may be taken in open trucks. The I.F.O.(W/H) will ensure that all such cargo is removed to Air Cargo Complex , Airlines Bonds, etc., within 24 hours of its arrival. The Airlines, representative will hand over the cargo meant for Air Cargo Complex to the representative of the A.A.I./ custodian and will obtain acknowledgement of receipt of the packages covered by the Manifest, on the Master copy of the I.G.M. and on the challans accompanying the said manifest. The cargo transfer challans will also be signed by the I.F.O.(ACC).

The representative of the Airlines after obtaining the acknowledgementS from A.A.I. /custodian's representative, will handover the I.G.M. (Master copy) and the challan, to the I.F.O.(Air Cargo Complex). The I.F.O.(Air Cargo Complex) in turn will forward, alongwith other challans covering the despatches of cargo covered by the particular manifest to Airlines Bonds etc.; documents relating to direct delivery; copy of the break-up statement and an extra copy of the I.G.M., etc., immediately to the Office Superintendent (Air Cargo Complex).

In case of the Consolidation cargo, the concerned I.F.O. (W/H) will forward such cargo under challans to the Break-bulk Unit of the Air Cargo Complex and obtain an acknowledgement from the custodian and the Customs Break-bulk officer and dispose of the documents in the manner described above.

ARRIVAL CARGO BREAK-UP STATEMENT

Flight No. _____ Date _____ Arrival Time _____ Regn. No. _____ I.G.M. No. _____

PACKAGES MANIFESTED	PACKAGES RECEIVED	PACKAGES FOR CARGO COMPLEX	PACKAGES FOR MMTC	PACKAGES FOR CATERING BOND	PACKAGES FOR AI STRONG ROOM	PACKAGES FOR DIRECT DELIVERY	PACKAGES FOR TRANSHIPMENT
		<u>Light</u> Consol : Direct : <u>Heavy</u> Consol : Direct : <u>Baggage</u> TOTAL	Packages for SHB		Packages for ETV S/Room		Direct : Consol : Total :
Packages Short Landed : <u>AWB No.</u> <u>No. of Pkgs.</u> <u>From/ To</u>				Packages received in excess : <u>AWB No.</u> <u>No. of Pkgs.</u> <u>From/ To</u>			
<u>Packages detained :</u>							
<u>Remarks :</u>							

Signature of Airline Staff

Signature of the Customs I.F.O.

I.G.M. Register

The I.F.O.(Air Cargo Complex) will also maintain an I.G.M. Register in proforma at Annexure 'B'. The I. F. O. at the Air Cargo Complex, will obtain from the S.D.O. (Airport) details of flights landed during the period and will enter the same in the register. Airlines stores meant for storage in Airlines Bonds will be taken by the Airlines to their bonded warehouse against a challan under Customs escort. The Customs Officer in-charge of the Airline's bonded ware house will acknowledge the receipt of the said cargo to the I.F.O., who will attach it with the Master copy of the I.G.M. before forwarding it to the Office Superintendent (Air Cargo Complex).

As soon as the Master Copy of the I.G.M. is received, the I.F.O. (ACC) will complete the relevant entries in the I.G.M. register.. It will be the duty of the Supdt. (P)./Cargo to ensure that in respect of each and every flight landed, the master copy of the I.G.M. together with the cargo is received in the Cargo Complex within the 24 hours of landing. He shall also verify that the documents relating to transfer of cargo to ACC, Airlines Bonds, Direct Delivery W/H etc., are attached with the manifest.

The I.F.O. (ACC) will check from the Warehouse Register maintained by the representative of the A.A.I./ custodian, whether the cargo shown in the master copy of the I.G.M. and the challans have been received in the Cargo Complex; and have been entered in the said register. He will transcribe in the Master copy of the I.G.M. the R. No. (Register number) assigned to each package in the Ware House Register. He will also update the register maintained in proforma at Annexure "F", by the I.F.O. (ACC).

Annexure 'B'**Proforma of I.G.M. REGISTER**

Date	I.G.M. No.	Flight No.	A/C Marks	Arrl. Time	Arrd. from	No. of pkgs. manifested	No. of pkgs. landed Airlines stores	No. of pkgs. meant for airpool
1	2	3	4	5	6	7	8	9
Pkgs. to be stored in cargo complex		No. of pkgs. to be retained in cold storage	No. of pkgs. for storage in strong room	No. of Excess landed pkgs.	No. of short landed pkgs.	No. of Pkgs. for Direct delivery		
10		11	12	13	14	15		
No. of pkgs. for Transhipment				Batch no.		Cargo officers name and signature.		
16				17		18		

Annexure 'F'

Date	IGM No.	Flight No.	Arrival time	No. of pkgs. landed	No. of pkgs. recd. In cargo complex	No. of pkgs. for T.P.
1	2	3	4	5	6	7
Date and time of receipt of IGM	Date on which particulars transcribed in IGM from the warehouse register		Date on which master copy forwarded to office	Signature of the Cargo Officer and date		Signature of the Supdt. (cargo) and date
8	9		10	11		12

Accounting for items in the I.G.M.

In regard to packages landed in excess or short landed, the I.F.O. (ACC) will submit a report to the Asstt./Dy. Commissioner/Air Cargo Complex, through Superintendent (P). After verifying that all information and documents have been collected and particulars verified, the I.F.O. (ACC) will forward the Master copy of the I.G.M. to Office Supdt./A.C.C. who will take further action in regard to closing of the I.G.M. For this purpose action will be taken by the O.S./A.C.C only in respect of the packages shown on the Master copy of the manifest as short / excess landed. As for packages certified as entered in the register maintained by the A.A.I. / custodians are concerned, these will be deemed to have been accounted for, for the purpose of closing the I.G.M. However, watch over the clearance and disposal of such packages should be kept on the basis of the returns submitted by the A.A.I. / custodians and the number of open entries in the Ware House register which shall be maintained by them in proforma at annexure "C" .

The Superintendent (P)/ (Cargo) will check the Ware House Register frequently and verify that all cargo landed within last 24 hours and meant for clearance at the ACC has been received by the representative of the A.A.I./custodian in the Air Cargo Complex. If any Cargo has not been received, he will have the necessary enquiries made and submit his report to the Asstt./Dy. Commissioner/ACC. The Supdt. (P) / (Cargo) will put his initials in the register in token of having checked the same. The Asstt./Dy. Commissioner/A.C.C will also occasionally check this register for verifying that all the entries have been made and accounted for, and will initial in the register in token of having checked the same.

The I.F.O. (Airline Warehouse) supervising the removal of Import cargo to the Air Cargo Complex will maintain a diary showing the following particulars:

- | | |
|---|-----------------------------------|
| 1. Registration No. of the van | 2. Flight No. |
| 3. Date and time of the arrival | 4. I.G.M. No. and date |
| 5. Time of departure of van for Cargo Complex | 6. Time of arrival at Cargo Comp. |

All Import cargo received by the custodian for clearance through the Cargo Complex will be entered in a register to be maintained by the Custodians in the proforma at Annexure 'C'. Such cargo will be stored in proper manner in the Import side of the Air Cargo Complex/ the strongroom or in the Cold Storage.

Annexure 'C'

**PROFORMA OF WAREHOUSE REGISTER
(To be maintained by the Custodian)**

Date of warehouse	Sr. No.	Flt. No.	T.G.M. No.	C. Note No.	Item. No.	No. of pkgs.	Description	Location
1	2	3	4	5	6	7	8	9
Party's signature when pkgs. forwarded for examination	Baggage form or B/E No.	No. of pkgs. in figure	No. of pkgs. in words	date of delivery	Customs duty cash No.	W.H. charges		
10	11	12	13	14	15	16		

Signature of the party receiving the goods.	Signature of the A.A.I. representative	Remarks.
17	18	19

Stacking, storage & accounting of packages

The custodians will be responsible for proper stacking, storage and accounting of packages and for presenting the packages for the purpose of Customs examination. They will account for all cargo handed over to him by the Import Freight Officer (Airline W/H). They will furnish a weekly statement in form Annexure `E', to the Assistant/Dy. Commissioner of Customs/ACC, through Superintendent (P) / Cargo, indicating the number of packages received during the week, number of packages delivered, number of packages (over 14 days old) transferred from the Air Cargo Complex to Import Warehouse, and number of packages in stock in the Air Cargo Complex, giving the break-up of the number of packages less than 14 days old, between 14 days and 2 months and over 2 months. The statement will be checked by the Supdt. (P)/ Cargo with reference to entries in the I.G.M. Register. This statement will then be put up to the Asst/Dy. Commissioner/ACC and will be kept in record by the OS/ACC. If any packages are not accounted for, the discrepancy will be brought to the notice of the Asstt./Dy. Commissioner/ACC and matter will be taken up with the custodians for further action.

Clearance of Import Cargo

The Import packages, both cargo and baggage, will be called by Customs for examination by making an endorsements on the Bill of entry, Baggage declaration form or Transshipment permit. The endorsement will be made by the Shed Appraiser/Baggage Supdt. On receipt of the requisition, the representative of the custodian will arrange to forward the required packages to the examination area/bays. The passenger/Importer/CHA will sign the Warehouse register, when the packages are forwarded for examination. The packages will be opened and examined in the presence of the Importer/ authorised representative. The packages containing baggage will be sealed after examination and before storing them in warehouse. Other packages will not be sealed but will be properly repacked by the Importer/CHA in the presence of the Customs staff and the representative of the custodian. If after examination the packages are not to be cleared, they will be stored at the place from where they were removed.

After completion of Customs formalities, the shed Appraiser authorised to sign "out of charge" orders in respect of Bills of Entry and Transshipment Permits or Supdt.(P) in respect of Baggage, will make an endorsement on the Bill of Entry / T.P./ Baggage form, as : "Please Deliver." The Passenger/ Importer /CHA will present such finalised documents to the representative of the custodian who will thereafter allow delivery of the package (s) to the Passenger/Importer/CHA and will endorse the completed document with remark "Delivered" signing below the remark. The Customs Officer posted at the Exit Gate will check the particulars such as marks, the number of the packages with those shown in clearance documents and will verify that the goods have been released by the authorised Officer and will thereafter allow the Passenger/Importer/CHA to remove the packages. He will endorse the clearance documents with remarks "passed" and will sign in full below the remarks. He will retain the clearance documents and will forward the same under despatch to the O. S. of the A.C.C. on the next working day.

Before, releasing the goods, the officer at the Gate will enter the particulars of the Bill of Entry, Baggage Form, Tranship Permit, etc., in a Register indicating –

(1) Date, (2) A.W.B. No. (3) S.No. of warehouse register (4) B/E, B/F, T/P particulars, (5) No. of packages declared, (6) No. of packages delivered, (7) signature of Gate Officer.

The signatures of the officers authorised to make "out of charge order" will be furnished to the representative of the custodians and to the Gate officer, to enable them to verify the signature before delivering the goods.

DIRECT DELIVERY OF IMPORT CARGO

Many a times there are certain kinds of Cargo which require special handling or are to reach to the Importer without loss of time. To facilitate this, special permission is granted by the Customs to the Importer to complete the clearance formalities either beforehand or subsequently. For this purpose, a special Direct Delivery cell is created which is manned by the Preventive and Ministerial staff. During as well as out of office hours, the examination and delivery of such Cargo is attended to by the Preventive Staff.

The broad procedure for the same is outlined below:

The following revised procedure in respect of Direct Delivery of Imported goods (such as Diplomatic Mail, Live Animals, Fresh Fruits, Flower/Vegetables, Frozen Foods, Radio Active Material, Current Newspaper and Magazines, Air Companies stores and Aircraft parts Imported by the Air Companies, Life Saving drugs and appliances, Any Cargo requiring special handling storage and TV films) in Air Cargo Complex, Mumbai, the following revised procedure is prescribed with immediate effect:-

- (1) Any application requesting for Direct Delivery of Imported goods shall be presented to the 'Direct Delivery Clerk', if such goods have already arrived or are likely to arrive within 24 hours (excluding the holidays) of presentation of such application.
- (2) In such application, the Importer or their authorised agent shall undertake that all papers for assessment shall be submitted along with Bill of Entry within 18 hours of clearance of such goods.
- (3) On receiving such application, the 'DD Clerk' shall mark to the concerned Group Appraiser to examine whether the goods can be allowed in Direct Delivery.
Group Appraiser is empowered to allow the Direct Delivery of Newspapers and Magazines only. Regarding all other items other than newspapers & magazines, the Appraiser shall in turn put up the application to Asstt./Dy. Commissioner, in charge of Group, for orders who would pass appropriate DD order or otherwise in the matter.
- (4) In case of direct delivery of life saving appliances, medicines and any other cargo which require special handling and storage, the application for Direct Delivery shall be put up to the Joint Commissioner/ Addl. Commissioner concerned, by the Asstt./Dy. Commissioner for orders.
- (5) The orders of the Addl. Commissioner/Asstt. Commissioner/Appraiser shall be noted by the Direct Delivery clerk in the respective Group, in the register maintained for the purpose and a running DD Number would be allotted.
- (6) After that the Appraising Officer in the concerned Group shall make necessary endorsement of the examination orders and Direct Delivery on payment of duty or IDF procedure as the case may be.
- (7) The order of Addl./Joint /Dy./Asstt. Commissioner/Appraiser shall be valid only for 48 hours after it is passed, and if the delivery of goods is not effected, fresh orders shall be obtained.
- (8) Direct Delivery Clerk/Office Superintendent (Admn.) shall keep the track of the Bill of Entry after the direct delivery is effected. He shall put up the D. D. Register to Asstt./Dy. Commissioner (Admn.) once a week with a summary and No. of cases in which the Bills of Entry with all documents are not presented for proper assessment within 48 hours as undertaken by the party.

A fortnightly extract of Group-wise details of pending DDs would be put to Addl. Commissioner (Admn.) alongwith the Direct Delivery Register for suitable orders/action.

If it is noticed that any Importer/CHA has failed to honour the undertaking of filing the Bill of Entry for regular assessment, action shall be taken against them as required under law and 'Direct Delivery' of goods to such Importers/CHAs may be refused for future.

[Based on Standing Order dated 18/09/1997 issued by Commissioner of Customs Air Cargo Complex, Sahar, Mumbai in F. No. S/3-MISC-42/97/ACC/GR-II.]

At the time of delivery the following points are to be taken care of:

A) During office hours

1. The cargo delivery is taken by the Importer or the authorised person. This can be done by identifying the person by his identity card, pass etc.
2. Duplicate / Kutcha B/E shall be scrutinized to ensure that the same has been registered by the direct delivery clerk and the number S/25.....is given and stamped.
3. The examination order is given by the Appraising Officer, like- inspect lot, check marks & Nos., description, quantity etc.
4. Examination should be done as per the directions given and the examination report shall be endorsed on the reverse of the duplicate B/E with full name and signature.
5. The entry in the direct delivery register should be counter signed by the person taking delivery.
6. Bonded/T.P. Cargo to be escorted by the concerned Preventive Staff.

B) After office hours

If prior permission is given by the Addl. Commissioner:

1. See that the B/E bears S/25.....number entered and stamped.
2. The examination of the cargo should be carried out as per the guidelines described below . Examination report has to be written and signed with full name and signature on the duplicate copy of B/E on the reverse. The report is to be signed by the Importer also.
3. Proper entry to be made in the Direct Delivery register counter signed by the person taking delivery.

C) In emergency after office hours

1. Asstt./ Dy. Commissioner/Airpool shall entertain the undertaking submitted by the CHA/Importer. Asstt./Dy. Commissioner/Airpool will also give the permission for Direct Delivery or otherwise.
2. The I.F.O. after verifying the permission will examine the cargo as per the guidelines given below. The examination report will be written by the I.F.O. on the undertaking, get the counter signature of the Importer and retain it.
3. The I.F.O. shall make entry in the Direct Delivery register and shall get it counter- signed by the Importer and give delivery of the cargo.
4. The retained undertaking along with the report is to be forwarded by I.F.O. on the next working day to the Direct Delivery clerk/O.S. Appraising.

Guidelines for examination of Direct Delivery cargo

Current news papers and periodicals

These are normally covered by a continuity bond executed by the C.H.A/Importer. The goods shall be examined with reference to the description and the same is certified on the reverse of duplicate Bill of Entry. In case News papers and Magazines are of objectionable nature, a reference has to be made to the Appraiser/Supdt (P).

Diplomatic Mail and Cargo

Diplomatic Mail and Cargo are not subject to examination in view of the diplomatic immunity enjoyed by the Foreign Missions. Diplomatic Mail Bags and packets should only be inspected for checking Diplomatic seal and Marks & numbers. These are normally covered by a continuity Bond.

Diplomatic cargo is cleared after verifying and matching the declaration / description given in the Bill of Entry with the details given in the Exemption Certificate issued by the State Government to the Foreign Missions, and checking the Diplomatic Seals and marks and numbers.

Live animals / birds

No animal / bird shall be released without production of health certificate issued by the authorities at originating Airport, and N.O.C. issued by the local Airport Health Officer. Full particulars viz. species, quantity, colours, height, length, weight, etc., as are available or as can be ascertained shall be recorded on the duplicate Bill of Entry. The invoice and pedigree chart if produced shall be endorsed in token of having been checked.

TV Films

These may be released directly only after inspection of the cartons containing films and after noting on the duplicate Bill of Entry, any other particulars those are shown on the carton.

Radio active material

Being of hazardous nature, these goods can not be examined and hence only should be inspected. Direct Delivery shall not be effected if the Bill of Entry is not accompanied by "No Objection Certificate" from the Deptt. of Atomic Energy in case the Importer is other than Department of Atomic Energy.

Drugs, medicine, serum, vaccine, etc.

In case of drugs and medicines, the quantity shall be recorded along with full marking showing the name of medicine (chemical as well as trade name) manufacturer's name, quantity in grams or millilitre (as the case may be), etc. Prior permission of the Asstt. Drug Controller is necessary in the case of all drugs and medicines. In case such permission has not been obtained the same may be obtained over telephone from A.D.C. during office hours and the fact shall be so recorded on the reverse of the Duplicate copy of Bill of Entry. If the clearance is allowed after office hours, the permission of A.D.C. may be obtained on the next working day by I.F.O.

Live plants and flowers

Quantity of the cargo to be released and verified shall be recorded at the time of examination so as to enable the Appraiser to appraise and value the cargo subsequently. The goods are required to be fumigated on arrival and a certificate, called "Phytosanitary Certificate". to that effect from the Plant Quarantine Entomologist, is essential before clearance of goods. This fact should be recorded on the duplicate Bill of Entry.

The Importers have to complete the formalities within 48 hours of the Direct Delivery of the Cargo. If they fail to do so for 2 deliveries, future facility of Direct Delivery to such Importer should be withheld.

UNCLEARED / UNCLAIMED CARGO

If any package is not cleared within 14 days of its landing, the representative of the A.A.I./custodians will arrange to issue a notice to the Importer in the form "Annexure `D'". Such notices will be prepared in triplicate, and one copy will be sent to the Importers by Registered A.D. Such packages will be entered in a challan in quadruplicate and will be forwarded to the Import Warehouse of the A.A.I. by the I.F.O. (ACC). The copies of the challans along with the copies of the notices will accompany the cargo transferred to Import Warehouse in closed vans under Customs Escort/double lock.

The representative of the AAI incharge of the Import Warehouse will sign all the copies of the challan in token of having received the packages and the notices. One copy of the challan will be retained by the representative of AAI receiving "over 14 days old " cargo and one copy will be returned by him to his counterpart in the Air Cargo Complex. Upon receipt of the acknowledged copy of the challan the representative of the AAI at the Air Cargo Complex will close the entries in the register by making the following remarks "Transferred to the Import Warehouse". The representative of the AAI will keep all the A.D. cards received back, for records.

The third copy of the challan will be taken over by the Customs Officer posted at the Import Warehouse where "over 14 days old" cargo will be shifted. The Customs Officer posted at the Import Warehouse, where the cargo will be shifted, will ensure that cargo transferred under each challan is entered by the custodians in the warehouse register (Proforma Annexure `C'). He will systematically file his copies of the challans and on each such challan certify that the entries have been made in respect of each package and the custodian's Register has been checked.

In respect of the cargo, which will be cleared by the Importers from the Import Warehouse, the procedure for accounting of the packages, their storage and examination, will be the same as laid down above for the packages that will be cleared at the Air Cargo Complex. The Customs Officer posted in this Warehouse, as well at the Exit Gate, will maintain a register for listing out the number of each clearance document, marks and numbers of the packages and the number of packages in the consignment, and will daily forward under despatch, the clearance document collected during the previous day, to the OS/ACC for action as laid down for the cargo stored at the Air Cargo Complex.

In respect of the Cargo which will be shifted from the Air Cargo Complex, the AAI will forward a weekly statement (Proforma at annexure `E'), except that the break-up will show the number of packages less than two months old as well as over two months old, through Supdt. (P)/Cargo to Asstt./Dy. Commissioner/ACC and these will be finally filed by the Office Superintendent.

In respect of all consignments removed or cleared from the Air Cargo Complex or warehouse/ /shed, the representative of the AAI will encircle the entries of such cargo with red ink to indicate closure of the entry.

Packages containing precious articles, stored in strong room at the Cargo Complex, will not be transferred to Import Warehouse but action to dispose of such packages, if not cleared within two months, will be initiated as for other goods.

The orders relating to issue of detention certificates and recommendation letters in respect of sea cargo will apply to Air Cargo as well.

The packages, which are not cleared within two months of the date of arrival, will be got listed by the AAI. Such packages will be examined by the Customs Appraiser specially posted for the purpose, and goods will be inventorised and the reserve price fixed, in each case. These goods will be auctioned by the Custodians, with the help of the Auctioneers appointed by them. All such auctions will be attended by the Customs Staff. The detailed procedure for preparation of lists of goods to be auctioned, their valuation, withdrawal of goods from auction list, the working out of ITC fines, the finalisation of lists after the auctions for allocation of sale proceeds will be as applicable to the uncleared, abandoned and

unclaimed Imported goods sold at the Docks. These procedures have been dealt with in Chapters 'Import Clearance' and ' Disposal ' of this Manual.

Annexure 'D'

To,

Sub: Non Clearance of Imported goods-disposal of

The Consignment (s) as per details below brought into India for consumption/transshipment has not been cleared/transhipped so far. The consignment has since been shifted to the Import Warehouse of the A.A.I.

You are hereby given notice that if the said consignment (s) is/are not cleared/transhipped on production of proper documents within fifteen (15) days from the receipt of this notice, the same is liable to be disposed, in terms of the provisions of Section 48 and Section 150 of the Customs Act, 1962, without any further communications to you.

Please note that shifting of uncleared packages will be at the cost of Importer.

Yours faithfully,

.....

Annexure 'E'

Weekly statement by the Custodian about packages handled in the Air Cargo Complex

Period From	To.....	Opening Balance	No. of pkgs. received in the Cargo complex including precious articles and perishables and transshipment packages.	No. of packages cleared
1	2	3	4	5
Total No. of pkgs.			Balance	
			less than 14 days old	over 14 days old
6			7	8

(B) EXPORT CARGO

Export of cargo through Air has assumed significant Importance in that it is a faster medium reaching out to numerous and divergent destinations. The Air Cargo Complex plays an Important role in facilitation of the same. All the papers relating to the Export of goods are processed in the Cargo Complex itself. In the Air Cargo Complexes having the EDI facilities, the Export documents are processed electronically. The procedure for the has been described in the Chapter “ Electronic Data Interchange “ of this Manual.

The Export Cargo is usually categorised into General Cargo and Perishable Cargo and is examined and cleared for Export by the Customs in separate enclosures in the Cargo Complex.

(i) Export Cargo (General)

The Export Freight Officer (E.F.O.)/ACC will check that only such Export cargo as has been passed by the Appraising staff is moved into the area reserved in the Export side of the Air Cargo Complex for such Cargo. He will tally the Export cargo being removed to Airlines Warehouses for making pallets and allow loading the same into the vans with reference to the challans and the Shipping Bills/Export documents. He will indicate on the challans, the time and date of removal of the Export cargo and will also attest the challans. He will maintain a Register showing the following particulars:

Date	Time of Departure of van	Reg. No. of / the van	Total no. of packages	Shipping Bill nos.	Name of Airlines .	Time of the receipt of challan indicating receipt of cargo, checked by E F O
1	2	3	4	5	6	7

The E.F.O. (ACC) will then lock the van, one key of the lock will be available with the E.F.O. (Airlines Warehouse).The van(s) will then be taken by the representative of the Airlines to their Warehouse. The E.F.O. (W/H) will thereafter allow and supervise the unloading of the cargo after opening the lock with the key deposited with him. He will check the number of packages with the number shown in the challan and will sign the challan in token of having checked and received the packages. This copy of the challan will be produced by the representative of the Airlines before the E.F.O. (ACC) who will file such copies serially for his record.

The E.F.O. (W/H) will ensure that all Export cargo received in the warehouse has been airlifted within time. If any cargo has not been airlifted within the specified time, he will allow this cargo to be taken back to the Air Cargo Complex for re-examination. The E.F.O. (W/H) will maintain a Register showing the following particulars.

Date	Regn. No. of the van	Time of arrival of the van	Total no of pkgs.	S/Bill nos.	No. of pkgs. shipped in time	No. of pkgs. not shipped in time & taken back to the Cargo Complex
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The Export Freight Officer (ACC) will carry out routine checks to verify that the vans carrying Export cargo move via the routes prescribed by the A.A.I.

(ii) Export cargo (Perishable)

With the transportation of cargo by air, it has now been possible to transport perishable cargo to number of destinations. Air transport provides quick, convenient and easy movement of such cargo. As the time is a crucial factor involving packaging, carting and shipping of perishable cargo, it is Important that processing of Import/Export formalities thereof have also to be completed with minimum of delay. To facilitate this, special arrangements are made in all the Air Cargo Complexes. As these formalities are to be completed at times beyond office hours, the same have been entrusted to the Preventive staff, which are posted round the clock at the Cargo Complexes.

The Exporters have to process the Shipping Bill in the Export department of the Air Cargo Complex during office hours. Thereafter the cargo is carted to the Cargo Complex and booked under an Airway Bill with the carrier Airline. Thereafter, the Exporter or his agent has to present the cargo along with the processed Shipping Bill and the Airway Bill to the E.F.O. (Perishable Cargo). The E.F.O. shall then inspect/examine the cargo in the light of the 'Examination order', endorsed by the Export Department, on the Shipping Bill. If everything is in order, the E.F.O. shall write the inspection / examination report on the reverse of the Shipping Bill. Thereafter, the E.F.O. / Supdt. (Cargo) shall allow the Cargo for Export by giving 'Let Export" order. In case of any discrepancy, the Export department shall be intimated for further action.

The Export Perishable Cargo so passed will then be handed over by the Exporter/agent to the representative of the carrier Airline, who will remove the same to their warehouse for palletisation and then loading on the Aircraft under the supervision of E.F.O. (W/H). The shipment of such Cargo shall be certified on the Shipping Bill by the E.F.O. (W/H) of the concerned Airline.

The completed Shipping Bills shall be submitted in the Export department alongwith the Export General Manifest by the Exporter/Airlines.

Simplification of procedure for clearance of Export consignment of perishable goods like fruits, vegetable goods like fruits, vegetables and flowers etc. at Airport – regarding

Please refer to earlier Circular No. 446/42/91-Cus. IV dated 6.8.91 which provides procedure for examination of cargo at different Customs stations.

2. It is reiterated that henceforth the perishable cargo at all Airport and Air Cargo complexes may not be examined in a routine manner. Such cargoes may be examined only where there is intelligence/information. The packages should not be opened during the processing of the papers. Whenever on intelligence or information, the packages are opened and examined, the details of such information/ intelligence may be subsequently brought to the notice of the Joint commissioner/Addl. Commissioner incharge of Airport/Air Cargo Complex.

3. The Addl. Commissioner or Assistant Commissioner may however check the packages to ensure that the Exporters have made proper declaration, However, necessary Phytosanitary Certificate from plant quarantine authorities or certificate from veterinary authorities or similar certificates as required by other agencies may be checked before clearance.

[Board's Circular No. 33/96-Cus. dated 17.6.96 in F. No. 446/42/91-CUS-IV]

(C) TRANSHIPMENT CARGO

The movement of the Import Cargo meant for Transshipment is governed by the provisions of Chapter VIII of the Customs Act, 1962, and the Goods Imported (Conditions of Transshipment) Regulations, 1995.

As has been described earlier, Transshipment cargo at the Air Cargo Complex constitutes three types of cargo:

- (i) From Foreign ports to Local Customs ports,
- (ii) From Foreign ports to another Foreign ports, and,
- (iii) From Local Customs ports to Foreign ports.

The procedure for movement and clearance of the three aforementioned types of Transshipment Air Cargo through the Cargo Complex has been outlined below :

(i) Foreign to Local

Cargo received at the Airport from foreign destinations for transshipment to inland airport shall be transferred immediately, after the break-bulk operations if any, to special enclosures in the concerned airlines warehouse having double locking arrangement i.e. one key with the airlines and one key with the Customs, for storage of Import cargo meant for transshipment.

The airline bringing the Import cargo or their agents shall file transshipment application, i.e. Cargo Transfer Manifest (CTM) as provided under Section 54 of the Customs Act 1962. The application shall be prepared I.G.M. wise and destination wise. As provided under the goods Imported (Condition of transshipment) Regulations, 1995, a fee of Rs. 20 /- shall be paid in respect of each application.

The application will be presented to the Transshipment Cargo Officer, who will verify the particulars with the relevant I.G.M. airway Bill etc. and if he is satisfied with the correctness of the particulars, shall register the same in the CTM Register, and the running serial number of the Register will be allotted to the application and this shall be indicated on all the copies of the application.

The application will, thereafter, be presented to the Superintendent I/C CTM. Who shall ensure, interalia, that the application is duly registered and the T.P. fees have been paid, before granting the permission.

The T.P. Officer shall indicate the reference number of the CTM against the relevant entry in the Transshipment Register and the date of forwarding the goods to the Transshipment warehouse of the domestic air carrier. He shall physically verify the goods before they are forwarded. Any damage or tampering of the package shall be reported for further action. He shall retain one copy of the CTM duly acknowledged by the escort officer and airlines representative and the same shall be filed CTM numberwise in box files.

The package shall be removed in closed trucks under Preventive escorts during day time between 10 a.m. and 6 p.m. The merchant overtimes fees at the prescribed rate shall be paid by the applicants for the services of the escort officer.

On receipt of the package in the transshipment warehouse of the domestic air carrier, the officer posted in the warehouse shall ensure that the packages are stored in the transshipment warehouse destination wise. He shall make necessary entries in the T.P. register maintained by him. He shall acknowledge on the duplicate copy to the CTM. the receipt of the packages in the warehouse and also indicate the serial number of his Register entry on the same. The representative of the domestic air carrier shall also acknowledge the receipt of the goods in the warehouse. The CTM copy duly acknowledged shall be handed over to escort officer who in turn will hand over the same to the transshipment officer of the airline warehouse from where the packages were removed. The transshipment

officer will close the entry in the CTM Register after giving cross-reference number of the Register entry of the domestic carrier's transshipment warehouse.

The domestic carrier shall prepare sufficient number of copies of the E.G.M. and present to the officer posted in the transshipment warehouse. The officer will assign the E.G.M. number, which will be running serial number in the EGM register. The transshipment cargo will be distinctly manifested as international cargo. The cargo from the transshipment warehouse of the domestic air carrier will be removed and loaded to the aircraft of the domestic air carrier under preventive supervision. The officer will endorse the E.G.M. for having shipped the cargo under his supervision and obtain the acknowledgement of the domestic carrier's representative for having received the cargo on board the aircraft. One copy of the E.G.M. will be retained by the officer and filed E.G.M. numberwise. Two copies of the E.G.M. will be forwarded to the port of destination in a sealed cover addressed to the Assistant Commissioner of Customs at the port of destination through the carrier. The officer shall enter the particulars like the date of shipment flight number and E.G.M. number against the relevant entry in the transshipment register. At the receiving port, the receipt of the Cargo will be acknowledged by the proper officer of customs by endorsing on the E.G.M. copy and the same will be returned to the port of origin through the same carrier. It would be the responsibility of the domestic carrier to produce the copy of the E.G.M. duly acknowledged by the proper officer at the port of destination within 45 days.

The officer of the transshipment warehouse of the domestic carrier will closely monitor the receipts of the acknowledged E.G.M.s from the ports of destinations. If there is delay of more than 45 days the same shall be brought to the notice of the Superintendent in charge of transshipment warehouse who shall issue necessary demand notice to the domestic carriers within 7 days.

The domestic carrier will execute a bond in terms of the Goods Imported (conditions of Transshipment) Regulations 1995. It shall be ensured that the value of the transhipped goods, in respect of which proof of receipt at the destination is awaited, at anytime does not exceed the amount for which bond has been executed by the airlines. For this purpose, the value of the transhipped goods would be the value declared in the airway bill or other documents. If no value is declared and the same cannot be ascertained otherwise, it shall be estimated at the rate of Rs.400/- per kilogram.

On receipt of the E.G.M. copy duly acknowledged by the proper officer at the port of destination, the officer posted in the transshipment warehouse shall close the entry in the E.G.M. register indicating the particulars of the receipt of the E.G.M. copy and the date. The E.G.M. copies received from the other ports shall be filed receiving date-wise. The carrier shall undertake to submit the acknowledged E.G.M. copy within 45 days of transshipment. If the copy is not received or some consignments of an E.G.M. is not accounted for, duty must be demanded from the carrier within 7 days for payment within next 10 days. If the amount is not paid, the bond should be enforced and no transshipment may be allowed by the carrier. The proper officer while demanding the duty should bring the consequences of non-payment to their notice.

(ii) Foreign to Foreign

Immediately after completion of sorting of cargo received on any particular flight, Imported cargo manifested for transshipment to any foreign destination shall be transferred by the concerned airlines under supervision of the Custom Officer posted in its warehouse to the special enclosure meant for storage of transshipment cargo under double locking arrangements and particulars of the cargo shall be entered in the prescribed register after its receipts in the storage godown. Before the transshipment of any goods, Cargo Transfer Manifest shall be presented in triplicate. One copy of the same will be kept by the I. F. O. of the concerned airlines. In case the cargo is to be transhipped on an Aircraft of another carrier which is also handled by different agent, the other two copies will be sent with the cargo to the carrier, who will carry the goods to foreign destinations where the Customs Officer will acknowledge the receipt of

the cargo giving his T.P. Register No. and return one copy back to the Transferring Carrier on production of which the officer posted there will close the entry in his T.P. Register after giving cross-reference. During the period the cargo is retained in the warehouse of the carrier who has to finally carry the goods to foreign destination, it shall be kept in a separate enclosure having double locking arrangement. The officer in-charge of the warehouse of the concerned airlines will escort such Transshipment Cargo and shall ensure that it is loaded on board the aircraft by which it is to be shipped. He shall make suitable endorsement on the relevant copy of the Bill of Transshipment certifying the shipment of the cargo. The entry in the register shall be closed after proof in regard to the Export of cargo is furnished by the E.F.O.

(iii) Local to Foreign for transshipment through another airport

- (a) The shipping Bill received shall be processed and all the particulars including name of Domestic Carrier, flight number, name of the transshipment airport etc. shall be endorsed in it. The transshipment cargo shall also be entered in a separate Export Transshipment Register. The carrier shall intimate within 24 hrs., the details of E.G.M.; short shipment or shut out cargo clearly shown in the E.G.M.
- (b) The Domestic Carrier shall give a bond to the Customs for safe and secure Export of the goods from India. The value of the bond shall be approximate value of the goods to be transhipped within two months from the airport and the value of the security as decided by the Commissioner, but may not be more than 25% of the Bond amount. The Domestic Carrier shall also undertake to produce the proof of Export within 30 days or such extended time, which the proper officer may allow on sufficient reason being shown.
- (c) The Customs Freight Officer at the originating airport shall retain all the duly endorsed copies of the shipping bills and AR4s and will make final endorsement after proof of Export from Transshipment Airport is received. The Domestic Carriers shall carry cargo only under an E.G.M. duly certified by the Customs.
- (d) At the Gateway Airport, the cargo received from the Inland airport for Export to foreign destinations shall be removed from the aircraft to the transshipment warehouse of the domestic carriers under Customs supervision and stored there separately. The domestic carrier will present the E.G.M. copies received from the Inland airport in the sealed cover to the officer posted in the transshipment warehouse who shall register the same in the I.G.M. Register maintained by him and assigned the running serial number. A receipt on the copy of the I.G.M. at the airport shall be given to the carrier. The Domestic carrier will prepare the Cargo. Transfer Manifest, which shall be registered in the CTM Register, maintained by the officer at the TP warehouse of the domestic carrier. After obtaining the permission from the Superintendent, the cargo shall be removed from the TP warehouse of the domestic carrier to the warehouse of the foreign airlines in closed trucks under Customs Supervision. After the shipment of the goods, the foreign going carrier will present the copy of the Export Manifest to the officer in-charge of the Transshipment warehouse of the domestic carrier, who will close the entry in his records by indicating the flight number and date of shipment of cargo.
- (e) Cross-reference shall be given on the copy of the IGM received from the Domestic carrier showing the flight no., Export manifest no. etc. in which the particular consignment has left the country. The said copy shall be handed over back to the Domestic carrier within 7 days of the departure of the cargo. The Domestic carrier shall submit this proof of Export to Custom Freight Officer of airport origin. On receipt of this proof the Custom Freight Officer at originating airport shall make endorsements on all copies of shipping bills including EP and AR-4s.
- (f) If the duly endorsed Export Manifest is not received by Customs Export Freight Officer at originating station within 30 days. He shall demand full FOB value of the goods within 7 days as a penalty for failure to perform the undertaking to tranship within specified time. This action would be in addition to

any other action that may be taken under any other law in force. The penalty demanded shall be payable within 10 days. In the event of failure, the bond may be enforced and no shipment may be allowed by that carrier. Assistant Commissioner I/C of all three types of transhipped shall, at random, send details of consignments transferred to the receiving Airport to verify whether the cargo has been received at the other end. Such verification shall not be too frequent.

- (g) Domestic Carriers may undertake transshipment on behalf of foreign airlines from the domestic airport to the gateway airport for further transport on the foreign airlines own aircraft. In such cases, if the foreign airlines are willing, the undertaking with bond and security may be taken from them for due Export of the cargo from the gateway airport.

The Superintendent I/C of the transshipment warehouse of the domestic carrier shall inspect the records of the offices posted in the transshipment warehouse atleast once a week to ensure that the above instructions are strictly followed and endorsed the records in token of having inspected them.

[Based on Public Notice No. 19 dated 19.10.1996 issued by Commissioner of Customs, Air Cargo Complex, Mumbai, in File No. S/3(P)-CTM-37/96]

AIR CARGO TRANSFER MANIFEST

The Commissioner of Customs
Air Cargo Complex

CTM NO :
 DATE :

Sir,

Please allow transshipment of the TransshipmentConsol cargo as declared in IGM and/or Consol Manifest on arrival by Flight. No.IGM No.vide MAWB No. toby(domestic carrier).....

The particulars of the cargo to be transhipped are as follows:

Sector AWB No.	Name of Importer	HAWB No.	Description of goods	No. of pkgs.	Wt. of pkgs.	Value in INRs (as declared in Invoice)

Declarant Signature (with official Seal)

IGM Verified
 Break-Up given
 T.P. fees paid

Transshipment for above pkgs
 toallowed
 under preventive escort

Customs officer
 CTM Section
 Preventive

Supdt. of Customs, CTM Section
 Name and Signature

Escort P.O.
 Name and Signature
 Name & Signature of staff of
 Receiving Airline

Receiving Customs officer
 Name and Signature
 Supdt. of Customs I/C Receiving W/H.
 Name and Signature

PROFORMA OF T.P. CARGO REGISTER (FOREIGN TO FOREIGN)

Flt. No. 1	I.G.M. No. 2	AWB No. 3	No. of Pkgs. 4	Description 5
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Flt. No. 6	EGM No. 7	No. of Pkgs. 9	Description. 10	Date of shipment. 11
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Date & Flt. No. of despatch. 11	Destination 12	Date of File received. 13	Remarks. 14
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PROFORMA OF T.P. REGISTER (FOREIGN TO INLAND)

Flt. No. 1	I.G.M. No. 2	AWB No. 3	No. of Pkgs. 4	Description 5
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Receiving TPO's Sign. and Batch 6	Flt. No. 7	EGM No. 8	No. of Pkgs. 9
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Description 10	Flight No./ Date of shipment 11	Destination 12	T.P.O.'s Sign. & Batch. 13	Remarks. 14
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Forwarding of Transshipment cargo in Bond fromAirport to.....Airport.

Enclosed please find two copies of the Export General Manifest of flight No..... datedwhich departed from Airport for Airport with Transshipment cargo totally consisting ofpackages of unaccompanied baggage with seals in tact on the same. A sealed cover containing similar two copies of the Export General Manifest was forwarded with the Pilot of the above-mentioned flight.

You are requested, to confirm that the above mentioned advice along with the unaccompanied baggage with seals in tact on all the packages was received by you and that the second copy duly endorsed by you for having received the unaccompanied baggage and also showing IGM No. thereon, has been returned by you to this office through the Airline.

If the above is confirmed kindly endorse the second copy enclosed to this letter accordingly and return the same to this office by return post.

In case the above is not confirmed, you are requested to kindly initiate enquiries and let us know the results of your enquiries at an early date.

CARRIAGE OF DOMESTIC CARGO ON AIR-INDIA FLIGHTS

M/s Air-India has requested to carry domestic Cargo on International flights on the ground that the majority of Air-India Flights originates at Mumbai and touch another Domestic point on its way to foreign airport. It has ample capacity to uplift domestic Cargo between these two ports. M/s Air India has also requested that to allow them to carry domestic Cargo in the domestic leg of the journey.

2. The Board has examined their proposal in consultation with various Commissioners of Customs and it has been decided to allow M/s Air India to carry domestic cargo between domestic airports on their International flights with the conditions that the container containing the Domestic and International cargo should be clearly distinguishable by appearance using different colours for covering materials, straps etc. & loading/unloading must be done under custom supervision. In addition the following precautions may be taken: -

1. A separate area will be earmarked in Cargo unit at the airport for acceptance and holding of such domestic cargo.
2. Domestic cargo will be accepted at the Export General Warehouse exclusively between 1030 and 1300 hours only.
3. Special domestic tags will be prepared for identification of the same with a separate colour coding.
4. Domestic Cargo will be loaded in separate hold on board the aircraft and it will not be mixed loaded with International Cargo.
5. Upon arrival of Cargo at the domestic Destination arrangement will be made to deliver the domestic Cargo separately.

[Board's Circular No. 15/99-Cus. dated 22.3.99 from F. No. 446/69/98-Cus. IV]

Clearance of Domestic Cargo at Air Cargo Complex

The following procedure has been outlined for clearing domestic cargo at the Air Cargo Complex-

The domestic cargo meant for the domestic leg of journey on International flights would be received between 10.30 Hrs. and 13.00 Hrs. by M/s Air India on all working days under the supervision of the Preventive Officer posted for this purpose in the Export General Shed at Air Cargo Complex, Sahar, Mumbai, in a specially earmarked area "Strong Room" alongwith Airways Bill.

After receipt of domestic cargo in Strong Room, Air India will prepare Form "A" in quadruplicate and sign the said Form "A" with certification that the package received have been affixed with domestic tags, domestic Airway Bill Nos. with destination and flight no. Thereafter, Air India will obtain permission on the said Form "A" from Superintendent (Preventive) of Batch for loading domestic cargo in container / on pallets. Superintendent (Prev.), after due verification, would permit loading of cargo in container / on pallets under Preventive supervision. M/s Air India should ensure that the container / pallets containing the Domestic and International cargo should be clearly distinguished by appearance using different colours for covering materials, straps, etc. The Preventive Officer deputed for the purpose shall, after

completion of the loading, escort the container / pallet upto the Aircraft and endorse Form "A" accordingly.

M/s Air India would forward the original and duplicate copy of Form "A" to the Airport of destination. The triplicate copy of Form "A" shall be forwarded to Customs Officer deputed for the said purpose. The Customs Officer shall maintain proper record. The duplicate copy of Form "A" shall be returned to Customs by Air India duly endorsed with the proper acknowledgement of cargo received at the Airport of destination. The duplicate copy shall be matched with triplicate copy retained by the Customs Officer. Any discrepancy noticed shall be reported to Asstt. Commissioner of Customs, (Prev.). The acknowledged duplicate copy of Form "A" shall be submitted to Customs Officer by Air India within 07 days of the shipment.

The domestic cargo brought to Mumbai by Air India from other Airports shall be received by Air India under Preventive supervision. The Air India representative will sign the original and duplicate copy of Form "A" in token of receiving the cargo and the same shall be countersigned by the Customs Officer deputed for the said purpose. The original copy of the Form "A" shall be retained by Air India for taking the domestic cargo out of Air Cargo Complex, Mumbai. The Customs Officer shall sign the duplicate copy of Form "A" and return back to Air India who shall thereafter forward the same to the Airport from where the cargo has been shipped. Air India shall inform the Customs Officer in advance of the Air India flight carrying domestic cargo for Mumbai. Air India shall transfer the domestic cargo meant for Mumbai into Strong Room after due verification and following endorsement shall be given on the original and duplicate copy of Form "A"-

" Received packages of domestic cargo arrived from Airport through flight no. AI - dated"

**Name & Signature of
Air India Representative**

**Signature of Customs Officer with Office Stamp
(at receiving Airport) "**

The domestic cargo meant to be delivered in Mumbai shall be taken out of the Export Shed by Air India within 12 hours of the arrival of the flight. No cargo shall be kept outside the Strong Room. The original copy of Form "A" shall be submitted by Air India to the Preventive Officer posted at the gate of Export Shed while taking the domestic cargo out of Export Shed. The delivery of domestic cargo to individual consignees shall be effected by M/s Air India from their Warehouse / office outside the Export Shed.

It shall be the responsibility of M/s Air India to ensure that International Import or Export cargo does not mix up with domestic cargo.

[Public Notice No. 6 dated 24.03.2000 issued by Commissionerate of Customs, Air Cargo Complex, Sahar, Mumbai, from F.No. S/3- Prev. (Admn.) 117 / 97 ACC]

FORM - A

(Domestic Cargo Movement)

(For Domestic Cargo on Air India's International Flights)

Sr. No.

Export Shed
Domestic Cargo Section
Air Cargo Complex,
Sahar, Mumbai – 99.

Date

Sr. No.	Airways Bill No.	No. of Pkgs.	Description of goods	Name of Consignor	CHA No.	Remarks
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 TOTAL No. of Packages

1) Certified that abovementioned have been affixed with Domestic Tags and Domestic Airways Bill No. with Destination.

2) Allowed domestic packages only for loading on pallets / container no. under Preventive Supervision.

(Signature of A.I. Staff)

(Signature of Supdt. / Batch)

3) Certified that packages are loaded in containers / pallets No..... and the container / pallets contains only domestic cargo.

4) Certified thatpackages have been loaded in container / pallet No. and the same has been escorted to flight No. under my supervision.

(Signature of A.I. Staff)

(Signature of Preventive Officer, ACC, Mumbai)
(with Stamp)

5) Receivedpackages of domestic cargo arrived from Mumbai Airport through Flight No. dated

(Name & Signature of A.I. Representative)

Sign. Of Customs Officer with Stamp at
Receiving Airport

Copy to :

- | | |
|-----------------------|--|
| 1) Original Copy | - For receiving Airport. |
| 2) Duplicate Copy | - To be handed over to Air India for obtaining receipt from receiving Airport & submitting back to Customs Office within 7 days. |
| 3) Triplicate Copy | - Supdt. / Batch Office, ACC , Mumbai. |
| 4) Quadruplicate Copy | - Air India's Copy. |

DEPLOYMENT OF PREVENTIVE STAFF AT AIR CARGO COMPLEX

As has been described earlier, the Cargo Complex is an enclosed area in the vicinity of the Airport, used for storage and clearance of Imported and Export Air cargo. The procedures regulating the arrival/departure of aircrafts, clearance of Import/Export cargo, etc., are almost similar to that in the Docks. The Preventive staff is deployed in the Cargo Complex to attend to various tasks like supervising loading/unloading of cargo, manning the Airlines' / custodians' warehouses, examination of certain types of Imported and Export cargo, manning of Entry/Exit points for cargo, checking and delivery of the Import/Export Cargo, etc.

Duties of the Preventive Staff at Air Cargo Complex

In view of the handling and movement of Cargo described above, the Preventive Staff deployed at the Air Cargo Complex can be into (3) broad categories –

- 1) **Office duties** – like administration, Special intelligence and Investigation Branch, Central Intelligence Unit, etc.
- 2) **Warehouse duties** – that of Airline warehouses, Custodians warehouses like Import Warehouse Direct Delivery Warehouse etc, AAI warehouse etc.
- 3) **Field duties** – like manning of various Entry/Exit gate, supervision of loading/unloading of cargo, escort of cargo from one warehouse to another and from/to aircraft etc.

To amalgamate these multi-faceted duties, the Preventive Officers are posted and designated broadly on the basis of attending to Import, Export and Transshipment Cargo, Warehouses and Gates. Superintendents (P) are posted to supervise the work of these officers as well as to attend to other works like signing of CTMs, etc.

Though the deployment of the Preventive staff in the Cargo Complex may largely depend upon the infrastructure, topography, work load, nature of cargo operations, availability of the staff, etc, following is the brief description of the Important formations and stations where the Preventive staff may be deployed, and duties thereat, for smooth functioning of the Import/Export of Cargo:

(A) ADMINISTRATION OFFICE

Like any other formation of the Customs Commissionerate, the Air Cargo Complex also consists of an Office to oversee the Administration of the Preventive Department. The main function of this office is to assist the Superiors in day to day administration of the Preventive staff in the Air Cargo Complex. This office also maintains records of all the files, correspondence, etc., pertaining to the Preventive Deptt., besides dealing with the Policy matters and issuing Circulars, Standing Orders for guidance of the staff. This office is normally headed by a Preventive Superintendent, assisted by Preventive Officers.

(i) Superintendent (P) / Administration

The main duties of the Supdt.(P)/ Admin. are as follows-

- (1) He shall oversee the strength, control and posting of Preventive staff at the different deployments in the Air Cargo Complex as per the norms laid down.
- (2) He shall ensure the deployment of floating staff for escort duties.
- (3) He shall ensure that all the correspondence, files etc. are attended to promptly.
- (4) He shall liaison with other agencies, at the Air Cargo Complex.
- (5) He shall assist the Asstt./Dy. Commissioner/ Admn (P), ACC, in overall running of the (Prev.) Section in the Air Cargo Complex.

- (6) He shall assist the Asstt. / Dy. Commissioner/ ACC in making periodical rotational deployments of the Preventive staff at the Air Cargo Complex.

(ii) Preventive Officer / Administration

The main duties of the Preventive Officer in the Administration Office are as follows-

He shall -

- (1) attend to the files by putting up proper notes and submitting the same without any delay.
- (2) bring to the notice of the staff all the Notifications, Circulars, S.O.s and correspondence received and shall keep record of the same for easy reference
- (3) assist the Supdt./A C/ DC in the deployment of staff under as per the norms
- (4) attend to all correspondence and keep liaison with other agencies at the Cargo Complex.
- (5) keep the records of Break - Bulk operators .
- (6) process the various applications of break -bulk operators for granting permissions.
- (7) deploy the Preventive Officers for Escort duties as and when required.
- (8) keep the record of amount of Merchant overtime paid by the Trade.
- (9) maintain leave register of Preventive staff
- (10) keep a record of receipt and despatch of all files and documents and monitor their movements.
- (11) assign file numbers to various applications from break- bulk agents, CHA, airlines regarding amendments to IGM, EGM, etc., after proper scrutiny by the respective Appraising Group , S.I.I.B., etc.

(B) CARGO BATCHES

As mentioned earlier, the Preventive staff is deployed at the Air Complex to oversee various Customs functions in relation to movement and clearance of Import/Export cargo. For the sake of smooth working and to facilitate the Trade, the Preventive staff is posted in Batches which work round the clock. Thus a continued service is provided by these Batch officers at the Cargo Complex for round the clock activities. These Batches consist of Preventive Officers who work as (i) Import Freight Officers (I.F.O.) (ii) Export Freight Officer (E.F.O.), and (iii) Transshipment Cargo Officer (T.P.O.), supervised by Superintendent (P). The strength of each such Batch depends upon the requirements, work-load, availability of staff, etc., at the Air Cargo Complex.

The duties of these officers are as follows-

(i) Superintendent (P)/ Batch

It will be the responsibility of the Supdt. /c of the Batch that the officers working under him perform their duties in the prescribed manner and the registers and records are properly maintained. In addition to this -

- (1) He shall supervise all the works carried out by the Preventive officers working under him.
- (2) He shall make deployments of the Batch staff at various postings.
- (3) He shall bring to the notice of the staff under him, all the Circulars / Orders / Instructions, issued by the Deptt. and ensure their compliance.
- (4) Whenever there is great rush of work at any place, he shall divert additional staff for the same.
- (5) He shall be in-charge of Officers & other staff posted at the Gates in the Import and Export sheds in Air Cargo Complex.
- (6) He shall attend to the work of C.T.M. and Direct Delivery of the cargo beyond office hours. He shall examine / check the seal, marks and nos. of the Direct Delivery cargo consignments as the

case may be, and allow clearance after making the endorsement on the duplicate copy of the Bill of Entry accordingly and also entering the details in the Direct Delivery Register.

- (7) He shall ensure that loading of the cargo in each of the sensitive flights shall be under the physical supervision of the Preventive Officers. He shall depute an Officer particularly for each of the such flights who, after supervision, shall submit a report to the Batch- in –charge, and the same shall be forwarded to the Asstt./Dy. Commissioner (Admn.) Likewise he shall also select one flight randomly from other sectors and follow the same procedure.
- (8) In case of Imported cargo, in addition to the existing practice of supervision of the unloading of the precious cargo, he shall also select sensitive flights everyday where the unloading of the cargo should be under the physical supervision of Preventive Officer. Immediately after unloading, a physical tally of the cargo shall be taken and a report shall be submitted to Asstt. / Dy. Commissioner/ (Admn.), through Supdt. I/c of Batch, in case of any discrepancy.

(ii) Preventive Officer i/c Batch

The duties of P.O. i/c Batche are –

- (1) assisting the Superintendent I/c Batch in effectively deploying the Batch officers at various postings.
- (2) scrutiny of the documents submitted by the Airlines, Exporters, CHAs, etc.
- (3) liaison with other agencies at the Cargo Complex.
- (4) keeping the Registers in the Batch up to date by ensuring that the concerned officers in the Batch fill up all the entries regularly in the Registers.
- (5) keeping file containing Standing Orders, Circulars, Notifications and all Important directives.
- (6) keeping records of AR 4 forms.
- (7) keeping the custody of keys of all Gates and Offices and maintaining key Register.
- (8) keeping custody of punch seals and other Customs Office seals (Stamps).
- (9) keeping custody of fire arms and ammunitions and maintaining fire arm Register.
- (10) Monitoring the condition and maintenance of X-Ray machines installed at the Export Shed.

(iii) Import Freight Officer (I.F.O.)

He is the officer who deals with all the Cargo Imported at Air Cargo Complex. The Important functions of the Import Freight Officer (I.F.O.) are –

- 1) receipt, signing and keeping records of I.G.Ms and Import Cargo Break-ups of all the flights bringing Cargo.
- 2) supervision of unloading of Import cargo , inspection of the damaged cargo.
- 3) maintaining IGM Register.
- 4) receiving the cargo to be cleared from the Air Cargo Complex, into the Custodians Warehouse.
- 5) supervision of depalletising of Break-bulk Cargo at Air Cargo Complex and forwarding the same into the Custodians Warehouse or for Transshipment.
- 6) signing the Import documents, transfer challans for the Import cargo.
- 7) putting up to the Asstt/Dy. Commissioner (Air Cargo Complex), all the cases of short/excess landed cargo.
- 8) forwarding of IGMs, challans, and other documents to the Office Superintendent /Air Cargo Complex for necessary action.

(iv) Export Freight Officer (E.F.O.) (Perishable Cargo)

He is the officer who deals with the examination and clearance of export cargo, which is perishable in nature.

His main duties are as follows-

- (1) He shall ensure that only bonafide goods for Export are allowed in the perishable cargo shed.
- (2) He shall ensure that only bonafide Exporters or their representatives, carrying perishable cargo under Export, are allowed entry in to the perishable shed.
- (3) He shall examine/inspect the perishable Export cargo, under the supervision of Superintendent (P) Batch, as per orders given by the Export Group and write the examination report on the Shipping Bill, make the entries in the Shipping Bill register and thereafter allow the goods to be loaded.
- (4) He shall supervise the palletising /loading of the examined and passed perishable Export goods by verifying the relevant documents and make shipment endorsements.
- (5) He shall ensure the despatch of completed Shipping Bills to EGM section.
- (6) He shall ascertain from the Airlines about any shut -out cargo and take necessary steps.
- (7) Endorsement on the Shipping Bills shall be made as below:
Shipped.....pkgs. by flight no.....dtd.....of M/s.....
EGM No.....dt.....under my supervision.

Name and signature of the P O

(v) Export Freight Officer (E.F.O.) - (General Cargo)

He is normally posted in the Export shed and he oversees the movement of general cargo, examined and cleared by the Appraising staff, to the warehouse of the concerned airline or to the aircraft.

His main duties are-

- (1) He shall keep a general supervision in the Export Shed.
- (2) He shall check the challans prepared by Airlines / Carting Agents for the Export cargo after examination and passing by the Appraising staff and supervise the loading/removal of the said cargo to the concerned Airline's W/H through the freight vans under double lock system.
- (3) He shall receive the duly completed EGMs with Shipping Bills and dispatch the same to the Air Cargo Manifest Clearance Department, if not submitted by the Airline/Agents.
- (4) He shall ascertain the shut out-cargo if any and allow the same to be taken back to town after obtaining necessary permission from AC /Export and shall make entry in the shut out cargo Register.
- (5) He shall make endorsements of shipment on the Shipping Bills.
- (6) He shall certify AR 4 forms/EP copies of the Shipping Bills for shipments of cargo within 7 days of the shipment.
- (7) He shall attend to Re-exports of Motor vehicles imported under Carnet/Triptide.
- (8) As the time of re-Export of the vehicle under the Carnet/Triptide procedure, the E.F.O. shall verify that the vehicle is re-Exported within the prescribed period of six months or such extended period by the competent authority. The E.F.O. supervising the shipment shall check the particulars of vehicle with those shown on the Shipping Bill / Carnet and, if he is satisfied of the identity, shall give "let ship" order on the Shipping Bill, after examining the vehicle for possible places of concealment of contraband. After completing the shipment and endorsement, the papers are to be forwarded to Carnet/Triptide officer or the Port of entry of the vehicle. Entry in the Passport of the passenger is to be cancelled.

- (9) The cargo after 'Let Export' order given by the Appraiser shall be carted out by the respective airline without much delay so that there is no congestion in the Export shed and the EFO will find it convenient and easy to search out the unexamined cargo. This will help the smooth flow of cargo in to the Export shed. This is Important on the anti smuggling point also.
- (10) He shall receive the Export cargo consignments from SEEPZ. He shall check the Customs seals, marks & nos., and verify the number of packages and endorse the accompanying Appendix – 37, Shipping Bills and allow the carting for shipment. He shall make necessary entries in the Register maintained, to this effect.

(vi) Transshipment Cargo Officer (T.P.O.)

His main duties are-

1. He shall attend to all the transshipment of cargo (TP cargo) and maintain the TP Registers for Local to Foreign, Foreign to Foreign and Foreign to Local cargo and shall enter the details of TP cargo in the relevant TP Registers.
2. The Consolidated and TP cargo (Foreign to Local) shall be forwarded by the T.P.O. to Domestic Carrier Airline under CTMs, reflecting all the particulars of the cargo. Care shall be taken to indicate House Air Way Bill number in addition to other particulars in respect of Consol cargo.
3. He shall escort such cargo to the Warehouse of the Domestic Carrier.
4. Local to Foreign and Foreign to Foreign cargo shall be forwarded and received under CTMs in the W.H of the concerned onward carrier Airline by the T.P.O.
5. The entries in the T.P. Registers shall be closed by the T.P.O. on the basis of the E.G.M. of the flight, international as well as domestic, carrying the T.P.cargo onwards.
6. EFOs of the Batches while receiving EGMs along with Shipping Bills, shall collect sufficient copies of EGMs from those airlines and despatch the same to TPO in the Batch for closing the despatch column in their respective TP registers.
7. The T.P.O. shall maintain records of the receipt and despatch of all the T P cargo.

(C) AIRLINES' & AAI's WAREHOUSES

Every Airline transporting Import/Export cargo, is usually allotted enclosed space by the Airports Authority of India, within the area of Airport / Air Cargo Complex. These warehouses are used by these Airlines to temporarily store Import/Export/Transshipment Cargo to be transported by their flights. Preventive Officers are posted to man these Warehouses of the International Airlines and the Domestic Carrier Airlines to oversee the proper movement of Import/Export cargo. Preventive Superintendents are also posted to supervise the work and functioning of these Warehouses.

(i) Superintendent I/C Airlines Warehouse

The Supdt. (P) in charge of Airline Warehouse shall supervise the Officers posted therein. He shall ensure that the officers working under him perform their duties as per the relevant instructions and guidelines issued from time to time. He shall also ensure that all the relevant records are maintained properly and shall check the same occasionally.

(ii) Preventive Officer / International Airlines Warehouse

The Preventive Officer posted in the Warehouse of the Airlines has to oversee and monitor the movement of the Import/Export cargo to and from these Warehouses. The Preventive Officer shall act as I.F.O., E.F.O. and T.P.O. as far as the Import/Export cargo of the Airline is concerned. He shall perform the aforesaid duties and maintain all the Registers/records as described in the earlier paragraphs. He

shall supervise the loading/unloading of the Export/Import cargo to/from the aircraft. He shall escort the cargo moved from this Warehouse to the aircraft and/or warehouse of other airline/ custodian. He shall maintain general supervision in the Warehouse against any unauthorised movement of cargo from /to the warehouse.

(iii) Preventive Officer/Domestic Carrier Airline Warehouse

The Government has permitted some Domestic/International Airlines to carry the Import/Export in their flights on the domestic run. These Airlines have their own separate warehouse to store such Import/Export Cargo pending transportation. In these warehouses, the Preventive Officers are posted round the clock. These officers attend to the Foreign to Local and Local to Foreign TP Cargo transported by these carrier Airlines.

The T.P. Cargo movements are covered by CTM procedure. Copy of the CTM, EGMs and break-up proforma shall be kept for record by the Officers concerned. The procedure is as below:

a) Local to Foreign cargo:

1. Inland carriers bring the Export cargo to the Airport under cover of EGMs duly certified by the respective inland Customs.
2. The EFO at the inland airport retains all the copies of the Shipping Bills along with the manifest filed by the airline after duly endorsing the Shipping Bills with shipment particulars viz. verification of seals, flight No. and the name of Gateway airport (actual departure Airport out of India). The details of the short shipment/shut out cargo shall be clearly shown in the EGM.
3. On reaching the Gateway Air Port ,the domestic carrier airline shall arrange for the transfer of such cargo to the concerned International Airline by filing transferred application (CTM) which will be prepared on the basis of details forwarded by the airport of origin of the cargo. The CTM will be in (6) copies- (a) One copy to W/H Officer of the international airline (b) One copy after completion of formalities of transfer to be sent by domestic carrier airline the Customs at inland airport from where the cargo originated, duly stamped and signed by the Customs at this end. This has to be done within 48 hours of the flight which left the inland Customs (c) The remaining four copies will be with domestic and International Carriers respectively.
4. The cargo shall be then shifted under CTM, into the W/H of the concerned International airline under the escort of the Domestic carrier W/H officer and the same shall be received by and shipped under the supervision of the W/H officer of the concerned International airline.
5. After actual Export of such cargo by the International carrier, copy of EGM shall be sent to the Customs at the port of origin.
6. After getting the above (5), the Customs staff at the inland port shall endorse the Shipping Bills for further processing.
7. The offices posted in this warehouse shall note down the advice received from inland ports, endorse and return the same to the port of origin after the actual Export of the cargo.

b) Foreign to Local cargo

Import cargo destined for inland airports is also permitted to be so transported by the International/domestic carrier airlines, after furnishing the requisite Bond/undertaking. The procedure shall be as follows:

1. Such cargo shall be forwarded by the International airline, under CTMs to the Warehouse of the domestic airline, escorted by the W/H officer of the International airline.

2. The cargo shall be manifested in the EGM of the domestic flight carrying the cargo, suitable Advices shall be prepared by the airline regarding the cargo and shall be despatched to the Customs of the destination airport, after being certified by the Customs.
3. The flight and EGM no. of the carrier flight shall be intimated to the T.P.O. of the Importing airline.
4. On receipt of the acknowledgement from the port of destination, the same also shall be intimated to the concerned T.P.O. of the importing airline, to enable him to close the T.P. entries.

The Officer posted in this Warehouse shall maintain Registers for each type of Transshipment cargo which is shifted to/from this warehouse and shall indicate against each entry the flight no. of arrival and departure of the Transshipment cargo. He shall also keep records of CTMs, Advices, etc., in respect of such cargo.

(iv) Preventive Officer i/c A.A.I. Warehouse

As has been stated earlier, this warehouse is meant for storage of Imported Cargo which has not been cleared from the Air Cargo Complex within 14 days of its landing. Such cargo is removed from the Cargo Complex in double locked vans, forwarded by the I.F.O. and received into the AAI Warehouse by the Preventive Officer posted there. If the cargo is not cleared by the Importer even after 30 days of its landing, the AAI may dispose off such cargo. The records in this warehouse are also to be maintained by the custodian on the lines of the records maintained in the Air Cargo Complex by the custodian.

The duties of P O I/c AAI warehouse are –

1. He shall keep the records up to date and maintain general supervision in the Warehouse.
2. He shall check the documents while delivering the cargo from the warehouse in the same manner as Import Gate officer at the Air Cargo Complex.
3. He shall supervise the unloading and stacking of the cargo in the warehouse.
4. He shall forward the bonded, TP and other cargo under Preventive escort.
5. He shall ensure that cargo received in this warehouse, if not cleared within one month of its landing at airport, is disposed off by AAI.
6. He shall maintain the relevant registers and records for storage and delivery of the cargo.

(D) ENTRY / EXIT GATES

The Entry/Exit Gates for movement of Import/Export cargo and of various staff/vehicles at the Air Cargo Complex, are very important points, which are manned by the Preventive Officers besides other Security staff. The officers at these Gates have to be extra alert to detect any unauthorised removal of any cargo or dutiable goods, movement of any prohibited/restricted goods, etc. There are usually three types of such Gates at the Air Cargo Complex- (i) Import Cargo Delivery Gate (ii) Export Cargo Entry Gate (iii) Other Gates authorised for movement of persons and vehicles.

The duties of the Preventive Staff at these Gates are briefly enumerated below:

(i) Import Cargo Delivery Gate Officer

The above gate is for the delivery of the Import cargo of various types.

The procedure for passing the Import cargo through this Gate is given below.

- (1) When the cargo is brought to the Gate for delivery, the Gate officer shall check the duplicate Bill of Entry to see whether the Appraising Officer has given out of charge for the cargo. He shall also ensure that the relevant stamp like HC, HD, IDF, ADF (HC–home consumption cash paid, HD-

home consumption – duty from deposit, IDF-Import duty free, ADF-appraised duty free etc.) alongwith the computer stamp, like compare stamp and out of charge stamp appear on the Bill of Entry.

- (2) He shall physically check the cargo as per the Bill of Entry to verify the Marks and Nos., Rotation No, Airway bill No, Total No of packages shown in 'out of charge' etc. to correlate the consignment with the Bill of Entry.
- (3) He shall then allow the cargo after making entries in the Cargo Register.
- (4) He shall verify the sealed sample with the orders passed by Appraiser on Bill of Entry while the sample is passed out to be deposited with Dy. Chief Chemist Laboratory. Entry shall be made in the Sample Register.
- (5) In case of T.P., Bond and other such cargo, forwarding note on the documents shall be checked by the Gate Officer and it shall be ensured that the escorting officer accompanies the cargo. Entry of such cargo shall be made in the relevant Register by the Gate Officer.
- (6) Duplicate copies of the Bill of Entry and other documents shall be collected and endorsed by the Gate Officer and kept in safe custody to be forwarded to Manifest Clearance Deptt. on the next working day.
- (7) The Gate Officer shall ensure the opening and closing/ locking of the Gate.

(ii) Export Shed Gate Officer

This is one of the Important postings of the Preventive Officer in the Air Cargo Complex. This Gate is used to bring the cargo to be Exported into the Export examination shed. The Gate officer shall be alert all the time keeping a strict watch on the cargo and persons moving through the Gate. Some of his duties are as below:

- 1 The Gate Officer shall ensure that only bonafide cargo is passed in through the Gate.
- 2 He shall allow only bonafide Exporters/representatives inside the shed through the Gate.
- 3 He shall check the documents vis-à-vis cargo, which is brought to the export shed for the purpose of export. Documents are viz. Shipping Bill and Airway Bill in respect of manual Shipping Bill, Annexure 'C' form duly filled, check list and Airway Bill in respect of E.D.I. shipment and Appendix – 37 form duly filled and Shipping Bill in respect of SEEPZ cargo.
- 4 Any shut-out cargo going out of the Gate shall be passed out only after verification of proper permission and check of the cargo. He shall maintain a register for the same.
- 5 The Gate officer shall maintain a Register for all the cargo allowed into the export shed, in the following proforma:

1	2	3	4	5	6
Sr. No.	Date	Name of the Exp.	No. of Pkgs.	S. B. No.	Description
7	8	9			
CHA No.	Remarks by Gate Officer	Signature of Gate Officer			

(iii) General Gates

Besides these two Gates, meant for specific purpose of passing in/out of the export/import cargo, there may be some Gates in the periphery of the Air Cargo Complex. These Gates are normally used by the Staff and vehicles of various agencies working at the Cargo Complex for in/out movement.

The Gate officer shall keep a close watch on all the persons and vehicles passing through the Gate and in case of suspicion, shall carry out a check of the suspect person or vehicle. The Gate officer shall be alert all the time to detect and thwart any attempt of removing any contraband goods or any dutiable goods unauthorisedly. He shall maintain a register showing details of persons/vehicles checked/searched by him.

(E) OTHER DEPLOYMENTS

In addition to the aforementioned deployments of the Preventive staff at Air Cargo Complex, there may be certain other deployments at the Air Cargo Complex, depending upon the requirements. A brief description of such duties is outlined below. Normally these units are manned by Preventive Officers, supervised by a Superintendent (P). The main work of the Preventive Officers in these units is to assist the Superintendent (P) in attending and accomplishing the day to day work :

(I) Superintendent i/c CTM

He shall supervise the work of officers posted under him. He shall scrutinise the Cargo Transfer Manifest for transshipment of cargo from/to the Air Cargo Complex and signed the same for granting permission. He shall also ensure the records and register are properly maintained. He shall be assisted by the I.F.O. in his work.

(ii) Superintendent/ Preventive Officer in EDI Centres

With the introduction of Indian Customs EDI System, many Air Cargo Complexes are now processing the documents for Import/Export cargo. Accordingly, Superintendent (P) and Preventive Officers are also deployed to work in and attend to various tasks of processing of documents/clearance of Import/Export cargo through such EDI Systems. Supdt./EDI and P.O./EDI are required to perform their duties as enumerated in the relevant sections of Chapter "EDI" of this Manual.

(iii) Superintendent i/c Direct Delivery

He attends to the work of clearance of Direct Delivery cargo. He is assisted by a Preventive Officer. The Superintendent (P) and Preventive Officer, posted in the Direct Delivery warehouse, shall perform their duties, as enumerated in the earlier paragraphs on the 'Direct Delivery of Import Cargo' of this Chapter.

UNACCOMPANIED BAGGAGE BY AIR

With the linkage of numerous destinations by Air, many passengers, specially those transferring their residences, now prefer to book their baggage by Air which is transported as cargo. This ensures faster delivery at the destination and is cheaper than the accompanied carriage of the baggage. The Unaccompanied can be of two types- one which arrives before and another which arrives after the arrival of the passenger at the destination.

Arrival and clearance of Unaccompanied Baggage at Air Cargo Complex

The following paragraphs describe the broad procedure for arrival, movement and clearance of Unaccompanied Baggage at the Air Cargo Complex-

The accompanied baggage of the passengers on arrival is segregated and handed over to them by the Airlines, to be cleared through Customs at the Passenger Terminal. The Unaccompanied Baggage is shifted to the Air Cargo Complex like general cargo as has been described earlier. At the Cargo Complex, the Baggage is entered into the warehouse of the custodian and given a serial no. The

baggage is further segregated as - to be cleared at the Cargo Complex and to be transhipped to other Indian ports for clearance. The baggage to be transhipped is moved to the domestic carrier airline in the same manner as described earlier in the case of the general transshipment cargo. The baggage to be cleared at the Cargo Complex is then shifted to the Unaccompanied Baggage Centre of the Air Cargo Complex.

The concerned Airline/Freight Forwarders/Break-bulk Agents, in the meantime, intimate the consignee about the arrival of the baggage and issue a Delivery Order after collecting necessary charges from him. On the strength of Delivery Order/Travel Documents/Airwaybill for booked baggage, the consignee/authorised agent files a Baggage Declaration Form with the Customs for clearance of the Baggage.

After scrutiny and verification of the documents, the Baggage Declaration Form is assigned to a Preventive Officer by the Supdt.(P)/ Baggage for further action of clearance of the same as per Baggage Rules. The P.O. then endorses a "please deliver" remark for the custodian on the BDF. On the basis of this endorsement, the custodians present the baggage covered under a particular BDF to the Customs for examination and clearance.

The baggage is then examined by the P.O. in presence of consignee/authorised agent, under the supervision of Supdt. (P)/Baggage. After the Duty chargeable has been assessed, the consignee/authorised agent is given a Detailed Duty Receipt to enable him to pay the requisite Duty with the Customs cashier. Once the Duty has been paid, the Supdt.(P)/ Baggage gives 'out of charge' on the BDF and the Baggage is handed over to the consignee/authorised agent for removal from the U.B.Centre.

Clearance of Baggage at U.B. Centre, Air Cargo Complex

The procedure relating to examination of the baggage at the Unaccompanied Baggage Centre, Air Cargo Complex has been reviewed and following procedure is prescribed for strict compliance by the staff at the U.B. Centre in Air Cargo Complex.

1) As laid down in Sec. 77 of the Customs Act, 1962, correct declaration of all the contents in the baggage shall be made to the proper officer by the person desiring to clear the Unaccompanied Baggage. This declaration shall be made in the prescribed proforma known as Baggage Declaration Form (B.D.F.). The P.R.O. in the U.B. Centre shall scrutinise the forms in detail for ascertaining the veracity of the information furnished. Only when he is satisfied, he shall accept the form and initial the same in token of scrutiny of the form. He may call for additional information if necessary.

2) The declaration shall be correct in all respects viz. the description of the goods, the Brand Name, the Model Number, the quantity and the approximate value, depreciated to the proportionate usage of the article while it was actually in the possession of the passenger. Any discrepancy noticed at the time of examination vis-à-vis the declaration on the BDF can be termed as 'misdeclaration' and can be treated according to the procedure as laid down under the relevant laws.

3) In addition to the particulars like number of packages etc., the total value declared in the BDF shall be noted in the Register maintained for the purpose and the relevant entry shall be closed only after clearance of the baggage covered by the respective BDF. Any alteration to be made shall be with the approval of Asstt./Dy. Commissioner/U.B. Centre, ACC.

4) If the total value of the goods declared under the Head 'miscellaneous' exceeds Rs. 1,000/-, the details of such goods viz. the commodity, Brand, quantity and value shall be obtained in detail for the individual items.

5) The arrival and departure particulars and particulars of stay abroad / and in India shall be verified from the Passport, Air Ticket / Boarding Cards of the passenger.

6) As far as U.B. is concerned, the examination of the Baggage shall be 100% vis-à-vis the declaration in BDF. Only in cases where Baggage Form is accompanied by the packing list, the examination of Baggage may be restricted to 10% as envisaged in the Ministry's letter No. 497/2/92 Cus-VI dated. 08.04.1993.

7) Examination of the baggage under the supervision or in presence of officers from SIIB shall be only on reasonable suspicion and with the approval of Asstt./Dy. Commissioner/SIIB and such examination shall be carried out under the supervision of Supdts./SIIB and Supdt./U.B.C. and the fact of such examination shall be endorsed on the BDF and signed by the Superintendents supervising the examination.

8) Several instances of misuse and exploitation of concessions under T.R. Rules have been noticed. Complaints have also been received from passengers of harassment in cases of bonafide T.R. Concessions. In order to avoid such complaints and at the same time to prevent dilution of checks against exploitation of T.R. facilities by unscrupulous elements, it is directed that in future, whenever a dispute / doubt arises in respect of bonafide nature of baggage sought to be cleared under T.R. Rules in terms of notification No. 137/90 Cus, the matter should be brought to the notice of the Addl. / Jt. Commissioner of Customs i/c. U.B. Centre, who will examine the case at his level and take appropriate decision (F. No. 520/127/94 – Cus VI dated. 18.05.95.).

9) Whenever any item Imported is found in commercial quantity attracting action under ITC Imported by TR/R8/Short Visit passenger, Asstt./Dy. Commissioner (UBC) will inspect the goods physically vis-à-vis the declaration and inventory taken by the officer and satisfy himself as to the quantity/quality and value of the items taken for duty purpose. In such cases, the duty assessment will be completed by the Asstt./Dy. Commissioner/U. B. Centre.

10) The Baggage officer shall give detailed justification in respect of each item (14 items under App. 'B' of the Baggage Rules, 1998) whenever the assessable value is less than the published book value for such items. This reduced value shall be approved by the Supdt./UBC before payment of duty. Wherever the value assessed is less than $\frac{2}{3}$ rd of the book value, the item shall be inspected by the Asstt. Commissioner (UBC) before the value is approved.

[Based on Standing Order No. 13/95 dated 31.08.1995 , issued by Commissioner of Customs, Air Cargo Complex, Sahar, Mumbai, in F. No. S/3-108/94 ACC (B)]

Strengthening of checks in Unaccompanied Baggage Centre

With a view to a streamline the functioning of U.B. Centre, following checks are ordered to be undertaken with immediate effect.

1. Henceforth the allocation of BDF forms amongst the officers would be done through computer on random basis. A data entry operator with necessary hardware and software is being posted to U.B. Centre for this work. In addition to this AC/EDI would develop software which will select consignments on random basis for examination by SIIB/CIU. A database of Imports through U.B. Centre including details of passenger, visits made abroad, consignments cleared through U.B. Centre in last one year, details of goods Imported, value declared and assessed, duty paid and fine and penalty imposed, should also be maintained in the software. This database would also be used to monitor the functioning of U. B. Centre by intelligence agencies and for intelligent selection of packages for examination by SIIB/CIU.

2. All packages should be X-rayed and a stamp be put on all such packages by the officer X-raying the consignment certifying that the consignments have been X-rayed. Those packages, which could not be X-rayed due to the odd size, would be stamped as 'NOT' X-RAYED' by the officer X-raying the

packages. A Preventive officer would be posted at Gate from batch, who would check this stamp in addition to other routine checks at the time of delivery of goods. The delivery of cargo would be done only between 12.00 PM to 1.00 PM and between 2.00 PM to 5.30 PM. Delivery of goods prior to 12.00 PM and after 5.30 PM would be done only with the permission of AC/U.B. Centre.

3. Valuation of goods is very Important because duty, fine and penalty depend upon the value of the goods. All standing instructions on valuation of U. B. Cargo should be followed scrupulously. The database of values should be updated continuously on the basis of market enquiry by SIIB and information circulated by various agencies from time to time. In addition to above, value of non-bonafide baggage may be ascertained with the help of appraising group and valuation information available in ICES (Imports) database.

4. In case of Import of goods in commercial quantity, fines and penalty should be imposed keeping in mind the local market value of the goods. Wherever required, deterrent measures like arrest and COFEPOSA detention should also be taken.

5. Addl. / Jt. Commissioner in-charge of SIIB/CIU/UBC and AC/DC in-charge of SIIB/CIU would also conduct surprise checks and random examination of cargo for effective control over U.B. Centre.

[Standing Order No. 10/99 dated 22/05/99 issued by Commissioner of Customs, Air Cargo Complex, Sahar, Mumbai, in F. No. SIIB/Genl./46/99]

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CHAPTER - SIX

CONTAINERS AND CONTAINERISED GOODS

PRELIMINARY

In modern times, the shipping trade has progressed in gigantic magnitude in terms of quality and quantity of cargo being moved through sea-routes. It provides convenient, cheap and larger means of transportation of cargo to numerous destinations spread all over the world.

Shipping is one of the oldest way of transporting goods for the purpose of trade. The cost per mile of water borne cargo is nearly half the cost of any other form of long distance transport. Though the modern day vessels are capable of hauling of thousand of tonnes of Cargo in one voyage, utilisation of cargo carrying capacity of the vessel to the optimum levels, is not only desirable but is essential for cost-effective measures. The cargo to be carried on board the vessel is of varied shapes, sizes and volumes. Each item of cargo must be individually arranged, counted, handled and put on board the ship according to a detailed cargo plan. This exercise involves time, manpower and is often not so economical optimally. Therefore, it is quicker and at times cheaper to have cargo of a standard shape and size which is easy to handle and stack. But it is not always possible to have cargo of convenient shape, size and weight, which would facilitate easy handling. To overcome this difficulty, consignments of cargo are generally stuffed into a large metal-box, which is much more convenient to handle, stack, load/unload and transport, than the conventional cargo. Such metal box is termed a "Unit Load" which in transportation usually means a "Container."

EVOLUTION

In response to "cost cutting" and "time saving" requirements of modern trade, the so-called "containerisation" has evolved during the past two decades. This system was introduced in "sea transport" in the year 1949 when John Wollan sent a "box" of sports goods across Irish Sea. The "White pass and Yukon route" introduced deep sea container traffic from Canada and the world's first fully integrated container service came into being from the year 1955. The world's largest container shipping service—Malcolm Mc Clean Service, was founded in United States of America.

A modified version of containerisation took shape in the year 1968. It is known as 'Lighter Aboard Ship or LASH. In the 'lash' system, lighters are loaded on the shore with cargo and then floated out to the ship waiting off-shore. The ship hands the lighters on board with its own crane (Gantry crane) and stacks them there high like containers. At the port of arrival the lighters are unloaded and floated to the shore. This saves both port costs as well as time spent in waiting for empty berth for the vessel.

What is a container

As mentioned earlier, a Container is simply a metal-box. It is no more complex than a truck body, a railway freight van or a ship's hold. Standard sizes for containers are 40, 20, or 10 feet long, 8 ft. wide and 8ft. in height. Some Containers have open tops or sides for easy loading of special cargo. Liquids are generally carried in boiler-shaped tanks surrounded by rectangular frame-work. Other Containers are insulated or refrigerated and are constructed according to International Standards and inspected by Insurance Companies.

The container traffic started in India only about the year 1973. Due to the obvious advantages, it revolutionarised the cargo traffic at Sea ports to such an extent that the major ports had to undergo huge infrastructural changes to suit themselves to container traffic. The advantages of containerised cargo traffic are that the ships take less time for loading/unloading and hence can make many voyages. Thus,

the landing cost is reduced, there is faster and more reliable delivery of the cargo for the consignee as also greater protection to cargo against damage, pilferage & contamination as the containers in use are made of corrugated steel.

There are different types and sizes of Containers that can be summarized as below-

- (1) Dry Containers
- (2) Tank Containers
- (3) Reefer Containers
- (4) Open Top Containers
- (5) Flat Containers etc.

The containers are of ISO standard and are normally 20ft x 8ft x 8 1/2 ft or 40ft x 8 1/2ft x 9 1/2ft.

The containers are mainly identified by four letter alphabets like APLU, ICSO, TEXU etc., followed by 6 to 8 numeric digits. These marks and numbers are assigned by an International body regulating the registration of Containers of all the Shipping lines and are affixed on the sides of the Container.

Nomenclature for the Containers

The Containers can be referred to as FCL, LCL or SOC Containers. The descriptions of the same are as follows:

- (1) **FCL Container** or Full Container Load -- when the Container is stuffed with cargo belonging to single party, it is called an FCL Container;
- (2) **LCL Container** or Less Container Load -- when the Container is stuffed with more than one party's cargo, it is called LCL Container;
- (3) **SOC Container** or Shippers Own Container-- The Containers normally belong to Shipping Companies or the Freight Forwarders. Sometimes private parties may also have their own containers for their special type of cargo. Such containers are called SOC Containers.

The main usage of the container is to act as packing material for Imported / Export cargo. On unloading of Import Cargo or loading of Export cargo or otherwise, the containers are re-exported out of India. In other words, the containers are not used for home consumption in India.

IMPORT OF CONTAINERS

The Govt. of India, vide Notification. No. 97/79 dt.2.5.1979, have exempted containers from payment of Customs import Duty provided they are re-exported out of India. The Notification. No. 104/94 dt.16.3.1994 issued in this regard is as follows: -

In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts containers which are of durable nature, falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from-

- (a) the whole of the Duty of Customs leviable thereon under the said First Schedule; and
- (b) the whole of the Additional Duty leviable thereon under Section 3 of the said Customs Tariff Act:

Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs, binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner, and to pay the duty leviable thereon in the event of the importer's failure to do so:

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit.

[M. F., D.R., Notification. No. 104/94 dt.16.3.1994]

Furnishing of Bond / Guarantee by the Importer

(1) Since the containerised traffic increased manifold the Govt. of India gave permission to open dry ports at various industrial cities & these dry ports are called Inland Containers Depots (ICDs). The Government also introduced & permitted opening of Container Freight Stations (CFSs) for stuffing /destuffing of cargo. (*For set-up and working of these ICDs & CFSs, please see Chapter on ICDs & CFS of this Manual*).

In order to facilitate & effectively monitor the movements of containers, respective Custom Houses should lay down procedures, as per guidelines given by the Ministry, with regards to duty free clearance of imported containers including their movement and accountability. The main aim should be to see that imported containers are re-exported within the stipulated period and failure to re-export should culminate into Show Cause cum Duty Demand Notice for recovery of duty, imposition of fine, penalty etc.

For the sake of convenience, all work related to the movement & accountability of the containers should be centralised in a designated section, preferably nominated as Container Cell, in respective Custom Houses.

One of the conditions in Notification No. 104/94 is that the containers shall be re-exported within six months from the date of their importation. For the purpose of fulfillment of this condition and the work relating to acceptance and cancellation of bonds, the following procedure should be observed:

The Steamer Agents/Owners of containers should execute a general continuity Guarantee/Bond (without Bank Guarantee) undertaking to re-export all the containers imported by them and binding themselves to pay appropriate duty & penalty, if any, in case of their failure to re-export the containers within the stipulated period. The Ministry, vide letter F.No. 450/11/88 Cus.IV dated 5.11.1998, has directed that the Assistant Commissioner may grant an extension beyond six month upto further 3 months for the special reasons to be recorded in writing. The extension beyond 9 months should not be granted as a matter of routine. However, in case of genuine difficulty, further extension of a period not exceeding by six months at a time may be granted by the Commissioner of Customs on merits of each case for the reasons to be recorded in writing.

“As per the existing practice, the clearance of containers, weather empty or loaded, intended for temporary admission, is to be allowed without requirement of filing a formal Bill of Entry for each container separately. The party concerned should intimate to the Customs, the number & identification particulars of the containers to be moved outside the Customs area. The Bond for such movement could be either for a specific individual consignment of containers or a general bond covering a larger number of containers as requested by the party.

As regards the amount of Bond to be taken for permitting such containers to be moved out of the Customs area temporarily, it has been noticed that different practices are being followed in the different Custom Houses. It is hereby clarified that the amount of Bond should not exceed the Customs Duty leviable on such container in case these were not to be re-exported within the stipulated time. As a thumb rule it is suggested that the Bond amount may be taken as Rs.20,000/- for a 20 feet non-reefer container & the amount may be taken on pro-rata basis for different lengths of non-reefer containers.

In case of default however, duty would be leviable on actual calculations based on the value of the containers and the rate of duty.”

[Ministry's letter F. No. 434/17/94-Cus IV dt.16.5.1994]

(2) Amount of Bond to be executed

The Mumbai Custom House has fixed following amounts for the purpose of executing bonds for temporary importation of containers-

(1) 20' plain container	Rs. 20, 000/-
(2) 40' plain container	Rs. 40, 000/-
(3) 20' Reefer container	Rs.2,00,000/-
(4) 40' Reefer container	Rs.3,50,000/-
(5) 20' Tank container	Rs.3,00,000/-
(6) 40' Tank container	Rs.4,00,000/-
(7) 20' Size container with 3 LDPE Tank having wall thickness (14mm) Height (2159mm) & Capacity (6000 litres)	Rs. 34, 400/-
(8) Flexitank of nominal Capacity 22,500 litres, Weighing at 123 kgs and thickness of 1.55 mm	Rs. 42, 600/-

[Mumbai Custom House P.N. No. 59 / 3.6.1994]

After acceptance of the Bond, intimation has to be issued to the Shipping Agent indicating the file number under which the Bond has been accepted.

MOVEMENT OF CONTAINERS & CONTAINERISED CARGO

The movement of loaded containers is required to be under proper control of Customs. The Ministry, vide circular No. 80 / 95-Cus-IV dt.6.7.1995, has directed that in order to ensure security & safeguard against tampering, the containers should be sealed with tamperproof bottle seals & that the cost of such seals should be recovered from the agents. Additionally, Para 6 of the Goods Imported (Condition of Transshipment) Regulations, 1995, lays down that the imported goods transferred must be sealed.

However, there is no need to put tamperproof bottle seals for Import loaded containers, which are being moved within Docks or outlying areas only.

As regards movement of goods to Inland Stations, The Board, vide letter F.No. 434/17/94-Cus IV of 18.5.94, has clarified that where any imported goods are moved under Bond to inland destinations, the amount of Bond guarantee should not exceed the Customs duty leviable on the goods.

The FCL cargo meant for dry ports (i.e. ICDs) will be shown on separate sheet called Sub-manifest sheet in the main IGM.

The movement of containerised cargo (import to ICDs/CFS) is actually transshipment & the same is allowed subject to observance of conditions as prescribed in "Goods Imported (Conditions of Transshipment) Regulations, 1995" issued vide Notifn. No. 67/95 Cus NT dt. 28.9.95. (*Please refer to Chapter "Transit & Transshipment" of this Manual for the said Notification*).

Tamper Proof Seals on containerised cargo

The Board has examined the matter of sealing of containerised cargo with a view to determine the appropriate sealing mechanism which will ensure security of the cargo and at the same time prevent the possibility of its tampering.

2. It is the view of the Board that the purpose of putting the seal on containerised cargo is to ensure foremost the security of the cargo contained therein. Hence, the seal used for the purpose should be such that it provides total security and which cannot be broken or even tampered with easily. Further, in case of any tampering the same should be easily detectable by the Customs.

3. In this regard, the Board has examined the seals presently in use by the Department and also certain seals available in the market. It is seen that the tamper proof 'bottle' seals presently under use appear to meet the objective of security and also safeguard against tampering.

4. In view of the aforesaid facts I am directed to say that the Board desires that suitable instructions may be issued to the concerned officers under your charge for ensuring containerised cargo is henceforth sealed only with tamper proof 'bottle' seals.

[Board's Circular No. 80/95 dt.6.7.1995 in F. No. 434/16/94-Cus.IV]

Movement of containers and containerised cargo –Instructions

(1) M/s. Indian Freight Container Manufacturers Association has represented to Government of India that a huge dumping of empty containers into the system is affecting the off take of containers manufactured in the country because of lack of monitoring of the requirement to re-export the imported Containers within six months. Moreover, extension beyond six months is granted by Customs from time to time routinely. Ministry of Commerce has requested that in addition to close monitoring bank guarantee be taken for Import of Containers.

2. On the issue of clearance of containerised cargo and re-export of marine containers, the attention is drawn to Board's earlier circular No. 434/17/94-Cus. IV, dated 16th May, 1994. The Notification No. 104/94 as amended by Notification No. 101/95 dated 20.5.1995 exempts the freight containers of durable nature from payment of whole of the duty of customs and the whole of additional duty payable provided the containers are re-exported within six months for which a bond is executed may not be given routinely.

3. It has been observed that as and when request for extension beyond 6 months period is received, the Customs Houses are routinely granting such extensions. This casual approach leads to the possibility of use of such containers for domestic trade in addition to affecting the domestic industry engaged in manufacturing of marine containers.

4. It has been felt that there is need to exercise more effective control over the clearance of marine freight containers and their subsequent re-export Separate account may be kept and bonds taken for import of loaded Containers and empty Containers. The re-export bonds for clearance of containers should be regularly monitored. The demands in terms of bond should be issued immediately on expiry of six months. The Assistant Commissioner may grant an extraction beyond 6 months upto further 3 months for the reasons recorded in writing.

The extension beyond 9 months should not be granted as a matter of routine. However, in cases of genuine difficulty, further extension of a period not exceeding 6 months at a time may be granted by the Commissioner of Customs on merits of each case for the reasons recorded in writing.

5. In case the goods are required to be detained for detailed examination, investigation, etc., the goods should be destuffed from the container and stored in any warehouse. The Containers should be released so that the shipping agents can fulfill their commitment of re-exporting the container within six months of their import.

[Board's Circular No. 83/98-Cus. dated 5th November, 1998 in F. No. 450/53/98-Cus. IV]

Movement of containers within port area & outlying areas & clearance of goods contained therein

On arrival of a vessel in the port and after berthing, the containers are unloaded under the general supervision of the Customs Section Officers. The Steamer Agent files IGM alongwith the list of containers brought by the vessel in the Import Deptt. The container list is then forwarded by the Import Deptt. to the container cell where the same is entered in the Shipping agent wise Container Register. The containers meant for clearance at the same port, are moved by the Port Trust through authorised

transporters to the nominated areas earmarked, shipping agentwise, in the docks/outlying area of docks. The Preventive Officer posted at the Gate shall verify as to whether the seals are intact and then allow the containers to move out of Docks to outlying areas of the docks. If the seal is broken / tampered with the matter shall be reported to the Asst./ Dy. Commissioner / Docks for necessary action. The Preventive Officer posted at the storage yard, on arrival of the container, shall check as to whether the seals are intact and enter the particulars in a prescribed register maintained at the Gate and shall allow the container to enter inside the storage yard. Discrepancy, if noticed, should be brought to the notice of Asstt./ Dy. Commissioner/ Docks for necessary action. In such container yards, as and when the importers / C.H.A. approach the Port Trust authorities and Customs with Bill of Entry, the container in which the cargo is carried, shall be destuffed. The goods shall then be examined and the same are cleared on payment of duty or on execution of Bond for warehousing etc. as per usual procedures. The F.C.L. containers along with Imported goods can also be permitted by the Container Cell to be taken to factory premises of the Importers, after Customs examination and 'out of charge'. The steamer agents / importers can store empty containers in Private storage yards for which no permission from Customs is required to be obtained. Similarly empty containers from private storage yards / Docks can be moved, without permission from Customs, by Steamer Agents to Exporters' premises for stuffing of Export cargo.

Supervision of stuffing the containers with Export cargo at the Exporters' premises has to be done under the supervision of Appraising staff (Customs) / Supdt. Central Excise, as the case may, be and thereafter duly sealed by them. However, stuffing of containers with Export cargo at the Customs Areas declared for this purpose in the Docks and other places, shall be done under the supervision of the Preventive Staff.

As regards Export cargo stuffed containers received from ICDs to Dock area, the Preventive staff posted in the Docks are required to verify the seals and allow shipment thereof if the seals are found intact.

As proof of Export of the containers, the Steamer Agents have to submit a list of containers shipped under one Port Clearance, to the Container Cell.

The number of containers so exported under one Port Clearance is to be co-related to their imports under various I.G.M.s by the various Steamer Agents. Since this scrutiny of one Port Clearance with reference to several I.G.M.s and verification thereof containerwise involves time and effort, the Steamer Agents are required to prepare and submit monthly statement of containers exported under each Port Clearance I.G.M. wise, in the following proforma:

Statement regarding export of containers during month of

Particulars of total numbers of Containers (both loaded and empty) imported by Vessel
 VOY IGM dated and exported.

Sl. No.	Container Number	Size	Exported by Vessel*	P. C. No. and date.

Total number of containers imported

Total number of containers exported

Till end of (month).

Balance

Bond file No.

Steamer Agents.

(*Attach copy of EGM & list of empty Containers duly certified by Section Officer / Boarding Officer)

As regards the empty containers which do not figure in the EGM, all the Section Officers are required to certify the tally sheets of the Stevedores for the loading of empty containers as a proof of export so that the same can be submitted by them to the Export Department with the respective EGMs to fulfill the condition of submission of proof regarding re-export.

Duties of the Preventive Staff posted in the Container Cell

As has been discussed in the earlier paragraphs, the monitoring of the Import & subsequent Export of the Containers by various Shipping Companies, etc., is being done by the Container Cell in the Customs House. The staff posted in the Container Cell normally consists of Ministerial staff and Preventive Officers, supervised by a Superintendent (Preventive). The main functions of the Preventive Staff in the Container Cell are as follows :

Superintendent (P)

- (1) Processing of Bond documents
- (2) Attending to Correspondence with Steamer Agents
- (3) Scrutiny of applications received for permission for taking containers out of Docks limit.
- (4) Scrutiny of applications for Transshipment permissions and endorsing T.P. permits and I.G.M. / SMTP copies.
- (5) Attending to grievances of representatives of Steamer Agents regarding difficulties in filing the particulars of non re-exported containers.
- (6) Other daily files(general) work.
- (7) Preparation of Show Cause Notices & Adjudication records.
- (8) Overall supervision of the staff and work in the Container Cell.

Preventive Officer

- (1) Maintaining I.G.M. wise and Steamer Agents wise register for Import of Containers.
- (2) Posting of Port Clearance particulars of re-exported containers in I.G.M. register.
- (3) Taking out fresh balance of non re-exported containers for issuing reminders/demand notices.
- (4) Issuing reminders to steamer Agents for accounting balance of imported but non-re exported containers.
- (5) Issuing Duty Demand Notices to Steamer Agents.
- (6) Attending to correspondence filed by Steamer Agents.
- (7) Any other work allotted by Supdt.(P)/Asstt. /Dy. Commissioner, Container Cell.

CHAPTER - SEVEN

INLAND CONTAINER DEPOTS (ICDs) AND CONATINER FREIGHT STATIONS (CFSs)

PRILIMINARY

The volume of goods imported into and exported out of country has risen considerably. With the liberalisation policies of the Central and State Governments, there has been a spurt in the foreign trade of the country. Accordingly, the movement of Imported/Export goods across the frontiers and within the country has also increased manifold. This, at times, results into the congestion of goods and conveyances at the ports/airports and delay in clearances of the goods.

In order to alleviate these difficulties, the Central Government has extended the facility to the trade for clearance of their import/export goods, at places away from the places of import/export. This not only eases the workload at the ports/airports but also makes it advantageous for the importer/exporter to get his goods cleared at a place convenient to him.

To provide for such facilities, the Central Government notifies, from time to time, the places to be used as 'dry ports' for the purpose of clearances of import/export goods. These are known as INLAND CONTAINER DEPOTS' and 'CONTAINER FREIGHT STATIONS. These places are enclosed and guarded Customs Stations having a requisite contingent of staff from the Customs, the Custodians, the Security, etc., to effect the clearances of import/export goods.

Imported goods are brought into the ICDs / CFSs, usually in containers, after the same has been duly allowed Transshipment at the port/airport of Import, under Customs seal/escort and are received by the Custodians. Similarly, the export goods are received into ICDs/CFSs by the custodians for clearances by the Customs. In all the cases, the import/export documents filed in the jurisdictional Commissionerate of Customs and Central Excise.

SETTING UP OF INLANDCONTAINER DEPOTS (ICDs) AND CONTAINER FREIGHT STATIONS (CFSs)- GUIDELINES, NORMS AND APPLICATION FORM

Part A

Definition of ICD / CFS:

An Inland Container Depot/Container Freight Station may be defined as: -

A common user facility with public authority status equipped with fixed installations and offering services for handling and temporary storage of import/export laden and empty containers carried under customs transit by any applicable mode of transport placed under customs control and with customs and other agencies competent to clear goods for home use, warehousing, temporary admissions, re-export, temporary storage for onward transit and outright export.

Distinction between ICD & CFS:

2. An ICD is a place where containers are aggregated for onward movement to or from the ports whereas CFS is a place where containers are packed and unpacked and aggregation/segregation of cargo takes place. An ICD may have CFS attached to it. ICDs are located outside the port towns whereas no site restriction applies to CFS.

Function of ICDs/CFSs:

3. Activities and operations in the ICD/CFS may be divided into the following main groups: -

- a) Receipt and despatch of containerisable cargo.
- b) Truck operations.
- c) Loading/Unloading of containers to and from trains.
- d) Stuffing/destuffing, aggregation/de-aggregation of containers.
- e) Customs clearance.
- f) Gate checks & security.
- g) Storage of cargo and containers.
- h) Information flow & Communication.
- i) Record keeping and data storage.
- j) Billing and cash collection.

4. The operations of the ICD/CFS revolve around the following centers of activity: -

- i) Siding: The place where containers are loaded on and unloaded off. Arrival and despatch of trains etc. also takes place at this location.
- ii) Container Yard: The place where loaded and empty containers are stacked prior to their despatch by specified mode of transport or prior to delivery to the customer.
- iii) The container Freight Station: The area where containers are packed and unpacked and aggregation/segregation of cargo takes place.
- iv) The Customs examination bay: The designated place where the containers are placed for examination by customs, separately for import and exports.

Benefits of ICDs/CFSs.

5. The benefits and potential benefits arising from an ICD/CFS are as follows: -

- i) Increased trade flows.
- ii) Lower door-to-door freight rates.
- iii) Safety of cargo.
- iv) Avoidance of clearing and forwarding agent's fees at seaports.
- v) Avoidance of storage, demurrage and late documentation fees.
- vi) Possible avoidance of the need to extend the period of marine insurance.
- vii) Optimal use of road and rail transport and better utilisation of capacity.
- viii) Benefits to seaports.
- ix) Inventory savings.
- x) Improved communications, etc.

6. An ICD/CFS is expected to bring about a reduction in the through transport rate per box compared to alternative cargo routes and rate paid prior to setting up ICD/CFS.

**FORMAT OF APPLICATION FOR PERMISSION TO SET UP
INLAND CONTAINER DEPOT/CONTAINER FREIGHT STATION**

1. Name of the Organisation proposing to set up ICD/CFS:
2. Status of the applicant Organisation
3. Place where the ICD/CFS is proposed to be set up and precise reasons for selection of the site.

4. Location of the site with distance from

- a) Nearest Highway
- b) Nearest Railhead
- c) Nearest Port
- d) Nearest ICD/CFS

(Enclose a map showing location and modal links to ports)

5. Whether land for the setting up of ICD/CFS already acquired, if so -

- a) areas of land (in sq. mtr.)
- b) whether owned/hired/on lease;
- c) if not, how the land is proposed to be acquired.

6. Name of the Customs Collectorate having jurisdiction to the proposed ICD/CFS.

7. **TRAFFIC PROJECTIONS:**

	<u>Commodity</u>	<u>Tonnes</u>	<u>TEUs</u>
Export (existing / projected)			
Import (existing / projected)			

NOTE: Party-wise expected traffic of export/import containers (TEUs) separately to be attached to the extent possible.

8. Names of the shipping lines, shipping agents, freight forwarders operating/ willing to operate

9. Lay-out plan of the proposed ICD/CFS:

- a) Details of rail terminal facilities for receiving Container trains, loading/unloading, stacking space for containers.
- b) covered areas separately for export/import/shut out/disputed/hazardous cargo, office block, etc.
- (c) Open area for Containers Circulation/Yard : paved/unpaved
- (d) gatehouse and security features
(detailed lay out plan to be enclosed)

10. Infrastructural facilities (area in sq. meters) proposed to be provided:

- a) Office accommodation for applicants staff;
- b) Accommodation for custom staff;
- c) Accommodation for shipping lines/agents.
- d) Accommodation for bank;
- e) Canteen
- f) Computer
- g) Weighment facilities.
- h) Telephone/telex/FAX
- i) Flood light/high mast towers for security; and
- j) Public & staff conveniences/amenities like toilets, drinking water etc.
- k) Fire fighting
- l) Drainage/Sewerage;
- m) Strong room for valuable cargo
- n) Reefer plug points
- o) Parking area for lorries outside the facility.

11. Equipment:

Details of the equipment (forklift, crane, trailer etc.) to handle the containers and cargoes.

12. Estimated cost of the proposed project.

13. Experience/capability of the applicant in running the ICD/CFS, staff to be employed with their experience and qualifications, responsibilities.

14. Financial status of the applicant organisation.

15. Movement logistics of containers between the proposed ICD/CFS & Gateway port: Complete details to be provided.

16. Coasting and proposed tariff.

17. Scope and plans for future expansion.

NOTE: The Customs Notification on the ICD/CFS will be issued only after infrastructure and security arrangements are completed & necessary bond with bank guarantee is provided.

PART B**Prior Survey a must:**

ICD/CFS introduces double handling of nation basis. For the facility to be successful, reduction in total transport cost must outweigh any increase in handling cost. This underlines the need for sound economic justification for setting up ICD/CFS through a carefully evaluated traffic likely to be handled at the proposed facility. A survey/feasibility study must precede setting up of all ICDs/CFSs and copy of the report should invariably accompany the application for setting up such a facility. Data for carrying out analysis could be from secondary sources and field observations, structured over time and space. The latter is more realistic and truthful. Prior discussions must be held with exporters, shipping lines, freight forwarders, port authorities, concerned Collectors of Customs/Excise etc. , and their point of view fully reflected in the report.

2. The traffic flow between Inland centres of production and ports need to be analysed with reference to:-

- commodities.
- directional-split (imports/exports)
- proportions of less-than-container load (LCL) and full-container-load (FCL)
- modes of transport available.
- Possible reduction in tonne per kilometers or
Box per kilometers costs.

3. A facility to be economically viable for the management; and attractive to: users, railways for full train load movements and other transport operations; seaports; shipping lines; freight forwarders etc., must have certain minimum amount of traffic. The prospective entrepreneurs are, therefore, strongly advised to study very carefully the viability of the project from the TEU traffic availability point of view.

While it is not proposed to lay down any minimum TEU figures as part of the criteria for approval of ICDs/CFSs, following are suggested indicates minimum:-

- For ICD – 6, 000 TEUs per year (Two way)
- For CFS – 1, 000 TEUs per year (Two way)

Design and lay-out of ICD/CFS

4. Key to a good lay-out is the smooth flow of containers, cargo and vehicles through the ICD/CFS. The design and lay out should take into account initial volume of business, estimated volume in 5/10 years horizon and the type of facilities exporters would require. The initial lay out should be capable of adaptation to changing circumstances. The design broadly should encompass features like (rail) siding, container yard, gate house and security features, boundary wall (fencing), roads, pavements, office building and public amenities. The track length and number of tracks should be adequate to handle rakes and for stabling trains where relevant.

The perimeter fencing and lighting must meet the standards required by Customs authorities. The gate being the focal point of site security should be properly planned.

The administration building is the focal point of production and processing and processing of all documentation relating to handling of cargo and containers. While its size will be determined by the needs of potential occupants, the main core of building may be a open space capable to divisions into different sized offices by partition walls. Fixed provisions can be made for sanitation facilities and possibly a food service facility.

A good communication system is a must.

Equipping the ICD/CFS:

5. A host of handling equipment of different kind and capacity is available for loading, unloading of containers from rail flats, chassis, their stacking, movement, cargo handling, stuffing destuffing and so on. The choice of equipment for the facility will have a major impact on the overall design and effective working of the ICD/CFS and should be carefully considered both for the ICD terminal and in the Container Freight Station. Availability of adequate and – proper equipment (owned, hired, leased) at the facility would be an essential requirement.

Tariff:

6. Detailed tariff structure and costing should be worked out in advance and information provided with the application.

General:

The main function of an ICD/CFS being receipt, despatch and clearance of containerised cargo, the need for an upto-date inventory control and tracking system to locate containers/cargo is paramount. Each functional unit of the facility (e.g. siding, container yard, gate stuffing/destuffing area etc.) should have upto-date, and where possible on-line, real-time information about all the containers etc. to meet the requirements of customers, administration, railways etc. This could be through computers etc.

PART C

Procedure for approval of ICD/CFS

Proposals for setting up ICD/CFS will be considered and cleared, on merits, by an Inter-Ministerial Committee for ICDs/CFSSs, which consists of officials of the Ministries of Commerce, Finance (Customs), Railways and Surface Transport. The proposals will be examined keeping in view that guidelines and norms mentioned in Part A & B.

2. Application (eight copies) in enclosed form should be submitted to the Joint Director (Infrastructure Division) in the Ministry of Commerce. Applications must be accompanied by copies of

feasibility reports mentioned in the guidelines.

3. On acceptance of a proposal, a letter of intend will be issued to the applicant which will enable it to initiate steps to create infrastructure.

4. After the applicant has put up required infrastructure, met the security standards of the area Collector of Customs and provided a bond backed by bank guarantee to the Customs, final clearance and Customs notification will be issued. The bond to be extended would be for a value equivalent to the value of cargo to be handled. Bank guarantee would be for 20% of the value of bond.

5. The approval will be subject to cancellation in the event of any abuse or violation of the conditions of approval.

6. The working of the ICD/CFS will be open to review by the Inter-Ministerial Committee and Customs Department.

[M.F.,D.R., Letter NO. 434/12/92; Cus- II DT. 5.6.1992]

Simplification of the procedure for setting up ICDs and CFSs.

Attention is invited to the various instructions and circulars issued from time to time regarding setting up of ICDs/CFSs by the Public Sector Undertakings as well as by the Private Sector Undertakings. In view of growing demand for setting up ICDs/CFSs in hinterland and to keep pace with fast growing import/export, it has been decided to simplify the procedure for setting up ICDs/CFSs.

2. The Container Freight Station (CFS) is not a Customs Station but it is to be declared as a Customs area under Section 8 of the Customs Act by the Commissioners of Customs concerned. Normally, every CFS is located in a Customs Station or in an adjunct to a Customs station. C.F.S. may handle exclusively export cargo or import cargo or both. Generally, CFS is taken to be an extended arm of the Port/ICD/ACC. Depending upon its importance and volume of work it handles, it functions like a full-fledged Customs station wherein the admission, processing and completion of all customs procedures are done. Alternatively, the processing of the Customs clearance documents is done in the Customs House and the CFS functions like 'Docks' where the examination and sealing of export cargo or examination and customs clearance of import cargo is done. Thus, depending upon the location, workload and other related factors, Commissioners of Customs can devise the Customs work in such CFS.

3. Commissioners of Customs are authorised to notify a CFS as a Customs area under Section 8 of the Customs Act in any place declared by the Central Government as a Customs station under section 7 of the Customs Act. However, before declaring a CFS, the Commissioners may assess the requirements of such facility in each Port/ICD/ACC for creation of such additional Customs area (CFS). If need be, the Commissioners may discuss such feasibility in the Regional Advisory Committee Meetings or meetings with the Trade. Commissioners are advised, however before notifying any new C.F.S. as Customs area is a Customs Station, they should call for the proposals by wide publicity and grant such facility only after fully satisfying themselves on the need, security, credibility of the persons concerned, suitability of the condition and other details of the applicant.

4. Proposals for CFS are also processed in the Ministry of Commerce when applicants make proposals to the Ministry. As and when such proposals are cleared and communicated to the Board, Commissioners are required to notify it under Section 8 of the Customs Act, as early as possible, after ensuring suitability and other criteria for such declaration.

5. Notifying a CFS as a Customs Area need not be restricted to Public Sector or Joint Sector units. Proposals from private sector could also be considered on merits, taking into account the Government policy of opening of CFS.

6. Before notifying such Customs area, the following guidelines may kindly be noted.

- a. There should be judicious mix of Public Sector Undertakings and Private Sector Undertakings to provide an element of healthy competition leading to greater efficiency and cost effectiveness in management and operation of such ICDs/CFSs.
- b. If at any station PSU has already been appointed as a custodian to operate a CFS/ICD, the next facility may be given to a joint sector/Private Sector and vice versa.
- c. The verification of financial standing and antecedents of the organisation may be done in the same manner as has been prescribed for private bonded warehouses by the Board vide its Circular No. 68/95 dated 16.5.95 and 99/95 dated 20.9.95.
- d. The selection of custodians to operate CFS/ICD may be made by the Commissioners stationed at the city in consultation with Regional office of DRI, and by constituting a committee of officers from the Commissionerate and or from the trade and other interests.
- e. The guidelines on the undertaking to be given by the Custodians to set up and operate ICDs/CFSs are issued vide Circular No. 128/95 dated 14.12.95 from Board's F. No. 434/12/92-Cus.IV.
- f. To project an image of fairness, the Commissioner may invite request for opening CFS/ICD through a Public Notice.
- g. The Commissioner may dispose of the case of Public Sector Undertakings themselves and the cases of Private Sector after confirmation by a Committee to be constituted as indicated above.

7. The application format and other details in this case will be same as contained in Board's earlier letter No. 434/12/92-Cus.IV dated 5.6.92. However, in such cases, the proposal may be entertained directly by Commissioner of Customs/Central Excise instead of making a reference to Inter-ministerial Committee set up in Ministry of Commerce.

8. These instructions supersede all instructions issued on the subject earlier, which are not in conformity with the instructions contained in this Circular.

[Board's Circular No. 133/95 Cus. Dt.22.12.1995 in F. No. 434/54/95-Cus]

Standard set of guidelines for appointment of custodians of EPZs/ICDs/CFSs.

The Government has decided that the private sector would also be involved in infrastructure development. Accordingly this sector had been allowed to open CFSs/ICDs/EPZs, in addition to public sector agencies. The other intention of the Government has been to bring the Customs facilities to the doorstep of the exporting and importing community; therefore, many CFSs/ICDs/EPZs have been allowed to be opened in the interior, apart from port towns so as to decongest the ports.

2. To ensure smooth working of all the facilities, a need was felt to draw up a standard set of undertakings to be given by the custodians before they are so appointed under section 45 of the Customs, a letter of even number dated 11.10.95 was circulated to all Chief Commissioners of Customs & Central Excise, all Commissioners of Customs and some Commissioners of Customs & Central Excise in whose jurisdiction these facilities are being created. Subsequently, this was discussed as an Agenda point in the Conference of Commissioners held at Cochin on 20/21st October 1995. As per the consensus arrived at in the said conference the set of undertakings has been revise. The revised set of guidelines is enclosed for your ready reference. It may be mentioned that the residential accommodation may be

asked for in places where ICD/CFSs are sanctioned in a newly developed area like Gandhinagar or New Township created e.g. J. N. Port, and places where we do not have any accommodation.

3. It is necessary that the major aspirants for custodianship, i.e. parties wanting to open CFS/ICD or EPZ may be appraised of these requirements through a public Notice/Trade Notice.

4. The need for CFS/ICD/EPZ is first felt by the trade before it is felt by the Department. The trade should also be informed through the Regional Advisory Committee that if they want to avail such opening of CFS/ICD/EPZ they may approach the Commissioner of Customs/Central Excise of the area concerned.

Guidelines on undertaking to be given by the custodians before being appointed as custodians of ICDs/CFSs/EPZs

- (1) The custodian should provide safe, secure and spacious premises for loading /unloading/ sorting of the cargo. The infrastructure for loading/unloading/storage operations should be designed to handle a minimum traffic of at least 10 TEU per day (two-way). The premises should be so designed that there should be provision for expansion of storage space, office accommodation, handling space, etc. for a period of 10 years.
- (2) Custodian shall provide sufficient modern handling equipment in operational condition for handling the containers and cargo in the area;
- (3) No alteration of the plan in the accommodation, boundary wall and building, etc. shall be made without the concurrence of the Commissioner of Customs;
- (4) Insurance of all goods held in the ICD/CFS shall be made by the custodian;
- (5) Custodian shall abide by all the rules and regulations under the Customs Act;
- (6) For proper discharge of duties the custodian shall execute a bond equal to the value of the goods likely to be stored in the premises for a period of 30 days, supported by a bank guarantee or a government bond or cash deposit equivalent to 10% of the value of goods;
- (7) The custodian shall bear the duty on the goods lost or pilfered from the CFS/ICD;
- (8) The custodian shall give separate bond with sufficient bank guarantee of the value of the bond towards the duty element of the Export goods transported from the customs area to the gateway port/any other customs area for export;/ transshipment. Custodian would also be held responsible for the duty and for other penalties leviable for the goods lost during transshipment from the said customs area to the gateway port/other customs area;
- (9) Security of the premises shall be the responsibility of the custodian subject to the prior approval of the Commissioner of Customs of the arrangements. The cost for the security has to be borne by the custodian;
- (10) Custodian shall bear the cost of the Customs staff, posted for the ICD/CFS/EPZ. The Commissioner of customs shall decide the number of staff which is required to be posted in the facility considering the workload in the station.
- (11) Custodian shall provide free furnished office space for the Customs Department;
- (12) Residential accommodation for the customs staff posted in the area shall be provided for by the custodian, wherever requisitioned by the Commissioner of Customs;
- (13) Free suitable transport from the nearest railway-head or suitable point shall be provided for the customs staff by the custodian;
- (14) In the ICD/CFS/EPZ the custodian shall make adequate arrangements for sanitary facilities, water supply and other allied facilities, including canteen facility, for the officers working in the area;
- (15) Custodian shall not charge any rent/demurrage on the goods detained by Customs Department under the Customs Act or any other Act for the time being in force. However, the Customs

Department shall pay the rent to the custodian after the ownership of the goods vests in the Government after confiscation. The rate of rent for such goods shall be fixed by the Commissioner in consultation with CPWD or local Revenue or Rent Control authorities;

- (16) In case the custodian wants to sublet any of the functions inside the customs area or connected with the customs area, the same should be done with prior approval of the Commissioner of Customs and the custodian shall remain responsible for the omissions and commissions of the said agency;
- (17) Duration of the appointment shall initially remain for 5 years and subject to the satisfaction of the Commissioner of Customs. Commissioner of Customs shall have the right to terminate the right to terminate the appointment at any time after assigning specific reasons and giving an opportunity for the customs to explain his case. The appointment shall be reviewed after every 5 years thereafter.

[Board's Circular No. 128/95 dtd. 14/12/95 in F. No. 434/12/92-Cus.IV]

Multi-modal Transportation of Goods Act, 1995 – Grant of Custom House Agents licence etc. to Multi-modal Transport Operators-Regarding

A number of references have been received from the field formations enquiring whether Multi-modal Transport Operators (MTOs) or their Agents appointed by the Ministry of Surface Transport have to be granted Custom House Agents licence or appointed as Steamer Agents for the purposes of Customs Act, 1962. In this context I am directed to say that the Multi-modal Transportation of Goods Act, 1993 governs carriage of goods from India to any place abroad by more than one mode of transport i. e. basically it is concerned with the operations concerning export of goods from India. Any person appointed by the Ministry of Surface Transport or any other agency under it as a Multi-modal Transport Operator is only for the purposes of the said Act and any such appointment does not confer any rights for his appointment as a Custom House Agent or Steamer Agent for the purpose of Customs Act, 1962.

2. Notwithstanding the aforesaid legal position, if a particular container agent who is acting under the guise of a Multi-modal Transport Operator for dealing with the export cargo, the permission for his operations either for de-stuffing or for stuffing to be granted only by the custodians of the imported cargo i.e. the Port Trust or the IAAI or others appointed so. In so far as the customs are concerned, if it is the normal practice of the Port Trust, AAI or other custodians to take security clearance from customs with reference to the person or persons to whom they issue passes, the Custom House need to verify from records about the credibility to whether the person has come to adverse notice of the Custom House which is detrimental to allowing handling of cargo, for example, involving themselves in some smuggling activities. Otherwise, the customs authorities have no status to deal with such kind of operators. Merely because he would handle the cargo either export or import, would not entitle him to any of the privileges to become a Customs House Agent or a Steamer Agent unless he is otherwise qualified in terms of the Customs House Agents Regulations or other provisions of the Customs Act, 1962. The role of a Custom House Agent is to be distinguished from the role of a container handling agent or a Multi-modal Transport Operator. These instructions would mutatis mutandis apply to such cargo agents operating to deal with Import cargo.

[Board's Circular No. 72/95 dt. 22.6.1995 in F. No. 450/61/92-Cus.IV]

Clarification regarding declaration of ICDs & CFSS

Attention is invited to the issue of Notification No. 15/95-Cus (NT) and No. 16/95-Cus (NT) both dated 10.3.95 relating to Inland Container Depots (ICD). Notification No. 15/95-Cus (NT) is a consolidated notification for places appointed by the Central Government as ICDs under clause (aa) of section 7 of the Customs Act, 1962. Notification No. 16/95-Cus (NT) rescinds various notifications appointing individual places as ICDs consequent to the issue of a single notification for these ICDs.

2. The issue of a single notification listing out the places set up as ICDs for the purpose specified in the notification itself, is essentially a step towards administrative and legal simplification. The subject notification lists out the facilities located in each State and at one glance the trade and the Department would be in a position to know the existence of such facilities. It may, however, be seen that the facilities (ICDs) are indicated largely by the name of the places without further specific reference to their exact location in the particular place. This is a departure from the practice hitherto followed as in the individual notifications, now rescinded, the location of the facilities were very specifically mentioned. This departure is, however, not to create any relevant of confusion and it is to be ensured the facilities available to the trade are brought to the notice. For this purpose, it is suggested that appropriate notification as per section 8 of the Customs Act, 1962, may be issued wherever it has not been notified so far specifying the location and purpose of the ICD or of the Container Freight Stations (CFS) attached to the said ICD as required under Section 8 of the Customs Act, 1962. To ensure that the trade is well informed, suitable public notices/trade notices would also be necessary.

3. It may also be noted that as regards the movement of cargo from and to the ICDs and CFSs, the policy of the Department has so far been to prefer such movement by the medium of rail transport wherever such link is provided. This is to cut down the possible revenue risk in view of the essential advantage of rail transport in terms of safety of goods in comparison to any other mode of transport such as, by road. However, having regard to the fact that rail transport may be inadequate to meet the requirement of the trade and also the fact that the revenue risk being largely taken care of in view of the reducing tariffs over the time, the policy of movement of cargo from ICD and CFS has been reviewed.

4. As regards the ICDs, it has been decided that the movement of cargo cleared by Customs at the ICD for export may be either by road or by rail at the discretion of the custodian of the ICD. For this purpose, the custodian will be required to execute a bond with Assistant Collector of Customs incharge of the ICD which will act as revenue safeguard should the goods be lost in transit. This new dispensation may please be noted.

5. It may also be seen that at times, the ICDs/ports are being serviced by CFSs. These CFSs are essentially feeder facilities for the ICDs/Ports both for import and export cargo, Since a particular CFS would be linked to a specific (ICD/Port, the movement of export cargo from the CFS to the ICD may be generally by road only in view of short distance involved. Accordingly for movement of the export cargo from the CFS to ICD/port, we may have no objection to such movement by road or even by rail as per option of custodian of the CFS. Here also, the custodian would be required to execute a suitable bond with the Assistant Collector of Customs incharge of the ICD, which will act as a revenue safeguard should goods be lost in transit.

7. As may be noted, with the issue of Notification 15/95-Cus. (NT) and 16/95(NT), no new facilities have been created, however, the existing facilities have simply been clubbed in one notification. Accordingly, as suggested above, this fact together with the exact location of the facility in your jurisdiction and further the Government policy regarding permitting the movement of goods from ICD/CFSs may be informed to the trade by issue of suitable public notice/trade notice. This would, however, be consequent to issue of the notification under section 8 of the Customs Act, 1962 by the concerned Commissioners wherever required to be issued.

[Board's Circular No. 77/95 dt. 30.6.95 in F. No. 434/62/94-Cus.-IV]

WORKING OF CUSTOMS STAFF IN ICDs / CFSs.

As mentioned in earlier paragraphs, the ICDs /CFSs are enclosed and guarded places notified under Section 7 of the Customs Act, 1962, as Customs Stations. With the increase in the volume of Import/Export of goods to/from the country, and to avoid the congestion in Docks/Air Cargo Complexes,

the ICDs/CFSSs are being preferred for Storage and Clearance of Import/Export cargo. This also provides convenience to the Importer/Exporters located in the hinterland of Ports/Airports.

Accordingly, requisite Staff comprising of Appraisers, Examiners, Superintendents Customs/Central Excise, Inspectors of Central Excise, Preventive Officers, Group D Staff, Ministerial Staff, etc., from the jurisdictional Commissionerate of Customs and Central Excise are posted in these Stations to attend to the work of Clearance of Imported/Export goods.

The ICDs/CFSSs can be termed as 'Dry Ports' and therefore the deployment and duties of the Customs Staff, procedures for Clearance of Imported/Export goods, are akin to those prevalent in Docks at the ports or Air Cargo Complexes at the Airports. Similar to the Docks/Air Cargo Complexes, the cargo/goods handled by the Customs in the ICDs/CFSSs are of two types –

a) Import Cargo

b) Export Cargo

a) Import Cargo – With the introduction of container services, most of the cargo carried by the vessels is containerised. The importers situated in the hinterland and away from the Ports/Airports are now availing themselves of the facility of clearance of the goods at the nearest ICD/CFSS.

Such goods, in containers or otherwise, are applied for to be transhipped to ICD/CFSS, at the Port/Airport of import by the Shipping Agents/ Importers. The goods are then carried to the concerned ICD/CFSS by Rail/Road/Air and are received there by the Custodians. Usually Container Corporation of India or CONCOR are appointed as Custodian under Section 45 of the Customs Act, 1962 and all the obligations/controls under provisions of the Customs Act, 1962 are also applicable to such ICD/CFSS and goods handled therein.

The Bill of Entry and other documents required for clearance of the Import goods are filed with the jurisdictional Commissionerate of Customs and Central Excise.

The procedure for Clearance of imported goods at ICD/CFSS are similar to that of goods imported at the Port/Airport.

Also, the functions of Customs Staff in ICD/CFSS are similar to those of such staff posted for Import Clearance in the Docks/Air Cargo Complex/Custom House.

b) Export Cargo – On the Export side, the goods are entered in ICD/CFSS for the purpose of examination/Inspection and Clearance by the Customs.

The Shipping Bill and other related documents are filed and processed in the jurisdictional Commissionerate of Customs and Central Excise and thereafter the Export goods are carted into the ICD/CFSS. After the usual Inspection/Examination, like in Docks/Air Cargo Complex, of goods by the Customs, the same are cleared for export. So passed Export goods are then either stuffed into containers under Customs Supervision or directly moved to the point of export-under Customs Escort/Seals. At the point of Export the goods are loaded on the vessel/aircraft/vehicle for onward carriage to the port of destination.

The duties and functions of the Customs Staff on the export side of ICD/CFSS are similar to those of such staff posted at Docks/Air Cargo Complex.

[**NOTE:** In the ICDs/CFSSs, where the facility for Electronic Data Interchange exists, the processing of Import/Export Documents and clearance of the goods is done according to the procedure described in the Chapter ' Electronic Data Interchange' of this Manual].

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CHAPTER - EIGHT

IMPORTS CLEARANCE

PRELIMINARY

The provisions relating to Customs clearance of Imported goods and Export goods have been outlined in Chapter VII of the Customs Act, 1962. However, the provisions of that chapter do not apply to the Baggage and Goods Imported / Exported by Post, as special provisions therefor has been made in separate Chapter under the Customs Act.

The provisions regulating the Arrivals / Departures of the conveyances carrying Imported / Export goods and unloading / loading of the same have been discussed in the previous Chapters of this Manual.

This Chapter of the Manual deals with the provisions for clearance of Imported goods. The procedures for clearance of Export Goods, Baggage on Import / Export thereof and clearance of goods Imported / Exported by Post have been discussed later in the respective Chapters of this Manual.

Section 45(1) of the Customs Act, 1962, prescribes that all imported goods shall remain in the custody of the person approved by the Commissioner of Customs for this purpose, until they are cleared for home consumption, warehousing or transshipment. Sub-section (2) of the Section 45 of the Act mandates that, the custodian of the goods shall keep an account of the goods received by them and shall furnish a copy thereof to the proper officer. Also, the custodians shall not remove or deliver the said imported goods unless the proper officer has issued a written order to that effect.

Section 45 (3) of the Customs Act, 1962, outlines an important provision that if any imported goods are pilfered after unloading thereof in a customs area while in the custody of the person referred to in Section 45(1) of the Act, that person shall be liable to pay appropriate duty on such goods.

Once the unloading of the Imported goods is complete, the same are taken charge of and remain in the custody of the Port / Airport authorities pending examination and clearance by the Customs authorities. Similarly, the Export goods are also kept in or near the Port / Airport premises for Customs clearance before export.

The procedures involved in the clearance of Imported goods for home consumption or other wise, and of Export goods, is of vital importance as this entails the process of collection of revenue and implementation of Customs laws- especially the assessment of goods and collection of Customs duty, verification of importability / exportability of goods and procedures prescribed therefor as per the Export / Import policy in force.

IMPORTED GOODS

As per the definition in Section 2(25) the Customs Act,1962, imported goods means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption. So, any goods which are brought into India (including the territorial waters of India) become imported goods and on which duties of Customs are leviable.

IMPORT CLEARANCE

The broad procedure for clearance of imported goods through Customs is outlined below :-

The imported goods usually fall into four broad categories-

- a) those which are intended for home consumption i.e. to be used within the country either for sale or for manufacture of other goods, and,
- b) those intended for warehousing.

- c) those intended for Transshipment to any foreign port or other Indian ports, and
- d) which remain on board for transit to other stations in the same conveyance.

In these paragraphs, the clearance of imported goods for home consumption have been discussed. The subject of clearance of goods imported for warehousing, goods in transit or transshipment has been dealt with in the respective Chapters of this Manual.

Procedure for clearance of Imported Goods

After the imported goods have been unloaded and taken charge of by Port / Airport authorities-acting as custodians, the Steamer Agents or Freight Agents intimate the consignees of the arrival of their goods. A Bill of Lading / Delivery Order is issued by them to the consignees after collecting requisite dues.

The importer of the goods, on receipt of the intimation & the required documents from the Steamer Agents / Freight Agents, present a Bill of Entry, either himself or through authorised Custom House Agents, to the Import department of the Custom House. The receiving clerk in the Import department assigns a running serial no. with date to the Bill of Entry and then passes it on to the Noting clerk. The Noting clerk compares the particulars declared in the Bill of Entry with the corresponding details in the Import Manifest and verifies the required licences, if any, as produced. He then enters the importer's details against the corresponding entry in the Import Manifest and Import Manifest No. & other details in the Bill of Entry.

Thereafter, the importer presents the Bill of Entry to the concerned Group of the Appraising Department in the Custom House for assessment. The Appraising Groups in the Custom House are formed on the basis of commodities as described in different Chapters of the Import Tariff of the Customs Tariff Act, 1975.

In the Appraising Group, the concerned Appraiser scrutinizes the Bill of Entry in relation to statistical requirements, classification of goods, rate of duty applicable, correctness of value and quantity declared, etc., vis-à-vis invoices and other documents submitted alongwith the Bill of Entry and gives an order on the Bill of Entry to the field staff for any physical examination or drawing of any samples for the purpose of assessment.

There are two kinds of orders for physical examination of goods etc. which can be -

- a) before payment of duty, called First Check procedure, and,
- b) after the payment of duty, called Second Check procedure.

a) First check – In this method, the Group Appraiser, after scrutiny of the Bill of Entry and other related documents, passes an order on the Bill of Entry for physical inspection / examination, weighment, drawing of samples, etc., of goods, in order to determine the classification, value, etc., of the same. The Bill of Entry is then taken to the Shed Appraiser, where the imported goods have been stored, who, in compliance of the order, examines the goods with the help of Examiners. The Shed Appraiser puts his examination report on the Bill of Entry and it is referred back to the concerned Group in the Custom House. The Group Appraiser, in the light of the report of the Shed Appraiser, completes the assessment and the Bill of Entry is handed over to the importer for payment of duty in the Cash Department. After the duty is paid and other requirements are met an “out of charge” order is endorsed on the Bill of Entry by the concerned Group Appraiser. Thereafter, the Bill of Entry with ‘out of charge’ order is submitted to the Port / Airport authorities who give the delivery of the goods to the importer or his agent and the goods are removed out of Port / Airport premises through approved Gates.

b) Second check – In second check procedure, the Group Appraiser, after scrutinising the B/E and other documents assesses the goods and determines the duty payable, on the basis of declarations made and

the importer is allowed to pay the duty so assessed. The Group Appraisers then forward the B/E to the Shed Appraiser with an order for physical examination / inspection of the goods, etc., thereon.

The Shed Appraiser thereafter, examines / inspects the subject goods in accordance with the orders endorsed by the Group Appraiser and gives his report on the Bill of Entry. If no discrepancy is found, the Shed Appraiser gives an 'Out of Charge' order on the Bill of Entry and then the goods are removed from Port / Airport premises.

If any discrepancy is found in the particulars of the goods in relation to the declarations made, the Bill of Entry is referred back to the concerned Group, alongwith Shed Appraiser's report, for further action.

More often than not, the Clearance of imported Goods is resorted to the Second check method in order to avoid delay.

Now a days in most of the Custom Houses, the records of details mentioned in the Bill of Entry and various other endorsements made on it are recorded and maintained electronically in various sections of Custom House.

Further, many Custom Houses has now been equipped with the necessary infrastructure to process the Bill of Entry and other documents/procedures electronically, for the clearance of imported goods. The same has been discussed in the Chapter " Electronic Data Interchange " of this Manual.

The Bill Of Entry

As discussed in the earlier paras, the Bill of Entry is the most important document in the process of clearance of imported goods from the admission stage till final clearance stage.

The Bill of Entry is the single document that initiates the procedure for clearance of Imported goods and passes through various sections of the Custom House and the Docks, in the process. It contains not only the declarations, made by the importer but also various observations, notings, reports, etc., on it made in different sections of the Custom House and Docks.

Section 46 of the Customs Act, 1962, makes it mandatory for the importer of any goods, other than goods in transit or for transshipment to file a Bill of Entry for clearance of goods for home consumption or warehousing.

The other provisions envisaged in this Section are –

- (i) A Bill of Entry under this Section may be presented at any time after the delivery of the Import Manifest or Import Report.
- (ii) The Commissioner of Customs is empowered to permit in special circumstances the presentation of a Bill of Entry even before the delivery of the Import Manifest. This may facilitate quick clearance of goods even if the vessel's Agent has been negligent in not presenting the Manifest promptly.
- (iii) The particulars to be mentioned in a Bill of Entry have not been specified in the clause but will be prescribed in the Regulations.
- (iv) Except where the proper officer so permits, a Bill of Entry shall be for all the goods included in the relevant Bill of Lading. Since an importer is required to make a true declaration, he cannot at the same time be asked to make a declaration which corresponds with what is contained in the Import Manifest, over which he has no control.
- (v) As per amendment brought by Section 8 of Finance Act of 1995 in sub-section (3) of Section 46 of the Customs Act, 1962, the Bill of Entry can now be noted 30 days in advance before the delivery of Import General Manifest. The period has been increased from 7 days to 30 days considering the development of EDI and new liberalisation policy. This amendment has been brought in order to decrease the port congestion and to facilitate quick clearance on arrival of the goods.

- (vi) Sub-clause (4) of the Section 46 requires the importer to produce the invoice, if any, in support of the particulars furnished by him in the Bill of Entry.
- (vii) Sub-clause (5) permits the proper officer of Customs to allow substitution or supplementation of the Import Manifest if the interest of revenue is not prejudicially affected and if there was no fraudulent intention.
- (viii) This section along with Section 15 quantifies the liability for payment of duty on imported goods. The crucial date for this purpose is the date on which the Bill of Entry is presented.

The assessment under the Customs Act is governed by Section 12 which is the charging Section for the Customs Duties on goods Imported into or Exported from India. The valuation of the goods is accepted in terms of Section 14. Hence, Section 46 is a procedural Section requiring filing of Bill of Entry for assessment. The duty on such Bill of Entry is calculated in terms of Section 15. Therefore, Section 15(1) (a) links with Section 46 for date of determination of rate of duty and tariff valuation of imported goods. Reading the two Sections together, the rate and date of determination of duty on goods entered for home consumption is decided which is the date on which a Bill of Entry is filed under Section 46. Further the exchange rate for the purpose of calculation of CIF value is taken on the date of filing Bill of Entry under section 46.

Advance Notice of Bill of Entry before delivery of I.G.M.

Kindly refer to the amended provisions of Sec. 46(3) of the Customs Act, 1962 which provide that Bill of Entry may be presented even before the delivery of Import Manifest, if the Vessel or Aircraft by which the goods have been shipped for importation, is expected to arrive within 30 days from the date of such presentation.

2. The Custom Houses were not clear about the procedure to be followed in case of advance Bill of Entry. The matter was examined in Board in consultation with Commissioners in Conference and representatives of Federation of Freight Forwarders Association, Mumbai Custom House Agents Association and Air Cargo Agents Association. Board had decided that the following procedures may be followed in this regard.

3. The importers desirous of availing the above facility should submit application alongwith the advance Bill of Entry (five copies) to the Import Department. The 5th copy (additional copy) will be called Advance Noting copy. Alongwith Advance Bill of Entry the importer/CHA will produce copy of Bill of lading/AWB and invoice issued by the supplier and other documents required for assessment. They will affix following declaration with the original Bill of Entry.

“We wish to clear the goods on arrival of the vessel. We request that our Bill of Entry be processed without waiting for the manifest. The vessel is due on We shall formally present the Bill of Entry for noting as soon as the Import Manifest is filed. In case the Steamer Agent fails to deliver the IGM to the Import Department within 30 days from the date of advance noting of Bill of Entry, or the goods in question are not found to be listed in the import manifest we shall surrender advance noted Bill of Entry to the Import Department for cancellation and shall present fresh Bill of Entry under Sec. 46 of the Customs Act, 1962 after the delivery of Import Manifest in the Custom House”.

“Signature of the authorised person”

4. Copy of Bill of Lading/Air Way Bill & Invoice may be accepted provided the same are certified as correct by the importers.

5. The Office Superintendent in Import Department will verify if all the documents are in order and the dealing clerk will put ‘Advance Noting’ stamp on all copies of Bill of Entry indicating running serial no. of Advance Noting Register. Thereafter he shall enter the relevant date on the systems and generate the

Thoka number and data for the subject Bill of Entry. He shall put the Thoka Number and date on all the copies of the Bill of Entry.

6. After the Thoka Number has been assigned, the Bill of Entry shall be forwarded to the Appraising Group for assessment. After the completion of assessment by Group Appraiser, the Bill of Entry shall be audited by the concurrent Audit Section and all other formalities including counter signature by Assistant Commissioner wherever required, will be completed. The Group Appraiser shall also make assessment on the 5th copy of the Bill of Entry, which will be forwarded by group to Import Department.

7. After delivery of the IGM by the Shipping Agent in the Import Department, the Bill of Entry shall again be presented to the Import Department alongwith all documents in original, which were not given with the advance copy of Bill of Entry for entering IGM No., Date of entry Inwards, Line No. etc. Then the Advance Bill of Entry shall be noted in the IGM by the Import Department, they will also make proper endorsement on the 5th copy of the Bill of Entry. The other copies of the Bill of Entry shall thereafter be forwarded to the Concurrent Audit Section for endorsement that there is no change in the rate of duty. However, if there is any change in the rates of duty, the concurrent Audit Section shall return such Bill of Entry to the dealing group Appraiser for re-assessment.

8. If the final entry of IGM is not made within 30 days from the date of presentation of Bill of Entry, the Bill of Entry will have to be surrendered to the Import Department for cancellation. After cancellation, necessary endorsement to this effect will be made in the corresponding entry of 'Advance Noting Registers'.

9. It shall be ensured that all Bills of Entry noted in advance in anticipation of IGM, are again presented either for noting against the IGM or for cancellation, in case the IGM of the vessel is not delivered within 30 days or the goods are not covered by the manifest. It will be the responsibility of the Office Superintendent of the Import Department to see that every Bill of Entry noted under this facility is properly accounted for.

10. The above facility will also be available in case of Bill of Entry for warehousing, 100% EOU, Duty Exemption Schemes, etc.

11. Noting on the basis of IGM of mother vessel

Now a day a large number of containers are transhipped at intermediate ports by the mother vessel to feeder vessels. Such feeder vessels move quite frequently between intermediate port & Indian ports. The name of feeder vessels is not known to the importer in India till last moment. In such cases the advance noting of Bill of Entry will be allowed on the basis of master Bill of Lading of mother vessel. On arrival of feeder vessel, amended Bill of Entry shall contain the name of master vessel as well as feeder vessel. The computer software may be modified suitably to accommodate both the names.

12. Levy of interest on duty amount

In terms of Section 47 (2) of the Customs Act, 1962 the importer is liable to pay interest on duty amount in case they fail to pay the import duty within seven days from the date on which Bill of Entry is returned to them for payment of duty.

In case of Bill of Entry filed under Advance Noting, the interest liability will start on completion of seven days from the date on which Bill of Entry is returned for payment of duty to importer/CHA after no change in duty is endorsed by Concurrent Audit Section.

13. Production of documents

Wherever the goods have been imported against L/C, the importers would provide bank-attested invoice before clearance of goods.

14. Rate of exchange

In terms of proviso clause to section 14, the price is calculated with reference to rate of exchange as in force on the date on which Bill of Entry is presented under section 46. The legal position in this

regard remains unchanged.

The Rate of Exchange applicable is as in force on the date of 1st presentation of Bill of Entry whether on final entry basis or prior entry basis or advance noting.

15. Substitution of Bill of Entry

Some of the Custom Houses are not allowing substitution of advance Bill of Entry for home consumption to Bill of Entry for warehousing in case of advance noting of Bill of Entry. In terms of section 46 (5) of Customs Act, 1962 substitution of Bill of Entry for home consumption or Bill of Entry for warehousing or vice-versa is allowed provided the interests of revenue are not prejudicially affected. The substitution of Bill of Entry may be dealt as per the above-mentioned provision in case of advance noting Bill of Entry also.

[**Board's Circular No. 22 / 97- Cus. dated 4 /7/ 1997**]

Types of Bill of Entry

There are following four types of Bills of Entry for different class of imported goods. The colour of the Bill of Entry mentioned refers to the colour of the paper on which the same is printed: -

- (i) For goods imported for Home Consumption – White Bill of Entry.
- (ii) For goods imported for Bonding (warehousing) or manufacturing in Bond – Yellow Bill of Entry.
- (iii) For Ex-bond clearance of the imported goods – Green Bill of Entry.
- (iv) For goods imported for Defence and for Government Stores – Pink Bill of Entry.

The importer is required to file the Bill of Entry in five copies. Each copy has a different colour coding for printing of the contents, as below-

- (i) Original copy of Bill of Entry, which is printed in Black letters and is retained by Customs after Duty is paid on the goods.
- (ii) Duplicate copy of Bill of Entry which is printed in Blue letters and is collected at the time of delivery of the goods at the gate of Port / Warehouse / Air Cargo Complex either by Customs or by Port / Airport authorities and subsequently dispatched to Custom House.
- (iii) Triplicate copy of Bill of Entry which is printed in Purple letters. This copy is importer's copy on which CENVAT endorsement is made.
- (iv) Quadruplicate copy of Bill of Entry which is printed in Green letters and is meant for verification of Foreign Exchange remittance by the RBI or for Export promotion.
- (v) Fifth copy of Bill of Entry which is printed in Pink letters and is used by Port / Airport authorities to make endorsement for forwarding of goods for examination and for collecting port charges.

Electronic Bill of Entry: - With the advancement of computer technology, many Custom Houses have been furnished with elaborate network of computers and other electronic gadgets. With the help of these, it has now become possible to process Electronic Bills of Entry. The data pertaining to the details of Bill of Entry and related documents is stored electronically in the EDI Service Centre of the Custom House. As and when required, the information can be transmitted to the designated EDI Centres in the Ports / Warehouses / ICDs / Air Cargo Complexes etc., after processing. At the places of storage of the imported goods, the Bill of Entry can be generated and printed with the help of data furnished by the importers in relation to goods imported by them. This system provides faster and easier clearance of Imported goods. Further, this type of electronic generation of Bill of Entry has eliminated the use of various types of coloured combined bill of entry.

The procedures related to processing Electronic Bills of Entry and clearance of Imported goods through them have been described in Chapter "Electronic Data Interchange" of this Manual.

Bill of Entry (Forms) Regulations, 1987-

In exercise of the powers conferred by Section 157, read with Section 46 of the Customs Act, 1962 (52 of 1962), and in supersession of the Bill of Entry (Forms) Regulations, 1976, except as respects things done before such supersession, the Central Board of Excise and Customs hereby makes the following regulations, namely:

1. Short title and commencement. - (1) These regulations may be called the Bill of Entry (Forms) Regulations, 1987.

(2) They shall come into force on the 1st day of January, 1990.

2. Definitions. – In these regulations, unless the context otherwise requires, -

(a) "form" means a form specified in the Appendix to these regulations;

(b) "goods" means any goods, other than goods intended for transit or transhipment.

3. Form of Bill of Entry.- A Bill of Entry to be presented by an importer of goods for home consumption or for warehousing or for ex-bond clearance for home consumption shall be in Form I or Form II or Form III, as the case may be.

[Notifn. No. 3/88 Cus. (N. T.) dtd 14-1-1988 as amended by G.S.R. 625 (E), dated 15th June, 1989]

FORM I**Bill of Entry for Home Consumption**

Custom House Agent's Name,
Address and licence No.

Port Code S = Sea Prior Entry Import Dept. S. No. and Customs House Importer Importer's Name
A = Air Stamp Date Agent Code Code and Address
L = Land

Vessel's Rotation No. Line Port of Country of Origin Country of Consignment Bill of Lading
Name and Date Number Shipment and code (if different) and Code Date

PACKAGES QUANTITY GOODS CUSTOMS DUTY ADDITIONAL DUTY

No. and Description	Marks and Numbers	Serial No.	Unit Code	Weight Volume Number etc.	Description. /R.I.T.C. No. (Give details of each class separately)	Customs Tariff heading Exemption	Nature of duty code	Assessable Value under Sec. 14 Customs
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

RATE	AMOUNT	C.E.T. Item	Value for purpose of	RATE	AMOUNT	TOTAL DUTY
Basic	Basic	Sec. 3	Basic	Basic	(Column 11
.....	Exemption	Customs Tariff	+ Column
Auxiliary (Rs.)	Auxiliary (Rs.)	Notification No. and year	Act, 1975 (Column 9 + Column 11) (Rs.)	Auxiliary (Rs.)	Auxiliary (Rs.)	15)
(10)	(11)	(12)	(13)	(14)	(15)	(Rs.)
(16)						

Gross Weight TOTAL NUMBR OF PACKAGES
(IN WORDS)

TOTAL AMOUNT OF DUTY
(IN WORDS)

RUPEES TOTAL
(By pin-point typewriter)

Import Clerk

Sl. No.	Invoice Value (Foreign Currency) FOB/C and F/C and I / CIF	Freight	Insurance	Currency Code	Exchange Rate	Loading/ Local Agency Commission	(Declaration to be signed by the Custom House Agent) 1. I/We declare that the contents of this Bill of Entry for goods imported against Bill of Lading No.....dated.....are in accordance with the Invoice No. ....dated .....and other documents presented herewith. 2. I/We declared that I/We have not received any other document or information showing a different price, value, quantity or description or the said goods and that if at any time hereafter I/We receive any documents from the importer showing a different state of facts, I/We will immediately make the same known to the [Commissioner of Customs].
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
Miscellaneous Charges		Total Value (In Rupees)	Landing Charges	Assessable Value (In Rupees)			
(8)		(9)	(10)	(11)			
1							
2							
3							
4							
5							
Total							
T.C. Licence or C.C.P. No. and date/ Part and S. No./ O.G.L. No. Exemption No. and value debited to Licence/C.C.P. (In case of Letter of Authority, Name of Person to whom issued, No. and Date)				Debit P.D. No.	Stamp of collection/ FREE No. and Date		N.B.- Where a declaration in this form is made by the Custom House Agent a declaration in the prescribed form shall be furnished by the importers of the goods covered by this Bill of Entry.
Licence(s) Registered		Licence(s) Audited		.....Date....		Signature of the Custom House Agent	

DECLARATION

(To be signed by an Importer)

With Custom*
House Agent

1. I/We declare that the contents of invoice(s) No. (s).....dated.....of M/s.....and of other documents relating to the goods covered by the aid invoice(s) and presented herewith are true and correct in every respect.

OR

Without Custom*

2. I/We declare that the contents of this Bill of Entry for goods imported against

House Agent Bill of Lading No.dated are in accordance with the invoice No. dated.....and other documents presented herewith. I/We also declare that the contents that the contents of the above mentioned invoice(s) and documents are true and correct in every respect.

3. I/We declare that goods covered by the bill of entry have been imported on outright purchase/consignment account.

4. /We am/are not connected with the suppliers/manufactures as: -

- (a) Agent/distributor/indentor/Branch/subsidiary/concessionaire, and
- (b) Collaborator entitled to the use of the trade mark, patent or design,
- (c) Otherwise than as ordinary importers or buyers.

5. I/We declare that the method of invoicing has not changed since the date on which my/our books of accounts and/or agreement with the suppliers were examined previously by the Customs House(s).

Signature of Importer.....

*Strike out whichever is inapplicable.

(FOR CUSTOM HOUSE USE)

Documents presented with bill of entry

Date of receipt in:

Check here additional documents required

1. Invoice

Appraising group /
Central Exchange Unit.

2. Packing List

Daily list
Revenue Posting

3. Bank Draft

Trade return I.A.D.

4. Insurance Memo/Policy

C.R.A.D. M.C.D. Key
Register

5. Bill of Lading or
Delivery Order

M.C.D. Manifest
Posting
(On duplicate Copy)

Passed out of Customs charge

6. Import Licence/Custom
Clearance Permit

7. Certificate of Origin

8.

Proper Officer

9.

10.

(Actual designation to be indicated)

FORM II

Bill of Entry for Warehousing

Custom House Agent's Name,
Address and licence No.

Port Code S = Sea Prior Entry Import Dept. S. No. and Customs House Importer Importer's Name
A = Air Stamp Date Agent Code Code and Address
L = Land

Vessel's Rotation No. Line Port of Country of Origin Country of Consignment Bill of Lading
Name and Date Number Shipment and code (if different) and Code Date

PACKAGES QUANTITY GOODS CUSTOMS DUTY ADDITIONAL DUTY

No. and Description	Marks and Numbers	SerialNo.	Unit Code	Weight Volume Number etc	Description R.I.T.C. No. (Give details of each class separately)	Customs Tariff heading Exemption	Nature of duty code	Assessable Value under Sec. 14
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

RATE Basic Auxiliary (Rs.)	AMOUNT Basic Auxiliary (Rs.)	C.E.T. Item Exemption Notification No. and year	Value for purpose of Sec. 3 Customs Tariff Act, 1975 (Column 9 + Column 11) (Rs.)	RATE Basic Auxiliary (Rs.)	AMOUNT Basic Auxiliary (Rs.)	TOTAL DUTY (Column 11 + Column 15) (Rs.)
(10)	(11)	(12)	(13)	(14)	(15)	(16)

Gross Weight TOTAL NUMBR OF PACKAGES
(IN WORDS)

TOTAL AMOUNT OF DUTY
(IN WORDS)

RUPEES TOTAL
(By pin-point typewriter)

Import Clerk

Sl. No.	Invoice Value (Foreign Currency) FOB/C and F/C and I / CIF	Freight	Insurance	Currency Code	Exchange Rate	Loading/ Local Agency Commission	(Declaration to be signed by the Custom House Agent) 1. I/We apply for leave to deposit the goods covered by the Bill of Entry in the warehouse being public/private warehouse appointed/Licensed under the Customs Act, 1962. 2. I/We declare that the contents of this Bill of Entry for goods imported against Bill of Lading No..... dated.....are in accordance with the Invoice No. ....dated.....and other documents presented herewith. 3. I/We declared that I/We have not received any other document or information showing a different price, value, quantity or description or the said goods and that if at any time hereafter I/We receive any documents from the importer showing a different state of facts, I/We will immediately make the same known to the [Commissioner of Customs]. N.B.- Where a declaration in this form is made by the Custom House Agent a declaration in the prescribed form shall be furnished by the importers of the goods covered by this Bill of Entry.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
Miscellaneous Charges		Total Value (In Rupees)	Landing Charges		Assessable Value (In Rupees)		
(8)		(9)	(10)		(11)		
1							
2							
3							
4							
5							
	Total						
T.C. Licence or C.C.P. No. and date/ Part and S. No./ O.G.L. No. Exemption. No. and value debited to Licence/C.C.P. (In case of Letter of Authority, Name of Person to whom issued, No. and Date)				To be ware- Housed within days from the operation of actual removal from docks		Bond registered under No.... of (Date) Supdt. Bond - Bond Clerk	
Licence(s) Registered		Licence(s) Audited		Date of Deposit of Goods in the ware- House.			Signature of the Custom House Agent
Assistant Commissioner/Bond Deptt.				Preventive Officer			

DECLARATION
(To be signed by an Importer)

With Custom*
House Agent

- I/We apply for leave to deposit the goods covered by this Bill of Entry in thewarehouse being a public/private warehouse appointed/
licensed under the Customs Act, 1962.
- I/We declare that the contents of invoice(s) No. (s).....dated.....of
M/s.....and of other documents relating to the goods covered by the aid
invoice(s) and presented herewith are true and correct in every respect.

OR

Without Custom*
House Agent

2. I/We declare that the contents of this Bill of Entry for goods imported against Bill of Lading No.dated are in accordance with the invoice No. dated.....and other documents presented herewith. I/We also declare that the contents that the contents of the above mentioned invoice(s) and documents are true and correct in every respect.
3. I/We declare that I/We have not received and do not know of any other documents or information showing a different price, value (including local payments, whether as commission or otherwise), quantity or description of the said goods and that if at any time hereafter, I/We discover any information showing a different state of facts, I/We will immediately make the same known to the Commissioner of Customs.
4. I/We declare that goods covered by the bill of entry have been imported on outright purchase/consignment account.
5. I/We am/are not connected with the suppliers/manufactures as: -
 - (d) Agent/distributor/indentor/Branch/subsidiary/concessionaire, and
 - (e) Collaborator entitled to the use of the trade mark, patent or design,
 - (f) Otherwise than as ordinary importers or buyers.
6. I/We declare that the method of invoicing has not changed since the date on which my/our books of accounts and/or agreement with the suppliers were examined previously by the Customs House(s).

Signature of Importer.....

*Strike out whichever is inapplicable.

(FOR CUSTOM HOUSE USE)

Documents presented with bill of entry	Date of receipt in:
Check here additional documents required	
1. Invoice	Appraising group Central Exchange Unit.
2. Packing List	Daily list Revenue Posting
3. Bank Draft	Trade return
4. Insurance Memo/Policy	I.A.D. /C.R.A.D. M.C.D. key register
5. Bill of Lading or Delivery Order	M.C.D. Manifest Posting
6. Import Licence/Custom Clearance Permit	ON DUPLICATE COPY Escorted .....packages to
7. Certificate of Origin	Bonded Warehouse at
8.	
9.	Proper Officer Escort Officer
10.	(Actual designation to be indicated)

FORM III**Bill of Entry for Ex-Bond Clearance
For Home Consumption**Custom House Agent's Name,
Address and licence No.

Port Code S = Sea Prior Entry Bond Dept. S. No. and Customs House Importer Importer's Name
A = Air Stamp Date Agent Code Code and Address
L = Land

Vessel's Rotation No. Line Port of Country of Origin Country of Consignment Bill of Lading
Name and Date Number Shipment and code (if different) and Code Date

PACKAGES QUANTITY GOODS CUSTOMS DUTY ADDITIONAL DUTY

No. and Description	Marks and Numbers	Serial No.	Unit Code	Weight Volume Number etc.	Description R.I.T.C. No. (Give details of each class separately)	Customs Tariff heading Exemption Notification No. and year	Nature of duty code	Assessable Value under Sec. 14 Customs Act,
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

RATE Basic Auxiliary (Rs.)	AMOUNT Basic Auxiliary (Rs.)	C.E.T. Item Exemption Notification No. and year	Value for purpose of Sec. 3 Customs Tariff Act, 1975 (Column 9 + Column 11) (Rs.)	RATE Basic Auxiliary (Rs.)	AMOUNT Basic Auxiliary (Rs.)	TOTAL DUTY (Column 11 + Column 15) (Rs.)
(10)	(11)	(12)	(13)	(14)	(15)	(16)

Gross Weight TOTAL NUMBER OF PACKAGES
(IN WORDS)TOTAL AMOUNT OF DUTY
(IN WORDS)

Import Clerk

RUPEES TOTAL
(By pin-point typewriter)

Sl. No.	Invoice Value (Foreign Currency) FOB/C and F/C and I / CIF	Freight	Insurance	Currency Code	Exchange Rate	Loading/ Local Agency Commission	Name and address of the warehouse where the goods are kept in deposit
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
Miscellaneous Charges		Total Value (In Rupees)		Landing Charges		Assessable Value (In Rupees)	
(8)		(9)		(10)		(11)	
1							(Declaration to be signed by the importer/Custom House Agent) 1. I/We declare that the particulars given in this Bill of Entry are true. 2. I/We apply for permission to clear the goods from the Customs Bonded Warehouse subject to the provisions of the Customs Act, 1962.
2							
3							
4							
5							
Total							
Date of deposit in Warehouse		Entered in Warehouse register			Debit P.D. A/c. No.		Stamp of collection
		Vide Page No.					
		Item No.					
Date of Presentation to Warehouse Officer.				Date of removal of goods from the Warehouse			
Warehouse Officer.							

(FOR CUSTOM HOUSE USE)

Documents presented with bill of entry

Date of receipt in:

Check here additional documents required

- | | | | |
|--------------------------------|----------------------------|---|-------------|
| 1. Invoice | Bond Department | | |
| 2. Packing List | Appraising Group | | |
| 3. Certificate of Origin | Warehouse Officer | Station | |
| | Central Exchange Unit | Date | |
| 4. Insurance Memo/Policy | Revenue Posting | Signature of | Custom |
| 5..... | Trade Return | Importer | House Agent |
| 6. | I.A.D. | (On Duplicate copy only) | |
| 7. | C.R.A.D. | Passed out of customs charge | |
| | M.C.D. key register | Proper Officer | |
| | M.C.D. Manifest
Posting | (Actual designation to be
indicated) | |

CHARGING OF INTEREST

Further, Section 47 of the Customs among other things stipulates that if the proper officer is satisfied that the goods entered for home consumption are not prohibited goods and the importer has paid duty and other dues chargeable, the proper officer may make an order permitting clearance of the goods, for home consumption.

The Section also stipulates that if the importer fails to pay import duty within 7 days from the date on which the B/E has returned to him for payment of duty, he shall pay interest at the rate fixed by the Board, on such duty till the date of payment of the said duty.

However, Section 49 of Customs Act, 1962, empowers Asstt. Commissioner of Customs, to permit the goods entered for home consumption to be stored in a public or private warehouse pending clearance if he is satisfied that the goods cannot be cleared within a reasonable time. However, such goods shall not be deemed to be warehoused goods for the purpose of the Customs Act.

UNCLEARED / UNCLAIMED IMPORTED GOODS

Many a times it is observed that the imported goods landed at a customs station are either not cleared within stipulated time or are relinquished title thereof, by the importer. Section 48 contains the provision to deal with such goods. The Section stipulates that such goods may be sold by (the custodians) after notice to the importer and with the permission of the proper officer, if such goods are not cleared for home consumption or warehoused or transhipped within 30 days from the date of unloading thereof or within such further time as the proper officer may allow.

The Section further prescribes that perishable goods & hazardous goods may be sold at any time and also that arms & ammunition may be sold at such time and place and in the manner directed by the Central government.

The following guidelines have been issued by the Ministry/Board in respect of disposal of unclaimed/uncleared cargo-

(A) Disposal of unclaimed/uncleared cargo

Government of India have taken a number of important decisions, as a part of the Scheme Operation Instant Cargo, for the expeditious clearance charge lying unclaimed / uncleared in the seaports, Airports and Aircargo complexes within a specified time limit. The instructions in respect of Air Cargo complexes have already been issued vide D. O. letter F. No. 446/44/92-Cus.IV, dated 20.9.1997 from Member (Customs).

2. The following instructions are being issued in respect of unclaimed/uncleared goods lying with the custodians who are Central Government undertakings like Port Trusts/C.W.C./CONCOR for immediate compliance.

2.1 All goods landed up to 1.1.1994 and lying uncleared/unclaimed may be taken up for disposal by the Custodians and the process of disposal should be completed by the target date fixed by the respective Custodians.

2.2 The Custodians would not require any NOC from the Customs, as long as they ensure that consignments in respect of which any dispute has been raised by the customs/importers or where any stay on disposal from any Court or Tribunal is operational, are not disposed of.

2.3 Customs shall scrutinise their own files and intimate the Custodian a list of disputed or stayed consignments or consignments requiring them to be retained for any proceedings. If no such intimation is received from the Customs within 15 days, the Custodian can go ahead with the disposal of the goods.

2.4 The valuation of the goods for disposal shall be done by the Custodians through approved valuers appointed by them, irrespective of any value arrived at by the Appraisers earlier. In cases of

doubt, the same may be referred to a panel of three valuers whose decision shall be final.

2.5 The disposal shall be made by Public Auction as earlier. These values assessed by the valuers appointed by the Custodian shall form the reserve price.

2.6 In the event of the goods not being disposed of at the reserved price at the first auction, following procedure shall be adopted for reduction in reserve price: -

Perishable goods

- (a) 25% reduction after first auction.
- (b) 50% reduction after second auction.
- (c) By public auction and sealed tender simultaneously to the highest bidder.

Non-Perishable goods

- (a) 10% reduction after first auction.
- (b) 20% reduction after second auction.
- (c) By public auction and sealed tender simultaneously to the highest bidder.

The above method of reduction in reserve price be intimated to the Custodian.

2.7 The sale proceeds shall be shared between the Custodians and the Customs on 50:50 basis.

3.1 All the goods landed between 1.1.1994 and 31.12.1996 and lying unclaimed/uncleared may be taken up for disposal, and the auction should be completed by the target date fixed by the respective Custodians. The following procedure shall be adopted for disposal of such goods.

3.2 The responsibility for the disposal shall exclusively be with the Custodian, who shall fix a reserve price, arrived at by a panel of approved valuers, which should include an expert on the product line. In case any request is made by the Custodians, the Customs shall make available to the Custodian the services of an Appraiser for the purpose to serve on the panel.

3.3 The customs will not insist on complete and detailed inventory of the contents of the consignments to be drawn in their presence. They shall, instead change 10% consignments for which detailed inventory shall be made in their presence for sample check.

3.4 Procedure for auction and/or reduction of reserve price shall be the same as in the case of packages prior to 1-1-1994 as contained in para 2.1.

3.5 The Custodian shall prepare a monthly list of Cargo due for disposal and sent it to the Customs. In case, Customs desires detention of any of the consignments for their being involved in disputes, Court cases etc., they shall intimate Port Trusts within 30 days of the receipt thereof. If no intimation is received from the Customs within 30 days, the Custodian shall presume that Customs have no objection and shall go ahead with the disposal.

3.6 The proceeds from the sale shall be shared on 50:50 basis between the Custodians and the Customs.

4.1 The Custodians shall forward to the Customs a list of the consignments imported and pending clearance from 1.1.1997 on a monthly basis. The Customs shall immediately on receipt, examine the list and forward to the Custodian the list of consignments in which they want to be withdrawn from such list on any account and permit the Custodian to dispose off the remaining cargo. If no list is received within 30 days, the Custodian will be free to dispose of these goods.

5. The above instructions are being issued as one time interim administrative arrangement to ensure that the unclaimed/uncleared cargo pending for long are disposed of at the earliest. As the

requirement under Section 150(2) of the Customs Act, 1962 is mandatory, the sharing of proceeds on the ratio of 50:50 is being adopted on a rough and ready basis, but in the final accounting of all auctioned goods, care should be taken to ensure that the mandatory requirements under the law are adhered to. You may require the concerned Custodians to submit consignment wise accounts after the goods are disposed of so as to ensure that full duty as applicable under Section 150(2) is recovered from the disposal value.

[Board's Circular No. 50/97 dated 17.10.97]

(B) Procedure for disposal of unclaimed/uncleared cargo lying in Air Cargo Complexes

This has a reference to Board's letter F. No. 446/44/92-Cus. IV dated the 20th Sept., 1997 on the above subject. The said procedure was applicable for goods landed upto 31st March, 1997 and lying unclaimed/uncleared in the air cargo complexes.

2. The procedure for clearance of air consignments for the period after 1st April, 1997 has been discussed with the Ministry of Civil Aviation. The need for releasing space quickly is of paramount importance in Air Cargo Complexes in order to facilitate quicker clearance, keeping this in mind, the following procedure is framed for adoption by all Customs Houses.

3. In terms of Section 48 of the Customs Act., 1962 goods imported into India which are not cleared for home consumption or warehoused or transhipped within 30 days of their landing or within such further time as Assistant Commissioner of Customs may allow or if the title to any imported goods is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having custody there of.

4. The imported goods lying uncleared may be classified into two categories viz., (a) goods confiscated under the Customs Act, 1962 and (b) goods not confiscated but lying uncleared unclaimed. For the goods of category (a), it is the responsibility of the Customs Department to get them disposed of through the disposal units of the Department. The custodian will fully undertake disposal of goods falling under category (b). Every month the custodian shall prepare a list of all imported goods aircraft-wise which are lying uncleared/unclaimed, for more than 45 days and will send it to customs on monthly basis. The list shall be delivered by hand and shall be acknowledged with date by the Customs. The list would contain complete particulars such as Airway Bill number, description of goods, weight, name of the consignee/consignor etc. A notice shall simultaneously be issued by the custodian to the consignee at this known address or through their notice board that if the goods are not cleared within 15 days it will be sold by the custodian under Section 48 of the Customs Act, 1962.

5. Valuation of goods shall be done by a Committee consisting of a representative of the custodian, Government approved valuers and a representative of the Customs for working out the reserve prices of the consignment to be auctioned. Customs House will provide, on cost recovery basis, one Appraiser each to Air Cargo Complex at Delhi, Mumbai, Chennai and Calcutta. The Appraisers posted on cost recovery basis to such formations would represent the Customs Department in the Committee and would have full authority to determine whether the goods are prohibited for import or fall in the negative list of import or are required to be detained for any other reason. The valuation committee at the time of fixing value would inspect the goods and segregate the goods, which are prohibited for import under EXIM policy or any other provisions of law.

6. On receipt of the sale list from the custodian, the Assistant Commissioner should scrutinize the list and withdraw the items of following category from the proposed sale;-

- (i) Goods on Negative list of Import.

- (ii) Consignments which are under investigation / adjudication / court proceedings.
- (iii) Motor Vehicles of all types.
- (iv) Other specific items intimated by Commissioner. In addition, restrictions imposed under Allied acts, if any, shall be observed, some examples are as under:-
 - (a) All drugs / pharmaceuticals and chemicals not accompanied by labels, manufacturer's name should be referred to the Assistant Drugs Controller / Laboratory for test report and advice before they are disposed of.
 - (b) Goods like food stuffs, insecticides, fertilisers, etc. which are subject matter of clearance form any other authority will be disposed of after obtaining necessary clearance from the respective authorities.
 - (c) Goods which are totally prohibited and are not allowed to be imported like Narcotic drug, arms and ammunition etc. shall be separated, adjudicated and confiscated.

The Assistant Commissioner shall ensure that intimation to withhold any consignment shall be sent to the custodian within 15 days of the receipt of the Sale list. The custodian shall be free to dispose off the goods if no intimation is receipt of the sale list by the Customs.

7. The custodian shall ensure that proper publicity of sale / auction is made by way of advertisement in local / national newspapers so that all the interested persons can participate in the auctions. The custodian should fix a date for holding the auction and communicate such date to the officer in charge of the customs station and communicate such date to the officer in charge of the customs station and the concerned Assistant Commissioner. The Assistant Commissioner would nominate, if necessary, an officer not below the rank of Supdt. / Appraiser to witness the auction. Customs shall not withdraw any consignments at the last moment from the auction being held except with the written approval of the Commissioner of Customs.

8. Government approved Auctioner shall be appointed by the Custodian for conducting the action. The reserve price shall not be disclosed to the Auctioneers and authority for acceptance of the final bids during the auction shall be that of the designated officer / committee of officers. The bidding shall be on commodity price and no separate duty shall be calculated or recovered. If the consignments are not disposed of in the first auction, the reserve price shall be reduced in the following scale;

(i) Perishable goods

After 1st auction, 25% of original value fixed.

After second auction, 50% of original value fixed.; failing this shall be given to the highest bidder who bids in the sealed tender without any reference to reserve price. If there are no bidders, the goods shall be destroyed.

(ii) Non – Perishable goods

After first auction, 10% of original value.

After second auction, 20% of original value.

Thereafter it shall be given to the highest bidder who bids in sealed tender.

9. The gross sale proceeds shall be shared between the custodians and the customs on 50:50 basis. The custodians shall bear the expenses like valuer's expenses, auctioner's expenses, sale expenses, storage charges, warehouse charges, out of their share of share of sale proceeds and they will not claim any such amount from the customs.

(C) Clearance of uncleared/unclaimed cargo lying in Ports and Air Cargo Complexes

It is to inform that vide letter No. 446/44/92-Cus.IV, dated 17-10-1997, read with letter dated 20-9-1997, Board had directed to take action to dispose of unclaimed and uncleared cargo landed upto 31-3-1997. In the EPB meeting dated 20-3-1999 at Chennai, it has been decided to take similar action to clear the goods lying upto 31-12-1998 within the next 3 months, if there are no court cases preventing such disposal and within next 6 months if there are court cases involved.

Board desires you to take expeditious action for disposal of these goods and report results achieved.

Similar action can be taken in future also periodically on your initiative.

[Board's Circular No. 21/99-Cus., dated 7-5-1999]

(D) Disposal of unclaimed/uncleared cargo

Please refer to Board's Circular No. 50/97-Cus., dated 17.10.1997 on above mentioned subject. In the said Circular, guidelines for disposal of unclaimed/uncleared cargo and sharing of sale proceeds on the basis of 50 : 50 between the custodian and Customs were issued as a one-time measure in respect of cargo landed prior to 31.12.1996. In the light of severe congestion at ports, the issue was examined again by the Export Promotion Board in its meetings held on 20.03.1999 and 24.09.1999, and it was decided that all goods received before 31st December, 1998 and lying uncleared would be disposed of through auctions. The sale proceeds would be shared on 50 : 50 basis between the port authorities and Customs and no charge, would be levied on the Shipping Companies.

2. In view of the above, the matter has been examined again by the Board, and it has been decided that guidelines issued for disposal of unclaimed/uncleared cargo landed prior to 31.12.1996 vide Circular No. 50/97-Cus., dated 17.10.1997 would also be followed in respect of goods landed during 01.01.1997 to 31.12.1998.

3. It is reiterated that instructions are being issued as an interim administrative arrangement to ensure disposal of unclaimed/uncleared cargo to reduce the congestion at Ports. As the requirement under section 150(2) of the Customs Act, 1962 is mandatory, the sharing of proceeds on the ratio of 50:50 is being adopted on a rough and ready basis, but in the final accounting of all auctioned goods requirement under the law needs to be adhered to. You may therefore require the concerned Custodians to submit consignment-wise accounts after the goods have been disposed of, so as to ensure that full duty as applicable under section 150(2) is received from the disposal value.

[Board's Circular No. 5/2000-Cus., dated 13.01.2000 from F. No. 450/145/97-Cus. IV]

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CHAPTER - NINE

EXPORT PROMOTION SCHEMES

PRELIMINARY

In the present milieu of globalisation, Foreign trade is an important and inevitable factor in the economy of any country. As mentioned in earlier Chapters, our country has a perceptible presence in the International Trade scene. India imports goods from many countries and at the same time goods produced in the country are exported to many countries in the world. Export goods constitute a sizeable portion of the indigenous production and help in earning the valuable foreign exchange for the country.

In the early Nineties, to boost the economy and international trade of the country, the Government of India initiated the process of globalisation and economic reforms. This included the liberalisation of Imports, easing out the foreign exchange transactions and many incentives for Exports among other things. These steps were further backed by revamping and simplification of procedures.

THE EXPORT / IMPORT POLICY & HANDBOOK OF PROCEDURES

The international trade of India is governed by the Foreign Trade (Development and Regulation) Act, 1992, and various Rules made thereunder. Under Section 5 of this Act, the Central Government is empowered to formulate and announce from time to time, by publication in the Official Gazette, the Export and Import Policy and also to amend that Policy. The amend-ments in the Policy are made by means of Notifications issued by the Ministry of Commerce. Besides this, the Ministry also issues circulars, clarifying Policy provisions.

The Exports and Imports are free, except to the extent they are regulated by the provisions of the Policy or any other law for the time being in force. The itemwise export and import policy shall be, as specified in ITC(HS) published and notified by the Director General of Foreign Trade, as amended from time to time.

Similarly, in pursuance of provisions of paragraph 4.11 of the Policy, the Director General of Foreign Trade notifies a compilation known as Handbook of Procedures and ITC (HS) Classification of Export and Import items and amendments thereto from time to time. The objective of the Handbook is to implement the provisions of the Foreign Trade (Development and Regulation) Act, 1992. The Rules and Orders made thereunder and the Export and Import Policy by laying down simple and transparent procedures which are easy to comply with and administer for more effective management of the foreign trade.

The Export & Import Policy 1997 – 2002

The current Export & Import Policy 1997 – 2002 was announced on 31.03.1997 and is in force from 01.04.1997 to 31.03.2002. This Policy focuses on the need to allow the exporters to market their products globally and operate in a hassle free environment. The schemes from earlier Policies that contributed to the growth of the economy are continued whereas other schemes are restructured and revamped and procedures are further simplified and streamlined. The principal objectives of this Policy are :

- (i) To accelerate the country's transition to a globally oriented vibrant economy with a view to derive maximum benefits from expanding global market opportunities.
- (ii) To stimulate sustained economic growth by providing access to essential raw materials, intermediates, components, consumables and capital goods required for augmenting production.

- (iii) To enhance the technological strength and efficiency of Indian agriculture, industry and services thereby improving their competitive strength while generating new employment opportunities, and to encourage the attainment of internationally accepted standards of quality.
- (iv) To provide consumers with good quality products at reasonable prices.

Along with this Policy, the Director General of Foreign Trade has also issued Handbook of Procedures, Volume I and Volume II, which shall also remain in force until 31st March, 2002.

The main thrust of the economic reforms initiated by the Government has been on boosting the Exports from the country. In order to encourage improvements in qualitative and quantitative exports of the indigenous goods the Government has outlined many export incentives, apart from the provisions of 'Duty Drawback' envisaged in Chapter X of the Customs Act, 1962. These Export Promotion Schemes are enumerated in the Export & Import Policy 1997 – 2002. Some of these Schemes are – EPCG Scheme, DEEC Scheme, DEPB Scheme, Advance Licence Scheme, Gem & Jewellery Scheme, incentives for EOUs/EPZs, EH/TH/STH/SSTH recognition, Deemed Exports, incentive for Export of SSI products, incentives for holders of Quality Certificates ISO 9000 etc., Income Tax Exemptions, etc.

The provisions of 'Duty Drawback' as enumerated in Chapter X of the Customs Act, 1962, and the provisions of various Export Promotion Schemes, as envisaged in the Export & Import Policy 1997-2002, are discussed in the following paragraphs.

DUTY DRAWBACK SCHEME

Drawback in relation to any goods manufactured in India, and exported, means the rebate (or refund) of duty chargeable (or paid) on any imported materials or excisable materials used in manufacture of such goods. Export goods may consist of two kinds – (a) imported goods to be re-exported (b) goods produced in India with or without use of any imported goods.

Drawback allowable on re-export of duty-paid goods

Section 74 of the Customs Act, 1962, stipulates that -

"(1) When any goods capable of being easily identified which have been imported into India and upon which any duty has been paid on importation,-

- (i) are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation under Sec. 51; or
- (ii) are to be exported as baggage and the owner of such baggage, for the purpose of clearing it, makes a declaration of its contents to the proper officer under Sec. 77 (which declaration shall be deemed to be an entry for export for the purposes of this section) and such officer makes an order permitting clearance of the goods for exportation; or
- (iii) are entered for export by post under Sec. 82 and the proper officer makes an order permitting clearance of the goods for exportation,

ninety-eight per cent, of such duty shall, except as otherwise hereinafter provided, be re-paid as drawback, if -

- (a) the goods are identified to the satisfaction of the Assistant commissioner of Customs as the goods which were imported; and
- (b) the goods are entered for export within two years from the date of payment of duty on the importation thereof:

Provided that in any particular case the aforesaid period of two years may, on sufficient cause being shown, be extended by the Board by such further period as it may deem fit.

(2) Notwithstanding anything contained in sub-section (1), the rate of drawback in the case of goods which have been used after the importation thereof shall be such as the Central Government, having

regard to the duration of use, depreciation in value and other relevant circumstances, may, by notification in the Official Gazette, fix.

(3) The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such regulations may -

- (a) provide for the manner in which the identify of goods imported in different consignments which are ordinarily stored together in bulk, may be established;
- (b) specify the goods which shall be deemed to be not capable of being easily identified; and
- (c) provide for the manner and the time within which a claim for payment of drawback is to be field.

(4) For the purposes of this section -

- (a) goods shall be deemed to have been entered for export on the date with reference to which the rate of duty is calculated under Sec. 16;
- (b) in the case of goods assessed to duty provisionally under Sec. 18, the date of payment of the provisional duty shall be deemed to be the date of payment of duty."

Section 74(3) empowers the Central government to male rules to carry out provisions of Section 74. The Central Government has notified the 'Re- export of Imported Goods (Drawback of Customs Duties) Rules, 1995, vide Notification no. 36/95-Cus. (NT) dated 25.5.1995.

Drawback on imported materials used in the manufacture of goods which are exported

Similarly, Section 75 of the Customs Act, 1962, specifies that -

"(1) Where it appears to the Central Government that in respect of goods of any class or description manufactured, processed or on which any operation has been carried out in India being goods which have been entered for export and in respect of which an order permitting the clearance and loading therefor for exportation has been made under Sec. 51 by the proper officer, or being goods entered for export by post under Sec. 82 and in respect of which an order permitting clearance for exportation has been made by the proper officer, a drawback should be allowed of duties of customs chargeable under this Act on any imported materials of a class or description used in the manufacture or processing of such goods or carrying out any operation on such goods, the Central Government may, by notification in the Official Gazette, direct that drawback shall be allowed in respect of such goods in accordance with, and subject to, the rules made under sub-section (2):

Provided that no drawback shall be allowed under this sub-section in respect of any of the aforesaid goods which the Central Government may, by rules made under sub-section (2), specify, if the export value of such goods or class of goods is less than the value of imported materials used in the manufacture or processing of such goods or carrying out any operation on such goods or class of goods, or is not more than such percentage of the value of the imported materials used in the manufacture or processing of such goods or carrying any operation on such goods or class of goods as the Central Government may, by notification in the Official Gazette, specify in this behalf :

Provided further that where any drawback has been allowed on any goods under this sub-section and the sale proceeds in respect of such goods are not received by or on behalf of the exporter in India within the time allowed under the Foreign Exchange Regulation Act, 1973 (**now Foreign Exchange Management Act, 1999**), such drawback shall be deemed never to have been allowed and the Central Government may, by rules made under sub-section (2), specify the procedure for the recovery or adjustment of the amount of such drawback;

(1A) Where it appears to the Central Government that the quantity of a particular material imported into India is more than the total quantity of like material that has been used in the goods manufactured, processed or on which any operation has been carried out in India and exported outside India, then, the

Central Government may, by notification in the Official Gazette, declare that so much of the material as is contained in the goods exported shall, for the purpose of sub-section (1), be deemed to be imported material.

(2) The Central Government may make rules for the purpose of carrying out the provisions of sub-section (1) and, in particular, such rules may provide-

(a) for the payment of drawback equal to the amount of duty actually paid on the imported materials used in the manufacture or processing of the goods or carrying out any operation on the goods or as is specified in the rules as the average amount of duty paid on the materials of that class or description used in the manufacture or processing of export goods or carrying out any operation on export goods of that class or description either by manufacturers generally or by persons processing or carrying on any operation generally or by any particular manufacturer or particular person carrying on any process or other operation, and interest, if any, payable thereon;

(aa) for specifying the goods in respect of which no drawback shall be allowed;

(ab) for specifying the procedure for recovery or adjustment of the amount of any drawback which had been allowed under sub-section (1) or interest chargeable thereon;

(b) for the production of such certificates, documents and other evidence in support of each claim of drawback as may be necessary;

(c) for requiring the manufacturer or the person carrying out any process or other operation to give access to every part of his manufactory to any officer of customs specially authorised in this behalf by the Assistant Commissioner of Customs to enable such authorised officer to inspect the process of manufacture, process or any other operation carried out and to verify by actual check or otherwise the statements made in support of the claim for drawback.

(d) for the manner and the time within which the claim for payment of drawback may be filed;

(3) The power to make rules conferred by sub-section (2) include the power to give drawback with retrospective effect from a date not earlier than the date of changes in the rates of duty on inputs used in the export goods."

As empowered by sub-section (3) of Section 75, the Central Government has framed the ' Customs and Central Excise Duties Drawback Rules, 1995'.

Interest on drawback

Section 75 A of the Customs Act, 1962, prescribes that-

" (1) Where any drawback payable to a claimant under Section 74 or Section 75 is not paid within a period of three months from the date of filing a claim for payment of such drawback, there shall be paid to that claimant in addition to the amount of drawback, interest at the rate fixed under section 27 A from the date after the expiry of the said period of two months till the date of payment of such drawback :

Provided that where any drawback, ordered to be paid under section 74 or section 75 in respect of a claim under any of the said section filed before the date on which the finance Bill 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such drawback.

Where any drawback has been paid to the claimant erroneously, the claimant shall within a period of three months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under Section 28 AA from the date after the expiry of the said period of three months till the date of recovery of such drawback."

Prohibition and regulation of drawback in certain cases

It is stipulated in Section 76 of the Customs Act, 1962, that-

" (1) Notwithstanding anything hereinbefore contained, no drawback shall be allowed :

- (a) Omitted.
- (b) in respect of any goods the market price of which is less than the amount of drawback due thereon
- (c) where the drawback due in respect of any goods is less than fifty rupees.

(2) Without prejudice to the provisions of sub-section (1), if the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed under this Chapter are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification."

EXPORT PROMOTION CAPITAL GOODS SCHEME

The provisions of Export Promotion Capital Goods Scheme as enumerated in Chapter 6 of the Export and Import Policy, 1997-2992, are given below-

6.1 Scheme

New capital goods, including computer software systems, may be imported under the Export Promotion Capital Goods (EPCG) Scheme.

6.2 Import on concessional duty

Capital goods (CG), including jigs, fixtures, dies, moulds and spares upto 20% of the CIF value of the capital goods may be imported at 5% Customs duty subject to an export obligation equivalent to 5 times CIF value of capital goods on FOB basis or 4 times the CIF value of capital goods on NFE basis to be fulfilled over a period of 8 years reckoned from the date of issuance of licence. For calculation of NFE, the provision of paragraph 12.6 of the Policy shall apply.

6.3 Eligibility

(a) Under the scheme, manufacturer exporters with or without supporting manufacturer(s) / vendor(s), merchant exporters tied to supporting manufacturer(s) and service providers are eligible to import capital goods. The capital goods imported by licence holder shall be installed at the factory of the licence holder or his supporting manufacturer(s) vendor(s). However, agricultural exporters and service providers shall be allowed to shift the capital goods, provided advance intimation is given to the concerned Assistant Commissioner of Customs and Excise. Such equipments shall not be sold or leased by the licence holders.

(b) If the licence issued under the scheme has actually been utilised for import of a value in excess of or less than 10% of the CIF value of the licence, licence shall be deemed too have been enhanced / reduced by that proportion. Export obligation shall accordingly be enhanced / reduced as per the actual utilisation of the licence.

6.4 Conditions for import of capital goods

Import of capital goods shall be subject to Actual User condition till the export obligation is completed.

6.5 Export obligation

The following conditions shall apply to the fulfillment of the export obligation:

(i) The export obligation shall be fulfilled by the export of goods manufactured or produced by the use of the capital goods imported under the scheme. The export obligation may also be fulfilled by the export of same goods, for which EPCG licence has been obtained, manufactured or produced in different manufacturing units of the licence holder / specified supporting manufacturer(s) / vendor(s).

However, if exporter is processing further to add value on the goods so manufactured, the export obligation shall stand enhanced by 50%.

(ii) the exports shall be directed export in the name of the EPCG licence holder. However, the export through third party(s) is also allowed provided the name of the EPCG licence holders is also indicated on the shipping bill. If a merchant exporter is the importer, the name of the supporting manufacturer shall also be indicated on the shipping bills. At the time of export, the EPCG licence No. and date shall be endorsed on the shipping bills which are proposed to be presented towards discharge of export obligation.

(iii) Export proceeds shall be realised in freely convertible currency;

(iv) Export shall be physical exports. However, deemed exports as specified in paragraph 10.2 (a), (b), (d), (f), and (g) of Policy shall also be counted towards fulfillment of export obligation, but the EPCG license holder shall not be entitled to claim any benefit under paragraph 10.3 of this Policy in respect of such deemed exports.

(v) The export obligation shall, in addition to any other export obligation undertaken by the importer, except the export obligation for the same product under the duty exemption / Remission Scheme, be as specified in paragraph (vi) below. The exporter obligation shall be, over and above, the average level of exports achieved by him in the preceding three licensing years for same and similar products, Wherever the average level of export was fixed taking into account the exports made to such countries as are notified by DGFT from time to time for this purpose, the average level of exports shall be reduced by excluding exports made to these countries. This waiver shall be applicable to all EPCG licences which have not been redeemed \ regularised.

However, exports made against any EPCG licence, except the EPCG licences, which have been redeemed, shall not be added up for calculating the average export performance for the purpose of the subsequent EPCG licence. If the export achieves an export of 75% of the annual value of the production of the relevant export product, the export obligation against the EPCG licence shall be subsumed under that export, provided the aggregate value of such exports during the specified period shall not be less than the aggregate value of the export obligation fixed under paragraph 6.2 of this Policy.

(vi) Where the manufacturer exporter has obtained licences for the manufacture of the same export product both under EPCG and the Duty Exemption / remission Scheme or Diamond Imprest Licence / replenishment Licence (under Chapter 8), the physical exports made under the Duty Exemption Scheme including the DEPB / DFRC / Diamond Imprest Licence / Replenishment Licence shall also be counted towards the discharge of the exports obligation under this scheme.

(vii) In case of export of computer software, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture, the export obligation shall be determined in accordance with paragraph 6.2 of the policy, but the licence holder shall not be required to maintain the average level of exports as specified in sub-paragraph (v) above.

6.6 Deleted.

6.7 Import of components and goods in dis-assembled / un-assembled condition

A person may apply for a licence under the EPCG scheme to import the capital goods in dis-assembled / un-assembled condition to be assembled into capital goods by the importer or components of such capital goods required for assembly or manufacture of capital goods by the importer. This facility shall not be available for replacement of parts.

6.8 Indigenous sourcing of capital goods

A person holding an EPCG licence may source the capital goods from a domestic manufacturer instead of importing them. In the event of a firm contract between the parties for such sourcing, the domestic manufacturer may apply for EPCG licence under the scheme for the import of components required for manufacture of the said capital goods.

The domestic manufacturer may also replenish the components after supply of capital goods to the EPCG licence holder. The export obligation relating to an EPCG licence shall be reckoned with reference to the CIF value of the licence actually utilised.

6.9 Benefits to domestic supplier

The domestic manufacturer supplying capital goods to EPCG licence holders shall be eligible for deemed export benefit under paragraph 10.3 of the Policy.

DUTY EXEMPTION / REMISSION SCHEME

The provisions of Duty Exemption / Remission Scheme as enumerated in Chapter 7 of the Export and Import Policy, 1997-2992, are given below-

7.1 The Duty Exemption Scheme enables import of inputs required for export production. The Duty Remission Scheme enabled post export replenishment / remission of duty on inputs used in the export product.

7.2 An Advance Licence is issued under Duty Exemption Scheme to allow import of inputs which are physically incorporated in the export product (making normal allowance for wastage). In addition, fuel, oil, energy, catalysts etc. which are consumed in the course of their use to obtain the export product, may also be allowed under the scheme. Advance Licence can be issued for :-

- (a) Physical exports.
- (b) Intermediate supplies.
- (c) Deemed exports.

For physical exports. Advance Licence can also be issued on the basis of annual requirement in respect of export products for which SIONs have been notified.

Duty Remission Scheme consists of (a) Duty Free Replenishment certificate and (b) duty Entitlement Passbook Scheme. The scheme allows drawback, of import charges on inputs used in the export product (making normal allowance for the wastage).

7.3 Advance Licence

(a) Advance Licence is issued for duty free import of inputs, as defined in paragraph 7.2, subject to actual user condition. Such licence (other than Advance Licence for deem-ed export) are exempted from payment of Basic Customs Duty, Surcharge, Additional Customs Duty, Anti-Dumping Duty and Safeguard Duty, if any. However, Advance Licence for deemed export shall be exempted from Basis Customs Duty surcharge and Addition Customs Duty only. Such licences are issued to :

- (i) Manufacturer-exporter or main contractor in case of deemed exports.
- (ii) Merchant-exporter where the merchant-exporter agrees to the endorsement of the name(s) of the supporting manufacturer(s) on the relevant DEEC Book and in the case of deemed exports, sub-contractor(s) whose names appear in the main contract.

Such licences and / or materials imported thereunder shall not be transferable even after completion of export obligation. However, in exceptional cases, the material may be allowed to be transferred on merits by ALC.

Such licence shall be issued with a positive value addition. However, for exports for which payments are not received in freely convertible currency, the same shall be subject to value addition as specified in Appendix – 39 of Handbook (Vol. 1), 1997 – 2002.

Advance Licence shall be issued in accordance with the Policy and procedure in force on the date of issue of licence and shall be subject to the fulfillment of a time bound export obligation as may be specified.

Advance Licence for Intermediate Supply

(b) Advance Licence may be issued for intermediate supply to a manufacturer-exporter for the import of inputs required in the manufacture of goods to be supplied to the ultimate exporter / deemed exporter holding another Advance Licence.

Advance Licence for Deemed Export

(c) Advance Licence can be issued for deemed export to the main contractor for import of inputs required in the manufacture of goods to be supplied to the categories mentioned in paragraph 10.2 (b), (c), (d), (e), (f) and (g) of the policy.

In addition, in respect of supply of goods to specified projects mentioned in paragraph 10.2 (d), (e), (f) and (g) of the Policy, an Advance Licence for deemed export can also be availed by the sub-contractor of the main contractor to such project. Such licence for deemed export can also be issued for supplies made to United Nations Organisations or under the Aid Programme of the United Nations or other multilateral agencies and paid for in foreign exchange.

7.4 Duty Free Replenishment Certificate (DFRC)

Duty Free Replenishment Certificate is issued to a merchant-exporter or manufacturer-exporter for the import of inputs used in the manufacture of goods without payment of basis customs Duty, Surcharge 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.

(i) Duty Free Replenishment Certificate shall be issued only in respect of export products covered under the SIONs as notified by DGFT.

(ii) Duty Free Replenishment Certificate shall be issued for import of inputs, as per SION, having same quality, technical characteristics and specifications as those used in those used in the end product and as indicated in the shipping bills./ The validity of such licences shall be 12 months. DFRC and or the material imported against it shall be freely transferable.

(iii) The Duty Free Replenishment Certificate shall be subject to a minimum value addition of 33%.

(iv) The export products, which are eligible for modified VAT, shall be eligible for CENVAT credit. However, non-excisable, non-dutiable or non-centrally dutiable products, shall be eligible for drawback at the time of exports in lieu of additional customs duty to be paid at the time of imports under the scheme.

(v) The exporter shall be entitled for drawback benefits in respect of any of the duty paid materials, whether imported or indigenous, used in the export product as per the drawback rate fixed by Directorate of Drawback (Ministry of Finance). The drawback shall however be restricted to the duty paid materials not covered under SION.

7.5 Jobbing, Repairing etc. for Re-Export

Import of goods, including those mentioned as restricted in ITC (HS) but excluding prohibited items, in terms of paragraph 7.2 supplied free of cost, may be permitted for the purpose of jobbing without a licence as per the terms of notification issued by department of Revenue from time to time.

7.6 Export Obligation

The period for fulfilment of the export obligation under Advance Licence shall be as prescribed in the Handbook (Vol. 1).

7.7 Advance Release Orders

An Advance Licence holder, except Advance Licence for intermediate supply, holder of DFRC

intending to source the inputs from indigenous sources / canalising agencies / EOU / EPZ / SEZ / EHTP / STP units in lieu of direct import has the option to source them against Advance Release Orders denominated in foreign exchange / Indian rupees. In such a case the licence shall be invalidated for direct import and a permission in the form of ARO shall be issued which will entitle the supplier to the benefits of deemed export. The transferee of a Duty free Replenishment Certificate shall also be eligible for ARO facility.

7.8 Back-to-Back Inland Letter of Credit

An advance Licence holder, except Advance Licence for intermediate supply, and holder of DFRC may, instead of applying for an Advance Release Order, avail of the facility of Back-to-Back inland Letter of Credit in accordance with the procedure specified in Handbook (Vol.1).

7.9 Prohibited items

Prohibited items of imports mentioned in ITC (HS) shall not be imported under the licences issued under the scheme.

7.10 Compliance with Export Policy

Goods mentioned as restricted for exported without specific export licence under Advance Licence issued with prior import condition. In such cases, the licence holder shall not be allowed to use indigenous inputs and the exported product shall be manufactured only out of imported inputs under Advance Licence.

7.11 Re-Import of Exported Goods under Advance licence

Goods exported under Advance Licence / DFRC / DEPB may be re-imported in the same or substantially the same form subject to such conditions as may be specified by the Department of Revenue from time to time.

7.12 Admissibility of Drawback

In the case of an Advance Licence, the drawback shall be available in respect of any of the duty paid materials, whether imported or indigenous, used in the goods exported, as per the drawback rate fixed by Ministry of Finance (Directorate of Drawback). The Drawback shall however be restricted to the duty paid materials as indicated in the DEEC.

7.13 Value Addition The value addition for the purposes of this Chapter shall be

$$V A = \frac{A - B}{B} \times 100, \text{ where}$$

V A is Value Addition

A is the FOB value of the export realised / FOR value of the supply received.

B is the CIF value of the imported inputs covered by the licence, plus any other imported materials used on which the benefit of duty drawback is being claimed.

7.14 DUTY ENTITLEMENT PASSBOOK (DEPB) SCHEME

For exporters not desirous of going through the licensing route, an optional facility is given under DEPB. The objective of Duty Entitlement passbook Scheme is to neutralise the incidence of Customs duty on the import content of the export product. The neutralisation shall be provided by way of grant of duty credit against export product.

Under the Duty Entitlement passbook Scheme (DEPB), an exporter may apply for credit, as a specified percentage of FOB value of exports, made in freely convertible currency. The credit shall be available against such export products and at such rates as may be specified by the Director General of Foreign Trade by way of public notice issued in this behalf, for import of raw materials, intermediates, components, parts, packaging material, etc.

The holder of Duty Entitlement Passbook Scheme (DEPB) shall have the option to pay additional customs duty, if any, in cash as well

7.15 Validity

The DEPB shall be valid for a period of 12 months from the date of issue.

7.16 Transferability

The DEPB and/or the items imported against it are freely transferable. The transfer of DEPB shall however be for import at the port specified in the DEPB which shall be the port from where exports have been made. However, imports from a port other than the port of export shall be allowed under TRA facility as per the terms and conditions of the notification issued by Department of Revenue.

7.17 Applicability of Drawback

The exports made under the DEPB Scheme shall not be entitled for drawback. The additional customs duty paid in cash on inputs under DEPB shall be adjusted as CENVAT Credit or Duty Drawback as per Rules framed by the Department of Revenue. However, where the additional Customs Duty is adjusted from DEPB, no benefit of CENVAT / Drawback shall be admissible

DIAMOND, GEM AND JEWELLERY EXPORT PROMOTION SCHEME

The provisions of Diamond Gem and Jewellery Export Promotion_Scheme as enumerated in Chapter 8 of the Export and Import Policy, 1997-2992, are given below-

8.1 Scheme for Gem and Jewellery

Exporters of gem and jewellery are eligible to import their inputs by obtaining Replenishment (REP) Licences and Diamond Imprest Licences from the licensing Authorities in accordance with the procedure specified in this behalf.

8.2 Replenishment Licence

The exporters of gem and jewellery products listed in Appendix 30-A of the Handbook (Vol. 1) shall be eligible for grant of Replenishment Licences at the rate and for the items mentioned in the said Appendix to import and replenish their inputs. Exports through third party are also admissible for REP Licences. The exports made in fulfilment of export obligation against Diamond Imprest Licences shall not qualify for this benefit.

Replenishment licence may also be issued for import of consumables or for plain /studded jewellery as per the details given in para 8.88 of Handbook (Vol. 1).

8.3 Diamond Imprest Licence

Diamond Imprest Licence may be issued, in advance, for import of rough diamonds from any source. Diamond Imprest Licence for import of cut and polished diamonds for mixing with cut and polished diamonds or for export as it is, may also be issued for export of cut and polished diamonds. Such licences shall carry an export obligation which has to be discharged in accordance with the procedure specified in this behalf.

8.4 Eligibility

An exporter may apply for a licence for import of rough diamonds :

- (a) Equal to the best export performance of cut and polished diamonds in any licensing year during the preceding three licensing years, if he has a minimum of three licensing years of export performance .
- (b) Against a valid export order in his own name.

An exporter of cut and polished diamonds, who is status holder, may also be issued a licence for import of cut and polished diamonds upto 5% of the export performance of the preceding year of cut and polished diamonds.

8.5 Export Obligation

The Export Obligation against each consignment shall be fulfilled within a period of five months from the date of clearance of such consignment through Customs. Exports made from the date of receipt of an application under this scheme by the licensing authority may be accepted towards discharge of Export Obligation.

8.6 Deleted.

8.7 Deleted.

8.8 Deleted.

8.9 Deleted.

8.10 Bulk Licences for Rough Diamonds

Bulk licences for rough diamonds are issued for import of rough diamonds from any source, with an obligation to supply such diamonds to the holder of valid REP / Diamond Imprest Licence, EOU/EPZ/SEZ units or to re-export the same. The supply / export of such rough diamonds shall be completed within a period of 12 months from the date of issuance of licence or within a period of three months from the date of import, whichever is later.

8.11 Eligibility

The eligibility to apply for Bulk Licence is prescribed in the Handbook (Vol.1).

8.12 If the eligible person is a limited company registered under the Companies Act, its 100 % owned subsidiary may apply for the Bulk Licence in lieu of the eligible person.

8.13 Private / Public Bonded Ware-house

Private / Public Bonded Warehouses may be set up in EPZ / SEZ / DTA for import and re-export of cut and polished diamonds, cut and polished coloured gemstones, import and re-export of rough diamonds, un-cut and unset precious and semi-precious stones and DTA sales of rough diamonds, uncut and unset precious and semi-precious stones against REP/GEM REP /Diamond Imprest licences subject to payment of customs duty wherever applicable, notwithstanding anything contained in paragraph 9.21 of Policy. These private / public bonded warehouses for selling rough diamonds, uncut and unset precious and semi-precious stones in DTA shall follow the procedure given in paragraph 8.24 and 8.25 of Handbook, Vol. 1. Import and re-export of cut and polished diamonds and cut and polished coloured gemstones will be subject to achievement of minimum value addition of 5%.

8.13 (a) Diamond Dollar Account

Firms and companies dealing in purchase / sale of rough or cut and polished diamonds with a tract record of at least 3 years in import or export of diamonds and having an average annual turn over Rs. 5 crore or above during preceding three licensing years may also carry out their business through designated Diamond Dollar Accounts. The Diamond Dollar Account Scheme shall operate under the current licensing scheme of this chapter. This scheme shall be optional and those importers / exporters who wish to continue to use Rupee Accounts shall be allowed to do so under the existing policies. Dollars in such accounts available from bank finance and / or export proceeds shall be used only for (i) import/ purchase of rough diamonds from over-seas/local sources, (ii) purchase of cut and polished diamonds from local sources, (iii) repayment of the dollar loans from the bank, and (iv) transfer to the Rupee Account of the exporter. Details of this Diamond Dollar Accounts Scheme (DDAS) are given in the Handbook (Vol.1).

8.14 Schemes for Gold /Silver/ Platinum Jewellery

Exporters of gold /silver/ platinum jewellery and articles thereof may import their essential inputs such as gold / silver /platinum, mountings, findings, rough gems, precious and semi-precious stones, synthetic stones and unprocessed pearls etc. in accordance with the procedures specified in this behalf.

8.15 Nominated agencies

The exporter availing the schemes of gold/silver/platinum jewellery and articles thereof may obtain

gold/silver/platinum from the nominated agencies. The nominated agencies are MMTC Ltd., Handicraft and Handloom Export Corporation (HHEC), State Trading Corporation (STC). The Project and Equipment Corporation of India Ltd. (PEC) and any agency authorised by Reserve Bank of India (RBI). A bank, authorised by RBI, is allowed export of gold scrap for refining and import in the form of standard gold bars.

8.16 Items of Export

The following items, if exported, would be eligible for the facilities under these schemes :

- (a) Gold jewellery, including partly processed jewellery and any articles including medallions and coins (excluding the coins of the nature of legal tender), whether plain or studded, containing gold of 8 carats and above;
- (b) Silver jewellery including partly processed jewellery and any articles including medallions and coins (excluding the coins of the nature of legal tender and any engineering goods) containing more than 50% silver by weight;
- (c) Platinum jewellery including partly processed jewellery and any articles including medallions and coins (excluding the coins of the nature of legal tender and any engineering goods) containing more than 50% platinum by weight;

8.17 Value Addition

The value addition will be as given in Handbook (Vol.1).

8.18 Wastage Norms

Under the schemes for gold/silver/platinum jewellery, the wastage or manufacturing loss shall be admissible as specified in the Handbook (Vol.1).

8.19 Export against supply by Foreign Buyer

Where the export orders are placed on the nominated agencies/status holder, the foreign buyer may supply to the nominated agencies/status holder, in advance and free of charge, gold, silver, platinum, alloys, findings and mountings of gold/silver/platinum for manufacture and export. The exports may be made by the nominated agencies directly or through their associates or by the status holder as the case may be. The import and export findings shall be on net to net basis.

The Foreign buyer may also supply to the nominated agencies /status holder in advance and free of charge plain semi-finished gold /silver/platinum jewellery for repairs/ re-make and export subject to minimum value addition of 10%. However, if the so imported semi-finished gold /silver/platinum jewellery is exported as studded jewellery, value addition of 15% shall be achieved. In such cases of export, wastage of 2% may be permitted.

The procedures in this regard shall be as prescribed in the Handbook (Vol.1).

8.20 Export through Exhibitions/Export promotion tours/Export of Branded Jewellery

The nominated agencies and their associates with the approval of Ministry of Commerce, and others with the approval of Gem and Jewellery Export Promotion Council (GJEPC) may export gold /silver / platinum jewellery and articles thereof for holding /participating in exhibitions abroad. Personal carriage of gold/silver/platinum jewellery, precious, semi-precious stones, beads and articles and export of branded jewellery is also permitted. These exports shall be subject to the conditions as given in the Handbook (Vol. 1).

8.21 An EOU/EPZ/SEZ unit may also participate in exhibitions in India/abroad. The procedures for movement of the jewellery from these units and back shall be as prescribed by the Customs authorities. In respect of such units, permission for holding / participating in exhibitions abroad may be granted by the concerned Development Commissioner.

8.22 Export against supply by Nominated Agencies

The exporter may obtain the gold/silver /platinum as an input for export products from nominated

agencies in advance or as replenishment after export in accordance with the procedures specified in this behalf.

8.23 Export against Advance Licence

An Advance Licence may be granted for the duty free import of :

- (a) Gold of fineness not less than 0.995 and mountings, sockets, frames and findings of 8 carats and above;
- (b) Silver of fineness not less than 0.995 and mountings, sockets, frames and findings containing more than 50% silver by weight ;
- (c) Platinum of fineness not less than 0.900 and mountings, sockets, frames & findings containing more than 50% platinum by weight.

8.24 Such licences shall carry an export obligation which will be required to be fulfilled in accordance with the procedures specified in this behalf.

8.25 The advance licence holder may obtain gold/silver/platinum from the nominated agencies in lieu of direct import in accordance with the procedures specified in this behalf.

8.26 Export from EOUs / EPZ units

The provisions in Chapter 9 of the Policy will be applicable to gem and jewellery EOU and EPZ Units except for the provisions contained herein.

8.27 In the event of a unit ceasing its operation, gold and other precious metals, alloys, gem and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by the Ministry of Commerce at the price to be determined by that agency.

8.28 These units may import their essential inputs for export production. They may also source gold of fineness not less than 0.995 through the nominated agencies.

8.28 A EOU / EPZ units may import plain/studded gold, platinum and silver jewellery for repairs/re-make and export subject to a minimum NFEP of 7.5% in case of plain jewellery and 12.5% in case of studded jewellery. Such import and export shall be as per the procedures prescribed in the Handbook (Vol.1).

8.29 Deleted.

8.30 Deleted.

8.31 Jewellery samples allowed to be imported may be re-exported after proper identification.

8.32 Re-export of imported goods and export of domestically procured goods including goods generated out of the partial processing/manufacture from such goods are permitted. Besides, supply of unsuitable/ broken cut and polished diamonds, rough diamonds precious and semi-precious stones, up to 5% of the value of imported or indigenously procured goods to the DTA against the valid REP/Gem REP/Diamond Imprest Licences as applicable on payment of appropriate duty are also permitted.

8.33 Partly processed jewellery may also be exported subject to realisation of the prescribed minimum value addition.

8.34 EOU/EPZ units are allowed to receive plain gold/ silver/ platinum jewellery from DTA against exchange of gold/ silver /platinum of the same purity and quantity in weight as that of the said jewellery. The DTA units supplying such jewellery, against exchange of gold/silver/platinum shall not be entitled for deemed export benefits. The EOU/ EPZ units shall not be eligible for wastage or manufacturing loss against such jewellery.

8.35 Samples made in wax models, silver models and rubber moulds may be exported under intimation to the Development Commissioner provided its value does not exceed Rs. 1,00,000/- in a year. The value of samples so exported shall not be counted towards discharge of Export Obligation.

8.36 EOU/EPZ units are also permitted to sell 10% of value of exports of the preceding year to DTA. In respect of sales of plain jewellery, the recipient shall pay concessional rate of duty to the Customs in Indian Rupees as notified by Customs. Such supply shall, however, be subject to the achievement of

prescribed value addition.

8.37 Replenishment Licence

An exporter is eligible for freely transferable Replenishment (REP) Licence at the rate of 87% of the FOB value of exports of plain gold/platinum jewellery and articles thereof, and 80% of the FOB value of export of studded gold/platinum jewellery and articles thereof. Besides, the exporter will be eligible for freely transferable Replenishment (REP) Licence at the rate of 70% of the FOB value of exports of plain silver jewellery and articles thereof, and 65% of the FOB value of export of studded silver jewellery and articles thereof. Such REP licences are valid for import of items as given in Handbook (Vol.1).

8.38 Gem Replenishment Licence

Gem replenishment (Gem REP) Licence may be issued under the schemes for export of gold/silver/platinum jewellery and articles thereof as given in paragraphs 8.19, 8.20, 8.22 and 8.23 of the Policy. In the case of plain gold/silver/platinum jewellery and articles, the value of such licences shall be determined with reference to the realisation in excess of the prescribed minimum value addition. In the case of studded gold/silver/platinum jewellery and articles thereof, the value of Gem Replenishment Licence shall be determined by taking into account the value of studdings used in items exported, after accounting for the value addition on gold/silver/platinum including admissible wastage. Such Gem REP licences shall be freely transferable.

8.39 Gem REP rate and item

The scale of replenishment and the item of import will be as prescribed in the Handbook (Vol.1).

8.40 Personal Carriage of Export/Import Parcels

Personal carriage of gems and jewellery export parcels by foreign bound passengers and personal carriage of gems and jewellery import parcels by an Indian importer/foreign national may be permitted as per the conditions given in Handbook (Vol.1).

EXPORT ORIENTED UNITS (EOU s) / UNITS IN EPZ s , SEZ s, EHTP s & STP s

The provisions of incentives to Export Oriented Units (EOUs)/Units in EPZs, SEZs, EHTPs & STPs as enumerated in Chapter 9 of the Export and Import Policy, 1997-2002, are given below-

9.1 Eligibility

Units undertaking to export their entire production of goods and services may be set up under the Export Oriented Units (EOU) Scheme, Export Processing Zone (EPZ) Scheme, Electronic Hardware Technology Park (EHTP) Scheme or Software Technology Park (STP) Scheme. Such units may be engaged in manufacture, services, trading development, of software, agriculture, including agro-processing, aquaculture, animal husbandry, bio-technology, floriculture, horticulture, pisciculture, viticulture, poultry, sericulture and granites and may export all products except prohibited items of exports in ITC (HS).

9.2 Importability of Goods

An EOU/EPZ/EHTP/STP unit may import without payment of duty all types of goods, including capital goods, as defined in the Policy, required by it for manufacture, services, trading or in connection therewith, provided they are not prohibited items of import in the ITC (HS). However, import of basmati paddy / brown rice shall be prohibited. The units shall also be permitted to import goods required for the approved activity, including capital goods, free of cost or on loan from clients.

The duties on import/procurement from DTA of goods, including capital goods, are only deferred.

EOU / EPZ /EHTP / STP units may procure goods required by it for manufacture, services, trading or in connection therewith, without payment of duty from bonded warehouses in DTA set up under the Policy.

STP / EHTP / EPZ may import, without payment of duty, all types of goods for creating a central facility for use by software development units in STP / EHTP / EPZ. The central facility for software

development can also be accessed by units in the DTA for export of software.

An EOU engaged in agriculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry or sericulture may import without payment of duty only such goods as are permitted to be imported duty free under a Customs Notification issued in this behalf.

9.3 Second Hand Capital Goods

Second hand capital goods may also be imported.

9.4 Leasing of Capital Goods

An EOU / EPZ /EHTP / STP unit may, on the basis of a firm contract between the parties, source the capital goods from a domestic / foreign leasing company. In such a case, the EOU / EPZ /EHTP / STP unit and the domestic / foreign leasing company shall jointly file the documents to enable import / procurement of the capital goods without payment of duty.

9.5 Net Foreign Exchange earning as a Percentage of Exports (NFEP) and Minimum Export Performance (EP)

The unit shall be a net foreign exchange earner. The Minimum Net Foreign Exchange earning as a Percentage of Exports (NFEP) as per paragraph 9.29 and the minimum Export Performance (EP) shall be as specified in Appendix I of the Policy. Items of manufacture for export specified in the Letter of Permission (lop) / Letter of Intent (LOI) alone shall be taken into account for calculation of NFEP and EP.

9.6 Legal Undertaking

The unit shall execute a legal undertaking with the Development Commissioner concerned and in the event of failure to fulfil the performance, as stipulated in Appendix –I, it would be liable to penalty in terms of the legal undertaking or under any other law for the time being in force.

9.7 Approvals

Applications for EOU / EPZ /EHTP / STP units, satisfying the conditions mentioned in para 9.37 of the Hand Book of Procedures (Vol-I) may be given approval within fifteen days by the concerned Development Commissioner of SEZ.

9.8 Other cases

In other cases, approval may be granted by the Board(s) of Approval (BOA) set up for this purpose or Secretariat for Industrial Assistance within 45 days, as the case may be.

9.9 DTA Sales

The entire production of EOU / EPZ /EHTP / STP units shall be exported subject to the following :

- a) Unless specifically prohibited in the LOP / LOI, rejects may be sold in the domestic traffic area (DTA), on prior intimation to the customs authority. Such sales shall be counted against DTA sale entitlement under para 9.9 (b) of the Policy. Sale of rejects shall be subject to payment of duties as applicable to sale under para 9.9(b).
- b) DTA sale upto 50% of the FOB value of exports may be made subject to payment of applicable duties and fulfilment of minimum NFEP prescribed in Appendix-I of the Policy. No DTA sale shall be permissible in respect of motor cars, alcoholic liquors and such other items as may be stipulated by Director General Foreign Trade by a Public Notice issued in this behalf.
- c) Deleted.
- d) Deleted.
- e) EOU / EPZ /EHTP / STP units may be permitted to sell finished products which are either freely importable under the Policy, or against other import licenses, in the DTA, over and above the levels permissible under sub-paragraph (b) above, against payment of full duties, on annual basis, provided they have achieved the stipulated NFEP and export performance.
- f) Deleted.

- g) For services, including software units, sale in the DTA in any mode, including on-line data communication, shall be permissible upto 50% of FOB value of exports and/or 50% of foreign exchange earned, where payment for such services is received in free foreign exchange.
- h) Items included as by-products in the LOP / LOI may be sold in the DTA on payment of applicable duty.

Note:- In the case of units manufacturing electronics hardware and software, the NFEP and DTA sale entitlement shall be reckoned separately for hardware and software.

9.10 Other Supplies in DTA

The following supplies in DTA shall be counted towards fulfillment of export performance & NFEP

- a) Supplies effected in DTA in terms of paragraph 10.2 of the Policy.
- b) Supplies effected in DTA against payment in foreign exchange.
- c) Supplies to other EOU / EPZ /EHTP / STP units provided that such goods are permissible for procurement in terms of paragraph 9.2 of the Policy.
- d) Supplies made to bonded warehouses set up under paragraph 11.14 of the Policy and / or under Section 65 of the Customs Act.
- e) Supply of goods against special entitlement of duty free import of goods.
- f) Supply of goods to defence and internal security forces, foreign missions / diplomats provided they are entitled to duty free imports of such items in terms of general exemption notification issued by Ministry of Finance.

[Note : For details about setting up and other aspects of the EOUs, please refer to the Chapter “Export Oriented Units” of this Manual]

DEEMED EXPORTS

The conditions of exports to be recognised as Deemed Exports are contained in Chapter 10 of the Policy and are enumerated below -

10.1 Definition

"Deemed Exports" refers to those transactions in which the goods supplied do not leave the country.

10.2 Categories of supply

The following categories of supply of goods by the main / sub-contractors shall be regarded as "Deemed Exports" under this Policy, provided the goods are manufactured in India :

- (a) Supply of goods against Advance Licence/DFRC under the Duty Exemption / Remission Scheme;
- (b) Supply of goods to Export Oriented Units (EOUs) or units located in Export Processing Zones (EPZs) or Special Economic Zones (SEZs) or Software Technology Parks (STPs) or to Electronic Hardware Technology Parks (EHTPs);
- (c) Supply of capital goods to holders of licences under Export Promotion Capital Goods (EPCG) Scheme;
- (d) Supply of goods to projects financed by multilateral or bilateral agencies / Funds as notified by the Department of Economic Affairs, Ministry of Finance under international competitive bidding in accordance with the procedures of those agencies / Funds, where the legal agreements provide for tender evaluation without including the customs duty.
- (e) Supply of capital goods, including in unassembled / disassembled condition as well as plants, machinery, accessories, tools, dies and such goods which are used for installation purposes till the stage of commercial production and spares to the extent of 10% of the FOB value to the fertilizer plants.

- (f) Supply of goods to any project or purpose in respect of which the Ministry of finance, by a notification, permits the import of such goods at zero customs duty coupled with the extension of benefits under this chapter to domestic supplies;
- (g) Supply of goods to the Power and refineries not covered in (f) above and coal, hydro-carbon, rail, road, port, civil aviation, bridges and other infrastructure projects provided minimum specific investment is Rs. 100 crores or more;
- (h) Supply of marine freight containers by 100% EOU (domestic freight containers-manufacturers) provided the said containers are exported out of India within 6 months or such further period as permitted by the Customs; and
- (i) Supply to projects funded by UN agencies.
The benefits of deemed exports shall be available under paragraph (d), (e), (f) and (g) only if the supply is made under the procedure of International Competitive Bidding (ICB).

10.3 Benefits for deemed Exports

Deemed exports shall be eligible for the following benefits in respect of manufacture and supply of goods qualifying as deemed exports :

- (a) Advance Licence for intermediate supply / deemed export;
- (b) Deemed Exports Drawback;
- (c) Refund of terminal excise duty.

EXPORT HOUSES, TRADING HOUSES, STAR TRADING HOUSES and SUPER STAR TRADING HOUSES

The conditions and norms for recognition of exporters are contained in Chapter 12 of the Policy and are enumerated below -

12.1 Objective

The objective of the scheme is to recognise established exporters as Export House, Trading House, Star Trading House and Super Star Trading House with a view to building marketing infrastructure and expertise required for export promotion. Such Houses should operate as highly professional and dynamic institutions and act as important instruments of export growth.

12.2 Eligibility

Merchant as well as Manufacturer exporters, service providers, Export Oriented Units (EOUs)/ Units located in Export Processing Zones (EPZs)/Special Economic Zones (SEZs)/Electronic Hardware Technology Parks (EHTPs)/Software Technology Parks (STPs) shall be eligible for such recognition.

12.3 Criterion for recognition

The eligibility criterion for such recognition shall be on the basis of the FOB/NFE value of export of goods and services, including software exports made directly, as well as on the basis of services rendered by the service provider during the preceding three licensing years or the preceding licensing year, at the option of the exporter. The Exports made, both in free foreign exchange and in Indian Rupees shall be taken into account for the purpose of recognition.

12.4 Export made by Subsidiary Company

The exports made by a subsidiary of a limited company shall be counted towards export performance of the limited company for the purpose of recognition. For this purpose, the company shall have the majority share holding in the subsidiary company.

12.5 Export Performance Level

The applicant is required to achieve the prescribed average export performance level subject to the

condition that

- a) Deemed exports and exports under paragraph 11.7 shall not be counted for export performance
- b) Deleted.
- c) Deleted.

The level of export performance for the purpose of recognition shall be as per the table below :

Category	Average FOB value of exports made during preceding three licensing years. [in Rs.]	FOB value during the preceding licensing year [in Rs.]	Average NFE earnings made during the preceding three licensing years [in Rs.]	NFE earned during the preceding licensing year [in Rs.]
(1)	(2)	(3)	(4)	(5)
EXPORT HOUSE	15 Crores	22 Crores	12 Crores	18 Crores
TRADING HOUSE	75 Crores	112 Crores	62 Crores	90 Crores
STAR TRADING HOUSE	375 Crores	560 Crores	312 Crores	450 Crores
SUPER STAR TRADING HOUSE	1125 Crores	1680 Crores	937 Crores	1350 Crores

12.6 Calculation of Net Foreign Exchange

For the purpose of calculation of the Net Foreign Exchange earned on exports, the value of all the licences including the value of 2.5 times of the DEPB credit earned / granted and the value of duty free gold / silver / platinum taken from nominated agency or from foreign supplier shall be deducted from the FOB value of exports made by the person. However, the value of freely transferable SIL, EPCG licences and the value of licences surrendered during the validity of licence shall not be deducted.

12.7 Weightage to Exports

For the purpose of recognition, weightage shall be given to the following categories of exports provided such exports are made in freely convertible currency :

- (a) Triple weightage on FOB or NFE on the export of products manufactured and exported by units in Small Scale Industry (SSI) / Tiny Sector / Cottage Sector and double weightage on FOB or NFE to merchant exporter exporting products reserved for SSI units and manufactured by units in the Small Sector Industry (SSI) / Tiny Sector / Cottage Sector. The facility under this paragraph shall not be available to units exporting gems and jewellery products.
- (b) Triple weightage on FOB / NFE on the export of products manufactured and exported by the handlooms and handicraft sector (including handloom made silk products), hand knotted carpets, carpets made of silk and double weightage on FOB / NFE to merchant exporter exporting products manufactured by the handlooms and handicraft sector (including hand-loom made silk products), hand knotted carpets, carpets made of silk.
- (c) Double weightage on FOB or NFE on the export of fruits and vegetables, floriculture and horticulture produce / products, project exports.
- (d) Double weightage on FOB or NFE on the export of goods manufactured in Northern States;
- (e) Double weightage on FOB or NFE on the export to such countries listed in Appendix 33 of the Handbook (Vol. I).
- (f) The manufacturing units registered with KVIC or KVIBs shall be granted triple weightage on FOB or NFE on the export of products manufactured and exported by them with effect from 15th August.

1997. However, such units shall not be entitled for the weightage given in sub-paragraph (a) and (b) above.

- (g) Double weightage on FOB or NFE on the export made by units having ISO 9000 (series) or IS / ISD 9000 (series) or ISO 14000 (series) certification.
- (h) Double weightage on FOB or NFE on the export of bar coded products.
- (i) Double weightage on FOB or NFE on the export of goods manufactured in Jammu and Kashmir.

12.8 Recognition for State Corporations

With a view to encouraging participation of State Governments and Union Territories in export promotion, one state corporation nominated by the respective State Government / Union Territory may be recognised as an Export House, even though the criterion for such recognition is not fulfilled by it. This benefit shall be available only for such period and in accordance with such terms and conditions as may be specified from time to time.

12.9 Validity Period

Status Certificate shall be valid for a period of three years starting from 1st April of the licensing year during which the application for the grant of such recognition is made, unless otherwise specified. On the expiry of such certificate, application for renewal of status certificate shall be required to be made within a period as prescribed in the Handbook (Vol. I). During the said period, the status holder shall be eligible to claim the usual facilities and benefits, except the benefit of a (SIL).

12.10 Facilities

All status holders shall be entitled to such facilities as specified in Ch. 12 of the Handbook (Vol.I).

12.11 Transitional arrangement

Status holders shall continue to hold the recognition accorded to them for the period for which such recognition was given.

12.12 Deleted.

12.12 A Manufacturing Companies / Industrial Houses

Manufacturing Companies or Industrial Houses with an annual manufacturing turnover of Rs. 300 Crores and Rs. 1,000 Crores in the preceding licensing year shall be recognised as Star Trading House and Super Star Trading House respectively on signing a Memorandum of Understanding in the prescribed form for achieving physical exports as currently prescribed for these categories over a period of next three years. Similarly, companies/ project exporters, domestic service providers with annual turnover of Rs. 100 Crores or more in the preceding licensing year shall be recognised as Export House and International Service Export House respectively on signing a Memorandum of Understanding in the prescribed form for achieving physical exports as currently prescribed for these categories over a period of next three years.

12.12 B Service providers shall be entitled to recognition as Service Export House, International Service Export House, International Star Service Export House, International Super Star Service Export House on earning free foreign exchange as given in paragraph 15.7 of the Policy.

12.13 Deleted.

12.14 Golden Status Certificate

Exporters who have attained Export House, Trading House, Star Trading House and Super Star Trading House status for three terms or more and continue to export shall be eligible for golden status certificate which would enable them to enjoy the benefits of status certificate irrespective of their actual performance thereafter as per guidelines issued in this regard from time to time.

EXPORT OF SERVICES

The provisions for export of Services are contained in Chapter 15 of the Policy and are enumerated below –

15.1 DEFINITION

“Services” include all the 161 tradable services covered under General Agreement on Trade in Services where payments for such services is received in free foreign exchange. A list of services is given in Appendix-54 of Hand Book of Procedures (Vol. I).

The service providers as defined in paragraph 3.48. rendering services listed in appendix-54 shall be entitled for the facilities mentioned hereinafter.

15.2 EPCG Scheme

The service providers shall be eligible for the facility of EPCG Scheme as described in Chapter 6 of the Policy. The provisions of paragraph 6.5 (vii) shall also extend to the service providers availing licences under this scheme.

15.3 EOU / EPZ /SEZ /STP Scheme

The service providers shall also be eligible for the facility of EOU / EPZ /SEZ /STP Scheme as given in Chapter 9 of this Policy.

15.4 Passenger Baggage

Service providers may import drawings, designs, integrated circuits and layout designs, software in diskettes and CDs related to their line of services as a part of passenger baggage without a licence.

15.5 Import of restricted items

Service providers shall be entitled to import restricted items up to 10% of the foreign exchange earned by them during the preceding licensing year for import of essential goods related to their line of business, including office and other equipment required for their own professional use.

15.6 Importer Exporter Code No.

The service providers shall be required to obtain an IEC CODE No. in terms of paragraph 4.9 of Policy read with paragraph 4.7 of Handbook of Procedures (Vol. I).

15.7 Status

The service providers shall be eligible for recognition as Service Export House, International Service Export House, International Star Service Export House, International Super Star Service Export House on achieving the performance level as mentioned below :

Category	Average free foreign exchange earning during the preceding three licensing years (in Rs)	Free foreign exchange earning during the preceding licensing year, (in Rs.)	Average NFE earning during the preceding three licensing years, (in Rs.)	NFE earned during the preceding licensing year (in Rs.)
(1)	(2)	(3)	(4)	(5)
Service Export House	4 Crores	6 Crores	3 Crores	5 Crores
International Service Export House	20 Crores	30 Crores	15 Crores	25 Crores
International Star Service Export House	100 Crores	150 Crores	75 Crores	125 Crores
International Super Star Service Export House	300 Crores	450 Crores	225 crores	375 Crores

The service status holders indicated above shall be entitled to all the facilities mentioned in paragraph 12.10 of the Policy.

15.8 Deleted

15.9 Agro focus Zone

Service providers in certain identified agro focus zones, supplying services related to exports for agriculture, horticulture, floriculture and allied sectors may import equipments under EPCG Scheme. The export obligation may be earning foreign exchanged in lieu of services rendered.

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CHAPTER - TEN

EXPORTS CLEARANCE

EXPORT GOODS

As defined in Section 2(19) of the Customs Act, 1962, Export goods means any goods, subject to the provisions of Section 11 of the Customs Act, 1962, which are to be taken out of India to a place out of India.

EXPORT CLEARANCE

Export of goods produced in a country also plays an important role in the economy of a country as it not only generates new opportunities for the Trade but also helps in building Foreign Exchange Reserve of the country.

Our country has many items on its Export list which are either manufactured indigenously or are available naturally. The Exports from our country expand to many countries all over the world.

Though exporting goods from India entails many procedures to be completed with Departments like Director General of Foreign Trade, Reserve Bank of India, Export Promotion Councils, Banks, etc., clearance of goods for Export is also an important aspect of Customs work. Over the period of time, the Govt. has introduced many schemes for promotion of Export from India and has simplified procedures thereof. The Customs Department has to enforce statutes of other Departments, in addition to the Customs Laws, applicable to the Export of goods

Procedure of Clearance of Export Goods

The broad procedure for clearance of goods for Export may be described briefly as follows :

The Exporter of goods presents a Shipping Bill or Bill of Export in the Export Department of the Custom House and the same is given a running serial No. with date. Thereafter, it is submitted to the Appraiser in the Export Department along with required documents , licences, samples, etc., if any.

After scrutiny of particulars declared in the Shipping Bill / Bill of Export and after verification of appended documents, the group Appraiser then makes an order on the reverse of the Shipping Bill / Bill of Export for any examination/ inspection of cargo. The Export goods are then carted to the Docks/Cargo Complex and presentation to the Appraising staff for examination/inspection along with processed Shipping Bill / Bill of Export. The Shed Appraiser /Superintendent (P), in the light of this order, examines the cargo and if everything is in order, gives a " let export" order whereby permitting the clearance and loading of the goods for Exportation. Thereafter, the so passed Export goods are loaded on the vessel/aircraft/vehicle under the supervision of the Preventive Staff and received on board by the Master / Agent. Copies of the Shipping Bills / Bills of Export pertaining to all the cargo loaded on the vessel/aircraft/vehicle are then attached with the Export Manifest and submitted to the Export Deptt of the Custom House by the Agents.

With the commencement of EDI Service Centres in many Custom Houses, the Shipping Bills and other Export Procedures are being processed electronically.

The Shipping Bill

The first step towards procedure for Export of any goods is that of filing a Shipping Bill by the Exporter of the goods. Section 50 of the Customs Act, 1962, stipulates that Exporter of any goods shall make an entry thereof by presenting a Shipping Bill in the case of goods to be Exported in a vessel or

aircraft, and a Bill of Export in case of goods to be Exported by land. This Section also makes it mandatory for the Exporter to enclose at the foot of the Shipping Bill / Bill of Export, a declaration as to the truth of the contents of the same.

The Shipping Bill is the most important document for the purpose of Customs Clearance of Export goods. It contains the details about the Exporter, the goods to be Exported, Exporter's code no., port of destination, value of goods, etc. The Shipping Bill is the document which is required to be presented by the Exporter right from the stage of noting to the actual shipment of goods and also for processing of post-export formalities.

Types of Shipping Bill

There are seven types of Shipping Bill which are used for Export of various categories of the goods. They are briefly described below. The colour of the Shipping Bill referred to is the colour of the paper on which the same are printed :-

- (a) **Shipping Bill for free goods:** All the Export goods whereon no duty or cess is levied on the export thereof or where no Duty Draw-back is being claimed or the goods are not exported under the D.E.E.C. Scheme or the goods are not being exported under Bond, then in case of all such goods, the Shipping Bill for Export of such goods is called the 'free Shipping Bill'. It is white in colour.
- (b) **Shipping Bill for Dutiable goods :** Where the Export goods are liable to either duty or cess, then the Shipping Bill for export of such goods is called the 'dutiable Shipping Bill'. It is yellow in colour.
- (c) **Shipping Bill for Duty Draw-back:** Where the Export goods are under claim for Duty Draw-back, the Shipping Bill for export in such case is called a 'Draw-back Shipping Bill'. It is green in colour.
- (d) **D.E.E.C. Shipping Bill:** Where Export goods are shipped as fulfillment of conditions against duty free imports or as advance export for duty free entitlement, the document for export is called 'DEEC Shipping Bill'. It is white in colour if no draw back is claimed, and green if Draw-back is claimed.
- (e) **Shipping Bill for Bonded goods:** When goods manufactured in bonded premises, using Imported goods on which no duty has been paid, are to be exported, then an 'ex-bond Shipping Bill' is used. It is green in colour.
- (f) **100% EOU Shipping Bill by Air:** 100% EOUs are required to file 'pink Shipping Bill' for Export of their consignments by Air.
- (g) **Duty Entitlement Pass Book Scheme (DEPB) Shipping Bill:** The Shipping Bill introduced under 'Duty Entitlement Passbook' scheme is of blue colour.

Electronic Shipping Bill

With the introduction of computerisation, many Custom Houses are now having a full fledged centralised Electronic Data Interchange Centres, which receive, store and transmit various data to different formations as and when required.

Briefly stated the Electronic Shipping Bills are Shipping Bills generated as computer print outs in prescribed formats at the places of examination / shipment of cargo with the help of information / data furnished by the Exporters in respect of their Export goods and compiled & processed at EDI Centre in

the Custom House. The information is then transmitted to the designated EDI Centres in the Docks/Cargo Complexes and other places to facilitate the examination/inspection and subsequent shipment of the Export cargo.

The details regarding the Electronic Shipping Bill and related procedures for clearance of Export goods through them are discussed in the Chapter “ Electronic Data Interchange” of this Manual.

Requirement of documents to be filed along with Shipping Bill

In order to effect Export , various types of Shipping Bill are used according to the nature and category of the goods. Along with the respective Shipping Bill, the Exporter or his agent has to submit the following documents:

1. Export invoice.
2. Packing list.
3. G. R. Form.
4. Certificates from other agencies.
4. Other compulsory certificates/licences under allied Acts.
5. Other Miscellaneous documents like AR 4 forms, etc.

Validity of Shipping Bill

Shipping Bills are valid for 90 days from the date of noting. However for air-cargo Shipping Bills the validity is for 30 days from noting of the Shipping Bill. Before the expiry of the Shipping Bill, the same can be re-validated by a validation application and on payment of amendment charges. After the expiry of the Shipping Bill the same has to be canceled and fresh Shipping Bill is required to be noted. The re-validation can be done only once. Thereafter a new Shipping Bill has to be filed.

Inspection Agencies for Export Goods

In order to have quality and other controls over the goods to be Exported out of country, the Government has made it mandatory that certain goods have to be inspected, before export, by the Departments which are otherwise also having a control over production, manufacture, regulating the movement, etc. of such goods. Following is the list of some of the goods and respective Inspecting Agencies for the Export goods :

<u>Name of the Agency</u>	<u>Export item for Inspection</u>
1.Export Inspection Council	Engineering goods, marine products, plants and allied inorganic chemicals, rubber products, jute, hessian, manganese and iron ore, bauxite , etc., manganese dioxide, chrome kyanite, silimanite, zinc magnesites etc.
2.Agriculture Marketing Advisor (Agmark)	Food, agricultural and animal products, export marine products, cashew, coir, etc.
3.Textile Committee	Cotton yarn, cotton textile and certain varieties of handloom goods.
4.Bureau of Indian Standards	Aluminum utensils, engineering and electrical goods, etc
5.Drug Controller	Drug, pharmaceutical and cosmetic products
6.Tea Board	All types of tea.
7.Central Silk Board	Tissar mullberry silk fabrics
8.Shellac Export Promotion	Shellac Council
9.Salt Commissioner	Salt

Shipping Bill and Bill of Export (Form) Regulations, 1991

In exercise of the powers conferred by section 157, read with sections 50 and 69, of the Customs Act, 1962 (52 of 1962), and in supersession of the Shipping Bill and Bill of Export (Form) Regulations, 1976, except as respect things done or omitted to be done before such supersession, the Central Board of Excise and Customs hereby makes the following regulations, namely: -

1. Short title and Commencement. (1) These regulations may be called the **Shipping Bill and Bill of Export (Form) Regulations, 1991**.

(2) They shall come into force on the 1st day of October 1991.

2. Shipping Bill. A shipping bill to be presented by an exporter of goods shall be in the form specified in Annexure I, Annexure II, Annexure III or Annexure IV, as the case may be, appended to these regulations.

3. Bill of Export. A bill of export to be presented by an exporter of goods be in the form specified in Annexure V, Annexure VI, Annexure VII or Annexure VIII, as the case may be, appended to these regulations.

4. Specifications of Shipping Bill and Bill of Export (Form). The Shipping Bill and Bill of Export forms specified in Annexures I to VIII or Annexure VIII shall be in accordance with the following specifications, namely: -

(a) the forms shall be printed on foolscap size of paper measuring 34.5 cms by 21.5 cms and shall have the following margins namely:-

- (i) top – 1.5 cms, (ii) bottom – 1.5 cms
(iii) left – 1.8 cms, (iv) right – 0.5 cms.

The layout of the forms and the sizes of the boxes shall be as per the layout and boxes shown in the Annexures;

(b) the forms shall be printed on paper of grammage 70 to 85 grams per square metre; the paper should be stable in conditions of 50 to 60 per cent relative humidity;

(c) the captions inside the boxes of the forms should be printed in 6 pt. Mono sans-serif and should be located as near as possible to the top left of the boxes;

(d) the forms shall be filled in by using a typewriter only.

ANNEXURE – I

Shipping Bill For Export Of Goods Under Claim For Duty Drawback

Exporter		Invoice No. and Date	SB No. and Date
		AR4/AR4A No. and Date	
Consignee		Q/Cert No. and Date	Import–Export Code No.
			RBI Code No.
Customs House Agent	LIC No.	Export Trade Control	If export under: Deferred Credit [] Joint Venture [] Rupee Credit..... [] Others [] RBI's Approval/Cir. No. and Date
Pre-Carriage by	Place of Receipt by Pre-Carrier	Nature of Contract: CIF []/FOB []/CFR []/Others (specify)	Type of shipment Outright Sale [] Consignment Export []
Vessel/Flight No.	Rotation No.	Exchange Rate U/S 14 of CA	Others (Specify) []
	Port of Loading	Currency of Invoice	

S. Marks & Nos. No.	No. and kind of Pkgs. Container Nos.	Statistical Code/and Description of Goods	Quantity	Value FOB				
Net Weight Gross Weight								
Total FOB Value in words								
<u>Analysis of Export Value</u>			<u>Currency</u>	<u>Amount</u>				
FOB Value			Full export value OR where not ascertainable, the value which exporter expects to receive on the sale of goods. Currency					
Freight								
Insurance								
Commission								
Discount								
Other								
Deductions			Amount					
Sl. No.	Export Tariff No.	Assessable Value under Sec. 14 of CA	DUTY		CESS		Total Duty and Cess	Duty payment particulars
			Rate	Amount	Rate	Amount		
Total Duty/Cess Amount in words: Rupees								Collection Stamp

Declaration:

I/We Declare that all particulars given herein are true and correct.
I/We also attach the declaration(s) under clause No.(s)
Public Notice No.dated Signature and Date

I/We claim drawback of Rs..... under Sec. 74/75 of Customs Act, 1962 and Customs and Central Excise Duty Drawback Rules, 1971. I/We certify that the export goods are new/used for.....I/We certify that I/We have complied with the conditions laid down in the said Rules 1971 and the conditions subject to which Drawback Rates are applicable.					DOCUMENTS SUBMITTED				
1. Name and Address of Bank					1. Invoice []				
					2. Packing List []				
					3. GR Form []				
2. Account No.....					4. AR-4/AR-4A Form []				
					5. ETC Licence []				
3. Drawback Ledger No.					6. Indent []				
					7. Acceptance of Contract []				
					8. Letter of Credit []				
					9. QC Certificate []				
					10. Port Trust Document []				
					11. Any other (Specify) []				
Item No. S. B.	S. No. and Sub S. Mo. of DBK Schedule	Qty/Wt. On which DBK Claimed	Value on which DBK claimed	Rate of DBK		Amount of DBK			
				Excise	Customs	Excise	Customs	Total	
Total Amount in words Rupees									
								Signature of Exporter/CHA	
FOR DEPARTMENT OFFICER Verified that the amount of Rs..... DBK as claimed above is ad- Missible subject to description Found correct on the basis of Physical examination/test etc.				Calculation	PRE-RECEIPT FORM Received the sum of				
				Checked	as drawback.				
				REVENUE STAMP					
Signature of A.O. Stamp			Comptist	Signature of Exporter / CHA					
‘LET EXPORT’					‘ALLOWED FOR SHIPMENT’				
Signature of Officer of Customs					Signature of Officer of Customs				

Vessel's name may be altered after check with original Entry for Fresh one may be granted to for the portion shutout or not shipped		Fee Rs.
Handed over to C.H.A./Party		Asstt. Commissioner
		Cashier
Contents Received on Board		Date of Shipment
Date	Signature of Master of Vessel	Signature of Officer of Customs
<u>Examination Order and Report</u>		

Verified Mate's Receipt No. of Issued by..... For
Cases/Bales/Packages/Containers..... Shipped per..... Which sailed on.....
From..... Under Preventive Supervision
Signature of Officer of Customs
OR
Shipment declared on this Shipping Bill has been air freighted on Flight No..... Dated.....
AWB No..... EGM No. Under Preventive Supervision in full/part (Specify quantity airfreighted).
Signature of Officer of Customs

ANNEXURE – II

Shipping Bill For Export Of Dutiable Goods

Exporter		Invoice No. and Date	SB No. and Date
		AR4/AR4A No. and Date	
Consignee		Q/Cert No. and Date	Import-Export Code No.
			RBI Code No.
Customs House Agent	LIC No.	Export Trade Control	If export under:
			Deferred Credit []
			Joint Venture []
			Rupee Credit..... []
			Others []
			RBI's Approval/Cir. No. and Date
Pre-Carriage by	Place of Receipt by Pre-Carrier	Nature of Contract: CIF []/FOB []/CFR []/ Others (specify)	Type of shipment
			Outright Sale []
			Consignment Export []
Vessel/Flight No.	Rotation No.	Exchange Rate U/S 14 of CA	Currency of Invoice
	Port of Loading	Port of Discharge	Country of Destination
			Others (Specify) []

S. No.	Marks & Nos.	No. and kind of Pkgs. Container Nos.	Statistical Code/and Description of Goods	Quantity	Value FOB			
	Net Weight							
	Gross Weight							
Total FOB Value in words								
<u>Analysis of Export Value</u> <u>Currency</u> <u>Amount</u> FOB Value Freight Insurance Commission .....Rate..... Discount Other Deductions			Full export value OR where not ascertainable, the value which exporter expects to receive on the sale of goods. Currency Amount					
Sl. No.	Export Tariff No.	Assessable Value under Sec. 14 of CA	DUTY		CESS		Total Duty and Cess	Duty payment particulars
			Rate	Amount	Rate	Amount		
Total Duty/Cess Amount in words: Rupees								Collection Stamp

Declaration:

I/We Declare that all particulars given herein are true and correct.

I/We also attach the declaration(s) under clause No.(s)

Public Notice No.dated Signature and Date

	DOCUMENTS SUBMITTED 1. Invoice [] 2. Packing List [] 3. GR Form [] 4. AR-4/AR-4A Form [] 5. ETC Licence [] 6. Indent [] 7. Acceptance of Contract [] 8. Letter of Credit [] 9. QC Certificate [] 10. Port Trust Document [] 11. Any other (Specify) []
'LET EXPORT' Signature of Officer of Customs	'ALLOWED FOR SHIPMENT' Signature of Officer of Customs

Vessel's name may be altered after check with original Entry for Fresh one may be granted to for the portion shutout or not shipped Handed over to C.H.A./Party		Fee Rs. Received Asstt. Commissioner Cashier
Contents Received on Board Date Signature of Master of Vessel	Date of Shipment Signature of Officer of Customs	
<p><u>Examination Order and Report</u></p>		
<p>Verified Mate's Receipt No. of Issued by..... For</p> <p>Cases/Bales/Packages/Containers..... Shipped per..... Which sailed on..... From..... Under Preventive Supervision</p> <p style="text-align: center;">Signature of Officer of Customs</p> <p style="text-align: center;">OR</p> <p>Shipment declared on this Shipping Bill has been air freighted on Flight No.....</p> <p>Dated.....AWB No..... EGM No. Under Preventive Supervision in full/part (Specify quantity airfreighted).</p> <p style="text-align: center;">Signature of Officer of Customs</p>		

ANNEXURE – III

Shipping Bill For Export Of Duty Free Goods

Exporter	Invoice No. and Date AR4/AR4A No. and Date	SB No. and Date
Consignee	Q/Cert No. and Date	Import-Export Code No. RBI Code No.
Customs House LIC No. Agent	Export Trade Control	If export under:

				Deferred Credit []				
				Joint Venture []				
				Rupee Credit..... []				
				Others []				
				RBI's Approval/Cir. No. and Date				
Pre-Carriage by	Place of Receipt by Pre-Carrier	Nature of Contract: CIF []/FOB []/CFR []/ Others (specify)		Type of shipment				
				Outright Sale []				
				Consignment Export []				
Vessel/Flight No.	Rotation No.	Exchange Rate U/S 14 of CA	Currency of Invoice	Others (Specify) []				
	Port of Loading	Port of Discharge	Country of Destination					
S. Marks & Nos. No.	No. and kind of Pkgs. Container Nos.	Statistical Code/and Description of Goods	Quantity	Value FOB				
Net Weight								
Gross Weight								
Total FOB Value in words								
<u>Analysis of Export Value</u>			<u>Currency</u>	<u>Amount</u>				
FOB Value	.....			Full export value OR where not ascertainable, the value which exporter expects to receive on the sale of goods. Currency Amount			
Freight	.....						
Insurance	.....						
Commission	.....Rate.....						
Discount	.....						
Other	.....						
Deductions	.....						
Sl. No.	Export Tariff No.	Assessable Value under Sec. 14 of CA	DUTY		CESS		Total Duty and Cess	Duty payment particulars
			Rate	Amount	Rate	Amount		
Total Duty/Cess Amount in words: Rupees								Collection Stamp

Declaration:

I/We Declare that all particulars given herein are true and correct.

I/We also attach the declaration(s) under clause No.(s)

Public Notice No.dated Signature and Date

	DOCUMENTS SUBMITTED 1. Invoice [] 2. Packing List [] 3. GR Form [] 4. AR-4/AR-4A Form [] 5. ETC Licence [] 6. Indent [] 7. Acceptance of Contract [] 8. Letter of Credit [] 9. QC Certificate [] 10. Port Trust Document [] 11. Any other (Specify) []
'LET EXPORT' Signature of Officer of Customs	'ALLOWED FOR SHIPMENT' Signature of Officer of Customs
Vessel's name may be altered after check with original entry for Fee Rs. Fresh one may be granted to for the portion shutout or not shipped Received Handed over to C.H.A./Party Asstt. Commissioner Cashier	
Contents Received on Board Date Signature of Master of Vessel	Date of Shipment Signature of Officer of Customs
<u>Examination Order and Report</u> 	

Verified Mate's Receipt No. of Issued by..... For

Cases/Bales/Packages/Containers..... Shipped per..... Which sailed on.....

From..... Under Preventive Supervision

Signature of Officer of Customs

OR

Shipment declared on this Shipping Bill has been air freighted on Flight No..... Dated.....

AWB No..... EGM No. Under Preventive Supervision in full/part (Specify quantity airfreighted).

Signature of Officer of Customs

ANNEXURE – I V

Shipping Bill For Export Of Duty Free Goods Under Ex-Bond

Exporter		Invoice No. and Date		SB No. and Date	
		AR4/AR4A No. and Date			
Consignee		Q/Cert No. and Date		Import-Export Code No.	
				RBI Code No.	
Customs House Agent	LIC No.	Export Trade Control		If export under:	
				Deferred Credit []	
				Joint Venture []	
				Rupee Credit..... []	
				Others []	
				RBI's Approval/Cir. No. and Date	
Pre-Carriage by	Place of Receipt by Pre-Carrier	Nature of Contract: CIF [] / FOB [] / CFR [] / Others (specify)		Type of shipment	
				Outright Sale []	
				Consignment Export []	
Vessel/Flight No.	Rotation No.	Exchange Rate U/S 14 of CA	Currency of Invoice	Others (Specify) []	
	Port of Loading	Port of Discharge	Country of Destination		
S. Marks & Nos. No.	No. and kind of Pkgs. Container Nos.	Statistical Code/and Description of Goods		Quantity	Value FOB
Net Weight					
Gross Weight					
Total FOB Value in words					
<u>Analysis of Export Value</u>			<u>Currency</u>	<u>Amount</u>	Full export value OR where not ascertainable, the value which exporter expects to receive on the sale of goods.
FOB Value					
Freight					
Insurance					
Commission			Rate.....		
Discount					
Other					
Deductions					
<u>Import particulars of Bonded Goods</u>					
Bill of Entry No. & Date	Vessel's Name and Rotation No.	No. of Packages	Bond No. & Date	Name of Bonded Warehouse	

Declaration:

I/We Declare that all particulars given herein are true and correct.

I/We also attach the declaration(s) under clause No.(s)

Public Notice No.dated

Signature and Date

	DOCUMENTS SUBMITTED 1. Invoice [] 2. Packing List [] 3. GR Form [] 4. AR-4/AR-4A Form [] 5. ETC Licence [] 6. Indent [] 7. Acceptance of Contract [] 8. Letter of Credit [] 9. QC Certificate [] 10. Port Trust Document [] 11. Any other (Specify) []
'LET EXPORT' Signature of Officer of Customs	'ALLOWED FOR SHIPMENT' Signature of Officer of Customs
Vessel's name may be altered after check with original entry for Fee Rs. Fresh one may be granted to for the portion shutout or not shipped Received Handed over to C.H.A./Party Asstt. Commissioner Cashier	
Contents Received on Board Date Signature of Master of Vessel	Date of Shipment
<u>Examination Order and Report</u> 	

Verified Mate's Receipt No. of Issued by..... For Cases/Bales/Packages/Containers..... Shipped per..... Which sailed on..... From..... Under Preventive Supervision <p style="text-align: center;">Signature of Officer of Customs</p> <p style="text-align: center;">OR</p> Shipment declared on this Shipping Bill has been air freighted on Flight No..... Dated..... AWB No..... EGM No. Under Preventive Supervision in full/part (Specify quantity airfreighted). <p style="text-align: center;">Signature of Officer of Customs</p>
--

DECLARATION TO BE FILED IN CASE OF EXPORT OF GOODS UNDER CLAIM FOR DRAWBACK

I / We (name of the exporter)..... do hereby declare as follows: -

- (a) that the quantity and specifications of the goods as stated in this Shipping Bill are in accordance with the terms of the export contract entered into with the buyer / consignee in pursuance of which the goods are being exported;
- (b) that the duties of Customs and Central Excise have been paid in respect of the containers, packing materials and other materials used in the manufacture of the export goods on which drawback is being claimed and that in respect of such containers, packing materials or other materials, no separate claim for rebate of duty under Rule 12A or Rule 191A of the Central Excise Rules, 1944 has been made or will be made to the Central Excise authorities;
- (c) that there is no change in the manufacturing formula and in the quantum per unit of the imported materials or components if any, utilised in the manufacture of export goods; and that the materials or components, which have been stated in the application under Rule 6 or Rule 7 to have been imported, continue to be so imported and are not being obtained from indigenous sources;
- (d) that the present market value of the goods is as follows: -
- (e) that the goods are not manufactured and / or exported in discharge of export obligation against an advance licence issued under the Duty Exemption Scheme *vide* relevant import and export policy in force;
- (f) that the goods are not manufactured and / or exported by a unit licenced as a 100% export oriented unit in terms of the import and export policy in force;
- (g) that the goods are not manufactured and / or exported by a unit situated in any Free Trade Zone/Export Processing Zone or any such other Zone;
- (h) that the goods are not manufactured partly or wholly in bonds under Sec. 65 of the Customs Act, 1962;
- (i) that the goods are not manufactured partly or wholly in bond under Rule 191 B of the Central Excise Rules, 1944;
- (j) that the export value of each of the goods covered by this shipping bill is not less than the total value of all imported materials used in the manufacture of such goods.

[Note: *Strike out the declaration whichever is not applicable*]

Name and Signature of the exporter.

ANNEXURE – II

DECLARATION TO BE FILED IN THE CASE OF EXPORT OF GOODS UNDER THE D.E.E.C. SCHEME

I / We(Name of the Exporter).....do hereby declare as follows: -

That the goods to be exported under this Shipping Bill are the products corresponding to the export products specified against Sl. No. in part (e) of the DEEC No. dated issued by the Joint / Deputy Chief Controller of Imports and Exports (Name of the office).....

(a) That the following raw materials / components / consumables have been used for the manufacture of good covered under this shipment, namely: -

Sl. No.	Description	Quantity	Technical Characteristics	Quantity	Whether Imported/ Indigenous

(b) that I / We are not availing the benefit of the provisions of Rule 191 A or Rule 191 B of the Central Excise Rules, 1944,

OR

that I / We are availing the benefit of the provisions of Rule 191 A or Rule 191 B of the Central Excise Rules, 1944 in respect of (name of the item).....

[Note: *Strike out the declaration whichever is not applicable*]

Name and Signature of the exporter

(for use by the Customs authorities)

Shipping Bill No. and Date

Name and Signature of the Customs Officer

ANNEXURE – III

DECLARATION TO BE FILED IN THE CASE OF EXPORT OF GOODS IN ANTICIPATION OF ISSUE OF AN ADVANCE LICENCE / DEEC

I / We (Name of the exporter) do hereby declare as follows: -

- (a) that the shipment is in pursuance of discharge of the export obligation against export order No. dated and
- (b) I / We request for registration of the shipping bill in anticipation of the grant of an Advance Licence / DEEC for which we have already applied to the Licensing Authority, namely
Vide our application No. dated and for which I / We have obtained the letter of permit / receipt No. dated from the said Licensing Authority.
- (c) that the following raw materials / components / consumables have been used for the manufacture of goods covered under this shipment, namely: -

Sl. No.	Description	Quantity	Technical Characteristics	Quantity	Whether Imported/ Indigenous

(d) that I / We are not availing the benefit of the provisions of Rule 191 A or Rule 191 B of the Central Excise Rules, 1944

OR

That I / We are availing the benefit of the provisions of Rule 191 A or Rule 191 B of the Central Excise Rules, 1944 in respect of (name of the item).....

[Note: *Strike out the declaration whichever is not applicable*]

Name and Signature of the Exporter

(For use by the Customs authorities)

Shipping Bill No. and Date

Name and Signature of the Customs Officer

ANNEXURE – IV

DECLARATION TO BE MADE ON SHIPPING BILLS FOR CONSIGNMENTS COVERED BY AR – 4A PENDING WEIGHMENT AT THE DOCKS

In consideration of the [Commissioner of Customs] agreeing to assess the goods on the declared weight pending verification by reference to AR – 4A Forms, I / We (name of the exporter) do hereby agree: -

- (a) to pay way extra duty / cess leviable on the goods covered by the Shipping Bill, and
- (b) to produce the AR – 4A Forms covering the shipment to the Customs House within 15 days of the shipment of the goods.

[Note: *Strike out the declaration whichever is not applicable*]

Name and Signature of the exporter

(For use by Customs authorities)

Shipping Bill No. and Date

Name and Signature of the Customs Officer

ANNEXURE – V

DECLARATION TO BE MADE BY EXPORTERS WHO FILED SHIPPING BILL WITHOUT CERTIFICATE FROM THE EXPORT INSPECTION AGENCY ETC.

(a) I / We (name of the exporter) do hereby declare that the goods being dispatched are / shall be in accordance with the conditions prescribed in the Export (Quality Control and Inspection) Act, 1963. Application for necessary inspection / quality control has been made to (name of the export inspection agency) and the same in original will be produced along with the goods at the time of customs examination.

(b) I / We (name of the exporter).....do hereby declare that the goods are as per the quality control requirements under the Export (Quality Control and Inspection) Act, 1963. Application for the issue of the inspection / quality control certificate has been made to which is duly authorised agency to issue such a certificate. The said certificate will be produced to the Customs Officer for checking at the time of shipment

[Note: *Strike out the declaration whichever is not applicable*]

Name and signature of the exporter

(For use by Customs authorities)

Shipping Bill No. and Date

Name and Signature of the Customs Officer

Goods to be taken back to town from the Docks

(1) It is notified for the information of the Exporters, Custom House Agents and others concerned that henceforth for taking the export cargo (other than perishable, damaged goods and goods under penal action) back into town, from the Docks, the following procedure shall be followed.

An application for taking the Export cargo back to town, will be presented in the Export Department, together with the relevant duplicate copy of the Shipping Bill. After scrutiny, it will be endorsed to the concerned Shed Appraiser, for examination of the goods and for his no objection.

The percentage of goods to be examined will normally be 5% unless otherwise specified by Assistant Commissioner of Customs/Exports.

"In case of application for taking factory stuffed container back to town, A. C./Export will normally order the container to be taken back to town after endorsing "subject to checking the seal intact" unless other wise specified. If the seals are found to be broken or tampered with in the Docks, the Shipping Bill will be returned back to the Export Department and a suitable examination order will be given."

The concerned Shed Appraiser in Docks will examine the cargo by exercising the usual precautions and checks and if the goods confirm to the declared description in the Shipping Bill, he will allow the same to be taken back to town under Preventive supervision. The Preventive Officer will endorse the duplicate Shipping Bill to that effect and return the file expeditiously to the Export Department for further action.

In case, where any discrepancy is noticed by the Shed Appraisers, such Shipping Bill will be returned to the Assistant Commissioner of Customs, Export Department through the Assistant Commissioner of Customs, Docks with appropriate remarks.

The status quo regarding the removal of damaged and perishable goods back into town will, however, be maintained.

This supersedes the earlier Public Notice Nos. 150 dt.7.8.82 and No. 99 dt.17.8.98.

[Public Notice no.124 dated 17.8.98 issued by Commissioner of Customs (EP) in F. No. S/16-Misc-457/98 Exp.]

(2) Attention of all officers and staff is invited to the fact that henceforth in all cases of requests of 'back to town' of Export shipment after the same have been carted into the docks, but for some reasons are not to be Exported, the full facts and circumstances of the case have to be scrutinised by the competent authority in terms of value of shipment before speaking order is passed in the matter in each case.

All other instructions in this regard will remain same as per Public Notice No. 124 dated 17.08.1998 issued by this Custom House.

[Standing Order No. 7477 issued by Commissioner of Customs (EP) in F. No. S/6B-9616/99 EXP]

TRANSHIPMENT OF EXPORT CARGO FROM GATEWAY PORTS LIKE CHENNAI & JNPT

The Export Promotion Board has examined the request of the trade that transshipment of containers of export cargo may be allowed at gateway ports like Chennai and JNPT, whereby goods which are customs cleared for shipment in small ports would be transhipped by coastal vessels to the gateway ports from where they would be sent on foreign voyage by foreign-going vessels. Similarly, on return journey, the transshipment of imported cargo may be allowed at, say, JNPT or Chennai so that the imported cargo containers can be taken to other smaller ports by coastal vessels for final Customs clearance of those goods at the said smaller ports.

2. The issue has been examined in the Board. On the import side, the imported goods can be allowed for transshipment under Goods Imported (Conditions of Transshipment) Regulations, 1995, whereby transshipment is allowed if the importer or the agent makes an application to the proper officer seeking permission for transshipment of the imported goods and the imported goods are manifested for transshipment to the said Customs port. The transshipment of imported goods at these ports may therefore be allowed liberally.

3. For export goods, the shipping bills may be passed at the port of export and export be allowed, subject to the condition of execution of bond as provided under Regulation 4 of Goods Imported (Conditions of Transshipment) Regulation, 1995 and the export goods are manifested for the final

destination through the transshipment port (hub port) like say "To Amsterdam through Chennai".

4. The issue of payment of drawback has also been examined. As per the Drawback Rules the drawback is to be paid when the shipping bills are passed and goods are loaded in ICD/CFS or port. Therefore, the drawback may be paid to the exporters as soon as the shipping bills are passed and goods are shipped at the originating port subject to the condition that the necessary bond has been executed by the Steamer Agent to bring back and submit the proof for export to the Custom House within 90 days. For endorsement and release of AR 4s the procedure prescribed by Circular No. 354/70/97-CX-6, dated 13.11.1997 may be followed. The submission of proof of export by the steamer agents must be strictly monitored.

5. You may issue a suitable Public Notice keeping in view the above principles. The Commissioner of Customs, Kandla has also issued a Public Notice No. 12/98, dated 9.7.1998, a copy of which is enclosed for reference. You may issue a suitable Public Notice in lines of the above guidelines within a fortnight.

[Board's Circular No. 31/99-Cus. Dt.27.5.1999 issued vide F. No. 450/54/99-Cus. IV]

Based on the above guidelines, all the Custom Houses have issued Public Notices / Standing Orders on the subject. The two Public Notices issued by the Mumbai Custom House in this regard are reproduced below-

(1) It is notified for information of all steamers Agents, CHAs, Exporters and all other concerned that to facilitate the movement of export cargo emanating from one port to be shipped from another Gateway Port, the following procedure is prescribed.

The exporter/CHA will file Shipping Bills in sixuplicate i.e. original, duplicate, triplicate, two transference copies and one E. P. copy. In addition to the usual information given in the Shipping Bill, the exporter / CHA will also mention the port of export on the Shipping Bill along with serial number of the container. Each copy of shipping bill will be endorsed that goods are to be transhipped through Gateway Port other than Mumbai.

FURTHER PROCEDURE:

The shipping bill shall be processed, the cargo stuffed and the containers sealed by the Customs Officers as per existing procedure.

The Appraising Officer/Examining Officer will give "Let Export" order on the duplicate copy of the shipping bill as also on the transference copies. The E. P. copy will be suitably endorsed/stamped by the Customs Officers (A. O./E. O.) to the effect that the goods will be transhipped at the Gateway Port for their destination outside India. The E. P. copy will be finally endorsed only after receipt of transference copy evidencing despatch of goods from Gateway Port.

The two transference copies of the Shipping Bills shall be placed in a sealed envelope and handed over to the steamer agent who will be responsible for producing it alongwith the container to the Customs Preventive/Boarding Officer at the Gateway Port.

The shipping agent will continue to file EGM in respect of containers transhipped to Gateway Port.

PROCEDURE FOR EXPORT OF CONTAINERS AT THE GATEWAY PORT:

The containers at Gateway Port will be unloaded and kept in a separate block under supervision of Customs Preventive officer/Boarding officer. The steamer agent will enter the name of the vessel, through which the goods are exported from the Gateway Port, on both the transference copies of the

shipping bill and have them endorsed by the Boarding Officer at the Gateway Port.

The Boarding Officer or Customs Preventive Officer nominated at Gateway Port should endorse the two transference copies of the shipping bill in the following manner:

- (i) Inspected and found seals intact on containers bearing the marks and numbers.
- (ii) The Customs seals on the above mentioned containers are intact.
- (iii) All the containers mentioned above have been shipped under my supervision by vessel.
- (iv) Will endorse the name of the mother vessel on both the transference copies.

If the seals of the containers are found broken by the Customs at the Gateway Port or anything is suspected suggesting tampering etc., Customs may examine the goods and make suitable endorsement on the transference copies of the shipping bills. In that eventuality, goods can be examined by Appraising Officer nominated for the purpose at Gateway Port. Unless there is strong suspicion that tampering has actually taken place, the container should not normally be held back. In the event of it being decided to carry out examination, this would be arranged by steamer agents who will produce necessary documents like copy of shipping bills, invoices etc.

As regards short shipment/shut out cargo from Gateway Port, existing procedure at Gateway Port will be followed with suitable endorsement in Transference copies.

Immediately after shipment of goods from Gateway Port, the Customs Preventive Officer/Boarding Officer will handover one transference copy to the shipping agent on the strength of which EGM would be filed at that port. The Second transference copy in a sealed cover will be handed over to Steamer Agent who will submit the same to Assistant Commissioner, Preventive (General) of New Custom House, Mumbai. Assistant Commissioner, Preventive (General), New Custom House will make arrangement to endorse EP/AR4 copies.

After endorsing the EP Copy/AR4, the Assistant Commissioner, Preventive (General) will forward the transference copy of the shipping bill to the respective Assistant Commissioner (Exports/Drawback / Group VII) who will process documents as per the prescribed procedure for drawback DEC, DEPB benefits etc.

[Public Notice No. 81 issued by Commissioner of Customs (E. P), Mumbai, from F. No. S/6B-4535/98 EXP.]

(2) In continuation to earlier Public Notice 81 Dated 09.07.1998, it is notified for information of all Steamer Agents, CHAs, Exporters and all others concerned that to facilitate movement of import/export cargo emanating from Mumbai port to be shipped from another gateway port, the following procedure is prescribed:

1. On the import side, the imported goods can be allowed for transshipment under Goods Imported (Conditions of Transshipment) Regulations, 1995, whereby transshipment is allowed if the importer or the agent makes an application to the proper officer seeking permission for transshipment of the imported goods as manifested for transshipment to the said customs port. The transshipment of imported goods at these ports may therefore be allowed liberally.

2. For Export goods, the shipping bill may be passed at New Custom House Mumbai and export be allowed, subject to the execution of a bond (sample bond enclosed) and the export goods are manifested for the final destination through the transshipment port (hub port) like say "To Amsterdam through J.N. port".

3. As per the Drawback Rules the drawback is to be paid when the shipping bills are passed and goods are loaded in ICD/CFS or port. The drawback may be paid to the exporters as soon as the shipping bill is passed and goods are shipped at the originating port, subject to the condition that the necessary bond has been executed by the Steamer Agent to bring back and submit the proof of export to the Custom House within 90 days. For endorsement and release of AR4 the procedure prescribed by Board Circular No. 354/70/97-CX-6 dated 13.11.1997 will be followed. The submission of proof of export by the Steamer Agent will be strictly monitored by the Custom house.
4. For the amendment of shipping bills from foreign going vessel to coastal run in case the shipment is not effected in the original vessel, the Exporters / CHA may apply to the proper officer for amendment of shipping bill after attaching two additional copies of shipping bills each duly stamped as 'True Copy' and 'Transference Copy', duly certified by the A. C. / D.C. Export.
5. Only those steamer agents, who are registered at NCH, Mumbai can operate the vessel for export / import of goods from / to Mumbai port through gateway ports.
6. Bond to be executed by the shipping agent shall be as prescribed by C.C. (E.P.), NCH, Mumbai and the validity of the said bond shall be one year from the date of execution.

[Public Notice No. 89 / 99 dated 03.08.1999 issued by Commissioner of Customs (Export Promotion), New Custom House, Mumbai, from F. No. S/6B – 4535 / 98 EXP.]

SAMPLE BOND

BOND REQUIRED AS PER PUBLIC NOTICE NO. 89 DATED 03.08.99 ISSUED BY THE COMMISSIONER OF CUSTOMS (E.P.), NEW CUSTOMS HOUSE, MUMBAI.

(TO BE EXECUTED BY STEAMER AGENT)

KNOW ALL MEN BY THESE PRESENTS THAT, WE..... HEREINAFTER CALLED "THE STEAMER AGENT" (WHICH EXPRESSION SHALL INCLUDE HIS SUCCESSORS/HEIRS, ASSIGNEES, EXECUTORS, ADMINISTRATORS AND LEGAL REPRESENTATIVES), AND WE..... THE "SURETY" (WHICH EXPRESSION SHALL INCLUDE OUR SUCCESSORS/HEIRS, ASSIGNEES, EXECUTORS AND LEGAL REPRESENTATIVES) ARE HELD AND FIRMLY BOUND TO THE PRESIDENT OF INDIA , HEREINAFTER CALLED THE "PRESIDENT" (WHICH EXPRESSION SHALL INCLUDE HIS SUCCESSORS & ASSIGNEES), A SUM OF RS.....(IN WORDS)..... TO BE PAID TO THE PRESIDENT, FOR WHICH PAYMENT WILL BE TRULY MADE WE BIND OURSELVES, OUR SUCCESSORS, HEIRS, EXECUTORS, ADMINISTRATORS AND LEGAL REPRESENTATIVES FIRMLY BY THESE PRESENT.

SEALED WITH OUR SEAL ON THIS DAY OF (MONTH/YEAR)

WHEREAS THE SAID STEAMER AGENT M/S HAS APPLIED TO THE ASSISTANT/DEPUTY COMMISSIONER (E.P.), NEW CUSTOM HOUSE, MUMBAI (HEREIN AFTER CALLED THE PROPER OFFICER) AND THE SAID OFFICER HAS AGREED TO ALLOW TRANSHIPMENT OF GOODS FROM/TO THE PORT OF MUMBAI TO/FROM GATEWAY PORT FOR EXPORT/IMPORT OF THE GOODS,

NOW THE CONDITIONS OF THE ABOVE WRITTEN BOND ARE SUCH THAT,

- 1) IF THE SAID STEAMER AGENT CAUSES THE SAID GOODS TO BE FULLY AND SAFELY TRANSHIPPED TO/FROM THE SAID GATEWAY PORT AND PRODUCE TO THE PROPER OFFICER AND DULY ACCOUNTED FOR AT THE GATEWAY PORT WITHIN 90 DAYS FROM THE DATE OF SHIPMENT OR CAUSES THE SAID GOODS TO BE OTHERWISE ACCOUNTED FOR, TO THE SATISFACTION OF SUCH OFFICER, AND
- 2) IF THE STEAMER AGENT PRODUCES , WITHIN 90 DAYS OF SHIPMENT, TO NEW CUSTOMS HOUSE MUMBAI A TRANSFERENCE COPY OF THE GATEWAY PORT THROUGH WHICH THE SAID GOODS ARE EXPORTED / IMPORTED AND,

- 3) IF THE SAID GOODS/CONTAINERS ARE TRANSHIPPED WITHOUT ANY DAMAGE OR SHORTAGES WITHIN A REASONABLE TIME OR WITHIN SUCH EXTENDED TIME AS MAY BE PERMITTED BY THE PROPER OFFICER,

THEN THE ABOVE WRITTEN BOND SHALL BE VOID AND OF NO EFFECT OTHERWISE THE SAME SHALL REMAIN IN FULL FORCE AND VIRTUE.

AND IT IS HEREBY AGREED AND DECLARED BY PARTIES AS FOLLOWS :

1. THIS BOND IS GIVEN UNDER THE ORDER OF THE CENTRAL GOVERNMENT FOR THE PERFORMANCE OF AN ACT IN WHICH THE PUBLIC ARE INTERESTED.
2. THE BOND SHALL REMAIN IN FORCE OF A PERIOD OF ONE YEAR FROM THE DATE HERE OF.
3. THIS BOND SHALL BE ENFORCEABLE AGAINST THE SURETY NOTWITHSTANDING THAT PROCEEDINGS HAVE NOT BEEN TAKE AGAINST THE EXPORTER/IMPORTER.
4. THE ASSISTANT/DEPUTY COMMISSIONER OF CUSTOMS (E.P.), NEW CUSTOMS HOUSE, MUMBAI OR ANY OTHER OFFICER OF THE GOVERNMENT OF INDIA SHALL HAVE FULL LIBERTY WITHOUT REFERENCE TO THE SURETY AND WITHOUT EFFECTING THE GUARANTEE TO POSTPONE FOR ANY TIME OR FROM TIME TO TIME THE EXERCISE OF ANY OF THE POWERS AND RIGHTS CONFERRED ON THEM BY LAW OR THIS BOND AND EITHER OR FORBEAR TO ENFORCE ANY SUCH POWERS AND RIGHTS OR ANY REMEDY AGAINST THE STEAMER AGENT AND THE SURETY SHALL NOT BE RELEASED BY ANY SUCH EXERCISE OR NON EXERCISE BY THE ASSISTANT / DEPUTY COMMISSIONER OF CUSTOMS (E.P.), AND / OR OTHER OFFICER OF THE GOVERNMENT OF INDIA WITHOUT NOTICE TO OR CONSENT OF THE SURETY OR BY REASON OF TIME BEING GIVEN TO THE STEAMER AGENT OR BY ANY OTHER FOR BEARANCE , ACT OR OMMISSON ON THE PART OF THE GOVERNMENT OFFICER TO THE STEAMER AGENT WHICH UNDER THE LAW RELATING TO SURETY WOULD BUT FOR THIS HAVE THE EFFECT OF REALISING THE SURETY. IN ORDER TO GIVE EFFECT TO THIS GUARANTEE THE PRESIDENT SHALL BE ENTITLED TO ACT AS IF THE SURETY WAS THE PRINCIPAL OBLIGE AND THE SURETY WAIVE ALL RIGHTS AS SURETY AND OTHER RIGHTS WHICH MAY BE INCONSISTENT WITH THE ABOVE PROVISIONS.
5. THE REIGHTS OF THE PRESIDENT TO RECOVER THE SAID AMOUNT FROM THE SURETY IN THE MANNER AFORESAID WILL NOT BE AFFECTED OR SUSPENDED BY REASON OF THE FACT THAT ANY DISPUTES HAVE BEEN RAISED BY THE STEAMER AGENT WITHREGARD TO THE LIABILITY OF OR THAT ANY PROCEEDINGS ARE PENDING BEFORE ANY OFFICER, TRIBUNAL OR COURT WITH REGARD THERETO OR IN CONNECTION THEREWITH.
6. THE GUARANTEE HEREIN CONTAINED SHALL NOT BE DETERMINED OR AFFECTED BY THE LIQUIDATION OR WINDING UP OR CHANGE OF CONSTITUTION OF THE STEAMER AGENT OR OF THE SURETY.
7. THE PRESIDENT THROUGH THE ASSISTANT / DEPUT COMMISSIONER OF CUSTOMS (E.P.). NEW CUSTOM HOUSE MUMBAI OR ANY OTHER OFFICER MAY RECOVER THE SAID SUM OF RS.....(RS. IN WORDS.....) OR PORTION THERE OF IN THE MANNER LAID IN SECTION 142 OF THE CUSTOM ACT 1962 WITHOUT PREJUDICE TO ANY OTHER MODE OF RECOVERY.
8. THE SURETY HAS POWER TO GIVE THIS GUARANTEE IN FAVOUR OF THE PRESIDENT AND SIGNATORY OF THIS BOND ON BEHALF OF THE SURETY HAS FULL POWER TO SIGN THIS BOND.
9. THE GUARANTEE HEREBY GIVEN SHALLBE A CONTINUING ONE AND SHALL NOT BE REVOKED BY THE SURETY WITHOUT THE CONSENT OF THE PRESIDENT OR THE COMMISSIONER OF CUSTOMS (E.P.), MUMBAI.

IN WITNESS WHERE OF THE STEAMER AGENT AND THE SURETY HAVE HEREIN SET AND SUBSCRIBED THEIR RESPECTIVE HANDS AND SEALS THE DAY, MONTH AND YEAR FIRST WRITTEN.

SIGNED AND DELIVERED BY AND ON BEHALF OF
THE STEAMER AGENT IN PRESENCE OF :-
SIGNED AND DELIVERED BY AND ON BEHALF OF SURETY IN

Export through ICDs / CFSs – Speedy Acceptance of Proof of Exports

It has been brought to the notice of the Board that there are inordinate delays in acceptance of proof of export where goods are exported through and Inland Container Depot/Customs Freight Stations (ICDs/CFSs) because of delayed receipt/non-receipt of the Transference Copies from the Customs formations at the port of exit. This causes delay in getting rebate claims or in fulfillment of conditions of bonds executed for exports without payment of duty. In many cases, rebate claims are rejected or the demands are raised for non-submission of proof of exports within the stipulated period of six months from the date of export.

2. It has been decided by the Board that for exports through ICDs/CFSs, a revised procedure should be followed in respect of the acceptance of proof of exports which is as follows: -

2.1 The Appraiser/Superintendent (Shed) will give a certificate in Part-B of the Original, Duplicate and Sixtuplicate copies of AR-4/AR-5 simultaneously when he gives the Let Export Order on the shipping Bills in terms of Section 51 of the Customs Act, 1962. This certificate shall be in the following form in lieu of the format given in Part – B of the AR-4/AR-5: -

Certificate that the consignment was stuffed in Container No(s)under Shipping Bill No.....dated.....for which the Let Export Order was given on the day of..... The Customs at the ICD/CFS will send the duplicate copy of AR-4/AR-5 to the address given at Sl. No. 1 of the AR-4/AR-5 (the concerned Jurisdictional Assistant Commissioner of the Maritime Commissioner) and hand over the Original and Sixtuplicate copies to the exporter. A provision has already been made under the instructions of the Board that the duplicate AR-4/AR-5 can be given to the exporter his authorised agent on his request in a sealed cover for presenting to the rebate sanctioning authority or the authority before whom the bond is executed.

2.2 Under the present procedure, the Transference Copies of the Shipping Bill (TR-I & TR-II) move along with the goods from ICD/CFS to the port of shipment and are endorsed with the details of Mate Receipt No., name of the issuing person, details of the cases/cartons/packages/container, name of the ship, date of sailing and the port of sailing – by the officer of Customs (Preventive Officer) who supervises the shipment. One copy of TR is received back in ICD/CFS on the basis of which the officers of Customs at ICD/CFS complete the Part-B of AR-4/AR-5. This TR copy is required at ICDs/CFSs for logging the DEEC Book, in the cases where the exports are effected under the Duty Exemption Scheme.

2.2.1. Under the modified procedure, the Customs formations (ICDs/CFSs), immediately after completing the DEEC Book logging, wherever applicable, will forward this Transference Copy to the same postal address where they had forwarded the corresponding AR-4/AR-5. To facilitate this, the exporters are required to indicate on the TR copies the same postal address to the concerned Central Excise formalities, as mention in the corresponding AR-4/AR-5 and this requirement should be duly reiterated and impressed upon, in the Trade Notice/Public Notice. This TR copy should be used as the corroborative evidence for acceptance of proof of export outside India.

2.3. Where the TR copy is not received from the Port of Shipment within 30 days of the Let Export Order, the exporter may present the relevant Mates Receipt issued by the shipping line at the time of loading of container(s) on board the ships and Bill of Lading, to the Jurisdictional Assistant Commissioner of Central Excise or the Maritime Commissioner, as the case may be. These should be accepted for the purpose of verifying the shipment of the goods at the Gateway port. After verification, that goods have

actually been exported, the rebate claims should be sanctioned or the bond should be discharged, as the case may be.

2.3.1. A post facto verification shall be done by the Central Excise Divisions. The file for acceptance of proof of export shall be closed, once TR copy is received from ICD/CFS within 120 days of the Let Export Order containing details of actual export. In case TR copy is not received within 120 days, the exporter may submit the Bank Realisation Certificate of export receipts in Original along with certified copy of this certificate. The Original will be returned to exporter after verification, and the certified copy will be retained in the Central Excise Division. If found in order, file regarding acceptance of proof of export will be closed.

2.3.2. If TR copy or Bank Realisation Certificate is not received within 180 days of clearance for exports, where exports are effected under bond, action for recovery should be taken in terms of Rule 14A of the Central Excise Rules, 1944.

2.3.4. In the interest of export promotion, it is imperative that full advantage of modern means of communication, which are not only speedy but also economical is taken by the offices of Customs (Docks) and the Central Excise Divisions. They are already computerised upto Range level. Verification on E-mail with the help of TR copy retained at the Gateway Port should be encouraged. The hard copies (printouts) can be retained for official records.

2.3.5. For proper monitoring of the cases, a register should be maintained in the Central Excise Division in the format given in Annexure I.

2.4. Other procedures contained in Board's Circular No. 81/81/94-CX dated 25.11.94. No. 87/87/94-CX dated 26.12.94 and No. 129/40/95-CX dated 29.5.95 will remain the same.

[Board's Circular No. 354/70/97-CX dated 13.11.97 in F. No. 209/54/97-CX.6]

**Proof of Export
Post Factor Verification
Register**

Note: (To be written on the Cover)

II. Authority : Board's Circular/...../9.....- CX
dated(F. No. 209/54/97-SC.6) Trade Notice
No./9 dt.

Signature
(Name in Block Letters)
Supdt. of Central Excise (Tech. Division)

Note: (First Page of the Register)

III. Index : (Range-wise)		
Sl. No.	Name of the Exporter	Page Nos. (.....to.....)
(1)	(2)	(3)

Note: Allot first few pages for Index : make index for every rangtenter exporters name Alphabetically as far as possible).

IV.

Format

_Sl. No.	Name of the Exporter	Date of Let Export Order	Date of Discharge of Bond	Date of Sanction of rebate	Shipping Bill No. Date	AR-4/AR-5 No. & Date
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(1)	(2)	(3)	4(a)**	4(b)**	(5)	(6)
-----	-----	-----	--------	--------	-----	-----

ICD/CFS	Mates Receipt No. & Date	Vessel (Name)	No. & Date	Bill of Lading Shipping Line
(7)	(8)	(9)	10 (a)	10 (b)

Date of Receipt of TR Bank of Realisation**	Date of submission of	Action Taken	Remarks
(11)**	(12)**	(13)	(14)

Note: “**” Strike out whichever is not applicable.

PROCEDURE FOR EXPORT OF GOODS UNDER CLAIM FOR REBATE OF EXCISE DUTY

1.1 Attention of Commissioners is invited to Board's telex F. No. 209/18/93 Dt.26.9.94 & 27.9.94 communicating the issue of fresh rules and notification relating to exports.

1.2 The New Central Excise Rule 12 (1) (a) has been framed to grant rebate of duty paid on export of duty paid goods. The new Rule 12 (1) (a) corresponds to the earlier Rule 12 of the Central Excise Rules. The fresh Notification No. 41/94 has been issued under the new Rule 12(1) (a) which permits grant of rebate on all excisable goods except mineral oil and goods supplied as ship stores. Under the Notification No. 41/94/the facility of rebate is available on export of goods to all countries other than Nepal and Bhutan.

2.1 The salient features of the new Rules and Notifications issued there-under are briefly summarized below: -

2.2 Self Removal Procedure

Now the exporters are being allowed to take clearances for export without the presence and examination of cargo by the Central Excise Officer.

2.3 AR4 and AR4A are merged

The existing AR4 and AR4A forms have been merged. Now only one single type of AR4 is required to be filed by exporters in all the situations namely :

- Export clearances on their own without examination by the Central Excise Officer whether under claim for rebate or under bond.
- Export Clearances under Central Excise seal whether under claim for rebate or under bond. A copy of the AR4 is enclosed.

2.4 Options of claiming rebate either from Maritime Commissioner or jurisdictional Assistant Commissioner of Central Excise.

- (a) The number of Maritime Commissioners has been reduced to seven
- (b) Where the export is from any of the port, airport or post office falling within the jurisdiction of Maritime Commissioner of Central Excise, option is available to file claim of rebate before such Maritime Commissioner of Central Excise or the Jurisdictional Assistant Commissioner of Central Excise. For this purpose exporters are required to clearly indicate their option on AR4 along with complete postal address of the authority from whom the rebate shall be claimed.

3.1 The following consolidated instructions are issued with regard to grant of rebate of Central Excise Duty paid on the exported to countries other than Nepal and Bhutan. The earlier instructions, on the subject which are inconsistent with these instructions, the new rules and the notifications issued thereunder may be treated as withdrawn.

4.0 The removal of goods under claim of rebate from a factory or warehouse without examination by the Central Excise Officers.

4.1 The exporters are now allowed to remove the goods for export on their own without getting the goods examined by the Central Excise Officers. The AR4 in such cases would be prepared in sixtuplicate, giving all particulars and declarations. The exporters shall deliver triplicate, quadruplicate, quintuplicate and sixtuplicate copies of AR4, to the Superintendent of Central Excise having jurisdiction over the factory or the warehouse, within twenty four hours of the removal of the consignment and would retain the original and duplicate copies for presenting along with the consignment to the Customs Officer at the point of export.

4.2 The jurisdictional Superintendent of Central Excise shall examine the information contained in AR4 and verify the facts of payment of duty and other certificates/declarations made by the exporter. After he is satisfied that the information contained in the AR4 is true, he will sign at appropriate places in the four copies of AR4 submitted to him and put his stamp with his name and designation below his signature. He would then dispose of the triplicate, quadruplicate, quintuplicate and sixtuplicate copies of AR4 as under:

- i) Triplicate
To the rebate sanctioning authority viz. Maritime Commissioner of Central Excise or the Assistant Commissioner of Central Excise declared by the exporter on the AR4. This copy on the request of exporter may be sealed and handed over to the exporter / his authorised agent for presenting to the rebate sanctioning authority.
- ii) Quadruplicate
To the Chief Accounts Officer in the Commissionerate Head Quarters.
- iii) Office copy to be retained by the Central Excise Officer.
- iv) Sixtuplicate
To be given to the exporter.

5.0 Procedure for exports under Central Excise seal

5.1 Where the exporter desires the sealing of the goods by the Central Excise Officers so that the export goods may not be examined by the Customs Officers at the Port/Airport of shipment, he should present an AR4 application in sixtuplicate to the Superintendent of Central Excise having jurisdiction over the factory/warehouse at least twenty four hours before the intended removal of the export goods from the factory/warehouse. However, where, exporter is unable to give 24 hours advance notice to the Superintendent of Central Excise, his request for shorter notice should normally be accepted. All such relaxations shall be reported to the Assistant Commissioner of Central Excise for ex post facto approval. Commissioners of Central Excise may delegate powers under rule 187 to the Assistant Commissioners of Central Excise.

5.2 The Superintendent of Central Excise may depute an Inspector of Central Excise or may himself go for sealing and examination of the export consignment. Where the AR4 indicates that the export is in discharge of an export obligation under a Quantity-based Advance Licence or a Value-based Advance Licence issued under the Duty Exemption Scheme, in such cases the consignment should invariably be examined and sealed by the Superintendent of Central Excise himself.

5.3 The Central Excise Officer examining the consignment would draw samples wherever necessary in triplicate. He would hand over two sets of samples, duly sealed, to the exporter or his authorised agent, for delivering to the Customs Officers at the point of export. He would retain the third set for his records.

5.4 The export consignment should be carefully examined vis-a-vis description of goods, their value and other particulars/declarations on the AR4. The Central Excise Officer shall verify the facts of payment of duty and other certificates/declarations made by the exporter. After he is satisfied that the information contained in the AR4 is true he would allow the clearances and also sign all the six copies of the AR4 at appropriate places and put his stamp with his name and designation below his signature.

The copies of AR4 would be disposed of as under:

Original and Duplicate: To the exporter or presenting to Customs Officer at the point of export along with the export consignment

Triplicate: To the rebate sanctioning authority i.e. Maritime Commissioner of Central Excise or the jurisdictional Assistant Commissioner of Central Excise, as declared by the exporter on the AR4. The Central Officer may hand over this copy under a sealed cover on exporter's request.

Quadruplicate: To the Chief Accounts Officer at his Commissionerate Head Quarters.

Quintuplicate: To be retained for records.

Markings

6.1 the packages in which the goods are to be exported would be legibly marked in ink or oil color or in such other durable manner with progressive number commencing with No. 1 for each calendar year and with the exporter's name.

AR4 Form:

7.1 The Different copies of AR4 forms should be of different colours indicated below :-

- i. Original – White
- ii. Duplicate – Buff
- iii. Triplicate – Pink
- iv. Quadruplicate – Green
- v. Quintuplicate – Blue
- vi. Sixtuplicate – Yellow

It will be sufficient if the copies of AR4 contain a colour band on the top or right hand corner in accordance with above colour scheme.

7.2 Exporters should be advised to take adequate care in filling up the AR4 proforma. The rebate sanctioning authority along with its complete postal address should be clearly mentioned at appropriate place in the AR4. The applicable portion should be carefully retained and inapplicable portion struck off. The exporters are now required to give following certificates/declaration.

"We hereby certify that the above mentioned goods have been manufactured.

- (a) availing facility/without availing facility of Modvat credit under Rule 57A of the Central Excise Rules, 1944.
- (b) availing facility/without availing facility under Rule 12(1) (b) of Central Excise Rules, 1944.
- (c) availing facility/without availing facility under Rule 13(1)(b) of Central Excise Rules, 1944.

We hereby declare that the export is in discharge of the export obligation under a Quantity Based Advance Licence/Value Based Advance Licence/Under Claim of Duty Drawback under Customs & Central Excise Duties Drawback Rules, 1971."

Disposal of AR4 by the Customs Officer at the Point of Exports :

8.1 The original, duplicate and sixtuplicate copies of the AR4 shall be presented by the exporter/his authorised agent to the Customs Officer at the point of export along with the goods, Shipping Bill/Bill of

Export and samples sealed by the Central Excise Officer. The export consignment shall be checked by the Customs Officer to see whether the seals are intact and the marks and number tally and if found in order he may allow exports after ensuring that the No. of the AR4 has been indicated in the Shipping Bill or the Bill of Export, as the case may be. The samples shall be dealt in accordance with instruction/standing orders of the Commissioner of Customs or the Central Board of Excise and Customs. After the goods have been shipped the proper officer of Customs would make necessary endorsements in the Original, Duplicate and Sixtuplicate copies of the AR4 at appropriate places and put his stamp with his name and designation below his signature. The copies of AR4 shall be disposed off by him in the following manner:

Original and

Sixtuplicate : To be handed over to the Exporter. Original shall be used for filling rebate claim. Sixtuplicate copy shall be used for Drawback/DEEC endorsement.

Duplicate : To be sent to Rebate Sanctioning authority declared on AR4. This copy on a request of exporter may be sealed and handed over to the exporter/his authorised agent for presenting to the rebate sanctioning authority.

Filing and sanction of Rebate Claim :

9.1 With Maritime Commissioner of Central Excise : where the export of the goods is from any of the ports, airports or post office falling within the jurisdiction of Maritime Commissioner of Central Excise of Mumbai, Calcutta, Chennai, Paradeep, Vishakhapatnam, Cochin, Kandla and the exporter had opted to claim rebate from Maritime Commissioner of Central Excise by declaring the same on AR4, he will file the claim with the proof of due exportation within time limit prescribed under Sec. 11B of the Central Excise and Salt Act, 1944 i.e. six months from the date of export, in prescribed form along with original copy of AR4 duly endorsed by the Customs Officer certifying the export of the consignment [and the duplicate copy handed over to him by the customs officer in a sealed cover] to the Maritime Commissioner of Central Excise who shall compare the original AR4 received from the exporter with the triplicate copy of the AR4 received from the Central Excise Officer and the duplicate AR4 received from the Customs Officer. The Maritime Commissioner after due scrutiny and verification of the said AR4s, will sanction the rebate claim in whole or in part.

9.2 With Assistant Commissioner, Central Excise having jurisdiction of the factory:

Where the exporter wishes to claim rebate of excise duty on goods exported from the Assistant Commissioner having jurisdiction over the factory or warehouse from where the goods removed for export, he will file the claim of rebate within six months from the date of export of the consignment [and the duplicate copy handed over to him by the Customs officer in a sealed cover]. The Assistant Commissioner of Central Excise, would verify and compare the original copy of AR4 with the duplicate copy of AR4 received from the Customs Officer and with the triplicate copy of AR4 received from Superintendent, Central Excise Range and after satisfying himself that the claim is in order will sanction the rebate either in whole or in part.

9.3 Documents to be filed for claiming rebate: Following documents should be filed for claiming rebate –

- Application in prescribed form Annexure 65
- Original copy of AR4
- Duplicate copy of AR4 in sealed cover received from Customs Officer[optional]
- Duly attested copy of Bill of Lading
- Duly attested copy of Shipping Bill (export Promotion Copy)
- Disclaimer Certificate [in case where claimant is other than exporter]

9.4 Time limit for disposal: The rebate sanctioning authority should point out deficiency, if any, in the claim within 15 days of lodging the same and ask the exporter to rectify the same within 15 days. Queries / deficiencies shall be pointed out at one go and piecemeal queries should be avoided. The claim of rebate of duty on export of goods should be disposed of within a period of two months.

Supplementary Rebate Claim :

10.1 The Supplementary Rebate Claim, if any, should be filed within the stipulated time provided under section 11B of the Central Excises and Salt Act, 1944.

Relaxation by Commissioner of Central Excise

11.1 **Relaxation to be granted by the Commissioner:** The Commissioner is empowered to condone/relax any condition relating to rebate of excise duty on goods exported for reasons to be recorded in writing, if he is satisfied that the goods have actually been exported. However, the Commissioner is not empowered to condone delay in filing of rebate claim filed after the expiration of six months from the date of export, the time limit prescribed under section 11B of the Central Excise Act. It may be noted that this power has to be exercised by the Commissioner and not the Assistant Commissioner who may be acting as Maritime Commissioner or the Jurisdictional Assistant Commissioner.

Restrictions

- 12.1 The Rebate of duty will not be allowed if –
- (i) the market price of the goods exported is less than the amount of rebate.
 - (ii) The amount of the 'Rebate' of duty admissible is less than Rs.500/-

Miscellaneous

13.1 Exports by persons other than manufactures: Where exports are by merchant exporters, a disclaimer certificate in favour of the exporter should be taken on each copy of AR 4.

13.2 Number of AR 4: Each exporter shall give a running serial starting from 1 for each calendar year to every AR4 filed by him.

14.1 Maritime Commissioners: Commissioner of Central Excise shall in the Trade Notice clearly specify the postal Address of the authority designated as Maritime Commissioner who will sanction the rebate and admit proof of exports in cases of exports under bond.

14.2 Commissioners may having regard to the nature of goods or trade practice relax any of the conditions regarding markings on the export packages recording the reasons. Necessary trade notice may be issued for this purpose.

14.3 Commissioner may also issue detailed trade notice/s and standing order/s in this regard. Copies of all Trade Notice and Standing Orders may be endorsed to Board and DGCCIE.

AR4 No.....

Range
 Division Address.....
 Commissionerate
 Quintuplicate -
 Sixtuplicate -

Original – White
 Duplicate – Buff
 Triplicate – Pink
 Quadruplicate – Green
 Blue
 Yellow

Form A. R. 4
Application for removal of excisable goods for export by
[Air/Sea/Port/Land]*

To
 Superintendent of Central Excise
(Full Postal Address)

1. Particulars of Asst. Commissioner of Central Excise / Maritime Commissioner of Central Excise * from whom rebate shall be claimed/with whom bond is executed * and his complete postal address.....
2. I / Weof.....propose to export the undermentioned consignment to (Country of destination) [by Air/Sea/Land/Parcel Post) * under claim for rebate / bond.

Particulars of manufacturer of goods and his Central Excise Reg. No.	No. and Description of packages	Gross Weight/ Net Wt.	Marks and Nos. on Packages	Quantity of goods	Description of goods
1.	2.	3.	4.	5.	6.

Value		Duty		No. & Date of Invoice under which duty was paid/No. and date of Bond executed under Rule 13 *	Amount of Rebate claimed	Remarks
Rs.	P.	Rs.	P.			
* Strike out whichever is not applicable.						
7.	8.	9.	10.	11.	12.	

3. We hereby certify that the above mentioned goods have been manufactured
 - (a) availing facility / without availing facility * Modvat credit under Rule 57A of Central Excise rules, 1944.
 - (b) Availing facility / without availing facility * under Rule 12 (1) (b) of Central Excise Rules, 1944
 - (c) Availing facility / without availing facility * under Rule 13 (1) (b) of Central Excise Rules, 1944
4. We hereby declare that the export is in discharge of the export obligation under a Quantity based Advance Licence/value based Advance Licence / under Claim of Duty Drawback under Customs & Central Excise Duties Drawback Rules, 1971 *
5. I / we hereby declare that the above particulars are true and correctly stated.

Time of Removal.....

Signature of owner or his authorised agent
With date.
Name in Block Letters & Designation
SEAL

Part A

Certification by the Central excise officer

Certified that duty has been paid on the goods described over leaf by debit entry in the Personal ledger Account No./RG 23A (Pt.II) No./ RG 23B (Pt.II) No. against Excise Invoice No. dated/ that the Owner has entered into B1 / B16 bond No.under Rule 13/14 of Central Excise Rules, 1944 with the

Certified that I have opened and examined the packages No. and found that the particulars stated and the description of goods given overleaf read with the invoice and the packing list (if any) correct [and that all the packages have been stuffed in the container No. With Marks.....]* and the same has been sealed with Central Excise seal / One Time Seal (OTS) No.

I have verified with the records, the certificate of the owner given at Sl. No. 3 overleaf regarding nonavailment of benefits under rule 57 A, 12 (1) (b), 13 (1) (b) and found it to be true.

Certified that I have drawn three representative samples from the consignment and have handed over two sets there of duly sealed to the exporter / his authorized representative.

Place.....

Date.....

Signature
(Name in Block Letters)
Superintendent of Central Excise

Signature
(Name in Block Letters)
Inspector of Central Excise

Part B
Certification by the Custom Officer

Certified that the consignment was shipped under my supervision under Shipping Bill no. datedby S.S. / Flt. No. which left on the day of19

Certified that the above mentioned consignment has been duly identified and has passed the land frontier today at In its original condition under Bill of Exports No. Dt
Place
Date

Signature
(Name and designation of Customs
officer in Block letters)
(Seal)

Note : The customs officer shall send the duplicate to the address given at Sl. No. 1 overleaf and hand over original and Sixtuplicate to the exporter.

Part C
Exports by Post

Certified that the consignment described overleaf has been despatched by foreign post to.....on day of19.....

Place
Date

Signature of Post Master
(Seal)

Part D
Rebate Sanction Order

(On Original, Duplicate and Triplicate)

Refund Order No.dated.....Rebate of Rs.....(Rupees
.....) sanctioned vide cheque No.....dated.....
Place Assistant Commissioner/Maritime
Date Commissioner of Central Excise.

[Board's Circular No. 81/81/94-CX dated 25.11.94 issued in F. No. 209/18/93-CX.6 (Pt.)]

EXPORT UNDER CLAIM FOR REBATE OF DUTY ON EXCISABLE MATERIALS USED IN THE MANUFACTURE OF EXPORT GOODS

1.1 Attention of the Commissioners in invited to Board's telex No. 209/18/93 dated 26.09.94 & 27.09.94 communicating the issue of fresh rules and notifications relating to exports.

1.2 The new Central Excise rule No. 12 (1) (b) has been framed to grant rebate of CE duty paid on raw materials / inputs used in the manufacture of the finished goods exported from India. The new Rule 12 (1) (b) thus incorporated in it the erstwhile rules 12 (A) and 191 A of the Central Excise Rules, 1944. A fresh notification 42/94, C.E. (N.T.), dated 22.9.94 issued under the new rule permits grant of rebate of duty paid on any excisable materials used in the manufacture and packing of the goods exported. The notification details the conditions for claiming such rebate of duty. Benefit of Notification No. 42/94-CE (NT) is not available for exports to Nepal or Bhutan and such exports are governed by separate instructions.

2.1 The salient features of the new rules and the notification issued thereunder are briefly summarised below :-

2.2 The benefit of input stage rebate under rule 12(1) (b) can be claimed on export of all finished goods whether excisable or not. But by Notification 42/94 the facility has been extended only to goods

appearing under the Schedule to the Central Excise Tariff Act, 1985. It is not necessary that the eligible finished goods to be exported are chargeable to Central Excise duty. Consequently the benefit under Rule 12 (1) (b) can be claimed even by a unit exempted from registration under rule 174 of Central Excise Rules, 1944 in view of production of goods exempted from payment of central Excise Duty.

2.3 Benefit of input stage rebate can be claimed by a manufacture of finished goods only when the exports is in his own name. Benefit of the input stage rebate shall not be extended where export are through merchant exporters. In short manufacturers working under this scheme are not permitted to export their goods through third parties.

2.4 The definition of "materials" has been made wider. The benefit is now available for excise duties paid on raw materials, consumables, components, semi-finished goods, assemblies, sub-assemblies, intermediate goods, accessories, parts and packing materials required for manufacture of export goods. Sources of Energy such as high speed diesel, furnace oil etc. shall not be regarded as consumables and consequentially benefit of rule 12(1) (b) shall not be available on Source of Energy. Similarly, the rebate of Central Excise duty paid on equipment and machinery items in the nature of capital goods used in relation to manufacture of finished goods being shall not be allowed under rule 12 (1) (b).

2.5 The definition of "manufacture" for the purpose o grant of input stage rebate has also been made liberal and now includes process of blending, alterations, or any other operations thereon.

2.6 Form AR5 modified; The erstwhile AR5 was prescribed under the old rule 191A. Since rule 191A has been rescinded, the old Performa of AR5 has been be continued on an adhoc basis. However a revised proforma of AR5 is enclosed which may be notified by the Commissioners of Central Excise through Trade Notice and the new proforma of AR5 may be brought into effect in all field formations positively from 01.06.95. Under this scheme, there is no need to use AR4 forms at all and the modified format of AR5 would 2.7 The benefit input stage rebate con not be claimed in any of the following situations.

- where the finished goods are exported under Claim for Duty Drawback
- where the finished goods are exported in discharge of export obligation under a Value Based Advance Licence or a Quantity based Advance Licence issued before 31.03.95.
- Where facility of input state credit is availed under Modvat provisions under Chapter V AA Central Excise Rules, 1944.

3.1 The following consolidated instructions are issued with regard to grant of rebate of Central Excise Duty paid on inputs used in the goods exported to countries other than Nepal and Bhutan. The earlier instructions on the subject which are inconsistent with these instruction, the new rules, and the notifications issued thereunder may be treated as withdrawn.

Declaration & Permission

4.1 The manufacture of finished goods intending to export such goods, under claim for rebate of Central Excise Duty on materials/inputs shall file a declaration (in quintuplicate) to the Commissioner of Central Excise having jurisdiction over the factory where finished goods for export are manufactured. The declaration shall contain details of finished goods to be exported, the details of materials required and their consumption ratios.

4.2 Proforma of declaration to be filed in terms of Notfn. CE-42/94(NT) is enclosed (Annexure 1). Dated acknowledgment or postal receipt of despatch by registered post shall be adequate proof of submission of the declaration.

4.3 The declaration should be filed complete in all respects by the manufacturer intending to avail the facility of input stage rebate. A neat flow diagram along with the write up of manufacturing process may be enclosed. Where there are more than one export product, separate statement of the consumption ratios may be finished for each export product.

4.4 The premises in which goods are manufactured for exports under rule 12 (1) should be clearly demarcated in the ground plan. The manufacturing area shall also be segregated.

4.5 Statement of consumption ratio is the most important information and should be carefully filed for each export product. Estimated monthly quantum of exports may be indicated at appropriate place. The details of materials may be furnished in descending order of importance indicating important materials (from duty incidence view point) first. Materials which contribute negligible amount to rebate may not be shown at the desecration of the exporter. The consumption's should be net of recycled materials.

4.6 The Commissioner of central Excise may nominate suitable office for verifying the declaration or direct Divisional Officer for arranging the verification. For this purpose, four copies may be sent to verifying officer and Commissioner's office may retain one copy for future reference.

4.7 The verifying officer shall carefully examine the data furnished in the declaration with special reference to consumption of materials and the wastages. Where manufacturing activity had been going on for the past years, many yearly consumption ratios may be used as guideline. The claim for rebate under Rule 12 (1) (b) is available for all duty paid excisable inputs used. The input output norms notified under the Export Import Policy may be referred for guidance. However it may be noted that the norms in the Export Import Policy may not include all materials and claim under rule 12 (1) (b) should not be denied merely on the grounds that a particular material does not appear under the norms in the Policy. Special care should be paid to materials which are recycled. Some solvents used in the Chemical Industry are recycled. Similarly many plastic wastages and non ferrous metals are recycled. Care should be taken that consumption of materials is net of such recycled materials. Where recoverable wastages are generated but not recycled but sold on account of its unsuitability, the same should be clearly reflected in the declaration.

4.8 The Central Excise Officer after carrying out the verification of the declaration shall append the necessary certificates/endorsements at appropriate places in the Declaration and sent three copies of the Commissioner of Central Excise, retaining one copy for his records.

4.9 (1) Based on the verification carried out by the Central Excise Officer, or otherwise, where the Commissioner of Central Excise is satisfied that the consumption norms claimed are reasonable and that the applicant has proper facility for carrying out the manufacture of goods for exports, the Commissioner may grant permission to the applicant for manufacture and export of finished goods under claim for rebate of Central Excise duties paid on materials used in the manufacture of finished goods exported. The letter of permission shall clearly indicate the conditions subject to which benefit under Rule 12 (1) (b) of the Central Excise Rules, 1944 shall be available. A proforma in which such permission may be granted in enclosed (Annexure II). A copy of the permission with verified declaration shall also be sent to the Assistant Commissioner of Central Excise and the Superintendent of Central Excise.

4.9 (2) If for any reason the Commissioner Central Excise could not satisfy himself with reference to the correctness of the consumption norms claimed by the applicant and the product is being manufactured for the first time in his jurisdiction, the Commissioner may permit the manufacturing operations and the verification of the consumption norms should be completed while the process of manufacture is on. The verification should be completed before allowing the export of the goods as the manufacturer working under this Scheme is expected to declare the raw materials consumed in the AR5 for making their claims for rebate. In such circumstances, the Superintendent of Central Excise would complete the verification as quickly as possible and the Commissioner can indicate the consumption norms as amendment to the permission already given. In some cases, where the manufacturer has to fulfil certain export commitments in view of letters of credit to be honoured, the Assistant Commissioner can permit the manufacturers to export the goods if the Superintendent had already conducted the verification and submitted the report but is pending approval by the Commissioner of Central Excise. In

such cases the AR5 Form against the declaration party, the Superintendents supervising the clearance shall clearly indicate that the consumption norms have been verified but not yet approved by the Commissioner. This would enable the Assistant Commissioner sanctioning the rebate to take note of this fact.

4.10 The permission granted by the Commissioner of Central Excise can be withdrawn at any time if it comes to the notice of the Commissioner that the information furnished by the applicant is incorrect or where it comes to the notice of the Commissioner that the applicant is not maintaining the records required under the Trade Notice issued in this regard or where it comes to the notice of the Commissioner that the premises where goods for export are manufactured is not properly segregated.

4.11 Any change in the consumption ratio should be promptly intimated by the manufacturer to the Commissioner of Central Excise, Assistant Commissioner of Central Excise and the jurisdictional Range Superintendent giving reference of the permission granted by the Commissioner of Central Excise. Commissioner of Central Excise may order fresh verification if the revised consumption ratios are higher (say 5% or more) than the ratio already verified and approved. However, Commissioner of Central Excise may sue their discretion in this regard.

Procurement of Materials and Record Maintenance

5.1 The excisable materials required for export production should be procured directly from the factory where such goods are manufactured or from dealers registered under Rule 174 of Central Excise Rules. The excisable materials and packing should be obtained in the original packed condition. The invoice should be in the name of the manufacturer of export goods.

Accounts & Returns

5.2 The manufacture shall maintain register of duty paid materials brought to the factory for manufacture of finished goods for export under claim for input stage rebate under Rule 12 (1) (b) in the proforma of RG 26. The account for finished goods manufactured and exported may be maintained in the proforma of RG 27. The manufacturer shall also file a quarterly return in form RT 14, of materials received and finished goods cleared.

5.3 Any officer duly empowered by the Assistant Commissioner in this behalf shall have access at all reasonable times to any premises indicated in the application and to any place where goods for export are processed or stored. The applicant shall also permit the officer of Central Excise access to any records relating to the production, storage and export of goods.

Removal For Export

6.1 The AR5 application in sixuplicate should be submitted by the manufacture to the Superintendent of Central Excise having jurisdiction over the factory atleast 24 hours before the intended removal of the goods for export from the factory under claim for rebate of Central Excise Duty paid on materials and packing used in the manufacture of export goods.

6.2 Where export goods are dutiable the manufacture may avail the facility of export, without payment of Central Excise duty on finished goods, under Central Excise Bond [Rule 13 (13) (1) (a)]. Alternatively finished goods may also be exported, after payment of Central Excise duty leviable on finished goods under claim of rebate [Rule 12 (1) (a)]. For this purpose manufacturer shall indicate the particulars clearly in AR5. For export clearances under AR5, instructions already issued for export clearances under Rule 12 (1) (a) and Rule 13 (1) (a) may be followed subject to modifications indicated below.

6.3 The new proforma of AR5 incorporates the requirements of Export clearances under rule 12 (1) (a) / 13 (1) (a). Therefore where export goods are dutiable, no separate AR4 is required and manufacturer needs to the fill up only AR5. However the facility of clearances of finished dutiable goods for export

under claim for rebate or against bond with Maritime Commissioner shall not be available in such cases and manufacturer shall have to approach Jurisdictional Assistant Commissioner of Central Excise for claiming rebate / discharge of bond.

6.4 The goods cleared under AR5 will be moved directly from the place of manufacture to the place of export.

6.5 The packages in which the goods are to be exported should be legibly marked in ink or oil colour or in such other durable manner with progressive number commencing with number 1 for each calendar year and with the manufacturer's name.

6.6 Every AR5 shall be numbered in a running serial of the factory starting with for each financial year.

6.7 The Superintendent of Central Excise shall himself verify the information contained in AR5. For this purpose he shall refer to the verified declaration (of para 4.1 above) received from the Commissioner of Central Excise along with permission granted by the Commissioner. The export consignment shall be carefully examined vis-a-vis the description of the goods, their value and other particulars/declarations on the AR5. The Superintendent of Central Excise shall verify the facts, certificate and declaration made by the manufacturer. The value declared on the AR5 should be as per section 4 of the Central Excises and Salt Act, 1944. After the Superintendent of Central Excise is satisfied that the information contained in the AR5 is true and after verifying that necessary bond [where goods are being exported under bond in terms of rule 13 (1) (a)] has been executed by the manufacturer, he would allow the clearances for exports and also sign on the AR5 at appropriate places and put his stamp with his name and designation below his signature .

6.8 The Superintendent of Central Excise examining the consignment shall draw representative samples (wherever feasible) in triplicate. He would handover two samples duly sealed to the manufacturer or his authorised agent for delivering to the Customs officer at the point of export. He would retain the set for his records. The export consignment shall be sealed by the Superintendent of Central Excise before permitting clearances.

6.9 The facility of export without presence of the Central Excise officer shall not be available for exports under rule 12 (1) (b).

6.10 Where the consumption date furnished in Table 2 of the AR5 is exhaustive and the Superintendent of Central Excise is not in a position to verify the same immediately, the export consignment should not be held up. The goods should be allowed to be cleared after certifying the original, duplicate and sextuplicate copies of the AR5 and after verifying the remaining aspects. A separate detailed verification report may be submitted by the Superintendent of Central Excise to the Assistant Commissioner of Central Excise within.

6.11 The colour coding and disposal of the AR5 will be as follows: -

i)	Original	- White	To the exporter for presentation at point of export.
ii)	Duplicate	- Buff	- do -
iii)	Triplicate	- Pink	To rebate sanctioning authority i.e. Assistant Commissioner.
iv)	Quadruplicate	- Green	C A O
v)	Quintuplicate	- Blue	Office record
vi)	Sixtuplicate	- Yellow	DEEC Copy

Disposal of AR5 in the Custom House:

7.1 The original, duplicate and sextuplicate copies of the AR5 shall be presented by the exporter/his authorised agent to the Customs Officer at the point of export along with the goods, Shipping Bill/Bill of export and samples sealed by the Central Excise Officer. The export consignment shall be checked by

the Customs Officer to see whether the seals are intact and the marks and number tally and, if found in order, he may allow exports after ensuring that the No. of the AR5 has been indicated in the Shipping Bill or the Bill of Export, as the case may be. However Custom Houses may wherever they desire on grounds of sufficient reasons examine the export cargo for conducting any check in terms of the Customs Law and Procedure. The samples shall be dealt with in accordance with instructions / standing orders of the Commissioner of Customs or the Central Board of Excise and Customs. After the goods have been shipped the proper officer of Customs would make necessary endorsements in the Original, Duplicate and sextuplicate copies of the AR5 at appropriate places and put his stamp with his name and designation below his signature, the copies of AR5 shall be disposed off by him in the following manner: -

Original and Sixtuplicate	Both to be handed over to the Exporter. Original shall be used by the exporter for claiming rebate from the Assistant Commissioner Central Excise having jurisdiction over the factory. Sixtuplicate copy shall be used for DEEC endorsement. This copy shall be presented by the exporter for endorsement of exports in the DEEC. At that stage the same shall be retained in the DEEC Cell of the Customs House for its record.
Duplicate	To be sent to the Assistant Commissioner of Central Excise (may also be handed over to the Exporter under a sealed cover for delivering to the Assistant Commissioner of Central Excise).

7.2 Where goods being exported are made from materials bearing high Central Excise Duty such as Polyester filament Fabrics/Knitwears made from Polyester filament yarn, the goods must be examined at the point of export notwithstanding the fact that the same has been sealed at the factory gate by the Superintendent of Central Excise. Samples should be invariably drawn in such cases for testing. Where test reports indicate other, taking such action as is necessary under the Customs Act.

7.3 Customs officer responsible for making endorsement in Ar5 shall carefully check that exports are not covered under any of the following :-

- The Duty Drawback Scheme
- A Value Based Advance Licence issued prior to 31.03.95
- A Quantity Based Advance Licence issued prior to 31.03.95

He will certify on all the three copies of AR5 that the exports are not under any of the Schemes specified above. He will also certify the fact of exports and make suitable endorsements at appropriate places in the AR5 and put his stamp with his name and designation below his signature. However, it may be noted that any exports made in discharge and any export obligation under a Value Based or a Quantity Based Advance Licence issued after 01.04.95 shall not be disqualified from availing benefit under Rule 12(1)(b).

7.4 The duplicate copy of AR5 duly signed by the Customs Officer shall be despatched by the Customs Officer to the Assistant Commissioner of Central Excise whose address is indicated in the AR5. On a request from exporter the original copy may also be handed indicated in the AR5. On a request from exporter the original copy may also be handed over to the exporter, under a sealed cover for delivering to the Asst. Commissioner of Central Excise. The Original copy and Sixtuplicate Copies shall be returned by the Customs Officer to the exporter against proper acknowledgement. The original copy of AR5 duly endorsed by the Customs Officer shall be used by the exporter for claiming input stage rebate and also rebate of any Central Excise Duty paid on the Finished goods exported or for discharge of bond executed under Rule 13(1) (a), if any. All these claims as indicated would be settled by the Assistant Commissioner of Central Excise having jurisdiction over the factory.

Claim for Rebate :

8.1 Claim for rebate of Central Excise Duty paid on materials used in the manufacture and packing of finished goods exported and rebate of Central Excise Duty paid on finished goods cleared for export after payment of Central Excise Duty [under rule 12(1)(a)] shall be lodged by the manufacturer in prescribed form (Annexure III). The application for rebate has to be made only to the Asst. Commissioner of Central Excise having jurisdiction over the factory. Where exports are under claim for rebate under rule 12(1)(a), the same should be claimed in the combined application for rebate.

8.2 The claim for rebate should be filed within the time stipulated under Section 1B of the Central Excises and salt Act, 1944.

8.3 For claiming rebate, the exporter shall submit the following documents along with the prescribed application: -

- Original copy of the AR5 duly endorsed by the Customs Officer;
- Duly attested copy of Shipping Bill (Export Promotion Copy)
- Duly attested copy of Bill of landing / Air way bill
- Duplicate copy of the Central Excise Invoice under which Central Excise duty was paid on goods cleared for export. [where rebate under rule 12(1) (a) is also being claimed]
- Duplicate copy of the AR5 received from the customs officer in a sealed cover (if obtained).

8.4 The Assistant Commissioner of Central Excise shall carefully examine the refund claim and satisfy himself that the exports are not under claim for duty drawback. He will also satisfy himself that the exports are neither under VABAL nor QBAL (as indicated above) issued prior to 31.03.95 (Where the shipping Bill indicates that the same is a Drawback Shipping Bill or the shipping Bill contains an endorsement that the same is in discharge of export obligation under VABAL or QBAL issued before 31.03.95, the claim should be rejected) he shall verify from his records that the manufacturing units is not availing the Input Stage Credit under Chapter V(AA) of Central Excise Rules, 1944.

8.5 The Assistant Commissioner of Central Excise should point out the deficiency, if any within 15 days of lodging of the claim and ask the exporter to rectify the same within 15 days. Queries / deficiencies shall be pointed out at one go and piecemeal queries should be avoided. The claim of rebate should be disposed of within a period of two months.

8.6 The Assistant Commissioner sanctioning rebate shall ensure that the relevant transport copies (duplicate copies) of Duty paying documents have been suitably defaced before payment is made.

8.7 Computation of Rebate Amount

Where is no bye-product or co-product generated in the process of manufacture, the amount of rebate can be simply worked out by adding the duty incidence on various inputs used in the manufacture. However, where bye-products are generated or where recoverable wastage come into existence, the amount of rebate should be calculated by using the following formula:

$$R = \frac{D}{\text{FOB} + S} \times \text{FOB}$$

Where

R	=	Rebate to be sanctioned
D	=	Total Duty incidence on materials
FOB	=	FOB value of Exports
S	=	Sale value of recoverable wastages and by product sold (net of Duty and taxes)

It may be ensured that when the procurements are at varying rate of Central Excise Duty and /or varying value, the duty incidence is worked out using FIFO (First in First Out) principle. The earliest procurement shall be adjusted first and subsequent procurement shall be taken into account only when the earlier procurements have been taken into account.

Illustration : Consider exports of 100MT of Steel Pipe of the Manufacture of which 105MT of HR Mild Steel Coils are required. Consider date of export 01.06.95. Assume no wastage or the same are lost.

Procurement on 01.01.95 (earliest) : 20MT (Duty rate 1000 PMT)
 Procurement on 20.01.95 : 50MT (Duty rate 1100 PMT)
 Procurement on 01.03.95 : 100MT (Duty rate 1500 PMT)
 Rebate = 20 x 1000 + 50 x 1100 + 35 x 1500 = 127500

Miscellaneous :

9.1 The rebate of duty will not be allowed if

- The market price of the goods is less than the rebate amount
- The amount of rebate admissible is less than Rs.500/-

9.2 Notification No. 42/94-CE(NT) permits a manufacturer to remove the raw materials or intermediate products for processing without payment of Central Excise duty. The general job-work provisions under Chapter VAA of Central Excise Rules, 1944, will apply. Care should be taken that this movement is permitted only for a single stage activity. The goods, after going to one job worker, shall not be permitted to go the another job worker, and it will be necessary to bring the goods back to the factory for further processing.

9.3 Commissioner may issue detailed Trade notice/s and standing order/s in this regard. Copies of all the Trade Notices and standing Orders may be endorsed to the Board and DGICCE.

Annexure I

Form of Declaration for availing Benefit of Rebate of Central Excise Duty Paid on Materials used in Manufacture and Packing of Export Goods.

(to be filed in Quintuplicate)

[Rule 12(1) (b) & Notfn. No. CE-42/94(NT)]

To

The Commissioner of Central Excise.

Sir,

1. We,(name of the manufacturer) having our office atand our factory at seek your permission to export materials used in the manufacture and packing of finished goods.

2. We are furnishing herewith details of finished goods to be exported and manufacturing formula with reference to quantity / proportion in which the materials are required for the finished goods & the tariff classification of materials and the rate of duty payable on the materials.

3. We agree to abide by the provisions of the Central Excise Rules, 1944, Notifications, Trade Notice/s and any instructions issued in this regard.

4. We undertake to intimate any change in the consumption ratio within 19 days of such changes.

5. We hereby declare

* Excluding recycled materials

Notes: -

1. The Units of quantity should be given in such a manner that it could be related to export invoice / Shipping Bill.
2. Only those materials may be indicated for which proof of payment of Central Excise Duty is available. Details of such inputs need not be given in respect of which rebate is not claimed on account of non availability of duty documents, on behalf of the applicant, I (name in full),(designation), hereby certify that the above material requirements and other information is true to the best of my knowledge.

Place
Date

(Signature)
Seal

Annexure II

Office of Commissioner of Central Excise.....

To
.....

File No.
Date

Subject : Permission to work under rule 12 (1) (b) of Central Excise Rules, 1944

1. With reference to your Declaration dt Commissioner of Central Excise,is pleased to grant permission to you to manufacture and export finished goods under claim for rebate of Central Excise Duty paid on materials used in the manufacture and packing of such goods. The permission is subject to following conditions.

- that you will not avail facility of input stage credit under Modvat provisions under ch. VAA of Central Excise Rules, 1944.
- that you will not claim Duty Drawback in respect of such exports.
- that such exports shall not be made in discharge of export obligation under a value Based Advance Licence or Quantity Based Advance Licence issued prior to 31.03.95.

2. You are requested to note that before making any exports you will have to fill an application in proforma of AR5, to the Superintendent of Central Excise in sixtuplicate giving full details there in at least 24 hrs before the intended removal of goods for export.

3. It may be noted that grant of rebate is subject to your following the relevant provisions of the Central Excises Act, 1944, rules, the conditions of the notification and the procedure prescribed in this regard under Trade Notice No.

4. To enable the Central Excise Officer to verify the date, you should maintain the records of consumption of materials and finished goods as prescribed under the Trade Notice indicated above.

5. The exports must be made within 90 days of the clearance of the finished goods from the factory, under claim for rebate of Central Excise duty paid on materials used in the manufacture and packing of such goods.

6. The permission granted is likely to be withdrawn if any of the information furnished by you is found to be false.

7. You will intimate any change in consumption ratios within 10 days of such change.

8. You will permit access to your factory and also all records, to any Central Excise Officer authorized by the Assistant Commissioner of Central Excise.

For Commissioner of Central Excise
Name
Designation
Seal

**Combined Application For Rebate of Central-Excise Duty Paid on
Materials used in the Manufacture of and Packing of
Finished goods Exported.
(To be submitted in Duplicate)**

To

The Assistant Commissioner of Central Excise

Sir,

We(name of the exporter) having our office at and our factory at have exported (quantity) of (name of the goods).

2. We request you to sanction amount of Rs. as rebate of Central Excise duty paid on materials used in the manufacture of and packing of finished goods exported under rule 12 (1) (b) of Central Excise rules, 1944.

3. We also request you to sanction amount of Rs. As rebate of Central Excise duty paid on clearances of goods exported under rule 12 (1) (a) of Central Excise rules, 1944.

4. We hereby declare :-

- that the finished goods were manufactured without availing the facility of Inputs Stage Credit under Chapter V (AA) of the Central Excise Rules.
- that the exports had been made without claiming duty drawback.
- that the exports are neither under VABAL nor under QBAL issued prior to 31.03.95.

5. We are enclosing the following documents in support of the claim :

- Original copy of the AR5 duly endorsed by the Customs Officer,
- Duly attested copy of shipping Bill (Export Promotion Copy)
- Duly attested copy of Bill of lading / Air way bill
- Duplicate copy of the Central Excise Invoice under which Central Excise Duty was paid on goods cleared for export. [where rebate under rule 12 (1) (a) is also being claimed].
- Duplicate copy of the AR5 received from the customs officer in sealed cover (if obtained).
- Detailed work sheet indicating the amount of rebate claimed.

Name & Designation

Seal

Date

Range :

Division :

Commissionerate :

RT 14

Quarterly Return of materials and finished goods required to be submitted by manufacturers working under Rule 12 (1) (b)

Year :

Quarter Ending .

.....

PART I

Statement of Duty paid material received for manufacture of export goods.

Sl. No.	Description of Matgerials	Opening balance	Receipts	Issued for manuf.	closing Balance	Remarks

PART II

Statement of finished goods manufactured for export.

Sl. No.	Description of Finished goods Manufactured For export	Opening balance	Product ion	Issued for Export	Closing Balance	Rebate Amount under Rule 12(1) (b)

We declare that I / We have compared the above particulars with the records / books of the factory and that they are, insofar as I / We can ascertain, accurate and complete.
Verified

Signature of the
Manufacturer

Central Excise Officer

Date :

RG 26**RECORD OF RAW MATERIALS RECEIVED**

Description of material :

Sl. No.	Date	Opening balance	Quantity received	Invoice details	Name of mfrer./ dealer	Range / Din. Of receipt
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Issued Manufacture		for Closing Balance		Signature Central Excise Officer		of Remarks
(8)		(9)		(10)		(11)

RG 27

Account of finished goods manufacture for export under claim for rebate of input stage Central excise Duty [Rule 12 (1) (b)] where the unit is not registered under Rule 174 of Central Excise Rules, 1944

Name and Address of factory

Description of goods

Date	Opening Bal.	Qty Mfd	Total (2+3)	Removals under Rule 12(1) (b)	Closing bal	Rebate Amount	AR5	Sig. Of C.EX. Officer.
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Notes : A separate register / page should be maintained for each excisable commodity manufactured for export.

CENTRAL EXCISE SERIES NO. 62

Range
 Division Address

Ar5 No.
 Original (White)
 Duplicate (Buff)
 Triplicate (Pink)
 Quadruplicate (Green)
 Quintuplicate (Blue)
 Sixtuplicate (Yellow)

Form A.R. 5

Combined application for removal of goods for export under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods and removal of dutiable excisable goods for export under claim for rebate of finished stage Central Excise Duty or under bond without payment of finished stage Central Excise Duty leviable on export goods.

[Rule 158, 187 & 187 A read with rule 12 (1) (a) (b) / 13(1) (a) of Central Excise Rules, 1944]

To

The Superintendent of Central Excise,
(full postal address)

1. Particulars of Assistant Commissioner of Central Excise from whom rebate shall be claimed / with whom bond is executed and his complete postal address
2. I/We if propose to export the under mentioned goods (details of which are given in Table 1 below) to (country of destination) by * air / sea / land / post parcel * under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods.
3. * The finished goods being exported are not dutiable

or

We intended to claim the rebate or Central Excise Duty paid on clearance of goods for export under Rule 12 (1) (a) of Central Excise Rules, 1944.

Or

The export goods are intended to be cleared without payment of Central Excise Duty under bond in terms of Rule 13 (1) (b) of Central Excise Rules, 1944.

TABLE 1 (Details of goods to be exported)

S. No.	Description of packages	Marks & Nos. on Packages	Gross Weight	Net Weight and quantity of goods **	Description of finished goods	Value
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Finished Stage Central Excise Duty	Invoice No. & date	Bond No. executed under rule 13(1) (a) (if any)	Amount of # of Rebate Claimed under Rule 12(1) (a)	Remarks
Rate Amount	(8) (9)	(10)	(11)	(12) (13)

* Strike out inapplicable portion

** Quality of goods to be furnished in units of sale where it is different than weight.

Write NA where exports are under bond in terms of Rule 13(1) (a) or where goods are not chargeable to Duty.

TABLE 2

(Details of duty paid excisable Materials and Packing materials used in manufacture of export goods for which rebate under Rule 12(1) (b) is being claimed)

S. No.	Name/Description of materials/packing with tech. spec./Quantity	C. Ex. Tariff Heading	Unit	Qty used	Name of Supplier	Invoice No. & Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Assessable Value / Unit Rs.	Rate of C. Ex. Duty	Duty Amt. per unit Rs.	Total Wastages		Rebate admissible under Rule 12(1) (b) (5-9) x 8 Rs.	Re- marks
			Recoverable	Irrecoverable		
(8)	(9)	(10)	(11)	(12)	(13)	(14)

Declaration:

- (a) We hereby certify that we have not availed facility of Madvat credit under rule 57A of Central Excise Rules, 1944
- (b) We hereby declare that the export is not in discharge of export obligation under a Value based Advance Licence issued prior to 31.03.95.
- (c) We hereby declare that the materials on which input stage rebate is claimed are not sought to be imported under a Quantity Based Advance Licence issued prior to 31.03.95.
- (d) We further declare that we shall not claim any Drawback on export of the consignment covered under this application.
- (e) I/We hereby declare that the above particulars are true and correctly stated.
- (f) We have been granted permission by Commissioner of Central Excise Vide C. No. dt..... for working under Rule 12(1) (b)

Time of Removal

Signature of owner or his authorised agent with date
Name in Block Letters & Designation
SEAL

Note 1: The AR5 should be submitted by the manufacturer atleast 24 hours before intended removal of goods for export, to the Superintendent of Central Excise.

Note 2 : A running serial of the factory starting with one every financial year should be allotted to every AR5

**For Department Use
PART A
Certification by the Central Excise Officer**

1. Certified that
*duty has been paid on the goods described overleaf by debit entry in the Personal Ledger Account
No. /RG23A(Pt.II) No. /RG23B(Pt.II) No. Against Excise Invoice No..... dated

*the owner has entered into B1/B-16 bond No. under Rule 13/14 of Central Excise Rules, 1944 with the

or

*the finished goods being exported are not dutiable.

2. Certified that I have opened and examined the packages No. and found that the particulars stated and the description of goods given overleaf read with the invoice and the packing list (if any) correct [and that all the packages have been stuffed in the container No. With Marks]* and the same has been sealed with Central Excise Seal/*One time Seal (OTS) No.

3. I have verified with the records, the declaration of the manufacture given at Sl.No.3 overleaf regarding non-availment of benefits under rule 57A, 12(1)(a), (13) (1)(b) and found it to be true.

4. Certified that I have drawn three representative samples from the consignment and have handed over two sets thereof duly sealed to the manufacturer/his authorised representative (wherever feasible)

5. Certified that the material consumptions indicated in Table2 overleaf are in accordance with the declaration No. filed by on

Place :
Date :

Signature
(Name in Block letters)
Superintendent of Central Excise

Signature
(Name in Block letters)
Inspector of Central Excise

*Strike out inapplicable portion

Note 3 : The details given in table 2 may be verified by the Superintendent of Central Excise subsequent to clearances. For this purpose a detailed verification report may be submitted by the Superintendent to the Assistant Commissioner of Central Excise along with Triplicate copy of AR5.

Note 4 : The original – duplicate and sixuplicate shall be returned to the manufacturer for presenting to the Customs Officer.

PART B
Certification by the Customs Officer

1. Certified that I have examined the consignment described overleaf, and that the seals on the packages were found intact and I have satisfied myself that particulars of the consignment are as specified overleaf except for the shortages mentioned below :
2. Certified that the exports are not under Duty Drawback Scheme. It is further certified that exports are not in discharge of export obligation under Value Based Advance Licence or a Quantity Based Advance Licence issued before 31.03.95.
3. Certified that all copies of Shipping Bill/Bill of Export* contain endorsement of AR5 No. in the space provided for indicating AR5/4A No.
4. Certified that the consignment was shipped under my supervision under *Shipping Bill No. /Bill of Export No..... dated which left for on...../which passed the frontier on
Duplicate copy of AR5 forwarded to Assistant Commissioner of Central Excise
On.....

Place Signature
Date (Name of designation of the Customs Officer in Block Letters)
(Seal)

Note 5 : The customs shall send the duplicate to the address given at Sl.NO. 1 overleaf and handover original and sixuplicate to the exporter.

PART C*
Rebate Sanction Order (Under Rule 12(1)(a))

(On Original, Duplicate and Triplicate)
Refund Order NO. Dated Rebate of Rs.
(Rupees..... Sanctioned vide cheque No..... dated

Place
Date Assistant Commissioner of Central Excise

*Strike out inapplicable portions

@ @ @ @ @ @ @ @ @ @ @ @ @ @ @ @

CHAPTER - ELEVEN

ELECTRONIC DATA INTERCHANGE

PRELIMINARY

Electronic Data Interchange or EDI can be termed as computer to computer transmission of standard data, which mainly consists of:

- a) Direct application to application communication.
- b) Use of electronic transmission medium rather than Magnetic tapes, discs or other transmission media.
- c) Use of electronic mailboxes for “store and collect/store and forward” transmission delivery of documents.
- d) Use of structured and formatted messages based on internationally accepted standard.

Computers have been around in our country for about last three decades. For quite a long time, computer technology has been in its nascent stage, confined mainly to small personal computers, calculators or customised computers used in specific institutions like Atomic Energy institutes, research organisations, etc.

The earlier computers in applied use were not only voluminous in size but also limited in terms of their functional capabilities. In the last decade or so, there has been tremendous progress and improvisations in the field of computer technology. The modern day computers have not only shrunk in size but have also achieved vast dimensions in the field of storage, maneuverability, presentation and transmission of information and data.

With the advancements in the field of technology, the modern computers have kept pace by taking quantum leap in the direction of sophisticated hardware as well as software to pack in amazing capabilities.

Since the time of advent of Local Area Networks, Internets and Internet, a revolution has dawned in the sphere of Information Technology. One of the greatest advantages of this is the fast and easier exchange of information among the people through computers, locally as well as all over the world.

Of late, the Central Government as well as State Governments have also switched over to computerisation of their offices on a large scale. This provides neat, faster and accurate analysis/storage/retrieval and printing of Data and Information besides saving a lot of manpower, space, stationery etc.

THE INDIAN CUSTOMS EDI SYSTEM

Indian Customs EDI System is a software package which accepts Customs documents electronically from the Custom House Agents (CHAs), Importers and Exporters for processing by the Customs Officers. The Bill of Entry (BEs) and Shipping Bills (SBs) can be submitted by EDI over NICNET, the nation-wide computer communication network of the National Informatics Centre (NIC), using the Remote EDI System (RES).

Those who do not have computer systems can bring their documents to the Services Centre (SC), a facility set up by Customs for entering the BEs/SBs into the computer system and to submit them to Customs for further processing.

Once the documents are submitted to Customs, either through EDI or through SC, there is no paper movement in the Custom House (CH). The documents do move from one officer to another, but only electronically within the computer system.

ICES has been designed and developed by NIC in consultation with the CBEC. It comprises two major sub-systems, namely:

ICES/I for processing Import documents

ICES/E for processing Export documents

NIC has also designed and developed a software package – Remote EDI System (RES), which enables the CHAs to prepare the Customs declarations, submit the documents to ICES through the EDI Services of NICNET. RES is presently operational only in Delhi. It has been specially developed to facilitate housekeeping operations of CHAs too. It enables them to receive status information, queries, as well as the finally processed documents, challans, Drawback payment status, etc. from ICES over NICNET.

EDI SYSTEM IN THE CUSTOM HOUSE

Based on EDI concept, ICES (Indian Customs EDI System) has been developed, which is a software package accepting Custom documents electronically (through Service Centre) from Custom House Agents, Importers and Exporters for processing by Custom Officers. Bills of Entry and Shipping Bills can be submitted by EDI over NICNET, the nation wide computer communication network of National Informatics Centre (NIC), using Remote EDI System (RES), to be processed by the Custom House.

EDI was introduced in several Air Cargo Complexes in the past few years. Few advantages of EDI, which were observed are :

- 1) Creation of Import and Export data bank with on line data entry.
- 2) On line retrieval of information to facilitate assessment, valuation, refund etc.
- 3) Fast and efficient data retrieval.
- 4) On line availability of CTH and CETH.
- 5) Correct rate of duty applied by System automatically with regards to CTH and CETH.
- 6) Removal of calculation errors.
- 7) Swift analysis of Import/Export.
- 8) Import data base for IGM control, licence, bond, Bank Guarantee, duty payment etc.
- 9) Speedier assessment and completion of Customs formalities.

After introduction of EDI System, original documents are seen only after assessment (by Group staff), at examination stage in docks. Groups are expected to do assessment only on the basis of documents fed electronically into the system, hence much of workload has shifted from regular Groups to docks.

Though the exact infrastructure of computerisation in each Custom House may largely depend on the topography, volume of work, available resources, etc., the basic procedure has to remain uniform throughout the formations.

The broad procedures for processing the Shipping Bills and Bills of Entry through EDI, as outlined in the two Public Notices issued by the Mumbai Custom House, are given below:-

Computerised processing of Shipping Bills under the Indian Customs EDI systems (ices) – (Exports) – New Custom House, Mumbai.

It is brought to the notice of all Exporters, Importers, CHAs and members of the trade that the computerised processing of Shipping Bills under the Indian Customs EDI Systems-Exports (ICES/E), have commenced at New Custom House, Mumbai. The change over to computerised processing of Shipping Bills would be in phases, as per date to be notified later :

- A) White Shipping Bill.
(Except those relating to jewellery, 100% EOU, DEEC, DEPB, EPCG, Pass Book and re-export cases)
- B) Shipping bills relating to Drawback and dutiable.
- C) DEEC Shipping bills.
- D) DEPB Shipping bills.

There shall be several EDI centres in the Docks, for processing of Export, each headed by an Assistant Commissioner of Customs, who will be in charge of appraising and as well as examination.

The procedure to be followed in respect of the Indian Customs EDI Systems-Exports will be as follows:-

2. CHANGE IN PROCEDURE FOR GR-1

- 2.1 With the introduction of EDI, the requirement of filing a GR1 form stands abolished in respect of documents filed through EDI. Henceforth, Exporters/CHAs would be required to file a declaration in the form SDF (Appendix I). It would be filed at the stage of arrival of the goods in the docks area. One copy of the Declaration would be attached to the original copy of the S/B generated by the system and retained by the Customs. The second copy would be attached to the duplicate S/B (the exchange control copy) and surrendered by the Exporter to the authorised dealer for the collection/negotiations.
- 2.2 The Exporters are required to obtain a certificate from the bank through which they would be realising the export proceeds (Appendix 1A). If the Exporter wishes to operate through different banks for the purpose, a certificate would have to be obtained from each of the banks. The certificate will be submitted to Custom and registered in the system. These would have to be submitted once a year for confirmation, or whenever the bank is changed.
- 2.3 In the declaration form (Annexure A or B) to be filed by the Exporters for the electronic processing of Export documents, the Exporters would need to mention the name of the bank and branch code as mentioned in the certificate from the bank. They will verify the details in the declaration with the information captured in the systems through the certificates registered earlier.
- 2.4 In the case of S/Bs processed manually, the existing arrangement of filing GR-1 forms would continue.

3. DATA ENTRY OF SHIPPING BILLS :-

- 3.1 The procedure for registration of IEC codes, PAN numbers, CHAs Licence numbers and/or account numbers by Exporters and CHAs has already been notified. The S/Bs cannot be allowed in absence of registration in the system.
- 3.2 For the purpose of filing the S/B the Exporters would present at the Center a declaration in form Annexure A (for exports without claim for drawback) or Annexure B (for exports under claim for drawback) along with copy of the Invoice. The form should be complete and signed by the exporter or his authorised CHA. Incomplete or unsigned forms would not be accepted.
- 3.3 In respect of items subject to cess, the corresponding serial number of the Cess Schedule should be mentioned. A printed challan generated by the system would be handed over to the Exporter. The Cess amount indicated should be paid in the Cash section of the Custom House, under a receipt.
- 3.4.1 In the beginning, data entry of Shipping Bills will be allowed to be made only at the Service Center located at New Custom House, Mumbai.

- 3.5. After the Exporters/CHAs have become conversant with the EDI procedures, the option of Remote EDI system would also be made available. In the Remote EDI system (RES) Exporters/CHAs can electronically file their Shipping Bills from their offices through Dial-up modems using telephone line. However commencement of that system will be notified at a later date.
- 3.6. The schedule of charges to be levied for data entry at the Service Center would be as determined by the Custom House from time to time.
- 3.7. The Service Center operators shall carefully enter the data on the basis of declarations (duly filled forms of Annex. `A' or `B') made by the Exporter/CHAs. After completion of data entry, the Check List will be printed by the Data Entry Operator and shall be handed over to the Exporters/CHAs for confirmation of the correctness. After the CHAs/Exporter makes corrections, if any, in the check list and returns the same to the operator duly signed, the operator shall make the corresponding corrections in the data and shall submit the Shipping Bill to the Indian Customs EDI Systems (ICES)-Export. The operator shall not make any amendment after generation of the check list against the respective fields and duly authenticated by CHA/Exporter's signature.
- 3.8. The system automatically generates the Shipping Bill number, the operator shall endorse the same on the Check list in clear and bold figures. It should be noted that no copy of the Shipping Bill would be made available at this stage. However, the TR-6 challan for payment of Cess will be generated at this stage. Noting Stage will not apply to Shipping Bills submitted through the Indian Customs EDI System.
- 3.9. The declarations would be accepted at the Service Center from 10.00 A.M. to 4.30 P.M. Declarations received upto 4.30 P.M. will be entered in the computer system by the Service Center on the same day. The examination of cargo and "Let Export" will be completed the same day for the goods brought in the Docks and registered before 3 P.M.
- 3.10. The validity of the Shipping Bill in EDI system is 15 days only. After expiry of fifteen days from the date of Shipping Bill, the Exporter has to again file the declaration afresh.

4. OCTROI PROCEDURE, QUOTA ALLOCATION AND OTHER CERTIFICATION FOR EXPORT GOODS.

- 4.1 The processing of Shipping Bills involving allocation of ready made garments quota by Apparel Export Promotion Council will also change with the introduction of the new system. Under EDI system the quota allocation label will be pasted on the export invoice instead of the Shipping Bill. The allocation number of AEPC should be entered in the system at the time of Shipping Bill data entry. The quota certification of export invoice should be submitted to Customs along with other original documents at the time of examination of the export cargo. As a transitional measure, Customs will accept AEPC certification of the manual Shipping Bill format also. However, in these cases the Shipping Bill be treated on par with invoice and will not be subjected to any processing. The shipping bill no. should also be indicated on the invoice when goods are presented for examination. Initially, during the transition period pasting of quota labels on the shipping bills will be allowed. For determining the validity date of the quota the relevant date would be the date on which the full consignment is presented to the Customs for examination and duly recorded in the Computer system.
- 4.2 Certification of other agencies involved in export clearance such as Cotton Textiles Export Promotion Council, Wildlife Inspection Agency under the Convention on International Trade in Endangered Species (CITES). Engineering Export Promotion Council, Agricultural Produce Export Development Agency (APEDA), Central Silk board. All India Handicraft Board, Assistant

Drug Controller, Archaeological Survey of India should also be obtained on the Export invoice since the Shipping Bill will no longer be available for such pre-shipment certification. The transitional arrangements for certification by these agencies would continue as in the case of AEPC certification. The No Objection of Assistant Drug Controller will also be obtained on the Export Invoice itself.

- 4.3 The Exporters may make use of export invoice or such other document as required by the Octroi authorities for the purpose of Octroi exemption, since the Shipping Bill is generated only after the let export order is given by Customs.

5. ARRIVAL OF GOODS AT DOCKS :

- 5.1 The goods brought for the purpose of examination and subsequent "let export" will be allowed entry into the Docks on the strength of the checklist and other declarations filed by the Exporter in the Service Center. The Custodian (Mumbai Port Trust) will not insist for production of Shipping Bill to allow entry of the goods to the docks area. The Custodian (Mumbai Port Trust) will endorse the quantity of goods actually received on the reverse of the Check List.
- 5.2 The Check list, copies of the other Declarations as aforesaid and additional data entry form as per Annexure –C should be submitted to the Examining Officer (Docks) designated for record of arrival of the goods. The Examining Officer shall verify the quantity of the goods actually received, and will enter the particulars of arrival into the system and thereafter enter the additional details as per Annexure – C. If at any stage subsequent to the entry of goods in the Docks, it is found that the Shipping Bill has not been filed, the exporter and his Custom House Agent will be solely responsible for the delay in processing the documents for export and any consequent damage / deterioration / pilferage in respect of the Export goods.
- 5.2 The Customs will record arrival of goods only after the full consignment, with duly numbered packages, is received inside the Dock. As already stated, the export goods should be brought for the purpose of examination and "let export" within 15 days of filing of the Declaration in the Export Service Center. In case of delay, a fresh declaration would need to be filed in the Export Service Center in the Custom House.

6. PROCESSING OF SHIPPING BILLS :

- 6.1 The Shipping Bills shall be processed by the system on the basis of declarations made by the Exporters. However, the following Shipping Bills shall automatically appear on the screen of the Assistant Commissioner of Customs, who shall confirm the processing :-
- (i) Shipping Bills where the FOB value of the goods is more than rupees ten lakhs.
 - (ii) Shipping Bills relating to free trade samples whose value is more than Rupees Twenty Thousand.
 - (iii) Drawback Shipping Bills where drawback amount is more than Rupees One Lakh.
- 6.2 Apart from verifying the value and other particulars for assessment, the Assistant Commissioner may call for the samples, if required for confirming the declared value or for checking classification under the Drawback Schedule. The Assistant Commissioner may also give any special instruction for examination of goods, if felt necessary.
- 6.3 The Exporter/CHAs can check up with the query counter at the Service Center whether the Shipping Bill submitted by them in the system has been cleared by the Assistant Commissioner or not, before the goods are brought into the Docks for examination and export. In case any query has been raised by the Assistant Commissioner the same is required to be replied through the service Center or in case of CHAs having EDI connectivity through their respective terminals.

The Shipping Bill be passed by the Assistant Commissioner after all the queries have been satisfactorily replied to.

7. CUSTOMS EXAMINATION OF EXPORT CARGO :-

7.1 After the receipt of the goods in the Docks, the Exporter/ CHA will contact the Examining Officer designated for the purpose and present the check list with the endorsement of Custodian, other declarations as aforesaid along with all original documents such as, Invoice and Packing list, AR-4, etc. He will also present the details of additional particulars, if any, listed in Public Notice as Annexure-C. As already stated the Examining Officer will verify the quantity of the goods actually received and enter into the system. The aforesaid officer will also enter the additional particulars in Annexure-C and thereafter mark the Electronic Shipping Bill and also hand over all original documents to the Shed Appraiser who will assign an Examining Officer for the examination and intimate the officers name and the packages to be examined, if any, on the Check list and return it to the Exporter or his agent. No such examination order shall be given unless the goods have been physically received in the Docks. It may however be clarified that Customs may examine all the packages / goods in case of any discrepancy.

7.2 The Examining Officer will inspect / examine the shipment along with the Shed Appraiser. The Examining Officer will enter the examination report in the system. There will be no need for a written examination report. He will then mark the Electronic Bill along with all original documents and check list to the Shed Appraiser. If the Shed Appraiser is satisfied that the particulars entered in the system conform to the description given in the original documents and the physical examination, he will proceed to allow "let export" for the shipment and inform the Exporter or his agent.

7.3 **Procedure for clearance of export consignments received in parts in Docks.**

In respect of cases where the exporter is unable to bring the entire consignment into the Docks for examination and 'Let Export' and brings the consignment in parts and seeks examination and Let export on that basis the following procedure will be followed for processing of Shipping Bill in the Dock.

- 1) The part consignment will be allowed entry into the Docks on the strength of the Check List and the Exporter/CHA will obtain the endorsement of MbPT certifying the quantity of the goods entered.
- 2) The Exporter , CHA will then present the part consignment to the Appraiser and Examining Officer/P.O. who will examine the goods and give Let Export for the part consignment if the goods are as per the declaration given in the check list and are otherwise in order.
- 3) The Examination report in respect of part consignment will be written on the reverse of the checklist and Let Export also will be given on the reverse side of the Checklist.
- 4) The goods then will be presented to the Preventive Officer(Docks) for allowing shipment. Preventive Officer will allow shipment for the quantity of goods for which LEO is given on the reverse of the checklist.
- 5) The goods will then be allowed loading under Preventive Supervision.
- 6) The above procedure will be followed for each part consignment and for each such part Shipment clear-cut Let Export Order and allow shipment order will be endorsed, till the entire consignment is examined and loaded on to the Vessel.

- 7) After the entire consignment is shipped in the Vessel, the Exporter will obtain the signature of the Master of the Vessel acknowledging the receipt of the goods on board on the reverse of the checklist. Then the P.O. will also endorse the shipment details and date of shipment on the checklist after verifying the mate receipt.
 - 8) The Exporter/CHA will then report to the Dock examining officer (P.O.) for the processing of the Shipping Bill in the System.
 - 9) The Exporter will submit the Checklist with all the endorsements with ANNEXURE-C and other documents as specified in this Public Notice, to the Examining Officer in the Docks.
 - 10) The Examining Officer as per the Procedure stipulated in this Public Notice will register the particulars of ANNEXURE-C in the Computer and mark the Shipping Bill to the Appraiser who will complete all the formalities of assessment before giving "LET EXPORT" in the system. After the "LET EXPORT" is given by the Appraiser, the Customs copy and Exporter's copy of the Shipping Bill will be generated. After obtaining the print out the Appraiser shall obtain the signature of Examining Officer on the examination report and the signature of the Exporter/CHA on both the Shipping Bills. Thereafter, the Shed Appraiser will sign both the Shipping Bills at the specified place and authenticate the SDF Declaration (original & duplicate) and return the Exporter copy of the Shipping Bill along with duplicate copy of SDF to the exporter/CHA. The Appraiser will retain the Checklist and other declarations in the Docks along with the Customs copy of the Shipping Bills and original copy of SDF.
 - 11) The Exporter copy of the Shipping Bill will be submitted by the Exporter/CHA to the Preventive Superintendent for entry of the loading stuffing details in to the system, relying on the container loading plan Cargo Loading Plan, the mate receipt and the checklist available with the Shed Appraiser.
 - 12) If the Vessel has not sailed by the time the Shipping Bill is generated in the system, the Exporter will get the exporter copy of the Shipping Bill endorsed by the master of the Vessel, and will submit the same to the Preventive Officer for signature in the appropriate place in the Shipping Bill endorsing shipment details after verifying mate receipt and check list. If the Vessel has already sailed, the Preventive Officer can endorse the actual shipment particulars at the appropriate place in the Shipping Bill based on mate receipt and check list.
- 7.4 In order to provide the procedure for stuffing of containerised Cargo in the Docks area under P.O.s Supervision and loading of bulk and containerised cargo two Annexures – K & L are provided. The same should be submitted in triplicate to Supdt. / P.O. at the time seeking supervision for stuffing / loading.

7.5 Procedure in case of factory stuffed containers :

- 7.5.1 Factory stuffed containers are received in the Docks area, the Customs Preventive Officer at the gate will verify the Central Excise seal on the container and will give the "seal check" endorsement on the Invoice. Thereafter, the Exporter or his agent should present the said invoice, check list and declaration along with all other original documents such as packing list AR-4 etc., to the Examining Officer posted for this purpose. He will also present the details of additional particulars if any listed in Annexure-C to this Public Notice. The Examining Officer will enter the additional particulars and mark the Shipping Bill and original documents to the Shed Appraiser, for consideration of "let export". The system may require re-examination of the factory

stuffed container on a random basis. If the container is selected for re-examination by the system, the procedure as given in Para 7.2 above will be required to be followed. In other cases, if the Shed Appraiser (Export) is satisfied with the particulars entered in the system and description given in the original documents, Central Excise examination report, and there is no need to examine the factory stuffed goods, he will proceed to allow "let export" for the shipments and inform the Exporter.

- 7.5.2 In case the Shed Appraiser (Export) feels that the goods require re-examination, he will mark the electronic copy of the shipping bill and other documents to the Assistant Commissioner (Exports) and instruct the exporter or his agent to meet the Assistant Commissioner(Exports). If the Assistant Commissioner of Customs (Exports), approves the re-examination of the goods, then container will be brought to the Docks and the procedure specified in para 7.2 above will be followed.

7.6 Variation between the Declaration & Physical Examination :

The check list and the declaration along with all original documents will be retained by the Appraiser concerned. In case of any variation between the declaration in the Shipping Bill and physical documents / Examination report, the Appraiser will mark the Electronic Shipping Bill to the Assistant Commissioner of Customs (Exports). He will also forward the physical documents to Assistant Commissioner of Customs (Exports) and instruct the Exporter or his agent to meet the Assistant Commissioner of Customs (Exports) for settlement of dispute. In case the exporter agrees with the views of the Department, the Shipping Bill would be processed accordingly. Where however, the exporter disputes the view of the Department, principles of natural justice would need to be followed before finalisation of the issue.

8. GENERATION OF SHIPPING BILLS :-

- 8.1 After the "let export" order is given on the system by the Appraiser, the Shipping Bill shall be generated by the system in two copies, i.e., one Customs copy, one Exporter's copy (E.P. copy will be generated only after vessel has sailed). After obtaining the print out the Appraiser shall obtain the signatures of the Examining Officer on the Examination report and the representative of the CHA on both copies of the Shipping Bill and Examination report. The CHA's representative's name and identity card number should be clearly mentioned below his signature. The Appraiser shall thereafter sign & stamp both the copies of the Shipping Bill at the specified place.
- 8.2 The Appraiser should also sign and stamp the original & duplicate copy of SDF form (already submitted by the Exporters with other documents) for value only. Customs copy of Shipping Bill and original copy of the SDF will be retained along with the original declarations by the Appraiser and forwarded to Export Department of the Custom House. He will return the exporter copy and the second copy of the SDF form to the Exporter or his agent. The E.P. copy of the Shipping Bill will be printed and shipment details MR NO. along with date of sailing will be endorsed by the Preventive Officer, only after sailing of the Vessel and verification of mate receipt by the proper officer (Preventive Officer).
- 8.3 As regards the AEPC quota and other certifications, these will be retained along with the Shipping Bill in the Dock export, after the Shipping Bill is generated by the system. At the time of examination, apart from checking that the goods are covered by the quota certifications, the details of the quota entered into the system would be checked.

9. EXAMINATION / STUFFING / LOADING OF GOODS AND CONTAINERS :-

- 9.1 The Exporter or his agent should hand over the Exporter copy of the Shipping Bill duly signed by the Appraiser permitting "Let Export", to the steamer agent who will then approach the proper officer (Preventive Officer) for allowing the shipment. In case of containerised cargo the stuffing of container at Docks will be done under Preventive Supervision. Loading of both containerised and bulk cargo will be done under Preventive Supervision. The Customs Preventive Superintendent (Docks) will enter the particulars of packages actually stuffed in to the container, the bottle seal no., particulars of loading of cargo container on board in to the system and endorse the same details on the exporter copy of the Shipping Bill presented to him by the steamer agent. To facilitate the process of entry of cargo loading report in the system the Exporter / CHA / Steamer Agent will prepare a Cargo Loading Plan (CLP) / container stuffing sheet. If there is a difference in the quantity number of packages stuffed in the containers / goods loaded on vessel the Supdt. (Docks) will put a remark on the Shipping Bill in the system and that Shipping Bill requires amendment or changed quantity. Those Shipping Bills also will not be taken up for the purpose of sanction of Drawback / DEEC logging, till the Shipping Bill is suitably amended for the changed quantity.
- 9.2 The Customs Preventive Officer supervising the loading of container and general cargo in to the vessel will give "Shipped on Board" endorsement on the Exporters copy of the Shipping Bill.

10. PAYMENT OF MERCHANT OVERTIME (M.O.T.)

For the time being the present manual system in respect of payment of Merchant Overtime (MOT) charges will continue.

11. DRAWAL OF SAMPLES :-

- 11.1 Where the Appraiser Docks (Export) orders for samples to be drawn and tested, the Examining Officer will proceed to draw two samples from the consignment and enter the particulars thereof along with details of the testing agency in the ICES/E system. There will be no separate register for recording dates of samples drawn. Three copies of the test memo will be prepared by the Examining Officer and will be signed by the Examining Officer and Appraising Officer on behalf of Customs and the Exporter or his agent. The disposal of the three copies of the test memo are as follows :-
- i) Original- to be sent along with the sample to the test agency.
 - ii) Duplicate – Customs copy to be retained with the 2nd sample.
 - iii) Triplicate – Exporter's copy.
- 11.2 The Assistant Commissioner if he considers necessary, may also order for sample to be drawn for purpose other than testing such as visual inspection and verification of description, market value inquiry etc.

12. QUERIES :-

With the discontinuance of the assessment in the Export Department, it is anticipated that there will not be any queries since any doubt can be clarified by the Exporter or his agent during examination. However, in a rare case, where the need arises for a detailed answer from the Exporters, a query can be raised by the Examining Officer or the Appraising Officer on the system which should be confirmed by the Assistant Commissioner of Customs (Exports). The Shipping Bill will remain pending and can not be printed till the Exporter's reply is seen and accepted by the Customs Department.

13. AMENDMENTS: -

- 13.1 Any correction / amendments in the checklist generated after the submission of declaration can be made at the Service Center provided the documents have not yet been submitted in the system and the Shipping Bill number has not been generated. Where corrections are required to be made after the generation of the Shipping Bill No. or after the goods have been brought into the Export Dock, amendments will be carried out in the following manners : -
- i) If the goods have not yet been allowed 'let export' amendments may be permitted by the Assistant Commissioner(Exports)
 - ii) Where the 'Let Export' order has already been given, amendments may be permitted only by the Additional / Deputy Commissioner, New Custom House, Mumbai, in charge of Export section.
- 13.2 In both the cases, after the permission for amendments has been granted, the Assistant Commissioner (Export) will approve the amendments on the system on behalf of the Additional / Deputy Commissioner. Where the print out of the Shipping Bill has already been generated, the Exporter will first surrender all copies of the Shipping Bill to the Dock Appraiser for cancellation before amendment is approved on the system.

14. SHORT SHIPMENTS, SHUT-OUT, CANCELLATION AND BACK TO TOWN PERMISSIONS :

- 14.1 All permissions for short shipment certificate, shut-out, cancellation of Shipping Bill and back to town permission shall be given by the Assistant Commissioner (Export) on the basis of an application made by the Exporter/CHA in this behalf. The application shall be accompanied by a 'no objection' from the concerned shipping lines. The Shipping Bill particulars need to be modified / cancelled in the system before granting such permission. The Assistant Commissioner should check the status of the Export General Manifest (E.G.M.) corresponding to that Shipping Bill before allowing modification/cancellation. In case the EGM has been filed but drawback against the Shipping Bill is not sanctioned, the concerned Shipping Bill should be cancelled so that drawback is disallowed. Where however the drawback has been sanctioned against the Shipping Bill consequent to the filing of EGM, the party should be asked to pay back the amount of drawback sanctioned before granting the permission.

15. CHANGE OF VESSEL NAME :-

- 15.1 It will be mandatory for the Exporter or his agent to indicate Vessel name in Annexure – C. Any request for change in vessel name after let export and before stuffing loading shall be in writing by the CHA/Exporter or the steamer agent depending upon who is the in-charge of the goods and such change shall be carried out by the Preventive Officer in-charge of loading / stuffing after obtaining permission from Superintendent (Docks). After stuffing / loading, the Custom Officer designated for the purpose shall carry out changes in vessel name and the officer permitting the change in vessel name will enter the particulars of the new vessel name into the system. The System will generate amendment number, which will be endorsed on the application for the amendment by the Preventive Officer. It is clarified that for change in vessel name the cancellation of let export order or reprint of Shipping Bill is not required.
- 15.2 The Exporter has to file a declaration with regard to freight (whenever CIF and C&F terms are applicable) in Annexure-C. At the time of submission of shipping bill or when the goods are presented for examination before the officer, the declaration as to freight should reflect the freight charges borne by the Exporter irrespective of the amount received by the Shipping lines and the consolidating Agent or any other person engaged in the entire operation of shipping and

movement. In the unlikely event of the Exporter not being aware of the actual freight, payment by him at the time of filing of Annexure-C, the Exporters should, to facilitate early payment of drawback, file a declaration of the freight on the basis of the standard published schedule of freight rates. Where however the actual freight is higher than the freight declared in the Shipping bill, it would be the responsibility of the steamer agent to report to customs every case where declared freight is less than those charged for transaction. The Exporter/CHAs should also review each case after shipment has taken place and if the freight borne by them is higher than the one declared in the shipping bill, they should pay back to the Customs, the excess drawback claimed / received or duty concession claimed thereon. The Exporter should bear in mind that any mis declaration resulting in loss of revenue is liable to be proceeded against under the Customs Act, 1962 or under any other law for the time being in force.

16. RECONSTRUCTION OF LOST DOCUMENTS:

No duplicate print out of EDI Shipping Bill will be generated if Shipping Bill is lost, since extra copy of Shipping Bills are liable to be misused. A certificate will be issued by the Customs stating that "let export order" has been allowed on the system to enable the goods to be accepted by the steamer agents. Drawback will be sanctioned on the basis of the let export order already recorded on the system. Only SDF Declaration will be allowed to be reconstructed if the original is still available with the department.

17. RE - PRINT OF SHIPPING BILLS:

Re-print of shipping bills are not ordinarily allowed since the extra copies of the shipping bills can be misused. However, where there is a system failure and as a result of which the print out after let export order has not been generated or there is misprint, re-print of the same will be allowed only after permission is granted by Assistant Commissioner (Export). The misprint copy shall be cancelled before any such permission is granted.

18. EXPORT OF GOODS UNDER CLAIM FOR DRAWBACK

- 18.1 The scheme of computerized processing of drawback claims under the Indian Customs EDI System – Exports will be applicable for all exports through Custom House except excluded categories. In respect of excluded categories the export documents will be filed manually and the DBK claim shall also be filed separately with Assistant Commissioner, Drawback, as hitherto.
- 18.2 In respect of goods to be exported under claim for drawback, the Exporters will file declaration in the form annexed as Annexure-B of this Public Notice. The declaration in the Annexure-C of this Public notice would also be required to be filed when the export goods are presented at the Export Docks for examination & "let export".
- 18.3 The Exporters are also required to give their current account number along with the name of the bank through which the export proceeds are to be realised.
- 18.4 Export declaration involving a drawback amount of more than Rupee one lakh will be processed on screen by the Assistant Commissioner, Customs before the goods can be brought for examination and for allowing "Let Export".
- 18.5 The drawback claims are sanctioned subject to the provisions of the Customs Act, 1962, the Customs & Central Excise Duties Drawback Rules, 1995 and conditions prescribed below different sub-headings of all industry rates (as per notification No. 67/98 Customs dated 01.09.1998 as amended). In order to sanction the drawback through EDI system, the exporters are required to submit declarations as per *Appendix III* and appropriate declarations, if any along

with the shipping bills as per applicable *Appendices* to this public notice. The details of the declarations being submitted shall be mentioned in the appropriate column of proforma at *Annexure "B"*. The rates of drawback under some S.S. Nos. are dependent upon certain conditions as mentioned in the Drawback Schedule. In order that the EDI system processes the claims correctly, exporters are advised to give the correct S.No. of the relevant Appendix applicable to their case on the declaration as well as in column "condition No." in the table given in proforma at *Annexure B*. The S.S. Nos. of the relevant declarations which are not applicable for the exporter may be deleted.

If the relevant declarations are not filed along with the shipping bills, the EDI system will not process the drawback claims. The Exporters and CHAs are advised to file the required declarations along with the shipping bills for immediate processing of their drawback claims and properly fill the table in *ANNEXURE-B*.

18.6 (*Not reproduced here*)

18.7 (*Not reproduced here*)

18.8 After actual export of the goods, the Drawback claims will be processed through EDI system by the officers of Drawback Branch on first come first served basis. There is no need for filing separate drawback claims. The status of the Shipping Bills and sanction of DBK claim can be ascertained from the query counter set up at the Service Center. If any query has been raised or deficiency notice, the same will be shown on the terminal. A printout of the query/deficiency may be obtained by the authorised person of the Exporter from the Service Center. The Exporters are advised to reply to such queries expeditiously and such replies shall be entered in the EDI system at the Service Center. The claim will come in queue of the EDI system only after reply to queries/deficiencies are entered by the Service Center.

18.9 Shipping Bills in respect of goods under claim for drawback against brand rates would also be processed similarly, except that drawback would be sanctioned only after the original brand rate letter is produced before the designated Customs officer in the Office of Assistant Commissioner (Export) and is entered in the system. The Exporter should specify the S.S No. of drawback as 98.01 for provisional drawback in the Annexure"B".

18.10 All the claims sanctioned on a particular day will be enumerated in a scroll and transferred to the Designated Bank through the system. The bank will credit the drawback amount in the respective accounts of the Exporters on the next working day. Bank will send a fortnightly statement to the Exporters of such credits made in their accounts.

18.11 The Steamer Agent/Shipping Line will transfer electronically the EGM to the Customs EDI system so that the physical export of the goods is confirmed, to enable the Customs to sanction the drawback claims. Such Shipping Bills will be cleared electronically on a first come first served basis.

19. EXPORT OF GOODS UNDER THE DEEC SCHEME:

19.1 Only Shipping Bills relating to DEEC wherein the DEEC book was issued on or after 01.04.95 will be processed on the EDI system. This would cover all DEEC books issued in terms of the following notifications.

- | | |
|---------------------------|---------------------------|
| 1) 079/95-Cus dt.31.03.95 | 2) 080/95-Cus dt.31.03.95 |
| 3) 106/95-Cus dt,02.06.95 | 4)107/95-Cus dt.02.06.95 |
| 5) 148/95-Cys dt,19.09.95 | 6) 149/95-Cus dt.19.09.95 |
| 7) 030/97-Cus dt.01.04.97 | 8) 031/97-Cus dt.01.04.97 |
| 9) 36/97-Cus dt. 11.4.97 | |

- 19.2 All the Exporters intending to file Shipping Bills under the DEEC scheme whether under claim for Drawback or otherwise should first get their DEEC Book registered with the New Custom House, Mumbai. The registration will be done in the Service Center. The original DEEC book would need to be produced at the Service Center for data entry. A print out of the relevant particulars entered will be given to the Exporter/CHA for his confirmation. After the confirmation by the Exporter/CHA by way of signing the printout alongwith the Identity Card Number of the CHA, the DEEC book would need to be presented to the Appraiser (DEEC Cell) in the Export department, who would verify the particulars entered in the computer with the original DEEC book and register the same in the EDI system. The Registration no. of the DEEC book would be furnished to the Exporter/CHA which would need to be mentioned on the declaration forms Annexure A/B filed for export of goods. It would not be necessary thereafter for the exporter/CHA to produce the original DEEC Book for processing of the Export declarations.
- 19.3 Each Book will be allotted a Registration No. which should be indicated on the Shipping bills in the relevant columns of Annexure A/B. Besides, the declarations at Appendix II (in all cases) and III (where drawback is also claimed in addition to DEEC benefits) are also to be filled by the Exporters and signed by them (Not by CHA).
- 19.4 Exporters who will be filing shipping bills for export of goods under the DEEC scheme would be required to file additional declarations regarding availment / non-availment of MODVAT or regarding observance/non-observance of specified procedures prescribed in the Central Excise Rules, 1944 in the form given in Appendix II. The declaration should be supported by the necessary certificates (A.R.-4 or any other evidence of non-availment of MODVAT) issued by the jurisdictional Central Excise Authorities. "Let Export" would be allowed only after verification of all these certificates at the time of examination of the goods. The fact that the prescribed DEEC Declaration is being made should be clearly stated at the appropriate place in the declaration being filed in the Service Center or through RES Mode.
- 19.5 All the Export declarations for DEEC would be processed on screen by the Appraiser and the Assistant Commissioner. After the declarations have been so processed and accepted, the goods can be presented at the Docks for examination and "Let Export" as in the case of other export goods. All Exporters availing of the DEEC facilities are requested to immediately get their DEEC Books registered in the EDI system so that the export declarations are processed expeditiously.
- 19.6 Further requirements in regard to computerised processing of DEEC shipping bills are as follows:
- a) Where benefits under both the DEEC and the Drawback schemes are sought to be availed of, Exporters should file both the declarations as at Appendices II & III.
 - b) The options set out in the Appendices II & III should be read carefully and whatever is not applicable should be struck out.
 - c) Exporters availing DEEC benefits in terms of Notifications No.148/95, 149/95 both dated 19.09.95 or 30/97 dated 01.04.97 should subscribe to the declaration at S. No. IA of the Appendix II, where the export goods have not been manufactured by availing of the procedure under Rule 12(1) (b) or 13 (1) (b) of the Central Excise Rules, 1944.
 - d) Exporters possessing DEEC Book in terms of notification No.149/95 dated 19.09.95 and desirous of availing of the benefit under notification no.49/94-CE(NT) dated 22.09.94 should subscribe to the declaration at Sl.No.I(B) of Appendix II.

- e) Similarly, Exporters availing of benefits in terms of Notification Nos.79/95 or 80/95 both dated 31-3-95, 106/95 or 107/95 dated 02-06-95 or 31/97 dt.01.04.97 shall subscribe to the declaration at S.No.I(A) or I(C) of APPENDIX II as the case may be.
- f) Exporters who wish to avail of DEEC benefits but do not propose to claim any drawback need file only the declaration as per APPENDIX II.
- 19.7 It is also clarified that those Exporters who propose to fulfil export obligations themselves have to sign declaration at S.No.2A of Appendix II. However, if the export obligations are being fulfilled by exports through a third party, the exporter is required to strike out S.No.2B or Appendix II. In such case, the name of the DEEC licence holder as well as that of the exporter shall be given and both have to sign the said declaration.
- 19.8 As regards the declaration at Appendix III, the options are set out in S.No.4 & 5. The Exporters are required to subscribe to the correct option and delete the other(s). The Exporters who are exporting goods under DEEC scheme shall delete the declaration at Sl.No.5A of Appendix III and shall subscribe to the S.No. applicable to them.
- 19.9 Those Exporters who possess a DEEC Book under Notification No.79/95 or 80/95 or 31/97 and intend to claim the Central Excise portion of drawback shall subscribe to declarations at S.No.V of Appendix III. Those exporters who are exporting goods under DEEC but intend to avail brand rate of drawback shall subscribe to the declaration S.S. No.V. Such Exporters are, required to file their shipping bills as per APPENDIX B. The Exporters who are having DEEC Books under notifications other than 79/95, 80/95, 30/97 and 31/97 are not entitled to All Industry Rates of Drawback.
- 19.10 **It is further clarified as follows:**
- a) While giving details relating to DEEC operations in the forms at Annexures A-B, the exporters/CHAs should indicate the S.No. of the goods being exported in the column titled 'ITEM SL.NO IN DEEC BOOK PART E' of Annexure A/B.
- b) If inputs mentioned in DEEC Import Book only have been used in the manufacture of the goods under export, in column titled "ITEM SR.NO.IN DEEC BOOK PART 'C' OF ANNEXURE-A/B the exporters/CHAs are required to give Sl.No. of Inputs in part-C of the DEEC Book and Exporters need not fill up column titled "DESCRIPTION OF RAW MATERIALS"
- c) If some inputs not mentioned in part-C of the DEEC book have been used in the manufacture of the goods under export and the exporter wants to declare such inputs, he shall give the description of such inputs in column titled "DESCRIPTION OF RAW MATERIALS".
- d) In the column "IND/IMP", the Exporters are required to write "N" if the inputs used are indigenous and "M" if the inputs used are imported.
- e) In the column titled "Cess schedule Sl.No." the serial number of the schedule relating to cess should be mentioned.

20. EXPORT GENERAL MANIFEST:

- 20.1 All the shipping lines/agents shall furnish the Export General Manifests, Shipping Bill wise, to the Customs electronically within 7 days from the date of sailing of the vessel. In the beginning, the shipping lines are required to enter the manifest in the Customs Computer System through the Service Center on payment of the prescribed fee. (In due course, an EDI server shall be installed for the electronic delivery of EGM through EDI service providers. Till such time, all the EGMs will

have to be entered through the service center only). After the entry of EGMs a checklist will be generated which has to be signed by Shipping Line certifying the correctness of data. Shipping Lines are also requested to give the details of shipping bill and Bills of Lading in the EGMs submitted by them. The Shipping lines shall be liable for penal action, if incorrect or incomplete EGMs are submitted. Service Center would be charging a flat fee of Rs.60/- per EGM irrespective of the number of entries. The Service Center would be receiving the EGMs for data entry between 10.00 A.M to 5.00 P.M. The Service Center will return the Export General Manifest after getting it entered in the system.

- 20.2 Apart from lodging the EGM electronically the shipping lines would continue to file manual EGMs along with the Exporter copy of the shipping bills as per the present practice in the Export department. Since the disbursement of Drawback to the exporters would be dependent on the filing of EGMs by the Shipping Lines, all Shipping Lines are advised to file the EGMs soon after the vessel has departed. The manual EGMs would be entered in the register at the Export Department and the Shipping lines are advised to obtain acknowledgements indicating the date and time at which the EGMs were received by the Export Department.

21. CREATION OF DATABASE OF EXPORTERS / CHA :

To implement EDI based clearances it is felt necessary to create Database of all the Exporters and CHAs. Therefore they are requested to give the information as prescribed at *Appendix XVI & XVII* to Assitt. Commissioner (EDI), New Custom House, Mumbai, under an acknowledgement. Non submission / inaccurate submission of information may cause delay in clearances of goods when the system goes on line.

@ @ @ @ @ @ @ @

Let Export Order

Please refer to the Public Notice No. 42 / 99 dated 22/03/99. In para 7.5.1 of this notice it is inter-alia stated that in the case of Factory Stuffed Containers, the Docks Appraiser shall give the 'let export order'.

In partial modification of the procedure mentioned therein, it has been decided that in all cases of Factory –stuffed or Customs Warehouse – stuffed containers, Customs out of charge (let export order) should be given by the Superintendent (Preventive) posted at the relevant Gate.

For export cargo stuffed in the Docks area, let export order shall continue to be given by the concerned Appraising Officer.

{ **Standing Order No. 7453 dtd. 17.05.1999 issued by Commissioner of Customs, (E.P.), Mumbai, in file no. S / 6 B – 2138 / 99 EXP.]**

ANNEXURE “A”

DECLARATION FORM FOR EXPORT OF GOODS WITHOUT CLAIM FOR DRAWBACK

To be filled in by the Service Center

Date of Presentation:	Job No.	:
Shipping Bill No.:	Date	:
Signature:	Date	:

To be filled in by Exporters/CHAs

1. Type of Shipping Bill:

[W] Duty Free-Commercial

[F] NFEI-No foreign exchange involved

2. Category of goods under NFEI Shipping Bill:Free trade sample

01. Diplomatic

02. Warranty replacement

03. Currency chest

04. Tourist purchases

05. Re-export of goods (except under Section 74)

06. Gift parcel

07. Others

3. CHA Licence No.:

Name:

4.(a) IE code No.:

(b) Name & Address of Exporter:

(c) Export Type: (i) : [P] Private / [G] Government

(ii) : [R] Merchant / [F] Manufacturer

5. (a) Type of export house (if applicable):

[EH] Export House

[TH] Trading House

[SH] Star Trading House

[SS] Super Star Trading House

(b) Certificate No.:

Validity up to:

6. State of Origin of Export goods:

(Gujarat / Maharastra / Rajasthan / Delhi /

Haryana / Punjab / U.P. etc.)

7. Consignee Name & Address:

8. Consignee Country:

9. Port of Destination:

10. Final Destination Country:

11. (a) Name & Address of the Bank through which export proceeds are to be realised:

(b) Account No.:

(c) Authorised Dealer Code:

Invoice Details

12. Invoice Number:

Date:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)

20. QUOTA RELATED INFORMATION

Sr. No	Invoice No.	Item No.	Quota Certificate No.	Export Licence No.	Quantity	Expiry Date	Agency Name (AEPC/ CTEPC/ APEDA)
1	2	3	4	5	6	7	8

DECLARATION

I/We declare that the particulars given above are true and correct.

I/We enclose the copies of the following documents: -

(To be submitted with the export goods in the Docks)

- i. SDF form
- ii. DEEC Declaration
- iii. Invoice
- iv. Quota/Inspection etc. Certificates
- v. Packing List with Package wise Contents
- vi. Others (specify)

Note : At the initial stage , obligatory on the part of exporter.

Name of Exporter:

Designation:

Signature:

Name of CHA:

Designation:

ID Card No.:

Signature:

Dated:

Notes:

1. All entries should be made in capital letters, typed or neatly hand written.
2. Photocopy of invoice has to be attached with the declaration form for Data entry.
3. All entries should be completed in all respects. Otherwise, it may be rejected.

ANNEXURE – “B”**DECLARATION FORM FOR EXPORT OF GOODS UNDER CLAIM FOR DRAWBACK***To be filled in by the Service Center*

Date of Presentation: Job No.:
 Shipping Bill No.: Date:
 Signature: Date:

To be filled in by Exporters/C.H.A.

1. CHA Licence No.: Name:
2. (a) IE code No.:
- (b) Name & Address of the Exporter:
- (c) Exporter Type: [i]: [P] Private [G] Government
 [ii]: [R] Merchant [F] Manufacturer
3. Exporter's Accounts No. in the Bank
-
4. (a) Type of export house (if applicable):
- [EH] Export House
 [TH] Trading House
 [SH] Star Trading House
 [SS] Super Star Trading House
- (b) Certificate No.: Valid upto :
5. State of Origin of Export goods
 (Gujarat / Maharastra / Rajasthan / Delhi /
 Haryana / Punjab / UP etc.):
6. Consignee Name & Address:
7. Consignee Country:
8. Port of Destination:
9. Final Destination Country:
10. (a) Name & Address of the Bank through which export proceeds to be realised:
- (b) Account No.:
- (c) Authorised Dealer Code:
11. (a) SDF Declaration :
- (b) RBI Waiver No. : Date :

Invoice Details

12. Invoice Number: Date :

D E E C PARTICULARS WHEREVER APPLICABLE							Cess Sched
Regd. No. & Date	Item Sl. No. in DEEC Book Part "E"	Item Sl. No. in DEEC Book Part "C"	Details of Raw Materials	Quantity	A/C Unit	Ind. / Imp.	Sl. No.
(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)

20. INFORMATION OF RAW MATERIALS

(To be given where Drawback is claimed on the basis of Raw Material used)

Invoice No..	Item No.	Raw Material Sl. No.	Description	Qty	A/C Unit	Rate at which DBK Claimed

21. QUOTA RELATED INFORMATION

Sr. No	Invoice No.	Item No.	Quota Certificate No.	Export Licence No.	Quantity	Expiry Date	Agency Name (AEPC/ CTEPC/ APEDA)
1	2	3	4	5	6	7	8

DECLARATION

I/We declare that the particulars given above are true and correct.

I/We enclose the copies of the following documents: -

(To be submitted with the export goods in the Docks)

- i. SDF form
- ii. DEEC Declaration

- iii. Invoice
- iv. Quota/Inspection etc. Certificates
- v. Packing List with Package wise Contents
- vi. Others (specify)

Name of Exporter:

Designation:

Signature:

Name of CHA:

Designation:

ID Card No.:

Signature:

Dated:

Notes:

1. All entries should be made in capital letters, typed or neatly hand written.
2. Photocopy of invoice has to be attached with the declaration form for Data entry.
3. All entries should be completed in all respects. Otherwise, it may be rejected.

ANNEXURE "C"

DATA TO BE ENTERED BY EXAMINING OFFICERS / P.O. WHEN EXPORT GOODS ARE BROUGHT FOR EXAMINATION.

1. Shipping Bill No.: _____ Date: _____
2. (a) Vessel Name _____
(b) Shipping Line _____
(c) Steamer Agent Name _____
3. Freight and Insurance charges:
(i) Freight Value: _____ Currency: _____
(ii) Insurance Value: _____ Currency: _____
4. Total No. of Packages: _____
5. Types of packages (Boxes, Cartons, Bags etc.): _____
6. Numbers marked on the packages (1-25 etc.): _____
7. Gross weight (in Kgs): _____
8. Net weight (in Kgs): _____
9. Container particulars:

Container No.	Size	Place of Sealing	Seal No.	Date of Sealing

TOTAL :										

Signature & Designation

The cargo is loaded under Preventive Supervision

With date & Seal

Representative / Surveyor

Dock Asstt.

Dock I/C

Rep. & Surveyor

Preventive

Of Shipping Agent /Line

K.P.T.

K.P.T.

of handling and

Officer

Transport Contractor

ANNEXURE – “L”

CONTAINER STUFFING SHEET

Date :

Container No.: :

Godown/Bay No.:

Shipping Agent :

Shipping line :

VIA No. : Voyage :

Customs Seal No.:

Vessel :

Port of Discharge :

Shipping Agent / Line Seal No.:

Sr. No.	Date of Carting Of Cargo	Shipping Bill No. & Date	Exporter	Consignee	Nature of Goods	Marking	No. of Packages stuffed	Gross Weight in Quintals	Value as per Shipping Bill	Remarks, details variations etc., if any
TOTAL :										

Signature & Designation

The cargo is loaded under Preventive Supervision

With date & Seal

Representative / Surveyor

Dock Asstt.

Dock I/C

Rep. & Surveyor

Preventive

Of Shipping Agent /Line

K.P.T.

K.P.T.

of handling and

Officer

Transport Contractor

APPENDIX – I**FORM SDF**

(Declaration under the Foreign Exchange Regulation Act, 1973)

Shipping Bill No.:

Date:

I/We, _____ (name of the Exporter) do hereby declare that: -

1. I/We am/are the seller/consignor of the goods in respect of which this declaration is being made and that the particulars given in the Shipping Bill No. _____

Dated _____ are true and that: -

a) The value as contracted with the buyer is the same as the full export value declared in the above Shipping Bill or

b) The full export value of the goods is not ascertainable at the time of export and that the value declared is that which I/We, having regard to the prevailing market conditions, expect to receive on the sale of goods in the overseas market.

2. That I/We undertake that I/We will deliver to the bank named _____ the foreign exchange representing the full export value of the goods on or before @ _____ in the manner prescribed in Rule 9 of the Foreign Exchange Regulation Rules, 1974.

3. That I/We am/are resident(s) in India and I/We have a place of business in India.

4. That I/We am/are not in the caution list of the Reserve Bank of India.

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note:

1. State appropriate date of delivery which must be the due date for payment or within six months from the date of shipment, whichever is earlier, but for exports to warehouses established outside India with permission of the Reserve Bank of India, the date of delivery must be within fifteen months.

2. Strike out whichever is not applicable.

APPENDIX IA**Form of Certificate required to be obtained from the Bank through which the foreign exchange is proposed to be realised.**

From,
(Name and address of the Bank)

To,
The Commissioner of Customs (Export Promotion)
.....Custom House,

Dear Sirs,

This is to certify that

(a) M/s. _____ (Name of the exporter)
having Importer Exporter Code No. _____ (IEC No. issued by the DGFT) is
having an account (A/c No. _____ Nature of A/c _____) in this branch of the
bank and

(b) the branch Code of this branch is _____

Authorised Signatory

(Name and Designation)

Date :

Bank Stamp :

APPENDIX II**DEEC DECLARATION**

(To be filed for export of goods under DEEC Scheme)

Shipping Bill No.

Date:

I/We, _____ (Name of the Exporter) do hereby declare that: -

(1) The export goods have not been manufactured by availing of the procedure under Rule 12(1)(b)/13(1)(b) of the Central Excise Rules, 1944. **OR**

The export goods have not been manufactured by availing the procedure under Rule 12(1)(b)/13(1)(b) of the Central Excise Rules, 1994, in respect of material permitted to be imported duty free under an advance licence, except availing benefit under Notification No. 49/94-CE (NT) dated 22.9.94. **OR**

The export goods have been manufactured by availing the procedure under Rule 12(1)(b)/13(1)(b) of the Central Excise Rules, 1944; and,

(2) The exports under this Shipping Bill are being made directly by the Advance Licence holder.

OR

The exports against this Shipping Bill are being made by third party(s) and a contractual agreement in this regard exists between the Advance Licence holder and third party, both have signed all

the export documents. In the event of a fraud, both will be severally and jointly responsible for the fraud and liable for penal action.

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: Please strike out whichever is inapplicable.

APPENDIX - III

DRAWBACK/DEEC DECLARATION

(To be filed for export goods under claim for Drawback)

Shipping Bill No.

Date:

I/We, _____ (Name of the Exporter) do hereby declare that: -

- i. The quality and specification of the goods as stated in this Shipping Bill are in accordance with the terms of the export contract entered into with the buyer/consignee in pursuance of which the goods are being exported.
- ii. I/We are not claiming benefit under the Engineering Products Export (Replenishment of Iron and steel Intermediates) Scheme, notified by the Ministry of Commerce in Notification No. 539 RE/92-97 dated 1.3.95.
- iii. There is no change in the manufacturing formula and in the quantum per unit of the imported material or components, if any utilised in the manufacture of export goods and the material or components declared in the application under Rule 6 or 7 of the Drawback Rules, 1995 to have been imported, continue to be so imported and are not obtained from indigenous sources.
- iv. The export have not been manufactured by availing the procedure under Rule 12(1)(b)/13(1)(b) of the Central Excise Rules, 1944.

OR

The export goods have been manufactured by availing the procedure under Rule 12(1)(b)/13(1)(b) of the Central Excise rules, 1944, but we have claimed/shall be claiming drawback on the basis of special brand rate in terms of Rule 6 of the Drawback Rules, 1995.

- v. The goods have not been manufactured and/or exported in discharge of export obligation against an Advance License issued under the Duty Exemption Entitlement Scheme (DEEC) declared under the Import and Export Policy.

OR

Goods have been manufactured and are being exported in discharge of export obligation under the Duty Exemption Entitlement Scheme (DEEC), in terms of Notification No. 79/95

or 80/95, both dated 31.3.95 or 31/97 dated 1.4.97. However, Drawback has been claimed only in respect of the Central Excise duties leviable on inputs specified in the Drawback Schedule.

OR

The goods have been manufactured and are being exported in discharge of export obligation under the Duty Exemption Entitlement Scheme (DEEC), but I/We are claiming Brand rate of drawback fixed under Rule 6 or 7 of the Drawback Rules.

- vi. The goods have not been manufactured and/or exported after availing of facility under the Passbook Scheme as contained in para 7.25 of the Export and Import Policy (April 1997-31 March 2002).
- vii. The goods have not been manufactured and/or exported by a unit licensed as 100% Export Oriented Unit in terms of Import and Export Policy in force.
- viii. The goods have not been manufactured and/or exported by a unit situated in a Free Trade, Export Processing or any other such Zone.
- ix. The goods have not been manufactured partly or wholly in bond under Section 65 of the Custom Act, 1962.
- x. The present market value of the goods is as follows: -

S. No.	Item No. in the Invoice	Market Value

- xi. The export value of the goods covered by this Shipping Bill is not less than the total value of all imported materials used in manufacture of such goods.
- xii. The market price of the goods being exported is not less than the drawback amount being claimed.
- xiii. The drawback amount claimed is more than 1% of the FOB value of the export product, or the drawback amount claimed is less than 1% of the FOB value but more than Rs. 500.
- xiv. I/We undertake to repatriate export proceeds within six months from date of export and submit the Bank Realisation Certificate (BRC) to Assistant Commissioner (Drawback). In case, the export proceeds are not realised within 6 months, I/We will either furnish extension of time from the R.B.I. and submit BRC within such extended period or will pay back the drawback received against this Shipping Bill.

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: *Please strike out whichever is inapplicable.*

APPENDIX IV**Declaration to be filed by the Exporters claiming All Industry Drawback Rate under S S Nos.**

03.02, 04.02, 04.03, 07.02, 07.03, 08.02, 08.03, 09.02, 09.03, 16.02, 16.03, 17.02, 17.03, 18.02, 18.03, 19.02, 19.03, 20.02, 20.03, 20.07, 20.11, 20.12, 20.16, 20.17, 21.02, 21.03, 39.01, 39.03, 39.05, 39.06, 39.07, 39.09, 39.11, 39.12, 39.13, 39.14, 39.15, 39.16, 39.161, 39.18, 39.181, 39.20, 39.24, 39.25, 40.06, 42.01, 42.02, 42.05, 42.06, 42.07, 42.10, 42.12, 52.01, 52.03, 52.04, 52.05, 54.03, 54.04, 54.05, 54.06, 55.01, 55.02, 55.03, 55.04, 55.05, 56.04, 58.01, 58.02, 58.03, 58.04, 60.06, 61.02, 61.05, 61.07, 62.02, 62.09, 62.10, 62.21, 63.01, 63.03, 63.04, 63.06, 63.061, 63.07, 63.08, 63.10, 63.11, 64.01, 64.02, 64.03, 64.04, 64.06, 64.07, 64.08, 64.09, 64.11, 71.02, 71.03, 71.05, 73.03, 73.11, 73.13, 73.15, 73.22, 74.02, 74.04, 74.05, 74.06, 74.07, 74.12, 74.17, 74.19, 74.20, 74.24, 76.03, 76.04, 82.01, 82.03, 82.031, 82.032, 83.07, 84.26, 84.54, 84.58, 85.37, 85.38, 85.39, 85.40, 85.45, 85.120, 85.154, 87.45, 90.11, 94.01 etc.

Shipping Bill No.

Date:

I/We _____ (Name of the Exporter) do hereby declare that: -

No MODVAT facility has been availed of in respect of any of the inputs used in the manufacture of export products.

OR

The goods are being exported under bond or under claim for rebate of Central Excise duty.

2. A certificate from the concerned Superintendent of Central Excise in charge of the factory of production is enclosed in support.

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: *Please strike out whichever is inapplicable.*

APPENDIX V**Declaration to be filed by the Exporters claiming All Industry Drawback Rate under S S Nos. 28.26, 29.15, 29.16, 30.01 and 30.02**

Shipping Bill No.

Date:

I/We, _____ (Name of the Exporter) declare that the drugs and pharmaceuticals under export are other than the following:

- i. Distilled water for injections, pharmacopoeial standards
- ii. Ayurvedic, homeopathic, sidha and crude drugs
- iii. Tincture and saline preparations
- iv. Medicinal Castor Oil

- v. Isogel
- vi. Calcium Senoside
- vii. Gripe Water
- viii. Gelatine Capsules
- ix. Surgical Spirit
- x. Ether Anesthetic B.P.
- xi. Sesame Oil B.P.
- xii. Strychnine Alkaloid
- xiii. Senna Calcium Precipitation 20%
- xiv. Interstopan Tablets
- xv. Drugs and pharmaceutical products extracted/manufactured wholly or partly from plants and animals.
- xvi. Drugs and pharmaceutical products containing any of the goods specified in Notification No. 23/98-Customs dated 2.6.98

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: *Please strike out whichever is inapplicable.*

APPENDIX - VI

[Declaration to be filed in respect of goods under S.S.No. 03.01, 04.01, 07.01, 08.01, 09.01, 16.01, 17.01, 18.01, 19.01, 20.01, 20.06, 20.10, 20.15, 21.01]

Shipping Bill Number & Date : _____

I / We _____ (Name of Exporter s) do hereby declare as follows :-

- 1.* That OTS cans used in the packing of export goods have not suffered any Central Excise Duty and no MODVAT credit has been availed for any of the inputs used in the manufacture of export products [Drawback as per schedule is admissible].
- 2.* That the OTS cans used in the packing of the export goods have suffered Central Excise Duty, no MODVAT credit has been availed for any of the inputs used in the manufacture of export products and certificate to these effects from Superintendent of Central Excise and evidence for payment of duty are enclosed. The Customs portion of Drawback has been claimed as per scheduled and Central Excise portion equal to duty actually suffered Rs. _____ per Kgs. Of Net Weight of the OTS is being claimed. [Drawback as per schedule plus Excise Duty suffered on OTS cans is permissible].

[* Strike out whichever is not applicable].

Name of Exporter :

Address :

Date :

(Signature of Exporter)

APPENDIX VII**Declaration to be filed by the Exporters claiming All Industry Drawback Rate under S S Nos. 30.04, 30.05, 30.06, 30.07 and 30.14**

Shipping Bill No.

Date

I/We, _____ (Name of Exporters) do hereby declare that: -

- i. The grammage of tablets indicates the extent of active ingredients contained in the tablet.
- ii. The grammage of tablets is as shown in the invoice but the active ingredient content is ____% only and drawback claimed has been reduced to the percentage of active ingredient.

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: *Please strike out whichever is inapplicable.*

APPENDIX VIII**Declaration to be filed by the Exporters claiming All Industry Drawback Rate under S S Nos. 30.03**

Shipping Bill No.:

Date:

I/We, _____ (Name of the Exporter) declare that mercury free hydrochloric acid (not exceeding the limit of 0.02 ppm of Mercury in hydrochloric acid) has been used in the manufacture of export product. A certificate from Superintendent of Central Excise is enclosed in support.

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: *Please strike out whichever is inapplicable.*

APPENDIX -IX

Declaration to be filed by the Exporters claiming All Industry Drawback Rate under S S Nos. 48.03, 48.04, 48.05, 48.06, 48.07, 48.08, 48.09 and 49.03, 49.04, 49.05, 49.06, 49.07, 49.08, 49.09, 49.10 & 95.01

Shipping Bill No.

Date:

I/We, _____ (name of the Exporter) declare that the goods under export are made of only one type of paper/board and if made of more than one type of paper/board, drawback is being claimed only in the quantity of paper falling under S. S. No. 48.03, 48.04, 48.05, 48.06, 48.07, 48.08, 48.09 and 95.01, as the case may be.

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: *Please strike out whichever is inapplicable.*

APPENDIX X

Declaration to be filed by the Exporters claiming All Industry Drawback Rate under S S Nos. 72.01, 72.03, 72.05, 72.07, 72.09, 72.11

Shipping Bill No.

Date:

I/We, _____ (Name of the Exporter) declare that the export products are made out of only imported HR/CR Steel sheets, strip or wide coil and these are duty paid.

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: *Please strike out whichever is inapplicable.*

APPENDIX XI

Declaration to be filed by the Exporters claiming All Industry Drawback Rate under S S Nos. 73.10, 73.18, 73.20, 73.24, 84.01, 84.02, 84.03, 84.04, 84.05, 84.06, 84.061, 84.062, 84.38, 84.49, 84.50, 84.60, 84.61, 87.12, 87.13 TO 87.19, 87.21 TO 87.27, 87.29 TO 87.38, 87.40, 87.41, 87.43 & 87.44

Shipping Bill No.:

Date:

I/We _____ (Name of the Exporter) declare that duty paid imported steel has been used in the manufacture of the export product and declaration to this effect has been made on the Shipping Bill and invoice. A certificate from the Superintendent, Central Excise, in charge of factory of production in support is enclosed.

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: *Please strike out whichever is inapplicable.*

APPENDIX XII

Declaration to be filed by the Exporters claiming All Industry Drawback Rate under S S No. 85.56]

Shipping Bill No.:

Date:

I/We, _____ (Name of the Exporter) declare that the imported colour monitor tubes have been used in the manufacture of 14" VGA colour monitors being exported. Documentary evidence in support is enclosed.

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: *Please strike out whichever is inapplicable.*

APPENDIX - XIII**Declaration to be filed by the Exporters claiming All Industry Drawback Rate under S S Nos. 84.12**

Shipping Bill No.:

Date:

I/We, _____ (Name of the Exporter)

declare that: -

The FOB price as per order/contract/invoice and shipping documents for centrifugal pumps and electric motors are not available separately in respect of "Power driven centrifugal pumps for liquid fitted with electric motors" under export (Drawback @ 3% of FOB value admissible)

OR

The FOB value of the centrifugal pumps and electric motors is separately available as per order/contract and is separately shown on the invoice and the shipping documents. We have shown price of pumps and motors separately in Annexure B. The value of the motor has been shown under S S No. 85.03 (III) and that the pump under S S No. 84.10 (Drawback Rate is admissible at the appropriate rate as per Drawback Schedule).

(Signature of the Exporter)

Name of Exporter:

Address:

Date:

Note: *Please strike out whichever is inapplicable.***APPENDIX – XIV****Declaration to be filed by the Exporters of Leather Articles claiming all Industry Drawback Rate under the Table for 1998-99.**

Shipping Bill No. :

Date :

I / We, _____ (Name of the Exporter) declare that the goods exported under the Shipping Bill No. _____ dated _____ have been manufactured from indigenous finished leather and do not contain duty free imported leather.

(Signature of the Exporter)

Name of Exporter :

Address :

Date :

Note : *Please strike out whichever is inapplicable.*

APPENDIX XV**Declaration to be filed in respect of goods for which drawback under S.S. Nos.****61.03, 61.04, 62.03 & 62.04**

Shipping Bill Number & Date : _____

I / We _____ (Name of the Exporter) declare that the goods entered in the Shipping Bill No. _____ dated _____ are manufactured in the 100% EOU / EPZ are, are, therefore, eligible for all industry rate of drawback under SS No. 61.03, 61.04, 62.03 & 62.04 and I) a certificate from the Asstt. Commissioner of Customs / Central Excise, Incharge of the zone / 100% EOU is produce to the effect that the export goods have been made from 100% of inputs on which no exemption from duty of Customs or the Duty of Central Excise / Additional Excise Duty in lieu of Sales Tax / Additional Excise Duty (Textile & Textile Act, 1978, has been claimed on any of the inputs (other Customs and /or Central Excise Exemption Notification for FTZ / EPZ Scheme ; and ii) a certificate from the Development Commissioner under the Ministry of Commerce that the unit concerned in the zone has not claimed / will not be allowed to claim or the domestic supplier has not claimed / will not be allowed to claim benefits relating to exemption / refund of Customs or Central Excise Duties paid on raw materials / inputs used in the export product.

*(Strike out whichever is in applicable).

(Name, Address & Signature of Exporter).

APPENDIX – XVI**EXPORTERS DATABASE**

1. NAME OF EXPORTER:
2. EXPORTER'S ADDRESS :
3. CITY:
4. STATE:
5. PINCODE :
6. TELEPHONES :
 - Office :
 - Residence :
 - Fax :
 - Mobile :
 - Pager :
 - Telex :
7. IMPORTER-EXPORTER CODE (IEC) NO. :
8. INCOME TAX PAN NO. :
9. BANK ACCOUNT NO. IN THE(designated)..BANK

10. DETAILS OF BANK ACCOUNT(S) MAINTAINED FOR THE PURPOSE OF RECEIVING EXPORT SALE PROCEEDS :

Name of the Bank :
 Address :
 Branch code :
 Nature of account : Account number :

NAME AND SIGNATURE

(Authorised Signatory)

Notes :

1. Please enclose attested copies of IEC and PAN certificates.
2. All columns should be written legibly and in CAPITAL letters.
3. Exporters claiming drawback are requested to fill up Entry No. 9 as drawback amounts would be credited only in their accounts maintained in the Bank Of India, Ballard Estate Branch, Mumbai. Against Entry No.10, please enclose separate sheets if you are maintaining accounts in more than one bank for the purpose of receiving the export proceeds.
4. Please enclose a certificate(s) from the bank(s) certifying the details at Entry No.10.

APPENDIX – XVII

CUSTOM HOUSE AGENTS DATABASE

1. NAME OF CHA :
2. ADDRESS :
3. CITY:
4. STATE:
5. PINCODE :
6. TELEPHONES :

Office :	Residence :
Fax :	Mobile :
Pager :	Telex :
7. INCOME TAX PAN NO.:
8. CHA LICENCE EXPIRY DATE :
9. NAMES OF THE AUTHORISED PERSONS :

NAME AND SIGNATURE ()
 (Authorised Signatory)

Notes : 1) Please enclose attested copy of CHA Licence and PAN certificate.

2) All columns should be written legibly and in CAPITAL letters.

[Based on Public Notice No. 42 / 99 Dated 22.03.1999 issued by Commissioner of Customs (Export Promotion), New Custom House, Mumbai, from F.NO. EDI/S/6B-21966/99Exp.]

Procedure for computerised processing of Shipping Bills under the Indian Customs EDI System (ICES)/Exports (To be read with Public Notice No .42)

The computerised processing of Shipping Bills under the Indian Customs EDI System (ICES) – Exports, have commenced at New Custom House, Mumbai in respect of the Shipping Bills as per dates to be notified later.

(A) White Shipping Bill .

(Except those relating to Jewellery, 100% EOU, DEEC, DEPB, EPCG, Pass Book and re-export cases)

(B) Shipping Bills relating to Drawback and dutiable yellow Shipping bills .

(C) DEEC Shipping bills.

(D) DEPB Shipping bills.

2. The Procedure to be followed in respect of the Indian Customs EDI System-Exports at New Custom House, Mumbai for assessment and clearance of duty free Shipping Bills and Drawback Shipping Bills shall be as follows :

1. EXAMINATION OF GOODS :

There shall be EDI Centres in the Docks, for processing of Exports, each headed by an Assistant Commissioner of Customs, who will be in charge of appraising and as well as examination.

1.1. On receipt of the goods in the Docks area the Examining Officer (Docks) designated for the purpose of 'goods arrival' shall check the entry of the goods into the Docks area and after verifying that all the packages / goods comprised in the consignment have entered the Docks area shall make the necessary data entry in the computer terminal in the respective fields provided for the purpose. The Examining Officer shall carefully check the entries in the ANNEXURE – C furnished by the CHAs / Exporters with reference to the AR-4 etc., and shall enter the data into the System. At the time of making entry the Examining Officer shall check the particulars of the check list with the particulars of the shipping bill appearing on the screen to avoid error in entering the particulars of some other Shipping Bill. After data entry of the 'goods arrival' information, the examining officer will mark the electronic Shipping Bill to the shed Appraiser. He will also pass on all the Original papers to the shed Appraiser for his perusal and scrutiny (i.e. Check List, Declarations in Annexure A or B, Declarations under Annexure-C, Invoices, Packing List, AR-4 etc.) The packages / goods are selected for examination by the computer system. The SI.No. of the packages/particulars of the goods so selected should be carefully and correctly entered in the respective fields. The Shed Appraiser shall mark the Shipping Bill to an Examining Officer for carrying out the examination and indicate the packages Nos. on the check list which is displayed by the system for carrying out the examination. However the procedure laid down in P.N. No. 42. Dt. 22.03.1999 with regard to clearances of export consignments received in parts in Docks shall be followed.

1.2. In case of factory stuffed containers the Customs Preventive Officer at the gate will, as per existing arrangement, continue, to countersign the 'seal check' endorsement made by the Central Excise Officers on the invoice carrying the examination report. The examining officer posted at the Docks area for recording 'arrival of goods' will enter the details as per ANNEXURE C of the Public Notice No. 42 Dt. 22.03.1999 after verifying the 'Seal Checked' endorsement countersigned by the Customs Officer.

- 1.3. The System will generate the name of the particular Examining Officer, to whom a Shipping Bill is allotted for examination. The Appraiser may give certain specific instructions to the Examining Officer to be observed by him while carrying out the examination. The Examining Officer will examine the shipment himself or along with the Shed Appraiser or others as applicable. The Examining Officer after examination of the goods shall enter the report on the system and shall correctly answer the questions put by the system. After the data entry of the examination report, the Shipping Bill shall be marked to the Appraiser along with all original documents and the Check List for 'Let Export Order'. The Shed Appraiser shall carefully see the particulars of the export on the screen and shall match the same with the check list and other declarations submitted by the exporter. The Shed Appraiser is also free to examine the goods if felt necessary. After satisfying himself that all the requirements of export are complied with, the Shed Appraiser shall give the 'Let Export Order'. It is to be emphasized here that the examination stage of the goods is the most crucial stage in the entire export operations under the ICES System. It may be noted that consequent upon the abolition of the requirement of filing a separate Drawback claim, it is at this stage where all the declarations regarding valuation, classification with reference to the Drawback Schedule, Local Market values of the goods, corrections of the freight and insurance charges (which have a bearing on the quantum of Drawback in case of contract is on CIF or C&F basis) and availment / non-availment of MODVAT etc. have to be verified. It is also to be ensured that the declarations submitted have been made in full in context of the goods / Drawback requirement and no aspect has been left unanswered/ blank. Since the RBI, the Apparel Export Promotion Council, DGFT, and other agencies depend on the information captured by the Customs Authorities on the Shipping Bill, it is equally important that the checks relating to quota verification, export licensing etc. are faithfully carried out at the examination stage.
- For the purpose of allaying any doubts an illustrative list of activities required to be satisfied by the concerned Shed Appraiser / Examining Officer is as under:
 - I. The officers should record whether the concerned exporter is a Manufacturer or a Merchant Exporter. In case of a Merchant Exporter the name and address of the supporting Manufacturer, if any, declared by the exporter should also be recorded in the specific field called Departmental Comments Module. This is intended to avoid difficulties / unnecessary delays in Drawback cases requiring non-availment of MODVAT.
 - II. The officers should verify whether the actual description and declared descriptions of the goods (on the system) conform fully to the sub-serial of the Drawback schedule under which the exporter intend to claim Drawback. In case the actual description conforms fully to the respective Drawback SS NO. but declaration is not of complete description, the concerned officer(s) carrying out the examination of goods shall ensure that necessary amplification of description or other relevant details are recorded by them in the Departmental Comments Module for posterity. In case nothing contrary to the declared Description applicable conditions vis-à-vis Drawback Schedule Serial Classification is recorded by Shed Officers at the time of examination of goods, it shall be presumed that the actual description of goods is in full satisfaction of the Shed Officers. Such Drawback claims shall be payable accordingly.
 - III. Wherever the exporter has declared the AR-4 No., unless the contrary is recorded in the Departmental Comments it shall be presumed that the concerned Examining Officer and Appraising Officer have verified the Central Excise certification as to Non-availment of MODVAT/Rule 12(1)(b)/Rule 13(1)(b) wherever required in relation to the Drawback Schedule

Serial No. claimed by the exporter. Such claims shall be passed in Drawback accordingly subject to fulfillment for all other requirements as under.

- IV. In case of Drawback claims, where exports are not covered by an AR-4 but which require non-availment of MODVAT/RULE 12(1)(b) / Rule 13(1)(b) facilities, the Docks / Shed Officers should record in Departmental comments lack of documents/certificates, if any, against those listed by the Exporter/CHA in Annexure A & B. Unless anything contrary to the exporter's claim is recorded in Departmental Comments by such officers at examination stage, it will be presumed that they have satisfied themselves about exporters admissibility to Drawback in this regard. Such claim shall be payable accordingly.
- V. In case there is a dispute about the value of goods and goods are being allowed shipment after retention of sample, the duly sealed samples should be forwarded to the Assistant Commissioner (Exports/DBK) for finalization. The Assistant Commissioner should finalize the claim of drawback within a week from the date of handing over of sample. This fact should also be recorded in query to exporter as well as in Departmental Comments before 'Let Export Order' is given online.
- VI. In case of factory stuffed containers, whether or not seal is checked by the examining officers they should invariably verify all related documents as is usually required for examination. Unless anything contrary to the claim / declaration is recorded in Departmental Comments it should be presumed that such officers has verified all material aspects for Drawback and the claim shall be paid to the party.

(This list is not exhaustive but is intended only to bring out the quintessence of the spirit of examination activities to be undertaken by the cutting edge officers under EDI system)

- 1.5 In cases where the Appraiser / Examining Officer feels that any material particulars given in the Shipping Bill do not appear to be correct and adversely affect the Drawback amount, he shall make entries in the respective fields for taking correct directions from the Assistant Commissioner (Exports) or Addl./Deputy Commissioner (Exp.). He shall also record his observation / comments in Departmental Comment Module for perusal of the Drawback Section, at the time finalization of Drawback by the Drawback Section. It may be noted that wherever there is dispute between the exporter and the department regarding rate of Drawback, the shed officers should record their views and the final decision is to be left to be taken by the Asstt. Commissioner (Exports/DBK) at the stage of the sanction of Drawback. If so required, samples of the export product may be drawn for examination / reference by the Drawback Officer at a later stage. In such cases goods should however be allowed to be cleared and let export allowed. Where a dispute is required to be referred to the Assistant Commissioner (Export/DBK), the shipping bill should be marked to the Assistant Commissioner(Export) for advice. Similarly, where query is required to be raised to the exporter, the same shall be raised on computer with clear questions and requirement which the exporter is required to fulfil. The query shall be marked to the Assistant Commissioner (Export/DBK) for confirmation. The Assistant Commissioner (Export/DBK) if satisfied that query is justified, he shall confirm the same. On receipt of query reply on the system, documents shall be processed further.
- 1.6 In the case of goods examined in the shed, the stuffing of goods into the containers will be done under Preventive supervision. The details regarding container number and clubbing of cargo pertaining to different Shipping Bills as required as per Serial Number 2 & 14 of ANNEXURE C to the Public Notice would be entered into the system by the Preventive Officer supervising the container stuffing.

- 1.7 The Customs officers in the Dock area should also check the Identity Cards of the person / agent handling the Shipping Bill on random basis to avoid / restrict the handling of export documents by unauthorized persons. This should be cross checked with the Identity Card No. mentioned in the ANNEXURE –A or ANNEXURE-B or ANNEXURE-C which is available with the CHA/EXPORTER in the Dock area.
- 1.8 As per the procedure after the cargo is loaded in the vessel after let export order is given on reverse of the checklist, the exporter will approach the Examining officer/Appraiser for processing of shipping bill in the system. For part consignments, LEO is given for that part which has been examined and the quantity is endorsed on the checklist. When the total quantity of the goods have been received or it is clear that the goods shall be short shipped, the Examining Officer shall enter the data of total goods received and examination details in the System. It has been observed that, the officer who undertakes processing of shipping bills in the system is not the same, as the officer who has examined and given let export order on the check list. In order to keep record of the officers who actually examine and give let export order on the check list, a report on such examination should be kept by the Appraiser who undertakes processing of shipping bill in the system in the Department comments module. The report however should be precise and limited to the names of the officers who have examined the goods and the nature of the examination of the consignment i.e. either in parts or full, any important observations and the date of examination and let export.

2. DRAWAL OF SAMPLES:

- 2.1. The samples shall be drawn in accordance with various instructions on the subject. The particulars of drawing the samples shall be entered in the requisite fields provided on the computer system. While making data entry, the sequence of entry of data in the field shall be maintained and all the questions which appear on the screen should be carefully answered so that the data entry of the fields is properly saved. The purpose for which the samples are being drawn should be clearly stated. If the samples are drawn for being referred to the Drawback Section in disputed cases, it should be clearly stated also. The sample number which is displayed on the computer monitor should be carefully noted and shall be indicated on the envelope of the samples for further reference. The sample shall be forwarded to the respective Laboratories and one set of the samples shall be preserved till the matter is finally settled after the receipt of the Test Report. On receipt of the Test Report, the same shall be entered in the system for finalization of the action that was kept in abeyance for want of the test report. The officers should ensure that the results of testing are entered on the day these are received from the concerned laboratory so that sanction of Drawback, logging of E.P. copy etc. can be done expeditiously and the exporters are not put to any hardship.
- 2.2 If the samples are drawn for a purposes other than testing such as for visual inspection by Assistant Commissioner(Export/DBK) or for verification of market value, then an appropriate remark to this effect is to be made in the departmental comments column. In such cases, no entries are to be made in the screen for the test menu.

3. EXAMINATION / STUFFING / LOADING OF GOODS AND CONTAINER :

The stuffing of the containers will be done under preventive supervision. The Preventive Officer / Superintendent is required to enter the particulars of packages actually stuffed into the container, the bottle seal number, particulars of loading of cargo container on board into the system. He will also enter these details in the register manually maintained for this purpose.

In case of stuffing under preventive supervision, the Superintendent Docks will endorse on the exporter copy of the Shipping Bill, the number of packages actually stuffed, the Bottle Seal No. and the Sl.No. of the register.

The Steamer Agent will prepare a container stuffing sheet/ Container loading plan (CLP)/Cargo Loading Plan (CLP) in triplicate and submit it to the Preventive Officer, who after supervising the stuffing shall put his signature on the CLP and retain the original copy. On the strength of the CLP Mate Receipt and copy of Shipping Bill, the Supdt(Prev./Docks) will enter the stuffing loading details. This is essential to check short shipment/excess shipment and for shut-out of cargo.

4. VESSEL SAILING REPORT & GENERATION OF EXPORT PROMOTION COPY OF THE SHIPPING BILL :

The Vessel Sailing Report shall be obtained from the Mumbai Port and entered in the prescribed field in the EDI System by the Superintendent Preventive (Docks). The Export Promotion copy of the Shipping bill will be generated by the Supdt(P) (Docks) after entry of the Vessel Sailing Report. The Export Promotion copy will be handed over to the exporter/ CHA after authentication by the Superintendent Docks.

The following procedure is prescribed for para – 3 and 4 above.

To ensure timely entry of particulars of loading of export cargo and Vessel Sailing Report into the EDI system following Procedure is to be adopted by the Superintendent Preventive (Docks).

- 1) After the loading of bulk cargo and stuffing and loading of Container Cargo is completed under the Preventive Supervision, the Preventive Officer, before endorsing shipment particulars on the exporter copy of the shipping bill, will collect the Cargo Loading Plan/Container Stuffing Sheet, copy of Mate's receipt and a Photostat Copy of the Exporter Copy of the Shipping Bill.
- 2) He will then enter the particulars of Loading / Stuffing in the prescribed register maintained for this purpose. Format of the register is given below.

FORMAT OF THE REGISTER

1. Sl. No.
 2. Shipping Bill
 3. Description of Cargo
 4. Quantity as per Shipping Bill / No. of Packages
 5. Container No. and Size
 6. Seal No.
 7. Name of the Vessel
 8. Date of the Shipment
 9. Quantity loaded / stuffed
 10. Signature of Preventive Officer
 11. Date of Entry of Preventive Officers Report (Loading / Stuffing Report) by the Superintendent.
 12. Signature of the Superintendent and Date who entered the report in the System.
 13. Short Shipment, if any
 14. Remarks
1. The Preventive Officer will hand over the documents and the Register, to the Superintendent Preventive(Docks) to enter the cargo loading Report in the Computer.

2. The Superintendent Preventive(Docks) will ensure that the particulars of Cargo stuffed in a Container and loaded into the vessel on the previous day, are entered into the system between 10 AM to 2 PM every day.
3. After entry of the report the Superintendent Preventive (Dock) will put his signature and mention Short/excess Shipment, if any in the register.
4. The Supdt. Preventive(Docks) will then generate the Export Promotion copy of the Shipping Bill. The date of Shipment, Mate Receipt No., sailing date of the Vessel will automatically get printed on the Shipping Bill at an appropriate place, after his approval.
5. The Supdt. Preventive (Docks) will then hand over the Export Promotion Copy to Exporter / CHA, after keeping the acknowledgement in the register maintained for that purpose.

The above procedure should be followed scrupulously. The Assistant Commissioner (Preventive) / EDI will inspect the register at regular intervals to monitor the entry of the reports in the computer.

5. MONITORING OF FILING OF EXPORT GENERAL MANIFESTS (EGM)

Since sanction of Drawback claims is dependent on timely filing of manifests by the Shipping Lines, it has to be ensured that Shipping Lines do not resort to undue delays in filing of EGMs. A register should be maintained with the Supdt. Dock at the gate for entering particulars of all vessels sailing out and the Supdt.Preventive (Docks) shall furnish a daily report for all vessels sailing out. Action should be initiated against the Shipping Lines which fail to deliver the EGMs electronically within 7 days of the departure of the vessel.

6. SANCTION OF DRAWBACK:

- 6.1 After the let export has been allowed and EGM has been filed the Shipping Bills will be available on the screen for sanction of the Drawback after the manifest has been matched on the system. The Drawback shall be sanctioned on-line on the computer terminal by Assistant Commissioner (Export/DBK).

At the time of sanction of Drawback Officers of the Drawback Section (Appraiser / Examining Officer) shall carefully go through the entries of the Shipping Bill particularly with reference to the following :-

- (a) Description of the Item : The officers should satisfy themselves that there is no error of the classification under Serial No. / Sub-Serial No. of the Drawback Schedule with reference to the description of the item displayed on the monitor & approved the Shed Officers. The entries / description are to be verified from the Drawback Schedule (Hard Copy) or the Drawback Schedule entered in the system. It may be further clarified that in cases where Drawback Schedule required non-availment of MODVAT, no query asking the Exporter to justify any such condition should be raised , subsequently asking an Exporter to produce any document, unless felt absolutely necessary and only with the prior approval of Asstt. Commissioner (EXP/DBK). The Let Export Order is to be given only after all the Certificates/Documents are produced at the time of Examination.
- (b) Examination report : The officer should carefully view the examination report fed by the Docks officers with reference to declaration pertaining to Drawback / Quota and description of item.
- (c) Departmental Comments : The officer should also view the monitor with reference to comments of the officers of Dock area, that may have been entered by them in Departmental Comments Module at the time of the examination for Drawback purposes. The Drawback officers shall

ensure that any requirement directed to be complied with, by the Shed Appraiser, is duly satisfied before Drawback is sanctioned.

- 6.2 In case of any error noticed with reference to classification / description, value and quantity of the goods, a query may be raised by the Appraiser (DBK) to the exporter to explain, the discrepancies. Each such query shall be confirmed by the Assistant Commissioner(DBK) before being communicated to the exporter. The Appraiser(DBK) can also seek advice from the Assistant Commissioner (DBK) through the system, if any clarification is required. If the drawback claim is in order the Assistant Commissioner(DBK) may sanction the Drawback amount.
- 6.3 A scroll will be generated at the end of the day by the Drawback section with reference to total number of drawback claims sanctioned on that day. On the basis of scroll, an advice is to be sent to the Bank for payment of Drawback, by the A.C(DBK). When connectivity with the bank is established, payment through the bank will be made as per Para 18.10 of the Public Notice No.42 dt. 22.03.1999.
- 6.4 In order to ensure that the drawback declaration captured on the system is in accordance with the signed declarations given by the exporters, it is essential that the officers sanctioning drawback should call for the physical copies of the Shipping Bills in about 10% of the cases for test verification.
- 6.5 Shipping Bills in respect of goods under claim for drawback against brand rate would be processed as per the above procedure except that drawback would sanctioned only after the original brand rate letter is produced before the Appraiser (Drawback). A register shall be maintained by the Assistant Commissioner (DBK) where a copy of the scroll is to be pasted on the Drawback sanction register and the same should be tallied with payment scroll of Bank next day. The payment scroll should also be parted on the same register next to the Drawback scroll and Assistant Commissioner(DBK) to sign the same on verification as a token of tallying the both.

7. SPECIAL CHECKS :

As mentioned above, examination of goods is very crucial for ensuring the correctness of the Drawback and other export benefits. With a view to ensure that all checks / examination of the in the dock area have been carried out before Let Export Order is given, test checks / examination of goods after the goods have been allowed 'let export' will be carried out by the special investigation branch as per the procedure devised by the Commissioner.

8. STORAGE OF SHIPPING BILL IN EXPORT SECTION AND AUDITING OF SHIPPING BILLS :

- 8.1 As provided in the PN No.42 dt. 22.03.1999 of New Custom House, Mumbai the Docks Appraiser will retain the following documents in Docks.
- 1) Customs copy of the Shipping Bill.
 - 2) Original Copy of SDF.
 - 3) All declarations (Annexure A/B, Annexure C other Drawback declaration AEPC Quota and other certification).
 - 4) The check list in case of assessment of part consignments and consignments on holidays and beyond office hours.

The Docks Appraiser will send all the above documents to the export section, on the next day under the movement register. The Export section will receive all these shipping bills along with the documents and keep a record of such EDI shipping bills in a register maintained for the

purpose. Export Department will annex the EGM filed in the section with respective Shipping Bill and then send them to the Audit Section for auditing. After auditing is over the copies of the Shipping Bills will be received back in the export section and kept on record.

8.2 With a view to carrying out the Audit of Shipping Bills with reference to the physical documents, it is necessary that hard copies of the EGMs along with the copies of the Shipping Bills and the Annexures thereto are forwarded to the audit Department within 5 days of their receipt by the Export Department. A continuous flow of the documents will thus be maintained and on any given day, 7 days EGMs would be available in the Audit Department. Terminals would be allocated to the officers of the Internal Audit Department, who would selectively verify the particulars given in the Shipping Bills as allowed "Let Export" by the Appraiser (Docks) with the physical copies of the Shipping Bills. Apart from carrying out the checks prescribed for the assessing and examining officers (except those related to physical examination of the goods), the audit has to particularly ensure that the data relating to the declarations (for example, Drawback, DEEC, Quota, GR Waiver etc.) as per the Shipping bills has been correctly captured in the system. They would also audit that the Drawback has been correctly sanctioned by the Asstt. Commissioner (DBK). The Copies of EGM and hard copies of all the documents, thereafter will be sent to export section through a prescribed register for storage.

8.3 It is to be mentioned here that the audit of such shipping bills Drawback sanctions would be on a post clearance basis and the Drawback sanctioned would not await the audit clearance. In case of any incorrect sanction of drawback or irregular let export, the fact would reported by the audit to the Assistant Commissioner (DBK) for taking further action. The audit officers would be maintaining a record of all Shipping Bills audited and Shipping Bills in respect of which the objections have been raised in the prescribed register for monitoring their disposal.

9. REGISTRATION OF IEC CODE / BANK ACCOUNT NUMBER ETC.

Since the Importer Exporter Code Number (IEC No.), the authorized dealer code allocated by RBI forms the core of computerized processing of documents, it has been decided that the registration of these numbers in the computer system shall be personally made by the designated officer. The registration of the IEC number should be made only after verifying the originals of IEC code or original or a duly certified, legible photocopy of the letter issued by the statistical branch of RBI of Mumbai office regarding the authorized dealer code. In no case should the aforesaid numbers be registered in the computer system on the basis of declaration made by the exporters.

10. USE OF COMPUTER TERMINALS

10.1 As may be observed most of the operations relating to export documentation and clearance under the ICES procedure are carried out on computer terminals. No hard copies or physical documents are required to be signed by the officer till the 'let export' stage.

10.2 The decision taken by the officers are entered into the system through terminals. The access to the system, is only through 'password'. It is therefore, very important for the officers to ensure security of their password and to prevent misuse of their terminals by any unauthorized persons. As a precaution, officers are advised not to leave their seats with their terminals on. They must log out as per the prescribed procedure before moving away from their terminals. No person should be permitted to operate the terminals using the log in names allotted to the officers. It is also advised that the officers must keep changing their password often to ensure its secrecy.

10.3 The officers should only themselves make the data entry in the computer system. They should not under any circumstances permit any other person to enter the data / make amendments in

the shipping bills on their behalf. As mentioned earlier, in the new EDI procedure the responsibility is solely of the officer in whose User-ID the data entry/amendment is done. Therefore, necessary precaution are required to be taken by the officers to avoid any such misuse.

11. PROVISIONAL SHIPMENTS:

In the eventuality of a System Breakdown at any stage, the Addl. /Deputy (Joint) Commissioner, Exports may allow filing of manual Shipping Bills and provisional Export in cases where a check list has been generated.

12. ERRORS AND TROUBLESHOOTING

In case the officers come across a problem either with the personal computers or with the particular screen on which they are working, the same should be immediately notified to the Assistant Commissioner(EDI), who if necessary, shall intimate the computer center to sort out the problem.

THIS ORDER SHALL COME INTO EFFECT IMMEDIATELY.

[Extracts from Standing Order No. 7439 Dated 22.03.99 issued by the Commissioner of Customs (Export Promotion), New Custom House, Mumbai, from F.NO. EDI/S/6B-21966/99-Exp.]

COMPUTERISED PROCESSING OF BILLS OF ENTRY UNDER THE INDIAN CUSTOMS EDI SYSTEM – IMPORTS (ICES/ I) AT THE NEW CUSTOM HOUSE, MUMBAI

The importers, the exporters, the Custom House Agents and the Trade are informed are that computerized processing of Bills of Entry (B/Es) under the Indian Customs EDI System for imports (ICS/1- referred to as the System) have commenced for the IGMs filed in the Custom House. The changeover to computerized processing of Bills of Entry will be in phases.

1.1. However, B/Es in respect of the following type of goods shall continue to be processed manually under the existing procedures :-

- i) Diplomatic goods.
- ii) Unaccompanied baggage
- iii) Goods imported for export related schemes e.g 100% EOUs, EPCG scheme, EPZ, STP, EHTP, DEEC, Duty Exemption passbook Scheme, etc.
- iv) Re-import goods
- v) Goods under transshipment.
- vi) Goods falling under Chapter 22 of the Customs Tariff
- vii) Goods to be cleared under a kachcha B/E.
- viii) Goods to be cleared under an ex-bond B/E.
- ix) Ship stores.
- x) Goods subject to anti-dumping or safeguard duties.
- xi) Import of goods where particulars of goods are not known (Sec.46 of the Customs Act, 1962)
- xii) Cases where direct delivery is being requested.
- xiii) Cases where provisional assessments are to be done with requirement of revenue deposit.
- xiv) Cases of goods imported meant for re-export.

- xv) Cases where the importers opt for clearance under '**Fast Track Clearance System**'/assessments presently being done in '**Single Window Clearance Group**'
- xvi) Cases where the goods are to be cleared from CFS Mulund.
- xvii) Cases where part delivery is given.
- xviii) Project imports.
- xix) Bulk Cargo
- xx) Cases where sea freight actually incurred exceeds 20% of the declared FOB value.
- xxi) The goods imported under Adhoc Exemption Order.
- xxii) Imports covered under Customs Notification Nos. 236/89 dated 01.09.1989 and No. 15/97 regarding preferential rate of duty.
- xxiii) Goods covered under the Additional Duties of Excise (Textiles & Textiles Articles) Act, 1978.

2. The Importers and CHAs are required to submit information in the prescribed enclosures for creating database in the System. It is reiterated that it will not be possible to process the documents under the System without submission of the data.

3. In the beginning, Bill of Entry will be entered in the System at the Service Centre in the Custom House (the "Centre" for short). Later, option of remote message transfer would be made available. In that case, the Shipping Lines, Steamer Agents, Importers or CHAs can electronically file IGMs, Bills of Entry from their offices through dial up modems using telephone lines. Procedures for this purpose would be notified separately.

4. IMPORT GENERAL MANIFEST :-

Prior IGM :

4.1. - The Shipping Lines (to be taken as including the Steamer Agents for this Public Notice) will submit the Import General Manifest in the form at Annexure II (duly filled up and signed) in two parts at the Centre.

4.2. - Along with the above, the Shipping Lines would be required to submit the electronic versions of the Import General Manifest on floppies, containing all the details and particulars in the form at Annexure II. It should be ensured by the Shipping Lines that all the particulars and details of the Import General Manifest submitted in paper form as well as on the floppy exactly match.

In case it is not possible to submit Import General Manifest in electronic form on floppies, the Centre will enter the data into the System on the basis of Annexure II and generate a draft IGM. The Shipping Line has to verify the correctness of the data entered in the System as per the draft, correct the errors, if any, and re-submit for corrections. This process would be carried out till a clean copy is printed and signed by the Shipping Line.

4.3. The Cargo Declaration being made in Form III (Customs Series Form No.58) under the Import Manifest (Vessels) Regulation, 1971, already contains the details required for Part II of the aforesaid declaration form (Annexure II). Therefore, the existing Cargo Declaration can serve the purpose for capturing information for Part II above. Where, however, any particulars are missing in the said Form III, the Shipping Lines could be required to indicate these details against the relevant line to facilitate data capture in complete form. Where the number of packages in a container is not available, it may be left blank.

4.4. - The Centre will submit the finally corrected data to the System. The IGM No., generated by the System would be indicated on the final IGM and returned to the Shipping Line or the Steamer Agent.

4.5. - On arrival of the vessel, the Shipping Line will approach the Preventive Officer in the Docks for granting entry inwards. Before making the application, the Shipping Line would make payment of the Light House Dues. The said P.O. will retrieve the IGM in the System by entering the arrival date, amount of Light House Dues paid, date of payment of Light House Dues and will grant entry inwards.

FINAL IGM :-

4.6 In case the Shipping Line is filing an IGM after arrival of the vessel and where no prior IGM has been filed, the same procedure as above would be followed except that the date of arrival of the vessel, shall be indicated in Part I of Annexure II for the purpose of data entry. After submission, the Shipping Line would approach the said designated P.O. for grant of entry inwards in the System.

5. CARGO DECLARATION (Bill of Entry)

Submission of Cargo Declaration at the Service Centre

5.1. - The Cargo Declaration in the format at Annexure I shall be made either through the Custom House Agents holding the valid licence under Customs House Agents Licencing Regulations, 1984, or by the importers on self basis provided they have got registered with the Custom House and hold valid identity cards issued by the Custom House. The CHA and such `SELF' importers shall indicate their identity card number and the complete name of the person signing the declaration as prescribed in Annexure I.

5.2. - The schedule of charges for data entry in the Centre shall be as determined by the Custom House from time to time.

5.3. - The declaration would be accepted at the Centre between 10.00A.M. to 4.30 P.M. and will be entered in the System the same day.

5.4. - Certified copies of Invoice and Packing List shall be enclosed along with Annexure I.

Once the IGM is filed in the System, whenever a Bill of Entry pertaining to any line in the said IGM is filed, the System will cross check the details of IGM No., Bill of Lading, etc., and the Bill of Entry would be accepted only if the relevant particulars match with those in the IGM. If any Bill of Entry is not accepted by the System, the CHAs(to be taken as including "SELF" Importers hereafter) should verify whether the IGM No. or Bill of Lading No. have been correctly furnished in the Bill of Entry submitted by them. Bill of Entry would be accepted by the System only if correct particulars of the IGM, Bill of Lading, etc., have been indicated. The System will accept only one Bill of Entry against a line number.

5.5. - The claim for assessment shall be made against each item of the Invoice. If there are more than one invoice, information shall be furnished for each item invoice-wise i.e. complete information of item in one invoice must precede information of items in the second invoice.

5.6. - If the particulars of classification are same for the next item also, the word "DO" will be accepted by the System for the next item of the invoice.

5.7. - RITC Nos. and ITC(HS) EXIM Code Nos. shall be indicated in eight (8) digits and CTH and CETH shall be indicated in six (6) digits without any decimal in between (e.g. 850110 and not 8501.10).

5.8. - In respect of goods for which benefit of notification no. 23/98-Cus dated 02.06.98 is claimed, against the entry `Generic Description' in Annexure I, list No. and the serial no. of the list shall be mentioned in addition to the generic description of the item. The Centre Operator will feed first the list no. and serial no., and if there is space left, generic description of the item.

For example, Nebulizers are covered by S.No. 244 of the Table of Notification No. 23/98 (List 22, Sr.No. 19). This entry would be described as :-

<u>Generic Description</u>	<u>CTH</u>	<u>Notfn./Year.Sr.No.</u>
L22/19, Nebulizers	9018	23/98, Sr.No.244

5.9. - Annexure I shall be received only if it is complete in all respects and legible.

5.10. - The Centre Operator shall carefully enter the data entered in Annexure I and hand over the resultant check list to the CHA for confirming the correctness of entries. The CHA would make the corrections, if any, sign the checklist and return it to the Operator. The operator shall make corrections in the corresponding data and submit the revised checklist to the CHA for re-confirmation. This process would be repeated till the CHA signs a clean checklist in token of correctness of the entered data.

5.11. - The Operator shall submit the authenticated electronic checklist to the System. The System will then generate a Bill of Entry No., which would be endorsed on the printed checklist and returned to the CHA.

5.12.- The operator shall retain the original Annexure I and pass them to the A.C.(in-charge EDI Cell) on each working day.

5. ENQUIRY :-

6.1. - Enquiries about the status of any Bill of Entry may be made at the Enquiry Counter of the Centre. In addition, a print out indicating the status of pending Bills of Entry shall be displayed at 12.30 P.M. and 5.00 P.M. on the Notice Board in the Service Centre Hall.

6.2 - In case of objections/queries, a print thereof will be given to the concerned CHA/"SELF' Importer at the Centre.

6.3. - The reply of the said objection/queries will be furnished in writing to the Centre and shall be entered in the System.

7. GREEN CHANNEL FACILITY

7.1. - Eligible importers can request for Green Channel Clearance by making request at the time of filing the Declaration Form (Annexure I). They will have to enter "Y" against S.NO. 14(B) of the Declaration Form. The Bill of Entry will be processed in the normal course and if the Green Channel Clearance is approved by the A.C.(Apprg.Group) / A.C.(Import Shed), the Shed Appraiser would allow release of the goods, if the documents submitted by the CHA/"SELF' Importer are otherwise found in order. This would mean that physical examination of the goods would not be conducted.

7.2. - The decision of the A.C. (Import Shed) in matters of Green Channel Clearance would however, be final and the right to examine any package or consignment being reserved.

8. PROCEDURE IN THE CASE OF FIRST CHECK

8.1. - C.H.A./"SELF" Importers would be able to make a request for first check electronically, if it is necessary to do so, before assessment and where the complete information is otherwise available for filing the Bill of Entry. In the case of first check, at the data entry stage, the appropriate column in the Bill of Entry (Annexure – I) format should be flagged "Y" and the reason for the request for the first check should also be duly entered. With the introduction of this facility, first check requests will no longer be entertained manually except in cases where the importers do not have any information regarding description/value of goods (Sec.46 cases).

8.2. - If the first check examination order has been given, a print of the unassessed copy of the Bill of Entry with examination order and other instruction(s) shall be given to the CHA/"SELF" Importer. The CHA/"SELF" Importer shall put his signature on the printed Bill of Entry declaring truth of contents and shall present the printed copy of the unassessed Bill of Entry at the jurisdictional EDI Centre in the Docks for examination of the goods along with all original import documents, technical literature, etc. After carrying out the examination, the shed Appraiser shall endorse the Examination Report on the Bill of Entry and also in the System and attest the catalogue, etc., found with the goods. The importer shall present the printed unassessed copy of the Bill of Entry on which the Examination Report has been written, to the Assessing Appraiser for completing the assessment on the System. After assessment, the printed copy of Bill of Entry shall be returned to the CHA/"SELF" Importer. Customs copy of the Bill of Entry along with the Examination Report and three copies of TR-6 Challan, where required, shall be printed for being passed on to the CHA/"SELF" Importer, on enquiry, through the Centre.

8.3. - Signed copies of the TR-6 Challan shall be submitted by the CHA/"SELF" Importer along with the duty amount, to the bank.

9. SECOND CHECK APPRAISEMENT

9.1. - After the Bill of Entry is electronically submitted to the System, the assessment shall be made on the basis of the declaration and claims made by the "SELF" Importer/CHA in Annexure – I Declaration Form. In case the Assessing Appraiser does not agree with the declaration/claim regarding tariff classification/notification/declared value etc., he will raise a query in the System. On approval by the A.C.(Group), the query will be printed in the Centre for being passed on to the CHA/"SELF" Importer, on enquiry.

9.2. - Replies to the queries will be submitted in the Centre where such replies will be transferred to the System.

9.3. - In case the "SELF" Importer/CHA agrees with the classification/valuation etc. proposed by the Assessing Appraiser/A.C. (Group), the Bill of Entry would be assessed accordingly. In case the Assessing Appraiser or A.C. (Group), as the case may be, agrees, suo moto or on receipt of the reply from the CHA /"SELF" Importer, with the claim made by the CHA /"SELF" Importer, the System will print Customs copy of Bill of Entry along with three copies of TR-6 challan, where required, and Examination Order shall be printed and handed over to the CHA/"SELF" Importer. These documents can be collected by CHA/"SELF" Importer, on enquiry, through the Service Centre.

9.4. - However, where the A.C.(Group) does not so agree with the CHA /"SELF" Importer claim/declaration, Principles of Natural Justice would need to be followed before finalising the assessment.

9.5.- The CHA/"SELF" Importer shall put his signature on the printed copies of the Bill of Entry, declaring the contents to be true and present the copies of the Bill of Entry along with duty paid TR-6 challan and other documents, duly certified to the Shed Appraiser.

10. CARGO DECLARATION THROUGH RES

10.1. - The CHAs/"SELF" Importers using Remote EDI System (RES) facility at their premises, shall enter the data through their computers on the DOS based package and ensure the correctness of the data entry before submission of the Bill of Entry for transferring the data to Customs Computer. The CHA/"SELF" Importer may take a print of the check list before submission and authenticate the data entry. After submission of the Bill of Entry, the data shall be transferred to Customs Computer through NICNET. On receipt of valid data, the Customs Computer shall assign a Bill of Entry No..... For enquiry about the status of the Bill of Entry, the CHA/"SELF" Importer may use their Job No.. (which is

given by the computer before submission) and date. The Customs Computer will indicate the status of the Bill of Entry. If the Bill of Entry has been registered by the Customs Computer, the Bill of Entry No. shall be displayed in CHA/"SELF" Importer's workstation. If the Bill of Entry is already finally assessed, one copy of the Bill of Entry shall be printed along with three copies of the TR-6 challan for payment of duty.

10.2. - 1st check and 2nd check procedure shall be the same as explained above in paragraphs 8 and 9.

10.3 - The facility of data entry and submission through RES shall be available for 24 hours. All the Bills of Entry submitted after Customs working hours shall remain in the NICNET MAIL BOX and shall be transferred to Customs Computer on the following working day at 10.30 A.M.

11. **SYSTEM APPRAISAL :-**

Bill of Entry in respect of the items under System Appraisal would be assessed by the 'System' immediately on their presentation; and a customs copy of the Bill of Entry, three copies of TR-6 challan, where required, and Examination Order will be printed and will be available (on enquiry through the Centre) to the CHAs /"SELF" Importers for getting the goods examined and obtaining 'out-of- charge' order. All the Bills of Entry, which are appraised by the 'System', would be audited in the jurisdictional EDI Centre in Docks before being granted 'out of charge' order. For this purpose, one of the Audit Officers is being shifted to each EDI location in the Docks, who will audit Bills of Entry which have been assessed by the 'System'. This procedure will be followed in respect of all Bills of Entry which have been assessed by the 'System.' In so far as the NMIDEC cases (e.g. Customs Notification Nos. 51/96 dtd. 23.07.96, 39/96 dtd. 23.07.96, 20/99 dtd. 28.2.99 are concerned, the debiting of the Pass Book etc. would be required to be done by the Shed Appraiser in the concerned jurisdictional EDI Centre. Examination of such goods would be carried out as per prescribed norms. An appraising officer (posted in the Docks) will be specifically assigned by the Asst.Commissioner (Docks) to deal with NMIDEC cases, in addition to his normal examination work.

12. **EXECUTION OF END USE UNDERTAKING BONDS :-**

End-use undertakings and Bonds shall be accepted manually by the concerned Assessing Officers as is being done at present, in the concerned Appraising Groups.

13. **DEBIT OF IMPORT LICENCES :-**

Debit entries in all Import Licences will be made in the Licence Section of the Custom House. These debit entries will be audited in the Licence Section itself and suitable endorsement to that effect will be made in the Customs copy of the Bill of Entry by a special Appraising Officer posted for this purpose in Licence Section.

14. **PAYMENT OF DUTY :-**

14.1. - With the introduction of computerisation and electronic processing of the Bills of Entry, based on EDI System, the Customs duties and other dues would be collected at the designated Bank.

14.2. - The said Bank Counter is linked with the System and will electronically transfer the amounts to the respective Customs Heads of Account.

14.3. - The CHA/"SELF" Importer shall present three copies of the TR-6 Challan to the said Bank for payment of duty and other dues. The Bank shall verify the particulars in the TR-6 Challans from the System, enter the particulars of receipt of amounts in the System and return two copies of TR-6 Challans duly stamped and signed to the CHA/"SELF" Importer. The Bank will retain one copy of the paid TR-6 Challan.

14.4- The "SELF" Importers/CHAs can pay the duties or other dues by Cash/Demand Draft/ Pay Order. However, the Trade is advised to open an account in the said Bank Branch and give standing advice to the said Bank Branch to debit the Customs duties or other dues from their said account for credit to the respective Customs Heads of Account so that the duty and other dues can be paid immediately after completion of Bill of Entry and clearance effected without loss of time.

15. ALERT VERIFICATION: -

Before examination of the goods, the CHA/"SELF" Importer will submit the printed copy of the un-assessed Bill of Entry, in respect of First Check cases or the Customs copy of Bill of Entry in other cases, to the "Alert Verification Counter" in the Centre. All Bills of Entry will be verified against the records and if everything is in order, Bills of Entry will be stamped and returned to the CHA/"SELF" Importer. The CHA/"SELF" Importer will then proceed for examination of goods.

16. EXAMINATION OF GOODS AND DELIVERY :-

16.1. - The CHA/"SELF" Importer, after obtaining the location and forwarding order of the goods from the Port Trust, shall present the Bill of Entry to the concerned jurisdictional EDI Centre in Docks

In cases, where the goods covered by a Bill of Entry are found to be stored at more than one location in Docks, the Bill of Entry will be presented by the CHA/"SELF" Importer to the EDI Centre having jurisdiction over the location where the largest number of packages are stored. In case, equal number of package are stored in two or more locations, the Bill of Entry shall be presented by the CHA/"SELF" Importer to the EDI Centre appearing first in the numerical list of order in the list of EDI Centres.

16.2. - However, in cases of imports of machinery with spares/accessories, the Bill of Entry will be presented by the CHA/"SELF" Importer to the EDI Centre having jurisdiction over areas where the main machinery is stored.

16.3. - Registration of Bills of Entry at the jurisdictional EDI Centre

The CHA/"SELF" Importer will present the Bill of Entry to the specifically nominated Customs Officer at the jurisdictional EDI Centre for the purpose of registration of the Bill of Entry at the EDI Centre. After registration, such specifically nominated Customs Officer will indicate (on the printed copy of the Bill of Entry) the name of the Appraising Officer for conducting examination of the goods.

16.4. - The CHA/"SELF" Importer shall submit his signed printed copy of the Bill of Entry, along with Duty-paid TR-6 challan and other documents, duly certified, to the concerned Shed Appraiser. The documents shall be arranged in the file cover in the following order :-

- i) Duty paid TR-6 Challan(in original), wherever applicable;
- ii) Printed copy of the unassessed Bill of Entry under First Check Appraisalment procedure;
- iii) Examination Order (in original);
- iv) Customs copy of the assessed Bill of Entry under Second Check Appraisalment procedure;
- v) Bank attested Invoice (in riginal and a photo copy)
- vi) Packing List (in original and a photo copy);
- vii) Certificate of Origin (in original and a photo copy);
- viii) Exemption Certificate(s)(in Original), when concession(s) in duty has(have) been claimed, based on any certificate(s) under any Notification(s);
- ix) Copy of Bond(s) or Undertaking(s) executed, if any
- x) Duly signed (by CHA/"SELF" Importer) declaration (in original) as per the said Annexure-III;
- xi) GATT declaration (in original) duly signed by the importer;

- xii) Copy of Delivery order;
- xiii) Bill of Lading;
- xiv) Technical literature, Catalogues, etc.
- xv) Any other declaration (in original) which may be required in terms of law;
- xvi) Test memo wherever required.

16.5. - All these documents will be retained by Customs at the time of granting 'Out-of-Charge.' As such, only certified/xerox copies of documents should be submitted where originals are not required.

16.6. - The Shed appraiser shall examine the goods and enter his Examination Report in the System as well as endorse the Examination Report on the printed copy of the Bill of Entry. He shall also sign the catalogue, invoice, etc. The CHA/"SELF" Importer shall sign the Examination Report on the printed copy of the Bill of Entry in token of the goods having been examined in his presence. He will record his name and I-Card No.(issued by the Custom House).

16.7.- In case the Shed Appraiser has a doubt or a query after examination of the goods, he will write it manually on the printed copy of the Bill of Entry, with the approval of A.C.(Docks).

16.8.- The CHA/"SELF" Importer shall submit his reply (to the above doubt/querie) to the Shed Appraiser. If the Shed Appraiser still feels that the Bill of Entry requires re-assessment, he shall forward it to A.C.(Group) through A.C.(Docks), with his comments on the Bill of Entry as well as in the System. A.C.(Group) will examine the facts and take appropriate action, if necessary, after following the Principles of Natural Justice.

16.9. - However, if the CHA/"SELF" Importer's reply (to the above doubt/querie) is acceptable, the Shed Appraiser will proceed to complete the examination of the goods.

16.10. - After completing examination of the goods, the Shed Appraiser would give 'Out-of-Charge' in the System, Thereupon, the System will print two copies of Bills of Entry viz. Importer's copy and Exchange Control Copy. The System will also generate three printed copies of 'Out-of-Charge' order viz.-

- a) Customs' copy;
- b) Gate P.O.'s copy; and
- c) Port Trust's copy.

All these printed copies of Bill of Entry will carry the Examination Report, 'Out-of-Charge' order No. and name and signature of the concerned Shed Appraiser. The above two printed copies each of Bill of Entry and 'Out-of-Charge' Order shall be returned to the CHA/"SELF" Importer after the Shed Appraiser signs them. One copy of the 'Out-of-Charge' order (duly signed by the Shed Appraiser) will be attached to the Customs copy of Bill of Entry and retained by the Shed Appraiser.

16.11.- The CHA/"SELF" Importer shall present copies of the 'Out-of-Charge' order and Importer's copy of Bill of Entry to Port Trust. The Port Trust shall issue the Gate Pass on strength of these documents. The Port Trust will retain one copy of the 'Out-of-Charge' order and return Importer's copy of Bill of Entry to the CHA/"SELF" Importer.

16.12. - The C.H.A./"SELF" Importer will present the importer's copy of Bill of Entry, the 'Out-of-Charge' order and the Port Trust Gate pass to the Customs Preventive Officer at the Docks Gate. The Gate Preventive Officer shall, after inspecting the packages, endorse the number of packages on the 'Out-of-Charge' Order and retain it. The Importer's copy of Bill of Entry and Gate Pass shall be returned to the CHA/"SELF" Importer.

16.13. - **PROCEDURE FOR OBTAINING OF PQ/ADC/PHO CLEARANCES:-**

In case of examination of goods , requiring N.O.C. from any of such other (i.e. other than Customs) Authorities, such NOC will be obtained and got endorsed on the printed un-assessed copy of the Bill of Entry (in case of First Check assessment) or Customs copy of Bill of Entry (in case of Second Check assessment).

16.14. - PROCEDURE FOR DRAWING AND FORWARDING SAMPLES FOR TESTING BY DEPUTY CHIEF CHEMIST LABORATORY IN THE CUSTOM HOUSE:-

Wherever, the A.C.(Group)/Assessing Officer desires the drawal and testing of a sample from an imported consignment, A.C.(Group)/Assessing Officer will prepare the TR Memo (which will bear the Bill of Entry No. also) in triplicate and attach it with un-assessed copy of the Bill of Entry in case of the First Check examination and to the Customs copy of Bill of Entry in case of Second Check examination.

In case of samples drawn, for test, on First Check examination of the goods, the Shed Appraiser will forward the samples, duly signed TR Memo along with the un-assessed copy of the Bill of Entry bearing the Examination Report, to Dy.C.C. Laboratory in the Custom House. In the case of Second Check examination, the Shed Appraiser will forward the samples, duly signed TR memo along with the Customs copy of the Bill of Entry bearing the Examination Report, to Dy. C.C. Laboratory in the Custom House.

16.15.- SPECIAL EXAMINATION :-

Whenever an import consignment required to be examined by an Expert Appraiser or under supervision of A.C.(Docks), or under supervision/in the presence of Officers from DRI/SIIB/CIU/DIU or other Enforcement Agencies, all such Experts and/or other Officers will examine the consignment and write and/or sign the Examination Report on the un-assessed copy of the Bill of Entry in case on First Check examination and on the Customs copy of the Bill of Entry in the case of Second Check examination. The Shed Appraiser will feed the Examination Report in the System with special mention of the fact of examination under the supervision /in the presence of such Experts and /or other Officers and their special remarks (if any) and further process the Bill of Entry as usual.

16.16. - PROCEDURE FOR EXAMINATION AND DELIVERY OF GOODS COVERED BY ONE BILL OF ENTRY STORED AT MORE THAN ONE LOCATION IN THE DOCKS :-

In cases where the goods imported against a Bill of Entry are located at more than one location in Docks, the individual parts of such consignment will be examined by the same Shed Appraiser who is assigned the task of examination at the jurisdictional EDI Centre (ref. Paras 16.1 to 16.3 ante). However, the said Shed Appraiser will grant 'Out-of-Charge' in the System only after he has entered all his various Examination Reports (relating to all the parts of the consignment) into the System. Location particulars, number of packages, etc will be clearly indicated along with each Examination Report for each part of the consignment, to form one whole Examination Report for the Bill of Entry and the 'Out-of-Charge' Order will be granted only thereafter. In such 'Out of Charge' Order, the Shed Appraiser will make endorsement for the Gate P. O. as under: -

"This consignment against Bill of Entry No.....datedis located at more than one location in Mumbai Docks – as indicated in the Examination Report".

In such a situation, for the said Bill of Entry at the time of delivery of each part of the consignment, the concerned Gate P. O. will endorse the quantum of delivery on the Gate P. O's copy of 'Out of Charge' Order (as directed by Shed Appraiser) and such endorsed Gate P. O's copy of "Out-of-Charge' Order will be given back to the CHA/"SELF" Importer. The said Gate P. O's copy of 'Out-of-Charge' Order will be retained by the Gate P. O. when the last part of the consignment is being taken out from the Docks Gate.

16.17. – DOCKS PROCESSING OF WAREHOUSING BILLS OF ENTRY (i. e. INTO-BOND BILLS OF ENTRY)

After examination and Examination Report in the same manner as for Bills of Entry for Home Consumption, the concerned Shed Appraising Officer should enter in the System, the Examination Report as well as on all three copies of "Out-of-Charge" Order that **"the goods are passed into bond"**.

Thereupon, the concerned Superintendent of Customs (Preventive) in the Docks shall forward (the Forwarding Order to be endorsed on Importer's copy of the Bill of Entry) the goods for warehousing after sealing or under Customs Escort – as the case may be.

16.18. – CASES OF SHORT-LANDING, PILFERRAGE, SHORTAGE IN IMPORT CONSIGNMENTS

In such situations, the Survey Report (Survey to be conducted on request by CHA/"SELF" Importer) should be endorsed on the unassessed copy of Bill of Entry (in the case of First Check) and Importers and Customs copy of Bill of Entry in the case of Second Check examination.

17. AVAILING MODVAT CREDIT ON THE BASIS OF IMPORTER'S / DUPLICATE COPY OF EDI BILL OF ENTRY: -

In order to remove the difficulties, if any, faced by the importers in availing Modvat Credit under Rule 57 (g) / 57 (t) of the Central Excise Rules, 1944 – in respect of Bills of Entry assessed through the EDI System, it is clarified that Duplicate/Importer's copy of Bill of Entry is generated by the System only after completion of assessment and payment of duty and examination. The Duplicate/Importer's copy of Bill of Entry signed by the CHA/Importer and counter-signed by the Appraising Officer of Customs, with his name is the proper document for availing the Modvat Credit as per Rule 57 (g) / 57 (t) of the Central Excise Rules, 1944.

In case of third party MODVAT availment, MODVAT declaration will be authenticated/endorsed on reverse of Importer/Duplicate copy of Bill of Entry by the Shed Appraising Officer.

The Central Excise Officers should allow Modvat Credit on the basis of Duplicate/Importer's copy of EDI Bill of Entry without insisting on a separate Modvat Certificate. However, in case of doubt, the Central Excise Officers can request the Custom House to confirm the details from the System. The System has in-built features to give a warning message if two different Central Excise formations sent the request for checking details of countervailing duty paid on the same Bill of Entry.

18. AMENDMENTS OF IGMs & BILLS OF ENTRY :-

AMENDMENTS OF IGMs –

18.1. - Shipping Lines should submit a written request to A.C.(Import Department) for seeking amendment of IGM giving reasons therefor. If satisfied, A.C.(Import Department) would permit carrying out amendment of IGM in the system. Such amendments in the System will be carried out in the Centre.

AMENDMENTS OF Bills of Entry -

18.2. - In case any error is noticed after submission of B/E, but before examination of goods, the CHA/"SELF" Importer may seek amendment of the Bill of Entry through the Centre after obtaining permission of the concerned A.C.(Group).

18.3. - In case any error is noticed after examination of import goods but before 'Out-of-Charge' order has been recorded in the System, the CHA/"SELF" Importer may seek amendment of the Bill of Entry through the Centre after obtaining permission from concerned A.C. (Docks) in charge of the jurisdictional EDI Centre.

18.4 No amendment in Bill of Entry particulars and consequent reprints shall be allowed after 'out-of-charge' order has been recorded in the System. However, exception would be permitted in the following cases :-

- i) If the provisions of Sec. 149 of the Customs Act, 1962, have been complied with;

- ii) If the request for amendment is made within four months of filing of the Bill of Entry;
- iii) The importer produces the Duplicate/Importer's copy as well as the Exchange Control copy of the Bill of Entry for cancellation before amendment is carried out and fresh print outs of the Bill of Entry are generated, and
- iv) The permission of the concerned Additional/Dy. Commissioner of Customs is obtained.

18.5. - No requests for attestation of extra copies of Bills of Entry or for re-prints shall be entertained. The CHA/"SELF" Importers are advised to keep the original documents (Importer's copy of Bill of Entry and duty-paid TR-6 challan) safely with them.

19. - MISCELLANEOUS

19.1 It is informed that the existing Public Notices issued by this Custom House relating to the procedures for presenting and processing of the Bills of Entry should be taken as suitably modified to the above and will continue to apply to the extent that they are not in contradiction with this Public Notice.

19.2 In cases, where it is felt that any difficulty in the electronic processing of Bill of Entry cannot be resolved without corrections in the EDI software, the System Manger will have the authority to allow manual processing of Bill(s) of Entry; and duly and promptly report the difficulty encountered to the Additional Commissioner (Systems), Directorate of Systems in the Custom House for suitable action.

[Based on Public Notice NO. 85 / 99 Dated 29/07/1999 issued by Commissioner of Customs (Imports), New Custom House, Mumbai, from file No. S/1-144/99EDI]

ANNEXURE I

DECLARATION FORM FOR FILING A BILL OF ENTRY

1. Importer Exporter Code (IEC) Number :
2. CHA Code Number :
3. Port of Shipment :
4. Country of Origin :
5. Country of Consignment :
6. IGM No. & Date :
7. Master B/L No. & Date :
8. House B/L No. & Date, if any :
9. Marks & Numbers :
10. Container Number :
11. Container Seal Number :
12. Container Size :
13. No. of Packages :
14. Gross Weight :
15. Type of Bills of Entry :
 - (a) Home Consumption/Into Bond/Ex-Bond
 - (b) Advance/Prior Entry/Post Arrival
 - (c) High Seas Sale/Defence/Books
16. Category of Importer : Government/Public Sector/Private
17. (a) Whether first Check is required? Y/N
 - (b) If yes, reasons therefor :

18. Whether Green Channel Clearance is required? Y/N

19. INVOICE DETAILS :

- i) Number :
- ii) Date :
- iii) Value :
- iv) Currency :
- v) Terms of Invoice : FOB/CIF/CI/CF
- vi) Freight Charges :
- vii) Insurance :
- viii) Other Charges :
- ix) SVB LOADING : (Y/N)

If yes, furnish the following details :-

- a) Reference Number :
- b) Date :
- c) Custom House :
- d) Loading On : A/D/B
- e) Percentage of Loading :
- f) Provisional or Final : P/F

20. CLAIM OF ASSESSMENT (PART I) :

S. No.	General Description including List No. where applicable	Unit Price	Net Quantity	Accounting Unit	DGCI&S ITC (HS) CODE	C.T.H.	Customs Notfn. No./Yr. S.NO.

NOTE : Attach additional sheets, if required.

CLAIM OF ASSESSMENT (PART II)

S. No.	Notfn. No. for SCD	CETH	C.Ex. Notfn. NO./Yr. S.No.	Notfn. for SAD	Other Notfn No., if any	CESS No.	DGFT ITC (HS) Code/ Policy para/ Licence details	Item-wise loading, if any.

NOTE : Attach additional sheets, if required.

21. WHETHER UNDER SECTION 48 : Y/N
If yes, reasons for delay:
22. NATURE OF TRANSACTION : SALE/CONSIGNMENT/HIRE/GIFT/
OTHERS
23. TERMS OF PAYMENT : LC/FOC/DP/SD/OTHERS
24. CONDITIONS ATTACHED WITH SALES, IF ANY :
25. ARE BUYER AND SELLER RELATED : Y/N
- IF YES.
- i) NATURE OF RELATIONSHIP :
- ii) BASIS OF DECLARED VALUE :
- iii) VALUATION RULE(S) APPLICABLE :
26. PARTICULARS OF PACKAGES AGAINST EACH ITEM OF INVOICE:

DECLARATION

1. I/We enclosed copies of the following documents:-
- i) INVOICES
- ii) PACKING LIST

I certify that, the declaration above, the documents and the information contained therein are true and correct.

Signature of the CHA/Importer

(Authorised Signatory only) :

Name:

Date:

NOTE: Where the invoice contains more than one item, in units or by description unit price of each item shall be indicated.

ANNEXURE II

DECLARATION FORM FOR FILING IMPORT GENERAL MANIFEST

PART I

1. Status of IGM : Prior/Final
2. If final, Date of the Arrival of the Vessel :
3. Name of the Vessel :
4. Vessel Code :
5. Voyage Number :
6. Name of the Shipping Line and its Code :
7. Name of the Steamer Agent and its Code :
8. Last Port of Call :
9. Gross Registered Tonnage :
10. Net Registered Tonnage :
11. (a) Amount of Light House dues paid :
(b) Date of payment :
12. Whether carrying nil cargo? If yes, Part II is not required.

Authorised Signatory

Stamp of Steamer Agent

PART II

1. Master B/L Number :
2. Master B/L Date :
3. House B/L Number :
4. House B/L Date :
5. Port of Shipment :
6. Port of Destination :
7. Description of Goods :
8. Total No. of Packages :
9. Gross Quantity :
10. Accounting Unit :
11. Marks & Numbers :
12. Consignee's Name & Address :
13. Importer's Name & Address :
14. Container Number ;
15. Container Seal Number :
16. Container Size :
17. FCL or LCL :
18. Total No. of Packages in the container :

NOTE

1. Where the number of packages in a container is not available , the entry may be left blank.
2. If the cargo is bulk in nature, total number of packages may be shown as one.
3. Master B/L means the B/L relating to individual consignment, House B/L, on the other hand, denotes B/L for consolidated cargo.

Authorised Signatory
Stamp of Steamer Agent

ANNEXURE III

(Declaration to be signed by the Custom House Agent)

1. I/We declare that the contents of this Bill of Entry for goods imported against Bill of Lading No. dtd..... are in accordance with the Invoice No. dtd. and other documents presented herewith.
2. I/We declare that I/We have not received any other documents or information showing a different price, value, quantity or description of the said goods and that if at any time hereafter I/We receive any documents from the importer showing a different state of facts. I/We will immediately make the same known to the Commissioner of Customs.

N.B. :- Where a declaration in this form is made by the Custom House Agent a declaration in the prescribed form shall be furnished by the Importer of the goods covered by this Bill of Entry.

Date :

Signature of the Importer or his Custom House Agent.

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CHAPTER – TWELVE

EXPORT ORIENTED UNITS

PRELIMINARY

Owing to the deficit in the balance of trade, not to mention about the increase in export performance, which is not adequate to bridge the gap in foreign exchange reserves, it had become necessary to step up growth of our exports. Among various schemes that are and that were brought up by Government of India with a view to encourage exports vis-à-vis foreign exchange earnings, such as cash compensatory support for 'export end products' grant of Import Replenishment Licences under Registered Exporters Scheme, Duty Drawback, grant of duty free import under advance licensing etc., the scheme for setting up 100% Export Oriented Units was brought out by Government of India, Ministry of Commerce by its resolution No. 8 (15) 78 EP dt.31.12.80. as amended by Resolution No. 1/5/82 EP dt. 21.11.83. Under this scheme, certain concessions are given to enable the 100% E O Us to meet the rigours of foreign demand, in pricing, quality and precision etc.

1 WORKING OF 100% EOUs

100% EOUs fall into three categories:

- (a) EOUs established anywhere in India and exporting 100% products except certain fixed percentage of sales in the Domestic Tariff Area (DTA) as may be permissible under the policy.
- (b) Units in Free Trade Zones (FTZs) Export Processing Zones (EPZS) and exporting 100% of their products.
- (c) EOUs set-up in Software Technologies Parks (STPs) and Electronics Hardware Technology Parks (EHTPs) for development of software and electronics hardware.

1.1 100% EOU's are allowed to import raw materials, machinery components and consumables free of Customs duties. In case these are produced indigenously, such goods are exempted from payment of Central Excise duty. These units have to operate under Customs Bond and have to adhere to the level of value addition fixed by the Board of Approvals in the Ministry of Commerce.

1.2 Policy and procedural aspects in setting-up and running of a 100% EOU have been notified by the Government from time to time. The procedures relating to Customs & Central Excise formalities for 100% EOU's are enumerated below.

2. SETTING UP OF 100% EOUs

2.1 ELIGIBILITY:

Units undertaking to export their entire production of goods may be set up under the EOU Scheme. Such units may be engaged in manufacture/production of any goods, soft-ware, Hardware, agriculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Units engaged in service activities may also be considered on merits (Para 9.1 Exim Policy 1997-2002).

The following factors are generally taken into consideration before approval of the unit as 100% E.O.U.

- a) Marketing/Buy-back arrangement and track record of the promoter; Foreign equity participation; Manufacturing content (Board of Approvals under the Ministry of Industry, favours projects involving manufacture to mere assembly as in the absence of manufacturing operation the scope of reasonable level of value addition and continuity of exports is limited);

- b) Raw materials tie-ups,
- c) Foreign exchange outgo on account of technology tie-ups, marketing commission etc; and
- d) External commercial borrowing – raising of funds by external commercial borrowings is preferred where outgo of foreign exchange for capital goods etc. is involved.

Wherever, the applicant unit meets the aforesaid basic guidelines, the Board, which has representative of CBEC, approves the unit under the Scheme subject to the basic condition that the unit shall undertake to manufacture the goods in Customs bonded warehouse and to export its entire production for a period of 10 years ordinarily and 5 years in the case of products having high degree of technological change. The Customs Authorities provide bond facilities to such units wherever located.

2.2 PROCEDURE FOR APPROVAL :

With a view to expedite approvals under the scheme, the Government has introduced a system of automatic approval for quick clearance of proposals through a single window concept which aims at grant of Letters of Intent/Permission, Import of Capital Goods and Foreign Collaboration, simultaneously.

Earlier, the Scheme envisaged that applicants for setting up of such units may be made to the Secretariat for Industrial Approvals (SIA), in the Ministry of Industry, where a Board of Approval for 100% EOU, created under the Chairmanship of the Commerce Secretary, considers such applications.

Now, in terms of Ministry of Industry Press Note No.6 dtd. 10.07.98 the applications for setting up EOUs shall be submitted to the Development Commissioner of the Export Processing Zone concerned. In case of 100% EOUs to be set up under STP/EHTP Scheme, the application shall be made to the Director of STP/EHTP.

As per the revised procedure, all proposals conforming to the prescribed parameters shall receive automatic approval within two weeks from the Development Commissioners (DCs) of Export Processing Zone concerned. All other proposals, which do not conform, to the parameters for automatic approval, shall be forwarded by the Development Commissioner to the Board of Approvals for consideration.

The detailed procedure for application and criteria for automatic approval has been given in the Press Note No.3 dated 19.04.1995, as amended and Appendix 16 of the Handbook of Procedures.

2.3 LEGAL FRAME WORK :

The unit shall execute a Bond/Legal Undertaking with the Development Commissioner concerned and in the event of failure to fulfil the obligations stipulated in the Letter of Approval (LOA)/Letter of Intent (LOI) it would be liable to penalty in terms of Bond/Legal Undertaking or under any other law for the time being in force. The LOA/LOI shall specify the items of manufacture, annual capacity, percentage of value addition to be achieved, limitations regarding sale of finished goods and rejects in the Domestic Tariff Area (D.T.A.) and such other matters as may be necessary and also impose such conditions as may be required.

In case of failure to fulfil the export obligation as per legal agreement, within the stipulated time, the following has been provided for :-

Payment of Custom duty on	Payment of excise duty on On indigenous	Penalty under Foreign Trade (D&R) Act, 1992 & Rules made there under	Specific permission before export products disposed off in local market and action under Foreign Trade (D&R) Act, 1992, the Rules made thereunder & The Exim Policy
<ul style="list-style-type: none"> • plant • machinery • equipment • raw material • components • consumables 	<ul style="list-style-type: none"> - plant - machinery - equipment - raw materials - components - consumables 		
[allowed for import as per licence)	(purchased by units during the period]		

Interest at 24% from the date of import/supply to the date on which payment is made to the Govt. is also to be paid.

2.4 CONVERSION OF DTA UNITS TO 100% EOUs:

Conversion of an existing DTA unit into an EOU may also be permitted. For this purpose the DTA unit may apply to the SIA in the same manner as applicable to new units. No concession in duties & taxes shall, however, be available for plant machinery and equipment already installed.

If an individual unit is operating, both as a domestic unit as well as an EOU, it shall have two distinct identities with separate accounts – to be able to distinguish between their Import & Export or supplies effected by the EOU and the D.T.A. unit. In this regard, attention is invited to Board's Circular No. 38/95 dated 17.5.95 wherein the Board has desired that the facility of partial conversion debonding, resulting in operation of DTA and 100% EOU from a common or adjacent premise is to be carefully monitored.

Partial Conversion of a DTA Unit to a 100% EOU/EHTP/STP Unit

It has come to notice of the Board that in the event of partial conversion of a DTA unit to a 100% EOU/EHTP/STP unit, etc. and *vice versa*, after necessary approval from the competent authority, both 100% EOU/EHTP/STP etc. units as well as the DTA unit function from the same or adjacent premises. At times some of the utilities may also be common to both the DTA and the 100% EOU/EHTP/STP, etc. units. In such situation the possibility of goods imported duty free under the various 100% EOU schemes, being diverted for use by the DTA unit cannot be ignored. Further, the possibility of transfer of production from one unit to another for obtaining tariff concession available to either unit is also real. Particularly since a customs officer will not be physically present at all times, it is always possible to use the equipments imported for the EOU for production in DTA and further to show goods produced in the EOU as the manufacture of the DTA unit or *vice versa*.

2. Whereas care is taken to insist upon complete physical segregation between DTA unit and 100% EOU/EHTP/STP, etc. units whenever requests for partial conversion/debonding are received, the above indicated possibilities which have adverse implications on revenue have to be necessarily taken care of.

3. In view of the aforesaid facts, the Board desires that the facility of partial conversion debonding resulting in operation of DTA and 100% EOU/EHTP/STP, etc. units from common or adjacent premises is to be carefully monitored. Preventive checks at regular intervals should necessarily be carried out to

ensure against the utilisation of EOU facilities for DTA manufacture. Further goods manufactured by EOU unit or DTA unit must be correctly reflected in the separate records of the respective units.

[Board's Circular no. 38 / 95 dtd.17.5.95]

Existing DTA units having an export obligation under the EPCG scheme may also apply for conversion into an EOU. On such conversion, the export obligation under the EPCG scheme will be met concurrently from the export by the unit as an EOU. (Para 9.28 – Exim Policy 1997 – 2002).

3. CUSTOMS & CENTRAL EXCISE PROCEDURES FOR 100% EOUs

Department of Revenue has exempted Capital Goods and the raw materials from the payments of customs duty when used in a 100% EOU. Similarly, indigenous procurements are also exempt from payment of central excise duty. The following conditions are to be satisfied by the 100% EOUs for availing of the benefit of duty-free imports: -

3.1 The manufacture of the goods by the EOU has to be undertaken in a Custom Bonded Warehouse. For this purpose, it is essential that –

- a) The place where, the unit is being set up is declared as a warehousing station;
- b) The unit applies for customs Bonding of the manufacturing premises as Bonded Warehouse to the jurisdictional Asst. Commissioner and is granted a private bonded warehousing licence under Section 59 of the Customs Act, which should be got validated from time to time;
- c) The goods on imports are transferred under bond to the manufactures warehouse on execution of a unified all-purpose B-17 Bond.
- d) The unit shall also obtain licence under Section 65 of the Customs Act for manufacture in bond from the jurisdictional Asstt. Commissioner.

3.2 The unit has to export out of India 100% or such other percentage as may be fixed by the Board of Approvals for 100% EOUs. These exports have to be effected for the period as stipulated by Board at the initial stage of grant of approval as 100% EOUs or a letter of Intent for setting up such unit or such extended period as may be specified by the Board of Approvals. Ordinarily, exports must be effected for a minimum period of 10 years or 5 years in case of goods involving high degree of technological changes. Provision has also been made for clearance of rejects for domestic sale upto 5% of articles so manufactured or such other percentage as may be approved by the Development Commissioner, on payment of appropriate Central Excise duties payable on such articles under Sec. 3 of the Central Excise Act.

3.3 The 100% EOU executes a B-17 Bond, which, interalia, covers an undertaking by the unit to pay on demand an amount equal to the duty leviable on the goods imported duty free that are not proved to the satisfaction of the Asstt. Commissioner of Customs to have been used in the manufacture of articles for export. This liability is, however, not attracted for goods (including rejects) which are allowed to be sold with the due approval of competent authorities in domestic market on payment of appropriate Central Excise duty leviable for goods produced by 100% EOU. The notification also waives duty liability on imported materials for wastage's and scrap, and trimmings etc., if cleared for domestic market, subject to payment of certain duties as indicated in the Notification No. 2/95 C.E. dtd.4.1.95 as amended. Certain inter-unit transfers and clearances out of the factory for part processing outside the 100% EOU are also permissible without attracting duty liability on imported materials used in their production/packaging.

3.4 Procedure for Bonding:

Except where otherwise provided, the operations of a 100% EOU are to be in a customs bonded area. As per the provisions of Section 9 of the Customs Act, 1962, public warehouses and private warehouses are issued licenses at a place, which has been declared as a warehousing station. This power vests with the jurisdictional A.C./D.C. of the C. Excise & Customs. Thus, it is required under the Customs Act, 1962 that a place is just declared as a warehousing station under Section 9 of the Customs Act, before a public warehouse are appointed or a private warehouse is licensed. Vide Notification No. 33/94-Cus (NT) dated 1.7.94, the powers to declare places to be warehousing stations under Section 9 of the Customs Act, 1962 in respect of 100% EOUs have been delegated to the Commissioner of Customs within their respective jurisdictions.

3.5 Application for Bonding:

After the place has been declared as a warehousing station, each individual unit should make an application to the jurisdictional Asstt. Commissioner of Customs/Central Excise for issuance of licence for a private bonded warehouse. The application should be accompanied by the following documents: -

1. A copy of the Notification or the Notification No. wherein the place has been declared as a warehousing station under Section 9 of the Customs Act 1962.
2. Copies of permission from the Ministry of Industries, allowing the facilities of 100% EOU to the applicant. (3 Copies)
3. Purchase / Sale deed of land (3 Copies)
4. 7/12 Abstract of land records issued by local revenue authorities (3 Copies)
5. Allotment letter from N.O.C. from local Grampanchayat.
6. N.O.C. from Pollution Control Board.
7. Ground plan duly verified by the jurisdictional Superintendent.
8. Process of manufacture with flow chart of stagewise manufacturing process alongwith imported & indigenous raw materials required.
9. An undertaking from the applicant, to the effect that they will bear the cost of Establishment charges and other charges of the staff posted there.
10. List of Imported Machinery & Indigenous machinery for setting up the 100% EOU with its total cost.
11. List of Imported/Indigenous Raw Materials to be used in the manufacture.

3.6 Bond:

A single all-purpose Bond (B-17) is now required to be furnished by a 100% EOU in lieu of the different bonds executed earlier. The said Bond can be executed with either surety or security (5% of the Bond amount). In this connection, the Board's Circulars No. 14/98-Cus. dtd.10.03.98 and 42/98 Cus. Dated 19.06.98 are relevant & are reproduced below –

Single Bond to be furnished by the 100% EOU

(1) The Trade and the Industry has been persistently representing that the number of bonds to be executed with the Customs and Excise Wing of the Department may be reduced and a single all purpose bond for covering liability of duty etc. under Excise and Customs Acts may be formulated to obviate the difficulties faced by the units. The issue has also been echoed in the meeting of Export Promotion Board Chaired by the Cabinet Secretary.

An in-depth examination of the issue was undertaken by the Board in consultation with Ministry of Law and a new format of the bond covering liabilities both under Customs & Central Excise Acts to be executed by 100% EOUs and the units situated in EPZ/FTZ or STP/EHTP Schemes or stand alone 100%

STP/EHTP units has been notified vide Notification No. 6/98-CE (NT), dated 2.3.1998. This Bond is called B-17 (General Surety/Security).

Kindly ensure that in future only one bond is taken from the above said units for all purposes. All previous instructions issued in this behalf may be treated as modified to this extent. This bond will be executed before the Assistant Commissioner of Customs/Central Excise in whose jurisdiction the unit is situated. Although the bond is devised to be executed as surety or security bond, it has also been decided that only surety bond has to be taken from such units. The bond amount has to be equivalent to double the amount of duty calculated on the goods to be imported/procured duty free from the manufacturing unit.

The Assistant Commissioner of Customs or Central Excise before whom the above bond will be executed would issue a certificate in the format enclosed stating that the bond has been executed by the unit in his charge. On the strength of this certificate the goods will be allowed clearance under the exemption Notification form Port of import/Airport/ICD/another EOU/STP/EHTP/unit in EPZ or Bonded Warehouse to the unit. Also on the strength of this bond, the Bond Officer will permit goods for job work outside the unit. In case the rewarding certificate is not received within 90 days of the issue of the certificate, the Assistant Commissioner incharge of the port/Airport/ICD/EOU/STP/EHTP etc. or the manufacturing unit shall write to the A.C. incharge of the EOU to issue demand notice to EOU for recovery of duty.

For procurement of duty free goods from the domestic manufacturers, however, the certificate appended in annexure – II of the Notification No. 1/95-CE would continue to be used. The existing procedure of Bill of Entry and AR-III A accompanying of goods, shall continue.

**Certificate for procurement and movement of imported goods/
Excisable goods without payment of duty**

Sr.No.

This is to certify that –

- (1) M/s.....Name & Address)is/are registered in this range of division of Central Excise/..... Commissionerate.
- (2) The said registrant has executed a bond prescribed for them for Rs..... with appropriate surety.
- (3) This registration authorities him/her/them to obtain/clear (name of the product) falling under Chapter No. of the Central Excise Tariff/Custom Tariff at nil rate of duty under Notification No. Dated from Port/ICD/EOU/EHTP/STP/EPZ unit or Bonded warehouse for the manufacture of/use at.....
- (4) The said goods may be allowed clearance of at nil rate of duty under intimation to the undersigned.

Supdt. Customs/Central Excise.

To

(.....Address of the range Officer/Custom Officer.....)

(Name and seal)

Dated :

[Board's Circular no. 14 / 98 dtd. 10.3.1998 in F.No.305/107/86-FTT]

(2) Please refer to Board's Circular No. 14/98-Cus dated 10.03.98 issued from F.No. 305/107/97-FTT regarding execution of the single bond in lieu of different bonds being executed at present by 100% EOUs/EPZs units which has been notified vide Notification No. 6/98-CE(NT) dtd. 2.3.98 called B-17 bond. It was provided in the above said circular that only surety bond has to be executed by such units.

2. It is seen that some units specially the capital oriented units being set up by equity participation of their foreign collaborators, are not able to organise prescribed individual/corporate surety equivalent to the bond amount. They have requested that they may be allowed to furnish security for the Bond and a lower rate for giving Bank guarantee or other security be fixed.

3. The matter has been considered by the Board and it has been decided that where the units are unable to give a surety for the B-17 bonds as prescribed in the above said Circular, they may be allowed to execute the bond coupled with a security for 5% (five percent) of the value of the bond in the form of bank guarantee or cash deposit or any other mode of securities recognized by the Government.

[Board's Circular No. 42/98 dated 19.06.98 in F.No. 305/86/98-FTT]

(3) Attention of the trade and more specifically of the 100% EOU, the exporters, the CHAs is invited to the procedure to be followed while clearing the import consignments and acceptance of B-17 Bond as per Standing Order No. 7425 dated 14.01.99.

2. The B – 17 Bond has to be taken for an amount equal to duty leviable on sanctioned requirements of imported and indigenous capital goods plus the duty leviable on the raw materials to be held in stock for 6 months.

This Bond amount will be calculated as under:

Value of both imported and indigenous capital goods (installed in the EOU as well as Capital goods list approved by Development Commissioner or as mentioned in legal undertaking)	- A
Customs duty on the capital goods (A) at the current rate of duty	- B
Raw materials to be held in stock for 6 months	- C
Appropriate Customs duty and C. Excise duty as the case may be on 'C' at current rates	- E

3. The B-17 Bond will be taken for an amount equal to B + E. The Unit will be explained the procedure and all calculation will be done by the EOU. The Supdt. I/c of the unit will check the value of the Capital goods as well as raw materials of the EOU from the Bond register and certify the same. The Appraiser working in the 100% EOU section in the Custom House will also check the calculations to ensure that the correct rates of duty have been applied. The B – 17 Bond will then be put up to the A.C. / D.C. / 100% EOU Section for approval.

4. The B – 17 Bond will be backed by a Bank Guarantee (in terms of para 6 of this Public Notice) or by a surety which will be in the form of a corporate surety of another company or of an individual who could even be the Directors of the Company (in their personal capacity) and will be for the total Bond amount. The solvency of Company / Individual or Director giving the surety has to be certified by a chartered Accountant or Bank in the Proforma given below :

It is hereby certified that Shri.....S/O Shri.....

R/O..... (in case of individual) / Ms.....(Surety)..... ,
 a company registered under Indian Companies Act, 1956 having its registered office
 at.....(complete address in case company standing surety for the other company).... is
 solvent as on date and is able to meet liabilities and commitments of.....(executor).... to the
 extent of an amount Rs..... (the amount indicated herein should be the amount to
 the extent of the bond amount).

5. From the Certificate given by CA/Bank, it is often not explicit whether the surety given by the person is the only surety or other multiple sureties have been signed by him with the result that it is not possible to know the solvency of the surety. With a view to clarify that the solvency certificate(s) is / are not misused for multiple purposes / benefits, the surety would be required to give an undertaking duly endorsed or attested by CA/Bank certifying that the surety is "First Original" and that no other surety has been signed by the named person.

6. The party can also give a Bank Guarantee or any of the approved govt. security for 5% of the Bond amount as security.

7. If the EOU, taking into consideration the volume of imports in future desires to execute a bond for a higher value than the minimum stipulated, that will be allowed. All earlier bonds taken to cover Capital goods and Job work etc., will be cancelled and returned to the party, after the acceptance of B-17 Bond.

8. The B-17 Bond will be placed in the custody of A.C/D.C/EOU under lock and key after is acceptance.

9. Supdt. I/c of the Unit will start a register placing a Xerox copy of the B – 17 Bond accepted, in the register and records in the following manner will be maintained in the register.

Total value of the Bond	=	F
Less Duty on Capital goods installed	=	G
	
		H
	
Less duty on raw material in stock		
1. B / E No.	I	
2. B / E No.	J	
3. C / T3 No.	K	L = (I + J + K)
Available value of Bond	M = (H - L)	

10. The fresh imports made by the party will be allowed by issue of a Procurement Certificate, by the Supdt. I / c. of the Unit, as and when requested by the EOU and the Duty on the goods for which Procurement Certificate (as per proforma given in Public Notice no. 163/98 dated 20.11.98) is issued, will be debited from the available value of Bond i.e. 'M'. For procurement under CT-3, the C. Excise duty will be debited from the value of Bond 'M'.

11. Procurement Certificate will be issued till there is value available in the B – 17 Bond. If the register shows nil value or low value, the EOU would be asked to give a fresh enhanced B – 17 Bond.

12. As and when the goods imported in a particular B/E are fully utilised for export purpose and the resultant goods are exported, the duty on that particular B/E will be credited back to B-17 Bond. Further record of the register will be as under :

Net value of Bond	=	M
Duty on goods for which Procurement Certificate No. issued.	=	N
Duty on good for which Procurement Certificate No. issued.	=	O
Duty on goods which CT – 3 Certificate		

No. issued.	=	P
Duty on goods released for job work	=	Q
Balance	$R = M - (N+O+P+Q)$	
Duty on B/E No. for which exports made	=	S
Duty on CT-3 for which exports made	=	T
Balance U	$U = R + (S + T)$	

and henceforth till there is balance in the B-17 Bond.

13. It is clarified that for Units already functioning and who have given Bond as per Annexure II of Public Notice no. 18 / 97 dated 14.2.97 for Capital goods installed in the Unit Premises, the B-17 Bond will be taken only for raw materials/components etc. lying in the Unit and to be imported by the Unit in the next 6 months. As and when the earlier Bond for Capital goods expires, the value of B-17 Bond will be enhanced to cover all duties as given in this Public Notice and B.G./Surety will also be enhanced accordingly.

14. Henceforth as per Board instructions, the sealed cover containing the covering letter from A.C/D.C/EOU to A.C/D.C/Central Excise (Incharge of the unit) along with the S/Bill and duplicate copy of B/E will be handed over to EOU representative, however a copy of covering letter addressed to Supdt. I/c of the Unit with full and proper address will be sent by registered post with acknowledgement due. The Supdt. I/c of the Unit are directed to indicate full postal address of their office on all Procurement Certificates.

The Re-warehousing Certificate will be issued by the Supdt. I/c of the EOU, after proper receipt of the goods and in addition to Re-warehousing Certificate being handed over to the party in a sealed cover, an additional copy of Re-warehousing Certificate should be sent by post to the Asstt. Commissioner/Deputy Commissioner of Customs/ "100% EOU (Bond).

This Public Notice is issued as per Ministry of Finance (CBEC) Circular no. 87/98 – Cus dated 18.11.98 and comes into force with immediate effect.

[Public Notice No. 74 / 99 dated 25.06.1999 issued by Commissioner of Customs (EP), Mumbai, from File No. S/6-Gen-2024/95-96 / S/6-Gen-427/96-97]

3.7 Manufacturing in Bond:-

The Manufacture and other operations in Warehouse Regulations 1966 have been amended wherein the need for Customs supervision of all operations of a 100% EOU have been removed. The EOU can now decide upon their working hours and the manufacturing would not be physically supervised by the Custom officers. The double lock system has also been dispensed with and control over the issue and return of the imported goods will be with the 100%.

Liberlisation of bonding procedure in respect of 100% EOUs –

The degree of supervision of the departmental officers on movement of raw materials, components, finished goods and manufacturing process and accounting of the same in an EOU has been under the review of the Board for some time. The Board has since amended the "Manufacture and Other Operations in Warehouse Regulations, 1966" by notification No. 44/98-Customs (NT) dated 2.7.1998 to provide operational flexibility, ease the restrictions and remove practical difficulties being faced by such EOUs, considering the changes in the environment of import control and tariff regime. The salient features of the changes are as under.

(i) The revised procedures will apply only to the EOUs as mentioned above. It will be observed from the amended regulations that the provisions relating to fixing the days/hours of operation of the warehouse, the manufacture to be carried out under the physical supervision of the customs officers,

locking of the warehouse premises, control over the issue and return of imported goods have been deleted. Therefore all movements from and to the units like clearance of raw materials/components to the job workers premises, clearance to other EOUs, export and sale into DTA can be made by the manufacture himself subject to his recording of each transaction in the records prescribed by the Board/Commissioner or their private records approved by the Commissioners.

(ii) As physical control is being abolished, greater stress need to be given on proper maintenance of prescribed records/accounts and non-maintenance of the accounts shall be viewed seriously and should also reflect on the supervisory role of the officers who have been assigned to supervise the said units. Such accounts should be scrutinised once in every month by the officer who have been posted on cost recovery basis or other officers assigned to the unit.

(iii) Movement of non-duty paid goods:

The movement of goods without payment of duty has been allowed from the EOU or to STP/EHTP units and for exports. The officer incharge of the sending EOU and receiving units shall watch such movements as there are reports of misuse of this facility. The rewarehousing certificate on transfer of the goods from one EOU to another shall be obtained by post and shall be cross-checked occasionally with the Superintendent incharge of the next unit to see whether the goods have been actually received in the unit or not In case of non-receipt of rewarehousing certificate and similarly proof of export from the proper officer, within 90/80 days, the duty shall be demanded from the sending unit immediately.

(iv) Audit of the unit:

The presently sanctioned Cost Recovery Officers shall examine the records of the units and transactions undertaken by the unit at least once in a month. The notification provides in regulation 11, that the Chief Commissioner may order special audit of the unit by a Cost Accountant (CA) nominated by him in this regard. Cost audit may be employed as a tool to check the correctness of raw material, quantity used, finished goods produced or other such situations. Before such approval, the chief Commissioner may form a panel of CAs, fix the rate of the charges to be received by the said Cost Accountant. The names of the CAs and the details of the charges may be pre-notified at regular intervals.

(v) It may be seen that while the latitude for manufacture and clearance and movement of raw materials and finished goods have been given to the EOUs, extra responsibility devolves on the cost recovery officers who are presently attached to the said units. There is no proposal at present for reduction or abolition of the said cost recovery posts. Wherever one officer has been assigned to more than one unit, the said officer would be made responsible for specific monthly checks. However, the units be permitted to operate with as much flexibility as possible. To obtain economy of scale units resort to various cost cutting measures like combining purchase of raw materials with other units, dispatch of goods in the same conveyance with other units or setting up common user facilities. Such arrangements may be allowed subject to proper and easy accounting of the duty free raw material and Capital goods used therein. However, it must be insisted upon and ensured that all movements of goods be recorded in a proper register. Where specific difficulty arises, units may be cost audited with the prior permission of the Chief Commissioner.

[Board's Circular No. 88/98. Dtd 2.12.98 in F. No. 473/9/98 LC]

3.8 Procedure for import:

In order to facilitate expeditious clearance of imported cargo for units in the 100% EOU Scheme, the following procedure is followed:-

a) Where goods are imported at the Customs Port/Air Port/ICD etc. and are required to be sent to a 100% EOU located at station away from the place of import:

The importer will produce the following documents :

- i) Into Bond Bill of Entry(in quadruplicate)
 - ii) Invoices
 - iii) Packing List
 - iv) Certificate of Origin
 - v) Attested copy of legal undertaking for 100% EOU
 - vi) Attested copy of Private Bonded warehouse licence issued by the A.C.
 - vii) Copy of the Green Card
 - viii) Copy of all purpose B-17 Bond
(The Into Bond Bill of Entry shall be assessed at the port/airport/ICD etc. as at present)
 - ix) Bill of lading
- b) Goods may be superficially examined as to the marks, numbers, gross weight, etc. by the customs staff for the purposes of completion of assessment i.e. imported goods need not be subjected to detailed examination at the port of import/airport/ICD etc. since these are required to be examined in full at the bonded premises of the 100% EOU.
- c) The imported goods, after being duly sealed whether FCL/LCL by the Customs at place of imports shall be sent to the bonded warehousing premises of the 100% EOU. Goods in packages may be wire sealed where necessary.
- d) The goods shall move under cover of 'Into Bond Bill of Entry' (in quadruplicate) filed with the Customs station – the original being retained at customs station of import and the three copies sent along with consignment. The officer in-charge of the 100% EOU will record the re-warehousing certificate along with detailed examination report on the duplicate and triplicate and return the duplicate to the Asst. Commissioner (Bond) of the Customs station of Import. The triplicate will be retained by him for his record and quadruplicate will be given to the party for his record.
- e) In cases, where the import of goods/packages are in such quantity that it would not be sufficient or economical for engaging full truck for such transfer, the Asstt./Dy. Commissioner (Bond) at the point of import could allow, at the request of the importer in such cases, carriage of such imported goods with other cargo in the same truck provided the imported goods are carried by a public carrier of repute.
- f) At the 100% EOU, the goods shall be subjected to detailed examination and re-warehousing certificate alongwith the detailed examination report be issued as indicated above.
- g) In the event of any discrepancy in the goods receipted as found on examination, the same shall be conveyed to the Customs station of import by speed post through which goods had been imported for the purpose of updating the position on the original copy of "Into Bond Bill of Entry" and connected records. The bond officer of the warehousing unit can, however, allow the issue of the raw material for use in 100% EOU.
- h) When goods imported are required to be sent to a 100% EOU located at the same station, the procedure as above shall be followed. However, for transit of goods from the Customs station to the local 100% EOU, the importer may be given the option to take the goods under the preventive escort.

3.9 Exemption from Custom Duties for Imported Goods:

- a) Import of specified goods including capital goods, raw materials, components, spares of capital goods and material handling equipments, samples/prototypes not exceeding two in Nos. of each type, blue prints etc. are exempted from the whole of the duties of Customs leviable under the First Schedule to the C.T.A. 1975, and the additional duty if any leviable thereon, under section 3 of the Act, subject to specified conditions. The details may be seen in Notfn. No. 53/97-Cus. Dated 03.06.97, as amended.

- b) Material required for the manufacture of certain specific goods e.g. corrugated cartons, tin containers, plastics extruded/moulded/fabricated products, multilayer laminated tubes etc., when imported into India by a manufacturer of final product for supply to a 100% EOU, are wholly exempt from Basic Customs Duty and additional duty subject to the certain conditions. (Notfn. No. 101/93-CUS dt.10.03.93, as amended.)
- c) Exemption to certain specified goods imported for manufacture of jewelry for export by 100% EOUs, is provided by Notfn. No. 277/90 Cus dt.12.12.90 as amended, subject to the conditions stipulated therein.
- d) All goods imported into India by 100% EOU when wholly exempt from Basic Customs Duty by virtue of any Notfn., are also exempted from additional duty vide Notfn. No. 5/94-Cus dt.18.1.94.
- e) Material imported for use in goods to be supplied to EOUs is also exempted from Customs Duties vide Notfn. No. 128/94-Cus dt.10.6.94, as amended.
- f) Exemption for import of specified goods for use in aquaculture farm and export of aquaculture products by 100% EOUs is provided vide Notfn. No. 196/94-CUS dt.8.12.94, as amended.
- g) Exemption for specified goods for use in export goods such as live animals, trees, plants, cut flowers, vegetables, fruits, silk worms cocoons etc. is provided by Notification No. 126/94-Cus. dt.3.6.94, as amended.
- h) Notification No. 41/96-Cus. dtd 23.7.96 provides exemption from Special Duty of customs to all goods which are wholly exempt from Customs duty under any exemption notification.
- i) Notfn. No. 22/99 Cus. Dtd.28.2.99 exempt goods imported by 100% EOUs from Special Additional duty of Customs.

3.10 Procedure for procurement of indigenous goods by EOUs:

- (a) The approved 100% EOUs have been extended the facilities of bringing into their units indigenously available Capital Goods, Components, Raw materials & other specified goods without payment of Central Excise duty under Notfn. No. 136/94 C.E. dtd.10.11.94 as amended, Notfn No. 1/95 CE dtd.4.1.95 as amended, & Notfn. No. 10/95 CE dtd 23.2.95. To avail of this facility the Units have to follow the CT-3 procedure.
- (b) Exemption to goods produced in a 100% EOU.
- 1) Notification: 127/84 CE dtd 26.5.84 provides exemption from excise duty for all excisable goods manufactured or produced for export by 100% EOU i.e. not for goods to be sold in India.
 - 2) Notification: 127/84 CE DT.26.5.84 provides exemption from additional duty of excise to all excisable goods produced or manufactured by 100% EOU.
 - 3) Notification No. 55/91 CE dt.25.7.91 provides exemption to such goods from the Additional Duties of C. Ex. (Textiles & Textile Article Act, 1978).

3.11 Rewarehousing procedure:

- a) A.C Bond of port of importation will send the documents regarding dispatch of goods as per "Warehoused goods (Removal) Regulations, 1963". The documents will be in the name of A.C of respective Division. Bonder also will give intimation regarding arrival of the import cargo in advance.
- b) On arrival of consignment of transit Bond, the Inspector will check up particulars on packages, with those in the application and documents by inspecting goods for their quantity, mark number and store them in the warehouse ensuring that all the packages are in-tact, and there is no room for missing any contents due to damage etc. In case of any discrepancy or damage, Preventive Officer/Inspector will report the matter to the Range Superintendent/Assistant Commissioner immediately for taking necessary action.

c) Importer will execute a B-17 Bond if not already executed under Section 59(I) of Customs Act, 1962 duly affixed with appropriate adhesive stamps alongwith In-to Bond Bill of entry in Quadruplicate duly attached with photocopies of the following documents:

- i) Copy of into Bond Bill of entry filed at the port importation duly authorised by Asstt. Commissioner (Bond).
- ii) Invoice
- iii) Bill of Lading
- iv) Packing List
- v) Certificate of origin
- vi) Import Licence / OGL Declarations.
- vii) Certificate regarding payments of store charges, Dept. Charges, Forwarding charges etc.
- viii) Test report in case of goods tested at Port of Importation.
- ix) Copy of order as passed by Asstt. Commissioner regarding reduction in value due to shortage etc.
- x) Shipping bill showing the endorsement of authorisation for removal of goods from port of importation for Re-Warehousing (Ex-bond).
- xi) Copies of Contracts
- xii) Any other documents that may be required by AC/Supdt. in respect of goods under receipt and examination.

d) Superintendent in-charge Warehouse will verify and compare details in all copies of Bill of Entry and mark it to the Preventive Officer /Inspector for checking all the documents as per requirements.

e) Preventive Officer/Inspector will check all documents, Bond and to ensure that they are in order and complete in all respects.

f) Preventive Officer/Inspector will put S. No. and date on all copies of Bill of Entry.

g) Preventive Officer / Inspector will put all documents (i to xii) in a separate file.

h) Preventive Officer / Inspector will make entries in the Register of Bill of Entry and Register of Bond.

i) Preventive Officer / Inspector will examine all the packages and ensure that they tally with the documents produced and are intact.

j) Superintendent will forward the file to Asstt. Commissioner after verifying all details.

k) Asstt. Commissioner will get all documents, Bond checked through his Technical staff.

l) Enter the particulars in the Register of Bond.

m) Mark the serial No. of the Bond.

n) Asstt. Commissioner will sign the Bond in token of its acceptance by putting his dated signature on Bond and Bill of Entry. The AC will detach and keep the Bond in safe custody and forward the file Superintendent for rewarehousing the consignment.

o) Preventive Officer / Inspector posted in warehousing will get the goods warehoused accordingly.

p) Endorsement of the Rewarehousing Certificate on all the copies of Bill of Entry, on completion of all the warehousing formalities.

q) Attestation of entries in Stock card and Stock Account Books by the Inspector / Preventive Officer.

r) Preventive Officer / Inspector will obtain Signature of Bonder on all four copies of Bill of Entry in token of their having received the goods fully and in sound condition.

s) Bonder will certify on the reverse of duplicate copy of Bill of Entry to the effect that the above goods have been duly received in the warehouse as per the particulars of Bill of Entry, which is to be returned to A.C. Bond of Port of importation alongwith Re-warehousing Certificate.

- t) Preventive Officer/Inspector will hand over Triplicate copy of Bill of entry to the importer/Agent by obtaining his signature on quadruplicate copy, which is to be kept in the Bond file.
- u) Preventive Officer/Inspector will make entries of re-warehousing in office records. Superintendent will issue RE-warehousing Certificate to Asstt. Commissioner, Bonds Deptt. (Port of Importation) in prescribed form by Regd. Post A. D.

3.12 SUBCONTRACT FOR JOBWORK IN DTA UNITS:

- a) In terms of Para 9.17 of the Exim Policy 1997-2002, the EOU/EPZ/STP Unit may be permitted to subcontract part of their production process through job work by units in the DTA or through other EOU/EPZ/STP Units. Recently the said Para in the policy has been amended and the sub contracting permission can now be given by Customs Authorities. The requirement of obtaining permission from the Development Commissioner has been removed. The Commissioner of Customs may permit the goods imported into India or goods partially processed or manufactured to be taken out of the 100% EOU concerned temporarily without payment of duty for the purposes of repairs, test, refining, reprocessing, display, jobwork, or any other operation necessary for manufacture of final product and return to the same Unit subject to the such conditions and limitations as may be specified by him in this behalf.
- b) EOU/EPZ/EHTP Units have been permitted to remove moulds, jigs, tools, fixtures, tackles, Instruments, hangers & patterns or drawings to the premises of the sub-contractor subject to the condition that these shall be brought to the premises of the EOU on completion of the job-work within a stipulated period. (Boards Circular No. 59/98-Cus. dtd 12.8.98 as reproduced below: -

Sub-contracting part of production process by 100 % EOUs

Attention is drawn to the Board's instructions issued from F.No.305/147/93-FTT dated January 31,1994 wherein it had been prescribed that the EOU/EPZ may be allowed to sub-contract part of their production process provided the substantial activity of manufacture is carried out within the EOU/EPZ/EHTP units and that it is possible to identify the finished products received after jobwork with the materials.

2. The Trade Associations have requested for revision of the above instructions requesting that EOU unit may be allowed to sub-contract part of their production process which may also result in the change of form or identity of the goods. It was also requested that these units may be permitted to remove moulds, jigs, tools, fixtures, tackles, instruments, hangers and patterns of drawing to the premises of the sub-contractors subject to the condition that these shall be brought back to the bonded premises of the parent unit on completion of the jobwork within a stipulated period.

3. The matter has been examined by the Board and it has been decided that EOU/EPZ/EHTP units may be permitted to remove moulds jigs, tools, fixtures, tackles, instruments, hangers and patterns or drawings to the premises of the sub-contractor subject to the condition that these shall be brought to the premises of the EOU on completion of the jobwork within a stipulated period. The Notifications No. 133/94-Cus dated 22.6.94, and 53/97 dated 3.6.97 and 95/93 & 96/93 both dated 2.3.98 have since been amended by Notification No. 12/98-Cus dated 27.4.98 to incorporate the above facility. In addition, Board has agreed to permit EOU/EPZ units to sub-contract part of their production process where the raw materials sent out for processing will lose its identity or where it substantial manufacturing activity does not take place in the parent unit subject to the condition that input/output norms in such cases would be specified by the Assistant Commissioner of Customs.

4. However, the suggestion that the EOU/EPZ units using predominantly indigenous raw materials may be allowed to sub-contract a part of their production for job work has not been agreed to as this

would convert EOU/EPZ units to trading units rather than manufacturing units and accounting raw materials may become more difficult.

In view of the above, Board's instructions dated 31.1.94 cited in paragraph 1 above stand modified to the above extent.

[Board's Circular No. 59/98 dt.12.8.1998 in F. No. 305/107/93-FTT]

100% EOU / EPZ / EHTP Units- permission to undertake jobwork outside the Unit from DTA

attention of the trade and more specially of the 100% EOUs, the importers / exporters and CHAs is invited to the Board's instructions issued vide F. No. 305/86/98 FTT dated 5.11.99 (Board's Circular No. 74/99 – Cus) on the subject matter of permission to undertake jobwork outside the unit from DTA by the EOU / EPZ / EHTP units in textile, readymade garment, agro-processing and granite has been allowed to undertake jobwork on behalf of the DTA units. This subjects to the condition that the finished products produced by the EOU / EPZ / EHTP units itself and these goods will not to be taken back to the DTA units.

2. As per para 9.17 (d) of the Exim Policy 1997-2002, as amended upto 1.4.99, the EOU /EPZ units in aquaculture, animal husbandry, electronics hardware & software, can also undertake jobwork for export on behalf of DTA units with the permission of Asstt. Commissioner of Customs. The trade and Ministry of Commerce brought to the notice of the Board that the EOU / EPZ units are facing difficulty in doing jobwork for DTA units in the absence of Department Circular extending the benefit to the sector of aquaculture, animal husbandry and electronics hardware and software.

3. To utilize the idle capacity of the EOU / EPZ units, it has been decided by the Board that the said 100% EOU / EPZ units in textile readymade garments, agro-processing and granite sector may be permitted to undertake jobwork from DTA units provided the finished products by such units will be exported directly from EOU / EPZ units itself. These goods will not be sent back to the DTA. Board has now decided to extend the benefits to the EOU / EPZ units in aquaculture, animal husbandry, electronics hardware and software sector also to the condition that the finished products produced by the said unit will be exported directly from such units and these goods shall not be allowed to be brought back to DTA units.

4. Due to the lack of clarity as to who will file the Shipping Bill and where the Shipping Bills of such exports will be assessed; now it is clarified that the Shipping Bill in such case will be filed in the name of DTA unit and the name of the said units will also be mentioned on the Shipping Bill as jobworker. In case of jobwork by EPZ unit, the Shipping Bill will be assessed by the Assistant Commissioner in charge of Zone. In case of EOU, as the Shipping Bill is filed at the Gateway Port, the Shipping Bill will be assessed by the Assistant Commissioner of Customs at Gateway Port. However, the name of exporter, i.e. the DTA unit and name of jobworker i.e. EOU unit shall be required to be mentioned on the Invoice and AR-4 and the same shall be signed by both the parties. It is clarified that no drawback / DEPB benefits shall be admissible either to EOU / EPZ unit or to the DTA unit for such exports.

5. The Public Notice is issued as per Ministry of Finance (CBEC) Circular No. 74/99-Cus dated 5.11.99 and comes into force with immediate effect.

[Public Notice No. 141/99 dated 28.12.99 issued by Commissioner of Customs (EP), Mumbai in F. No. S/6-Gen-55/99-2000 EOU]

3.13 PROCEDURE FOR EXPORT:

a) Export formalities will be in accordance with the procedure set out in relevant provisions of Chapter IX of Central Excise Rules, 1944.

- b) Application for removal of a consignment for Export should be in AR – 4 form in Quadruplicate and to be presented 24 Hours in advance of removal of goods to the proper officer alongwith Invoices, Shipping Bill & Packing list etc.
- c) All packages should be marked with S. No. and identification marks before presentation.
- d) The Prev. Officer/Inspector will (i) verify particulars of packages with the details in Application, (ii) seal each package with Central Excise Seal, (iii) endorse all copies of applications to that effect, and (iv) return duplicate/triplicate copies of AR 4 to the owner.
- e) Owner will dispatch the goods and shall enter R.R. No./Date in duplicate/triplicate copies of Application and shall communicate particulars to the officer for entry in other copies of Application.
- f) The formalities at the Port of Export will be as under
- i) Goods will be presented to the Customs officer of Port/Airport alongwith duplicate/triplicate copies of AR 4.
 - ii) Packages will be examined/weighed/sealed/checked and particulars verified as per the application.
 - iii) Duplicate/triplicate copy will be verified by the proper officer after allowing shipment certifying that the goods have been duly exported (By citing Shipping bill No. and date and other particulars of Export) by returning the triplicate copy to Exporter.
- g) The triplicate copy of the application will be submitted as proof of Export to the Inspector, incharge of the unit by the Exporter, who will keep this copy in the Export file.

3.15 Movement of Goods:

- a) Movement of goods without payment of duty from One EOU to another EOU or to STP/EHTP units and for export can be made by the manufacturer himself subject to his recording each of the transaction in the records. The officer incharge of the EOUs sending the goods or receiving the goods shall watch such movements, as there are reports of misuse of this facility. The rewarehousing certificate on transfer of the goods from one EOU to another shall be obtained by post and shall be cross-checked occasionally by the Supdt. I/c of the next Unit to see whether the goods have been actually received in the Unit or not. In case of non-receipt of rewarehousing certificate and similar proof of export from the proper officer, within 90 days, the duty shall be demanded from the sending unit immediately.
- b) The following records will be maintained in similar details, which are not otherwise contained, in the private records of the EOU.
- i) Bond register showing receipt of the goods & issue of the goods.
 - ii) Issue notes.
 - iii) Manufacturing Register.
 - iv) Finished product Register.
 - v) Reject/Scrap Register.
 - vi) Export Register.
 - vii) Sub contract Register.
 - viii) DTA Sale registers.
 - ix) Indigenous goods register showing receipt & Issue.
- c) As physical control is abolished, greater stress will be given on proper maintenance of records/accounts & non-maintenance of accounts shall be view seriously. Such accounts should be scrutinised once in every month by the Preventive officer/Inspector I/C of the Unit who has been posted on cost recovery basis and Supdt. I/C of the unit. There is no proposal at present for reduction or abolition of the cost recovery post.

d) To economy of scale, units resort to various Cost cutting measures like combining purchase of raw materials with other units, dispatch of goods in the same conveyance with other units or setting up common user facilities. Such arrangements will be allowed subject to proper and easy accounting of duty free raw materials & Capital goods used therein. The EOU desirous of availing such facilities may make a request to the jurisdictional Asstt. / Dy. Commissioner of Customs giving all details. The same will be approved by the joint/Add. Commissioner of Customs, if found in order.

3.16 EXPORT THROUGH EXPORT HOUSE / TRADING HOUSE / STAR TRADING HOUSE / SUPER STAR TRADING HOUSE:

An EOU may export goods manufactured by it through a Merchant Exporter/Export House/Trading House/Star Trading House/Super star trading House recognized under the Exim Policy, or through any other EOU/EPZ unit. This permission extends only to the marketing of the goods by such channels. The manufacturer of the goods shall be done in the EOU concerned. The value addition and export obligation as well as any other obligation relating to the import and export shall continue to be discharged by the EOU concerned (Para 9.11 of Exim Policy 1997-2002). Such exports shall fulfil the following conditions: -

- i) The export orders so procured shall be executed within the parameters of EOU schemes and the goods shall be directly transferred from the Custom bonded area of the unit to the port of shipment;
- ii) Fulfillment of Net Foreign Exchange Earnings as a percentages of exports/export performance by EOUs in regard to such exports shall be reckoned on the basis of the price at which the goods are supplied by EOUs to EH/TH/STH/SSTH/other exporter;
- iii) All export benefits including special Import licence and recognition as EH/TH/STH/SSTH would accrue to the exporter in whose name foreign exchange earnings are realised.

3.17 EXPORT OF GOODS MANUFACTURED BY 100% EOU UNITS TO NEPAL IN INDIAN CURRENCY:

In this regard, attention is invited to Board's Circular No. 48/95 dt.16.5.95 (reproduced below) wherein it is clarified that in terms of Central Excise Rules 13 & 14 and Notfn. Issued thereunder, exports to Nepal are required to suffer the applicable duties if the payment is received in Rupee account; the same treatment is also applicable to 100% EOUs. Accordingly, exports from 100% EOUs to Nepal may be permitted by following Nepal invoice procedure and collection of appropriate duties where payment is received in Indian Currency.

Exports to Nepal and Bhutan by 100% EOUs

As per the provisions of the Notifications issued under Rule 13 and Rule 14 of the Central Excise Rules, 1944, the export of excisable goods to Nepal and Bhutan is permissible under bond without payment of excise duty subject to certain conditions, one of which is that the payment for the exports is received in freely convertible currency. At the same time the policy of the Ministry of Commerce and the instructions of the Reserve Bank of India permit exports from 100% EOU and EPZ Units against payments in Indian Currency. A doubt has accordingly arisen whether the exports by 100% EOU/EPZ units to Nepal may be made against payments in Indian currencies without recovery of excise duties.

2. The matter has been examined by the Board and I am directed to say that in terms of the Central Excise Rules 13 & 14 and the Notifications issued thereunder exports to Nepal are required to suffer the applicable duties if the payment for such exports is received in rupee account; the same treatment should

apply also to exports to Nepal by 100% EOU/EPZ Units. Hence, export under bond under Rule 13 and 14 of the Central Excise Rules, 1944 without payment of excise duties, is **not** permissible in the case of exports by 100% EOU/EPZ Units to Nepal where the payment is received on rupee account. For applicable duties of excise in respect of excisable goods, the relevant Notification should be referred which requires for 100% EOU/EPZ Units to pay the customs duties applicable to such goods. If the export goods are not excisable, they will pay appropriate customs duty as if imported into India. Accordingly, exports may be permitted to Nepal from 100% EOU/EPZs by following Nepal invoice procedure and collections of appropriate duties when the payment is received in Indian currency.

[Board's Circular No. 48/95 dated 16/5/95 in F. No. 305/6/95-FTT(pt)]

3.18 LEASING OF CAPITAL GOODS:

a) An EOU may, on the basis of a firm contract between parties, source the capital goods from a domestic/foreign leasing company. In such case the EOU and domestic/foreign leasing company shall jointly file the import documents to enable import of capital goods free of duty (Para 9.4 of the Exim policy 1997-2002). Clarifications in this regard issued by the Board vide Circular No. 88/95 dt.1.8.95.

Import of Capital Goods by the 100% EOUs

Please refer to the amendments in the Exim policy 1992-97 introduced by the Ministry of Commerce w.e.f.1.4.1995 in so far as they relate to the EOU/EPZ schemes. In Particular, reference is made to the changes in paras 96, 115 and 118 of the exim policy. –

2. As may be noted, para 96 of the Exim policy details the facility available to EOU/EPZ units to source its capital goods from the domestic leasing company on the basis of a firm contact. This is an existing facility. However, the said para has been re-formulated now so as to clearly bring out the fact that in such case, the EOU/EPZ unit and the domestic leasing company will jointly file the import documents to enable the import of the capital goods free of duty. This stipulation is necessary in view of the fact that while the EOU/EPZ unit may eligible for duty free imports under the respective customs notification imports by a leasing company for supply to these units do not qualify for the exemption. Hence, it is necessary that if imports are by a leasing company then for the purpose of availing of duty concession, the import document namely bill of entry should be jointly filed by the leasing company together with the EOU/EPZ unit concerned and consequently the bond for fulfillment of the conditions of the exemption notification has also to be executed by both the persons. Only in such case customs duty benefit will be available. This aspect is to be particularly ensured by the customs in case any imports are noticed under para 96 of the Exim policy.

3. In the new Exim policy, para 115 relating to setting up of private bonded warehouse in EPZs has been amended so as to specifically provide for the facility of sale of the warehoused goods in the DTA subject to compliance with the Exim policy for such clearances and on payment of applicable duties. In this regard, it may be noted that in terms of the Customs Act, 1962 any imported goods may be warehoused. Further, clearance from the warehouse are permitted either for export or for home consumption. Thus, in the instant case, the facility of clearances to DTA only illustrates the legal position. However, it is observed that at the time of clearances from the private bonded warehouses two statutory obligations have to be fulfilled. The first is that the clearance shall be allowed subject to compliance with the Exim policy. In other words, if an item is in the negative list of imports then for both warehousing the item as well as for clearances from the warehouse, the import licence must be necessarily ensured. Where by a PN/order DGFT exempts the requirement of licence for import of Negative list Item for warehousing, the import licence should be insisted before granting clearance for DTA. Secondly, the applicable customs duty is to be recovered at the time of clearance from the warehouse, It is, therefore, to

be ensured that the private bonded warehouses in the EPZs the warehousing of the goods as well as the clearance to DTA must necessarily comply with the Exim policy as well as the duty must be recovered at the time of ex-bonding. No doubt, in such cases, the customs duty is invariably being recovered. However, in view of the present amendment to the Exim policy, particular care will have to be taken to ensure the clearances to DTA are in accordance with the Exim policy. A reference is also invited to Board's instruction F. No. 314/32/94-FTT dated 9.9.94 in this behalf.

4. By yet another amendment to para 118 of the Exim policy, existing DTA units having an export obligation under the EPCG scheme are permitted to convert into an EOU. Further, on such conversion the export obligations under the EPCG scheme will be made concurrently from the exports by the unit as an EOU. In this context, it may be noted that strictly the fulfillment of export obligation is a matter within the competence of the Development Commissioner and does not concern the customs. However, it is necessary to note this amendment as it must be clearly understood that upon such conversion to an EOU, no refund of customs duty paid by the unit under the EPCG scheme the capital goods may be imported duty free while under the EPCG scheme certain duty is to be paid. Hence, it must be ensured that in no case is a refund of duty allowed.

5. Provision has also been made in the Exim policy (para 117 A) for extending the benefit of EPCG scheme on debonding of existing 100% EOU/EPZ units. This facility is however available only for availing the EPCG benefit of zero rated of 15% duty on the capital goods it does not extend the benefit of zero rated EPCG scheme. For other than capital goods, normal duties at the time of debonding would be applicable. The 100% EOU/EPZ notifications have been amended appropriately to implement the provisions of para 117A.6.

[Board's Circular No. 88/95 dt.1.8.95 in F. No. 305/34/95-FTT]

b) Capital goods procured from indigenous sources on the basis of lease agreement between the leasing company and the EOU, will be eligible for Central excise exemptions.

c) The value of imported capital goods financed through leasing companies shall also be taken into account for the purpose of calculation of net foreign exchange earnings as a percentage of exports.

3.19 Inter Unit Transfer:

a) Transfer of manufactured goods may be permitted from one EOU to another EOU. However, it would be eligible to be considered as export by the recipient unit only when the transferred goods undergo further processing/manufacture.

b) Goods imported by an EOU may be transferred or given on loan to another EOU, which shall be duly accounted for, but not counted towards discharge of export obligation.

c) Any capital goods transferred or given on loan from one EOU etc. to another shall require prior permission of Development Commissioner. (Para 9.16 of Exim Policy '97-2002).

3.20 DTA Sales:

The entire production of EOUs shall be exported subject to the following –

A) Rejects upto 5% of FOB Value of Exports on the basis of records maintained by the Unit may be sold in DTA, subject to the payment of applicable duties. The term 'Rejects' shall cover the products which have definite manufacturing defects and are not exportable as per the declaration of the unit concerned and shall include sub-standard products but not spares, tools, waste/scrap/remnants & bye products. (Para 9.22 of the Hand Book of Procedures).

B) Upto 50% of the FOB Value of exports may be sold in the DTA subject to the fulfillment of minimum NFEP & on payment of applicable duties. In case of units in toys, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, viticulture and sericulture, such sales may be subject to positive NFEP only. No DTA sale shall be permissible in respect of motor cars, alcoholic liquors and such other items as may be stipulated by DGFT by a public notice issued in this behalf.

C) The electronic hardware products may be sold on the following basis in DTA:

NFE earnings as a % age of Exports	Permissible sale in DTA
1. Less than 10%	NIL
2. 10 to 25%	Upto 30% of the production in value terms of the electronic items including components manufactured in the unit.
3. More than 25%	Upto 40% of the production in value terms of the electronic items including components manufactured in the unit.

It has now been provided in the EXIM Policy that DTA Sale on all accounts for all sectors shall not exceed 50% of the FOB Value of the previous financial year's export.

It is also clarified that the DTA Sale, in accordance with Para 9.9 & 9.20 of the Exim Policy will only be eligible for concessional rate of duty provided under Notfn. No. 2/95 CE dtd.4.1.95. (CBEC Circular No. 30/99 dtd.25.5.99)

DTA Sales by the EOUs

The revised EXIM Policy, 1997-2002 and corresponding Hank Book of Procedures (HOP), incorporating amendments in the policy up to 31.03.1999, comes into force from 1st April, 1999. The amendments made in the Chapter 9 of the EXIM Policy and HOP and agreed to, by our Department have necessitated amendments in notifications, governing stand alone 100% EOUs including units of EHTP, STP, Agriculture/Horticulture/Floriculture & Aquaculture sector Export Processing/ Free Trade Zones, and units in EHTP/STP Complexes. These notifications have been amended vide Notification No. 65/99-Cus., dated the 19th May, 1999 and No. 25/99CE., dated the 19th May, 1999. The salient features of the amendments are as under:-

A. DTA sales:

Hitherto, clearance of the finished goods and rejects into DTA, on payment of appropriate duty is allowed as a stipulated percentage of value of production. The scrap/waste/remnants upto a fixed percentage is also allowed clearance into DTA, on payment of duty. In addition to the above, separate scale of DTA sale entitlement for agriculture and EHTP sector had been provided. It has now been provided in EXIM Policy that DTA sale on all accounts for all sectors shall not exceed 50% of the FOB value of previous financial year's export. This provision has been incorporated in the amendments. The total value of the goods sold in the DTA by a unit under this provision shall be 50% of FOB value of exports. It may also be clarified that the DTA sale, in accordance with Para 9.9 and 9.20 of the EXIM Policy, will only be eligible for concessional rate of duty, provided under Notification 2/95 C.E. dated 4.1.1995.

B. Demand of duty from the defaulting units :

(i) It has now been provided, to demand duty and interest on the duty free raw materials, components, spares, and consumables (other than capital goods) etc. if the unit fails to achieve the stipulated NFEP and EP within a period of one year of importation/procurement of such goods or within such extended period, not exceeding further one year as the Assistant Commissioner may, on being satisfied that there is a sufficient cause, allow. It has been further provided that, Commissioner may extend this period for achievement of NFEP or EP for further period not exceeding five years from the date of importation or procurement of such goods.

(ii) The duty and interest will also be demanded from the units who have failed to –

(a) install or use or re-export the capital goods within a period of one year from the date of importation or procurement or within the extended period as may be allowed by the Assistant Commissioner;

(b) use or re-export/return the imported/indigenous goods, procured duty free (other than capital goods) within a period of one year or within the extended period, permitted by the Assistant Commissioner.

(c) To export the manufactured/produced/package goods within one year or within such extended period by the AC, from the date of importation or procurement of imported or indigenous goods. For further details, notification may be referred to.

The above extensions may be given liberally and the duty and interest may be demanded only in cases involving *mala fide* and diversion of raw material.

C. The Notification No. 126/94 Cus, dated the 3rd June, 1994 and 136/94 CE dated the 10th November, 1994, governing agriculture/horticulture/floriculture units have been enlarged to allow exports of processed fruits, vegetables, meat and edible meat offal.

D. Inclusion of “Service” as Export Product :-

The Notification NO. 133/94 Cus, dated 22.06.1994 and 126/94CE dated 2.9.1994, governing units in the EPZ/FTZ has been enlarged to include ‘service’ as product for export.

E. Procurement of goods from Public/Private Bonded Warehouses :-

The EOU/EPZ units may now also source imported goods, duty free from the public/private bonded warehouses licensed under Section 57 or 58 of the Customs Act.

F. Duty free clearance into Warehouse or to License Holders under para 9,10(c) of the Exim Policy :

Under Notification No. 26/98C.E. (NT), dated 15.07.1998, goods can be cleared to warehouses appointed or registered, without payment of Central Excise duty, for further exports. It has been provided that goods manufactured or produced within 100% EOU/EPZ units (except units in the aquaculture, agriculture & STP sectors) may be cleared to the above said warehouses or to the licence holders as referred to, in Paragraph 9.10(e) of EXIM Policy, without payment of duty.

G. Export from job worker’s premises :

It has now been provided that, the goods sent out for job work from the EOU/EPZ (except STP, agriculture or aquaculture sector) units, may be exported directly from the job worker’s premises provided the scrap, waste or remnant generated during the processing, is either returned or cleared on payment of appropriate duty. The existing instruction for permitting sub-contracting may be followed but export from the job worker’s premises may only be permitted when the same is registered under Rule 174 of the Central Excise Rules, 1944. A sample of goods exported may be sent to the parent unit for checking whether the goods supplied by the units, are utilised by the job worker, in the product under export.

H. Assistant Commissioner to approve importation/procurement of fuel lubricants and other consumables:

It has now been provided that the EOU/EPZ units may import or source duty free fuel , lubricants and other consumables for their captive generating sets or captive power plants or boilers with the approval of the Assistant Commissioner, on the recommendation of the Development Commissioner.

[Board's Circular No. 30/99 dtd. 25.05.99]

3.21 PROCEDURE FOR SALE IN DOMESTIC TARIFF AREA :

- a) Permission to sell a percentage of production in DTA has to be obtained from the Development Commissioner with whom the EOU/EPZ is registered.
- b) It should be checked-up whether the item is covered by Import Licence/Open General Licence as per current ITC Policy.
- c) Application to Development Commissioner has to be certified by Customs.
- d) Debit Import Licence (both copies) or release order of the purchaser may be debited by endorsing all details, such as date of supply, value, description, quantity, duty paid etc. Original release order (proof of export) will be detained.
- e) Ensure that procedure prescribed under Chapter V_A (Rule 100A to 100H) of Central Excise Rules, 1944 regarding removal of excisable goods from 100% EOU is followed.
- f) Clearance of goods manufactured in a 100% EOU into the DTA against an advance licence. Para 9.10 of the Exim Policy provides that supplies against advance licence shall be counted towards fulfillment of the export obligation. In this regard Notfn. No. 82/92 C.E. dtd 27.8.92 may be seen along with instructions issued vide Ministry's F. No. 305/6/94-FTT dt.24.5.94.
- g) Bunching of DTA sale Entitlement:

If a unit manufactures and exports several products, DTA sales of any products approved for manufacture & export is allowed within the overall entitlement of DTA sale. Entitlement will be determined in totality and not with reference to specific items. (Para 9.24 of the Handbook of Procedures.)

Detailed guidelines for sale of goods in the DTA by 100% EOU's/EPZ/EHTP/STP Units have been given in Appendix 42 of the Handbook of procedures.

3.22 Effective Rate of C. Ex. Duty for DTA Sales:

- 1) Notification No. 2/95 CE, dt.4.1.95, as amended provides that permissible DTA Sales would be exempted from so much of the duty under Section 3 of the Central Excise Act, 1944 as is in excess of the amount calculated at the rate of 50% of each of the duties of customs which would be leviable, read with any other relevant exemption Notfn.
- 2) Notfn. No. 8/97 CE, dtd.1.3.97, as amended exempts the DTA Sales of Finished products, rejects & Waste/Scrap produced or manufactured in a 100% EOU wholly from the Indigenous raw material from so much of the duty of excise leviable under Section 3 of the Central Excise Act as is in excess of an amount equal to the duty of Excise leviable under the said Section 3 of the Central excise Act on like goods produced or manufactured in India other than in a 100% EOU, if sold in India. However, this Notifn. is not applicable if the finished products manufactured and cleared by a Unit other than a EOU are fully exempt from the duties of Excise or chargeable to Nil rate of duty.
3. Notfn. No. 13/98 CE dtd.2.6.98 exempts the DTA Sales of Finished products, rejects & Waste/Scrap produced or manufactured in a 100% EOU wholly from the Indigenous raw material from so much of the duty of excise leviable under Section 3 of the Central Excise Act as is in excess of an amount

calculated at the rate of 30% of each of the duties of Customs which would be leviable under Section 112 of the Customs Act on the like goods if imported into India, subject to the following conditions.

- I) If the finished products manufactured and cleared by a Unit other than a EOU are fully exempt from the duties of Excise or chargeable to Nil rate of duty.
 - II) Finished products, Rejects, and waste or scrap are allowed to be sold in India under Para 9.9 or Para 9.20 of the EXIM Policy.
4. Notfn. No. 25/98 CE dtd.12.8.98 exempts all goods produced or manufactured in a 100% EOU, EHTP Unit and allowed to be sold in India from the whole of SAD of Customs leviable on such goods under Section 3 A of the Customs Tariff Act.

3.23 **Checking of Records:**

The presently sanctioned Cost Recovery Officers shall examine the records of the Unit and transactions undertaken by the unit at least once in a month. Further the audit of the records of the Unit may also be undertaken by Customs. The amended "Manufacturing & Other Operation in Warehouse Regulations 1966" provide in regulation 11 that the Chief Commissioner may order special audit of the unit by a Cost Accountant (CA) nominated by him in this regard. Cost audit will be employed as a tool to check the correctness of raw material, quantity used, finished goods produced or other such situations. The Chief Commissioner will form a panel of CA's and fix the rate of charges to be received by the said Cost accountant.

3.24. Levy of Interest on Customs duty under section 61 of the Customs Act 1962. Vide Finance Act 1994, Section 61 of the Act 1962 was amended and the normal warehousing period in respect of capital goods warehoused by 100% EOUs has been fixed for five years which is further extendable. Accordingly, vide Notfn. No. 67/95 (NT) Cus Dt.1/11/95, exemption on specified items (e.g. capital good, components, spares of capital goods & equipment, permissible officer equipment for STP/EHTP, captive power plants, tools, etc.) was given from interest accrued on the Customs duties payable on warehoused goods at the time of clearance from Customs bonded warehouses.

In this regard circular No. 31/96 Cus. dt.7/6/96 has been issued to clarify that the benefit of Notfn. No. 67/95-Cus (NT) dt.1/11/95 should be extended to goods, which had been warehoused prior to the amendment of the Customs Act and issue of Notification, and intended to be cleared for home consumption after these changes were effected. However, the capital goods imported by 100% EOUs and debonded prior to amendment of Sec 61 of the Act 1962 would continue to be governed by the old provisions.

3.25 **Procedure for removal of Scraps/Wastes/Rejects:**

Sale or disposal of waste/scrap/remnant arising out of production process may be permitted in the DTA on payment of duties and taxes as per the norms fixed by the Board of Approvals. In respects of items for which no norms have been fixed by the Board, such disposal shall be allowed as per the norms notified under Duty Exemption Scheme. The removal procedure will be as under: -

- a) Application for removal of scrap will be submitted by the Bonder.
- b) If requested for destruction, it would be allowed without payment of duty but should be done under supervision of the Inspector and by endorsing the documents to the effect.
- c) The Bonder will file Ex-Bond Bill of Entry if the scrap is required for DTA removal on payment of duty. The inspector will ascertain the permissible percentage allowed by the Board of Approval.
- d) Inspector will scrutinise the Bill of Entry and ensure that all the columns are duly completed.

- e) Supdt./ A.C. will ascertain the assessable value as per the relevant provisions of the Customs Act/Valuation Rules
- f) Classification of scrap will be as imported scrap of the respective material (in case it is within the permissible percentage).
- g) Rate of duty will be as applicable on the date of removal of goods.
- h) The Inspector will indicate the amount of duty and complete the Bill of Entry in all respects. He will get approved and signed by Asstt. Commissioner for allowing the same for removal on payment of duty.
- i) The Inspector will sign the Challans for deposit the duty and ask the Bonder to make the payment in Bank.
- j) On production of duty paid challan, the Inspector will make endorsement on all the copies of the Bill of Entry to that effect and examine/weigh the goods and allow delivery of goods covered by the Bill of Entry.
- k) The Inspector will make entries in the Stock register and accounts books.
- l) In case the scrap material is allowed clearance by competent authority, which is in excess of the permissible percentage, the classification will be as per the mother material (and not as scrap) and duty will be levied accordingly. However, the valuation will depend on the type of material and would be done by Supdt./A C by proper examination of goods.
- m) Application for removal of rejects will be submitted by the Bonder furnishing all details.
- n) The rejects will be examined and same will be classified and valued appropriately with the approval of the Asstt. Commissioner after his inspection as per the standard norms.
- o) Assessment of duty will be as per relevant Customs Notification.
- p) Only permissible rejects will be allowed to be removed to DTA. For the excess quantity special permission from the Development Commissioner will be necessary and will be allowed by proper authorisation and shall be subject to payment of applicable duties/taxes.

4. Debonding of the 100% EOU:

Subject to the approval of the Development Commissioner, EOUs may be debonded on the completion of the bonding period or on their inability to achieve the Export Obligation, Value addition or other requirement. On debonding the EOU will be liable to pay the following:-

- a) Customs duty on Capital goods on the depreciated Value at the rates prevalent on the date of debonding.

Board's Circulars No. 27/98 dt.21/4/98 and No. 43/98 dt.26/6/98 detailing depreciation norms are reproduced below:-

Depreciation on Capital Goods

(1) Attention is drawn to Board's F. No. 305/52/85-FTT dated the 15th April 1987 wherein the method for calculating the depreciation on 'Capital goods' permitted to be taken outside the units, was prescribed, and the over all limit of depreciation was fixed at 70%. Subsequently Board in their F. No. 314/19/94-FTT Part-VI, dated 11th April, 1997 had provided for accelerated rate of depreciation for the computers in view of depreciation for the computers in view of their rapid obsolescence, keeping, the overall limit at 70%.

2. It had been suggested by the Ministry of Commerce and Deptt. of Electronics that the existing scale prescribed for depreciation is not adequate and the overall limit be raised to 90%. The issue had been examined by the Board and it had been noted that it would be in the interest of export promotion to provide higher depreciation for the purpose of payment of duty on clearance both for imported and

indigenous capital goods. It was also felt that separate formulation for the computers and other capital goods should be prescribed because of the rapid obsolescence of the computers as compared to other capital goods.

3. In view of the above it has been decided that for computers following rate of depreciation may be allowed: -

- For every quarter during 1st year – 7%
- For every quarter during 2nd year – 7%
- For every quarter during 3rd year – 5%
- For every quarter during 4th year and onwards – 3%
- Subject to an overall limit of 90%

and for capital goods **other than computers**, the following depreciation rate may be allowed: -

- For every quarter in the 1st year – 4%
- For every quarter in the 2nd year – 3%
- For every quarter in the 3rd year – 3%
- For every quarter in the 4th year – 2.5%
- For every quarter in the 5th year – 2%
- and thereafter.
- Subject to a maximum of 75%

4. The period of depreciation would be counted from the date the capital goods have been put into the manufacturing process in the EOU/EPZ/STP/EHTP up to the date they are sought to be cleared to the DTA. In case of the 2nd hand imported capital goods, the depreciation shall be calculated from the value which has been accepted by the Assistant Commissioner Customs at the time of assessing the Into Bond Bill of Entry.

5. The depreciation shall be calculated as per straight line method. However, in case of partial debonding of the computer or other capital goods as the case may be, are sold at a value higher than that arrived after allowing depreciation at the above said rates, the transaction value may be taken as the assessable value for the purpose of calculation of duty.

[Board's Circular No. 27/98 dt.21/4/98 in F. No. 314/19/94-FTT]

(2) Representations have been received from the Trade and recommendations from the Ministry of Commerce that the depreciation norms for capital goods other than computers may be raised to an overall limit of 90% as provided in the Exim Policy as also in the Income Tax Rules, 1962.

The issue has been re-examined by the Board and it has been decided to revise the depreciation norms for the capital goods other than computers and computers peripherals, to 90% with the following stipulations:

- For every quarter in the 1st year – 4%
- For every quarter in the 2nd year – 3%
- For every quarter in the 3rd year – 3%
- For every quarter in the 4th year – 2.5%
- and thereafter,
- subject to a maximum of 90%

The Circular No. 27/98 stands modified to the above extent.

The above may be given a wide publicity by issue of Public Notice. Cases already decided may be reopened.

[Board's Circular No. 43/98 dt.26/6/98 in F. No. 314/19/98-FTT]

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- b) Customs duty on unused imported raw materials and components on the value at the time of import, at the rate in force on the date of clearance.
 - c) In respect of excisable goods, Excise duty to be levied without depreciation non such goods at rates as on the date of clearance.
 - d) The penalty imposed by appropriate authority under the Foreign Trade Development Act 1992 for non-fulfillment of the conditions of approval.
 - e) Interest @ 24% is also to be paid wherever applicable.

5. Re-Export of goods:

As per Para 10 of the Notfn. No. 53/97 Cus dtd 3.6.97, the Development Commissioner may (subject to such conditions as prescribed) permit a unit to re-export the goods. Since no permission of the Commissioner is required, The units should apply to the jurisdictional Asst./Dy. Commissioner along with permission of the Development commissioner for re-export of the goods and the permission shall be granted by the Divisional C. Excise Asst./Dy. Commissioner.

6. Demand of duty from defaulting units.

- a) It has now been provided to demand duty and interest on the duty free raw materials, components, spares & consumables (other than Capital goods), if the Unit fails to achieve stipulated NFEP & EP within a period of one year of importation/procurement or within such extended period, not exceeding further one year as the A.C./D.C. may on being satisfied that there is sufficient cause, allow. Commissioner may extend this period for achievement of NFEP & EP for further period not exceeding 5 years from the date of importation or the procurement of such goods.
- b) The duty & interest will also be demanded from the units who have failed to: -
 - I) Install or use or re-export the Capital goods within a period of One year from the date of importation or procurement or within the extended period as allowed by the A.C./D.C.
 - II) Use or re-export/return the imported/indigenous goods, procured duty free (Other than Capital goods) within a period of One year or the extended period permitted by the A.C./D.C.
 - III) To export the manufactured/produced/packaged goods within one year or such extended period as permitted by the A.C./D.C. from the date of importation or procurement of the imported or indigenous goods.
- c) The above extensions may be given liberally and the duty and interest may be demanded only in cases involving malafide and diversion of raw materials.

Boards Circular No. 30/99 Cus. dtd.25.5.99 may be referred for details.

7. The Notfn. No. 126/94 Cus dtd.3.6.94 & 136/94 CE dtd.10.11.94 have been amended to allow exports of processed fruits, vegetables & meat. Further 'Service' has also been included as product of Export under Notfn. No. 133/94 Cus. dtd.22/6/94 & 126/94 CE dtd.2.9.94 (As amended)

8. The EOU/EPZ Units may now also source imported good duty free from the Public/Private Bonded Warehouses licenced under Section 57 or 58 of the Custom Act 1962.

9. Duty Free Clearance into warehouse or to licence holder under Para 9.10 of the EXIM Policy has been allowed for the goods manufactured or produced in a 100% EOU/EPZ (except Units in aquaculture, agriculture & STP Sector) (Boards Circular No. 30/99-Cus dated 25.05.99.)

10. Export from job worker's premises :

It has now been provided that the goods sent out for job work from the EOU/EPZ (except Units in aquaculture, agriculture & STP Sector) may be exported directly from the job worker's premises provided the scrap/waste or remnants generated during the processing is either returned or cleared on payment of duty. However in such case, the job worker's premises must be registered with the Central Excise under Rule 174 of the Central Excise Rules. As sample of the goods exported may be sent to the parent Unit for checking whether the goods supplied by the unit are utilised by the job worker in the product under export.

11. Asst. Commissioner/Dy. Commissioner to approve importation/procurement to fuel Lubricants and other Consumables :

It has now been provided that the EOU/EPZ Units may import or source duty free fuel, lubricants, and other consumables for their captive generating sets or captive power plants or boilers with the approval of the Asst. Commissioner/Dy. Commissioner of Customs on the recommendations of the Development Commissioner.

12. Supply/Transfer of samples and other goods to DTA for specific purpose :

EOU/EPZ/EHTP/STP unit may with the permission of the concerned customs authorities.

- (a) Supply or sell in the DTA, samples of goods produced by EOU/EPZ/EHTP/STP units for display/market promotion, upto 1% of the value of previous year's export or maximum of Rs.10 lakhs in case of new unit going into production, on payment of applicable duties. Samples may also be allowed to be removed from the unit without payment of duty on furnishing a suitable undertaking to the customs authority for return of such goods. Samples may also be exported including through courier agencies authorized by the Commissioner of Customs.
- (b) Bring back for repair the goods sold in DTA but found defective.
- (c) Transfer goods to DTA for repair/replacement/testing or calibration and return.
- (d) Transfer goods for quality testing/R&D purpose to any recognized laboratory/institution upto a maximum of Rs.2 lakhs per annum for items appearing in the Negative List of Imports and Rs.5 lakhs per annum for other items, without payment of duty, on giving suitable undertaking to the customs for return of goods. However, if the goods have been consumed/destroyed in the process of testing etc. a certificate from the laboratory/institution to this effect shall be furnished to the Customs.

Para 9.12 of EXIM Policy 1997-2002 allow these units to supply or sell in DTA, Samples of goods produced by EOU/EPZ/EHTP/STP units for display/Market promotion upto 1% of the value of previous year's export or maximum of Rs.10 lakhs in case of new units going into production, on payment of applicable duties. Such samples may also be allowed to be removed from the unit on furnishing a suitable undertaking to the Customs for return of such goods. The clearances under Para 9.2 do not effect clearances under para 9.9 of the Policy. The Notifications governing all these units also provide that the goods manufactured may be cleared into DTA without payment of duty for display and return to the units.

The units may be allowed to take out the returnable samples into DTA without payment of duty for the purposes of display including for showing to prospective buyer. In such cases the procedure prescribed for sub-contracting may be followed. Non-returnable samples for home consumption may be allowed clearance on payment of appropriated duty within the permissible limits and such clearances may be debited to their entitlement of DTA Clearance.

Units desirous of sending samples in the presence of the Customs Officer and to hand over the same to the representative of courier company authorised by the Commissioner of Customs for its presentation at the port/airport of export. The sealed samples need not be examined again before 'Let

export' is given if the seals are intact and clearly not tampered with. The representative of the Courier Company shall produce the proof of export to the Asstt. Commissioner of Customs in the Zone.

Clearance of Samples from EOU/EPZ/EHTP/STP Units to DTA

(1) It has been brought to the notice of the Board by the trade associations and the Ministry of Commerce that the units in EPZ/EHTP are unable to take out samples to show it to their prospective buyers because of the lengthy procedure to be followed.

2. The issue has been examined and it is noticed that para 9.12 of EXIM Policy 1997-2002 allows these units to supply or sell in DTA, samples of goods produced by EOU/EPZ/EHTP/STP units for display/market promotion upto 1% of the value of previous year's export or maximum of Rs.1 lakh in case of new units going into production, on payment of applicable duties. Such sample undertaking to the customs authority for return of such goods. The clearances under para 9.12 do not affect clearance under para 9.9 of the Policy. The notifications governing all these units also provide that goods manufactured may be cleared into D.T.A. without payment of duty for display and return to the units.

3. Similarly, provisions also exist in these notifications for clearance of goods manufactured and allowed to be sold in India on payment of appropriate duty. The quantum of such sale is decided by the MOC in each case. The EXIM Policy further provides [para 9.9 (e)] that units may be permitted to sell finished products which are freely importable under the Policy, into DTA over & above the levels otherwise permissible against payment of full duties, provided the units have achieved on an annual basis, the stipulated NFEP and export obligation.

4. In view of the above provisions, the units may be allowed to take out the returnable samples into DTA without payment of duty for the purpose of display including for showing to the prospective buyer. In such cases the procedure prescribed for sub-contracting may be followed. Non returnable samples for home consumption may be allowed clearance on payment of appropriate duty within the permissible limits and such clearances may be debited to their entitlement of DTA clearance.

5. Units desirous of sending samples abroad through courier may be allowed to seal the samples in the presence of the customs officer and to hand-over the same to the representative of courier company authorised by Commissioner of Customs for its presentation at the port/airport of export. These sealed samples need not be examined again before 'let export' is given if the seals are intact and clearly not tampered with. The representative of the courier company shall produce the proof of export to the Asst. Commissioner of Customs in the Zone. The difficulties face in implementing the above procedure may be brought to the notice of the board by returning post.

[Board's Circular No. 22/98 dt.27.3.98 in F. No. 305/60/98-FTT]

(2) Attention is drawn to Board's Circular No. 22/98, dated the 27th March, 1998 issued from the F. No. 305/60/98-FTT on the above subject.

2. As per paragraph 9.12 of the Exim Policy, 1997-2002 (as amended upto 31st March,1999), the EOU/EPZ/EHTP/STP Units are allowed to supply or sell in DTA, annually, samples of goods produced by it for display/market promotion, upto 1% of the value previous year's export or maximum of Rs.10 lakhs in case of new unit going into production, on payment of applicable duties. However, as per Board's Circular No. 28/98, dated 27-3-1998, the samples upto 1% of the value of previous year's export or maximum of Rs.1 lakh in case of new units going into production can only be allowed to be cleared on payment of applicable duty.

3. It has been brought to notice of the Board by the Ministry of Commerce that in absence of any fresh instructions, of the EOU/EPZ/STP/EHTP Units are unable to clear the samples as per Paragraph 9.12 of the Exim Policy as revised upto 31st March, 1999.

4 The issue has been examined. It has been decided that henceforth, the EOU/EPZ/STP/EHTP Units shall be allowed to supply or sell in DTA, samples of goods produced by them for display/market promotion upto 1% of the value of previous year's export or maximum of Rs.10 lakhs in case of new unit going into production, on payment of applicable duties.

4. The instructions issued vide Board's Circular No. 22.98, dated 27-3-1998, stand modified to the above extent.

[Board's Circular No. 52/99-Cus., dated 20-8-1999]

13. Clearance of Personal Computers from EOU / EPZ / STP / EHTP Units for Installation in their Administrative / Registered Office Outside Bonded premises

The EOU/EPZ/STP/EHTP units have been allowed to install personal computers obtained duty free, not exceeding two in number in their registered/administrative offices subject to the following conditions:

- a) The computers would be located only in the registered office or administrative office of the units working under EOU/EPZ/STP/EHTP/Schemes;
- b) Any disposal of such computers would be subject to same conditions as are applicable to other goods imported by these units.
- c) The computers would be accounted for in the records maintained by such units; and
- d) The intimation of locating the computers and their technical details would be given to Assistant Commissioner of Customs/Central Excise in charge of unit both at the time of removal of the computers from the factory and after installation of the same in the administrative office/registered office of the EOU/EPZ/EHTP/STP units.

14. EXPORT THROUGH AUTHRISED COURIER AGENCIES.

100% EOUS/EHTP/STP Units have been allowed to export their goods and samples through authorised courier agencies. Units desirous of sending goods/samples through courier are allowed to seal the goods/samples in the presence of the Customs Officer and to hand-over the same to the representative of the courier company authorised by the Commissioner of Customs for its presentation at the port/airport of export. These goods/samples need not be examined again before 'LET EXPORT' is given if the seals are intact and clearly not tampered with. The representative of the Courier Company shall produce the proof of export to the Asstt./Dy. Commissioner of Customs.

(Board's Circular No. 22/98 -Cus dtd.27.3.98 & Circular No. 65/98-Cus dtd.3.9.98 refers)

[All the abovementioned procedural and other details on the 100% EOUs are based on Public Notice No. 131/99 dt.9.9.99 issued by Customs Commissionerate, Pune]

Execution of a Single B-17 Bond by EOU/EPZ/EHTP/STP units – Clarification

Please refer to Board's Circular Nos. 14/98-Cus., dated 10th March, 1998, 42/98Cus.,dated the 19th June, 1998, 66/98-Cus., dated the 15th September, 1998 and Board's letter F. No. 305/46/97-FTT, dated 23.9.1998 on the above subject.

2. It has been brought to the notice of the Board by Trade as well as the Ministry of Commerce that the B-17 bond with 100% surety or Bank Guarantee at 5% of the bond amount, instead of simplifying the procedure, has made the operations of the EOU/EPZ/STP/EHTP units more expensive and the units find

it difficult to organise the said surety/bank guarantee, particularly in cases where the units have to make huge investment on capital goods.

3. The issue has been examined by the Board and it has been decided that the bond amount will now be equivalent to 25% of the duty leviable on the sanctioned requirement of imported and indigenous capital goods plus the duty forgone on the raw materials to be held in stock for three months only.

4. It has also been brought to the notice of the Board that the trade finds it difficult to operate under B-17 bond mainly because of differences in interpretation/misconception prevailing in the field formations. Some of the issues as mentioned below have been brought to the notice of the Board:

- (i) At the port of import in some of the Customs Houses, a certificate showing balance credit against B-17 bond for clearance of import consignment is being demanded.
- (ii) Units are being asked to execute separate bond for the purpose of (a) supply/transfer of goods under 9.12 of the Exim Policy, (b) Re-import and re-export of goods (c) Movement of duty free indigenous goods procured duty free under CT-3.
- (iii) The B-17 bond is not being accepted at all ICD/Air Cargo Complexes.
- (iv) End-use certificate in respect of consignment already warehoused is being insisted by Customs Authorities at the time of fresh imports by such units.
- (v) Escort is being insisted for movement of duty free goods from the port/ICD to the EOU/EPZ/STP/EHTP units.

5. The points have been examined by the Board and I am directed to clarify the issues as under:

(i) The B-17 bond is required to be executed before the jurisdictional Assistant Commissioner of Customs / Central Excise in charge of unit and the jurisdictional Assistant Commissioner will issue certificate which will indicate only description and classification of goods and on the strength of such certificate, clearance under exemption notification will be allowed to the EOU/EPZ/STP/EHTP units at the port of import. The value and quantity of goods to be imported and the bond amount shall be monitored by jurisdictional Assistant Commissioner of Customs or Central Excise. Hence, it is clarified that no other certificate other than the certificate annexed to Circular No. 14/98, dated 10-3-1998, is required to be produced at port of import by EOU/EPZ/STP/EHTP units. It is further clarified that the monitoring at the port of import shall be limited to the extent of ensuring that the goods imported by the units are warehoused in the units within the prescribed time limit and re-warehousing certificate is submitted to the Assistant Commissioner of Customs at the port of import within the prescribed time limit. For this purpose, no separate bond along with surety or security should be asked from the EOU/EPZ/STP/EHTP units at the port of import.

(ii) As already clarified, the B-17 bond is an all-purpose bond. The supply / transfer of samples as provided under para 9.12 of the Exim Policy is covered by para 9 of the Central Excise Notification 6/98 (NT). Exports and Imports includes re-export and re-imports and therefore, the later-category is also covered under the said Bond. For replacement of indigenous goods procured duty free and found to be defective /damaged or otherwise unfit for use, no separate bonds other than B-17 bond, would be required.

(iii) The question of accepting B-17 at ICD/Airports etc. does not arise. As stated above, the bond is to be executed before the jurisdictional Asstt. Commissioner of Customs or Central Excise and clearance will be allowed at port of import on the strength of the certificate issued by the jurisdictional Assistant Commissioner Officer in charge of EOU/EPZ/STP/EHTP unit.

(iv) It is clarified that there is no need for asking end-use certificate from the unit at the time of fresh imports. The units will have to submit only re-warehousing certificate to the Assistant Commissioner in charge of the port of import within 90 days of issue of certificate by jurisdictional Assistant Commissioner. In case such re-warehousing certificate is not furnished within the specified period, the Assistant Commissioner in charge of the port of import shall intimate the Assistant Commissioner of Customs or Central Excise in charge of the units for issuing a demand notice to recover the duty / penalty etc.

(v) As stated above, B-17 bond is an all-purpose bond, thus it is also a transit bond. Hence, no Customs escort shall be insisted upon the movement of duty free goods from the Airport/ICD etc. to the unit from unit to Airport/ICD or to any other place, say, job worker's premises, provided the same is permitted by jurisdictional Assistant Commissioner.

6. It is further clarified that:

(i) Only single B-17 bond may be insisted from the units and requests for execution of multiple bonds as existed earlier should not be entertained.

(ii) The B-17 bond does not cover advance DTA sale and for this purpose separate bond as prescribed in the Handbook of Procedure (Appendix 42) shall have to be executed.

(iii) The basic purpose of the B-17 bond is to safeguard Government revenue and to ensure that action is taken against the unit to recover the same in case of non-fulfilment of the conditions of the exemption notification.

(iv) The value for the bond amount shall be worked out on the basis of projected requirement i.e. equivalent to 25% of duty leviable on sanctioned requirement of imported and indigenous capital goods plus the duty on raw materials to be held in stock for three month, projected, calculated and certified by the unit. Since this is on the basis of sanctioned requirement of capital goods and raw materials, initially the Bond amount would be on the basis of the projected value of the goods. However, if later, the bond amount falls short of the actual import or local procurement made by the unit, the actual amount of bond may be worked out and the unit may be asked to submit revised bond.

(v) The B-17 bond is a running bond and would be debited, whenever there is fresh import or local procurement of the raw material/capital goods. However, the value debited from the bond amount in respect of raw materials, will be credited again when the raw material is used in the manufacture of finished products and the same is either exported or cleared into DTA as per provision of the EXIM Policy. However, the bond in respect of capital goods shall not stand discharged on arrival of the capital goods within the unit /warehouse and the security/surety shall not be discharged so long as the capital goods are in the unit. The duty for debiting the bond amount in respect of capital goods/raw materials will be as per duty forgone amount given in the Bill of Entry/AR-3. This monitoring will be done by Assistant Commissioner in charge of the unit and on broad basis rather than going into intricate details of input-output norms etc.

7. Circular Nos. 14/98-Cus., dated 10-3-1998, 42/98-Cus., dated 19-6-1998 and 66/98-Cus., dated 15-9-1998, stand modified to the above extent.

[Board's Circular No. 76/99-Cus., dated 17-11-1999]

Administrative Control over EOUs / EPZs

Attention is invited to the above mentioned subject. It has been brought to the notice of the Board that the existing arrangements require certain modifications so as to facilitate the work relating to EOUs.

2. The matter has been considered by the Board. It is noted that with the passage of time, a large number of Export Oriented Units has come up in the interiors of the country far away from the port towns and are in close proximity to the Central Excise Divisions and Ranges. Keeping in view the proximity of Central Excise Divisions and Ranges to the Export Oriented Units and also with a view to facilitate the work of the said EOUs, it has been decided that except for the EOUs located within the municipal limits of port cities / towns, the work of all EOUs shall be handled by the staff of jurisdictional Commissioner of Central Excise. In the case of port cities / towns etc. the work of EOUs located within the municipal limits of port cities / towns, shall be handled by jurisdictional Commissioner of Customs, Seaport. As regards the administrative control over the EPZs, the present arrangement would continue i.e. the work would continue to be handled by Commissioners of Customs. Also, in case of new EPZs and the Special Economic Zones (SEZs) that are likely to come up in future, the administrative control shall be exercised by the jurisdictional Commissioner of Customs.

3. These instructions are issued in supercession of earlier instructions on the above subject.

[Board's Circular No. 72/2000-Cus. dated 31.8.2000]

Working of Preventive staff in EOUs

The Preventive staff is deployed in the Export Oriented Units to oversee the working of and observance of the prescribed procedures by these Units.

The deployment and duties of the Preventive staff in these Units is similar to those that has been described in the Chapter ' Warehousing ' of this Manual.

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CHAPTER - THIRTEEN

TRANSIT AND TRANSHIPMENT OF GOODS

PRELIMINARY

The Import and Export of goods to and from our country takes place through various Customs Ports, Customs Airports and Land Customs Stations situated along the frontiers across the country. Every day, numerous Indian & Foreign vessels, aircrafts and vehicles call at these customs stations for the purpose of bringing in imported goods and taking out goods produced in India. Owing to wide ranging factors such as available facilities, operational priorities and conveniences, trade norms, business competition, International transportation laws etc., these conveyances carry goods which are diversified in terms of variety, quantum and destination, in a single journey itself.

The imported goods on board a conveyance calling at any of the Customs station can be classified into, two broad categories -

- 1) Goods to be retained on board to be carried to other Indian or foreign destination. Such goods are known as Transit goods.
- 2) Goods to be unloaded at the port/airport of call. This can be further subdivided into two categories-
 - (i) goods unloaded to be Custom cleared at the port/airport of call, and
 - (ii) goods unloaded at port of call but destined further to some other Indian or foreign port/airport. Such goods are known as Transshipment goods.

The provisions dealing with the Transit and Transshipment goods have been outlined in Chapter VIII of the Customs Act, 1962.

Section 52 of the Act specifically excludes a) baggage, b) goods imported by post and c) stores; from the purview of these provisions, which have been covered under Chapter XI of the Act as a special provision.

GOODS IN TRANSIT

Section 53 of the Customs Act, 1962, provides that goods mentioned in an Import Report or an Import Manifest, as goods for transit in the same conveyance to any Customs Station in India or to any place outside India, may be allowed to be so transited without payment of duty. This Section, however, also makes it clear that any prohibitions / restrictions in force, on the bringing into India or taking out of India of any goods, shall apply to such goods.

TRANSHIPMENT OF GOODS

Section 54 of the Customs Act, outlines the provisions for transshipment of imported goods to a place in India or outside India.

Sub-clause (1) of section 54 stipulates that any person intending to Tranship any goods, which are imported into a Customs Station, shall present a "Bill of Transshipment" in respect of such goods to the proper officer. It also provides that, if the goods are being transhipped under an International Treaty or bilateral agreement between the Govt. of India and the Government of a foreign country, a "Declaration for Transshipment" instead of a "Bill of Transshipment" shall be presented to the proper officer.

Sub-clause (2) of the Section 54 provides that if the goods are intended to be transhipped to a place outside India, the same may be allowed without payment of duty but the prohibitions / restrictions on bringing into India or taking out of India of any goods, shall apply to such goods.

Sub-clause (3) of the Section 54 refers to the goods imported into a Customs Station but whose transshipment is with the object of despatching the same to any Customs Station within India. The Section stipulates that if any imported goods are intended for Transshipment to any Customs Station in India, the proper officer may allow the goods to be transhipped without payment of duty, if he is satisfied that the goods are bona-fide intended for transshipment to such Customs station and subject to the prescribed conditions for the due arrival of such goods at the customs station to which transshipment is allowed.

Conditions Of Transshipment

Section 54 of the Customs Act, 1962, is to be read with the regulations made by the Central Government under Section 157 of the Customs Act, 1962. These regulations are reproduced below –

The Goods Imported (Conditions of Transshipment) Regulations, 1995

In exercise of the powers conferred by section 157, read with sub-section (3) of section 54 and section 158 of the Customs Act, 1962-(52 of 1962), and in supersession of the Imported Goods (Conditions of Transshipment) Regulations, 1984, the Central Board of Excise and Customs hereby makes the following regulations, namely: -

1. Short title and commencement. – (1) These regulations may be called the Goods Imported (Conditions of Transshipment) Regulations, 1995.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. – In these regulations, unless the context otherwise, requires, -

(a) “Custodian” means a person approved by the Commissioner of Customs for the purpose of section 45 f the Customs Act, 1962 (52 of 1962);

(b) “declarant” means –

(i) the person incharge of the conveyance in which the goods are imported, or his agent, or

(ii) the person authorised to tranship the goods by the exporter of the goods or by an agent acting on behalf of such exporter;

(c) “transporter” means the Railways, the owner of the vessel, the owner of the aircraft or, as the case may be, the owner of the motor vehicle, in which the goods imported are transported for the purpose of transshipment.

3. Conditions governing transshipment. – Transshipment shall be allowed under these regulations on the conditions that –

(a) the declarant makes an application to the proper officer of the Customs seeking permission for transshipment of the goods imported;

(b) the goods imported are mentioned in the Import Manifest or the Import Report, as the case may be, as for transshipment to any customs station;

(c) such transshipment is by rail, a vessel, an aircraft or a motor vehicle or by a combination of two or more of these modes of transport:

Provided that if the goods imported are sought to be transhipped by a motor vehicle, such transshipment shall be made only on permission in writing of the Commissioner of Customs; and such Commissioner while permitting such transshipment shall have regard to the following factors, namely: -

(i) the nature of the goods imported to be transhipped,

(ii) the amount of revenue involved, and

(iii) any other factor which the Commissioner of Customs may deem relevant.

Provided further that the Commissioner of Customs shall, before refusing any such application for permission for transshipment of goods imported by a motor vehicle, give a reasonable opportunity of being heard to the declarant.

- (d) the declarant, the transporter or, as the case may be, the custodian executes a bond in such form with or without surety or security or with both as the Commissioner of Customs may specify for-
- (i) Completion of the transshipment of the goods imported to the Customs station of destination; or
 - (ii) the transfer of the imported goods to another mode of transport during the course of their transshipment:

Provided that if the transshipment to the customs station of destination is by more than one mode of transport, the Commissioner of Customs may accept a single bond for the transshipment by such different modes:

Provided further that the transfer from one mode of transport to another of the goods imported during the course of their transshipment may be under the supervision of a proper officer of Customs and at such places and subject to such conditions as may be specified by the Commissioner of Customs at the customs station of import:

Provided also that the Commissioner of Customs may permit the execution of a general bond in such form and with such surety or security or with both as that Commissioner may deem, fit for the aforesaid purposes.

4. Terms of the bond to be executed –

The term of the bond shall be that if the person executing the bond produces to the proper officer, within one month or within such extended period as such officer may allow, a certificate issued by the proper officer at the customs station of transfer as specified in the said bond or at the customs station of destination specified in the said bond and situated at or nearest to the place of destination that the imported goods have been transferred or produced at the station as the case may be, the bond shall stand discharged; but otherwise an amount equal to the value, as the case may be, the market price of the imported goods in respect of which the said certificate is not produced shall stand forfeited.

5. Payment of fees –

A fee of twenty rupees in respect of each application for transshipment of the goods imported shall be charged for all customs stations.

6. Imported goods transferred to be sealed -

- (1) Before the goods imported are transhipped, the proper officer shall, -
 - (a) in the case of transshipment by rail, seal the containers with the Customs Department's seal in the presence of an authorised representative of the declarant, the transporter or, as the case may be, custodian;
 - (b) in the case of transshipment by an aircraft, a vessel or a motor vehicle, place all small packages containing the imported goods in durable bags and seal the bags with the Customs Department's seal in the presence of an authorised representative of the declarant, the transporter or, as the case may be, custodian.
- (2) The materials and the bags required for sealing the containers or bags under sub-regulation (1) shall be provided by, and at the cost of the declarant or the transporter or, as the case may be, the custodian.

[Notfn. No. 61/95-Cus(NT) dtd., 28.09.1995, as amended by Notfn.No. 31/98 Cus (NT) dtd. 02.06.1998.]

Form of application for Permission of Tranship

To

Dated.....

The Commissioner of Customs

.....

Sir,

Be pleased to grant permission to tranship/re-ship from thearrived from on the undermentioned goods for exportation per to..... without payment of duty (if any).

Marks and Number of packages	Number of description of packages	Contents of packages	Remarks
---------------------------------	--------------------------------------	-------------------------	---------

Transhipment / re-shipment fee of Rs.....received.

Shroff,

Commissioner of Customs

(Reverse)

Preventive Officer Mr.....to board the

Do.

Do.

Exporting ship

Importing ship

.....

Commissioner of Customs

Marks and number	Tally
------------------	-------

Packages received on board.

Preventive Officer

Ship's Officer

Transhipment Permit

To

The Commissioner of Customs,

.....

Sir,

Please permit to be transhipped from S.S.....arrived here on(Date)
under.....colours from, the undermentioned goods for Exportation per
 S. S.....undercolours to.....

Marks and No.	Numbers and kind of packages	Description of goods	Weight or quantity	Originally manifested for transhipment under Rot No. Line No.	Space for P.C.'s Stamps	Space for Cashier's Stamps	Space for Import Department Stamp
1	2	3	4	5	6	7	8

Customs

House

Orders

We do declare the contents of this application to be truly stated.

Space for

Court fee

Stamps

Signature of Transhipment Agent/Importer

[C.B.R. Notification No. 232-Cus. dated the 2nd November, 1957.]

Transhipment of Imported Goods – appointment of Customs stations

Notification No. 50-Customs (NT) dated 6th September, 1995 has been issued appointing all the Customs ports including Inland Container Depots (ICDs) and Customs Airports notified under section 7 of the Customs Act, 1962 as places for transhipment of imported goods.

2. As you are aware, in terms of sub-section (3) to section 54 of the Customs Act, 1962, goods imported into a Customs Port or airport and mentioned in the Indian Ports Act 1908 or the Customs airport at Bombay, Calcutta, Delhi or Madras has to be allowed transhipment, without payment of duty, by the proper officer. This facility of transhipment without payment of duty, is also available to imported goods meant for any other Customs ports including an Inland Container Depot, or Customs airports, notified by the Central Board of Excise & Customs in this behalf. Imported goods can also be allowed transhipment subject to satisfaction of the proper officer that these are bona-fide intended for transhipment.

3. Notifications have been issued in the past appointing some of the Customs port/airports notified under section 7 of the Customs Act, 1962 as places for transhipment. However, these Notifications do not cover all the airport/ports including ICDs and in respect of the airports / ports including ICDs not covered by these notifications, the transhipment is being allowed by the proper officer, on case to case basis.

4. Notification No. 50/95-Cus, (NT) has now been issued with an intention to bring uniformity in the matter of transhipment & for the sale of administrative convenience. In terms of this notification all the

Customs Port including ICDs & customs airports notified u/s 7 of the Act, 1962 would be entitled for automatic transshipment of imported goods.

5. The Notifications as mentioned in annexure to this letter by which airport at Bangalore & ICDs at Pragati Maiden (New Delhi), Bangalore Cantt, Anabardhi Railway Station (AP), Coimbatore (TN), Dhanbari Kalan (Ludhiana, Punjab), New Guwahati (Assam), Reddipalam (AP) Amin Gaon (Guwahati, Assam) & Sanganer (Jaipur, Rajasthan) have been declared as place for transshipment are also being rescinded.

[**Circular No. 102/95 dated 22/9/95 in F. No. 434/31/95-Cus-IV**]

TRANSHIPMENT OF CONTAINERISED IMPORTED GOODS – PROCEDURE REGARDING

It is notified for information of all Steamer Agents, CHAs, importers and all other concerned that to facilitate the transshipment of imported goods/cargo emanating from one port to be shipped to other ports including foreign ports, the following procedure is prescribed.

Transshipment of imported goods by vessel: -

Wherein any goods imported at Jawahar Custom House are intended for transshipment in terms of Section 54 of the Customs Act, a application for transshipment shall be presented to the proper officer. Such goods imported as for transshipment to any place outside India are required to be duly entered in the Import Manifest required to be filed as per provisions of Section 30, of the Customs Act, 1962. The transshipment shall be allowed subject to observance of the conditions as prescribed in “Goods Imported Conditions of Transshipment Regulations 1995” issued vide Notification No. 61/95-CUS NT dated 28.9.95 as amended by Section 111/18.10.95.

The application for transshipment of the imported goods can be made either by the master of vessel/aircraft, the steamer agent, a consolidation agent, a container agent or any other person duly authorised in this behalf by the foreign supplier or his agent.

No goods shall be transhipped unless and until –

- a tranship permit covering the same is produced (Appendix A)
- The transshipment fees, if any, payable in respect thereof have been paid;
- An order to let tranship has been obtained, in writing, on the tranship permit.

Transshipment is to be effected within two months of the final entry inward of the importing ship. Goods not transhipped within two months or such extended period as may be allowed by Commissioner of Customs for reasons to be recorded in writing shall be disposed off by public auction.

The application shall be filed on 5 copies.

For transshipment to a foreign port, the above application will be presented to the receiving clerk in the Import Department of the concerned Custom House, who, after verification that the vessel, to which the goods are to be transhipped, has been duly entered outward for the ports for which the goods are to be transhipped, will make it over to the Manifest noter. The Manifest Noter shall verify that the particulars of the goods furnished in the application correspond with those entered in the Manifest and also that the port of destination is not included in the list of ports to which transshipment is prohibited. The Noter shall also verify whether the articles specified in the transshipment application are such, as are suspected to come under any one of those, the transshipment of which is prohibited. Thereafter, he will note in the Manifest, opposite the relative item or items the name of the vessel, to which and the person or persons

by whom the goods are being transhipped and the date of entry and enter the total number of containers in words above his signature in all copies of the application. He will also calculate and note in all copies of the application the total amount of supervision fee recoverable at the rates prescribed and submit the application for the Assistant Commissioner's permission.

The original copy shall be retained in the Import Section and the other copies sent to Superintendent (Preventive) in the container cell who will depute an officer to supervise the transhipment of goods after making necessary entries in a register to be maintained for the purpose. The Preventive Officer deputed supervise the goods will, after the shipment in whole or in part endorse the applications to show the actual quantity of goods shipped and return the duplicate to the Import Department. The Triplicate copy duly endorsed shall be forwarded to the Container Cell after making for records. The quadruplicate will be given to the master of vessel for filing along with the EGM in the case of transhipment to the Indian Port. The fifth copy will be handed over to the applicant for his record. The procedure to be followed in such cases will be the same as above, except that the Quadruplicate copy will be handed over to the Master of the Vessel for Production at the Indian port of discharge along with EGM to the proper officer.

Transhipment of Shut-out or Relanded Goods

When the whole of the Containerised goods/the goods, the transhipment of which was permitted are not eventually shipped by the vessel originally designated but is intended to be shipped by another vessel, the transhipment will be permitted after amendment of the name of the exporting vessel without any further transhipment fee, whether the goods were supervised or not, provided the port of destination remains the same. No amendments fee will be charged for the first two such amendments.

When any part of the goods for which a transhipment order was issued is not eventually shipped by the original exporting vessel but is intended to be shipped by another vessel, a fresh application should be filed for such portion of the goods. This will be dealt with in accordance with the procedure detailed in the para above except that after comparing the application with the first set and verifying previous payment of transhipment fee and making necessary endorsement on both sets, it is passed without further transhipment fee being levied.

Urgent Transhipment-procedure

The procedure to be followed in respect of transhipment goods (the transhipment of goods which is prohibited) from one vessel to another, on Sundays and on other holidays and when the receiving vessel is to sail within 24 hours of arrival of the discharging vessel, is as follows: -

The transhipment may be effected within the said period with permission from Assistant/Dy. Commissioner (Imports) or Assistant/Dy. Commissioner (Preventive) and under the supervision of the Preventive Officer on board in anticipation of Transhipment permit and payment of the transhipment fees if any, payable in respect thereof provided that the Steamer Agent execute a guarantee on stamp paper with a list of cargo to be transhipped in duplicate, undertaking to complete the transhipment formalities immediately after sailing of the vessel. Guarantee papers are retained in the Preventive Office and a separate note sheet, with one copy of list of transhipment cargo, will be forwarded to Preventive Officer on board to supervise the transhipment cargo as per list and endorse the papers to Import Department immediately.

The copies of lists received in the Import Department will be retained by the Manifest Noter concerned until the usual transshipment applications are filed and the Export Duty or cess or fees if any are leviable, are paid or noted in the memorandum of fees, as the case may be.

Should there be any delay in filing the ordinary application for transshipment or in the payment of export duty or cess or fees, as the case may be, the matter may be reported to the Preventive Department to take action in accordance with the undertaking.

In case of free cargo coming from Customs Port and of dutiable goods intended for Customs Ports, urgent transshipment may freely be allowed.

No Import Licence is necessary in the case of restricted goods intended for transshipment to other ports but brought to this port and reshipped without being removed from the Docks.

Refrigerated stores pending transshipment: -

In case of transshipment of refrigerated cargo or stores, carried or brought in the Refer-Containers will be stored in the nominated area or the port. In the absence of the facilities for keeping refer-containers in the nominated port area special permission from the Asstt. Commissioner Preventive (General) is required to be obtained for keeping such refer-containers in any CFS. Such movement will be under Preventive escort on payment of fees as prescribed. An application for such movement will be made in duplicate, one copy to be retained in the CFS on deposit of such container and the other copy duly endorsed by the Custodian to be brought back to the Office of ACP(G). This copy will be again taken for the purpose of movement of said refer-container from CFS to the Docks for the purpose of loading on the concerned vessel. Before moving of the refer-container from the CFS to the Docks, the copy of application kept with Custodian to be duly endorsed to that effect.

Transshipment of Imported containerised cargo by Rail/Road to another Customs port in India:

Transshipment of containerised cargo from one Customs Port to another Customs Port by road or rail is permissible under Customs Act, 1962. It will therefore, be open to the proper officer to allow the goods to be so transhipped. Such transshipment will be permitted as per procedure already in existence. The form of application/transshipment permit, however, shall be as per the revised format in Appendix A and in 5 copies handed over to the person-in-charge of the conveyance instead of the master of vessel.

Terms of the bond to be executed :

Bond will be executed for transshipment to ports and destinations in India. The Bond is not required to be executed if transshipment is made directly to a foreign port. The terms of the bond shall be that if the person executing the bond produces to the proper officer, within one month or within such extended period as such officer may allow, a certificate issued by the proper officer at the customs station of transfer as specified in the said or other customs station of destination specified in the said bond and situated at or nearest to the place of destination that the imported goods have been transferred or produced at the station as the case may be, the bond shall stand discharged; but otherwise an amount equal to the value, or as the case may be, the market price of the imported goods in respect of which the said certificate is not produced shall stand forfeited. The bonds executed will be backed by such surety/security as is prescribed by the appropriate authority from time to time.

Payment of fees :

A fee of twenty rupees in respect of each application for transshipment. Of the goods imported shall be charged for customs station.

Imported goods transferred to be sealed :

Before the goods imported are transhipped to a destination in India, the proper officer shall-

In the case of transhipment by rail, an aircraft, a vessel or a motor vehicle, seal the Containers with the Customs Department 's seal in the presence of an authorised representative of the declarant, the transporter or, as the case may be, custodian. The requirement of sealing the container for transhipment by any mode of conveyance in general or specifically for any particular conveyance or consignment, may be dispensed with, by an order passed in this regard by the appropriate authority under law, Such authority will be the Chief Commissioner/Commissioner of the Port, or any officer not below the rank of Addl./Jt Commissioner specially designated for this purpose. The Agent of the importing vessel are responsible for due transhipment under permit or all cargo manifested for transhipment. Except where such cargo is transhipped before the vessel obtains inward clearance, a special deposit of Rs. 1,000/- (Rupees One Thousand Only) shall be made on account of each importing vessel and such deposit shall be forfeited unless the name of the receiving vessel is declared by the Agents of the importing vessel within two months from the date of entry. The said amount will be refunded on the submission of the name of the receiving vessel within the prescribed period. Such declaration shall be at once checked with the export general manifest of vessel named and items found to have been duly forwarded shall be cleared from the import manifest. Enquiry shall be made as to omissions discovered.

The master of the exporting vessel is, as per the provision of section 41 of the Customs Act 1962 responsible for the due entry in export manifest of all transhipped cargo ; when an amendment of the export manifest in respect of goods found not to have been entered is permitted, such amendment will be allowed on payment of fees as are prescribed for amendment from time to time.

No goods intended for transhipment at any port shall be landed at any place other than the prescribed area without special permission. Permission to land transhipment cargo at any place other than the prescribed area, pending shipment may be given by the Assistant Commissioner of Customs, incharge Preventive service on application by the merchant or ship's agent.

Such permissions shall remain in force for one week only, fresh application for every subsequent week is necessary. Each application shall state when the goods will be landed, where they will be (whether in the special enclosures or in the within Customs limit) and shall be accompanied by sepoys fees as prescribed. All goods entered for transhipment to foreign port shall be stowed entirely separate from cargo meant for home consumption in the enclosure specially allotted for the purpose by Port Trust.

The facility of transhipment will not be made available to arms, ammunitions, explosives and other cargo considered as constituting a threat to the security/safety and integrity of the Country, goods the import of which is prohibited by the EXIM Policy in force at the time of imports and any other goods specified for this purpose under the Customs Act, 1962 or any other law for the time being in force, by, Notification, Circular, Order/Notice or instructions as issued by the appropriate authority, except with the Special Permission of the Commissioner of Customs for reasons to be recorded in writing. The transhipment will also not be allowed to any Port/destination with regard to which any order of Prohibition has been passed by the appropriate authority under law.

Nothing contained in this Public Notice shall adversely affect the right of the proper officer of Customs at the Port of Import to detain, check and if necessary deny the request for transhipment of

goods entered for transshipment and to call for any information that is considered as necessary for passing order on the request for transshipment made by applicant.

The above procedure will also apply mutatis mutandis in the case of transshipment of containerised imported goods between two ports.

[**Public Notice No. 86/99 dated 03.08.1999 issued by the Chief Commissioner of Customs, Mumbai, from file no. S/V – 10 (79) CCO / 99]**

APPENDIX – A

Application for permission to Tranship / Transshipment Permit

To

Date :

The Customs Commissioner,
..... Custom House,

Sir,

Be pleased to grant permission to tranship/re-ship from the.....arrived from..... on.....the under mentioned goods for exportations per to.....without payment of duty (if any)

Marks & Numbers Of packages	Description of goods	Weight or Quantity	Value	Originally Manifest for transshipment Import General Manifest No.....of ....(year).. Transshipping fee to be received.

Asstt Commissioner of Customs

Transshipment/reshipment fee of Rs.received

Shroff/Cashier

Customs Commissioner

I/We hereby declare the contents of this application to be truly stated

Signature of Exporter/importer or his authorised agent.

(Reverse of form)

Preventive officer Mr.....	to board the Exporting ship Importing ship Customs Commissioner	Supdt. of Customs (Prev.)
Marks & Numbers	Tally	
Packages received on Board	Ships Officer	Preventive Officer

TRANSHIPMENT OF FREE AND UNRESTRICTED GOODS

- (a) **From one Steamer to another** – Permission to tranship is given on the application of the Master or in his lieu the agents of the importing vessel, made at the time of its Entry Inwards at the foot of the vessels' I.G.M. The "Let Tranship" Order is signed by the Superintendent, Imports.

Such goods are discharged from the importing ship under boat-notes issued by the Preventive Officer on board or in his absence, by an officer of the ship. When the goods are shipped on board the receiving vessel, the boat notes are delivered over to the Preventive Officer, if one is present on board such vessel, or to an officer of the ship and are signed by him in acknowledgement of the goods having been duly received on board. They are subsequently delivered by the Agents of the exporting vessel in the M.C.D. or the Coastal Trade Establishment as the case may be, for check with the relative E.G.M.

Boat Notes shall be issued in duplicate and their counterfoils shall also be in duplicate.

- (b) **From a Steamer or square-rigged vessel to a country craft or vice versa or from the country craft to another-** The procedure described in para is applicable except that no transhipment fee is recovered.

Transhipment of goods by country crafts

Transhipment by country craft clearing for foreign ports via Customs Ports of goods and ship's stores liable to duty shall be permitted only on the owner of the goods executing a bond under Section 54 (3) (b) subject to the provision of Section 11 of the Customs Act. The Bond shall be cancelled on production of Landing Certificate from the port of destination. The shippers shall be called upon to pay the duty involved where no such evidence is produced.

Movement of goods through foreign territory

Sometimes the goods, imported or otherwise, have to move from one part of India to another through any foreign territory.

Section 56 of the Customs Act, 1962, contains the provisions for such goods. It stipulates that imported goods may be transported from one Land Customs Station to another without payment of duty. It also prescribed that any goods may be transported from one part of India to another part through any foreign territory. It further stipulates that movement of such goods in both the cases is subject to the conditions as may be prescribed for due arrival of such goods at the place of destination.

The Central Government has made the following regulations in this regard –

The Transportation of Goods (Through Foreign Territory) Regulations, 1965

In exercise of the powers conferred by section 157 read with section 56 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations, namely:-

1. **Short title** – These regulations may be called the Transportation of Goods (Through Foreign Territory) Regulations, 1965.
2. **Application** - These regulation shall apply to goods, whether imported or indigenious which are to be transported from one part of India to another through a route which lies partly over the territory of a foreign country.
3. **Consignor to deliver a bill** (a) Whenever any goods to which these regulations apply are to be transported, the consignor of the goods shall make an entry to that effect by presenting to the proper officer a bill (in duplicate) in the form specified in Appendix A to these regulations.
4. **Permission to load goods, etc.** No person-in-charge of a vessel shall permit the loading of such goods on a conveyance unless-

- (a) the bill relating to them after approval by, and
- (b) a written permission to load the goods from,
the proper officer are received by him.

5. Execution of bond. Before any such goods are permitted to be loaded on the conveyance, the consignor or the person-in-charge of the vessel shall be required to execute a bond in such form and with such surety or sufficient security as the proper officer may demand, binding himself in an amount not exceeding the value of the goods.

6. Duties of the person-in-charge of the conveyance. (1) On receipt of the documents referred to in regulation 4, the person-in-charge of the conveyance shall prepare as many sets of Manifest (in triplicate) in the Form specified in Appendix B to these regulations in respect of such goods as there are customs stations to be passed through on the route.

He shall, immediately on arrival at any customs station of delivery or re-entry, deliver a set of the manifest along with the bill or bills relating to the goods to the proper officer at the customs station.

(2) The proper officer shall, after making the necessary check, make an endorsement on the manifest, retain one copy of the manifest and return the other two copies to the person-in-charge of the conveyance.

(3) The person-in-charge of the conveyance shall retain one of the two copies for carrier's record and present the other to the proper officer at the loading station.

(4) The person-in-charge of the conveyance carrying such goods shall not leave the Customs station until a written permission has been given by the proper officer after checking the manifest presented to him under this regulation.

7. Delivery of bills at the destination station. The person-in-charge of the conveyance shall carry with him on the journey all the bills relating to the goods delivered to him and shall immediately on arrival at any customs station, deliver to the proper officer such of the bills as relate to the goods unloaded at that station.

8. Clearance of goods. Such goods, after being unloaded at any customs station, shall not be cleared unless the proper officer gives a written permission that all the goods so unloaded are entered in the bill or bills delivered to him under these Regulations.

9. Terms of the bond. The condition of the bond to be executed under Regulation 5 shall be that if the person-in-charge of the conveyance or the consignor produces proof within a time stipulated in the bond or such extended time as the proper officer may permit that the goods have been produced before the proper officer at destination the bond shall be void; and if such proof be not furnished the executor of the instrument shall be liable to pay an amount equal to the export duty leviable on the goods and such penalty as may be adjudged or imposed by the proper officer under the Customs Act, 1962, the Imports and Exports (Control) Act, 1947 [*now Foreign Trade (Development & Regulation) Act, 1992*] or the Foreign Exchange Regulation Act, 1947 [*now Foreign Exchange Regulation Act, 1973*] and shall also be liable to forfeit the whole amount of the bond.

10. Execution of General Bond. Notwithstanding anything contained in these Regulations, the proper officer may permit the person-in-charge of the conveyance or the consignor of goods to enter into a general bond in such form and with such surety or security as the proper officer may deem fit, in respect of transport of goods as above said to be effected from time to time.

APPENDIX A

Customs Declaration Form

I/We hereby declare that the description and the value of the goods mentioned in the Annexure here to as well as the description in the forwarding note are true to the best of my / our knowledge and belief.

2. In case,
- a) the packages in which they are contained or any of them differ from the description given in the said Annexure or in the forwarding note; or
 - b) the contents thereof have been wrongly described in the said Annexure or in the forwarding note as regards the denominations, characters or conditions according to which such goods are chargeable with duty, or being imported or exported; or
 - c) the contents of such packages or any of them have been incorrectly mentioned in regard to sort, quality, quantity or value; or
 - d) goods not mentioned in the said Annexure or in the forwarding note have been concealed in or mixed with the articles specified therein or have apparently been packed so as to deceive the officers of the Customs, and such circumstances or any of them is not accounted for to the satisfaction of the Commissioner of Customs, or in case the said goods or any part thereof being subject to export duty or any restrictions under the Imports and Exports (Control) Act, 1947 [*now Foreign Trade (Development & Regulation) Act, 1992*] or the Foreign Exchange Regulations Act, 1947 [*now Foreign Exchange Regulation Act, 1973*], have been lost while in transit over any foreign territory.

I / We agree to pay on demand to the President of India the amount of duty if any, and also such amount of penalty as may be adjudged or imposed by any competent officers of the Government of India on me / us under the Customs Act, 1962 and / or the Imports and Exports (Control) Act, 1947 [*now Foreign Trade (Development & Regulation) Act, 1992*] or the Foreign Exchange Regulations Act, 1947 [*now Foreign Exchange Regulation Act, 1973*].

ANNEXURE

- 1. Marks on and description of packages
- 2. Description of goods
- 3. Weight, quantity or number
- 4. Value of the goods
- 5. Customs station of entry
- 6. Customs station of re-entry

I / we hereby declare the above particulars to be true.

Signature of Consignor or his authorised agent.

.....

Occupation

Address

Date

Transport permitted

Officer of Customs

.....(Name of Customs Station.)

**APPENDIX B
Transit Manifest**

Serial No.
 Date
 Name of Vessel
 Rotation No.
 (for calendar year)

Sl. No.	Bill No. and Date	Station from	Name and Address of Consignor	Station to	Name and Address of Consignee	Description of goods	No. of pkgs.	Quantity	Value of goods	Customs Sl. no. shown in the Bill	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)

Signature of the person in charge of the conveyance.

Liability of duty on transited/transhipped goods

Section 55 of the Customs Act, 1962, stipulates that any goods allowed to be transited or transhipped to any Customs Stations in India shall, on their arrival at such station, be liable to duty and shall be entered in like manner, as goods are entered on their first importation thereof. The section also stipulates that the provisions of the Customs Act, 1962, and any rules and regulations, shall apply in relation to such goods.

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CHAPTER - FOURTEEN

WAREHOUSING

PRELIMINARY:

“Warehousing” in relation to the Customs Act means the storage –

upto a period of one year or for reduced period as the case may be as prescribed by Section 61 of the Customs Act, pending clearance for home consumption on payment of Duty under Sec. 68 or the re-export to any foreign port without such payment under Section 69 or as provisions and stores for the use on board any vessel proceeding to a foreign port under Section 86 , of any dutiable goods on their first importation-

in a place situated at a specified Customs port subject to Customs control and other regulations made under the provisions of Chapter IX, Customs Act.

The object of warehousing is to allow the trade the facility of deferring payment of Duty on imported goods for one year or reduced period as the case may be till their actual clearance for home consumption or their re-export without payment of the Duty to any foreign port. Warehousing of articles imported by air in a Public or Private Bonded warehouse along with the goods imported by sea is permissible.

[Govt. of India's letter No. 55/12/51-Cus I/IV dated 20.06.1956]

WAREHOUSING

As per the definitions given in Section 2(43), 2(44) and 2(45) of the Customs Act, 1962-

Warehouse -means a public warehouse appointed under Section 57 or private warehouse licensed under Section 58,

Warehoused goods- means goods deposited in a warehouse,

Warehousing station- means a place declared as a warehousing station under Section 9.

The legal provisions for warehousing imported goods are contained in Chapter IX, i.e., Section 57 to 73 of the Customs Act, 1962. Under Section 9, the Central Board of Excise and Customs may issue a notification declaring any place to be a warehousing station. At such warehousing stations an Assistant Commissioner of Customs can appoint a public warehouse under Section 57 and he can licence a private warehouse under Section 58 of the Act. These are also known as Bonded warehouses.

‘Bond’ literally means a document executed by the importer to bind himself in a sum equal to twice the amount of Duty assessed on imported goods under Section 59 of Customs Act, 1962. We use the word ‘Bond’ in day to day work in the sense of Bonded Warehouse. And when the importer warehouses the imported goods in the Bonded Warehouse without payment of Duty after execution of Bond under Section 59 of Customs Act, 1962, the goods stored therein become Bonded goods or warehoused goods.

WAREHOUSING STATIONS

Section 9 of the Customs Act, 1962, prescribes that –

The Board may declare places to be warehousing stations at which alone public warehouses may be appointed and private warehouses may be licensed.

Thus, a ‘warehousing station’ means a place declared as a warehousing station under Section 9 of the Customs Act, 1962. Goods can be stored only at such places, where facilities exist for warehousing them.

Warehousing Stations In Interiors

“ There should be as few a number of places which should be declared as warehousing stations as possible having regard to the proximity to the Port, the requirement of the Trade and Industry, the availability of Customs expertise etc. The warehousing stations should be so chosen that the industrial units located in the interior, uniformly and without discrimination, get the benefit of the facilities. If the number of places is kept minimal and uniform, it will be possible to cater better to the needs of the staff for exercising powers in regard to warehoused goods. It should also be possible to keep the number of warehouses to the minimum and yet cater to the needs of the industry adequately if, instead of a number of private warehouses, a single public warehouse is appointed at an appropriate station. Supervisory audit and other checks would also be possible more easily and expeditiously if this approach of having only public warehouses is adopted.”

[Para 4 of Board's letter F. No. 473/147/79-Cus. VII dtd. 7.7.80]

BONDED WAREHOUSES

There are two types of Bonded Warehouses viz. PUBLIC BONDED WAREHOUSES AND PRIVATE BONDED WAREHOUSES -

Public Bonded Warehouses

Though statutorily the Deputy Commissioner of Customs or Assistant Commissioner of Customs can appoint (at any warehousing station) a Public Warehouse wherein dutiable goods may be stored, the Board vide Letter F. No. 473/147/79-Cus VII dt.7.7.80 [Para 5] has decided that once a place is declared to be a Warehousing Station, the concerned Commissioner himself will exercise the power to appoint the Public Warehouse.

As a regards appointment of open space as a Public Bonded Warehouse the Board vide letter 3/65/65-Cus VII dt.9.2.66. Circular No. 4/66 (Warehousing) has informed that it is not the intention to encourage Bonding in open spaces. However, when in the individual judgement of the jurisdictional Commissioner, the circumstances warrant that such open spaces may be permitted as Bonded warehouses, he may appoint such open spaces as Bonded warehouses.

Private Bonded Warehouses:

Private warehouses belong to individual private firms of importers.

Authority competent to issue licence:

Private Bonded warehouse are licensed as such under Section 58(i) Customs Act by the Dy. Commissioner / the Assistant Commissioner of Customs.

Application for licence:

Every application for a licence for a private warehouse under Section 58(i) of the Customs Act should be in writing and in the form C.B.R. Cus. 202 which will be supplied by the Custom House.

When an application for licence may be refused:

No licence for a private Bonded warehouse should be issued if suitable and sufficient accommodation can be provided in any Public (Port Trust) Warehouse. Assistant/Dy. Commissioner of Customs would also be fully justified in refusing at his discretion, the licensing of a Private Bonded Warehouse, if general trade conditions seem unsettled and the financial stability of the applicant firm is subject to suspicion or is reported to be unreliable.

Request for holding a Private Bonded Warehouse should not be turned down on the mere reasons of availability of space in a Public Bonded warehouse of the Port Trust. If an applicant is otherwise fit to hold a licence, and be shown that it would be highly inconvenient or would definitely handicap his business, if he had to operate in a public Bonded warehouse of the Port Trust, it can

ordinarily be held that there is sufficient justification for issuing a licence for a private Bonded warehouse to such an applicant.

[**C.B.R. Letter No. F.3/30/60-Cus. VII dated 6.9.60.]**

While licensing private warehouses under Section 58 the Asst./ Dy. Commissioner has to ensure that there is no risk to Customs revenue. He has also to ensure that the applicant is solvent, that the place is a secure one for storing non-Duty paid imported goods and that there is no danger of theft, loss or deterioration due to natural causes like weather conditions etc. He has also to take into consideration the volume of imported goods likely to be deposited in the warehouse, the total amount of Customs Duty on such goods etc. before issuing the licence. While licensing private Bonded warehouses at inland places, points such as non-availability of public Bonded warehouses of the Central Warehousing Corporation, problems likely to arise in assessments of goods that may be deposited in and later on cleared out of the warehouses, are also taken into account. The licence is issued by the Asstt. / Dy. Commissioner normally for a period of one year and can be cancelled by him after giving one month notice to the licensee. It can also be cancelled, after giving him an opportunity to represent, if the licensee commits any contravention of the Customs Act, 1962, Rules and Regulations made thereunder,.

Further, pending an enquiry, whether a licence granted should be cancelled, the Dy. Commissioner or Asstt./Dy. Commissioner is empowered to suspend the licence as per Sub Clause (3) of Section 58 of the Customs Act, 1962.

APPOINTMENT OF PUBLIC BONDED WAREHOUSES & LICENSING OF PRIVATE BONDED WAREHOUSES- GUIDELINES

Review of the existing policy with regard to appointment of public Bonded warehouses and licensing of private Bonded warehouses has been conducted by the Board. Consequently, it has been decided to liberalise the procedure on the lines indicated in the succeeding paragraphs.

2.0 Appointment of Public Bonded Warehouses: -

2.1 The existing policy of appointing only Central Warehousing Corporation and State Warehousing Corporations as the custodians of the public Bonded warehouses, formulated in 1980, will undergo a change in the context of liberalisation of the economy. Considering the fact that the management of CFSs and ICDs has been entrusted to private operators, in line with the existing policy of privatisation and with a view to raising the efficiency of warehousing services, private operators would now be allowed to be appointed as custodians of the public Bonded warehouses. This relaxation may have the way for more number of public Bonded warehouses coming up in interior locations where these are needed.

2.2 The concerned Commissioner should, however, ensure that while appointing any private operator as a custodian for public Bonded warehouse, the application submitted by the letter is very carefully scrutinised and factors such as the feasibility and financial viability of the warehouse operator, his credibility, his financial status, his past record to comply with Customs & Excise Laws, his expertise in warehousing field, etc. should be given due consideration. Besides, operational requirements such as, suitability and security of the premises, availability of Customs expertise, proximity to the users etc. are also to be taken into account while appointing the custodians for the public Bonded warehouses. The applicant should agree to take the services of the Customs officers on cost-recovery basis, if the services of the officer are required on a continuous basis (i.e. 9 AM to 6 PM), or on payment of MOT/Supervision charges, as the case may be.

3. Appointment of Private Bonded Warehouses: -

Furthermore, it has been decided that the requests for grant of licence for private Bonded warehouses will be considered and decided at the level of the Commissioners without making any reference to the Board. The private Bonded warehouse licences may allowed without any restrictions regarding the type of goods to be warehoused. Hitherto, private Bonded warehouse licences were

allowed only in respect of goods which required specialised storage/handling facilities, e.g., liquid in bulk, hazardous goods, explosive goods, goods requiring controlled temperature conditions, etc. From now onwards, irrespective of whether the goods fall in the above categories or not, the private Bonded warehouse licences may be granted. The existing practice of allowing only industrial raw-materials/components to be warehoused in inland areas is also being relaxed. The Commissioners may carefully scrutinise the applicant is financially sound, has good credibility, and has not been involved in custom or excise Duty evasion in the preceding 5 years, in the normal course, a private Bonded warehouse licence may be granted. This would, of course, be subject to the condition that the premises are suitable and adequately secured and the applicant agrees to take the services of the Customs officers on cost-recovery basis, if the services of the officer are required on a continuous basis (i.e. 9 AM to 6 PM) or on payment of MOT/Supervision charges, as the case may be.

[**Board's Circular No. 68/95 Dated 15/6/95 in F. No. 473/61/94-LC**]

Further guidelines on Private Bonded Warehouses

Attention is drawn to the instructions contained in Board's circular of even number dated 15th June, 1995 [*Customs Circular No. 68/95*]. Certain doubts have been expressed in some quarters regarding methodology to be followed for licensing of private Bonded warehouses. Accordingly, further guidelines for grant of such licences are issued and Commissioners are advised to ensure that these guidelines are followed in respect of the existing private Bonded warehouse licences by giving them suitable time for compliance with the fresh requirements. The time limit may be fixed two months from the date of issue of Public Notice/Trade Notice.

2. The applications for private Bonded warehouse licences may be classified in two categories. The first category being of those who want to store sensitive goods such as liquors, cigarettes, foodstuffs, consumables, etc. The second category is of those who do not store sensitive goods but store non-sensitive goods.

3. Guidelines for Storing Sensitive Goods

- (i) The new applicants who are intending to store sensitive goods should be asked to produce a solvency certificate (not a reference or confidential certificates) from a scheduled Bank of repute (i.e., other than a cooperative bank which has operations limited to a city, etc.) for a value of not less than rupees fifty lakhs (Rs.50 lakhs);
- (ii) Such warehouses should not be located in residential areas;
- (iii) The premises must be carefully checked to ensure that they are secured against theft, pilferage or other risks and are easily accessible for the departmental officers for any surprise checks.

In respect of existing licences their location and other requirements should be reviewed and action should be taken in case it is found wanting in certain requirements. They should be given notices of say 90 days to either shift or give additional provisions that are required from the Department's point of view:

- (iv) It may be ensured that there are adequate provisions for fire fighting operations.
- (v) It may be ensured that the goods deposited in the warehouses are fully insured by the warehouse-keeper against theft, pilferage, fire accidents, other natural calamities, risks against rioting, etc. at least for a value equal to the Customs Duty by a comprehensive Insurance Policy and drawn in favour of the Commissioner of Customs.

In respect of goods already warehoused, ensure that this coverage is also being made by the existing warehouse-keepers.

- (vi) It may be ensured that in respect of new applicants, their record is clean and that the proprietor or partner or any of the directors are not involved in any Customs Duty evasion or smuggling

offences (other than technical offences), Commissioners may deny licences to such applicants.

(vii) In respect of existing warehouse-keepers, if their track record has not been found satisfactory or cases have been registered for illegal removal or improper compliance of the rules and regulations, immediate action should be taken to cancel their licences after observing the principles of Natural Justice. Where Duty evasion is found to be more than one lakh, either in individual case or in a series of offences, the cases of such licences should be reviewed for action.

(viii) In respect of individual consignments to be warehoused, the licencees are to give a double Duty Bond as required under the law. In respect of sensitive goods, we may take a cash deposit or Bank Guarantee equal to 25% of the Duty liability (effective Duty foregone) for each consignments. However, where a warehouse-keeper wants to have revolving Bond with a single bank guarantee for a higher amount, it can be accepted and a suitable credit/debit system for each consignment warehoused/cleared can be operated.

4. For Non-Sensitive Goods

- (i) The applicant should be solvent and has a good record. There is no need to insist on a solvency certificate of Rs.50 lakhs but should be solvent for Rs.10 lakhs.
- (ii) All other provisions regarding security of the place, location of the place, insurance to be taken indicated in para 3 above would mutatis mutandis apply to non-sensitive goods. Normally, the double Duty Bond with surety would be sufficient. However Commissioners may ask for a bank guarantee where they are not satisfied about the transactions of a particular Bond.

5. Transit Bond for Transfer or Bonds to Interiors

- (i) Where the imported goods are stored in a private Bonded warehouse within the same metropolitan city, the regulations allow it to be sent under escort. In such cases, there is no need for a transfer Bond.
- (ii) Where the goods have to go outside the city, a transfer Bond is required to be taken but where a transfer takes place within the territorial jurisdiction of the Commissioner of Customs and is within a reasonable distance say upto 50 kms, he may wave the bank guarantee if he is satisfied with the bona fides of the party and the goods are sent under escort;
- (iii) In respect of sensitive goods, the Duty should be secured by a transit Bond backed by a bank guarantee or a cash security for 50% of the Duty involved. In respect of non-sensitive goods transit Bond would be covered by a bank guarantee or a cash security for 25% of Duty revolved. The Commissioners may demand bank guarantee/security up to the value of Duty amount, if they consider it necessary in certain cases.

[Circular No. 99/95 Dt.20.9.1995 in F. No. 473/61/94-LC]

Grant of Licences to Private Bonded Warehouses- sensitive items

Attention is drawn to Commissioner of Customs, Ahmedabad's letter F.No.VIII/40-13/Cus. (T)/95 dated 22.12.95 regarding grant of licence to private Bonded warehouses under section 58 of the Customs Act, 1962 and to say that the sensitivity of a product may change from time to time depending upon the rates of duties and the licensing aspect involved. Therefore, no comprehensive list of sensitive items should be drawn for guidance of the Commissioners. The Board, therefore, desires that the Commissioner's should themselves decide as to what is sensitive and what is not, after taking into consideration the nature of the commodity, the rates of duties and the licensing aspects involved. However, difficulties, if any, faced may be brought to the notice of the Board.

[Circular No. 20/96-Cus. Dated 4.4.96 in F. No. 473/3/96-LC]

Availability of space certificate from Public Bonded Warehouse not required

Attention is drawn to the instruction issued by the Board vide letter of even number dated 15th June, 1995 [Customs Circular No. 68/95] and to say that a doubt has arisen whether “no objection” is required from Public Bonded Warehouse for availability of space there before granting licence for Private Bonded Warehouse (in the same area where the Public Bonded Warehouse exists) under section 58 of the Customs Act, 1962.

2. The Board has examined the matter further and it is hereby clarified that there is no precondition of obtaining a ‘no objection’ from the Public Bonded Warehouse for considering the applications for licencing private Bonded warehouse. Therefore, the applications for private Bonded warehouse licence may be decided on merits without considering the aspect of availability of space in the Public Bonded Warehouse.

[Circular No. 1/96-Cus. Dated 1/1/96 in F. No. 473/61/94-LC]

Preliminary enquiries to be made before grant or renewal of a licence

Before any licence for a private Bonded warehouse is granted or any existing licence is renewed, it is incumbent on the Custom House to be satisfied that the applicant for a licence is a person of good financial standing who can be relied upon. An enquiry as to the financial status of the applicant should therefore be made confidentially with his bankers. The information should be submitted to Assistant / Dy. Commissioner of Customs (Bonds) for orders.

Conditions which a building to be appointed a private warehouse under Section 58 (i) Customs Act, must fulfil:

- (i) The walls should be well built.
- (ii) If the warehouse includes a whole building or is on a upper floor, the roof should be well and strongly terraced or tiled, the rafters in the latter case being ceiled with planks, strong cloth or matting.
- (iii) If the floors of any part of a warehouse are continued over a gateway, the latter should be ceiled with planks if not already arched with brick and mortar.
- (iv) There should be sufficient number of windows in each room to supersede, as far as practicable, the necessity of using lamps should the light from the open door be insufficient.
- (v) Windows - whether on upper or lower floors - must be secured by stout iron bars deeply fixed in the brick work, and those on the ground floor- by shutters made to open internally with strong hinges and with a cross bar in addition to the iron bars already mentioned.
- (vi) All superfluous windows opening into private yards of other buildings should be closed up with brick work as solid as the walls themselves.
- (vii) All the entrances into the warehouse should have doors and strong locks. The doors should be furnished with screw staples having each screw secured by a nut and riveted on the inside to prevent the fastening being drawn.
- (viii) The entrance doors must open into a street or other public way so as to be at all times accessible for the easy examination of lock and fastenings without passing through other doors or gates.
- (ix) Any holes required in the walls for the admission of air are not to exceed 9 inches in diameter and to be secured by stout cross iron bars deeply fixed in the brick work.
- (x) There must be no private communication whatever with any Bonded warehouse.
- (xi) The department should satisfy itself that –if there be windows in the adjoining premises from which access might be had to the roof of the warehouse – the security of the warehouse is not thereby diminished.

(xii) If the applicant has already one or more warehouses the department should satisfy itself that their capacity is fully taken up.

(xiii) The licensee of a private warehouse should pay the cost of purchasing a Chubb's lock of the size of 2 ½ or more required for locking the warehouse. He must also bear any charges incurred in repairing the lock when it gets out of order. The lock should be purchased by the Customs Department so that the keys do not go into the hands of the licensee. The duplicate keys of such locks should be forwarded in sealed envelopes to the Chief Accounts officer for custody. The original keys are kept by the Preventive Department.

(xiv) If the warehouse is intended for warehousing matches or other easily combustible materials, it should be provided with a sufficient number of fire-extinguishers and other appliances; such as buckets of water, sand etc, for putting out fire.

Premises to the licenced- inspection thereof

Before granting a licence, it is necessary to verify that the building that is to be licenced as a private Bonded warehouse is in sound condition i.e. suitable and safe for depositing goods. On receipt of the application, therefore, the building will be examined by a Preventive Supdt, who will submit his report by filling the questionnaire form in Appendix 'A'.

APPENDIX "A"

(Questionnaire to be filled in by the Officer inspecting the premise to be licensed as a Private Bonded Warehouse).

1. Nature of walls.
2. Nature of roof.
3. Lighting.
4. Are all windows and ventilation spaces properly barred or secured with strong shutters that can be fastened firmly from inside?
5. Arrangements for locking door. In particular, are all hasps and staples so secured that they cannot be unscrewed or otherwise easily withdrawn from outside?
6. Are all the doorways other than those to which Customs locks are to be affixed, bricked up or otherwise blocked more securely than by bolting or locking of doors?
7. Precautions against fire.

Certified that the proposed premises have been verified by me and found suitable for Customs Bonded Warehouse.

Superintendent of Customs
I/c. Bonded warehouse.

The premises have been verified personally by me and is quite suitable and is recommended for issue of a warehouse licence.

Assistant Commissioner of Customs

Renewals

The above procedure shall be followed for renewals also. The financial status of each licensee will be reviewed every year. For this purpose, it will not be necessary in all cases to make any written reference to the Bank.

Register of Licences

The Bond Clerk shall maintain a register showing the list of licences granted for private Bonded warehouses and shall issue a warning notice to the licensees a month prior to the expiry of the licences.

The list should be kept posted upto-date and all alternations and corrections made on it initialed, dated and countersigned by the Office Superintendent Imports.

Validity of Licence

A licence for a private warehouse shall be valid for one year and shall accordingly be renewable annually, save in exceptional cases in which the Assistant Commissioner decides otherwise. A licence may be cancelled by the Asst. Commissioner for the reasons given in the Section 58 (3) of Customs Act, 1962. A licensee has a legal claim to have his licence cancelled before the expiry period of its validity, provided Duty has been paid on the whole of the goods stored in the warehouse. Section 58 (3) specifies the circumstances in which the Assistant Commissioner may cancel a licence otherwise than on the application of the licensee. It does not purport to render, not to have the effect of rendering the Asst. Commissioner incompetent to cancel a licence at any time on the application of the licensee.

When a licence is so cancelled on an application from the licensee, the date on which the cancellation of the licence takes effect should be taken to be the date of actual removal of the goods therefrom the purpose of Section 15(b) Customs Act.

Fees

No fees should be charged for the grant of licence.

PRIVATE WAREHOUSES –working of

Control over private warehouse

The warehouse should be under double lock, one of the Custom House and the other of the licensee. The Custom House locks should be Chubb's or Godrej lock and they should be purchased at the expense of the licensee. The set of keys in actual use shall be in charge of the Preventive Department and their duplicates shall be retained in the Customs Treasury.

Periodical verification of stocks in Private warehouse

The Preventive Supdt. (Bonds) shall be deputed to verify the stocks in private warehouses periodically. He will satisfy himself that the contents of the packages are intact and agree with the description given in the relative records, by examining 2% of the packages of each consignment, subject to a minimum of 1 and the maximum of 25 packages. It will be sufficient, in the case of the bagged cargo such as sugar, to check the contents by probing the bags and in the case of packages containing motor cars and parts thereof, to remove a plank of the case and inspect the contents through the opening. In the report submitted by him, the Preventive Supdt. (Bonds) will make a note as to the scope of each visit of inspection. The Asst. Commissioner (Bonds), should pay at least six surprise visits in a year to such private warehouses is to provide a check on the records of the Bond Department.

The inspection of private Bonded warehouses and checking of Bonded stocks by surprise visits will be carried out by the Bond Supdt. A register will be maintained by the Bond Supdt. Wherein the dates Of such surprise visits, particulars of Bonded Warehouse and stock will be shown.

Maintenance of the Records of Stocks in Private Bonded Warehouse

In order that the exact stocks in a private warehouse on any date (i.e. the balance remaining after deliveries have been given to the Bonders) may be disclosed, the Bond Department shall maintain, at the end of each volume of a Bond register, a summary in form at Appendix 'B' showing a detailed record of packages received in the warehouses and the quantity delivered therefrom, from time to time. The Preventive officer supervising the storage of any goods into, or deliveries from, any private warehouse

shall endorse on the respective duplicate into-Bond or ex-Bond Bill of Entry the date and location of the goods so stored or delivered under his supervision and forward the documents to the Bond Department. The particulars endorsed on these documents will be transcribed in the summary and attested by the Senior Clerk in the department. When half yearly inspection reports are received in the Bond Department, Bond Clerk will check them with the entries in the register and report discrepancies, if any, to Asst. Commissioner, Bonds, for orders.

APPENDIX "B"

Bond No. & Date	Date of Receipt of goods	Total No. of packages	No. of Packages cleared	Date of clearance	Clerk's initials
1	2	3	4	5	6

The licensees of the private Bonded warehouses will maintain a Stock Account Book in form at Appendix 'C'.

Types of goods to be stored in a private warehouse and the manner of their storage

A licence for a private Bonded warehouse should be granted on the condition that the warehouse shall be used by the licensee normally for warehousing his own goods only and that the goods stored therein shall be stacked in such a manner as to enable easy access, whenever necessary, to every package or parcel therein. In special cases where facilities for depositing imported goods in the public warehouse are not available, the goods, imported by other than the licensee may be allowed in the licensee's warehouse provided the Bond under Section 59 of the Customs Act 1962 is executed by the importer of the goods and the license of the warehouse jointly.

Cost of Custom House Establishment

The cost of any Custom House Establishment employed at a private Bonded warehouse, permanently or occasionally, should be defrayed by the licensees.

APPENDIX "C"

Receipts

Bond S. No. and date	Date of receipt of goods in warehouse	Vessels name & whence imported	Packages marks & numbers	Quantity and / or weight	Description	Value of goods
1	2	3	4	5	6	7

Issues

Operations performed in Bond under sec. 64 of the C.A. with full detailed results	Date of clearance of goods	No. of packages of Qty. cleared	B/E Cash number and date	Amount of Duty paid	Shipping Bill No. and date
8	9	10	11	12	13

Name of vessel and Rot. Number	Balance	Preventive Officer's Signature	Remarks
14	15	16	17

Warehousing of Goods in Public warehouse

(1) An into-Bond Bill of Entry, in duplicate containing such particulars, as may be prescribed in the directions issued from time to time on the subject, will be presented by the Bonder to the receiving clerk in the Import Department who will (i) verify that all the columns therein are properly filled in, and (ii) give a serial number to the Bill of Entry. The Bill of Entry, in duplicate will then be passed on the party for presentation in the Appraising Department.

(2) The procedure followed in the Appraising Department in regard to the Examination and assessment of the goods will be the same as that followed in the case of bills of entry for home consumption with the following difference. The Appraisers will see that-(i) all the particulars are correctly entered in both the copies of the into-Bond Bill of Entry (ii) record on both of them in words and figures, the quantities or values on which Customs Duty is leviable and the rate of Duty and (iii) also initial both the copies (which will also be counter-initialed by the Principal Appraiser in-charge of his section). The particulars ascertained in survey made on behalf of the Ship's Agents should be recorded on both the copies.

Apportioning of value and quantity in into-Bond Bill of Entry – furnishing of:

It is permissible for a consignment consisting several packages covered by an into-Bond Bill of Entry to be removed from the warehouse piece-meal i.e. in one or more lots either for home consumption under cover of one or more ex-Bond Bills of Entry or under cover one or more Shipping Bills for shipment to foreign ports. It is essential, therefore, that the total values and quantity of the consignment as declared in the into-Bond Bill of Entry should be apportioned correctly amongst the various ex-Bond Bills of Entry and Shipping Bills, if and when they are presented in the Bond Department. To enable the Bond Department to do this and to certify the values and quantities in the relative ex-Bond Bills of Entry or Shipping Bills,

the Bonder must, at the time of the presentation of the into-Bond Bills of Entry or Shipping Bills in the Appraising Department show on the reverse of the original copy thereof the quantity and value (both in foreign and Indian Currency) of the consignment, except when he does not wish to clear the consignment piecemeal but in one lot only, in which case he must subscribe a declaration to that effect on the into-Bond Bill of Entry. The assessing Appraiser will attest the values and quantities in token of his having checked them and also show the rate of Duty leviable on the goods. When however, the contents of all piece-goods containing equal number of pieces of identical quantity and consequently of uniform value or bags of sugar or uniform weight and in consequence of uniform value, the assessing Appraiser need only make the following endorsement on the reverse of the into-Bond Bill of Entry viz., "Contents Uniform". The Duty calculated in the Appraising Department will verify (i) that the invoice value of each individual package has been noted by the Bonder on the reverse of the into-Bond Bill of Entry and attested by the assessing Appraiser, (ii) that the equivalent in Indian Currency of such values has been correctly calculated by the Bonder (iii) that the total value shown by him on the obverse of the Bill of Entry corresponds with that shown on its reverse. This will enable the Bond Department to deduce and certify on the ex-Bond bills of entry or Shipping Bills, the exact average value, number and/or weight of individual packages from the total assessed value, number and/or weight and there would be no occasion for any shortage or excess in respect of these particulars to be adjusted finally.

After assessment of the goods, the Bill of Entry will be handed over to the Comptist for calculation of the Duty. Thereafter the into-Bond Bill of Entry shall be forwarded to I.A.D. for pre-audit.

After pre-audit the into-Bond Bill of Entry shall be forwarded to the Bond Clerk in the Bond Department. He will retain the original into-Bond Bill of Entry and hand over the duplicate Bill of Entry to the importer or his agent for execution of a Bond under Section 59 of the Customs Act, 1962.

On presentation of the Bill of Entry and a Bond required under Section 59, Customs Act, the Bond Clerk will compare them with the original Bill of Entry and (i) endorse on the face of the duplicate into-Bond Bill of Entry "compared with the pre-audited original into-Bond Bill of Entry". (ii) note on both the copies of the Bill of Entry the period within which the goods should be warehoused. (iii) enter the Bond and all the particulars including the rate of Duty in the Bond register. (iv) note the Bond number on the Bills of Entry, and (v) take all the Bond registers to the Superintendent/ Bonds, with the Exchange Control copy and the Bond, who will initial the Bond and sign the Bond register and also three copies of Bill of Entry, permitting the goods to be warehoused within the time specified. The Bond (alone) will then be submitted to Assistant/Dy. Commissioner, Bonds, for his signature in token of its acceptance.

Fourteen working days excluding the date on which the 'pass order' is granted shall be allowed for the purpose of removal. Extension of this period will be allowed free of fee by the Assistant Commissioner, Bonds, whenever applications are received from the Bonders with satisfactory reasons adduced to justify the extension.

The Bond Clerk will then (i) retain the Bond, (ii) forward the original into-Bond Bill of Entry on the first working day of the next week (along with similar other original into-Bond Bills of Entry collected during the week) to the Statistical Department for registration and return, (iii) return the duplicate Bill of Entry to the importer as the authority for the removal of the goods from the port Trust premises to the warehouse under Preventive supervision, (iv) obtain the signature in the Bond and initials in the Bond Register from the Asst. / Dy. Commissioner (Imports & Bonds) and forward the same with the register to I.A.D. for complete checking, and (vi) the original Bond will be forwarded to the Cash Department for safe custody and the duplicate copy of the Bond will be retained in the Bond Department.

Procedural irregularities in warehousing of goods – delay in grant of Order Under Section 60 of the Customs Act, 1962 – Regarding.

The Audit has brought to the notice of the Board a case where an importer filed a warehousing Bill of Entry for Bonding certain imported goods and in this direction, he also executed a warehousing Bond as per Section 59 of the Act. The Bond was accepted by the Customs House. However, since the importer did not present the documents thereafter for obtaining an order for depositing the goods in a warehouse as per section 60, the goods were not deposited in the warehouse. Subsequently, the importer sought clearance of the goods and the said order u/s 60 was obtained at the delayed stage. The Audit has contended that if the Order under Section 60 had been given by the Customs House immediately upon acceptance of the warehousing Bond, the warehousing period could have been determined with reference to the earlier date and the interest on the Customs Duty charged accordingly. Audit's view is that on account of this delay in grant of order u/s 60, there has been a procedural irregularity leading to revenue loss.

2. On an examination of the various aspects of the matter it is seen that the warehousing period has to be determined with reference to the order of the proper officer u/s 60 of the Customs Act, However, the Department should take care that this order is given immediately, once the warehousing Bond is accepted by the Department from the importer. Each Custom House should draw up a suitable procedure to ensure that the said Order u/s 60 is given immediately after the acceptance of the Warehousing Bond.

[Circular No. 30/95 Dtd. 30.3.95 in F. No. 483/9/93-LC]

Admission of goods into public warehouse – Action by Warehouse keeper:

(a) On receipt of all goods in the public warehouse, the Warehouse keeper will;

(i) Check the goods with the particulars noted in the duplicate Bill of Entry.

(ii) Have the number of the Bond and year of Bonding noted on each package and see that the goods are deposited in due course and properly stacked in the room allotted to the importer for the storage of goods.

The Bond supervisor, is responsible for seeing that goods are stacked according to their respective Bond numbers so as to facilitate stock taking and verification of balances under each Bond.

(iii) Enter the particulars of the quantity and the description of the goods received in the stock lists (Form CBR Cus. 171), certify on the face of the duplicate Bill of Entry to the effect that the above mentioned goods which have been duly received in the warehouse have been found to correspond in particulars with those entered in the Bill of Entry and after noting the date of warehousing therein return the latter document to the Bond Clerk.

Action by Bond clerk

(i) On receipt of the duplicate Bill of Entry from the warehouse keeper, the Bond Clerk will note in the Bond Register the date on which the goods were warehoused and see that all the packages covered by the Bond have been duly warehoused or have been otherwise duly accounted for.

(ii) He will then register the particulars in the trade posting registers maintained for the purpose of preparing the monthly statement of stock balances of certain Bonded goods specified in the Form C.B.R. Cus. 124 and forwards the duplicate into-Bond Bill of Entry to the M.C.D.

Admission of goods to private warehouse

The procedure will be the same as that described above except that when no Customs officer is permanently posted at the warehouse, the duties in regard to the receipt and storage of the goods in the warehouse and the entry of the necessary particulars in the stock lists will be performed by the Preventive officer deputed for the purpose by the Supdt. Preventive Posting section or Bond deptt. on an application in writing to this effect being made to him by the Bondholder of the goods. After receiving goods into a private

warehouse the Bond Officer will obtain the licensee's acknowledgement for the receipt of the goods on the duplicate Bill of Entry. The Bond clerk will see that this is invariably done in all cases and submit a report to the Asst. Commissioner of any cases of failures on the part of the Bond Officer to obtain the licensee's acknowledgement.

Double Locks

The licensees shall be required to attach their own locks to every door of the licensed warehouse to which Customs locks are attached. The Customs officers attending the work at the warehouse should bring to the notice of the Assistant /Dy. Commissioner/ Bonds, cases in which this requirement has not been complied with.

Slack or deficient packages – Surveyed cases

Whenever a survey is held on behalf of ship's agents on any slack or deficient packages comprising a consignment entered for warehousing the Bonder should, prior to the removal of the packages from the Docks to the Warehouse, repack the deficient packages properly and put a distinctive mark and/or number of the said packages. The marking should be carried out under Preventive supervision on an application to Assistant/Dy. Commissioner Bonds, this will obviate the need for subsequent re-examination of the goods in the warehouse. When the survey is held under Customs supervision the Officer deputed for the purpose will make his survey report on the reverse of the into-Bond Bill of Entry and show the marks and numbers on the packages surveyed.

Packages with common marks

If, while examining any consignment entered for warehousing the Examiner finds that some of the packages covered by the into-Bond Bill of Entry bear common marks but not uniform contents, he may call upon the Bonder to make another kind of distinguishing marks and/or numbers of such packages and note the same on the reverse of the into-Bond Bill of Entry of the guidance of Bond Department.

Marks not tallying

When it is found that the marks or numbers of any packages brought to the warehouse do not correspond with these shown in the relative into-Bond Bill of Entry, the Bonder should be called upon either to account for the discrepancy or to arrange for its examination to verify whether the package forms part of the consignment covered by the Bill of Entry. So long as the package in question is not so examined of the discrepancy accounted for to the satisfaction of the Asst. Commissioner of Customs (Bonds) it cannot be considered to have been duly warehoused nor will its clearance from the warehouse be allowed.

All necessary particulars should be transcribed on the reverse of the original warehousing Bill of Entry as well as in the Bond register from the duplicate warehousing Bill of Entry sent by Bond Officer. Bond section will retain the Original Bill of Entry and forward the duplicate Bill of Entry to the Manifest Clearance Department.

Acceptance of Bonds – Instructions – Section 59:

The importer of any dutiable goods which have been entered for warehousing and assessed to Duty under Section 17 or Section 18 shall execute a Bond binding himself in a sum equal to twice the amount of the Duty assessed on such goods; and,

- (a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;
- (b) to pay on or before a date specified in a notice of demand all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same from the

date so specified at the rate of six percent per annum or such other rate as is for the time being fixed by the Board; and

- (c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulation in respect of such goods.

For the purpose of sub-section (i) the Asst./Dy. Commissioner may permit an importer to enter into a general Bond in such amount as the Asst./Dy. Commissioner may approve in respect of the warehousing of goods to be imported by him within a specified period.

A Bond executed under this section by the importer in respect of any goods shall continue in force notwithstanding the transfer of the goods to any other person or the removal of the goods to another warehouse.

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

Bond – Its form, Execution and Acceptance

- (i) The Bond to be furnished by the Bonder under section 59 is at Appendix “D.” All the particulars therein shall be duly filled in by the Bonder. It shall be stamped in accordance with the rates specified in the schedule to the Indian Stamp Act signed by the Bonder and attested by two witnesses.
- (ii) The Bond shall be for twice the amount of the Customs Duty assessed on the goods proposed to be warehoused. It shall be written up properly, all erasures and corrections therein being initialed by the person signing it. The country whence the goods are consigned will be shown therein after the words imported by sea from ‘ appearing at the foot of the form and the declaration shall correspond with that shown in the into-Bond Bill of Entry.
- (iii) In various places, in the Bond alternative words or expressions, one of which is required to be scored out according as the party executing the Bond is an individual or a firm. As failure to do this would result in an ambiguity likely to prejudice the interest of the Customs House in a Court of Law, if, at any future date, it be deemed necessary to proceed under that Bond that Bonder must invariably be required to cancel one of these two alternative expressions.
- (iv) If a Bond is found before its acceptance, to be understamped, it should be brought to notice of the Bonder and the deficiency be made good of. If, however the Bond is over stamped, the fact should be brought to the notice of the Bonder or his representative so that he may, if he so chooses put in a fresh Bond properly stamped and obtain a refund. If he does not consider it worthwhile to do this, the overstamped Bond should be accepted and the following note made thereon – “overstamped – No action by Bonder.”
- (v) If the Bond is found to be correct in respect of all the particulars mentioned above and provided the Bond Department is satisfied that it is properly and duly executed by the owner of the goods or his duly authorised agent, its acceptance cannot be withheld and it shall be submitted to Assistant / Dy. Commissioner (Bond) for affixing his signature thereto in token of its acceptance. If found otherwise the Bond shall be returned to the Bonder for amendment.
- (vi) Every Bond should be executed for the full period of three years, one year or such period allowed by the Assistant Commissioner for which goods are to remain in a warehouse under Section 61 Customs Act and shall cover consignments imported.

APPENDIX "D"
BOND

No. 19 .

We, No. ofand of the same place, are jointly and severally bound to the President of India in the sum of Government Rupeesto be paid to the said President of India in which payment we jointly and severally bind ourselves and our legal representatives.

Date

The above Bonder having applied to the Commissioner of Custom House at for a period of one year in the following Goods that is to say

(DESCRIPTION OF GOODS)
(TO BE ENTERED)

imported by sea from on board S.S / M.V. and entered in the Custom House Books as No. on the Register of goods imported by sea.

The condition of the Bond is that

If the said or their legal representatives shall observe all the Rules prescribed in the Customs Act, 1962 to be observed by owners, of goods warehoused, and by persons obtaining permission to warehouse goods under the provisions thereof.

And if the said..... or their legal Representatives shall pay to the Commissioner of Customs House at the port of all dues, whether Custom duties warehouse dues, rend or other lawful charges which shall be demandable on the said goods or on account of penalties incurred in respect of them. Within one year from the date of this Bond, or within such of further time as the Commissioner of Customs shall allow in that behalf together with interest ion every such sum at the rate of 6 (six) percent, per annum from the demand thereof being made in writing by the said Commissioner of Custom House.

And if, within the term so fixed or enlarged the said goods or any portion thereof having been removed from the said Warehouse for Home consumption, or exportation by sea, the full amount of all Customs duties, warehouse dues, rend and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods, this obligation shall be void.

Otherwise and on breach or failure in the performance of any part of this condition the same shall be in full force. We agree that any amount becoming due by us under this Bond may be recovered in the manner laid down under sub section 142(1) of the Customs Act, 1962 without prejudice to any other mode of recovery.

STATION :

Date :

Witnesses :

ACCEPTED FOR AND ON BEHALF OF THE
PRESIDENT OF INDIA

Assistant / Dy. Commissioner of Customs

General Bonds under Section 59(2) Customs Act,1962 - Procedure for allowing warehousing of goods under

For the purpose of permitting warehousing of goods under general Bonds, the following procedure should be followed:

(i) When an importer applies to the Assistant / Dy. Commissioner of Bonds for warehousing goods under a general Bond under section 59 (2) of the Customs Act,'62, an application containing full particulars viz. General description, quantity, value of the good, intended to be warehoused for the next four years, the purpose for which warehousing facilities are sought, the quantity and value of the goods imported by the party during the preceding year; and the amount for which the Bond is sought to be executed should be put up to the Assistant / Dy. Commissioner Bonds, for orders. The Assistant / Dy. Commissioner should see whether the Bond amount proposed will cover the goods to be imported by the party during the next four years. After obtaining the Assistant / Dy. Commissioner's approval, the importers should be asked to execute a general Bond in the proforma at Appendix 'E' and the Bond put up when received for pre-audit to I.A.D.

(ii) On acceptance of the Bond by Assistant Dy. Commissioner (Bonds), it should be registered in a supplementary register, in the proforma set out in Appendix 'F'. After it is registered, the Bond will be forwarded to Cash Department for safe custody. The maintenance of this supplementary register will not in any way change or interfere with any other registration that may be required under the existing procedure. Once the Bond has been duly registered in the supplementary register and assigned a number, it will be intimated to the importer who will thereafter be allowed to warehouse imported goods during the period specified in the Bond so long as there is sufficient balance to cover the value of the imported goods. The importer will quote the general Bond number and date on all references made by him to the Bond Department.

(iii) Although there will not be individual Bonds, under section 59 (1) the existing procedure of assigning Bond serial numbers for each consignment warehoused and corresponding entry in the main Bond register will continue. This number will be quoted in the into-Bond bills of entry. The importers also quote the Bond serial number on all the ex-Bond clearance documents etc. The audit check will as usual be conducted for the into-Bond and ex-Bond clearances.

(iv) When the goods covered by a particular Bond serial number are cleared or accounted for to the satisfaction of the proper officer, such Bond serial number should be cancelled. The relevant documents relating to such cancelled Bond serial number should be upto I.A.D. and Customs Revenue Audit for their audit check as on the case of 59 (1) Bonds, so as to avoid duplication of work by sending the same to these departments at the later stage of the cancellation of the relative general Bond on expiry of its validity period.

(v) With a view to keep a watch over the balance of Bond amount the Bond clerk should make clear and suitable debit and credit entries in the relevant columns of the supplementary register, each time an entry is made for warehousing or clearance and strike the balance. Therefore when the duplicate into-Bond Bill of Entry is received back from the warehouse keeper or Preventive Officer after completion of warehousing, the Bond clerk should satisfy himself that the quantity warehoused corresponds to the quantity in the into-Bond Bill of Entry. If there is any difference, he should make suitable entries in the supplementary register.

(vii) Similarly all clearances from the warehouse should be noted in the supplementary register immediately on receipt of the duplicate Bill of Entry, Shipping Bill, or advice from other port in the

case of transfer under Section 67 of the Customs Act, etc. All entries in the supplementary register, should be initialled by the Bond clerk and the Superintendent Bonds, who shall check the relevant entries and balances with reference to the entries made in the Main Bond Registers and in the relevant documents. The balance column of the register will give the complete picture to indicate whether the amount in balance would be adequate to cover any further consignment to be warehoused. Where the value of the goods required to be warehoused exceed the balance available in the Bond, the importer should be asked to execute either an individual Bond or a general Bond at his option. The consignment however should not be permitted to be split over two Bonds. If the importer elect to execute another general Bond, it should also be for a sufficiently large amount so that the earlier general Bond could be cancelled after all the consignments Bonded thereunder have been cleared or otherwise duly accounted for to the satisfaction of the Asst. / Dy. Commissioner (Bonds). The importer will not be permitted to warehouse any more consignment under the first general continuing Bond.

(vii) The general Bond along with the supplement register will be put up for audit and thereafter to Assistant / Dy. Commissioner (Bonds) for cancellation.

(viii) There should be no difficulty as to the stamp Duty payable on a general continuing Bond under Section 59 (2) of the Customs Act. As for the other Bonds the stamp Duty will be governed by the respective State enactments as may be applicable.

(ix) It has been a uniform practice not to take a surety for warehousing Bonds since the warehouse goods themselves are a security in kind. There is no necessity to deviate from this practice merely because a general continuing Bond is taken.

(x) Since this is a general Bond, each Bonder will have to decide the amount of Bond that he thinks will suit his requirement. If the value of the goods deposited in the warehouse at any one time exceed the maximum permissible as fixed by the amount of Bond, he will not be able to warehouse any further goods, till a balance is available in the general Bond.

(xi) Even under a general Bond each individual consignment will be entitled to have a life of one year in Bond. The minimum period of Bond therefore, has to be fixed at something in excess of Bond period, with provision to terminate the same on either side with three months notice. Such notice shall operate to suspend fresh warehousing after the period of notice but all consignments warehoused till then shall stand covered by the Bond upto a period one year or a reduced period from the date of warehousing unless of course the licence for private warehouse itself is revoked.

[Board's letter F. No. 3/29/60 Cus. VII dt.2-7-63 Instruction No. 27 of 1963-Bonds & Guarantee]

[F. No. 473/82/78 Cus. VII dt.20-4-78]

APPENDIX "E"

Form of General Bond in respect of warehousing of goods under Section 59 (2), Customs Act '62.

The Bond should be executed on a non-judicial stamped paper of appropriate value to be locally ascertained.

KNOW ALL MEN BY THESE PRESENTS THAT

<p>1. These descriptions should be used when the importer is the sole proprietor and the description 2 & 3 are to be deleted in such a</p>	<p>1. Shri residing at and carrying on business under the sole proprietor thereof at</p>
--	--

<p>case.</p> <p>2. These description are to be used when the importers are partners and the descriptions 1 & 3 are to be deleted in such a case.</p> <p>3. These descriptions are to be used when the importers is a limited company and the description 1 and 2 are to be deleted in such a case.</p> <p>(A) these words are to be used when the importer is the sole proprietor and the words marked (B) and (C) are to be deleted in such case.</p> <p>(B) these words are to be used when importers are partners and the words (A) and (C) are to be deleted in such a case.</p> <p>(C) these words are to be used when the importer is a limited company and the words marked (A) and (B) are to be omitted in such a case. these underlined words are to be used only when a partnership firm is the importer. In other words are to be deleted.</p>	<p>.....</p> <p>2. We, Shri residing at Shri .....residing at .....all carrying on business at under the name and style of M/s..... in partnership as partners.</p> <p>3. M/s .....a company incorporated under the Companies Act and having its registered office at hereafter called "the obliger (s) which expression shall unless repugnant to or excluded by the context mean and include.</p> <p>(A) his heirs, executors, administrations and legal representatives, (B) each one of us and partners for the time being of the said M/s .....and the survivors of them and us and his/our/their respective heirs, executors and administrators, (C) its successors.</p> <p>Hereby jointly severally bind myself/ourselves and my/our/heirs, executors, administrators, successors upto the President of India for the payment of Rs.....for which payment I/We jointly and severally bind ourselves heirs, executors, administrators and our legal representatives.</p>
--	--

Dated at thisday of(month/year).....

Signed, sealed and delivered by Shriduly constituted attorney of Limited in the presence of

WHAREAS (i) the obliger(s) has/have applied to the Assistant Commissioner of Customs at the Customs Port of hereinafter called the said authority for permission to enter into a general Bond for the purposes of sub-section (2) of Section 59, Customs Act,1962 (52 of 1962) hereinafter referred to as the said Act in respect of the warehousing of goods to be imported by him/them during the period commencing from and ending onand (ii) the said authority has given under sec. 59 of the said Act permission in respect of goods to be imported by obliger(s) during the period from to..... (both days inclusive) hereinafter referred to as the permitted period.

2. Now the conditions of the above written Bond are such that: -

(i) If the said obliger(s) shall within days from the date of arrival of each shipment of goods intended to be warehoused give notice in wiring to the proper officer of Customs stating full particulars of the goods;

(ii) And if the obliger(s) shall observe in relation to the goods (a) which the obliger(s) may import from time to time within the permitted period and (b) which the obliger(s) may be permitted from time to time to deposit in the said warehouse under section 60 of the said Act (hereinafter called the said goods) all the provisions of the said Act and the rules and regulations to be observed by obliger(s) warehouse goods in respect of such goods:

(iii) And if the obliger(s) shall on or before the date or dates specified in notice of demand (as the case may be) pay to the proper officer of the Customs Port atall duties, rent and charges claimable whether by way of Customs duties, warehouse charges, rent or other charges if any, which shall be claimable on the said goods together with interest on the same from the date or dates so specified in the said notice or notices of demand at the rate of 6% per annum or at such other rate as is for the time being fixed by the Central Board of Revenue constituted under the Central Board of Revenue Act, 1924;

(iv) And if the obliger(s) shall discharge all penalties imposed for violation of the provisions of the said Act and the rules and regulations in respect of the said goods;

THEN THE ABOVE WRITTEN BOND SHALL BE VOID; otherwise the same shall remain in force and virtue.

IT IS AGREED AND DECLARED BY THE OBLIGER(S) FOLLOWS: -

(a) This Bond shall continue in full force notwithstanding the transfer of the goods warehoused under this Bond to any other person or the removal of the goods to another warehouse,

(b) Any amount due under this Bond may be recovered in the manner laid down in sub-section (i) of Sec. 142 of the said Act without prejudice to any other mode of recovery.

<p>(i) These words will apply if the importer is a proprietary concern.</p> <p>(ii) These words will apply if the importer is a partnership firm.</p> <p>(iii) These words will apply if the importer is a limited company.</p> <ul style="list-style-type: none"> • This attestation clause is to be used when the importer is proprietary concern. <p>** This attestation clause is to be used if the importer is a partnership firm.</p> <p>@ "This attestation clause is to be used when the importer is a Limited company.</p>	<p>IN WITNESS WHEREOF (i) Shri the sole proprietor of the said M/s .....has hereunto set his hand (ii) Shri and Shri as such partners as aforesaid have hereunto set their hands and (iii) the common seal of the said M/s .....hereunto affixed in the presence of Directors of the Company who have here unto set and subscribed their hands on this .....day of .....(month/year).....</p> <ul style="list-style-type: none"> • Signed and delivered by Shri in the presence of witness: <ol style="list-style-type: none"> 1. 2. ** Signed and delivered by the said Shri .....and Shri as such partners as aforesaid in the presence of <p>Witness:</p> <ol style="list-style-type: none"> 1. 2. @ "The common seal of the said M/s..... is affixed hereto pursuant to a resolution of the Board of Directors of M/s dated This day of in the presence of Shri and Shri <p>Directors who have signed these presents in the presence of:</p> <p>Witness:</p> <ol style="list-style-type: none"> 1. 2.
--	---

Accepted by Shri for and on behalf of the President of India, this day of 19 ..

Signature and Designation

APPENDIX 'F'

Form of supplementary Register to be maintained by the Bond Department in the Custom House in cases where consignment are imported under continuing and general Bonds.

- Name and address of Importer:
- Name and address of Clearing Agent (if any):
- Number of acceptance by the Assistant Commissioner:
- Date of Expiry: (in red ink).

Value of the Bond: (a) (in figures)
 (b).....(in words)

Sl No.	Date	Reference to the Main Bonds Register	Value of the goods warehoused (Debit entries.)	Value of the goods cleared (i.e.) home consumption shipment ex-Bond or transferred in Bonds (Credit entries).	Balance	Initials of Bond clerk	Initials of Superintendent (Bonds)	Remarks
1	2	3	4	5	6	7	8	9

Warehousing Bond-Ship Stores

The Government of India having permitted some Steamer agents to import controlled food-stuff for purposes of re-export whenever required for the use of ship's crew and having also permitted them as a special case, to store these articles separately in their Bonded warehouse, it has been decided that the normal Bond procedure applicable to warehouses where Preventive Officers are exclusively posted, should be followed in such cases with the only exception that the prescribed under Section 59 Customs Act will not apply to these goods and that the applicant will execute ITC Bond to the appropriate authorities.

Fraudulent availment of exemption from payment of import Duty under Section 90 and Notfn. No. 211/83 on ship spares and stores for ships

It has come to the notice of the Board that many parties had fraudulently cleared imported cargo from Bonded warehouses under Sec. 90 of the Customs Act, 1962 Duty free for delivery to Naval Ships. Similar clearances were also noticed Duty free under Notfn. No. 211/83 for use as ship spares. The modus operandi in both the cases were to clear the goods from the Bonds and divert them to the local market. Though they were destined to Shipping Corporation of India and Naval Ships, goods never reached there.

2. In all these cases, it was observed that the mandatory provisions for escorting the goods were not adhered to which facilitated diversion of the goods to domestic market.

3. Board desires that the provisions regarding clearance and escorting of goods imported as "ship stores" or "ship spares" should be unscrupulously followed. The suitable actions may kindly be taken to guard against this type of frauds, necessary standing orders to all departmental officers may be issued/reiterated.

[Board's Circular No. 8/98 dated 11.2.1998 in F. No. 450/13/98 – Cus. IV]

WAREHOUSING OF BULK OIL

When any of the tanks authorised for receipt/storage of dutiable petroleum in bulk or any other liquid bulk cargo under Sec. 8(a) of the Customs Act, 1962 are intended as Private Bonded Warehouse for storage of bulk oil under the provisions of Chapter IX of the Act, the owner is required to submit application in the following format.

FORM OF APPLICATION FOR GRANT/RENEWAL OF LICENCE FOR PRIVATE BONDED WAREHOUSE VIDE SECTION 58 OF CUSTOMS ACT, 1962

(1) Particulars of Licence :

(i) For an `Individual' OR
Incorporate Company

- a) Name :
- b) Address :
- c) Nature of Business :

(ii) For a Firm

- a) Name of Firm :
- b) Address :
- c) Nature of Business :

And the following particulars in respect of each person having any proprietary interest in the firm.

- a) Name :
- b) Address :
- c) Description :

(2) Description of goods to be
warehoused :

(3) Whether the Goods other than those :
Belonging to the licence or for which :
he is an Agent are interested to be :
Warehoused :

(4) Particulars of maximum stock :
intended to be held in the warehouse :
at any one time : TANK NO. :
.....

- a) Quantity : M.T. APPROX.
- b) Value – C.I.F. : Rs. APPROX.
- A.V. : Rs. APPROX.
- c) Duty (at rates in force at: Rs. APPROX.
the time of application)

NOTE : In the case of spirit intended for denaturation, this should be separately specified.

(5) Particulars of maximum stock actually held at any one time under the expiring licence (for use in case of renewals only.)

- a) Date :
- b) No. of packages :
- c) Value :
- d) Duty :

(6) Particulars of any changes in :
proprietorship of the firm since :
dated of last renewal (to be filled in :
only by firms applying for renewal) :

(7) Particulars of premises to be :
licensed :

- a) Name and Address of owner :
- b) Place at which situated :
- c) Dimensions :
- i) Diameter :
- ii) Height :
- d) Distance from the Custom House :

NOTE : If more than one godown is to be licensed, separate particulars should be given for each if necessary in separate sheet.

- (8) Name & Address of Banker :
- or other person to whom reference :
- may be made regarding the financial status of the licences :

We declare the above particulars to be true and apply for the grant/renewal of the licence under Section 58 of the Customs Act, 1962 in accordance therewith.

PLACE :

DATE :

Along with the format, the applicant should submit, Solvency Certificate issued by Bank Insurance Policy, empty dip memo Duty certified by the Preventive Officer, & valid calibration chart.

The concerned Asst. Commissioner should grant licence for tank on party's compliance of conditions as laid down in Circular Nos. 68/95 dtd. 15.6.95 and 99/95 dtd. 20.09.95 issued in F.No. 473/61/94 LC and Circular No. 28/96 dtd. 14.05.96 issued in F.No. 473/14/96 LC.

As regards, warehousing of the bulk oil, please see Chapter on oil for procedure in respect of discharge and clearance of liquid cargo in bulk for home consumption/warehousing in Bonded warehouse.

PERIOD FOR WHICH GOODS MAY REMAIN WAREHOUSED

Section 61 of Customs Act, 1962 stipulates that –

(1) Any warehoused goods may be left 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 user in any hundred per cent export oriented undertaking, till the expiry of five years; and
- (b) in the case of any other goods, till the expiry of one year, after the date on which the proper officer has made an order under Section 60 permitting the deposit of the goods in a warehouse;

Provided that –

- (i) in the case of any goods which are not likely to deteriorate, the period specified in Sub-section(1) may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months and by the Chief Commissioner of Customs for such further period as he may deem fit;
- (ii) in the case of any goods referred to in clause (b), if they are likely to deteriorate, the aforesaid period of one year may be reduced by the Commissioner of Customs to such shorter period as he may deem fit:

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

(2) Where any warehoused goods –

- (i) specified in sub-clause (a) of sub-section (1), remain in a warehouse beyond the period specified in that sub-section by reason of extension of the aforesaid period or otherwise, interest at such rate as is specified in section 47 shall be payable, on the amount of Duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said warehousing period till the date of payment of Duty on the warehoused goods;
- (ii) specified in sub-clause (b) of sub-section (1), remain in a warehouse beyond a period of six months, interest shall be payable at such rate or rates exceeding the rate specified in section 47, as may be fixed by the Board, on the amount of Duty payable at the time of clearance of the goods in accordance with the provisions of section 15 on the warehoused goods, for the period from the expiry of the said six months till the date of payment of Duty on the warehoused goods:

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

Provided further that the Board may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section.

Explanation.- For the purpose of this section, “hundred per cent export oriented undertaking” has the same meaning as in Explanation 2 to sub-section (1) of section 3 of the Central Excises Act, 1944.

DUTY ON GOODS AFTER EXPIRY OF WAREHOUSING PERIOD

1. Attention is drawn to Board's instructions as contained in F. No. 473/206/87-Cus-VII dated 12.7.89 on the above mentioned subject wherein it was clarified that on expiry of the permissible or extended warehousing period the goods kept in a warehouse cease to be warehoused goods and therefore, their removal from the warehouse cannot be regarded as covered by the provisions of section 15 (1) (b) of the Customs Act. It was also noted that there was no specific legal provision to determine the rate of Duty in such cases of warehoused goods where the Bond period has expired. It was accordingly concluded that the residual clause of Section 15 (1) (c) of the Customs Act could apply after expiry of the warehousing period and that the rate of Duty in such cases shall be the rate prevalent on the date of payment of Duty.

2. The issue has been re-considered in the light of Hon'ble Supreme Court's judgement (in Civil Appeal No. 4459 of 1989) delivered on August 23, 1996 in the case of **Kesoram Rayon vs. Commissioner of Customs**, Calcutta 1996 (66) report. In the said judgement the Hon'ble Apex Court has held that goods which are not removed from a warehouse within the permissible or extended period are to be treated as goods improperly removed from the warehouse. In such a case the importer is required to pay the full amount of Duty chargeable on the goods together with interest, penalties, rent and other charges. It was further held that the Duty would be chargeable at the rate applicable on the date of their deemed removal from the warehouse, that is, the date on which permitted or extended period expired.

3. In other words, a clear interpretation of the Hon'ble Supreme Court's judgement is that the date of payment of Duty in the case of warehoused goods removed after the expiry of the permissible or extended period would henceforth be the date of expiry of the warehousing period or such other extended period as the case may be and not the date of payment of Duty.

4. The amended instructions in the light of the Hon'ble Supreme Court's judgement as aforesaid under para 2 and 3 may be implemented with immediate effect. These instructions supersede Board's instructions issued vide F.No. 473/206/87-Cus VII dated 12th July, 1989.

[Board's Circular No. 31/97 dtd. 14.08.97 in F.No. 473/29/97-LC]

APPLICATION BEFORE EXPIRY OF WAREHOUSED PERIOD

Section 61 of the Customs Act, 1962 lays down the period for which the imported goods can be warehoused. The first proviso to this Section provides that the period of warehousing prescribed, on sufficient cause being shown, can be extended for a period not exceeding 6 months by Commissioner of Customs. Further extension in the period can be granted by the Chief Commissioner of Customs.

2. A doubt has arisen whether extension in the warehousing period can be granted when the application for extension is moved after the expiry of the initial or extended warehousing period. Section 61 of the Customs Act, 1962 is silent on this issue.

3. In order to arrive at a uniform practice in granting such extensions, the matter was examined in consultation with Ministry of Law. Consequently, it has been decided that the importers may be advised to file such application for extensions in the warehousing period to the proper authority well before the expiry of initial/extended period of warehousing.

4. However, in cases of exceptional circumstances, the extensions in the warehousing period can be considered and granted even after the expiry of initial/extended warehousing period. In all such cases, the jurisdictional Chief Commissioner may himself decide the request for extension after taking into consideration the exceptional circumstances, the nature of the commodity, the rate of duties, particularly, whether the same results in loss of revenue to the Government, the licensing aspects involved etc.

[Board's Circular No. 12/98 Cus dtd. 5.3.1998 in F.No. 473/30/97-LC]

WAREHOUSING – LEVY OF INTEREST ON THE CUSTOMS DUTY UNDER SECTION 61 OF THE CUSTOMS ACT, 1962

Vide Finance Act, 1994, Section 61 of the Customs Act, 1962 was amended and the normal warehousing period in respect of capital goods warehoused by 100% EOUs have been fixed for five years which is further extendable. Further, the Board has been vested with powers under section 61(2) to specify class of goods in official Gazette in which no interest on Duty shall be chargeable consequent to the amendment in the Finance Act, 1994 representations have been received from different sectors of the industry requesting for issuing necessary notification under Section 61(2) exempting their warehoused goods from payment of interest on Customs Duty.

2. The Board has examined the matter and identified certain class of goods in which cases interest on Duty would not be chargeable at the time of their clearance from the warehouse. Accordingly, notification No. 67/95 (NT)-Customs dtd. 1.11.95 payable on the goods warehoused under Chapter IX of

the Customs Act, 1962 and specified in the Table to the above mentioned notification at the time of clearance from the Customs Bonded warehouse under Section 68 *ibid*.

3. After issue of the notification, a doubt has arisen as to whether the goods which have been warehoused prior to the amendment of the Customs Act and issue of the notification and intended to be cleared for home consumption are eligible for exemption from payment of interest on Duty under the aforesaid notification at the time of clearance from the warehouse. The matter has been examined by the Board in the light of the opinion given by the Ministry of Law on 11.3.85 and decided that since the warehoused goods have not been cleared for home consumption as on the date of amendment to Customs Act, 1962 (1994-95) as well as the issue of notification, the benefit of notification No. 67/95 (NT)-Customs, dated 1.11.95 should be extended to these goods. However, the capital goods imported by 100% EOUs and de-bonded prior to amendment of section 61 of the Customs Act, 1962 *vide* Finance Act, 1994 would continue to be governed by the old provisions.

4. *(Not reproduced here)*

5. Representations have also been received by the Board from various quarters of trade and industry for discontinuation of practice of issuing interest demand notices issued at the time of extension in warehousing period or otherwise. It has been represented that the interest on the Customs Duty is to be collected only at the time of clearance of the goods from the warehouse for DTA and as such the demand notice appears necessary only at the stage of clearance and not each time the extension is given to the Bond period.

6. The matter has, accordingly, been examined by the Board. It has been observed that the practice of issuing the interest demand notices at the time of granting extension of warehousing period would not be proper because consequent to coming into force of the Finance Act, 1994-95 interest on warehoused goods is to be calculated with reference to the Duty payable at the time of clearance of goods from the warehouse. Accordingly, it has been decided that the interest may be collected at the time of clearance of the goods from the warehouse. In cases where there is a policy to waive interest in terms of Board's circular F. No. 475/82/92/LC dated 27.12.93, demand notices may be issued but may not be enforced till the issue of waiver of interest is decided. The instructions of the Board contained in circular F. No. 475/42/91-Cus VII dated 6.6.91, F. No. 475/37/92-LC dated 2.12.92 and F. No. 475/59/92-LC dated 16.2.93 are no more relevant in view of the fact that the interest amount will also be nil in cases where the Duty payable at the time of clearance of goods from the warehouse is nil. Further, in any case, interest can be quantified only at the time of clearance of goods from the warehouse. All the field formations may be suitably advised in this regard.

7. The Board has also decided that the demand notices already issued may be decided in terms of the instructions contained in Board's circular F. No. 475/82/92-LC dated 27.12.93 & 10.2.94 laying down the guidelines for waiver of the interest by the Chief Commissioner of Customs & Central Excise, any difficulties arising on account of these instructions may be brought to the notice of the Board immediately.

[Board's Circular No. 31/96 Dtd.7.6.96 in F. No. 475/32/94-LC]

Fixation of interest on the warehoused goods not cleared within six months

Attention of the trade, and more specifically of the 100% EOU's the importers and exporters and CHAs is invited to Board's instructions issued *vide* F. No. 473/24/97-LC dated 12.5.99 on the subject matter of interest to be charged on warehoused goods.

Public Notice No. 75/99 dated 01.07.99 is issued in pursuance of order conveyed by Board vide telex F. No. 473/24/97-LC dated 12.05.99.

Rate of interest chargeable on the good warehoused but not cleared within six months from the date of warehousing will be as below:

Sr. No.	Duration of Warehousing	Rate of interest
1.	6 to 09 months	12% p. a.
2.	9 to 12 months	16% p. a.
3.	Beyond 12 months	20% p. a.

[**Public Notice No. 75/99 dated 01.07.99 issued by Commissioner of Customs (EP) Mumbai in F. No. S/6-Gen-21/99 EOU**]

Waiver of interest on the Customs duty

Reference correspondence resting with the Board's instructions of even number dated 27.12.1993 on the subject mentioned above and to say that in para 3 of the said instructions it has been sated that in respect of goods imported by 100% EOUs waiver of interest shall be considered on completion of the export obligation period. It has, however, been observed by the Board that certain 100% EOUs do not fulfill their export obligation and are allowed pre-mature debonding by the competent authority (SIA). Since waiver of interest is considered based on the principle that the imported goods are ab-initio not cleared/intended to be cleared for home-consumption on payment of duty and are meant for export out of India, in the circumstances where the unit was pre-maturely debonded without going into production or without export, the Board had decided that in such cases, interest waiver does not merit consideration. Only in very exceptional circumstances the interest waiver would be considered in such cases.

It is, therefore, requested that the above decision may be kept in mind while deciding the cases for waiver of interest in respect of goods imported by 100% EOUs.

[**Board's letter F. No. 475/82/92-LC, dated 10.02.1994**

CONTROL OVER WAREHOUSES/ WAREHOUSED GOODS

Section 62 of the Customs Act, 1962 stipulates that –

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

Section 63 of the Customs Act, 1962 stipulates that –

- (1) The owner of any warehoused goods shall pay to the warehouse-keeper rent and warehouse charged 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.

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.

Section 64 of the Customs Act, 1962 prescribes that –

With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same -

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

Section 65 of the Customs Act, 1962 prescribes that –

(1) With the sanction of the [Assistant 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.

(2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply: -

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

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

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

MANUFACTURE AND OTHER OPERATIONS IN WAREHOUSE REGULATIONS, 1966

In exercise of the powers conferred by section 157 of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations, namely: -

1. Short title and commencement. These regulations may be called the Manufacture and Other Operations in Warehouse Regulations, 1966.

(2) They shall be deemed to have come into force on the 4th day of June, 1966.

2. Definitions. For the purpose of these regulations, unless the context otherwise requires –

- (i) “Act” means the Customs Act, 1962 (52 of 1962);
- (ii) “manufacturer” means the owner of any warehoused goods to whom sanction has been accorded under regulation 5;

- (iii) "proper form" means such form as the Assistant / Dy. Commissioner of Customs may require to be adopted.

3. Owner to make applications. (a) The owner of any goods warehoused under the Act intending to undertake any manufacturing process or other operations in the warehouse in relation to such goods shall make an application to the Assistant / Dy. Commissioner of Customs in the proper form and furnish *inter alia* -

- (i) information regarding the nature of the manufacturing process or other operations;
- (ii) particulars of imported and other goods proposed to be used in the manufacturing process or other operations;
- (iii) the detailed plan and description of the warehouse; and
- (iv) data regarding the volume of trade anticipated of the manufacturing process or other operations; and
- (v) the applicant shall, on being called upon to do so, furnish such other information as may be required.

4. Execution of Bond : The Assistant / Dy. Commissioner of Customs may, if he is satisfied that the applicant has carried out such alternations to the warehouse premises as may be required for this purpose and that the volume of trade and other considerations justify grant of sanction direct the applicant to file a Bond, undertaking *inter alia* to-

- (i) observe all the provisions of these regulations;
- (ii) maintain detailed accounts of all imported and other goods used in the manufacturing process or other operations in the proper form and to produce such accounts for inspection by the proper officer;
- (iii) submit detailed statements of all imported and other goods used in the manufacturing process or other operations and those remaining in stock, at any time the proper officer directs;
- (iv) provide to the officers of Customs office space, wherever required, and access to warehouse, for control and supervision of the manufacturing process or other operations or imported and other goods as may be specified by Assistant/ Dy. Commissioner of Customs;
- (v) pay all the charges including pay, allowance, leave and pensionary charges of such officers as may from time to time be posted by the Assistant / Dy. Commissioner of Customs in the warehouse for supervision and control of the manufacturing process or other operations, or imported and other goods;
- (vi) comply with such conditions as may be imposed by the Assistant / Dy. Commissioner of Customs from time to time for carrying out the purpose of these regulations and the Act.

5. Grant of sanction. On execution of the Bond, in the manner hereinbefore provided, the Assistant Commissioner of Customs shall accord sanction to the applicant to carry on such manufacturing process or other operations specifying:

- (a) the manufacturing process or other operations permitted to be carried on in the warehouse;
- (b) the types and nature of imported and other goods permitted to be used;
- (c) the period for which the sanction is valid; and
- (d) the conditions if any, subject to which the manufacturing process or other operations may be carried on in the warehouse.
- (e) the input-output norms, wherever considered necessary, for the raw materials and the finished goods.

6. Conditions that may be imposed by the Assistant / Dy. Commissioner of Customs. The Assistant / Dy. Commissioner of Customs may from time to time:

- (i) Omitted
- (ii) determine the number of Customs officers that may be attached to the warehouse for purpose of supervising the manufacturing process or other operations;
- (iii) fix the sum payable by the manufacturer towards the cost of such establishment and the extra charges payable towards the overtime services, if any, performed by such establishment at the request of the manufacturer; and
- (iv) Omitted

7. Omitted

8. Omitted

9. Maintenance of accounts. The manufacturer shall maintain accounts relating to stocks, raw materials, goods in process, finished goods, waste and refuse in proper form:

Provided that where the manufacturer maintains for his own purpose such detailed accounts and has carried out such alternations in the form of accounts as may be required in this behalf, the Assistant / Dy. Commissioner of Customs may in his discretion direct such forms of accounts to be adopted as the proper form.

10. Accounts to be accessible to Customs Officer. The proper officer may, at any time, inspect or call for the accounts and connected records for scrutiny.

11. Special audit in certain cases:

- (i) The Chief Commissioner of Customs may, for reasons to be recorded in writing, direct a manufacturer to get the accounts of his warehouse, office, stores, godowns, factory, depot, or other establishment audited by a Cost Accountant, nominated by him in this behalf.
- (ii) The Cost Accountant, shall submit the audit report duly signed and certified by him within the period specified by the Chief Commissioner of Customs, or such extended period as may be allowed by him, to the Commissioner, giving therein such other information or particulars as may have been asked for by the Chief Commissioner.
- (iii) The provisions of sub-regulation (i) shall be in addition to, and not in derogation of any other law for the time being in force.
- (iv) The expenses of, and incidental to, such audit (including the remuneration of the Cost Accountant) shall be determined by the Chief Commissioner and paid by the manufacturer and in default of such payment shall be recoverable from the manufacturer in the manner provided in section 142 of the Customs Act, 1962 (52 of 1962).
- (v) The manufacturer shall be given a copy of the audit report conducted in pursuance of sub-regulation (i) who may make a representation, if he so likes.

Explanation: For the purpose of this regulation "Cost Accountant" shall have the meaning assigned to it in clause (b) of sub-section (1) of section (2) of the Cost and Works Accountant Act, 1959 (23 of 1959).

13. Manufacturer to give notice before suspending or discontinuing the manufacturing process or other operations. No manufacturer shall suspend or discontinue the manufacturing process

or other operations authorised to be carried on in the warehouse without giving in writing to the Assistant / Dy. Commissioner of Customs one month's notice of his intention so to do:

Provided that in any particular case the aforesaid period of one month may, on sufficient cause being shown, be reduced by the Assistant / Dy. Commissioner of Customs by such period as the Assistant / Dy. Commissioner may deem fit:

14. Cancellation and suspension of sanctions. If the manufacturer or any person in his employ commits a breach of the provisions of the Act or the terms and conditions imposed by or under these regulations or if the particulars furnished in the application for sanction are false or incorrect, or if any undertaking given in the Bond is not fulfilled the Assistant / Dy. Commissioner of Customs may, without prejudice to any other action that he may take under the provisions of the Act or these regulations cancel the sanction for carrying on the manufacturing process or other operations:

Provided that before the sanction is cancelled the manufacturer shall be given reasonable opportunity of being heard.

15. Repeal. The rules and Regulations specified in the Schedule to these regulations appended below shall cease to be in force except as respects things done or omitted to be done before such cesser.

SCHEDULE (see Regulation 15)

1. Rules prescribed for the purpose of operation on goods in a warehouse – Wines and Spirits – vide late C.B.R. Notification No. 56, dated the 2nd July, 1927, as amended by notification No. 29-Cus., dated the 16th May, 1931 and No. 11-Cus., dated the 22nd January, 1938.

2. Rules for the manufacture of cigarettes in Bond from unmanufactured foreign tobacco imported and warehoused under the provisions of section 92 of the Sea Customs Act at an inland Bonded warehouse - late C.B.R. Notification No. 34-Cus., dated the 30th May, 1942.

3. Rules for the manufacture of cigarettes or tobacco in Bond from unmanufactured foreign tobacco imported and warehoused under the provisions of section 92 of the Sea Customs Act – (late C.B.R. Notification No. 54-Customs, dated the 25th October, 1941, as amended by Notification No. 8-Customs, dated the 17th April, 1943 and No. 62-Customs, dated the 8th July, 1950).

4. Rules for manufacture of complete Gramophone machine (including electric gramophones) in Bond – late C.B.R. Notification No. 9-Customs, dated the 13th July, 1946).

5. Rules for the free-entry at the Madras Custom House of unmanufactured foreign tobacco imported for the manufacture of cigars intended for export to foreign ports – (Notification dated the 1st November, 1910, published on page 1685-86 of Part II of the Fort St. George Gazette, dated the 8th November, 1910 as amended by Notification dated the 22nd May, 1920 published on page 1051 of Part II of the Fort St. George Gazette, dated the 1st June, 1920, late C.B.R. Notification No. 79-Customs, dated the 5th December, 1936, Notification No. 12-Customs, dated the 22nd January, 1938 and No. 47-Customs, dated the 12th October, 1940).

6. Rules to regulate the canning of motor spirit and kerosene oil from the stock imported and warehoused in a Bonded tank at Bombay – (late C.B.R. Notification No. 5-Customs, dated the 5th January, 1935 as amended by Notification No. 70-Customs, dated the 26th March, 1938).

7. Rules for the manufacture or repairs of vessels from material imported by the Hindustan Shipyard Ltd., Visakhapatnam etc. – (late C.B.R. Notification No. 78 -Customs, dated the 7th August, 1954 as amended by C.B.R. Notification No. 63-Customs, dated the 3rd June, 1961).

8. Motor Vehicles (Manufacture-in-Bond) Rules, 1956-(late C.B.R. Notification No. 97-Customs, dated the 6th November, 1956).

9. Rules for the manufacture or re-manufacture of cigarettes or tobacco in Bond from indigenous or imported Duty paid tobacco or cigarettes and unmanufactured imported tobacco warehoused under the provision of section 92 of the Sea Customs Act – (late C.B.R. Notification No. 22-Customs, dated the 29th June, 1957).

10. The handicrafts (Manufacture-in-Bond) Rules, 1958 – (C.B.R. Notification No. 229-Customs, dated the 13th August, 1958).

11. The manufacture-in Bond (General) Rules, 1960 – (late C.B.R. Notification No. 15-Customs, dated the 27th February, 1960).

[Notfn. No. 155/66-Cus. dated 30.7.1966 as amended by Notfn. No. 44/98- Cus. dated 2.7.1998]

Grant of In-Bond Manufacture facility Under Section 65 of The Customs Act, 1962

It is to state that a review of the existing policy with regard to grant of in-Bond Manufacture facility under Section 65 of the Customs Act, 1962 has been conducted by the Board. Consequent to the review, it has been decided that the requests for grant of in-Bond Manufacture facility under Section 65 of the Act will henceforth be considered and decided at the level of the Commissioners without making any reference to the Board. The following guidelines may however, be kept in view while deciding such requests.

2. The Board's policy has been to extend the facility mainly to export oriented units so that unnecessary difficulties to pay Duty and later claim drawback can be avoided. In order to decide whether an Industrial unit is export-oriented or not, the following figures may be compared; -

- (a) Total value of goods manufactured by using imported raw materials;
- (b) Total value of such finished goods exported; and
- (c) Total value of such finished goods retained for domestic sale.

3. Flexible approach may, however, be adopted in the matter so that there is no instance that the exports have to be less than 50% of imported materials. Further the Manufacture-in-Bond operations are required to be carried out under Customs supervision on cost recovery basis. The Commissioners may carefully scrutinise the applications for grant of in-Bond manufacture facility and if the applicants financially secure, has good credibility, and has not been involved in Customs or Excise Duty evasion in the preceding 5 years in the normal course, an in-Bond manufacture licence under Section 65 may be granted. This would, of course, be subject to the condition that the premises are suitable and adequately secured. While granting the requests, the provisions of the Manufacture and other operations in Warehouse Regulations, 1966 have also to be complied with.

[M.F. (DR) Circular No. 132/95-Cus. dt.22.12.1995 in F. No. 473/61/94-LC]

Power to exempt imported materials used in manufacture of goods in warehouse

As per Section 66 of the Customs Act, 1962 if any imported materials are used in accordance with the provisions of section 65 for the manufacture of any goods and the rate of Duty leviable on the imported materials exceeds the rate of Duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of Duty.

REMOVAL OF GOODS FROM ONE WAREHOUSE TO ANOTHER

As per Section 67 of the Customs Act, 1962 the owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

- (i) Application for removal of goods from one warehouse to another under the provisions of Section 67 of the Customs Act will be presented in the prescribed form vide Appendix 11 to the Bond clerk.
- (ii) The Bond clerk will see that the particulars in the application agree with the entries in the Bond Register, note therein the receipt of the application and submit it to the Assistant Commissioner for his orders. The orders will be endorsed on the application which will then be returned to the owner.
- (iii) If permitted, the file will be forwarded to the Preventive Department to depute, on receipt of an application from the owner, an officer to supervise the transfer of the goods, if no Customs officer is posted in charge of the warehouse, to or from which the goods are to be removed.
- (iv) The owner will present the application to the Officer, if any, in charge of the warehouse from which the goods are to be removed or to the officer deputed to supervise the removal. This officer will allow delivery of the goods, endorse the application and make a note in the stock list to that effect and the goods will be transported under the supervision of the Officer deputed for the purpose.
- (v) On arrival of the goods at the warehouse where the goods are to be deposited, the supervising Officer or the Officer in charge, if there be one, will see that the goods covered by the application are duly stored in the warehouse and will make an endorsement to that effect on the application which will then be returned by the supervising Officer to the Bond Clerk.
- (vi) The Bond Clerk will make a note of the transfer of the goods in the Bond register and forward the application in the usual course to the warehouse keeper to be filed with the relative original into-Bond Bill of Entry.
- (vii) In the case of bulk oil transfers the Bond Clerk will, on receipt of the file from the oil Appraiser, note the complete particulars of the transfer in the Bond Register and make necessary endorsements forwarded to IAD for scrutiny.
- (viii) On receipt of the oil transfer files, the Bond Clerk will recover Duty on the unaccountable loss and the transfer loss and if there be any gain, proceed with the refund when a claim is received from the Bonders.
- (ix) He will finally note the amount of Duty recovered in the Bond register with full particulars of the bill number and date and forward the file to records to be filed with relative Bond documents.

Removal of goods by sea under Section 67 of the Act

In case of goods to be shipped from Bond under the provisions of Section 67 of the Customs Act, the following procedure will be observed.

- (a) The owner will prepare a Shipping Bill in triplicate in the prescribed form with the words 'From Bond' written prominently in red ink at the top of each copy and present the documents to the Bond Clerk along with a Bond in the prescribed. One Bond is sufficient for all goods shipped by the same Shipper by the same ship even though the goods are covered by more than one Shipping Bill (vide C.B.R. Letter D. Dis. No. 15-Cus.1/40 dated the 29th January, 1940). The Bond Clerk will –
 - (i) satisfy that the goods are entered for shipment to a warehousing port; and that the warehousing licence at the other end is valid and would accommodate the goods sought to be transferred. (A certificate to this effect should be obtained from the Asst. Commissioner of Customs/Central Excise/Superintendent (Customs)/Central Excise in charge of the warehouse and present along with the transfer application);

- (ii) compare and record the particulars of goods entered for shipment against the entries in the Bond register;
- (iii) check the Bond to see that it is correctly prepared and stamped;
- (iv) take necessary action to recover charges, if any, leviable on the goods; and
- (v) endorse and initial the order in the Shipping Bill permitting shipment of the goods under Section 67 and submit the documents with the Bond to the Assistant Commissioner for signature of the order and acceptance of the Bond.

(b) (i) On receipt of the duplicate and triplicate shipping bills from the Export Department, the owner will obtain from the Preventive Department, the services of an officer to supervise the removal and shipment of the goods, and will present the documents to the warehouse keeper, or in the case of a private warehouse, to the officer to issue the goods therefrom.

(ii) The warehouse keeper or the officer deputed to issue the goods will allow delivery after satisfying himself that rent has been recovered, if leviable and that Duty on deficient contents, if any, found after examination of the outwardly defective packages has been collected, note the clearance of the goods on the relative stock list and on the duplicate Shipping Bill and hand over the duplicate and triplicate Shipping Bill to the supervising officer.

(iii) The supervising officer should satisfy himself as to the condition of the packages before removal and if found to be in good order, he should make an endorsement to that effect on the reverse of the Shipping Bill. If, on the other hand, any package is found to be broken or tampered with, then he should open and examine the package in the presence of the shipper or his representative, prepare a list of the contents thereof and note therein the condition of the package and should sign and date the list and should also get the shipper or his representative to sign the list. He should thereafter proceed with the shipment. The list with the report as to the condition of the packages should be forwarded to the Bond clerk in the Import Department who should obtain the invoice for the package to ascertain whether there is any shortage on which Duty should be recovered under the Bond.

(iv) After the goods have been shipped under supervision, the supervising officer will make a note of the fact on the reverse of the Shipping Bill, hand over the triplicate copy of the ship's officer and send the duplicate to Bond Department.

(v) The Bond clerk will deal with the Shipping Bill as in the case of free goods and prepare an advice in the prescribed form (C.B.R. Cus.33) for despatch to the Customs officer at the port of destination after verifying whether the goods have been actually shipped.

(vi) On receipt of intimation regarding the due arrival and rewarehousing or clearance of the goods at the port of destination, the Bond Clerk should –

- (a) after audit put up the Bond to the Assistant Commissioner to cancellation;
- (b) complete the entries in the Bond Register and submit the Shipping Bills with the register to the Superintendent Import & Bond Department, for check of the clearance posted and initial of the register in token thereof;
- (c) send the Shipping Bills to the I.A.D. with the registers.

Removal of goods by inland carriage under Section 67

(i) The procedure is the same as described in preceding paragraph except that the Customs Officer deputed for supervision will accompany the goods to the Booking Office and after they are consigned to the Officer in charge of the warehouse where the goods are to be deposited send the railway receipt with the application to the Bond Clerk.

(ii) The Bond clerk will despatch the railway receipt with a covering advice signed by the Assistant Commissioner to the officer to whom the goods are consigned.

(iii) On receipt of the intimation from the officer in charge of the warehouse to which the goods are consigned regarding the arrival of and rewarehousing of the goods, the Bond filed under section 67 of the Act will be cancelled by the Assistant Commissioner.

Detection of irregularities in clearance of goods from bonded warehouse –

Several instances of irregularities in the clearance of goods from Bonded Warehouses have come to the notice of the Board.

2. Board desires that suitable instructions may be issued to all field officers to be alert against any such irregularities and in particular follow the following procedure:

- (i) The goods should be stored in Bonded Warehouses only after due examination. Reverse of the Bill of Entry must confirm the veracity of the declared description with the distinctive identification marks of the subject goods.
- (ii) At the time of actual removal of the goods from the warehouse, the declared description of the goods recorded on the Warehousing Bill of Entry, should be tallied with the description declared on the ex-bond (Green) Bill of Entry.
- (iii) There should be regular audit and inspection by the senior officers and the Customs House audit parties so that the nature, quantity, number and other relevant particulars with reference to the concerned documents are verified. The exercise could be once in six months for audit parties supported by surprise checks by senior officer.
- (iv) The records of bonded goods in the Customs Houses, as far as possible, should be computerised.
- (v) It should also be made mandatory for the Central Warehousing Corporation and other warehouses to submit status report as regard the consignments pending for one year and above. The position can then be cross checked in the Customs House where the warehousing Bills of Entry had originated.
- (vi) Action under Section 72 of the Customs Act, 1962 must be initiated on expiry of the warehousing period.
- (vii) All cases where goods continue to lie in the warehouse after the expiry of warehousing period should be specially taken up for scrutiny by the audit parties and other checks in order to guard against deterioration, substitution or any other unlawful removal.

[Board's Circular No. 52/98-Cus., dated 27.07.1998 from F. No. 473/13/98-LC]

Transport of goods in Bond from the warehousing Port to another by motors, trucks or lorries:

This concession should be allowed only in special cases and to firms and carriers of repute. The Custom House should satisfy itself about the standing of the Transport Company and their security arrangements before allowing any particular consignment to be transported by road. It should also exercise due care at the time of accepting the sureties for the Bonds, that the Government revenue is adequately safeguarded.

The Bonders should also be asked to furnish a Bond to cover the I.T.C. penalty in cases, where an I.T.C. licence had not been produced at the time of warehousing.

[Board's letter F. No. 3/53 58-Cus. VII dated 5.11.1959]

Transfer of imported goods for re-warehousing from major port to inland warehousing station

(A) Please refer to the correspondence resting with Board's letter F. No. 473/25/90-CUS-VII, dated 30.09.1991 on the above subject and to say that as a measure of further relaxation it has been

decided that only 5% bank guarantee alongwith the transit bond equal to the amount of duty may be insisted from 100% EOU / EHTP / EPZ units in respect of capital goods and raw material / components / consumables etc. for the first three years of operation, on the condition that re-warehousing certificates in respect of the consignment cleared should be produced within three weeks of the despatch, failing which the next consignments may be allowed only on transit bond supported by 100% Bank Guarantee. Further, if the unit concerned has properly installed the capital goods, produced and exported goods in terms of the requirements, and also produced re-warehousing certificates as stipulated above, then on the basis of the recommendation of the Commissioner of Customs / Central Excise (as the case may be) the unit may be allowed in-bond movement on furnishing a Bond without Bank guarantee for subsequent imports, whether of capital goods or other goods. This would, however, again be subject to the condition that the unit continues to provide the re-warehousing certificate within three weeks of despatch.

2. The Board's instruction dated 30th November, 1991 may be considered modified to the above extent.

[Board's Circular No. 29/95, dated 29.03.1995 from F. No. 473/6/95-LC]

(B) Please refer to Board's Circular No. 29/95, dated 29th March, 1995 (issued from F. No. 473/6/95-LC) on the above subject and to say that as a measure of further relaxation, it has been decided to do away with the requirement of 5% Bank Guarantee in the case of imported goods of 100% E.O.U.s / EHTP / STP and EPZ Units. However, a transit bond or an insurance policy equivalent to the amount of duty involved may be obtained on the condition that re-warehousing certificate would be submitted within a period of 30 days from the date of despatch of the goods from the port / airport of import. Where the party fails to produce the re-warehousing certificate within 30 days consecutively for more than three consignments, he would be required to support their Bond with 100% Bank Guarantee.

2. The Board's instructions dated 29th March, 1995 may be considered modified to the above extent. You are, therefore, requested to issue suitable instructions to the field formation.

[Board's Circular No. 41/97-Cus., dated 19.09.1997 from F. No. 473/31/97-LC]

REMOVAL OF WAREHOUSED GOODS

The importer (or owner) may clear the warehoused goods for home consumption on payment of Duty warehouse rent, interest etc. (if any). For this purpose, he is required to file a green Bill of Entry under Section 68. This Bill of Entry is filed in the Import Department. After assigning admission number and date it is transferred to the Bonds Department where the Bond Clerk verifies the declared particulars with the particulars already entered in the Warehouse Register from the into-Bond Bill of Entry. Thereafter, the Appraising Group assesses the Bill of Entry. The importer pays the Duty and obtains out of charge order on the reverse of the duplicate Bill of Entry from the office Superintendent of the Cash/Accounts Department. He then produces this duplicate Bill of Entry to the Bond Officer or Warehouse Keeper and clears the consignment from the warehouse. Under Sec. 15 (1) (b), the rate of Duty applicable to such goods is the rate prevailing on the date of actual removal of the goods from the warehouse. Hence the warehouse keeper or Bond Officer endorses the date (or dates) on which the goods are physically removed from the warehouse. If any further Duty has become due on account of a change in the rates of Duty before such removal, the Bond Clerk who receives the duplicate Bill of Entry from the warehouse keeper shall initiate necessary action. More than one clearance of a single

warehoused consignment can also be effected by filing different green bills of entry under Sec.68. As far as the rate of exchange is concerned, the same rate that prevailed on the date of filing of the into-Bond Bill of Entry by the importer is applicable to all clearance ex-Bond.

Warehoused Goods (Removal) Regulations, 1963

In exercise of the powers conferred by Section 157 of the Customs Act, 1962, the Central Board of Revenue hereby makes the following regulations, namely: -

Short title: The regulations may be called the Warehoused Goods (Removal) Regulations, 1963.

(i) Conditions for transport of warehoused goods to another town: Where the goods are to be removed from one warehouse to another in the same town, the proper Officer may require that the transport of the goods between the two warehouses be under the supervision of an Officer of Customs, the owner meeting the cost of such supervision.

(ii) Where the goods are to be removed from one warehouse to another in a different town, the proper officer may require the person requesting the removal to execute a Bond in a sum equal to the amount of import Duty leviable on such goods and in such form and manner as the proper officer deems fit.

(iii) Terms of the Bond to be executed: The terms of the Bond shall be that if the person executing the Bond produces to the proper officer, within three months or within such extended period as such officer may allow, a certificate issued by the proper officer at the place of destination that the goods have arrived at that place, the Bond shall stand discharged; but otherwise an amount equal to the import Duty leviable on the goods in respect of which the said certificate is not produced shall stand forfeited.

(iv) Surety or security to be furnished : The proper officer may require that the Bond shall be with surety or security or both as is acceptable to him.

[Ministry of Finance, Deptt. of Revenue Notification No. 59/63 Cus dtd. 01.02.1963]

Bonded warehousing – Remission of Duty on legal breakage

The question of remission of Duty on warehoused goods lost or destroyed in transit from one warehouse to another has been examined and the Board has ruled that so long as loss or destruction of goods takes place before the clearance of the goods for home consumption as specified in section 23 of the Customs Act, 1962 remission of Duty has to be allowed.

(i) The Bond taken under Section 67 of the Customs Act, 1962, a suitable provision should be made permitting remission of Duty on genuine losses in transit. 'Loss' for this purpose does not include pilferage which is covered by section 13 of the Customs Act, 1962.

(ii) Normally transit losses are very nominal. For liquor bottles, breakage during transit do not appear to exceed ½% and in the case of first importation at port losses should be much less. Because of the wide spread use of pilfer-proof caps it is easy to establish whether the loss is legal or not. For the purpose of establishing losses in transit, the examination should be carried out under the supervision of Gazetted Officers and the necks of the bottles with pilfer proof-caps intact should be submitted to the Asst. Commissioners for destruction along with the examination reports.

(iii) Where breakages in excess of ½% for liquor bottles are noticed, such breakages should be properly looked into in order to check malpractice and the warehouse keepers should be asked to take steps to reduce the breakages. Where such cases of breakages persist steps should be taken to cancel the warehouse licence.

[Board's letter F.No. 473/8/71- Cus VIII dtd. 31.01.72]

CLEARANCE OF GOODS FOR EXPORTATION

Section 69 of the Customs Act 1962, stipulates that (1) any warehoused goods may be exported to a place outside India without payment of import Duty if –

- (a) a Shipping Bill or a bill of export has been presented in respect of such goods in the prescribed form;
- (b) the export Duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- (c) an order for clearance of such goods for exportation has been made by the proper officer.

(2) Notwithstanding anything contained in sub-section (1) of the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of Duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the Notification.

Application of Section 69 and Chapter X to Stores-Section 88 of Customs Act

The provisions of Section 69 and Chapter X shall apply to stores (other than those to which Section 90 applies) as they apply to other goods, subject to the modifications that –

for the words “exported to any place outside India” or the word “exported” wherever they occur, the words “taken on board any foreign going vessel or aircraft as stores” shall be substituted;

Clearance of goods for shipment under Sections 69 & 88 of Customs Act, 1962

When goods are entered for shipment to a foreign port or as provisions, etc., for use on board a vessel proceeding to a foreign port, the procedure is as follows: -

(a) The owner of the warehoused goods will present a Shipping Bill in triplicate in the prescribed form with the words “form Bond” written prominently in red ink at the top of each copy to the Bond clerk. The Bond clerk will see –

- (i) that the goods are entered for shipment to a foreign port.
- (ii) compare and record the particulars of goods entered for shipment against the entries in the Bond Register.
- (iii) Endorse and initial the order in the Shipping Bill pertaining shipment of the goods to the Assistant / Dy. Commissioner (Bonds) for signature.

(b) After obtaining Assistant / Dy. Commissioner’s orders permitting shipment ex-Bond, the Shipping Bill is forwarded to the Export Department for numbering and date stamping. The original Shipping Bill is detained in the Export Department. On receipt of the duplicate and triplicate of the Shipping Bills from the Export Department the owner will obtain from the Preventive Department the services of an Officer to supervise the removal and shipment. The duplicate Shipping Bills are forwarded along with the E.G.M.s after shipment to Export Department. The triplicate Shipping Bills are received by Bond Clerk from the Preventive Department who will finally note in the Bond register the particulars of shipment. In places where triplicate Shipping Bills are not filed, the duplicate Shipping Bill after shipment of the goods is received in the Bond Department from Export Department. The duplicate Shipping Bill is endorsed by the Export Department as “compared in the E.G.M.” The particulars of shipments are entered in the Bond register.

Stores supplied ex-Bond to Government Vessels

Provisions & stores including wines, and spirits may be shipped ex-Bond to ships of the Indian Navy irrespective of whether their destination is a foreign port or otherwise.

- (a) This concession is also admissible in respect of aircraft proceeding direct to other foreign destinations.

[Govt. of India, Ministry of Finance (R.D.) C.No.91(28)Cus 1/49 dated 12.04.1950]

- (b) The Govt. of India have no objection to the supply of liquor and consumable stores ex-Bond from the warehouses maintained by the Air companies subject to the following conditions, namely-

That such supplies will be made only when the plane is taking off on an onward flight for a foreign destination and will not touch an intermediate Indian Airport.

The supplies will be kept under seal until the plane takes off. An endorsement that "the seals were found in tact at the time of departure" will be made by the Customs Officer.

[Govt . of India, Ministry of Finance (R.D.) Letter No. 70(23) Cus 1/54 Cus III dtd. 22.8.55]

SHIPMENT OF LIQUID FUEL UNDER SECTION 88 OF THE CUSTOMS ACT,1962

For the shipment of liquid fuel , the following procedure shall be followed:-

- (i) The oil company will first present in the Preventive Department the Shipping Bill, with Bond number and date noted therein or an application requisitioning an officer for supervising shipment. The Preventive Department will obtain the Assistant / Dy. Commissioner's orders sanctioning the staff required.
- (ii) The Shipping Bill will then be presented in the Bond Department for admission and for putting up endorsement to obtain the Assistant / Dy. Commissioner's orders for permission to ship the goods under Section 88 of the Customs Act. The Bond Clerk will make an entry in the Bond register and assign an issue number to the Shipping Bill. After the Assistant / Dy. Commissioner's orders have been obtained, the Shipping Bill will be forwarded to the Export Clerk to be dealt with under usual procedure.
- (iii) It will thereafter be forwarded to the Preventive Officer concerned, who, after bunkering is completed and the quantity verified with the Chief Engineer's log book and with that arrived at after measuring the tank, will certify the quantity so verified on the Shipping Bill.
- (iv) The Bond Clerk will then note in the register the actual quantity bunkered and transmit the Shipping Bill to the Export Department which will return the Shipping Bill to the Export Department which will return the Shipping Bill to the Bond Clerk after the usual check with the manifest.
- (v) The entries in the register will then be completed and the register submitted to the Superintendent for initials. The registers with the Shipping Bills will thereafter be forwarded to the Audit Department for checking the entries as required by the rules.
- (vi) Liquid fuel supplied to Coasting Vessels: When vessels in the coasting run are to be bunkered from stocks in Bond, the oil company should in addition to the presentation in the Export Department of a Shipping Bill for the quantity of oil required to be shipped, file in the Import Department a green Bill of Entry (ex-Bond Bill of Entry) for the same quantity. Duty on this quantity should be collected before the oil is allowed to be pumped. After bunkering is over, action should be taken for the recovery of Duty on any shipment of excess quantity and for the grant of refund on the quantity short-shipped on receipt of shippers application.

Consumption in Indian Waters of ships' stores Shipped from Bond

The expression "any vessel proceeding to a foreign port in Section 112 of Sea Customs Act (*Section 88 of the Customs Act, 1962*) should not be construed as referring to any vessel engaged in the Foreign trade so as to allow shipments of provisions or stores to be made for use on board the vessel while lying in port before the commencement of the outward journey. The concession envisaged (*Section 88 of the Customs Act, 1962*) would therefore be available only when the vessel leaves an Indian port with a foreign port as its destination. The fact that the vessel has to call, enroute, on some other Indian ports or it will have to pass through the Indian waters for some time would not justify the prevention of use of such stores on board the vessel while lying in such other Indian ports or passing through the Indian waters. What is important is that the destination of the vessel should be a foreign port and it is irrelevant that on the way the vessel is to commence its voyage from a port say 'X' to a foreign port, she cannot claim the benefit of Section 112 Sea Customs Act (*Section 88 of the Customs Act 1962*) as long as she remains anchored at the port 'X' but should be entitled to obtain shipment of stores without payment of Duty for use after she leaves port 'X' and if she has to touch Indian ports say 'Y' and 'Z' in the course of her journey she will be entitled to use the stores while lying at the ports 'Y' and 'Z' without having to pay Duty.

[Board's letter No. 55 (16)-Cus.1/54 dated 11.10.54]

Supply of Bonded stores of Steamers – quantity restrictions

The Board considers that there should be no restriction on the quantities of ex Bond shipment under Section 112 Sea Customs Act (*Section 88 Customs Act*). Nor is there any justification for doing so in view of the wording of the Section viz. for use on vessel proceeding to a foreign port, which implies that the quantities should be allowed in a liberal way, subject to the criterion of 'for use on Board'. The restriction envisaged in Section 28 Sea Customs Act (*Section 89 Customs Act*) cannot be applied in the case of imported goods. The only case where restriction on the quantity of goods sought to be shipped stores under Section 112 Sea Customs Act (*Section 88 Customs Act*) would be applicable is where the quantities are so large that they cannot conceivably be intended for use as stores and/or there is reason to suspect that such article would be surreptitiously landed.

[Board's letter F. No. 3/27/59-Cus III dated 14.1.69]

RESHIPMENT OF GOODS WITHOUT PHYSICAL REMOVAL INTO A WAREHOUSE

(a) The Govt. of India do not agree to adopting the procedure of constructive warehousing i.e. of taking a Bond and into-Bond Bill of Entry allowing clearance for reshipment without the goods having been physically removed into a warehouse as this would be an evasion of Section 128 Sea Customs Act (*Section 54 Customs Act '62*) in that it would authorise what amounts to transshipments in circumstances where transshipment is not allowed by that section.

[Govt. of India, Com. Department D.O. No. 2053 dated 14/17th April 1923]

(b) In modification of the instructions in clause (a) above, the Govt. of India have authorised the Commissioner of Customs to relax, in deserving cases, the requirement of physical warehousing under section 93 Sea Customs Act (*Section 60 Customs Act '62*) and to allow ex-Bond shipment in exceptional circumstances in anticipation of their approval.

[Ministry of Finance (R.D.) F. No. 55/4/52-Cus. I dated 27.5.1952]

(c) Physical warehousing – waving of the condition of – There are cases where after landing of goods in the Docks, the importer seeks for Bonding of the goods, but before physically warehousing can take place, he seeks clearances for exports or home consumption or even removal from the warehouse to another warehouse in another town. In exceptional and genuine circumstances, the waiver of actual physical warehousing at the port of importation used to be permitted by the Custom Houses subject to ex-post facto approval of Board. This practice was stopped and Board issued the following revised instructions under F. No. 473/16/88-Cus.VII dt.15.6.88.

2. “The Board have decided to terminate the practice of granting ex-post facto approval of waiver of the requirement of physical warehousing at the port of importation. The instructions issued in F. No. 173/157/74-Cus.VII dated 23.4.75 are, therefore, rescinded.

3. In the following cases, Asstt./Dy. Commissioners of Customs may grant waiver of physical warehousing with the approval of the Commissioner, if necessary, ex-post-facto.

(a) Constructive warehousing under Section 60:

- (i) Merchanting trade i.e., goods imported for supply to other foreign countries. This sort of merchanting trade is permitted by the RBI as per Chapter 13 of the Exchange Control Manual.
- (ii) Cases where duties are not collected i.e., stores, spare parts, fuel for vessels etc. or “stores” as defined in Section 2 (38) of the Customs Act, 1962.

(b) Constructive warehousing under Section 67:

- (i) Equipment, machinery and raw materials for 100% EOUs located outside the port city and therefore, in urgent need of equipment.
- (ii) Companies with manufacture-in-Bond permissions under Section 65.
- (iii) Bulky, heavy and dangerous and delicate items, which require special handling or air-conditioning.
- (iv) Goods belonging to reported companies which have urgent reasons for immediate clearance”.

Ex-Bond ship stores when the vessel does not proceed to a foreign port

(i) The Ministry of Law, who were consulted in the matter, have advised that since the stores were shipped under Section 112 Sea Customs Act (Section 88 of the Customs Act, 1962) for use on board of the vessel. When it was intended that it should proceed to a foreign port, and as the vessel did not so proceed, but instead that it should proceed to a foreign port, and as the vessel did not to proceed, but instead put into an Indian Customs port, the concession of Section 112 Sea Customs Act (Section 88 of the Customs Act, 1962) was not available. In the circumstances, the Duty was payable on the stores at the Indian port and that on arrival the stores should have been landed and Bonded at that port under a fresh Bond.

(ii) The proper course in such cases, is, however, to take a Bond under Section 130 Sea Customs Act (Section 54 Customs Act) so that if the conditions attaching to the export are not fulfilled suitable action may be taken in terms of such a Bond.

Warehousing of goods imported under savings clause 3 (d) of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993

(i) The question of imports of goods under saving Clause 3 (d) of the Imports (Control) Order, 1955, their warehousing in Bond and subsequent release to Diplomats has been considered in consultation with the Department of Economic Affairs and the Ministry of External Affairs.

(ii) It has been decided that with immediate effect imports under the said Saving Clause should be permitted only of: (i) bonafide ships stores items; and (ii) items like provisions, liquors, cigarettes and tobacco. In no case should the imports of non-consumable items like Air-conditioners, Refrigerators, Tape Recorders etc. be allowed.

[Based on Board's letters F. No. 3/5/66-Cus. VII dated 23.5.66 & 16.6.66]

CLOSING OF BOND

Cancellation and return of warehousing Bond – Section 73 Customs Act, 62

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

Cancellation of Bonds: -

(a) When a Bond is ripe for cancellation, all documents relating thereto original into-Bond Bill of Entry, ex-Bond Bill of Entry and Shipping Bills which should always be kept by the Bond Clerk with the relative Bond, who should maintain form the purpose a key-book to facilitate the tracing of these documents subsequently) together with the Bond Register, should be sent to the I.A.D. The Audit Clerk should immediately scrutinise the documents and the entries in the Bond Register and, if these are in order, should impress his Department's stamp on the Bond and against the entries in the Bond Register and initial the documents in token of having audited them and return them to the Bond Department. The Bond should not be cancelled by the Bond Department unless it bears the I.A.D. stamp duly initialled by the Audit Clerk.

(b) The Office Superintendent, Bonds, will personally check the Bond Register twice a year in January and July and see that there has been no undue delay in the disposal of completed Bond, and report to the Assistant Commissioner of his having done so.

Bond file: (a) A Bond file consists of –

- (i) Bond under Section 59 Customs Act '62.
- (ii) The original into-Bond Bill of Entry.
- (iii) Original and duplicate ex-Bond Bill of Entry.
- (iv) The original Shipping Bill in respect of goods shipped to a foreign port and duplicate in case of goods removed to a Customs port.
- (v) Papers relating to the discharge of the Bond under Section 67 Customs Act '62.
- (vi) The Bonder's application for removing part contents of packages for home consumption or re-export or for operations under Section 64 and 65 Customs Act' 62.
- (vii) The Bonder's application for extension of the time limit for warehousing goods.
- (viii) The Bonder's application for removal of goods under Section 67 Customs Act '62.
- (ix) Re-gauge papers in duplicate.

(b) In the case of intimation received from other ports regarding re-warehousing or otherwise of the Bonded goods such papers should be filed separately if it refers to more than one Bond.

Audit of Bond Files: (a) Bond Files of the nature specified below should be forwarded to the I.A.D. through the Assistant Commissioner, Bonds: -

- (i) those containing inaccuracy of a serious nature or in which any document is missing.
- (ii) those containing ex-Bond bills of entry involving short or excess charge above Rs.25/- in an individual Bill of Entry, and
- (iii) those containing ex-Bond bills of entry involving short or excess charge below Rs.25/- in an individual Bill of Entry due to incorrect particulars having been furnished by the Bond Department when issuing them and detected at the time of sending the Bond file for audit.

(b) All other files should be sent directly to the I.A.D. by the Office Superintendent, Bonds, or the Preventive Officer in charge of warehouses.

(c) Bond file should ordinarily be sent for audit within two months from the date of last clearance from Bond.

CHECK LISTS FOR WORKING OF BONDED WAREHOUSES

The Directorate of Inspection & Audit, have drawn up and issued Check Lists on various warehousing procedures for the guidance of the staff. These check lists cover procedures from inspections to be carried out before issuance of licence to auditing of documents.

Though, one may feel the instructions to be repetitive, the same being important, are, however, reproduced below :-

Check list – I (Before a licence is issued)

1. Verify that the place where the warehouse is proposed to be licensed has been notified as a warehousing station under Sec. 9 of the Customs Act, 1962.
2. The application for licence has been made in the prescribed form.
3. The no. of commodities proposed to be Bonded in each warehouse should not exceed 5 or 6.
4. The warehouse building should be inspected and it should not be in the residential area.
5. It should be a pucca building (brick-built)
6. If the warehouse is on the top-floor, then the terrace should be well and strongly built.
7. All windows and sky lights should be well secured.
8. All windows, sky lights should be covered with strong wire-mesh internally.
9. There should not be more than 1 door.
10. The door should be screwed and hinged from inside to prevent the fastening being removed from outside.
11. The premises must be secured against theft, pilferage, or other risks and must be easily accesible for the departmental officers for any inspection or checks.
12. There must be no private communication whatsoever with the Bonded warehouse.
13. The warehouse should be provided with adequate no. of fire extinguishers and other equipment such as buckets of water, sand etc., for putting out fire.
14. The warehouse building should be inspected by a Superintendent.

15. A report on the condition of the building shall be prepared and the questionnaire duly filled in should be submitted to the Asst./Dy. Commissioner.
16. The applicant shall give in writing his readings to defray the expenses on account of commissionerate's establishment employed at the private Bonded warehouse on a regular basis or occasionally.
17. The new applicants who are intending to store sensitive goods should produce a solvency certificate (not just a reference or a confidential certificate) from a scheduled bank of repute (other than a co-operative bank or a bank which has operations limited to a city etc.) for a value of not less than Rupees Fifty Lakhs (Rs. 50,00,000/-)

In respect of non-sensitive goods, the applicant should be solvent for Rs. Ten lakhs (Rs.10,00,000/-)

Check list –II (Issuing of a licence and other allied steps)

1. Licence for a private Bonded warehouse should not be issued if the applicant's record is not clean and that the proprietor, or partner or any of the Directors are involved in any of the Customs Duty evasion of smuggling offences and have been subjected to penalty or other action under the Customs or Central Excise Laws.

A licence shall be valid for one year and may be renewed annually.

2. Before renewal of the licence the check-list I may again be followed.
3. Before a licence is cancelled give one month's notice in writing to the licensee.
4. If the licensee has contravened any provisions of the Customs Act, 1962 or the Rules and Regulations or committed breach of any of the conditions of the licence then the licence may be cancelled after giving reasonable opportunity of being heard.
5. See that the "Proper Officer," in relation to various functions to be performed in respect of warehousing, is notified under Sec. 2(34) of the Customs Act, 1962.
6. Importer shall execute a Bond in the prescribed form.
7. The Bond may be for a single consignment or a general Bond.
8. In the case of a Bond for a single consignment the amount, for which the importer shall bind himself, should be equal to twice the amount of Duty assessed on the goods intended to be Bonded. In respect of sensitive goods, the licence should give a cash deposit or bank guarantee equal to 25% of the Duty liability for each consignment.
9. In the case of a general Bond the importer shall bind himself in such amount not less than twice the amount of Duty estimated on the likely quantity of goods to be Bonded within a specified period.
10. After the licence has been issued and the Bond has been accepted the importer can be allowed to Bond dutiable imported goods.
11. The licensee shall pay the cost of purchasing a strong lock.
12. Purchase a strong lock for locking the warehouse door.
13. One key of the lock shall be retained with the officer in charge of administration in a sealed cover.
14. The other key shall be kept with the 'Proper Officer' in charge of the warehouse.

Check List – III (Examination and Bonding of goods)

1. Examine all packages before Bonding.
2. Compare with the documents received from the dispatching Commissionerate.
3. Send an acknowledgement for receipt of the goods to the dispatching Commissionerate.
4. See that the goods are properly stocked.

5. See that the stock card is kept with each stock.
6. The importer has to file a set of into-Bond bills of entry.
7. Classify and assess the into-Bond Bill of Entry.
8. Hand over to the importer his copy of the Bill of Entry.
9. Do not allow similar type of goods produced indigenously or obtained locally in the same warehouse.
10. The goods deposited in the warehouse should be fully insured by the warehouse keeper against theft, pilferage, fire accidents, other natural calamities, risks against rioting etc. at least for a value equal to the Customs Duty by a comprehensive insured policy drawn in the favour of the Commissioner of Customs.
11. Always lock the door before leaving the warehouse.
12. Never hand over the key to the importer or any other person.
13. The key shall be handed over only to the officer-in-charge of administration or to the 'Proper Officer' in-charge of the warehouse.
14. Maintain a Bond register in the prescribed form.
15. Draw a summary in the Bond register at the end of each month showing the no. of packages of each type of goods received in the warehouse, quantity of each type delivered therefrom and the balance in stock.
16. Put your full signature with date under the summary.
17. Endorse on the duplicate copy of into-Bond Bill of Entry, the date and location of the goods stored.
18. Empty cases shall not be allowed to be stored in the warehouse.
19. Empty cases shall be delivered to the Bonder under receipt on the reverse of the into-Bond Bill of Entry.
20. Check the period of storage to ensure that they do not remain warehoused beyond the period prescribed in Sec. 61 of the Customs Act.
21. If the warehoused goods are not reoved at the expiration of the period, issue demand for payment of the full amount of Duty chargeable thereon and interest payable under Sec.72 of the Customs Act.

Check List –IV (Steps to be taken before sanctioning manufacture and other operations in Bond)

1. The facility shall be sanctioned with prior approval of the Board.
2. Facility shall be extended to export oriented manufacture units.
3. The unit shall produce evidence to show that the export of finished goods is more than 10% of the product as proposed to be manufactured in Bond.
4. The total value of goods manufactured by using imported materials is significantly large.
5. The imported items shall not generally be similar to items produced indigenously which may be used for making export goods (this may not be applied to items which are technically identical e.g.copper)
6. Determine the number of officers of different cadre required to be posted for adequate control and supervision of manufacture in Bond.
7. Ensure that the manufacture and other operations in Warehouse Regulations, 1966 as amended are followed.
8. The Asst./Dy. Commissioner shall also provide a detailed procedure specifying manufacturing processes etc.

9. The procedure shall also prescribe the conditions to be complied with by the manufacturer as stipulated in Sec. 65(1) read with Rule 5 & 6 of the Manufacture and other operations in Warehouse Regulations, 1966 as amended.
10. The procedure shall also include a proforma of the register in which detailed accounts of all Bonded and other goods used in the manufacture are to be maintained.
11. Prescribe a form of statement in which details of all Bonded and other goods used in the manufacture and those remaining in stock are to be submitted.
12. In case such facility is extended to allow manufacture of goods from same type of materials as the Bonded materials, which are import Duty paid and/or indigenous material in the same place, then (i) prescribe suitable conditions for such facility;
(ii) the conditions so prescribed shall include that the manufacturing operations will not be carried out simultaneously;
(iii) that proper accounts for each verification of goods manufactured from different categories of materials i.e., (a) Bonded materials and (b) non-Bonded materials are maintained;

Check List – V (Removal of goods from one warehouse to another) :

1. Check that the application has been made in the prescribed form in duplicate.
2. Check the particulars in the application to ensure that they agree with the entries in the Bond Register.
3. Submit the application to the proper officer for orders.
4. The proper officer shall require that the transport of the goods between two warehouses in the same town is made under the supervision and escort of an officer of Customs (the owner has to meet the cost of supervision and escort).
5. If the goods are to be removed to a warehouse in a different town, see that a Bond in a sum equal to the amount of import Duty leviable on the goods has been executed by the person requesting the removal.
6. Check that the Bond has been furnished in the proper form.
7. Check that the terms of the Bond include that the person executing the Bond undertakes to produce a certificate issued by the proper Customs officer at the place of destination that the goods had arrived at that place.
8. Check that this term of the Bond also specifies the time (that is within 3 months or within such extended period as the Asst. / Dy. Commissioner may allow) within which the certificate shall be produced by the person.
9. Check that the Bond is backed by sufficient surety or security or both as accepted by the Asst. / Dy. Commissioner.
10. Check that the owner submits a Bond Shipping Bill in the prescribed form and presents from along with the above mentioned form.
11. Check that the Shipping Bills contain all the necessary information and the columns have been properly filled in.
12. Submit the documents to the Asst. / Dy. Commissioner for orders and acceptance of the Bond.
13. Before allowing delivery of the goods note the clearance of the goods in the godown register and on the duplicate Shipping Bill.
14. The goods shall be accompanied by a Customs Officer to the railway booking office.
15. The Customs officer shall obtain the railway receipt.
16. Immediately on return to the office arrange to send the railway receipt with the covering advice (in

- the prescribed form) to the officer to whom the goods have been consigned; get the advice note signed by the proper officer.
17. See that the railway receipt and the advice note goes under registered post with acknowledgement due.
 18. Record the reference number of the advice note and date in the godown register; also keep the acknowledgement receipt posted suitably in the register.
 19. In the case of transport by road verify that the carriers are of repute and standing.
 20. Seek the permission of the Asst. / Dy. Commissioner to allow transport by a particular transport company.
 21. Each package is sealed with wire and lead seal.
 22. Record the fact of sealing and the lead seal number in the advice note number.
 23. Follow the checks listed at 1 to 18 above relating to transport by rail.
 24. Keep a watch regarding the receipt of intimation of the arrival of the goods.
 25. Issue a reminder if the intimation is not received in 2 to 3 weeks time from the date of despatch and bring the fact to the notice of the Superintendent / Asst. / Dy. Commissioner.
 26. On receipt of intimation submit the Bond filed under Sec. 67 to the Asst. / Dy. Commissioner for cancellation.

Check list – VI (Clearance of warehoused goods)

1. The importer shall present Bill of Entry in the prescribed form.
2. Check that the particulars of the goods given in the Bill of Entry agree with the entry with the entry in the Bond register.
3. Note the quantity to be cleared in the register.
4. Note the original and duplicate 'into-Bond' Bill of Entry, the issue number below the Bond number entered on the document by the Bonder.
5. Reassess the ex-Bond Bill of Entry.
6. If the goods are tariff value goods, the rate of tariff value shall be the one in force on the day of actual removal of the goods from the warehouse.
7. The rate of Duty shall be the one in force on the day of actual removal of the goods from the warehouse.
8. Doubly check and make sure that the provisions of exemption notifications are correctly applied. In case if doubt, get in touch with the concerned Custom House.
9. After Duty has been paid, get the 'passed out of Bond' order from the 'Proper Officer' (designated for this purpose by the Commissioner under Sec. 2 (34) of the Customs Act) on the duplicate copy of the ex-Bond Bill of Entry.
10. Give delivery of the goods, ensuring that only those covered by the ex-Bond Bill of Entry are delivered.
11. After the goods have been delivered endorse the date and time of delivery of the duplicate ex-Bond Bill of Entry and retain it with other records for subsequent audit.

Check list – VII (Stock verification)

1. The Asst. /Dy. Commissioner shall verify the stocks every three months (in case the volume of goods warehoused is very large, the period may be raised up to one year with the concurrence of the Commissioner.
2. He shall satisfy that the contents of packages are in tact by examining 5% of the packages but

limited a maximum of 25 packages of each consignment.

3. In the case of cargo in bags, such as cement, the check shall be effected by probing the bags.
4. Verify that the goods agree with the description given in the corresponding into-Bond Bill of Entry.
5. The stock shall be challenged and the actual number of packages found in the godown recorded in stock challenge register under signature with date.
6. The Bond register and other records shall also be verified and signed.
7. A report on the finding shall be submitted to the Commissioner for information.

Check list – VII (Audit of documents and registers)

1. All documents and register relating to the Customs Bonded warehouse shall be audited regularly by an audit party (preferably once every month)
2. All duplicate ex-Bond bills of entry shall be forwarded to the Internal Audit Dept. of the major Custom House through which the goods were imported for post audit in batches once every month (address it to the Asst. / Dy. Commissioner, Internal Audit Dept. of the Custom House) by registered post.
3. Ensure that audited ex-Bond bills of entry are received back within a reasonable time so as to enable you to issue demands within time in case of any short-levy brought out as a result of audit scrutiny.
4. In case of delay in the receipt of audited documents, remind the Custom House for prompt return of the documents.

DUTIES OF PREVENTIVE STAFF DEPLOYED IN BOND SECTION/BONDED WAREHOUSES

In the modern times, a lot of Importers utilize the facility of warehousing the imported goods in Bonded Warehouses, both Private and Public. As is evident from the Rules and Regulations governing, these Bonded goods have to be under Customs control all the time till clearance. This Customs control is monitored by the Custom House through the Preventive Staff who are posted at these Warehouses and also in the Bond Department, to oversee the day to day functioning of these warehouses and movement of Bonded goods to / from them.

Preventive Officers of Customs are posted as Bond officers in Public / Private Bonded Warehouses, in term of Sec. 62 of Customs Act, 1962, and Superintendent (Preventive) in-charge of such warehouse administer supervisory control over the functioning of these Bonded warehouses.

Superintendent (Preventive) incharge Bonded warehouses

The Bond Superintendent (Preventive) in charge of the Bonded warehouse should pay frequent visits to Public and Private Bonded warehouses and should;

- (a) Inspect the stock of Bonded goods in the warehouse by challenging the stock with the Bond Register and vice versa and in token of his check should sign the checked entries in the Bond Warehouse Register and the stock cards.
- (b) Check the Bond Bills of Entry on which the goods have been warehoused into Bond.
- (c) Check the ex-Bond Bills of Entry for the goods cleared for home consumption on payment of Duty, if any,
- (d) Check ex-Bond Shipping Bills on which Bonded goods are proposed to be shipped, as ship's stores or Bond cargo.
- (e) Wherever necessary he should examine the ex-Bond goods, in the Bonded premises or at the Gates, which are being taken out for shipment to docks; and should ascertain that the same are

being properly removed from the Bonded warehouse and escorted by the Officers as laid down in the rules.

- (f) He should also check the expiry dates of the operating Bonds of various Bonded items; and submit to Assistant Commissioner / Bonds, the information regarding cancellation of Bonds according to their tenures.
- (g) He should record in his diary all the particulars of such checks carried out. If any irregularity is noticed, the same should be recorded in the Station Diary, and matter reported to the Assistant Commissioner /Bond and to the Asstt./Dy. Commissioner of Customs (Preventive).

The Duties of the Preventive Officer posted at Private Bonded Warehouse

- (a) The Preventive Officer deputed to supervise the work in the Private/Public Bonded Warehouse should check that the date , on or before which the goods are to be passed into Bond, has not expired.
- (b) The officer shall check the packages to see that they are intact and the marks & nos. tally with those entered in Bill of Entry. If any packages intended for deposit in a private warehouse are found in broken condition, the work should be stopped and a report submitted to Appraising Department for orders. After necessary action has been taken by the Appraising Department, the goods should be escorted to the warehouse.
- (c) After depositing the goods in the Bonded warehouse, the Officer should obtain receipt from the Bonders or the warehouse keepers, on the reverse of the Bill of Entry , in token of having received the goods in the warehouse and should endorse the Bill of Entry as -
"Supervised the removal offromto M/s..... Pvt. Ltd. Bonded warehouse and their actual storage therein".
- (d) The officer will then make suitable entries in the Bond Register maintained for the purpose and also in the Stock Card.
- (e) The Bill of Entry should be retained by the officer to be forwarded through transit book to the Bond Deptt.
- (f) He shall supervise removal from one warehouse to another and shall escort goods from the warehouse to Railway Booking office for being despatched in Bond by Rail.
- (g) He shall supervise manufacturing operations, under section 65, where such operations are permitted and carried out.
- (h) He shall supervise scrutiny, sorting, re-packing, and bottling in Bond when sanctioned by the A.C. Bond Deptt.
- (i) He shall escort goods from any warehouse to the place of shipment for the purpose of being exported under sec. 69 and 88 of Customs Act, 1962.
- (j) In all cases where records of warehouse are being maintained by the Preventive Officer, care should be exercised not to release warehoused goods after expiry of warehousing period.
- (k) Whenever there are changes in Tariff valuation or rate of Duty, the Preventive Officer supervising the delivery of the goods will hold the delivery pending recovery of excess Duty, if any, due to such changes, between the date of payment of Duty and actual removal of the goods from the warehouse.
- (l) The Preventive Officer supervising the removal of Bonded goods shall see that the Department has properly processed the Shipping Bill. He should see before shipment of the goods that the conditions of the packages are in good order. If any package is broken or found to be tampered with, he should open and examine the packages in presence of shipper or his representative,

prepare list of contents thereof and note there in , the condition of the package and should sign the list. The shipper or his representative should also sign the said list. The list with report should be forwarded to Bond Deptt. through the Bond Superintendent.

- (m) The Preventive Officer posted in the Bonded warehouse should prepare and forward through Supdt. (P) / Bond, such periodical statements as required by the Bond Department, like total quantity and value of goods Bonded, details of expiring / expired Bonds, details of active Bonds, amount of Duty / interest involved, etc.

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CHAPTER - FIFTEEN

AIRPORT

PRELIMINARY

With the advent of advancements in the field of aviation, the traffic through air-routes all over the world has increased manifold in the recent years. Aircrafts, which are capable of carrying large number of people, cargo, equipment etc. with faster speeds and to greater distances, have descended on the international civil aviation scene.

The modern day air-crafts carry passengers as well as cargo in sizeable quantities to many destinations in a single journey. Now a days, most of the countries in the world have their own airlines which operate their air-crafts in accordance with requirements, trade policies, international aviation laws, international relations, etc. Sometimes, there are flights, which cater only to cargo movements.

AIRPORT CUSTOMS

India has an important presence on international scenario not only as an exporter/importer of large number of commodities but also occupies an important place on the civil aviation map. Everyday, numerous International and domestic flights operate from Indian Airports carrying large no. of passengers and goods within India and outside India. The airports at Metropolitan cities of India are Major airports handling thousands of passengers everyday. These international airports in our country are important entry/exit points for passenger as well as cargo. Owing to this, the Customs department has been deployed to play an important role at these airports in relation to enforcement of Customs and allied statutes governing imports/exports cargo and the baggage.

On arrival of the aircraft at any international airport, the cargo brought by it is shifted to the concerned Air Cargo Complex for further procedures and clearance. The passenger and their baggage is diverted to the passenger terminal of the airport for clearance through Immigration and Customs.

ARRIVAL OF AIRCRAFTS

Like the vessels and other vehicles carrying Imported goods or Export goods, the aircrafts carrying such goods and / or passengers have also to observe certain Customs and other formalities.

As laid down in Sec.29 of the Customs Act, an aircraft entering India from any place outside India must call or land only at Customs airports (appointed by the Central Government under Section 7 (i) of the Customs Act, 1962) on its first arrival in the country.

According to Sec. 30 of the Customs Act, the Captain of the aircraft has to deliver an Import Manifest within twelve hours of arrival at the airport. However, the Asstt. Commissioner can relax the time specified only on being satisfied that there was sufficient cause for not delivering the Import Manifest in the given time frame. He can also permit amendments and supplements to the Manifest already filed.

Rule 56 of the Indian Aircraft Rules, 1920 also stipulates the filing of Import Manifest in the case of aircrafts.

In order to carry out the provisions of Chapter VI of the Customs Act, 1962, one Air Customs Officer (normally the Station Duty Officer) at the Airporst is designated as proper officer to receive the IGM / General Declaration and EGM / General Declaration round-the-clock, in addition to his routine duty.

It is pertinent to point out here that the Captain of the aircraft need not obtain order for Entry Inwards and Entry Outwards as the relevant Sections 31 & 39 of the Customs Act, 1962, refer only to vessels and not to the aircrafts.

Further, the provisions regarding Import Manifest, Export Manifest and Port Clearance are not applicable to aircrafts belonging to the Govt. of India or Govt. of any foreign country or to any aircraft which lands in emergent circumstances. This exception is provided for under Sec. 43.

The Import Manifest (Aircraft) Regulations, 1976 made by the Central Government under Sec. 157 read with Sec. 30 of the Customs Act, 1962, are given below:

Import Manifest (Aircraft) Regulations, 1976

In exercise of the powers conferred by section 157, read with section 30 of the Customs Act, 1962, the Central Board of Excise and Customs hereby made the following regulations, namely: -

1. Short title and commencement. – (1) These regulations may be called the Import Manifest (Aircraft) Regulations, 1976.

(2) They shall come into force on such date as the Central Board of Excise and Customs may, by notification in the Official Gazette, appoint.

2. Definition. – In these regulations, “Form” means a form appended to these regulations.

3. Import manifest. – Every import manifest shall –

- (a) be delivered in duplicate;
- (b) cover all the goods carried in the aircraft; and
- (c) consist of –
 - (i) a general declaration, in Form I
 - (ii) a passenger manifest, in Form II
 - (iii) a cargo manifest, in Form III
 - (iv) a list of private property in the possession of the Captain of the Aircraft and other members of the crew, in Form IV

4. Cargo manifest. – (1) The cargo manifest referred to in sub-clause (iii) of clause(c) of regulation 3 shall be delivered in separate sheets in respects of the following categories of cargo, namely:-

- (a) cargo to be landed;
- (b) unaccompanied baggage;
- (c) goods to be transhipped;
- (d) same bottom or retention cargo.

(2) (a) Notwithstanding anything contained in sub-regulation (1), the cargo declaration in respect of : -

- (i) arms;
- (ii) ammunitions;
- (iii) narcotics;
- (iv) dangerous drugs;
- (v) gold; or
- (vi) silver,

irrespective of whether for landing, for transhipment, or for being carried as same bottom cargo, shall be furnished in separate sheets and shall be set out in the order of the ports of loading.

(b) If an aircraft does not carry any of the cargoes referred to in clause (a), a nil declaration shall be furnished.

FORM I

General Declaration

Owner or OperatorMarks of Nationality and Registration
 Flight No.....Date Departure from(Place and Country).....
 Arrival at.....(Place and Country).....

FLIGHT ROUTING

*Place	Total	Number of Passengers of this stage	Cargo
	Number of crew		

Departure Place:
 EmbarkingCargo Manifest attached.
 Through on same flight
 Arrival Place:
 Disembarking.....
 Through on same flight.....

* (Place of origin, en-route and destination to be indicated)

Declaration of Health

For official use only

Persons on board known to be suffering from illness other than air sickness or the effects of accidents, as well as those cases of illness disembarked during the flight.....

Any other conditions on board which may lead to the spread of disease.....

Details of each disinfecting or sanitary treatment (place, date, time, method) during the flight. If no disinfecting has been carried out during the flight, give details of most recent standing.....

Signed., if required.....

Crew member concerned

I declare that all statements and particulars contained in this General Declaration, and in any supplementary form required to be presented with this General Declaration are complete, exact and true to the best of my knowledge and that all through passengers will continue/have continued on the flight.

SIGNATURE.....

Authorised Agent or

Pilot-in-Command

FORM II

Passenger Manifest

Owner or OperatorMarks of Nationality and
 RegistrationFlight No..... Date.....Point
 of embarkationPoint of disembarkation
 (Place and Country) (Place and Country)

Surname and initials

For use by owner or operator only

For official use only

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**FORM No. III
Cargo Manifest**

Owner or OperatorMarks of Nationality and
 RegistrationFlight No..... Date.....Point
 of LoadingPoint of unloading
 (Place and Country) (Place and Country)

Air Way Bill Number	Number of packages	Nature of goods	For use by owner or operator only	For official use only
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**FORM IV
List of Private Property in the Possession of the Captain and Crew**

Flight No.
 Aircraft departed for
 Arrived from

Name of the crew	Position held	Currency			Tobacco products	Alcoholic liquors	Watches		Jewellery	Any other article,	Signature	Remarks
		Indian	Foreign	Traveler's cheques			S. No.,	Make, Brand				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	

Aircraft imparts cash :
 Aircraft cash collection :
 Gold, coin and bullion :
 Certified that the above declaration is true to the best of my knowledge.

Signature of Captain of the Aircraft

[G.I., D.R. & B. Notification No. 421/76-Cus., dated 23.10.1976 as amended by Notification No. 221-Cus., dated 22.10.1977.]

DEPARTURE OF AIRCRAFTS

Section 42 of the Customs Act, 1962, stipulates that no aircrafts should leave the airport without a written order from the Proper Officer of Customs. At the same time, Rule 57 of the Indian Aircrafts Rules, 1920 requires that the Customs Officer should sign the logbook and the Export Manifest. This signature is sufficient authority for the aircraft to proceed to its destination.

However, as laid down in Sec. 41 of the Customs Act, 1962, Captain of the aircraft is required to file an Export Manifest before departure of the aircraft. The C.B.E.C. in exercise of the powers conferred u/s 157 r/w Sec. 41 of the Act have made the Export Manifest (Aircraft) Regulations, 1976 which are as under:

Export Manifest (Aircraft) Regulations, 1976

In exercise of the powers conferred by section 157, read with section 41 of the Customs Act, 1962, the Central Board of Excise and Customs hereby made the following regulations, namely: -

1. Short title and commencement. – (1) These regulations may be called the Export Manifest (Aircraft) Regulations, 1976.

(2) They shall come into force on such date as the Central Board of Excise and Customs may, by notification in the Official Gazette, appoint.

2. Definition. – In these regulations, “Form” means a form appended to these regulations.

3. Export manifest. – Every export manifest shall –

- (a) be delivered in duplicate;
- (b) cover all the goods carried in the aircraft;
- (c) consist of –
 - (i) a general declaration, in Form I
 - (ii) a passenger manifest, in Form II
 - (iii) a cargo manifest, in Form III
 - (v) a list of private property in the possession of the Captain of the Aircraft and other members of the crew, in Form IV

(2) The export manifest for all goods shipped and transhipped and endorsed by the person-in-charge of the aircraft as to the quantities shipped and transhipped shall be delivered to the proper officer of customs at the airport, before the departure of the aircraft.

4. Cargo manifest. – (1) The cargo manifest referred to in sub-clause (iii) of clause(c) of regulation 3, shall be delivered in separate sheets in respects of the following categories of cargo, namely:-

- (a) cargo shipped;
- (b) cargo transhipped;
- (c) goods lying in the aircraft but not landed or transhipped (same bottom cargo);
- (d) cargo in respect of which drawback has been claimed.

(2) (a) Notwithstanding anything contained in sub-regulation (1), the cargo declaration in respect of :-

- (ii) arms;
- (ii) ammunitions;
- (iii) explosives;
- (iv) narcotics;
- (v) dangerous drugs; or
- (vi) gold;

irrespective of whether for shipment, for transshipment, or for being carried as same bottom cargo, shall be furnished in separate sheets and shall be set out in the order of the ports of loading.

(b) If an aircraft does not carry any of the cargoes referred to in clause (a), a nil declaration shall be furnished.

FORM I**General Declaration**

Owner or OperatorMarks of Nationality and Registration
 Flight No.....Date Departure from(Place and Country).....
 Arrival at.....(Place and Country).....

Flight Routing

*Place	Total Number of crew	Number of Passengers of this stage	Cargo
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Departure Place:

EmbarkingCargo Manifest attached.

Through on same flight

Arrival Place:

Disembarking.....

Through on same flight.....

* (Place of origin, en-route and destination to be indicated)

Declaration of Health

For official use only

Persons on board known to be suffering from illness other than air sickness or the effects of accidents, as well as those cases of illness disembarked during the flight.....

Any other conditions on board which may lead to the spread of disease.....

Details of each disinfecting or sanitary treatment (place, date, time, method) during the flight. If no disinfecting has been carried out during the flight, give details of most recent disinfecting.....

Signed., if required.....

Crew member concerned

I declare that all statements and particulars contained in this General Declaration, and in any supplementary form required to be presented with this General Declaration are complete, exact and true to the best of my knowledge and that all through passengers will continue/have continued on the flight.

Signature.....

Authorised Agent or

Pilot-in-Command

FORM II

Passenger Manifest

Owner or OperatorMarks of Nationality and

RegistrationFlight No..... Date.....Point

of embarkationPoint of disembarkation

(Place and Country)

(Place and Country)

Surname and initials

For use by owner or operator only

For official use only

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FORM No. III
Cargo Manifest

Owner or OperatorMarks of Nationality and
RegistrationFlight No..... Date.....Point
of LoadingPoint of unloading
(Place and Country) (Place and Country)

Air Way Bill Number	Number of packages	Nature of goods	For use by owner or operator only	For official use only
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FORM IV

List of Private Property in the Possession of the Captain and Crew

Flight No.

Aircraft departed for

Arrived from

Name of the crew	Position held	Currency			Tobacco products	Alcoholic liquors	Watches			Any other article, not	Signature	Remarks
		Indian	Foreign	Traveler's cheques etc.			S.No., Make, Brand	Jewellery				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	

Aircraft imprest cash :

Aircraft cash collection :

Gold, coin and bullion :

Certified that the above declaration is true to the best of my knowledge.

Signature of Captain of the Aircraft

[G.I.,D.R. & B. Notification No. 419/76-Cus., dated 23.10.1976]

INSPECTION OF NON-SCHEDULED FLIGHTS

The Customs field security staff, in addition to taking rounds to ensure that officers and sepoy posted at different Airport periphery Gates are present and alert and taking rounds in the apron and surrounding areas from anti-smuggling point of view, are entrusted with the job of checking and sealing of non-scheduled aircrafts at the time of their arrival and to carry out necessary checks at the time of departure. The Ministry vide F. No. 394/10/96 Cus.(AS) of 14.10.97 has issued the following guidelines

regarding the procedure for Customs Clearance of non-scheduled flights: -

1. Upon receiving information from Air Traffic Control (ATC) about the arrival of non-scheduled flights, it should be ensured by the Field Security Staff that the provisions of Section 30 of the Customs Act, 1962 regarding filling of declaration and manifest under Import Manifest (aircraft) Regulations, 1976 are observed strictly.
2. The aircraft shall be examined visually by the Customs authorities and in case of any reasonable doubt or suspicion, the aircraft may be rummaged after getting permission of Asstt./ Dy. Commissioner of Customs.
3. In case of recovery of any prohibited goods/documents during visual inspection/rummaging of aircraft, the crew and the passenger should be immediately detained and necessary action may be taken under the law and the Commissioner of Customs, local police and intelligence agencies must be informed by phone/telex/fax.
4. The aircraft shall be kept under Customs seal. Any maintenance or repairs of the aircraft shall be allowed under Customs supervisions on Cost recovery basis.
5. The facility of purchase of goods from Duty Free Shops may also be extended to the transit passengers of the foreign non-scheduled flights.
6. The non-scheduled flight register will have the following columns: -

1. Sr. no. & date	2. I. G. M. No.
3. Type of Aircraft	4. Arrived from
5. No. of crew members	5 A. Names of passengers
5C. Passport details.	5B. Addresses.
6 A. Names of passengers	6. No. of passengers
6C. Local address in India.	6B. Permanent / postal address of passenger
6E. Occupation	6D. Passport details.
7. Cargo, if any	6F. Nature and purpose of visit in India.
9. Details of Guarantee, if filed	8. Expected duration of stay in India
11. Signature of the A.C.S. / F.S.	10. Boarded/Sealed/Rummaged
13. Destination.	12. E.G.M. No. & Date
15. No. of Crew/passengers/Cargo.	14. Date & time of Departure
	16. Signature of A.C.S. /F.S.

Air Customs Superintendent i/c of Field Security shall fill in the columns from 1 to 10 above after completing the Field security formalities and shall make endorsement with his dated signature and name in column 11 of the register. He will also obtain the departure details alongwith copy of the E.G.M. from the concerned Airlines. After completing departure formalities he shall complete Sr. no. 12 to 15 of the Register and shall make endorsement by putting his dated signature and name in column 16 of the register.

7. For obtaining details at Sr. no. 5A to C & 6A to F of para 6 above, format as prescribed in Annexure A & B should be handed over to the Master of the aircraft or to the Handling Agents immediately on arrival. The details so obtained should be properly entered in the Register.
8. In addition to the above, the A.C.S. I/C Field Security shall maintain separate file for each individual non-scheduled flight, which shall contain all the particulars regarding the flight including copies of the I.G.M. and E.G.M. File, should also contain name of the Officers who attended the non-scheduled flights on its arrival or departure. After completing all the formalities the A.C.S./ Field Security will forward the file to the Administration office, who will scrutinise all the details and keep it for record for a period of one year.

**ANNEXURE 'B' FOR DETAILS REGARDING PARTICULARS OF PASSENGERS ARRIVED
BY NON-SCHEDULED FLIGHT NO.....**

	A	B	C	D	E	F
SR. NO.	NAME OF PASSENGER	PERMANENT /POSTAL ADDRESS	LOCAL ADDRESS IN INDIA	PASSPORT DETAILS	OCCUPATION	NATURE AND PURPOSE OF VISIT

Master of the Aircraft.

**ANNEXURE 'A' FOR DETAILS REGARDING PARTICULARS OF
CREW MEMBERS OF NON-SCHEDULED FLIGHT NO.....**

SR. NO.	A	B	C
	NAME OF THE CREW	ADDRESS	PASSPORT DETAILS

Master of Aircraft.

Further instructions on inspection of Non-scheduled Flights

1. In case a non-scheduled Aircraft, which has arrived from an International Port, is expected to touch one or more Indian Port/s before it finally leaves India, Duty on the balance fuel on the Aircraft or on the quantity of fuel likely to be consumed during the flight to the Domestic Port/s, should be recovered. Similarly, if such flights arrive from a domestic port, verification should be made as to whether fuel charges have been recovered at the first port of call.
2. If a non-scheduled flight has arrived from a domestic port and is further departing to another domestic port, IGM / EGM is not required to be filed. IGM / EGM is required to be filed only at the time of arrival of the flight from international port and final departure to a foreign destination respectively.
3. In case a non- scheduled Aircraft, which has arrived from a domestic port, departs to a port outside India, an intimation that the flight has departed to a foreign port is to be forwarded to the port of first call, to enable that office to cancel the Bond / undertaking, filed if any, by the airlines / agents of the said flight at that port.

Foreign Travel Tax 1979 – Accountal of Passengers.

With the introduction of Foreign Travel Tax 1979 with effect from mid night of 14/15-6-79, the accountal of the passengers will have to be ensured at the time of their departure, as per instructions contained in the Ministry's D. O. letter F. No. 304/1/79 FTT, dated 06.06.1979. It will be observed from these instructions that the copy furnished to the visadex officer shall be relied upon as the master copy for determining the number of passengers, including transit passengers and the exempted categories. With a view to avoid confusion and to ensure smooth flow of passengers, the airlines shall provide certified copy of the manifest, which is based upon the flight coupons of passengers to the Visadex Officer, with a summary of the passengers as per the attached proforma (Form I – Passengers report under Rule 8). On

scrutiny of the manifest and after comparison with the visadex copy, the visadex officers shall certify correctness thereof. The Airlines shall furnish 3 copies of the passenger manifest showing at the bottom an abstract of the number of passengers travelling to:

- (i) Neighbouring countries, Viz.
 - (a) Afghanistan
 - (b) Baluchistan,
 - (c) Bhutan,
 - (d) Burma, (*now Myanmar*)
 - (e) Nepal,
 - (f) Pakistan,
 - (g) Srilanka,
 - (h) The Maldives.
- (ii) Countries other than neighbouring countries.
- (iii) Exempted categories.

Passengers report in Form I shall be presented to the Export P. R. O. who shall assign rotation number, airlines-wise, and handover two copies of the manifest after certification to the airlines for their use. The copy retained by the Export P. R. O. shall be collected by the F. T. T. department the next day for compilation of the return in Form 2 (with reference to Rule 9). In order to facilitate accountal of the flights/Passengers by the F. T. T. Department, the P. R. O. shall maintain the rotation register in proforma at Annexure 'C' separately for each airline. The rotation number shall be the serial number for each airlines. For this purpose, separate registers shall be allocated for each airlines. The Superintendent in-charge of Export Baggage Clearance, shall ensure that the register is maintained properly and shall initial column 8 thereof in token of the scrutiny of the manifest/register.

The S. D. O. shall continue assigning E. G. M. (rotation) number to the manifest, as hitherto. The Export P. R. O. shall have an additional column number wherein, for the purpose of correlation, he shall show the regular E. G. M. number.

There may be occasions when an aircraft is grounded for long duration owing to some snag, and airline may accommodate in-transit passengers in town. As F. T. Tax is applicable to even in-transit passengers once they cross the Customs barriers, Superintendent (Export) shall obtain a list (in duplicate) of such passengers from the Airlines. A copy of this list shall be kept with the Export PRO who shall keep a watch to ensure that all of them are accounted for whenever they connect any outgoing flight. The airlines shall provide separate passenger manifest for such in-transit joining passengers wherein they shall indicate 'ex-flight' rotation (by which they arrived earlier).

Occasional selective checks shall be exercised to ensure that F. T. T. is recovered wherever recoverable. This could be ascertained from stamps affixed to the passengers' tickets.

Transit passengers leaving by the next available flight have been exempted from tax provided they do not come out of the Customs barrier (I.e. they are in direct transit). Discreet watch shall be kept on the movements of transit passengers to ensure that those who go beyond the Customs barrier on arrival do not escape the tax net.

Exemption certificates collected by the carriers at the time of checking out the passengers shall be attached to one of the copies of the reports.

The exempted categories are:

Sl. No.	Category of passengers	Conditions
1	2	3
1.	Members of Diplomatic	Production of a Certificate from the Head of Diplomatic

	Missions in India holding Diplomatic status and their families.	Mission in India or an Officer authorised by him in this behalf to the effect that the passenger enjoys diplomatic status or is a member of the family of an officer enjoying diplomatic status.
2.	Career Consular Officers of foreign Consulate in India and their families.	Production of a Certificate from the Head of the foreign consular post in India or an Officer authorised by him in this behalf to the effect that the passengers is a Career Consular Officer or is a member of the family of such Officer.
3.	Officials of the United Nations in India or any specialised agency of the United Nations in India and their families and are not nationals of, or permanently resident in, India.	Production of a Certificate from the Head of the United Nations Office in India or the Head of the specialised agency of the United Nations in India or by an officer authorised by Head of the specialised agency of the United Nations in India to the effect that the passenger is entitled to customs privileges admissible under the provisions of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), or is a member of the family of such official entitled to customs privileges as admissible under the provisions of the said Act of 1947.

All the Superintendents (Export) shall ensure that direct transit passengers are properly accounted for. For this purpose, a copy of arrival/through manifest shall be attached to the final manifest.

All the staff posted for clearance of departing passengers shall carry out spot checks to ensure recovery of Foreign Travel Tax from passengers. In respect of passengers who fall under the exempted categories, Superintendents shall ensure that the exemption certificates have been verified by the carriers and make a note to that effect against the name of the passenger in the Visadex copy of the Passenger Manifest.

[Mumbai Airport F. No. Air/ Cus / 51/20/79 dated 19.06.1979]

FORM – I
(Passenger Report)
(See Rule 8)

Name of the Carrier :
Voyage No. :
Identifying particulars
or name of Ship/Aircraft :
Date of Departure :
Point of Departure from India :
Route and Station of Origin and
destination :

S. No.	Name of the Pax.	Male/Female/child.	Customs Port or Customs Airport of boarding in India.	Remarks
1	2	3	4	5

- (a) Total No. of joining passengers :
- (b) Out of (a) the No. of passengers in transit exempted from payment of tax :
- (c) Out of the difference between (a) and (b) No. of passengers travelling to neighbouring countries :
- (d) Out of the difference between (a) and (b) No. of passengers going to countries other than neighbouring countries. :
- (e) Out of the number against (c), the No. exempted from payment of tax. :
- (f) Out of the number against (d), the number exempted from payment of tax. :

I declare that the particulars furnished in this report are true and complete to the best of my knowledge and belief.

Date:

Signature of the Carrier:.....

Note: - 1. In respect of passengers exempted from payment of foreign travel tax give reasons in the remarks column and indicate whether certificate wherever prescribed has been attached.

Note: - 2. In respect of transit passengers, who are exempted from payment of foreign travel tax indicate the flight number by which arrived and the date.

FORM – 2
(See Rule 9)

Return showing the particulars of the flights operated, No. of passengers carried, amount of tax collected and paid into the treasury and amount of Refund obtained the month of

Name of the Carrier :

S. No./Running rotation No. for foreign travel tax.	Voyage No. and date.	Total No. of joining paxs.	Out of No. in Col. 3, No. of transit pax exempted from foreign travel tax.	Out of the difference between the No. in Column 3 and 4.	
				No. of passengers going to neighbouring countries	No. of passengers going to other countries.

1	2	3	4	5(a)	5(b)

<u>No. of passengers exempted.</u>		Tax Collected.	<u>Total tax paid into treasury (indicate separately all challan Nos.</u>		<u>Refund obtained during the month.</u>
Out of the Number shown in column 5(a)	Out of the Number shown in Col. 5(b)		Challan No.	Amount (Rs.)	Refund order No. Amount and Date received.
6(a)	6(b)	7	8		9

I declare that the particulars furnished in this return are true and complete the best of my knowledge and belief. In the event of any mistake being detected later resulting in non-collection of tax, hold myself responsible for the mistake and also agree to make good the consequent loss in revenue.

Date: -

Signature of the Carrier.

* Attach copy of each challan referred to in column 8.

ANNEXURE 'C'

Proforma of the Register

S. No./Running rotation No. for F.T.T.	Flight No. and date.	Total No. of joining passengers.	Out of No. in Col. 3, No. of transit passengers exempted from F.T.T.	Out of the difference between the No. in Column 3 and 4.	
				No. of passengers going to neighbouring countries	No. of passengers going to other countries.
1	2	3	4	5(a)	5(b)

<u>No. of passengers exempted.</u>		Date of receipt of passengers manifest.	Initial of Supdt.
Out of the Number shown in column 5(a)	Out of the Number shown in Col. 5(b)		
6(a)	6(b)	7	8

Travel Tax leviable in case of**(1) if journey is frustrated (2) transit passengers who go out of Customs barriers**

- (1) the law Ministry have advised that it is clear from clause (d) and (e) of Section 34 of the Finance Act, 1979, that as soon as, with a view to perform an International journey, a passenger boards at any Custom Port or Customs Airport, ship or an aircraft, the liability of payment of Foreign Travel Tax arises and the law, as it is framed, does not take into account the fact that the completion of the said international journey may be frustrated thereafter.
- (2) As regards in-transit passengers, who go out of Customs barriers on account of some technical fault in the Aircraft, but come back after sight-seeing or rest to board the same Aircraft when it is fit to take-off, attention is invited to the provisions of Section 34 (e) (ii) in terms of which, tax will not be chargeable for such in-transit passengers even if they cross the Customs barriers provided they continue their journey by the same aircraft bearing the same flight number by which they arrive.

[Extracts from Board's letter F. No. 306/14/79 FTT dated 28.12.1979]

Inland Air Travel Tax Collection – Monthly Report Statement

It has been considered necessary by the Board to obtain the information on the collection of Inland Air Travel Tax and the collection charges paid to the Airlines for various purposes such as Budgetary exercise, replies to Parliament Questions and others. Accordingly two forms are proposed to be prescribed for collecting the requisite information. The formats of these two forms are enclosed herewith. Form – I contains two parts viz. Part A and Part B. Part A represents statement of calculation of IATT month – wise. Part – B represents the statement of outstanding amount of IATT from the airlines. Form – II represent the statement of collection charges paid towards IATT, monthwise. The information contained in these forms – I are to be sent monthwise.

As desired by the Board, it is requested that the statements in respect of IATT collection and collection charges paid to the Airlines may be sent every month from the 1st April of 1995 i.e. commencement of the financial year 1995-96 onwards as per the prescribed forms.

Form – I

Financial Year.....

Part –A**Statement showing Collection of Inland Air Travel Tax for the Month of.....**

Name of the Airlines/Air carriers	Gross amount of tax deposited the month	Current arrears	Gross amount of tax deposited (2+2)	Refund allowed under Rule 4	Net Collection (2+3+5)	Progressive net collection since April, as per col.6	Remarks with period related to amount shown at item 3
1	2	3	4	5	6	7	8
A.	National Air Carriers						
Total							

Grand Total

Signature of Assistant Collector (Customs)

Charge.....

From - I

Financial Year.....

Part - B**Statement showing amount to IATT outstanding at the end of the month of**

Name of the Air carriers	Amount outstanding upto the end of previous month	Amount deposited towards outstanding dues during the month	Amount outstanding for the tax liability during the month	Amount outstanding at the end of this month	Remarks with action taken under Rules for recovery
1	2	3	4	5	6
A National Air carriers					
B Other Air Carriers					
Total					

Signature of Assistant Commissioner (Customs)

Charge.....

From - II**Statement showing amount of IATT outstanding at the end of the month of.....**

Name of the Airlines / Air carriers	Amount claimed by the carrier during the month period-wise	Amount paid to the carrier	Amount outstanding for payment with remarks (2-3)	Progressive total of amount paid from April as per col.3	Remarks
1	2	3	4	5	6
A National Air carriers					
B Other Air Carriers					
Total Financial Year					

Signature of Assistant Commissioner (Customs)

Charge.....

[Board's Circular No. 40/95, dated 18-04-1995 from F. No. 306/2/95-FTT]**Foreign Travel Tax – Forms revised**

At present the Board has prescribed three forms for the statement of collection of FTT, vide F.No.310/19/79-FTT, dated 20-10-1979 and F.No.310/3/81-FTT, dated 29-04-1981; Demand Notice vide

F.No.310/9/73-FTT, dated 28-07-1993; and for refund claims vide F.No.31.2.73; dated 02-04-1973. On review of the existing three types of forms it has been found that these forms are not sufficient to serve the purpose of collection of requisite data and monitoring of FTT collections. Accordingly it had been decided to replace the existing three types of forms by a new set of forms. The specimen copies of these new forms are enclosed.

2. As may be seen the new forms are two in number. Form-I contains two parts of which Part-I is the statement showing the collection of FTT outstanding against the airlines. The Form-II is prescribed for monitoring the utilisation of collection charges payable to the Airlines towards FTT collection under Demand No. 35.

3. As desired by the Board, it is requested that the information on FTT be sent henceforth on monthly basis, as per the prescribed forms. The statement will be on financial year basis starting with effect from 1st April, 1995.

Form – I

Financial Year

Part – A

Statement showing Collection of Inland Air Travel Tax for the Month of.....

Name of the Airlines/ Air carriers	Gross amount of tax deposited the month	Current arrears	Gross amount of tax deposited (2+3)	Refund allowed under Rule 5	Net Collection (4+5)	Progressive net collection since April, as per col.6	Remarks with period of amount shown at col. 3
1	2	3	4	5	6	7	8
A. National Air Carriers							
Total							
B. Other Air carriers							
Total							
Grand Total							

Signature of Assistant Commissioner (Customs)

Charge.....

Form - I

Financial Year.....

Part - B

Statement showing amount to IATT outstanding at the end of the month of

Name of the Air carriers	Amount outstanding upto the end of previous month	Amount outstanding upto the end of this month	Amount deposited towards outstanding dues during the month	Period-wise balance of outstanding amount	Remarks with action taken under Rules for recovery
1	2	3	4	5	6

Total

Signature of Assistant Commissioner (Customs)

Charge.....

From - II

Statement showing amount of IATT outstanding at the end of the month of.....

Name of the Airlines	Amount claimed by the carrier during the month period-wise	Amount paid to the carrier	Amount outstanding for payment with remarks	Progressive total from April, as per col.3	Remarks
1	2	3	4	5	6
Total Financial Year					

Signature of Assistant Commissioner (Customs)

Charge.....

[Board's Circular No. 42/95, dated 24-04-1995 from F. No. 520/18/95-Cus. VI]

BAGGAGE CLEARANCE

The main function of the Customs Staff at the International Airports is clearance of international passengers & their baggage on Arrival & Departure. The concept of Channel system for baggage clearance is required to be properly understood by the Staff. In the era of liberalisation, the rules & Instructions on Baggage & other connected matters are required to be implemented with a pragmatic approach maintaining proper balance between the letter and the spirit behind the same, keeping in mind the needs of the passengers and the stipulations of law. The system of clearance of passenger's baggage is based on the trust reposed on the passengers who are expected to make a bonafide and complete declaration of the contents of their baggage as envisaged in Sec. 77 of the Customs Act , 1962. Passengers arriving from non-sensitive countries viz. Europe, USA, etc., who opt to pass through Green Channel are allowed unhindered walk through. It is only in rare cases, where there is either prior intelligence or grounds for grave suspicions, that the baggage is examined. Passengers arriving from sensitive ports (like Dubai, Singapore, Hongkong, etc.) are similarly allowed but with a greater element of scrutiny by way of higher percentage of screening or questioning is resorted to.

As regards the passengers opting for Red Channel, the Bay Supdt. shall accept oral declaration of the passenger and opening of baggage is done only with the permission of Asst. Commissioner on duty. In the event of baggage being found within the admissible Duty-free allowance, the Supdt. shall specify accordingly on the gate pass and clear the passenger. In case, the goods are released on payment of duty or are taken up for adjudication, the Air Customs Officer shall indicate the Duty Receipt No./Detention Receipt No. on the gate pass itself.

The term 'baggage clearance' also involves multifarious activities of the staff, e.g. detention of baggage for reshipment/valuation/payment of duty, adjudication processes, handing over of mishandled baggage to rightful owner, disposal of confiscated/uncleared goods, refund of Customs Duty, deployment of staff (general administration.) policy matters, correspondence, compilation of statistics etc.

Most of the major International Airports have full-fledged Commissionerates attending to the work relating to clearance of passenger's baggage and various other matters connected with the establishment and administration.

INTERNATIONAL PASSENGERS – a profile

1. Introduction

India is a little over one-third the size of the United States and stretches over 3200 kms. from the Snow-clad Himalayas to Kanya Kumari. A tourist who is on the look-out for the foot-prints of history will see that India has been a vast theatre where races and cultures have blended leading to some of the most sublime achievements in art, religion and philosophy. India is so diverse that it has something to offer to all types of visitors – religions, artistic, philanthropic, lovers of sports, hunting, games or scenic beauty.

India is a fast developing country. Its trade, commerce, industry is gradually increasing. There is all round advancement in scientific and technological field. All these have given rise to steady increase of passenger traffic to and from abroad. The need for carefree or more precisely trouble-free travel is felt more than ever before. True to Indian tradition of hospitality, the attitude of Custom officer at all international airports therefore, needs to be tuned accordingly. A visitor to India on landing from aircraft, barring for short contact with other agencies like Health, Immigration, comes in touch with Customs Officer and from the behaviour and attitude of the Customs Officer, forms first-hand ideas about the country itself. It must not be forgotten that an air passenger while on flight is treated with extreme courtesy by the members of Airlines Crew. Hence a little discourtesy or carelessness by a Customs Officer brings about a sharp contrast and eventually bitterness in a visitor's mind.

2. Historical Background Of Passenger Clearance

Till about a decade ago, baggage of an incoming passenger was to be examined extensively. Till 1965, Customs Import Duty on baggage articles was charged according to different rate of duty applicable to different tariff items causing delay in baggage clearance of the passengers who were exceeding duty free baggage allowance. No fixed baggage allowance was provided in baggage Rules, it depended on the period of stay of passenger abroad. Gradually the procedure was simplified – both the rate of duty on baggage, irrespective of the type of articles (except liquor etc.) and the duty-free allowance, irrespective of period of stay abroad, became uniform for all passengers, which helped quicker clearance. Extensive baggage examination was replaced by a system of selective check according to pre-fixed digits i.e. only baggage of those passengers were to be checked whose passport or ticket numbers ended with the pre-fixed digits. This system was obviously found to be not justifiable in all cases and was ultimately substituted by channel system. Initially, it had 3 channel system- 'white' for tourist, 'green' for passengers within free allowance and 'Red' channel for passengers having dutiable goods. There was no examination of baggage for white channel passengers, occasional examination for 'Green' channel and 100% examination for 'Red' channel passengers. The system was further liberalised by introduction of two-channel system - 'Green' and 'Red' with no examination for either except for special cases. Slab rate of duty for baggage items, dependant on the total value of goods exceeding free allowance, was introduced. Thereafter it has been a flat rate of duty on baggage exceeding the duty free allowance in terms of value (except a few items like liquor, cigarettes etc.)

In regard to tourist passenger there is practically no check except for import of high-valued articles.

In the Export side, the clearance of passengers and their baggage however, continues to be quite liberal. Issue of 'Export Certificate' for identifiable valuable articles in order to facilitate their duty-free importation etc., also continues.

3. Type Of Passengers :

International air passenger can be broadly categorised into the following groups :-

- (a) **TOURIST** – (i) of foreign origin,
(ii) of Indian origin.

(i) Tourist Of Foreign Origin- Tourist of foreign origin visits India for non-immigrant purposes such as recreation, sport, games, religious purpose, visit to tourist spots, business, attending seminars, conferences etc. They come in group and as individuals. They normally travel in groups. If in groups, their baggage are normally pooled and they desire to be cleared in groups. Hence it is desirable that at all International airports, there are arrangements to handle them as a group rather than as individuals. While group tourists depend on their own agents who look after their comfort, accommodation, transport etc. individual tourists often enquire of Customs officers about various information like tourist spots, hotel, transport, exchange rate of foreign currency, system of exchange, etc. Though at each international airport, officers from the Government of India Tourist Department are also posted to take care of tourists, it is more often the Customs officers from whom he seeks help for first-hand knowledge about all such matters as the tourist spends quite some time with the Customs. It is, therefore, desirable that the Customs officers should not only be polite and courteous, but also be knowledgeable about tourist queries and should be able to satisfy them.

It should be an additional advantage if some of the Custom officers could also speak to tourists in their own language. For this purpose some elementary knowledge of important foreign languages may be of great help. Knowledge of how to wish the tourist in his or her own language would perhaps be a further plus point in this regard. Normally tourist baggage is not examined by Customs, but if for any special reason the baggage is to be opened, it must be ensured that the Customs Officer help him in opening, re-packing and closing the same. While a tourist leaves the Customs counter, it should not be forgotten to wish him a nice stay in India. All these small matters count very much in impressing a tourist on his first arrival.

(ii) Tourist Of Indian Origin- Indians who have settled abroad and are coming for short visits to see their relatives, acquaintances or for tourist purposes fall within this category. Back home after long period, they desire to be treated sympathetically and kindly by their own fellow men. Hence responsibility of the Customs officer at the airport is quite enormous. On the point of entry to their homeland, they may be a little emotional, but this should not be misconstrued, rather they have to be extended all sympathy and kindness. It is possible that due to long absence from the country they may also need various information like a tourist of foreign origin, hence a Customs officer should be abreast of all such basic information for communication to them.

(b) NON – TOURIST: -

- (i) Indian origin and foreign origin.
(ii) Passengers coming to India on transfer of residence.

(i) Non – tourist of Indian origin and foreign origin- Residents in India travel different countries for business, seminars, technical/scientific studies, medical treatment, attending invitations, sports, game and other tourist purposes. The visitors include foreigners settled in India temporarily or permanently. This category of passengers are aware of Indian situation and need no first-hand knowledge about accommodation, transport etc. However, many of them are busy people and having spent about a few hours on flight will feel averse to be stuck at the airport for Customs clearance for long. With the introduction of channel system their clearance time has been considerably cut down, but even then currency declaration in some cases, payment of duty on excess/dutiable articles, is likely to take some time.

Then there are un-accompanied ladies, sick persons, children, and mothers with infants who deserve special consideration.

Planning of passenger clearance, particularly when flights are bunching and there is possibility of mix up of baggage of one flight with another, need be done well in advance. For this purpose carrier Air lines could also be consulted. Care should be taken to identify the passengers needing special care, i.e. the sick, mothers with infants, aged people etc. and to arrange for their speedy clearance.

One single irritant for a passenger is mishandling of his baggage. Liaison with airline representatives to deal with such passengers expeditiously may save embarrassment in such situations.

(ii) Residents coming back from abroad. on transfer of residence- These passengers are non-tourist but they have special problem – they have well-packed crates/boxes containing house-hold goods. Scientists/technocrats, may have equipments and appliances with them – such passengers need to be handled carefully – firstly because they are likely to take longer time in baggage clearance – because of opening of crates/boxes, and secondly because re-packing of boxes which were packed abroad by professional packers, may not be possible so nicely, at the airport. This is more so when the boxes contain fragile articles or scientific instruments. This problem needs to be handled in consultation with the carrier airline and other agencies operating at the airport. It has however to be remembered that an understanding type of Customs officer may not be easily mis-understood by a passenger.

It has also been a common sentiment with respectable and responsible passenger that they grudge not so much for paying rightful Customs duty, as for discourtesy shown to them or delay caused to them.

- (c) DIPLOMATS:** these dignitaries may include the diplomats
- (i) of foreign origin accredited to India,
 - (ii) of foreign origin not accredited to India,
 - (iii) Indian diplomats returning home.

Diplomats accredited to India are immune from baggage examination and other formalities and they are entitled to courtesy . Trained officers usually handle diplomatic passengers. Foreign diplomats not-accredited to India, but transiting should also be extended extreme courtesy.

Indian diplomats returning to India on completion of their assignment abroad or otherwise are not entitled to diplomatic immunity in their own country. However, they also deserve to be handled with all courtesy and care.

Courtesy and Efficiency

It is important to ponder over the attitude and approach that the Customs Officers should adopt while discharging their duties and responsibilities entrusted to them by the law and the administrators *vis-à-vis* the expectations and the requirements of the members of the public that they serve.

Though it is true that Customs Officers are entrusted with the onerous task of collecting revenue and safeguarding the national security, it is also true that they are vested with the necessary power and discretion. A great amount of trust and confidence is also reposed in them.

Having been appointed in a Uniformed Service and posted at the International Airports to attend to the international travellers, where they come in intimate contact with them, the Customs Officers are also expected to conduct themselves in the most disciplined and dignified manner and show at all times courtesy and helpful attitude. Needless to say, this requires maintenance of the highest degree of integrity and honesty, possession of complete knowledge of rules and procedures, just and sympathetic consideration, sound health and pleasant disposition.

While enforcing the law; implementing the rules; executing the orders and following the procedures, certain difficulties do arise in being firm and considerate; conscientious and lenient and just and sympathetic, all at the same time. It is for this very purpose that the Customs Officers should learn, imbibe and develop a fine blend of executive effectiveness with humanitarian considerations. A little inclination towards understanding the needs and difficulties of the members of public they are required to serve, will help them greatly in adopting this kind of attitude to fulfil their obligations with the law and the procedures.

Now that the world has ushered into the New Millennium, one should also be conscious of the fact that the communication and transportation facilities have attained such proficiency that the time has become more precious and short in availability than ever before. The level of literacy and self-reliance amongst the people have increased so much that they are quite conscious of their rights and expect respectable and adequate treatment.

More often than not, the feedback available about the conduct and performance at work, reveals that wherever and whenever courtesy, politeness, patience, helpful attitude and sympathetic consideration are shown while discharging the duties, even the strict enforcement of law, firmness in the decisions and levy of Duty are taken in good spirit and appreciated; and the lack of such qualities and/or the presence of ulterior motives, creates an atmosphere of animosity, distrust, non-cooperation and litigation. Any display of hypocrisy and (false) pretension is simply abhorred and condemned.

However, over the past few years, as if a silverline amongst the clouds, it has been recognised both by the Administration and the Public that the tasks of revenue collection and enforcement of laws are difficult ones, and that the officers engaged in this onerous task are always hard put to get the 'understanding' of the members of the public they serve. Further, it is also recognised that they are performing such duties as are normally considered to be unpleasant. In this situation, it should not be difficult to beget the understanding and cooperation of the people by showing the sincerity of purpose in serving them.

For the Air Customs Officers posted at the International Airports, the first concern is to know the passengers. It is not enough to classify and treat them as Tourists and Non-Tourists under the Rules. They comprise foreigners visiting India for the first time and Indians coming home. One cannot expect them, in the normal course, to know the current rules and procedures and to instantaneously adjust and adapt themselves to the requirements. While it is true that 'ignorance of law is no excuse' it is also true that 'all persons are innocent unless proved otherwise'. A bit of an effort to explain the requirements of law and procedures will help the passenger to comply with the same willingly.

No doubt, the Customs Officers have also to keep an eye on those who travel frequently and those who are suspect to be indulging in illegal transactions either as sponsors, financiers, agents or carriers. It is in the case of such that one's sixth sense and experience should help to spot such defaulters and exercise all the powers firmly and meticulously.

The second concern should be to know the authorities and agencies working along with Customs. One should not only know their duties and working methods but also their personnel as well. This will help the Customs Officers to adopt the appropriate attitude towards them and seek desirable co-ordination and co-operation. This will also help to thwart any irregularities or malpractice that such personnel may be prone to commit. This will also necessitate upholding the prestige and dignity of the Service and Office of the Customs Department.

Last but not the least, it is for each one to realise one's own responsibilities as individuals. One has to keep on reminding oneself as to what he owes to himself, the family, the society and the nation.

None of one's actions should ever tarnish the image of anyone. Maintenance of the highest degree of integrity and honesty, holding out a helpful attitude, keeping sound health and pleasant manners and believing in the *es-pirit-de-corps* are all basic ingredients of making Customs Officers amiable and useful members of the society. Whilst being engaged in public services, the best policy is to place 'Service' before 'Self' and discharge duties detachedly without awaiting for rewards or recognition.

Declaration and Examination of Baggage

The basic pattern of Customs clearance procedures is that the owner declares the goods and the Customs Officer grants appropriate clearance after verifying the correctness of the declaration. Baggage is also cleared in the same way. But there is one important difference, most accompanied baggage is required to be declared only orally. While this makes the procedure simpler and takes less time, it also calls for a greater degree of skill on the part of the Customs officer who has to obtain and check the declaration. The declaration has to cover all items which require consideration but it need not and should not go into unnecessary details of minor items. In short, it has to be broad declaration of dutiable items. But as most passengers would not be familiar with Customs Rules the officer has to guide them as to the 'dutiable' items. In addition, specific questions have to be put about the more important atleast of the items restricted or prohibited for import. The following broad line of questioning would generally cover most situations, but one has to be skilful, to adopt, amplify or even reduce it suitably, as required:

1. Do you have anything do declare, Sir/Madam?
2. How long after are you returning to India, Sir/Madam?
3. Any new purchases, jewellery, watches Sir/Madam?
4. Have you any costly items, Sir/Madam, like -----.?
5. Any tobacco or alcohol or perfumed spirits, Sir/Madam?
6. Could you tell me Sir/Madam, if there are any prohibited articles in your baggage like gold, dangerous drugs, Indian Currency notes?
7. Have you declared all the foreign currency with you, Sir/Madam?
8. Here you are, Sir/Madam, you are through.

The questions given above are only intended to set one thinking and planning on the right lines. But, whatever the question may be, one should not sound discourteous, supercilious or as if pulling up the passenger. Asking these few questions and even some more that one can think upon the occasion, will take very little time and that time is better spent talking to the passenger than in burrowing into his baggage straightway; For example, while one is talking to him, one can size up the passenger and more or less fix the type of examination or clearance that is appropriate. One could be able to observe if there are any signs of nervousness or if the passenger is concealing something or giving a false declaration. And if it is a genuine case one will be able to decide to pass him without much ado, thus saving time and at the same time leaving a good impression on him. Talking to the passenger will also make the whole business of baggage clearance more humane than mechanical and this is always appreciated.

Generally it is expected that the Customs will decide to pass the majority of air passengers without examination of their baggage. There will, of course, be the hardly few who will still try to smuggle trunk loads of contraband by air and it is expected that by skilful observation and questioning one can spot them and it will not be necessary for, anyone to apply this method of trial and error on a large number to detect few cases. The same talents with whatever aid, prior information can provide, help to catch the more serious attempts at smuggling gold, diamonds and the like.

What should be the manner of examination? Unless, because of prior information or some suspicious circumstances, one is looking for contraband in any particular case, the ordinary examination of baggage is intended to test the truthfulness of the passenger's declaration and to ascertain that it is not off the mark and that no deliberate evasion of duty or restriction is indicated. It is difficult to lay down general instructions describing the exact manner of dealing with particular situations; the broad approach is described above.

Do's and Don'ts for Customs Officers

1. Look smart and cheerful and try to receive each passenger with a smile
2. The passenger expects courtesy. Always address the passenger as Sir/Madam
3. Be quick in your work. The passenger's chief interest is quick clearance
4. He appreciates helpfulness and resents indifference. You know the Customs regulations better than the passenger and it is Your duty to help him in completing the formalities quickly, as long as he is acting within the law.
5. Little gestures of consideration are always welcome and particularly so by a traveler at the end of a journey. Be generous with him.
6. Children, old or sick persons, unaccompanied women, foreigners, particularly those who are new to the country and unfamiliar with the language, need to be handled with special care.
7. When you take up a passenger, attend to him until you complete his clearance. Don't go away elsewhere leaving him bewildered and resentful.
8. When a passenger approaches you, attend to him even if you are otherwise busy. If you can't spare him any attendance at all, don't brush him aside but request him politely to wait, if you can take him up soon. If not, point out the proper officer for him to approach. But avoid giving the impression that you are merely "passing the buck".
9. Never approach a passenger with an air of suspicion. Even when you have found a smuggler, be strict, but not rude. He will be dealt with according to law; but discourtesy is certainly not one of the penalties he has to accept, nor is the dignity of law thus upheld.
10. Do not take everything out of a suitcase or package unless you suspect concealment Try to satisfy yourself by intelligent feeling of the contents.
11. Do not take out items of intimate personal wear and similar articles and embarrass the passenger.
12. Let not the package, after you have finished with it, look as if it had been tossed about in a storm. Try to disturb the contents to a minimum and help the passenger to repack.
13. Be always patient and courteous whatever provocation or irritant may be.
14. Be firm in enforcing the law, but try always to explain why you are taking a decision against the passenger's wishes. At the same time, if, as may happen, the passenger is inclined to argue, don't indulge in argument but try to withdraw from it politely.
15. Never make remarks, which might cause offence even if you think they are humorous.
16. Know your job. If you do not, you might bring discredit to yourself and to your Service. Keep all your equipment – books, registers, forms and stationery – close at hand, and properly arranged.
17. Always display a sense of proportion. A petty error in declaration and the deliberate smuggling of gold should not both be handled the same way.
18. Act firmly but judiciously.
19. Keep good rapport and co-ordination with your superiors, colleagues, subordinates and other staff at the Airport.

20. Rules are to be applied with understanding and discretion and not mechanically. Be always prepared to take a matter beyond your competence to your seniors, if you think it calls for such exercise of discretion by them.

DEPLOYMENT AND DUTIES OF CUSTOMS STAFF AT AIRPORT

The Customs staff strength at airport depends on the infrastructure, workload, availability of staff, etc. Deployments and Duties of staff posted at airports are enumerated below, briefly :-

(a) Asst. / Dy. Commissioners (Administration):

1. General administration, service discipline, deployment of staff and vehicles, public relations and complaints.
2. All matters of policy, interpretation and procedures relating to baggage other than detained and uncleared baggage.
3. Liaison with Airlines, Airport authorities, Police, Income Tax, Central Excise, DRI , IB, etc., and attend various meetings.
4. Parliament questions, C.R.A. Objections.
5. Maintenance of vehicles including signing of bills and log-books, etc.
6. Audit objections, demands and recovery relating to baggage.
7. Refund of drawback.
8. Work relating to Foreign Travel Tax.
9. Adjudication, CEGAT Cases, Appeals, Revisions and action under Section 142 of the Customs Act, 1962.
10. Periodical statements, Revenue Statements
11. Disposal and Special Visadex
12. Procedure and control over goods in the main warehouses, Strong room, Mishandled baggage (main) warehouse and confiscated goods and Disposal warehouses. Supervision over the disposal of perishable goods and destruction of obscene items.
13. Vigilance matters.
14. Record section.

(b) Assistant/Dy. Commissioners (in-charge of Baggage):

Besides supervising clearance of passengers and baggage, as well as matters relating thereto, they have to handle the following :

1. Procedure and control over storage, custody and disposal of mishandled baggage.
2. Field Security and Visadex.
3. Procedure and control over Duty Free Shops and other licenced shops in the Transit Lounge.
4. All matters relating to control over storage and custody of goods detained in Detention warehouse (D.S.- I & D.O.- II), D.S.- V Warehouse, D.O.- VI Warehouse (Reshipment).

(c) Duties of Superintendents

The duties of Superintendent in the Air Customs Pool Scheme are very vital and their role is pivotal. Their duties are also multifarious. They are the effective link between basic workers and the administration. In the present context of clearance of baggage, practically, they are the proper officers to effect clearance of passengers. The current orders on clearance of baggage require the Supdts. to take oral declaration of the passengers about the contents of their baggage and decide whether the same is

be accepted or subject to examination/verification in full or in percentage. They are also expected to address themselves to such of the passengers and the counter-officers who need help and guidance in the matter of clearance especially when a dispute or difficulty is confronted with. They are also required to spot out and reach the places of undue hold up and clear the same. They are expected to be up to date in matters of Rules and Regulations, nature and valuation of goods and procedural requirements. Above all, they are required to hold a disposition that they are amiable, helpful in their attitude, pleasant in manners, firm in their decisions and tactful in resolving problems. They are expected not only to hold dignity and decorum of office but are required to enforce discipline amongst the colleagues and the subordinates. They are further expected to monitor the happenings on the field with regard to volume of traffic, nature of goods, modus operandi functioning of other agencies and the performance of the staff to the superior officers in order to decide and evolve methods and procedures to take suitable measures, to have effective and expeditious clearance and to maintain smooth administration. It may thus be stated that it is mainly through the conduct and performance of the Superintendents that the image of the department is effectively projected.

Allocation of work amongst the field Superintendents and their duties are as under:

1 Superintendent / Baggage

His duties will be broadly as under:

- (i) Exercise over-all supervision of the clearance of passengers.
- (ii) Maintain discipline amongst the staff in his batch.
- (iii) Takes declaration of baggage, assessment & clearance of the same.
- (iv) Keep check on suspects & if intercepted takes action as per instructions.
- (v) DDR Audit.

Superintendent for Departure Duties

His duties will be broadly as under:

- (i) The superintendent has to oversee overall administration and working of Departure Customs staff
- (ii) Supervise clearance of outgoing passengers by the ACOs under him.
- (iii) Issuance of Export Certificates to relating passengers.
- (iv) Ensure that no delay is caused to the departure of flight s on account of any Customs formalities.
- (v) In addition to attending to baggage duties, the superintendent will take round in the Transit Lounge and carry out surprise check on the passengers having Re-shipment/TP items and on the Duty Free shop.
- (vi) On request of Airlines, allow temporary transfer of passengers of delayed flights, to hotels after permission is sought from AC/DC. In such cases, Export Certificates issued, if any, are to be collected and to be handed over again to the passenger at the time of departure, after verification of item/s
- (vii) Similarly, if a passenger is offloaded by Airlines or Emigration authorities, verification should be made regarding issue of Export Certificate and goods meant for re-shipment, before allowing the passenger to be offloaded.
- (viii) Receive departure manifest from the airlines well in advance as prescribed and scrutinise the names of all the passengers in the manifest, with the names in the visadex system.
- (ix) Keep watch on the Departure lounge.
- (x) In certain cases the names of suspects are temporarily kept on clipboard for a specific period without opening any visadex cards. These names are also to be verified with the Departure

Passenger Manifest. When any of these names appear in the Manifest, the VO has to circle the name on all copies of the Manifest and take action as above regarding verification of passport and suitably alerting the counter-staff regarding information, examination etc.

Superintendent i/c Policy & Administration

His duties will be broadly as under:

- (i) Supervise the work of the ACOs and ministerial staff posted to work under him.
- (ii) Attend to general administration and maintenance of discipline.
- (iii) Attend to the deployment of staff for various duties.
- (iv) Attend to the correspondence and drafting involved in Technical matters, Policy matters and Interpretations and procedures relating to baggage.
- (v) Attend to all matters connected TBRE section, Records, Budget matters and correspondence with the Board, the Ministry, Customs Houses, other Government departments and all other Agencies.
- (vi) Attend to complaints received from the Public, the Custom House, the Board, the Ministry or any other Agencies.
- (vii) Attend to the matters connected with DDRs, Bonds/Guarantees, local purchases, furniture, office requirements and all miscellaneous matters arising from time to time.
- (viii) Ensure prompt replies to Parliament Questions.
- (ix) Attend to matters pertaining to various committees like F.A.L., A.O.C., Advisory Committee, Security Committee, etc.
- (x) Maintain liaison with I.A.A.I., Immigration, Health, Civil Aviation and Airlines. Attend to all matters pertaining to vehicles and maintenance thereof. Ensure upkeep and cleanliness of the office premises.

2. Superintendent I/c Case Files

His duties will be broadly as under:

- (i) Attend to all matters connected with Adjudication case files such as issue of Show Cause Notice and Order-in-Original, Appeals, Tribunal cases, Appeals & Revisions
- (ii) Attend to all matters relating to visadexing of suspects and supervise the work of the Special Visadex Officers.
- (iii) Attend to all matters connected with Refund, Drawback and Less Charge cases, No-duty paid certificates and TR cases.
- (iv) Attend to the correspondence and drafting involved in Technical matters, Policy matters and Interpretations and procedures relating to baggage.
- (v) Ensure prompt submission of periodical statements to the Board, the Ministry and the Custom House or other Agencies.
- (vi) Attend to CRA/Audit Objections and PAC matters

Superintendent I/c Warehouse and Disposal

His duties will be broadly as under:

- (i) Supervise the work of the Warehouse Officers by day.
- (ii) Supervise the work of the Disposal Officers.
- (iii) Supervise the work of the Mishandled Baggage Officers.
- (iv) Attend to all matters relating to the goods detained at the Airport Warehouses and supervise the work of officers posted at these warehouses.

- (v) Attend to all matters connected with the disposal of the detained goods as per orders in force.

Duties of P.R.O. (Arrival)

One Supdt. or one ACO is posted in each batch to act as PRO (Import). He is the main link between Administration Office, Asstt. /Dy. Commissioner and the staff posted in the Batch. His duties are given below:

1. Maintain general discipline amongst the staff and cleanliness of the Baggage Hall.
2. Assist the Channeling staff to channelise and guide passengers to the respective counters for clearance. Ensure that old, disabled passengers and unescorted minors and given expeditious clearance.
3. Attend to the clearance of VIPs and maintenance of register for the movement of the VIPs.
4. Make arrangement for protocol duties in respect of VIPs passing through Bombay Airport either on domestic or international sectors.
5. Maintain an Attendance Register and report the names of absentees to the Asstt. Commissioner on duty.
6. Keep liaison with the airlines and other departments operating in the Arrival Hall and attend to all the enquiries made by the passengers, public, airlines and other departments.
7. Ensure that no unauthorised persons have access to the Baggage Hall.
8. Maintain orders and various instructions issued from time to time and circulate amongst the staff.
9. Maintain a register for escort duties on international flights on domestic sectors and make necessary postings.

Duties of Baggage Officers

The Baggage Officers should bear in mind that they are among the first to receive the in incoming passengers including foreigners visiting our country, Indians residing abroad and coming to India for short duration on leave or holiday and Indians returning home. It would help to make the tour or the visit or the homecoming pleasant if these passengers are met with unflinching courtesy and consideration while they are in the baggage hall.

The Baggage Officers should acquire a thorough knowledge of the Baggage Rules and familiarise themselves with the Act, the Rules, the Manuals and other Instructions.

While clearing the passenger's baggage the Baggage Officers must have a broad outlook and helping attitude within the framework of the Rules. They must be polite and courteous while dealing with the passengers. and under no circumstances the passenger should be harassed. Any violation of the regulations, should be firmly dealt with as per the rules, but the officers must not act rude or be impolite with the passengers.

All Baggage Officers should take position at their counters by the time the first passenger calls at the Immigration counter, and they shall not leave their counters till the last passenger of a flight is cleared and unless there is a gap of 15 minutes or more for the next flight to arrive. At the time of change over of the shift, if the baggage clearance is in progress they should not leave the counters unless relieved.

In addition to baggage clearance, the duties of baggage officer also include manning of certain Entry / Exit gates of Baggage Halls and Tarmac, DDR check, escorting packages, escorting flights and attend to protocol duties.

Duties of the Detention Officer

1. Detain under Detention Receipts all the packages from passengers for payment of duty, fine, penalty, for valuation, clearance as per rules, etc.
2. Detain under Detention Receipt all packages, including precious articles, meant for reshipment and transshipment.
3. Have all the packages sealed with Customs seal.

Duties of the Station duty Officer

One ACO in each of the 4 batches is detailed to perform the duties of SDO round-the-clock. His duties are as under:

1. He has to ensure that all relevant papers of incoming and outgoing flights are submitted/filed by the airline in prescribed number of copies.
2. He shall assign IGM No. and EGM No. to the flight manifests and maintain the respective registers.
3. He will attend to telephone calls and will pass on messages to the concerned officers. All intimations regarding facilities will be noted and passed on to the PROs and about suspects to the Visadex Officers. Messages regarding VIP movements will be entered in the VIP Register.
4. He will maintain up-to-date flight schedules.
5. He will be responsible for the safe custody and despatch of all important communications to be sent or received through the Pilots of the aircrafts/escort officers.
6. He will receive letters, papers and parcels from Custom House, Preventive Commissionerate , DRI, Central Excise Commissionerate, etc. for being sent through Escort Officers to other Airports for onward transmission to the respective addresses such as Board, Ministry Custom Houses, Commissionerates , DRI and other Customs and Central Excise authorities, etc.
7. All these letters parcels, documents etc. will be entered serially in a special register maintained for the purpose and will be handed over to the first available escort officer proceeding to the respective Airport after obtaining his acknowledgement in the register. In turn he has to also receive letters/papers/parcels brought by the escort officers from other airports, enter the same in the register, attach serial numbers thereto and then forward them promptly to the concerned persons/authorities to whom the same are addressed.

Duties of Transit Lounge Officers

The Transit Lounge Officers' main function is to prevent smuggling and leakage of revenue through the medium of Transit passengers and the representative of various agencies operating at the airport and coming in contact with transit passengers. They will, therefore, ensure that all transit passengers have been escorted and left by the airlines in the Transit Lounge.

They will keep a general watch on the activities of passengers and persons operating in Transit Lounge and place suspicious looking passengers and persons under surveillance.

They will keep the activities of the shop keepers under observation and will see that for all payments, which are to be made in foreign currency, cash receipts are passed on to the passengers. They will also carry out surprise checks of the documents maintained by the shop-keepers.

They will be responsible for full receipt and storage of goods, control on the Duty Free Shop by way of checks on sales to Transit and outgoing passengers, check of sales vouchers, registers and other documents and also check of balance stocks.

The procedure regarding Baggage clearance, Baggage Rules & Board's various instructions and orders have been detailed & discussed in the next Chapter on 'Baggage' in this Manual.

Smuggling activities by Domestic Passengers travelling in Air-India flights

Reference is invited to above – mentioned subject and to say that Commissioners of Customs, Delhi and Sahar Airport have informed that there has been increasing incidence of smuggling of goods through domestic passengers travelling in Air- India flights and it has therefore become necessary to introduce some procedural safe guards in order to check such misuse.

2. In this regard the Sahar Airport Commissionerate have issued certain guidelines to the Customs officers which lay down that a declaration should be obtained from domestic passengers embarking on domestic flights in Air-India aircrafts in respect of goods of foreign origin carried by them in their hand baggage/cabin baggage. This declaration would be prepared by the Air Customs Officers posted at Airport Departure and would be handed over to the Customs officer escorting the domestic flight. On arrival at the port of destination, the Escort officer would handover the declaration forms to the Superintendent of Customs in-charge at the Airport so that the Customs officers on the airport of arrival can cross check the goods of foreign origin being carried by domestic passengers with the goods declared by them at the airport of departure. A copy of a format of the declaration form are enclosed.

3. All Commissioners of Customs are requested to follow the procedure devised by Sahar Airport Commissionerate and issue suitable instructions on these lines to their officers so as to discourage domestic passengers from taking over dutiable goods on board the aircraft from international passengers and seeking to clear them without payment of duty under the guise of domestic baggage.

[Ministry's letter F. No. 520/56/87-Cus. VI dt.19.05.88]

Declaration of domestic passengers travelling by Air India flight

StationFlight No.Date.....

Name of the domestic passenger:

Accompanied by AdultsMinors

No. of hand bags

I/We do/do not possess the following articles for which I / We possess valid customs clearance documents:

- | | | |
|-----|--|---------------------|
| 1) | Watches, watch movements or parts thereof | (of foreign origin) |
| 2) | Transistors and diodes | (") |
| 3) | Photographic Cameras including Video Cameras | (") |
| 4) | T. V. Sets | (") |
| 5) | V. C. Rs., V. C. Ps and Video Tapes | (") |
| 6) | Zip fasteners | (") |
| 7) | Any other electronic items | (") |
| 8) | Gold bullion and gold jewellery | (") |
| 9) | Silver Bullion and coins | |
| 10) | Foreign currency | |
| 11) | Indian currency beyond Rs.5000/- | |

Before me

Signature of the passenger

Signature of the Customs Officer

with name in capital letter.

Signature of the Customs Escorting officer

with name in capital letter.

Duties of Escort Officer Air-India Flights

Air-India is allowed to carry their stopover passengers cleared at Bombay as well as over flowing passengers of Indian Airlines flights, on trunk routes, when their International flights run on the domestic sector. In order to have a check on such passengers while on flight an ACO is posted as Escort Officer on the flight. His duties in brief are as follows:

- 1 To ensure that the baggage bearing domestic tags are loaded into a separate hold in the aircraft.
- 2 To ensure that all the domestic passengers occupy the rear most seats on the aircraft and that they use a toilet reserved for domestic passengers.
- 3 To keep a watch on the movements of the passengers and ensure that no transactions take place between International and domestic passengers while on flight.
- 4 On reaching the destination, to escort the domestic passengers with their hand luggage from the aircraft to the Baggage Hall.
- 5 to report any untoward incident noticed, while on flight, to the Senior most officer on duty at the destination.
- 6 to clear the domestic passengers after verifying their names from the Manifest and after checking the tags on the suitcases.
- 7 To carry important letters & such other packets and ensure prompt delivery to the addressee.

Baggage Transit facility at Bombay airport to other domestic airports

It has been brought to the notice of the Board that some local customs instructions were issued at Bombay airport to Air India during 1988 under which the Air India was prohibited from taking any through traffic via Bombay to any other point in India even on its own flights if the traffic is coming from Gulf points, Singapore, Hong Kong and Bangkok. This system had some adverse effect on the commercial interests of Air India, and also caused hardships to the passengers.

2. The position has since been reviewed by the Commissioner of Customs, Bombay Airport and it has been decided to allow transit facility at Bombay to the Passengers bound for other domestic airports notified as customs airports for handling passengers for having customs clearance facilities and to interline their baggage for clearance at final destination provided. Air India ensures that such passengers are manifested in the passengers Manifest as direct transit passengers and such passengers remain in transit lounge till they board connecting flight within 24 hours from their arrival at Bombay Airport. The checked baggage of such passengers must bear a tag indicating its place of final destination. All such transit baggage will remain in Customs custody like any other interline baggage.

[Board's Circular No. 42/95 dated 24.04.95 from F. No. 520/18/95-Cus. VI]

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CHAPTER - SIXTEEN

BAGGAGE

PRELIMINARY

Section 77 to 81 as enumerated in Chapter XI of the Customs Act, 1962, deal with the special provisions regarding baggage. At the same time the goods imported through baggage mode are classified under Chapter 98 of the Customs Tariff Act, 1975, for the purpose of fixing duty percentage.

The preceding Chapter on 'Airport' of this Manual deals with the formalities to be completed by the Customs Staff on arrival of the aircraft till its departure and broad aspects regarding deployment and duties of Customs Staff, mode of passenger clearance etc.

Once the aircraft lands at Airport, the transit passengers either remain in the aircraft (if they are proceeding further in the same aircraft) or remain in the transit lounge of the Airport. The disembarking passengers first report to the Immigration authorities along with their travel documents for Immigration Clearance. Once through Immigration, they come to the Customs Arrival Baggage Hall, collect their baggage and report to Customs for clearance of their baggage. At the same time, disembarking Airline crewmembers report to Customs along with their baggage and crew declaration forms for Customs Clearance after having cleared themselves through Immigration.

The Customs officers deployed on baggage clearance duties have to perform manifold delicate tasks. On one hand they are called upon to safeguard Govt. revenue as also to ensure that contraband goods do not find way into the Country through baggage and on the other hand they are called upon to be good public relation officers to the travelling public. For the tourists and the travelers arriving in this Country for the first time, the conduct of the Customs Officer at the point of entry, his tactful handling and his professional expertise are factors, which create the first impression. Such impressions however short and subtle tend to remain with the visitors and ultimately become vital part of the image that they carry of the Country they have visited.

The present system of clearance of passengers baggage is to great degree, based on the trust reposed in the passengers who are expected to make a bonafide and complete declaration of the contents of their baggage as envisaged in Sec. 77 of the Customs Act, 1962. It is only on selective basis or on grave suspicion that the detailed examination of baggage is resorted to. The Rules and instructions on baggage and other connected matters are therefore to be implemented with pragmatic approach and maintain proper balance between the letter and spirit behind the same keeping in view the needs of the passengers and stipulations of law.

Baggage clearance is one of the important functions of the Air Customs Pool Staff. Delay in clearance leads to resentment among passengers, which is not at all desired. Different modes of clearance of Baggage are used for speedy clearance.

Though there is no clear definition of the term 'baggage' in the Customs Act 1962 Sec. 2 (3) of the said Act gives an inclusive definition i.e. "baggage includes unaccompanied baggage, but does not include Motor Vehicle". The definition of the term goods in Sub Sec. (22) of Sec.2 includes 'baggage'.

Baggage is synonymous with luggage. According to Webster, "baggage" means group of travelling bags, trunks or both especially when packed and in transit. Personal belongings of travelers either carried by hand or packed with Courier luggage. The Oxford Dictionary gives the meaning of baggage as collection of property in packages that a traveler takes with him on a journey, luggage. The word baggage therefore becomes a comprehensive term, which means the luggage of a passenger accompanied or unaccompanied and comprises trunks or packages and the personal belongings of a

passenger referred to therein.

Section 79 of the Act talks about the bonafide baggage, which is exempted from Customs duty and proper officer has been empowered to pass free of duty any article which is in the baggage of a passenger and which has been in his use for a prescribed period or is for his use or is meant for making gifts or souvenir.

In the era of liberalisation, importance is given to speedy clearance of passengers. The facility of Green Channel has been made available to passengers arriving from sensitive as well as non-sensitive areas. The Green Channel passengers pass unhindered and unquestioned by the Customs Officers except when there is grave suspicion. It is seen that over 90% of the passengers avail of the Green Channel facility.

Responsibility for the declaration of the baggage contents rests entirely on the passenger. At the red channel oral declaration given by the passenger is accepted. The baggage of the passenger is normally screened before a list of dutiable articles is prepared. In case, the passenger is not able to give details of dutiable items and in case of grave suspicions that the passenger has made a mis-declaration the baggage is subjected to examination.

Duty on import of gold and silver is collected at separate counters earmarked for the same. Similarly, separate counters are earmarked for passengers who wish to declare foreign exchange.

The Air Intelligence Unit at the Airport is responsible for the surveillance of Airport area, collection of information / intelligence, carrying out routine patrolling, rummaging of aircraft, maintaining general intelligence on the trend of smuggling of sensitive commodities and undertaking investigations into the cases detected at the Airport. Seizures of contraband goods both at the time of import and export through Airport is the major activity of the A.I.U. Arrests and prosecutions of the persons found involved in the smuggling activities is the natural corollary to the seizures.

BAGGAGE

The clearance of personal baggage of passengers and crew members is governed by Chapter / Head 98.03 of the Customs Tariff and Baggage Rules framed under Sec. 79 of the Customs Act, 1962.

The Govt. of India in exercise of powers conferred under Sec.79 of the Act notified "The Baggage Rules, 1994" vide Notification No.11/94 CUs. (N.T.) dt. 01.03.94 in the Finance Bill, 1994. The Baggage Rules superceded all the earlier Baggage Rules, viz. (1) The Baggage Rules, 1978 (2) The Tourist Baggage Rules, 1978, and (3) The Transfer of Residence Rules, 1978. The major feature of the Rules was non – requirement of issuance of Tourist Baggage Re – export form (T.B.R.E.) which was being issued to tourists for items temporarily imported into India and allowed clearance free of duty temporarily.

Importability of goods through Baggage Mode under EXIM policy

In terms of para 5.6 of the Exim Policy 1997-2002, bonafide household goods and personal effects are allowed to be imported as part of passengers' baggage. Samples of such items that are otherwise freely importable under the Policy are also allowed to be imported as part of passengers' baggage without an Import Licence. Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, etc., required for execution of specific export orders placed on them, as part of their baggage without an Import Licence.

THE BAGGAGE RULES, 1998

On 02.06.98, the Govt. of India rescinded Notification No.11/97- Cus. and introduced "Baggage Rules, 1998" vide Notification No.30/98-Cus. (N.T.) of 02.06.98, text of which is given below:

In exercise of the powers conferred by section 79 of the Customs Act, 1962 (52 of 1962), and in suppression of the Baggage Rules, 1994, except as respects things done or omitted to be done before such suppression, the Central Government hereby makes the following rule, namely:-

1. Short title and commencement:-
 - (i) These rule may be called the Baggage Rules, 1998.They shall come into force on the date of their publication in the Official Gazette.
2. Definitions:- In these rules, unless the context otherwise requires;-
 - (I) "appendix" means an Appendix to these rules;
 - (ii) "resident" means a person holding a valid passport issued under the Passports Act, 1967 (15 of 19) and normally residing in India;
 - (ii) "tourist" means a person, not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non – immigrant purposes, such as touring, recreation, sports, health, family reasons, study, religious pilgrimage or business;
 - (iii) "family" includes all persons who are residing in the same house and form part of the same domestic establishment;
 - (iv) "professional equipment" means such portable equipments, instruments, apparatus and appliances as are required in his profession, by a carpenter, a plumber, a welder, a mason, and the like and shall not include items of common use such as cameras, cassette recorders, dicta-phones, personal computers, typewriters, and other similar articles.
3. Passengers returning from countries other than Nepal, Bhutan, Myanmar or China. An Indian resident or a foreigner residing in India, returning from any country other than Nepal, Bhutan, Myanmar or China, shall be allowed clearance free of duty articles in his bonafide baggage to the extent mentioned in column (2) Appendix A.

Appendix A
(See rule 3)

(1)	Articles allowed free of duty (2)
(a) All passengers of and above 12 years of age and returning after stay abroad of more than three days	(I) Used personal effect, excluding jewelry, required for satisfying daily necessities of life. (ii) Articles upto a value of Rs 12000 if these are carried on the person or in the accompanied baggage of the passenger.
(b) All passengers of and above 12 years of age and returning after stay abroad of three days or less	(I) Used personal effects, excluding jewellery, required for satisfying daily necessities of life. (ii) Articles upto a value of Rs 6000 if these are carried on the person or in the accompanied baggage of the passenger.
(c) All passengers upto 12 years of age and returning after stay abroad of more than three days.	(I) Used personal effects, excluding jewellery, required for satisfying daily necessities of life. (ii) Articles upto a value of Rs 3000 if these are carried on the person or in the accompanied baggage of the passenger.
(d) All passengers upto 12 years of age and returning after stay abroad of three days or less.	(I) Used personal effects, excluding jewellery, required for satisfying daily necessities of life. (ii) Articles upto a value of Rs 1500 if these are carried on the person or in the accompanied baggage of the passenger.

Explanation:- The free allowance under this rule shall not be allowed to be pooled with the free allowance of any other passenger.

4. Passengers returning from Nepal, Bhutan, Myanmar or China.- An Indian resident or a foreigner residing in India, returning from Nepal, Bhutan, Myanmar or China, other than by land route, shall be allowed clearance free of duty articles in his bonafide baggage to the extent mentioned in column (2) or Appendix B.

**Appendix B
(See rule 4)**

(1)	(2)
(a) Passengers of and above 12 years of age and returning after stay abroad of more than three days.	(I) Used personal effects, excluding jewellery, required for satisfying daily necessities of life. (ii) Articles upto a value of Rs 3000 if these are carried on the person or in the accompanied baggage of the passenger.
(b) Passengers upto 12 years of age and returning after stay abroad of three days or less.	(I) Used personal effects, excluding jewellery, required for satisfying daily necessities of life. (ii) Articles upto a value of Rs 750 if these are carried on the person or in the accompanied baggage of the passenger.

Explanation:- The free allowance under this rule shall not be allowed to be pooled with the free allowance of any other passenger.

5. Professionals returning India.- An Indian passenger who was engaged in his profession abroad shall on his return to India be allowed clearance free of duty, in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bonafide baggage to the extent mentioned in column (2) of Appendix C.

**Appendix C
(See rule 5)**

(1)	Articles allowed free of duty (2)
(a) Indian passenger returning after atleast 3 months	(I) Used household articles upto an aggregate value of Rs 6000. (ii) Professional equipment upto a value or Rs 10000.
(b) Indian passenger returning after at least 6 months	(I) Used household articles upto an aggregate value of Rs 6000. (ii) Professional equipment upto a value of Rs 20000.
(c) Indian passenger returning after a stay of minimum 365 days during the preceding 2 years on termination of his work, and who has not availed this concession in the preceding three years.	(I) Used household articles and personal effects, (which have been in the possession and use abroad of the passenger or his family for at least six months) and which are not mentioned in Annex I or Annex II Upto an aggregate value of Rs 30000.

6. Jewellery:- A passenger returning to India shall be allowed clearance free of duty jewellery in his bonafide baggage to the extent mentioned in column (2) of Appendix D.

**Appendix D
(See rule 6)**

(1)	Jewellery	(2)
Indian passenger who has been residing Abroad for over one year.	(I) Jewellery upto an aggregate value of Rs 10000 by A gentleman passenger, or (ii) upto an aggregate value of Rs 20000 by a lady passenger.	

7. Tourists:- A tourist arriving in India shall be allowed clearance free of duty articles in his bonafide baggage to the extent mentioned in column (2) of Appendix E.

**Appendix E
(See rule 7)**

(1)	Articles allowed free of duty	(2)
(a) Tourists of Indian origin	(I) used personal effects and travel souvenirs, if- (a) these goods are for personal use of the tourist, and (b) these goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination. (ii) articles as allowed to be cleared under rule 3 or rule 4.	
(b) Tourists of foreign origin other than those of Nepalese origin coming from Nepal or of Bhutanese origin coming from Bhutan.	(I) used personal effects and travel souvenirs, if- (a) these goods are for personal use of the Tourist, and (b) these goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination. (ii) articles upto a value of Rs 4000 for making gifts.	
(c) Tourists of Nepalese origin coming from Nepal or of Bhutanese origin coming from Bhutan.	No free allowance.	

8. Transfer of residence:- (1) A person who is transferring his residence to India shall be allowed clearance free of duty, in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in the bonafide baggage to the extent mentioned in column (1) of Appendix F, subject to the conditions, if any, mentioned in the corresponding entry in column (2) of the said Appendix.

(2) The conditions may be relaxed to the extent mentioned in column (3) of the said Appendix.

**Appendix F
(see rule 8)**

<u>Articles allowed free of duty</u>	<u>Conditions</u>	<u>Relaxation that may considered.</u>
(a) Used personal and household articles, other than those listed at Annex I or Annex II, but including jewellery upto ten thousand rupees by a gentleman passenger or	(1) Minimum stay of two years abroad, immediately preceding the date of his arrival on TR, (2) total stay in India on short visit during the 2 preceding years should not exceed 6	(a) <u>For condition (1)</u> Shortfall of upto 2 months in stay abroad can be condoned by Assistant Commissioner of Customs if the early return is on account of: (i) terminal leave or vacation being

<p>rupees twenty thousand by a lady passenger.</p> <p>(b) Jewellery taken out earlier by the passenger or by a member of his family from India.</p>	<p>months, and (3) passenger has not availed this concession in the preceding three years.</p> <p>Satisfaction of the Assistant Commissioner of Customs regarding the jewellery having been taken out earlier from India.</p>	<p>availed of by the passenger; or (ii) any other special circumstances, (b) <u>For condition (2)</u> Commissioner of Customs may condone short visits in excess of 6 months in deserving cases. (c) <u>For condition (3)</u> No relaxation.</p>
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Annex I

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 200 or cigars exceeding 50 or tobacco exceeding 250 gms.
4. Alcoholic liquor and wines in excess of one litre each.
5. Gold or silver, in any form, other than ornaments.

Annex II

1. Colour television / Monochrome Television.
2. Video Cassette Recorder / Video Cassette Player / Video Television receiver.
3. Washing Machine.
4. Electrical / Liquefied Petroleum Gas Cooking range (other than Electrical / Liquefied Petroleum Gas stoves with not more than two burners and without any extra attachment.
5. Dish Washer.
6. Music System.
7. Personal Computer.
8. Air Conditioner.
9. Refrigerator.
10. Deep Freezer.
11. Microwave Oven.
12. Video camera or the combination of such video camera with one or more of the following goods, namely :-
 - (a) Television Receiver.
 - (b) Sound recording or reproducing apparatus;
 - (c) Video reproducing apparatus.
13. Word Processing Machine.
14. Fax Machine.
15. Vessels.
16. Aircraft.
17. Cinematographic films of 35 mm and above.
18. Gold or silver, in any form, other than ornaments.

Provisions regarding unaccompanied baggage

(1) Provisions of these rules are also extended to unaccompanied baggage except where they have been specifically excluded.

The unaccompanied baggage had been in the possession abroad of the passenger and is despatched within one month of his arrival in India or within such further period as the Assistant Commissioner of Customs may allow.

The unaccompanied baggage may land in India up to 2 months before the arrival of the passenger or within such period, not exceeding one year, as the Assistant Commissioner of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of two months due to circumstances beyond his control, such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the

transport or travel arrangements in the country of countries concerned or any other reasons, which necessitated a change in the travel schedule of the passenger.

Application of these Rules to members of the crew :- The provisions of these Rules shall apply in respect of members of the crew engaged in a foreign going vessel for importation of their baggage at the time of final pay off on termination of their engagement.

[**Notification No.30/98 – Customs (N.T.) dated the 2nd June,1998**]

Revision of Crew Baggage Allowance

Reference is invited to Board's instructions dated 5.2.1979. issued from F. No. 495/78-Cus.VI on the above subject, which prescribe a baggage allowance of Rs.30. To operating airlines crew members for bringing petty items like chocolates, cheese, cosmetics, etc. for their personal or family use and to say that the question of increase in the existing value limit of Rs.30 has been under the consideration of the Board on account of representations received from various quarters. It has now been decided by the Board that the existing baggage allowance of Rs.30 for operating airlines Crew members to bring petty gifts may be revised to Rs.300 (Rupees three hundred).

These instructions shall supersede all existing instructions on the subject.

[**F. No. 496 / 38/ 93-Cus-vi dated 25.08.94**]

Import of high value items by the Airlines Crew

It has come to the notice of the Board that at some airports, airlines crew are being allowed to bring in costly gadgets like air conditioners, refrigerators, music system etc. On payment of Baggage Duty @ 80% ad valorem under Notification No. 136 / 90-Cus (As amended) read with heading 98.03 of the first Schedule of the CTA, 1975. It is, however, observed by the Board that there is no ITC provision permitting operating airlines crew to import such consumer goods. As consumer goods are in the negative list of Imports, the same cannot be imported without an import licence, except where such imports have been permitted specifically under the Exim Policy in force or under Public Notice / Order issued by the DGFT.

As far as the passengers are concerned, so long as the goods brought by them are bonafide baggage, the same are exempt from ITC restrictions in view of para 34 A of the current Exim Policy. But there is no such exemption for the members of the crew and members of the crew are not passengers. The Baggage Rules, 1994 also do not apply to them except Rule 18, which is applicable only to sea crew for importation of their baggage at the time of final pay off on termination of their engagement.

In view of the above position, the Board is of the view that such imports by the operating Airlines crew are unauthorised and such goods are liable to confiscation under Section 111 (d) of the Customs Act, 1962.

[**Board's Circular No.2/3/95 dt.26.6.95**]

Estimates Committee's recommendation on Rule 7 of Baggage Rules, 1998

In the Estimates Committee (1994-95) of the 10th Lok Sabha, the Government had undertaken to review the Baggage Rules permitting the travellers to bring in Note Book Computers and other essential items so that harassment to the general passengers could be eliminated. The Committee had desired an expeditious review of the matter. The matter has been examined. Under Tourist Baggage Rules, 1978, Notification No. 45/92-Cus. (NT) dated 19/6/92 was issued listing the personal effects which could be

imported temporarily free of duty. This list included 14 items of day to day use of the tourist.

The Tourist Baggage Rules was replaced by the Baggage Rules, 1994 which contained a chapter on concession for tourists. In rule 11, the personal effects imported by the tourists temporarily have been allowed duty free entry and the explanation of Rule 11 defined the wording 'personal effect' such as clothing and other articles, new or used, which a tourist may personally and reasonably required taking into account of circumstances for his visit but excluding all merchandise imported for commercial purposes. The list contained in Notification 92, though the Notification has expired, continue to be the guiding the customs formations at the Airport to give this benefit.

The Baggage Rules, 1998 issued vide Notification No. 30/98-CUS (NT) dated 2/6/98 was provided for import of duty free goods by tourists in Regulation 7 as contained in Appendix 'E' of the said Rules. There is no definition for personal effects in the present Baggage Rules. However, for the sake of uniformity it is considered necessary to reiterate that the personal effects would include the following goods:

- (i) Personal jewellery.
- (ii) One camera with film rolls not exceeding twenty.
- (iii) One video camera/camcorder with accessories and with video cassettes not exceeding twelve.
- (iv) One pair of binoculars.
- (v) One portable colour television (not exceeding 15CMs in size)
- (vi) One music system including compact disc player.
- (vii) One portable typewriter.
- (viii) One perambulator.
- (ix) One tent / other camping equipment.
- (x) One computer (laptop/note book).
- (xi) One electronic diary.
- (xii) One portable wireless receiving set (transistor radio)
- (xiii) Professional equipments, instruments and apparatus of appliances including professional audio/video equipments.
- (xiv) Sports equipments such as one fishing outfit, one sporting firearm with fifty cartridges, one non-powdered bicycle, one canoe or ranges less than 51 metres long, one pair of skids two tennis rackets, one golf set (14 pcs. With a dozen of golf balls)
- (xv) One cell phone.

It may kindly be noted that while Notn. No. 45/92 defined personal effects as articles both new or used and Rule 11 of Baggage Rules 1994 allowed personal effects of tourists for duty free import, the Baggage Rules, 1998 allows only used personal effects of the tourists. It is not the intention of the Board to verify the newness of every product, which a traveller brings, so long as it is not prima-facie new goods in their original packaging which can be disposed of off hand.

[Board's Circular No. 72/98 dt.24.9.98-Cus. in F. No. 520/136/92 CUS VI]

EFFECTIVE RATE OF DUTY ON BAGGAGE.

In exercise of the powers conferred sub-section (1) of section 25 of the Customs Act, 1962, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 58-Customs, dated the 1st march, 1983, the Central Government, being satisfied that it is

necessary in the public interest so to do, hereby exempts articles falling under Heading No. 98.03 of the First Schedule to the Customs Tariff Act, 1975 specified in column (1) of the Table hereto annexed, when imported into India by a passenger or a member of a crew as baggage, from so much of the duty of customs leviable thereon which specified in the said First Schedule, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (2) of the said Table.

TABLE

Description of articles (1)	Rate (2)
Any article the value of which exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 1998.	50% ad valorem
On the unaccompanied baggage.	50% ad valorem

Explanation.- Where the value of any one article exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 1994, the amount of duty shall be calculated only on the value in excess of the duty free allowance so admissible to the extent not availed of by such passenger or member for clearing any other article of baggage, if any.

Nothing contained in this notification shall apply to –

- (i) Omitted;
- (ii) fire arms;
- (iii) cartridges of fire arms exceeding 50;
- (iv) cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules;
- (v) Omitted;
- (vi) Goods imported through a courier service.

This notification shall come into force on the 1st day of April, 1990.

[Notification No. 136/90-Cus., dated 20-3-1990 as amended by Notifications No. 113/92-Cus., dated 1-3-1992; No. 158/92-Cus., dated 8-4-1992; No. 84/93-Cus., dated 28-2-1993; No. 131/93-Cus., dated 15.6.1993; No. 92/94-Cus., dated 1-3-1994; No. 130/94-Cus., dated 15-6-1994; No. 66/95-Cus., dated 16-3-1995; No. 48/96-Cus., dated 23-7-1996; No. 19/97-Cus., dated 1-3-1997 and No. 28/98-Cus., dated 2-6-1998.]

Exemption from Additional Duty to Baggage

In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 194-Customs, dated the 26th September, 1980, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts all goods falling under **Heading No. 98.03** of the First Schedule to the Customs Tariff Act, 1975, when imported into India by a passenger or a member of the crew as baggage, from the **whole of the additional duty** leviable thereon under section 3 of the said Customs Tariff Act.

[Notifn. No. 183/86-Cus., dated 1.3.1986 as amended by Notfn. No. 48/96-Cus.,dated 23.7.1996]

Effective rate of basic duty on specified goods imported as baggage

In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (2) of the Table annexed hereto, falling under Heading No. 98.03 of the First Schedule to the Customs Tariff Act, 1975, when imported by –

- (a) any person holding a valid passport issued under the Passport Act, 1967, and returning to India after having stayed abroad for at least 365 days during the two years immediately preceding the date of arrival in India, or,
- (b) any person on a bona fide transfer of residence to India as part of his bona fide baggage, - from so much of the duty of Customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate of 25% *ad valorem*, subject to the following conditions, namely: -

In case of (a) above.-

- (i) such person has been working abroad for a minimum period of one year and is returning to India on termination of such work after having stayed abroad for at least 365 days during the two years immediately preceding the date of arrival in India;
- (ii) such person affirms by a declaration that the goods have been in his possession abroad or, the goods are purchased by such person at the time of his arrival, but before clearance from Customs, from the duty free shop located in the arrival hall of the international airports;
- (iii) Omitted;
- (iv) the goods (other than those purchased from the duty free shops at the time of arrival of such passenger) not accompanying such passenger were shipped or despatched or arrived within the time limits specified in the Baggage Rules, 1998; and
- (v) in respect of such goods not more than one unit shall be permissible to such person and the total aggregate of value of such goods including other goods imported free of duty by him under Rule 5 of the Baggage Rules, 1998, shall not exceed rupees thirty thousand.

In case of (b) above, -

- (i) such person has been residing abroad for a minimum period of two years immediately preceding the transfer of residence and has not availed this concession in the preceding three years;
- (ii) such person affirms by a declaration that the goods have been in his possession abroad, or, the goods are purchased by such person at the time of his arrival, but before clearance from Customs, from the duty free shop located in the arrival hall of the international airports;
- (iii) Omitted;
- (iv) the goods (other than those purchased from the duty free shops at the time of arrival of such passenger) not accompanying such passenger were shipped or despatched or arrived within the time limits specified in the Baggage Rules, 1998;
- (v) not more than one unit of each item of such goods shall be permissible per family and the person claiming the benefit of this notification affirms by a declaration that no other member of the family had availed of, or would avail of, the benefit of this notification in respect of that item; and
- (vi) the total aggregate value of such goods shall not exceed rupees one lakh fifty thousand.

TABLE

S. No.	Goods
(1)	(2)
1.	Colour TV/Monochrome TV.
2.	VCR/VCP/VTR.
3.	Washing machines.
4.	Electrical/L.P.G. Cooking Range (other than Electrical/LPG Stoves with not more than two burners and without any extra attachment).
5.	Dish washers.
6.	Music systems.
7.	Personal computers.
8.	Air-conditioners.
9.	Refrigerators.
10.	Deep freezers.
11.	Micro wave ovens.
12.	Video camera or the combination of any such video camera with one or more of the following goods, namely: - (a) television receiver; (b) sound recording or reproducing apparatus; (c) video reproducing apparatus;
13.	Word processing machine.
14.	Fax Machine.

Explanation : For the purpose of this notification, -

(i) * * * *

(ii) short visits, if any, made by the person referred to in clause (b), during the aforesaid period of 2 years shall be ignored if the total duration of stay on such short visits does not exceed six months and shortfall upto a period of two months in a person's stay abroad may be condoned by the Assistant Commissioner of Customs if he is satisfied that the person's early return to India has been caused by his availing of the terminal leave or a vacation or by any other special circumstances, provided that on sufficient cause being shown by the person concerned, the Commissioner of Customs may condone the period of stay in India in excess of six months.

(iii) "family" includes all persons who are residing in the same house and form part of the same domestic establishment.

Provided that on sufficient cause being shown by the person concerned, the Commissioner of Customs may condone the period of stay in India in excess of six months.

This notification shall come into force on the 1st day of April, 1990.

[Notification No. 137/90-Cus., dated 20-3-1990 as amended by Notifications No. 156/90-Cus., dated 27-3-1990; No. 164/90-Cus., dated 30-3-1990; No. 39/91-Cus. (N. T.), dated 31-5-1991; No. 106/91-Cus., dated 25-7-1991; No. 46/92+Cus. (N. T.), dated 19-6-1992; No. 3/93-Cus. (N. T.), dated 15-1-1-1993; No. 8/93-Cus., dated 17-2-1993; No. 92/94-Cus., dated 1-3-1994 and No. 101/95-Cus., dated 26-5-1995.]

Effective rate of duty for Gold including ornaments imported by passengers

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 117/92-Customs, dated the 1st March, 1992, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts gold, in any form including ornaments (but excluding ornaments studded with stones or pearls), when imported into India by an eligible passenger, from so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, **as is in excess of the amount calculated at the rate of Rs.400/- per ten grams and the whole of the additional duty** leviable thereon under section 3 of the Customs Tariff Act, 1975, subject to the following conditions, namely: -

- (a) the duty at the rate specified above shall be paid in convertible foreign currency;
- (b) the quantity of such gold shall not exceed * [ten kilograms] per eligible passenger; and
- (c) the gold is either carried by the eligible passenger at the time of his arrival in India or is imported by him within fifteen days of his arrival in India.

Notwithstanding anything contained in paragraph 1, the exemption under this notification shall also apply to gold taken delivery of by an eligible passenger from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Limited, subject to the conditions (a) and (b) of paragraph 1 and subject to further condition that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

Explanation: - For the purposes of this notification, "eligible passenger" means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passport Act, 1967(15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification at any time of such short visits.

This notification shall come into force on the 1st day of November, 1994.

[Notification No. 171/94-Cus., dated 30-9-1994 as amended by Notification No. 1/97-Cus., dated 1-1-1997 and No. 28/98-Cus., dated 2-6-1998.]

IMPORT OF GOLD BY PASSENGERS UNDER THE GOLD IMPORT SCHEME

A doubt has been raised whether to be eligible to import gold as passenger's Baggage, it is necessary that the gold should be owned by the passenger or not and to say that the matter has been considered by the Board and it has been decided that it is not necessary that a passenger must own the gold to be eligible to import. Any incoming passenger can import the gold so long as he satisfies the conditions of stay abroad and those relating to payment of duty in foreign exchange and the maximum quantity of five kg (*now 10 kgs. with effect from 01.01.1997*)permitted under the Scheme.

[Ministry's letter F. No. 495/3/94-Cus.VI dated 2-3-94]

Clarification regarding importability of gold/silver coins

Please refer to Ministry's Letter of even number dated 31st August, 1994, on the above subject, and to say that the Department of Economic Affairs have now informed that they have re-examined the matter in consultation with the Reserve Bank of India. It has been informed by the Reserve Bank of India that there would be no restriction under FERA on import of foreign coins (whether current or non-current) made of gold or any other metal. The same holds good in respect of commemorative coins also.

In view of the present clarification given by the Reserve Bank of India, Ministry's earlier instructions vide letter of even number dated 31st August, 1994 stand modified and the eligible passengers may be allowed to import gold/silver in any form, including coins (whether current, non-current or commemorative) but excluding, jewellery studded with stones or pearls subject to fulfillment of other conditions mentioned in the Notification Nos. 171/94. Cus. or 172/94. Cus. both dated 30.9.94, as the case may be. Field formations under your jurisdiction may be suitably informed.

[Board's Circular No. 74/95 dated 7.6.95]

Effective rate of duty for Silver including ornaments when imported by a passenger

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 4/93-Customs, dated the 8th February, 1993, the Central Government, being satisfied that it is necessary in the Public interest so to do, hereby exempts silver, in any form including ornaments (but excluding ornaments studded with stones or pearls), when imported into India by an eligible passenger, from so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, **as is in excess of the amount calculated at the rate of Rs.500 per kilogram** and the **whole of the additional duty** leviable thereon under section 3 of the Customs Tariff Act, 1975, subject to the following conditions, namely: -

- (a) the duty at the rate specified above shall be paid in convertible foreign currency;
- (b) the quantity of such silver shall not exceed one hundred kilograms per eligible passenger; and
- (c) the silver is either carried by the eligible passenger at the time of his arrival in India or is imported by him within fifteen days of his arrival in India.

Notwithstanding anything contained in paragraph 1, the exemption under this notification shall also apply to silver taken delivery of by an eligible passenger from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Limited, subject to the conditions (a) and (b) of paragraph 1 and subject to further condition that such eligible passenger files a declaration in the prescribed form before the proper officer of the silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

This notification shall come into force on the 1st day of November, 1994.

[Notification No. 172/94-CUS., dated 30-9-1994.]

Certain clarifications regarding Import of Gold

- (i) **Action to be taken if passenger does not have enough convertible foreign currency for payment of duty.**

In the absence of payment of duty in foreign exchange, the import is unauthorised under the ITC Notification, RBI Notification and Customs Notification. The goods therefore cannot be allowed clearance at baggage rate. In case the passenger has correctly declared the gold brought by him, the re-export of the same may be permitted under section 77 of the Customs Act, 1962. In other cases, the only option

left is to confiscate the goods absolutely and appropriate penalty may also be imposed. However, in case where passenger makes a request for temporary detention and produces evidence that he is maintaining dollars account in India from which he would pay duty in foreign exchange, the same may be considered for subsequent clearance on payment of duty in foreign exchange.

(ii) Whether the passenger can bring the full quota of 10 Kgs. in installments within a period of six months of his first import of gold.

The Notification permits that a passenger who has come after period of six months stay abroad continuously can clear a maximum of 10 Kgs. of gold in one go. There is no concept of second or third visits in this regard. Likewise, there is no provision for condonation of either any shortfall in stay abroad or short visits made to India in six months period.

(iii) Whether the import of gold can be availed by all members of a family.

The Notification relating to import of gold is an independent Notification not related with Baggage Rules. Therefore, the benefit is permissible to all the passengers coming into India who fulfil the conditions mentioned in the said Notification.

(iv) Whether glass-studded jewellery or jewellery studded with only few stones can be permitted.

It is clarified that only non-studded jewellery is allowed under this Notification.

(v) Verification regarding the source of passengers' earnings.

So far as the Notification is concerned, there is no condition that the source of earnings from which the gold has been purchased has to be verified. Further, no such condition has been prescribed in the ITC Order or RBI Notification. Therefore, it would be beyond the jurisdiction of Customs Officers to go into this aspect.

(vi) Whether a separate register should be opened for it.

It is advised that a separate register for gold imports giving the particulars as under may be maintained: -

- i) Sl. No.
- ii) Name of the pax
- iii) Passport No.
- iv) Place and date of issue of Passport.
- v) Flight No. and date.
- vi) Country of embarkation.
- vii) Nationality
- viii) Total weight of gold.
- ix) Description of gold (whether jewellery, coin, biscuit, etc.)
- x) Markings and design, obverse & reverse, of the gold if in biscuit form
- xi) Duty amount
- xii) Currency in which the duty paid.
- xiii) Baggage Receipt No.
- xiv) Remarks

(vii) **Whether the free allowance for personal jewellery is affected by the Notification 117/92-Cus. & Notification No. 18/92-Cus. NT and 19/92-Cus. (NT) both dated 01.03.1992.**

Free allowance for jewellery is not affected by issue of Notifications mentioned above. The passengers are entitled to the same apart from the benefit of Notification No. 117/92-Cus. if otherwise eligible.

[Ministry's letter F. No. 495/5/82-CUS-VI dated 22.4.92.]

Note: The above instructions shall also be applicable in respect of import of silver under Notification No. 172/94.

Exemption from Surcharge of Customs

Gold & Silver including ornaments (but excluding ornaments studded with stones & pearls) imported into India or taken delivery by an eligible passenger in terms of notifications of the Govt. of India in the Ministry of Finance (Deptt. of Revenue) Nos. 171/94. Cus. both dated 30.09.94 are exempted from the whole in the Surcharge of Customs leviable thereon.

[Not. No. 19/2000 Cus. dated 01.03.2000]

Exemption from Special Additional Duty

In exercise of the powers conferred by sub-section (1) of section 3 A of the Customs Tariff Act, 1975 (5 1 of 1975) (hereinafter referred to as the Customs Tariff Act), the Central Government, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on the like goods on their sale or purchase in India, hereby specifies the rates of special additional duty as indicated in column (4) of the Table below in respect of goods, when imported into India, specified in corresponding entry in column (3) of the said Table and falling with the Chapter, heading No. or sub-heading No. of the First Schedule to the Customs Tariff Act as are specified in the corresponding entry in column (2) of the said Table:

Provided that in respect of the goods specified against Sl. No. 24, 25, 26, 31 and 32 of the said Table, "Nil" rate shall be subject to the conditions, if any, subject to which the goods are exempt either partially or wholly from the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act.

Table

S. No.	Chapter or heading No. sub-heading No.	Description of goods	Standard rate
(1)	(2)	(3)	(4)
25.	71	<p>Note : Sl. No. 1 to 24 not reproduced here.</p> <p>Gold and silver including ornaments (but excluding ornaments studded with stones or pearls), imported into India or taken delivery by an eligible passenger in terms of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), Nos. 171/94-Customs, dated 30th September, 1994 and 172/94-Customs, dated the 30th September, 1994</p> <p>Sl. No. 26 to 29 not reproduced.</p>	Nil

30.	98.03	All goods which in terms of the Baggage Rules, 1998, are – (i) passed free duty; or (ii) exempt from the whole of the duty of customs leviable thereon which is specified in the First Schedule	Nil
31.	Any Chapter	All goods which are exempt from – (a) the whole of the duty of customs leviable thereon under the First Schedule; and (b) the whole of the additional duty of customs leviable thereon under sub-section (1) of section 3 of the Customs Tariff Act.	Nil
32.	Any Chapter	All goods (a) in the case of which “Free” rates of duty of customs are specified in column (4) or column (5), as the case may be, of the First Schedule, and (b) which are exempt from the whole of the additional duty of customs leviable thereon under sub-section (1) of section 3 of the Customs Tariff Act or on which no amount of said additional duty of customs is payable for any reason. SI No. 33 to 35 not reproduced.	Nil
36.	Any Chapter	All goods, other than those specified against SI. No. 1 to 35 above	4% <i>ad valorem</i>

[Notification No. 18/2000-Customs dated 1st March, 2000]

CONCESSIONAL RATE OF DUTY FOR SPECIFIED GOODS IMPORTED BY A PASSENGER AS BAGGAGE

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (2) of the Table hereto annexed and falling under heading NO. 98.03 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India by a passenger as baggage, from so much of that portion of the duty of customs leviable thereon under the said First Schedule, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the said Table, but for the classification of such goods under heading No. 98.03 of the said First Schedule, subject to the conditions, if any specified in the corresponding entry in column (4) of the said Table.

TABLE

S.No.	Description	Rate	Condition
(1)	(2)	(3)	(4)
1.	The following namely :- (I) Goods specified in the notifications of the Government of India in the Ministry of Finance (Department of Revenue and Banking, Department of Revenue and Insurance or Department of Revenue, as the case may be) Nos. 174/66-Customs, dated the 24 th September, 1966, 80/70-Customs, Dated the 29 th August, 1970, 207/89-Customs, dated the 17 th July, 1989, 148/94-Customs, dated the 13 th July, 1994 (S.Nos. 5 and 6), 154/94-Customs, dated the 13 th July, 1994 and 51/96-Customs, dated the 23 rd July, 1996; (II) The goods specified in the Table to the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 19/2000-Customs, dated the 1 st March 2000 against S.No. 80 [in column (3) at item Nos. (A) and (C) 115, 129,130 (only blank travellers cheques),132,236,311,320,323,	Rate specified in the said notifications	Conditions, if any, specified in the said notifications

325 and 327. (III) The goods specified against item Nos. A and B of the Table to the notification of the Government of India in the Ministry of Finance (Department of Revenue) NO. 37/96-Customs, dated the 23 rd July, 1996.		
2. Newspapers (including periodicals) falling within heading NO. 49.02, music manuscripts falling within heading No. 49.04, topographical plans falling within heading No. 49.05, plans, drawings and designs falling within heading No. 49.06, postage stamps falling within heading No. 97.04 and medals falling under heading No. 97.05, of the First Schedule to the said Customs Tariff Act.	Rate specified in the said first Schedule	--

[Notification No. 49/96-Cus., dtd 23-7-1996 as amended by Notfn. No. 23/97-Cus., dtd 4-3-1997, No. 28/98-Cus., dtd 2-6-1998 and notfn. no. 37/99-Cus. dated 09.04.99 & Not.20/2000 dated 01.03.2000]

The notifications referred to in the Table above are reproduced below:

Exemption to re-import of private personal property

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 270-Customs, dated the 25th October, 1958, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in column (1) of the Table hereto annexed when imported into India from so much of the duty customs leviable thereon as is specified in column (3), subject to the limitations and conditions specified in column (2) thereof, namely: -

TABLE

Goods	Limitations and Conditions	Extent of Exemption
(1)	(2)	(3)
Goods not produced or manufactured in India, which are private personal property and which prior to their import into India have been exported there from.	Provided that the proper officer of customs is satisfied :- (1) as to the identity of the goods; (2) that no drawback of duty was paid on their exports; (3) that the ownership of the goods has not changed between the time of export and re-import or if it has changed that it has remained in the family of the exporter; (4) that the goods are being imported for personal use and not for sale; and (5) (a) that the goods have been re-imported within three years from the date of export; or (b) that the goods were re-imported after the expiry of three years from the date of export, but were shipped or consigned to India within the time limit allowed under sub-rule (1) of rule 7 of the 'Baggage Rules, 1970, and the owner of such goods re-turned to India within three years from his departure from India.	(i) In the case of goods other than those in (ii) below on which any alternations, renovations, additions or repairs have been executed subsequent to their export, so much as is in excess of the duty of customs which would be leviable if the value of the goods were equal to the cost of such alternations, renovations, additions or repairs; (ii) In the case of goods repaired on a "free of charge" basis in accordance with the terms of warranties given by the manufacturers or by their accredited sales agents in accordance with the established trade practice pertaining to the goods, the whole of the duty of customs; (iii) In other cases, the whole of the duty of customs.

[Notification No. 174-Cus., dated 24-09-1966 as amended by notifications No. 99-Cus., dated 21-06-1969 and No. 93-Cus., dated 17-10-1970]

Exemption to articles supplied free under warranty as replacement for defective ones

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts articles and component parts thereof, when imported respectively for the replacement of defective articles or of component parts thereof, from the whole of the duty of customs leviable thereon under section 3 of the said Customs Tariff Act, subject to the following conditions, namely :-

- (i) the defective articles were brought in to India earlier from places outside India and are private personal properties of the importer;
- (ii) the articles or component parts thereof, as the case may be, are imported within the warranty period and are supplied free of charge by the foreign manufacturer in terms of the warranty given by the manufacturer in accordance with the established trade practice pertaining to the articles;
- (iii) the repairs including replacement of the defective parts are done free of charge by the manufacturer through his agent or branch in India; and
- (iv) the defective articles or component parts thereof if not re-exported are destroyed, or surrendered to the Customs.

[Notfn. No. 80-Cus., dated 29-08-1970 as amended by Notfn. No. 129/86-Cus., dated 17-02-1986]

Exemption to foodstuffs and provisions, imported by foreigners

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 135/66-Customs, dated 20th June, 1966, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts foodstuffs and provisions (excluding fruit products, alcohol and tobacco), when imported into India by a person residing in India, not being a citizen of India, from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and from the whole of the additional duty of customs leviable thereon under section 3 of the said Customs Tariff Act :

Provided that –

- (i) the aggregate c.i.f. value of such foodstuffs and provisions so imported by any such person in a year shall not exceed Rs. 50,000; and
- (ii) the importer secures the foreign currency required for importing such foodstuffs and provisions from the funds available to him in the foreign country.

[Notification No. 45/92-Cus., dated 1-3-1992]

Exemption to specified free gifts, donations, relief and rehabilitation material imported by charitable organizations, Red Cross Society, CARE and Government of India

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods (hereinafter referred to as the said goods) of the description specified in column (2) of the Table hereto annexed and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from the whole of the duty of customs leviable thereon under the said First Schedule and from

the whole of the additional duty leviable thereon under section 3 of the second mentioned Act subject to the conditions specified in column (3) against each serial number in column (1) of the said table.

TABLE

S. No.	Description of Goods	Conditions
(1)	(2)	(3)
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	Goods imported into India for the purposes of relief and rehabilitation	(i) The said goods are imported into India in accordance with the terms of any agreement in force between the Government of India and any foreign Government providing for duty-free entry of such goods into India; and (ii) The goods so imported shall not be sold or otherwise disposed of in India except with the prior approval of, and on fulfillment of such conditions as may be imposed by, the Government in this behalf.
6.	Articles of food and edible material	The goods are supplied as free gifts to the Government of India, either by the agencies approved by the United Nations Organization or by the European Economic Community.
7.	.....	.....
8.	.....	.....

[Notification No. 148/94-Cus., dated 13-7-1994 as amended by Notification No. 173/94-Cus., dated 6-10-1994; No. 101/95-Cus., dated 26-5-1995 and No. 48/96-Cus., dated 23-7-1996]

Exemption to samples, price lists, commercial samples or prototypes imported as baggage or by post, Air or Courier service and prototypes of engineering goods imported as samples for executing or securing export orders

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods (hereinafter referred to as the said goods) of the description specified in column (2) of the Table hereto annexed and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from the whole of the duty of customs leviable thereon which is specified in the said Schedule and from the whole of the additional duty leviable thereon under section 3 of the second mentioned Act subject to the conditions, if any, laid down in the corresponding entry in column (3) thereof.

TABLE

S. No.	Description of goods	Conditions
(1)	(2)	(3)
1.	Samples	The samples are exempt from import duties under and in accordance with the International Convention to facilitate the importation of Commercial Samples and Advertising material drawn up at Geneva and dated the 7 th day of November, 1952.
2.	Price lists	The price lists are supplied free of charge and are exempt from import duties under and in accordance with the Convention mentioned against S. No. 1 above.
3.	Commercial samples	(i) The said goods have been imported as personal baggage by bona fide commercial travelers or businessmen or imported by post or by air;

		<p>(ii) The importer produces his Import Export Code Number at the time of importation;</p> <p>(iii) The said goods are clearly marked as samples;</p> <p>(iv) The import of the said goods does not exceed Rs.36,000 in value or 10 units in number, within a period of twelve months; and</p> <p>(v) The importer at the time of importation –</p> <p style="padding-left: 40px;">(A) declares that –</p> <p>(a) the samples have been imported into India solely for the purpose of being shown in India for the guidance of exporters or for securing or executing an export order;</p> <p>(b) the total import value if samples does not exceed Rs.36, 000 or 10 units in number, within the period of the last twelve months; and</p> <p>(B) produces an undertaking to the Assistant Commissioner of Customs to pay the duty leviable on the said goods but for the exemption contained herein, if the declaration under sub-clause (A) is found to be false.</p>
4.	<p>Prototype of engineering goods imported as samples for executing or for use in connection with securing export orders.</p>	<p>(i) The importer produces a certificate from the Export Promotion Council concerned with the particular export or the Trade Development Authority to the effect that the samples are required for executing or for use in connection with securing export orders;</p> <p>(ii) where the value of a sample does not exceed Rupees ten thousand the same shall be rendered useless as merchandise by any suitable process and where this is not possible they are re-exported within a period of nine months of import or such extended period as may be allowed by the Assistant Commissioner of Customs;</p> <p>(iii) where the value of a sample exceeds Rupees ten thousand the same shall be re-exported within a period of nine months or such extended period as may be allowed by the Assistant Commissioner of Customs; and</p> <p>(iii) the importer shall execute a bond in such form and for such sum and with such surety as may be prescribed by the Assistant Commissioner of Customs, for the purpose of enforcing conditions (ii) and (iii), as the case may be.</p>
5.	<p>Bona fide commercial samples and prototypes</p>	<p>(i) The said goods have been imported by post or in an aircraft, or by courier service;</p> <p>(ii) the value of the said samples or prototypes does not exceed rupees two thousand; and</p> <p>(iii) the said goods have been supplied free of charge.</p> <p>Explanation. – For the purpose of clause (ii), postal charges or the air-freight shall not be taken into account for determining the value limit of rupees two thousand.</p>

[Notification No. 154/94-Cus., dated 13-7-1994 as amended by Notification No. 100/95-Cus., dated 26.-5-1995; No. 101/95-Cus., dated 26-5-1995 and No. 75/97-Cus., dated 14-10-1997.]

Exemption to research equipment imported by Public funded and non-commercial research institutions and I.I.T. etc

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods falling within the First Schedule to the Customs Tariff Act, 1975 and specified in column (3) of the Table hereto annexed, from the **whole of the duty of customs** leviable thereon which is specified in the said First Schedule and from the **whole of the additional duty** leviable thereon under section 3 of the said Customs Tariff Act, when imported into India, by importers specified in column (2) of the said Table, subject to the conditions specified in the corresponding entry in column (4) of the said Table.

2. This notification shall come into force with effect from the 1st day of September, 1996.

TABLE

S. No.	Name of the importer	Description of goods	Conditions
(1)	(2)	(3)	(4)
1.	Public funded research institution or a university or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital	<p>(a) Scientific and technical instruments, apparatus, equipment (including computers);</p> <p>(b) accessories, parts and consumables; live animals (for experimental purposes)</p> <p>(c) Computer software, Compact Disc-Read Only Memory (CDROM), recorded magnetic tapes, microfilms, microfiches;</p> <p>(d) Proto-types, the C.I.F. value of which does not exceed rupees fifty thousand in a financial year.</p>	<p>(I) The goods are imported by or for delivery to-</p> <p>(a) a public funded research institution under the administrative control of the Department of Space or the Department of Atomic Energy or the Department of Defence Research and Development of the Government of India, or</p> <p>(b) an institution registered with the Government of India in Department of Scientific and Industrial Research; and the importer produces a certificate to this effect from an officer not below the rank of a Deputy Secretary in the concerned Department;</p> <p>(ii) The importer produces, at the time of importation, a certificate from the head of the institution, in each cases, certifying that the said goods are required for research purposes only;</p> <p>(iii) In the case of import of live animals for experimental purposes, the importer produces, at the time of importation, a certificate from an officer not below the rank of a Deputy Secretary to the Government of India in the Department of Scientific and Industrial Research to the effect that the Committee for the Purpose of Control and Supervision of Experiments on Animals has no objection to the said import and the live animals are required for research purposes; and</p> <p>(iv) When the goods are imported for delivery to the an institution, the certificates specified in items (I) and (ii), as the case may be, items (I), (ii) and (iii) above shall be produced at the time of clearance of the goods from a warehouse appointed under section 57 or 58 of the Customs Act, 1962 (52 of 1962).</p>
2.	Non-commercial research institutions, other than a hospital	<p>(a) Scientific and technical instruments, apparatus, equipment (including computers);</p> <p>(b) Accessories, parts and consumables;</p> <p>(c) Computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms. Microfiches;</p> <p>(d) Proto-types.</p>	<p>(i) The importer is registered with the Government of India in the department of Scientific and Industrial Research;</p> <p>(ii) An officer not below the rank of a Deputy Secretary to the Government of India in the said Department certifies, in each case, that the importer is not engaged in any commercial activity and that the said goods are required for research purposes only,</p> <p>(iii) the goods are covered by a Pass-Book issued by the said Department; the aggregate C.I.F. value of imports under this exemption does not exceed rupees two crores in the case of consumables, rupees fifty thousand in the case of proto-</p>

			types and rupees five crores in other cases, in a financial year.
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Explanation. - For the purposes of this notification, the expression,-

- (a) "Public funded research institution" means a research institution in the case of which not less than fifty per cent of the recurring expenditure is met by the Central Government or the Government of any State or the administration of any Union territory;
- (b) "University" means a university established or incorporated by or under a Central, State or Provincial Act and includes –
- (i) an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956 to be a university for the purposes of that Act;
- (ii) an institution declared by Parliament by law to be an institution of national importance;
- (iii) a college maintained by, or affiliated to, a University;
- (c) "Head" means –
- (i) in relation to an institution, the Director there of, (by whatever name called);
- (ii) in relation to a University, the Registrar thereof (by whatever name called);
- (iii) in relation to a College, the Principal there of (by whatever name called);
- (d) "Hospital" includes any Institution, Center, Trust, Society, Association, Laboratory, Clinic or Maternity Home which renders medical, surgical or diagnostic treatment.

[Notification No. 51/96-Cus., dated 23-7-1996 as amended by Notification Nos. 93/96-Cus., dated 11-12-1996 and No. 19/97-Cus., dated 1-3-1997 vide Corrigendum M.F. (D.R.) Notification F. No. B-40/11/96-TRU, dated 25-10-1996 as amended by Notification No. 28/98-Cus., dated 2-6-1998. & Not. No.20/2000 dated.01.03.2000]

EXEMPTIONS AND EFFECTIVE RATES OF BASIC AND ADDITIONAL DUTY FOR SPECIFIED GOODS OF CHAPTERS 1 TO 99

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Customs Tariff Act 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;
- (b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the Conditions specified in the Annexure to this notification, the Condition No. of which is mentioned in the corresponding entry in column (6) of the said Table.

Provided that nothing contained in this notification shall apply to goods specified against Serial Nos. 212,213,214,215,216,217 and 218 of the said Table on or after the 1st day of April 2001.

Explanation :- For the purposes of this notification, the rate specified in column (4) or column (5), is ad valorem rate, unless otherwise specified.

TABLE

S. No.	Chapter or heading No. or sub-heading No.	Description of goods	Standard Rate	Additional duty Rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
80.	28, 29, 30 or 38	The following goods- (A) The life saving drugs/ medicine including their salts and esters and diagnostic test kits specified in List 2 (B) ----- (C) Other life saving drugs or medicines	Nil	Nil	---
			Nil	Nil	7
115.	39, 48 or any other Chapter	Tags, labels, printed bags, stickers, belts, buttons or hangers, imported by <i>bona fide</i> exporters	Nil	Nil	---
129.	49	Printed books (including covers for printed books) and printed manuals (including those in loose-leaf form with binder)	Nil	---	---
130.	49	..... blank travellers cheques.	15%	---	---
132.	49.11	Plans, drawings and designs	Nil	---	---
236.	84, 85 or 90	The goods specified in List 21	15%	---	---
311.	84, 85 or 90	The following goods, imported by an accredited journalist: - (i) Personal computers including lap top personal computers; (ii) Typewriters; and (iii) fax machines	Nil	Nil	69
320.	90 or any other Chapter	The following goods, namely: - (A) Medical equipment (excluding Foley Balloon Catheters) specified in List 28 ; (B) Accessories of the medical equipment at (A) above; (C) Parts required for the manufacture of the medical equipment at (A) above and spare parts required for the maintenance of the medical equipment at (A) above.	Nil	---	---
			Nil	Nil	---
			Nil	Nil	48
323.	90 or any other Chapter	The following goods, namely: - (A) Medical equipment specified in List 29 ; (B) Parts required for the manufacture of medical	Nil	---	---
			Nil	Nil	48

		equipment at (A) above and spare parts required for the maintenance of the medical equipment at (A) above.			
325.	90 or any other Chapter	Goods for Tubal Occlusion specified in List 31	Nil	Nil	---
327.	90 or any other Chapter	Goods specified in List 32 imported by a handicapped or disabled person for his personal use	Nil	Nil	75

LIST 2 (See Sl. No. 80 and 339 of the Table)

1. ^{32}P Sodium Phosphate
2. Fluorocytosin
3. 5 – Fluorouracil
4. 6 – Isoguanine
5. Acclarubicin
6. Dactinomycin
7. Agglutinating Sera
8. Allopurinol
9. Ambenonium chloride
10. Amikacin
11. Amino – glutathemide
12. Amiodarone
13. Amiphenazole
14. Amphotericin – B
15. Amrinone
16. Amsacrine
17. Amylobarbitone Sodium
18. Anti – Diphtheria Normal Human Immunoglobulin
19. Anti – Haemophilic Factor concentrate (VIII and IX)
20. Anti–Human lymphocyte immunoglobulin IV
21. Antihuman thymocyte immunoglobulin IV
22. Anti – Pertussis Normal Human Immunoglobulin
23. Anti – Plague serum
24. Anti – Pseudomonas Normal Human Immunoglobulin
25. Anti – Rabies Normal Human Immunoglobulin
26. Aprotinin
27. Atracurium besylate
28. Baclofen
29. Beclamide
30. Bemergide
31. Bleomycin
32. Blood group sera
33. Burn therapy dressing soaked in gel
34. Bovine Thrombin for in vitro test for diagnosis in Haemorrhagic disorders
35. Bovine Albumin
36. Broxuridine
37. Bretyleum Tossylate
38. Busulphan
39. Calcium Disodium Edetate
40. Carbidopa with Levodopa
41. Carmustine
42. Cefoperazone
43. Ceftizoxime
44. Cesium Tubes
45. Chenodeoxycholic Acid
46. Chlorambucil
47. Chlormerdrin 197 Hg.
48. Cholestyramine
49. Christmas Factor Concentrate (Coagulation factor IX prothrombin complex concentrate)
50. Chorionic Gonadotrophin
51. Cobalt – 60
52. Clindamycin
53. Colistin
54. Corboquone
55. Corticotrophin
56. Cyclocytidine
57. Cyclophosphamide
58. Cyanamide
59. Dacarbazine
60. Daunomycin
61. Daunorubicin
62. Desmopressin
63. Desferrioxamine
64. Diagnostic Agent for detection of Hepatitis B Antigen
65. Diagnostic kits for detection of HIV antibodies
66. Diphtheria Antitoxin sera
67. Dimercaprol
68. Diazoxide
69. Dobutamine Hydrochloride
70. Dispyramide Phosphate
71. Edrophonium
72. Dopamine
73. Enzyme linked Immunoabsorbent Assay kits [ELISA KITS]
74. Epirubicin
75. Fibrinogen
76. Floxuridine
77. Follicle Stimulating Hormone [FSH]
78. Fospestrol
79. Gallium Citrate
80. Gasgangrene Anti – Toxin Serum
81. Glucagon

82. Heptamine
83. Hepatitis B Immunoglobulin
84. Hexamethyl-melamino
85. Histoglobulin
86. Hydralazine
87. Hydroxyurea
88. Idarubicine
89. Idoxuridine
90. Ifosfamide
91. Isoprenaline
92. Immunoassay kit for blood fibrinogen degradation product for direct estimation for diagnostic test in D.I.C.
93. Inactivated rabies vaccine [Human diploid cell]
94. Inactivated rabies vaccine [Vero – cell]
95. (a) Indium (III) in bleomycin (b) Indium 113 Sterile generator and elution accessories (c) Indium 113 in brain scanning kit (d) Indium 113 in liver scanning kit
96. Interferon alpha – 2b / interferon alpha – 2a interferon alpha NL / interferon alpha NL (LNS)
97. Intravenous amino acids
98. Intravenous Fat Emulsion
99. Iopamidol (103)
100. Iohexol
101. Ketamine
102. Isoflurane
103. Selenium-75
104. Asparaginase
105. Calcium folinate
106. Lactulose
107. Levodopa with benserazide
108. Levodopa (L-Dopa)
109. Mannitol Busulphan Preparations
110. Lomustine
111. Meningococcal A and C combined vaccine with diluent solvent
112. Melphalan
113. Mercaptopurine
114. Mesna
115. Methisazone
116. Methicillin
117. Methoxy isobutyl Isonitrite
118. Methotrexate
119. Methyl prednisolone
120. Methoxyflurane
121. Metrizamide Inj with diluent
122. Metraminol
123. Mithramycin
124. Nimustine
125. Mitotane
126. Mitomycin
127. MMR (Measles, mumps and rubella) vaccine
128. Latamoxef
129. Monocomponent insulins
130. Nalorphine
131. Mustin Hydrochloride
132. Netilmicin
133. Naloxone
134. Nitroglycerine
135. Normal Human plasma
136. Normal Human immunoglobulin
137. Nuclear magnetic resonance contrast agent
138. Normal Human serum Albumin
139. Penicillamine
140. Pancuronium Bromide
141. Pentamidine
142. Penicillinase
143. Peplomycin
144. Pilocarpine
145. Podophyllotoxin
146. Piperacillin
147. Polimyelitis vaccine (inactivated and live)
148. Laureth 9
149. Polymyxin B
150. Polyestradiol
151. Potassium Aminobenzoate
152. Porcine insulin Zinc Suspension
153. Praziquantel
154. Pralidoxime
155. Prednimustine
156. Prazosin
157. Porcine and Bovine insulin
158. Procarbazine
159. Purified Chick Embryo Cell Rabies Vaccine
160. Protamine

161. Pyridostigmine
162. Pyridinol Carbamate
163. Radio- immunoassay kit for hormones (T3, T4 TSH Insulin, Glucogen, Growth Hormone, Cortisol, L. H. Digoxin)
164. Quinidine
165. Radioisotope TI 201
166. Tribavarin
167. Septopal beads and chains
168. Sodium Arsenate
169. Sodium Cromoglycatespinacaps and cattridges
170. Sodium Huyalauronate sterile 1% and 1.4% solution
171. Solution containing Human Follicle Stimulating and Luteinsing hormones
172. Solution of Nucleotides and Nucliosides
173. Somatostatin
174. Somatropin
175. Specific Desensitizing Vaccine
176. Sterlile Absorbable Haemostatfor control of surgical vessel bleeding
177. Streptokinase and Streptodomase preparations
178. Strontium Chloride (85 Sr.)
179. Strontium SR-89 Chloride
180. Suxamethonium Chloride
181. Testolactone
182. Technitium-99M
183. Thigouanine
184. Thallium 201
185. Ticarcillin
186. Tobramycin
187. Tissue Plasminogen Activator
188. Tranexamic Acid
189. Tocainide
190. Tri-iodothyronine
191. Triethylene Tetramine
192. Triethylene Thiophosphoramide
193. Trofosfamide
194. Tubocurarine
195. Urokinase
196. Ursodeoxycholic Acid
197. Vancomycin
198. Vasopressin
199. Vecuronium Bromide
200. Vindesin Sulphate
201. X-ray diagnostic agents, the following: -
(i) Propylidone (ii) Ethyl iodophenylun decylate (iii) Iodipammide methyl glucamine (iv) Lipidoll ultra fluid (v) Patent blue
202. Anti-D Immunoglobulin
203. Aurothiomalate Sodium
204. Botulinum Toxin Type 'A'
205. Triptorelin
206. D.K. line 100% purified perfluorodicalin liquid
207. Filgrastim/Molgramostim (G-CSF/GM-CFS)
208. Flecainide
209. Foetal Bovine Serum (FBS)
210. Gadolinium DTPA Dimeglumine
211. HTLV – 1 Western Blot Kits
212. Tetanus Immunoglobulin
213. BCG vaccine, Iopromide, Iotrolan
214. Legionella Pneumophilis IF kits
215. Muromonabg – CD 3
216. Octreotide
217. Typhoid Vaccines:
(i) VI Antigen of Salmonella Typhi
(ii) Ty 2la cells and attenuated non-pathogenicstrains of S.Typhi
218. (a) Rabbit brainsthiboplastin for PT test
(b) Reagent for PT tests
(c) Human Thrombin for TT tests
219. Pneumocystis carinil IF kits
220. Puenoxvtelzamins
221. Rabies immunoglobulin of equine origin
222. Thrombokinese
223. Teniposide
224. Vadarabine
225. Iscador, CLIA diagnostic kits
226. Lamivudine
227. Zalcitabine
228. Saqinavir
229. Zidovudine
230. Ritonavir
231. Amifostine
232. Gemcitabine
233. Goserlin Acetate
234. Teicoplanin

- 235. Recuronium Bromide
- 236. Abeciximab
- 237. Disodium Pamidronate.
- 238. Sevoflurane
- 239. Ticarcillin Disodium and Potassium
Clavulanate combination
- 240. Trans-1-diamino cyclohexane
Oxalatoplatinum
- 241. Letrozole
- 242. Irinotecan
- 243. Leuprolide Acetate
- 244. Fludarabine Phosphate
- 245. Lenograstim
- 246. Tretionoin
- 247. Enoxaparin
- 248. Eptifibatide
- 249. Mycophenolate Mofetil
- 250. Prostaglandin E 1 (PGE1)
- 251. Natural Micronised Progesterone
- 252. Latanoprost
- 253. Riluzole
- 254. Cefpirome

Condition No. 7

If, -

- (a) the goods are imported by an individual for personal use;
- (b) it is certified in the Form below, by the Director General or Deputy Director General or Assistant Director General, Health Services, New Delhi in each individual case, that the goods are a life saving drug or medicine; and,
- (c) the importer produces the said certificate to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, at the time of clearance, or gives an undertaking as acceptable to the Deputy Commissioner or the Assistant Commissioner to furnish the said certificate within such period as specified by the Deputy Commissioner or the Assistant Commissioner, failing which to pay duty leviable thereon.

FORM

Certified that the drug/medicine _____ (name of the drug/medicine) being imported by _____ is a life saving drug/medicine and exemption from the payment of customs duty is recommended.

Signature with date

Name

Designation

Place

LIST 21 (Sl. No. 236 of the Table)

(1) Capacitors (excluding paper capacitors and power capacitors)	(8) Ceramic/Magnetic cartridges and stylus	(18)(i) Saw filters (ii) Ceramic filter/trap (iii) Delay lines (iv) CRT socket (v) Spark gap (vi) Degaussing coil
(2) Ferrite parts including memory cores and ferrite magnets	(9) Air cored and Ferrite cored transformers	(19)Fibre optics and other optoelectronic parts and devices namely, Couplers, Attenuators, Connectors, Splicers, Multiplexers and Demultiplexers
(3) Switches with contact rating less than 5 amperes at voltage not exceeding 250 Volts AC or DC	(10)Microphones/Microphone cartridges	(20)Passive optical parts, namely, Microlens and splitters, Micropositioners, Optical filters and gratings and Phase plates
(4) Connectors	(11)RF/IF coils, Inductance coils, Peaking coils, Tuning coils	(21)Special purpose optical fibres, namely, polarisation holding fibres, plastic fibres and large core fibres
(5) Magnetic-Heads (all types)	(12)Antennas	(22)Electron guns
(6) Loud speakers (cone type)	(13)Relays of contact rating upto 7 amperes	(23)Liquid crystal displays
(7) Deflection parts, namely:-	(14)EHT cables	
(i) EHT/LOT/FBT transformers	(15)Level meters/level indicators/tuning indicators /peak level meters/ battery meter/VC meters/Tape counters	
(ii) Line driver transformers	(16)Tone arms	
(iii) Deflection coil/yoke	(17)Microwave passive parts	
(iv) Linearity coil		
(v) Width coil		

Condition No. 69

- (i) If the importer produces a certificate from an officer not below the rank of a Deputy Principal Information Officer in the Press Information Bureau in the Ministry of Information and Broadcasting to the effect that the importer is an accredited journalist, and that the importer has not availed, on any occasion

in the previous five years, exemption under this notification or the notification of the Government of India in the Ministry of Finance (Department of Revenue)No. 83/93-Customs, dated the 28th February,1993 or No. 36/96-Customs, dated the 23rd July, 1996 or No. 11/97-Customs, dated the 1st March, 1997 or No. 23/98- Cus. dated 02.06.1998 or 20/99-Cus. dated 28.02.1999.

(ii) the exemption under this notification shall be applicable to that portion of C.I.F. value of the specified personal computers, typewriters and fax machines, which does not exceed one lakh rupees; and,

(iii) if the importer gives an undertaking to the Deputy Commissioner or the Assistant Commissioner of Customs, as the case may be, at the time and place of importation to the effect that the said goods shall remain in his possession, control and use and shall not be sold or parted with for a period of five years from the date of importation.

LIST 28 (See Sl. No. 320 of the Table)

(1) Australia Antigen RIA kit	(23)Oxygenator	(51) Dosimetry System
(2) Cardiac catheters with guidewires	(24)Plastic disposable 3-way connectors	(52) Cell Saver Equipment
(3) Clips for aneurysms and clips applying forceps in Neuro-Surgery	(25) Portable intermittent positive, pressure breathing apparatus	(53) Cell Washer
(4) Cardio vascular sutures	(26) Pulmoflator	(54) Thawer Equipment for Blood Warming
(5) Cardiovascular special instruments, namely:-	(27) Respirators including ventimeters	(55) Mammography Unit
(i) Coronary perfusion cannulae (ii) Electrical or gas operated sternal cutter (iii) High pressure stop cocks and connectors for pressure recording (iv) Vascular bull-dog clamps (v) Vascular clamps (vi) Vascular needle holders (vii) Vascular scissors straight or angled (viii) Vascular tissue forceps	(28) Sengstaken tubes	(56) O ₂ Concentrator
(6) Compressed air breathing apparatus complete	(29) Tracheostomy tubes	(57) Ventricular Assist Device
(7) D.C. Difibrilators or internal use and pace makers	(30) Ventilator used with anesthesia apparatus	(58) Pace Maker
(8) Laryngeal Mask-Endotracheal Tube	(31) Vascular grafts	(59) Activated Clot Time Machine
(9) Haemodialysors	(32) Tracheostomy tube of plain PVC, Low pressure PVC, Red Rubber Plain, and Red Rubber cuffed.	(60) Cobalt Therapy Unit
(10)Heart lung machine	(33) Various types of Cardiac Catheters including ballon tipped, double Lumen and PTCA catheters, ballon dilatation catheters and Endomyocardial biopsy forceps	(61) Colour Doppler Ultrasound Scanner
(11)Heart valve prothesis including valve frames	(34) Disposable and non-disposable cannula for aorta, vena cavae and similar veins and blood vessels and cannula for intra-corporal spaces	(62) SPECT Gamma Camera
(12)Nebulized humidifier	(35) Programmer for pacemaker	(63) Deep Therapy Unit
(13)Hydrocephalus shunts	(36) Ancillaries for blood component therapy required for the treatment of cancer, namely, Y type blood solution recipient set Transfer pack 1000ml. And 300 ml. ; disposable pherasis bowl 225 ml. And 373 ml. Hydroxy ethyl starch solution; wasting harness with bypass; and waste bags	(64) Cardiac and Vascular Angiography System including Digital subtraction Angiography
(14)Hyper-baric oxygen chamber	(37) AIDS (Acquired Immune Deficiency Syndrome) test kits; Enhanced luminescence analysers for AIDS, Hepatitis and other Analyses	(65) Pulse Oximeter
(15)Fogarty and embolectomy catheters	(38) Iridium wire	(66) Blood Gas Analyser (including cartidges, if any), Sodium Potassium Analyser, Auto Analyser for enzymes, drug levels and biochemical investigations, or a combination of two or more of the aforesaid
(16)Implantable cardiac pacemakers	(39) Anti-HLA sera (AB-CDR)	(67) Ultrasonic Surgical Aspirator
(17)Intra-arterial catheters and guidewires and material for intervention radiology	(40) T.P.H.A. Kits and AIDS	(68) Intra Cranial Pressure Monitoring Equipment
(18)Intra-cardiac patches		(69) Radio Therapy Simulator
		(70) Treatment Planning System
		(71) Angiography Contrast Agent
		(72) Mobile Image Intensifier
		(73) Magnetic Resonance Imaging System
		(74) Surgical Laser
		(75) Electro Hydraulic Operating Table for Cardio Throacic and Neuro Surgery
		(76) Implants for pain relief and bladder control
		(77) Artificial electronics larynx

<p>(19)Nebulizer (excluding ultrasonic nebulizers and heat nebulizers)</p> <p>(20)Omayya reservoirs for intraventricular investigation/therpy</p> <p>(21)Operating sets for Perutaneous Nephrostomy and Percutaneous removal of kidney stones with continuous irrigation and suction with ultrasonic Lithotrite, etc.</p> <p>(22) Qstomy products (Appliances) for managing Colostomy, Illcostomy, Ureterostomy, Illeal Conduit Urostomy Stoma cases such as bags, belts, adhesives seals or discs or rolls adhesive remover, skin barriers micropore surgical tapes, bag closing clamps karaya seals paste or powder, irrigation sets, plastic or rubber faceplates, flanges, male or female urinary incontinecy sets, skin gels, in parts or sets</p>	<p>diagnostic kits</p> <p>(41) Gamma knife</p> <p>(42) Bone Marrow Transplant Equipment including silastic long standing intravenous catheters for Chemotherapy</p> <p>(43) Cell Separator</p> <p>(44) Pressure Transducer and Pressure Amplifier</p> <p>(45) Cell Saver</p> <p>(46) Continuous Ambulatory Peritoneal Dialysis Solution Bag along with tubing system</p> <p>(47) Craniotome (Pneumatic and Electric Equipment) and Drills</p> <p>(48)Binocular Loupes</p> <p>(49) Intra Aortic Balloon Pump</p> <p>(50) Remote After Loading Brachy Therapy Equipment</p>	<p>instruments</p> <p>(78) Ventilators other than those used with anaesthesia</p> <p>(79) Digital Video EEG System</p> <p>(80) Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement</p> <p>(81) Small portable pumps used for giving slow infusion of anti-cancer drugs or thalassaemic drugs</p> <p>(82) Fibre optic endoscopes including Paediatric resectoscopes / audit resectoscope , Peritoneoscopes, Arthroscope, Microlaryngoscope ,Fibreoptic Flexible Nasal Pharyngo Bronchoscope, Fibreoptic Flexible Laryngo Brochoscope, Video Laryngo Brochoscope and Video Oesophago Gastroscope, Fibreoptic Flexible Oesophago Gastroscope</p>
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Condition No. 48

If the importer furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that

(a) the parts, or as the case may be, the spare parts shall be used for the manufacture or maintenance, as the case may be, of the specified medical equipment;

(b) he shall, within three months or such extended period that the said Deputy Commissioner or the Assistant Commissioner may allow, produce –

(i) in the case of parts, a certificate from the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory manufacturing the specified medical equipment, to the effect that the parts have been used in the manufacture of the specified medical equipment; **or**

(ii) in the case of spare parts, necessary evidence to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that the spare parts have been used for the maintenance of the specified medical equipment; and

(c) he shall pay on demand, in the event of his failure to comply with the above conditions, an amount equal to the difference between the duty leviable on such quantity of the parts or, as the case may be, spare parts, but for the exemption under this notification and that already paid at the time of importation.

LIST 29 (See Sl. No. 323 of the Table)

(1) Ophthalmoscope – Direct/Indirect	(12) Intraocular lenses / Keratoprosthesis / orbital implants	(25) Automatic refractometer or lensometer / projection lensometer or a combination of the aforesaid
(2) Ophthalmic/Xenon Arc	(13) Diathermy equipment	(26) Complete refraction unit with Phoropter / projection- chart
(3) Flurescein Angiography Equipment including Fundus Camera	(14) Synoptophore	(27) Ophthalmic hydraulic chair
(4) Ultrasonic Equipment (A scan/Pacchy meter)	(15) Silicone Sponges / rubber/ bands, for Retinal Detachment Surgery	(28) Low Visual aids and sets (telescopic glasses)
(5) Microsurgical needles, cannulas, blades trephine blades, membrane peelers, diathermy probes, vitreous cutters, atraumatic needles and sutures, intraocular scissors and forceps	(16) Vitrectomy equipment	(29) Colour vision testing equipment
(6) Tonometer (Schiotz/ Applanation / Pneumo)	(17) Phaco-emulsification system	(30) Photoclectric keratoscope and thermokeratoscope
(7) Retinoscope Streak / spot	(18) Visual field recording equipment	(31) Pseudo-isochromatic chart boom / Ishiare
(8) Operating glasses (2x,x, 6x)/ Binomag	(19) Ocular electro physiological testing equipment [Electroretinography / Electroculography / Visually evoked response equipment (ERG/EOG and VER)]	(32) Slit lamp biomicroscope / photo slit lamp
(9) Gonioscope, 3 mirror lens, special lenses for laser delivery, special diagnostic lenses (14D, 20D, 90D), Endo lens	(20) Keratometer / Automatic Keratometer	(33) Surgical operating zoom microscope with closed circuit TV camera
(10) Sterilisers (high speed / ethylene)	(21) Prism bars	(34) Surgical operating microscope manual
(11) Specular microscope with monitor and recorder	(22) Laser Interferometer	(35) Argon / krypton laser
	(23) Pachymeter – optical / electronic	(36) Yag laser, excimer laser or diode laser
	(24) Aspiration – irrigation equipment	

LIST 31 (See Sl. No. 325 of the Table)

- (1) 12 (+ / - 1) mm Laparoscope (Single incision) (2) Falope Ring applicator single incision (for two rings) and procedure instruction manual, kit containing guide and loader and cleaning brush (3) 12 (+ / - 1) mm Trocar (including piston type) with spare washers for sleeve and canulae and cleaning brush (4) Fibre Optic Light Cable (5) Bulbs, fuse lamps, Adapter for Fibre Optic Light Cable / Laparoscope (6) Carbondioxide (CO₂) cylinder with pneumoperitoneum apparatus (7) Light Source (8) Machine for Gas Insufflator with Gas Tubing Spare Carbondioxide (CO₂) House Pipe and a Gauge (9) Verres Needle (4" and 5-1/2") (10) Minilight source with accessories consisting of :- (a) 6 volts rechargeable battery (b) A C battery charger (c) A C power supplier 220 volts (d) Inter-connection assembly (e) Converter (11) Falope Rings (12) 6-8 mm Laparoscope (double puncture) (13) Dual incision applicator Two rings (14) Trocal and Cannula 6-8 mm with valves gas stopcock (15) Probe 34-37 cm (16) Scissors 34-37cm (17) Suction Cannula 34-37cm :-

Notes :-

- (A) Item Nos. 6,7 and 8 may be imported separately or in combinations as dual control assembly.
 (B) Item Nos. 1 and 2 may be separate or in combination. When in combination, it is called Laparocator.

List 32 (See Sl. No. 327 of the Table)

<p>(A) (1) Braille writers and braille writing instruments (2) Hand writing equipment Braille Frames, Slates, Writing Guides, Script Writing Guides, Styli, Braille Erasers (3) Canes, Electronic aids like the sonic Guide (4) Optical, Environmental Sensors (5) Arithmetic aids like the Taylor Frame (arithmetic and algebra types), Cubarythum, Speaking or Braille calculator</p>	<p>(6) Geometrical aids like combined Graph and Mathematical Demonstration Board, Braille Protractors, Scales, Compasses and Spar Wheels (7) Electronic measuring equipment, like as calipers, micrometers, comparators, gauges, gauge blocks Levels, Rules, Rulers and Yardsticks (8) Drafting, Drawing aids, tactile displays</p>	<p>(9) Specially adapted clocks and watches (B) (1) Orthopaedic appliances falling under heading No. 90.21 of the First Schedule (2) Wheel chairs falling under heading No. 87.13 of the First Schedule (C) Artificial electronic larynx and spares thereof (D) Artificial electronic ear (Cochlear implant)</p>
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Condition No. 75

It the importer produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be at the time of importation, a certificate from the Civil Surgeon or the District Medical Officer or the Administrative Medical Officer or the Director of Health Services of the concerned State or a Specialist in the concerned speciality attached to a Government Hospital or a recognised medical college to the effect that the importer suffers from the particular handicap or disability and that the imported goods in respect of which the examination is claimed are essential to overcome the said handicap or disability.

EFFECTIVE RATE OF DUTY FOR IMPORTS FROM NEPAL

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in column (2) of the Table below and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India from Nepal, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975, subject to the conditions, if any, specified in the corresponding entry in column (3) of the said Table.

TABLE

Item No.	Description of goods	Conditions
(1)	(2)	(3)
A.	<p>The following goods, namely: - (1) Agricultural, horticultural and forest produce and minerals which have not undergone any processing; (2) Rice, pulses and flour; (3) Timber; (4) Jaggery (gur and shakkar); (5) Animals, birds and fish; (6) Bees, bees-wax and honey; (7) Raw wool, goat hair and bones as are used in the manufacture of bone-meal; (8) Milk, home-made products of milk and eggs; (9) Ghani-produced oil and oil-cakes; (10) Ayurvedic and herbal medicines; (11) Articles produced by village artisans as are mainly used in villages; (12) Yak tail; (13) Akra.</p>	<p>It the goods are wholly produced in Nepal</p>

B.	All manufactured goods other than the following : - (i) Alcoholic Liquors or beverages and their concentrates, other than beer and Industrial spirits. (ii) Perfumes and cosmetics with non-Nepalese or non-Indian brand names. (iii) Cigarettes and Tobacco.	If, - (a) the said goods are manufactured in Nepal; and (b) the importer produces a certificate of origin in the form annexed to this notification duly certified by an agency designated by His Majesty's Government of Nepal, in respect of the consignment, to the satisfaction of the Assistant Commissioner of Customs that such goods have in fact been manufactured in Nepal.
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ANNEXURE

FORM

Certificate of origin for exports free of basic and auxiliary duties under the Treaty of Trade between His Majesty's Government of Nepal and the Government of India

Reference No.

1. Articles consigned from (Exporter's business name, address):
2. Articles consigned to (Consignee's name, address):
3. Means of transport and route:
4. Item number (HS Traffic Line):
5. Marks and number of packages:
6. Description of Articles:
7. Gross weight or other quantity:
8. Number and date of invoice together with value:
9. Declaration by the exporter:

The undersigned hereby declares that the details furnished above are correct, that the articles are produced in Nepal and that they comply with the Rules of Origin specified in the Treaty of Trade between His Majesty's Government of Nepal and Government of India.

(Place and Date)

Signature of authorised signatory

10. Certification:

It is certified that the articles herein referred to are eligible for preferential treatment as per provisions of the Treaty of Trade between His Majesty's Government of Nepal and the Government of India. It is further certified that :

1. The articles have been manufactured in Nepal at a factory situated at (name of place/district) by M/s. (name of the company);
2. The articles involve manufacturing activity in Nepal and that the manufacturing activity consists of converting(major inputs) into(output) through a process consisting of (brief description of manufacturing process);
3. The above articles do not involve only assembly of parts/repacking operations;
4. The articles in question are not products of third country origin. *

for His Majesty's Government of Nepal.

Place and date

Signature and Stamp of
Certifying Authority.

* For the purpose of the above Item No. 4 the articles which have undergone a manufacturing process in Nepal will not be treated as product of third country origin.

11. For official use of Indian customs:

The consignment has been examined and allowed to be imported into India as it complies with the Rules of Origin specified in the Treaty of Trade between His Majesty's Government of Nepal and Government of India.

Date:

Signature and Seal of the

Place:

certifying authority.

[Notification No. 37/96-Cus., dated 23-7-1996 as amended by Notifications No. 99/96-Cus., dated 27-12-1996 and No. 5/97-Cus., dated 20-1-1997]

GUIDELINES FOR CLEARANCE OF PASSENGERS' BAGGAGE AT AIRPORT

A number of complaints have been received from passengers complaining about the narrow-minded attitude behaviour and conduct of Customs officers which projects a poor image of the Organisation. In the era of liberalised policies, the Rules and Instructions on Baggage and other connected matters are required to be implemented with a pragmatic approach and maintaining proper balance between the letter and spirit behind the same keeping in mind the needs of the passengers and stipulations of law. The system of clearance of passengers' baggage requires to be fully based on the trust reposed in the passengers who are expected to make a bonafide and complete declaration of the contents of their baggage as envisaged in Section 77 of the Customs Act, 1962, based on this principle, the existing procedure for clearance of passengers is reviewed.

GREEN CHANNEL

1. Henceforth, the passengers arriving from non-sensitive areas viz. Europe, USA etc and opting to pass through the Green Channel should be allowed unhindered walk-through. It is only in rare cases where there is either prior intelligence or grounds for grave suspicion the baggage should be screened on X-Ray Machine or examined with the explicit permission of the Asstt. Commissioner on duty and in his presence. The said examination should be carried out on any counter at Red Channel and under no circumstances the B.S.M. counter itself. A proper record of the particulars of such passengers, time taken and outcome of the examination etc. should be kept in the custody of the AC/AP, which should be submitted to the DC/AP on weekly basis.

2. Passengers arriving from sensitive areas and opting for green channel should be similarly allowed. However, greater element of scrutiny by way of questioning may be resorted to, at the discretion of Assistant Commissioner on duty.

3. As far as Tourists who intend to avail concession under Rule 11 are concerned, unless and until the proper officer feels that there are reasons of fear of abuse of the concessions, the concession sought must be granted.

RED CHANNEL

1. Since the passengers opting for the red channel are prepared voluntarily to declare dutiable goods and pay duty, they should be treated with greater respect and attention. Oral declaration should normally be accepted by the Bay Superintendent and it should be recorded by him on the reverse of the

Gate Pass and the passengers signature obtained thereon. In case the list of goods is too long to be incorporated on the gate pass, such declaration may be taken in a separate sheet of paper; however, the gist of such declaration including the category of goods, total quantity and value should be indicated on the reverse of the gate pass. Counter officer will indicate the counter number and the officer's name on the face of the said gate pass and also append his signature, name in full thereon. Only after completing the above declaration counter officer may take subsequent actions such as screening and preparation of DDR. Opening of Baggage will be done only with the permission of AC/AP on duty. In case the baggage is found to be within the admissible Free Allowance, Bay Superintendent shall specify accordingly on the gate pass and clear the passenger. In case where the goods are released on payment of duty or are taken up for I.T.C. action the ACO shall indicate the DDR No. / DR No. etc. on the gate pass itself.

2. In case, the passenger is in possession of foreign currency over US \$ 2500 or equivalent, the same should be physically counted by the Superintendent posted for F. C. counter and the Currency Declaration Form be so issued duly countersigned by the Assistant Commissioner on duty. Names of passenger who have been issued with CDF for declaring currency over US \$ 10,000 or equivalent should be forwarded to Spl. Visadex officer on day today basis.

3. The cases where the passenger wishes to detain his baggage intended to be transhipped, the said baggage will be examined 100% and inventoried and detained as per following procedure as regarding detention for T.P./Payment of duty/ITC/Reshipment. The ACO who assesses the baggage of the passenger shall prepare the detention receipt in quadruplicate and obtain the approval of the AC/AP on the said detention receipt itself. The ACO assessing the baggage shall ensure to complete all the entries in the detention receipt carefully. The counter officer will forward the packages for detention to the DS-I/DO-II who will make necessary entries in the Warehouse Register and endorse the registration number on the detention receipt. The counter officer will associate with the DS-I/DO-II for sealing of the detained packages, in presence of the passenger and obtain his signature on the label affixing the seal. The original copy of the Detention Receipt will be handed over to the passenger, the duplicate copy will be kept in side the package before sealing and the triplicate copy will be forwarded to the Main Warehouse (or other Warehouse as the case may be) along with the packages. When the number of packages are more than one, one package will contain the detention memo and the other packages will contain a label giving the details of the detention viz, name of the passenger, D.R. No. , A.P.S. No., reasons for detention etc. When the detention is due to an Adjudication, one copy of the Adjudication order will also be forwarded to the Warehouse along with the Detention Memo. Brief of Adjudication Order shall be recorded in the Warehouse Register. In ITC cases where the value of commercial goods exceeds Rs. 2 lakhs, a seizure panchanama shall invariably be drawn by the counter officer.

4. Henceforth, there shall not be any Re-examination counter. The AC/AP on duty shall himself earmark 100% examination cases to any of the available counter officer. The ITC register henceforth shall remain in the custody of PRO Arrival.

5. In cases, where the passengers are allowed to go out to bring money for payment of duty, fine, penalty etc., The passenger should be allowed by the Bay Supdt. on giving a note as regards duty amount required, counter no etc. The Gate Officer should verify the same and allow such passenger to go out.

6. AC/AP on duty normally be on his feet and available in the Baggage Hall. He should deploy minimum two Supdts. with specific purpose of locating passengers who are found in the Baggage Hall for more than 30 minutes after arrival of flight. Such passengers should be given top priority in clearance. They should be checked by the Supdts. without directing the pax to the counter officer except in cases where it is considered necessary.

7. It has been observed that some times, the compilation of details relating to incoming flights, number of passengers cleared through Green Channel/Red Channel and normal time taken for clearance of passengers of a particular flight maintained separately in PRO's Per Capita Register are not realistic. Maintenance and compilation of data relating to various aspect of passenger facilitation is in important area which has to be meticulously maintained as these are the data which help us come up with improvements in specific areas relating to passenger facilitation. There is no reason why the factual data should not be incorporated or maintained in the prescribed Register. Therefore, AC/AP on duty should ensure that the factual data is reflected in the PRO's Per Capita Register.

[Standing Order NO. 3 / 97 issued by Commissioner of Customs, Sahar Intl. Airport, Mumbai]

[Note : in view of the revised limits for import of Foreign currency and revised procedural guidelines-

(a) para 2 of the above Standing Order may be read as follows-

" in cases where the passenger is in possession of foreign currency over US \$ 5,000 or equivalent, the same should be physically counted by the Superintendent posted for F. C. Counter and the Currency Declaration Form (C.D.F.) be issued after duly countersigning the same. If the passenger is in possession of foreign currency equivalent to US \$ 10,000 or more, the Currency Declaration Form to be so issued should also be countersigned by the Assistant / Deputy Commissioner on duty. A statement indicating names of the passengers who have been issued CDF for declaring currency equivalent to U S \$ 30,000 or more should be forwarded to AIU on day to day basis."

(b) first sentence of para 3 may be read as follows –

" The cases where the passenger wishes to detain his baggage intended to be transhipped, reshipped, for payment of duty or for any other reasons, the said baggage will be examined 100% and inventoried and detained as per procedure followed for detention for TP / Payment of duty / ITC / Reshipment, etc."]

IMPORT OF CERTAIN SPECIAL CLASS OF GOODS AS BAGAGE

1. IMPORT OF FIRE ARMS & AMMUNITION

Import of Fire Arms is prohibited as per the Exim Policy. However, imports of Arms and Ammunition by renowned sports persons is allowed as per conditions laid down in Notfn.No.147/94 (see Chapter "Customs Duties, Exemptions and Prohibitions" of this Manual.)

(1) As regards import of Fire Arms under Transfer of Residence Rules, extracts from, para 5 of letter F.No.497/57/87 Cus. VI dated 05.01.1988, issued by the Ministry is reproduced below:-

"So far as imports under Transfer of Residence Rules are concerned, a condition be put in the Arms licence of the importer concerned that the fire arms shall not be transferred to any person in India during the life time of the licence for consideration or otherwise..... Having regard to the sensitive value of the item, it should be ensured that Transfer of Residence facilities in respect of import of a fire arm are permitted only in those cases where proof of possession for a period of one year by way of a possession licence or an Arms licence, wherever required in the country of residence abroad, is invariably insisted upon, besides the purchase vouchers, to establish the period of ownership. If there are genuine doubts regarding the ownership & possession of the firearm for a minimum period of one year abroad, the concessions under the T.R. Rules should be denied & the firearms so imported, confiscated absolutely. It may also be ensured that the firearms imported under T.R.Rules are allowed clearance only at the level of Asst. Commissioner after due verification since personal firearms are not permitted for possession in many countries, particularly by persons who are not Nationals of that country."

In terms of the decision taken by the CCPA, we have been allowing one Firearm to persons who are transferring their residence to India and who fulfill other conditions prescribed in the Baggage Rules.

Ministry's instructions dated 05.01.88 issued from F. No. 497/57/87-Cus. VI may be referred to in this connection. In view of the conditions stipulated in the Ministry's instructions dated 05.01.88 only one Firearm can be allowed to such persons and the same is not allowed to be disposed off during the life time of that person, for consideration or otherwise. As such the question of allowing one Firearm under Transfer of Residence Rules, 1978 and another Firearm under Rule 16 of the Baggage Rules 1994 will not arise, nor can a Firearm be allowed under Rules 5 or Rule 8 of the Baggage Rules, 1994.

[Board's Circular No. 3/95 dt.12.01.95 in F. No. 496/4/94 (CUS.VI)]

(2) In this connection, it is pointed out that one firearm of permissible bore is allowed to be imported by persons transferring their residence to India under Chapter IV of the Baggage Rules, 1994. This is being allowed in terms of Ministry's instructions, dated 05.01.1988 issued from F. No. 497/57/87-Cus. VI. Such release is permitted subject to the condition that the firearm so cleared shall not be sold, transferred, loaned or otherwise parted with, for consideration or otherwise, to any other person in India during the life time of the person concerned. An endorsement to this effect is made in the arm licence and the passport of the passenger concerned at the time of clearance of the firearm. Such endorsement shall continue to be made by the Customs authorities at the time of clearance of the firearm in question.

[Extracts from Board's Circular No. 63/95-Cus., dated 07.06.1995 from F. No. 495/11/95-CUS. VI]

2. IMPORT OF AIR GUNS & AIR PISTOLS

The question whether the prohibition imposed on import of firearms under ITC Public Notice No. 131/86 of 13.11.1986 would render import of Air Guns in baggage as unauthorised, has been further examined in the Ministry. The Chief Controller of Imports & Exports has clarified that Air Guns would not be covered in the ban imposed on the import of firearms, on 13.11.86.

In view of the above the Board desires that Airguns and Air Pistols need not be treated as prohibited item under the said Public Notice when imported in baggage.

[Board's letter F. No. 495/107/87-Cus. VI dated. 30.03.1988]

However, the airguns / air pistols should be verified by police & no objection be obtained prior to clearance of the same from customs.

3. IMPORT OF FOREIGN EXCHANGE AND INDIAN CURRENCY

Foreign Exchange Management (Export & Import of Currency) Regulations, 2000

In exercise of the powers conferred by clause (g) of sub-section (3) of Section 6, sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999, the Reserve Bank makes the following regulations for export from and import into, India of currency or currency noted, namely:-

Short title and commencement

1. (i) These regulations may be called as Foreign Exchange Management (Export and Import of Currency) Regulations, 2000.

(ii) They shall come into effect on 1st day of June, 2000.

Definitions

2. In these regulations, unless the context requires otherwise,-

(i) 'Act' means Foreign Exchange Management Act, 1999 ;

(ii) the words and expressions used and not defined in these regulations but defined in the Act have meanings respectively assigned to them in the Act.

Export and Import of Indian currency and currency notes

3. (1) Save as otherwise provided in these regulations, any person resident in India,

(a) may take outside India (other than to Nepal and Bhutan) currency notes of Government

of India and Reserve Bank of India notes upto an amount not exceeding Rs. 5,000 per person ;

- (b) may take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each.

Explanation – ' Commemorative Coin' includes coin issued by Government of India Mint to commemorate any specific occasion or event and expressed in Indian currency ;

- (c) who had gone out of India on a temporary visit, may bring into India at the time of his return from any place outside India (other than from Nepal and Bhutan), currency notes of Government of India and Reserve Bank of India notes upto an amount not exceeding Rs. 5,000 per person ;

Prohibition on Export of Indian coins

4. No person shall take or send out of India the Indian coins, which are covered by the Antique and Art Treasure Act, 1972.

Prohibition on Export and Import of foreign currency

5. Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.

Import of foreign exchange into India

6. A person may –

- (a) send into India without limit foreign exchange in any form other than currency notes, bank notes and traveller's cheques ;
 (b) bring into India from any place outside India without limit foreign exchange (other than unissued notes) :

provided that bringing of foreign exchange into India under clause (b) shall be subject to the condition that such person makes, on arrival in India, a declaration to the Customs authorities in Currency Declaration Form (CDF) annexed to these Regulations :

provided further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange in the form of currency notes, bank notes or traveller's cheques brought in by such person at any one time does not exceed US \$ 10,000 (US Dollars ten thousands) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US \$ 5,000 (US Dollars five thousands) or its equivalent.

Export of foreign exchange and currency notes

7. (1) An authorised person may send out of India foreign currency acquired in normal course of business.

(2) Any person may take or send out of India, -

- (i) Cheques drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) Regulations, 2000 ;
 (ii) foreign exchange obtained by him by drawal from an authorised person in accordance with the provisions of the Act or rules or regulations or directions made or issued thereunder ;
 (iii) currency in the safes of vessels or aircrafts which has been brought into India or which has been taken on board a vessel or aircraft with the permission of the Reserve Bank.

(3) Any person may take out of India, -

- (i) foreign exchange possessed by him in accordance with the Foreign Exchange (Possession and Retention of Foreign Currency) Regulations, 2000 ;
 (ii) unspent foreign exchange brought back by him to India while returning from travel abroad

and retained in accordance with the Foreign Exchange (Possession and Retention of Foreign Currency) Regulations, 2000 ;

- (4) Any person resident outside India may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared in accordance with the proviso to clause (b) of Regulation 6, on his arrival in India.

Export and Import of currency to or from Nepal and Bhutan

- 8. Notwithstanding anything contained in these regulations, a person may –
 - (i) take or send out of India to Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs. 100 in either case) ;
 - (ii) bring into India from Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs. 100 in either case) ;
 - (iii) take out of India to Nepal or Bhutan, or bring into India from Nepal or Bhutan, currency notes being the currency of Nepal or Bhutan.

[Reserve Bank of India Notification No. FEMA 6 / 2000-RB, dated 3.5.2000]

CURRENCY DECLARATION FORM (CDF)
(See Regulation 6)

Instructions to passengers

- 1. This form need not be completed in cases where the aggregate value of the foreign exchange brought in by the passenger in the form of currency notes, bank notes, or traveller's cheques does not exceed U S \$ 10, 000/- or its equivalent and / or the value of foreign currency notes does not exceed U S \$ 5, 000 or its equivalent.
- 2. Passengers are advised to produce this form to a bank authorised to deal in foreign exchange or money changer at the time of conversion of foreign exchange into Indian rupees or reconversion of rupees into foreign exchange.
- 3. Visitors to India may please note that in case they do not wish to encash all the foreign exchange declared above they should retain this form with them for production to the Customs at the time of their departure from India to enable them to take with them the unutilised balance.
- 4. Details of travellers' cheques/currency notes need not be furnished.
- 5. Foreign tourists need not indicate their address.

(To be completed by passenger)

I hereby, declare that the following foreign exchange is in my possession at the time of my arrival in India.

(Aggregate value only)

	Name of currency	Currency notes	Travellers Cheques	Total
1				
2				
3				

Signature
Passport No.
Nationality
Address in India

To be completed by Customs Officer

This is to certify that the above named person has brought with him foreign exchange as indicated above.

Date

.....
(Stamp and Signature of Customs Officer)

(Space for endorsement)

Date	Distinctive Number of Encashment Certificate	Amount changed	Stamp and Signature of Bank or Money changer
(1)	(2)	(3)	(4)

Currency declaration forms – Procedure

In view of the potential for manipulation- with a view to smuggling out large amount of foreign currency-in the Currency Declaration Forms filled in by passengers at the time of arrival in India, the following procedure should be adopted for issue and collection of the Currency Declaration Forms:

- i) Currency Declaration forms should be in the handwriting of the passenger concerned to the extent possible, and should invariably give details of the currency declared both in number and words.
- ii) Duplicate carbon copy of the Currency Declaration Form should be retained flight wise at the airport of issue.
- iii) Currencies should not be indicated in abbreviations, indicating the nature of the currency (e.g. U S Dollars, Pound Sterling, German Marks, etc., should be spelt out in full).
- iv) The Supdt. (Prev.) countersigning the Currency Declaration Form should write his name in block capital letters.
- v) At the port of exit, any Currency Declaration form for a sizable value should be immediately brought to the notice of Superintendent or other Senior Officers on duty and in case the passenger appears to be suspicious he or she should be properly interrogated particularly when the amount declared in the Currency Declaration form is sought to be re-exported within a short time.

Further, officers are directed to ensure that the passengers importing currency/travellers cheques etc., in excess of permissible limit equivalent to U. S. Dollars 10,000/- fill in the currency declaration forms in duplicate at the time of arrival as required in (i) & (iii) above. The officers while issuing the Currency Declaration forms must ensure that the passengers possess the currency that they have declared before the officers accept the currency declaration. The officer should certify the import of currency after verifying that the required details are properly filled in by the passengers and the officers must sign in full and also write their names in capital letters below their signature. They should mention the amount in words and score out blank space with ink across the page. In cases where the amount of foreign currency mentioned on the declaration form exceeds US \$ 10, 000/- or its equivalent in cash, the Supdt. should bring this to the notice of the supervising Asstt. Commissioner i/c Batch and Count the same in his presence and obtain his signature on the Currency Declaration Form.

At the time of departure the passenger is required to surrender the C.D.F. to the Customs Officer in Departure. The C. D. F. is not valid for subsequent trips. The officers in departure should enquire from the departing passengers if they have the CDF to surrender.

Foreign Exchange Management (Possession & Retention of Foreign Currency) Regulations, 2000

In exercise of powers conferred by clause (a) and clause (e) of Section 9, clause (d) and clause (g) of sub-section (2) of Section 47 of the Foreign Exchange Management Act, 1999, the Reserve Bank of India makes the following regulations, namely :-

Short title and commencement

1. (i) These regulations may be called the Foreign Exchange Management (Possession & Retention of Foreign Currency) Regulations, 2000.
- (ii) They shall come into force on 1st day of June, 2000.

Definitions

2. In these regulations, unless the context requires otherwise,-
 - (i) 'Act' means the Foreign Exchange Management Act, 1999 ;
 - (ii) 'To possess' or 'to retain' means to possess or to retain in physical form and the words 'possession' or 'retention' shall be construed accordingly.
 - (iii) The words and expressions used but not defined in these Regulations shall have the same meaning respectively assigned to them in the Act.

Limits for possession and retention of foreign currency or foreign coins

3. For the purpose of clause (a) and clause (e) of Section 9 of the Act, the Reserve Bank specifies the following limits for possession or retention of foreign currency or foreign coins, namely :-
 - (i) possession without limit of foreign currency and coins by an authorised person within the scope of his authority ;
 - (ii) possession without limit of foreign coins by any person ;
 - (iii) retention by a person resident in India of foreign currency notes, bank notes and foreign currency travellers' cheques not exceeding US \$ 2000 or its equivalent in aggregate , provided that such foreign exchange in the form of currency notes, bank notes and travellers' cheques ;
 - (a) was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India ;
 - or
 - (b) was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation ;
 - or
 - (c) was acquired by him by way of honorarium or gift while on a visit to any place outside India
 - or
 - (d) represents unspent amount of foreign exchange acquired by him from an authorised person for travel abroad.

Possession of foreign exchange by a person resident in India but not permanently resident therein

4. Without prejudice to clause (iv) of regulation 3, a person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and travellers' cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the regulations made under the Act.

Explanation : For the purpose of this clause, 'not permanently resident' means a person resident in India for employment of a specific duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years.

[Reserve Bank of India Notification No. FEMA 11 / 2000-RB dated 3.5.2000]

Payment of amount of Penalties by Residents on behalf of NRIs / Foreigners

Section 9 (1) of the FERA 1973 provides that no person resident outside India shall, without the general or special permission of Reserve Bank of India –

- (i) Make any payment to or for the credit of any person resident outside India.
- (ii) Make any payment to or for credit of any person by order or on behalf of any person resident outside India.

Due to these restrictions, resident Indians were not permitted to pay the penalties, imposed on NRIs / foreign nationals under the Customs Act, on behalf of them. The Reserve Bank of India examined this situation, put forth by the Sahar Airport Commissionerate vide letter F. No. Air Cus/49/MII/1500/96 /72 dt.07.01.1997. (F. No. Air Cus/50/53/97), and agreed to relax these restrictions and allowed payment of penalties in Indian rupees by the residents on behalf of NRIs / foreign nationals, vide their letter No. EC. CO. EPD. 1262./18.26.09/97 dated 26th May, 1997.

4. IMPORT OF COMMERCIAL GOODS AS BAGGAGE:

Para 5.6 of the Export/Import Policy 1997-2002 allows import of *bonafide household goods and personal effects* as part of passengers' baggage. The Proper Officer should weigh the import of goods vis-à-vis passengers' status and attending circumstances in this context and decide whether the goods imported can be termed as his/her bonafide household goods and personal effects.

Board's instructions regarding permissibility of free allowance to passengers, when the whole of the goods or a part of the goods of their baggage is treated to be imported in commercial quantity, is reproduced below-

(A) It has come to the notice of the Board that adjudicating authorities at different levels are holding different opinions whether free allowance would be permitted on import of baggage, where part of the goods are found to be in commercial quantity. The issue of import of consumer goods in commercial quantity had earlier been examined by Board and instructions were issued vide circular No. 2/92, dated 31-01-1992 and vide File No. 495 / 10 / 92-Cus. VI. Dated 07-07-1992 and recently vide F.No.495 / 6 /96-Cus. VI dated 06-05-1996. The gist of the said instructions are that import of the consumer goods in commercial quantity is not permissible even in the present EXIM Policy and in addition they are not to be adjudicated. The present problem is where a part of the goods are in the commercial quantity and that part attracts adjudication and penalty, whether free baggage allowance can be allowed to the other part of the goods which is not in commercial quantity. The matter has been examined and it is found that the entire baggage imported by a passenger does not become non – bona fide or tainted because some articles in the baggage are held liable to confiscation being in commercial quantities. Therefore, that portion of the baggage which is not in commercial quantity would be eligible to free baggage allowance.

[Board's Circular No.64/96-Cus.,VI dated 17.12.1996 from F.No.495/6/96-Cus-IV]

(B) Instances have come to the notice of the Central Board of Excise and Customs that in some cases of import of baggage in commercial quantity, the Adjudicating / Appellate authorities have dropped / set aside the order imposing redemption fine and personal penalty on non *bona fide* baggage, on the plea that these items are otherwise freely importable under the EXIM Policy.

2. Vide Board's instructions dated 6-5-1996, it was clarified that import of goods in baggage in commercial quantities would not be permissible within the scope of the Baggage Rules, even on payment of baggage rate of duty and these had to be adjudicated for imposition of suitable redemption fine / penalties etc. Vide Board's instructions dated 17-12-1996, it was further clarified that the portion of the baggage which is not in commercial quantity would be eligible to free baggage allowance.

3. Copy of Board's instructions issued vide F.No. 495 / 6 / 96- Cus., dated 6-5-1996 (enclosed) and dated 17-12-1996 may be re-circulated to the all concerned once again for strict compliance.

F. No. 495 / 6 / 96 – Cus. VI
 Government of India
 Ministry of Finance
 Department of revenue

New Delhi, the 6th May, 1996.

To,

Shri D S Solanki,
 Chief Commissioner of Customs, Mumbai.

Subject : Import of goods in commercial quantities in baggage

Sir,

Please refer to your D.O. letter F. No. S / V – 10 (28) CCU / 96, dated the 16th April, 1996, on the above subject. The Board has examined the issue in detail and it is confirmed that import of goods in commercial quantity could not be permissible within the scope of the Baggage Rules, 1994, even on payment of baggage rate of duty. The baggage rules operate in consonance with the EXIM Policy. The EXIM Policy specifically restricts import of consumer goods howsoever described in para 156 A. therefore, under the guise of the baggage, the same EXIM Policy cannot be allowed to be subverted and such goods therefore, be adjudicated before clearance.

2. The Board's instructions No. 2/92 dated 31-1-1992, mentioned that " These articles are, however, not permitted for importation as baggage in terms of relevant ITC / Notice, such goods would be released on adjudication after levy of appropriate fine and penalty". Similarly, the Board's instruction dated 7th July, 1992, issued from the F. No. 495 / 10 / 92 – Cus.VI also mentioned " Therefore, normal restrictions and prohibitions as have been specified in the revised import policy of goods, irrespective of whether they are brought by air, sea or baggage would be applicable". It may be seen that both the instructions has spoken of following the EXIM Policy and therefore, the practice of allowing such goods on payment of duty only was irregular. In addition, it was mentioned in the Commissioners Conference at Calcutta and Cochin that other Collectorates were not allowing goods in commercial quantities without adjudication.

[C B E & C Circular No. 29 / 2000 dated 11-4-2000]

5. IMPORT OF PETS AS BAGGAGE

A passenger may be allowed to import one or two pets, provided their value falls within his duty free allowance under the Baggage Rules. The pets should be released only after verification of necessary Health Certificates from the place of import.

[Board's letter F. No. 495/49/72- CUs VI dated 03.10.1972]

Note:

Clearance of one dog or other domestic pets like cats and birds in a limited number may be allowed without Import Trade Control restrictions on furnishing the following Health Certificates to the Customs Authorities-

- (i) a Health Certificate from a Veterinary Officer authorised to issue a valid certificate by the Government in the country of export, to the effect that the dog is free from AUJOSSKY'S disease,

Distemper Rabies, LEISHNAOSIS and LEPTOSPIROSIS and in case of cats – from DISTEMPER and RABIES.

(ii) In case of import of dogs or cats originating from such countries where Rabies infection is known to exist, a Health Certificate containing a record of vaccination, vaccine issued, brew of the vaccine and name of the producing laboratory, and to the effect that the dog/cat was vaccinated against Rabies- more than one month but within 12 months prior to actual disembarkation- with nervous tissue vaccine or within 36 months with chicken embryo vaccine, both the vaccines have previously passed satisfactory potency tests.

(iii) in the case of parrots, a Certificate to the effect that the parrots were subjected to a compliment fixation test for PSITTACOSIS with negative results within 30 days prior to actual disembarkation.

6. GOODS IMPORTED UNDER ATA CARNET

In order to facilitate International Trade and Technology, the Govt. of India have acceded to the "Customs Convention on A. T. A. Carnet for temporary importation of goods". Presently the temporary duty free imports (including re-imports) and exports (including re-exports) of the goods intended to be displayed at exhibitions/fairs in India and abroad as approved by the Govt. of India or by the Indian Trade Promotion Organisation are only allowed. The following goods are excluded from ATA Carnets procedure: -

1. Consumables and goods meant for distributions or sale which are not likely to be re-exported.
2. Goods imported through the medium of post.
3. Transit goods.

The Govt. of India have issued Notifications No. 157/90-Cus, dated 28.03.90 (effective from 01.05.1990), under Section 25(1) of the Customs Act, 1962. In terms of notification goods described in Schedule I to the notification, when imported into India for display or use at any event specified in Schedule II to the Notification, are exempt from the whole of Customs duty and the whole of additional duty leviable thereon and the Notification no. 158/90-Cus, dated 28.03.90, exempts these goods from auxiliary duty subject to the following conditions:

1. the event specified in Schedule II is held in public interest and is sponsored or approved by the Government of Indian or the Trade Fair Authority of India.
2. the said goods are imported under an ATA carnet issued in accordance with the Customs Convention on ATA Carnet for temporary admission and the Carnet is guaranteed by the Federation of Indian Chamber of Commerce and Industry, which has been appointed as the guaranteeing association for ATA Carnet in India (hereinafter referred to as the Federation)
3. the said goods in all respects conform to the description, quantity, quality, value and other specifications given in the ATA carnet duly certified by the Customs authorities at the country of exportation.
4. the said goods shall be exported within a period of six months from the date of importation.

Provided that where the goods are exported within the said period of six months and again re-imported, the period of six months shall be computed from the date of first clearance:

Provided further that when the Central Government is satisfied that it is necessary in the public interest so to do, it may extend the said period for a further period not exceeding six months;

5. in the event of failure to export the goods within the period specified in condition (4), the customs duty leviable on the goods as on the date of clearance shall be paid by the Federation:

Provided that the Federation shall not be liable to pay the Customs duty in cases where the said goods are sold in exhibitions or fairs or otherwise disposed of in India on payment of customs duty with the prior approval of the Government of India (Department of Revenue). Only such goods will be allowed to be sold as are otherwise permissible for import into the country under the Import Policy in force at that time and/or the buyer holds a valid import licence duly endorsed by the Licensing Authority.

It will be noted from the above that:

1. As per the convention, the ATA carnet is a sole document for temporary importation (including re-importation) and temporary exportation (including re-exportation) of goods under the Convention.
2. the Federation of Indian Chambers of Commerce and Industry (hereinafter referred to as the Federation) shall be the sole "Guaranteeing Association" for ATA Carnets in India.
3. the validity of ATA Carnet shall not in any case exceed one year from the date of issue;

The Director General of Inspection, Customs & Central Excise has been designated as the "authorised officer" by the Ministry of Finance, Deptt. of Revenue, for the purpose of Convention on ATA Carnet. The Director General of Inspection, Customs & Central Excise receives approval of Exhibitions/Fairs by different Ministries. The centralised records of such approval is kept by the Directorate General. Such approvals are then promptly communicated by the DGICCE to the Custom Houses and Guaranteeing Associations.

It is but mandatory to restrict this facility only to Exhibitions/Fairs approved by the Govt. of India. It has been observed that in large number of cases, test equipment's, instruments or other goods of high value imported as accompanied baggage by passengers have been cleared against ATA carnet for temporary importation of goods despite the clear instructions that this facility is restricted to specified goods imported for display or use at specified exhibitions/fairs and similar events covered under the Notification no. 157/90.

It is, therefore, to all concerned that henceforth as and when any passenger declares any goods covered by ATA Carnet papers and seeks clearance without payment of duty, the said goods should be cleared under carnet papers only if they are covered under the Notification no. 157/90. In all such cases, prior permission of the Asstt. Commissioner of Customs (AP) on duty must be obtained.

In the event any import claimed clearance under carnet but the said goods are not covered under the Notification no. 157/90-Cus, the same should be cleared under the prevalent Baggage rules, 1998, as amended, alongwith other prohibition and exemption under the law.

The govt. of India vide their letter F.No. 528/220/91-Cus (TU), ICD, dated 23.06.1994, have conveyed its decision to allow import of jewelry free of duty under the Notification no. 157/90 – Cus, dated 28.03.90, through international Airports / Air Cargo Complex at Sahar Village, Mumbai, and Air Cargo Complex, New Delhi, subject to observance of certain procedures.

Procedure For Imports :

1. The ATA Carnet has four counterfoils and vouchers viz Exportation counterfoil and Voucher, Re-importation counterfoil and voucher, Importation counterfoil and voucher and Re-exportation counterfoil and voucher.
2. For monitoring and processing the imports / exports of goods cleared under Carnet, the Case File Office will maintain a register as prescribed by the Board.
3. Asstt. Commissioner (AP) / Air customs superintendent and one ACO with specific instructions for clearance of imports under Carnet in addition to their normal duties.
4. In the event of imports under carnet, the ACS i/c Carnet will first confirm that the goods are imported for display or for use at Govt. approved Exhibitions/Fairs and/or similar events which are covered under notification no. 157/90.

5. Air Customs superintendent posted for Carnet clearance will verify the general list given on the reverse of the voucher with reference to the description, marks and numbers and certify to that effect. On the face of the importation, counterfoil and voucher and re-importation counterfoil and voucher, as the case may be, will certify under his full signature with name and date and will retain voucher for departmental use. The verification report will be made in column (d) "other remarks" in the original and duplicate copy of the importation voucher, and since the imports will be under passenger's baggage mode the classification BTN 98.03 will be mentioned in column 2 on the reverse side of the voucher. The Air Customs superintendent should also obtain the details of exhibition, i. e., name and venue of Fair/Exhibition and its sponsors. The details of exhibition will be mentioned on the reverse side of the voucher so as to keep track of the imports vis-à-vis sponsors. Air Customs superintendent Carnet should ensure that all the carnet papers which are retained in the batch are forwarded to CFO through batch P.R.O. for entering in the Carnet Register and for further monitoring of its exports. In the event the goods are intended to be exported out of India from place other than the Airport of Import the ACS i/c Carnet should ascertain the place of re-export and mention the same on reverse side of the voucher.

Procedure For Exports

1. The ACS i/c Departure should properly verify the description, quantity, marks and numbers and endorse the re-exportation voucher and counterfoils and the goods will be allowed to be re-exported out of India. ACS i/c Departure will indicate the flight number and date by which the goods are being re-exported. The endorsements will be given by ACS i/c Departure under his seal and full signatures with date. He will also mention details of Fair/Exhibition for which the goods were temporarily imported. Thereafter, ACS i/c Departure should ensure that all the Carnet papers are forwarded to ACS i/c CFO on the next working day for correlating the entry regarding the exports of goods. In the event the goods were not initially imported at the Airport of departure but exported from the Airport in such cases, the re-export voucher should be sent to the concerned Commissionerated by CFO for co-relating with the importation.

For monitoring the importation/exportation through ATA Carnet, one register indicating the following details such as Carnet voucher no./date of issue, Name of the pax/Sponsor's name and address, Description of the goods in brief, flight number/date for all the batches will be maintained module wise by Arrival and Departure. PRO i/c Batch will ensure that all the Carnet papers are forwarded to CFO without any delay on the next working day.

The Directorate General of Inspection being the monitoring authority for all the clearances granted by the Custom Houses, is to be kept informed through periodical statements from the Airport regarding description and value of the goods imported under carnet and subsequent re-export and amount of customs duty recovered thereon in case of failure to re-export of the goods. The following statements will be prepared by the CFO (Carnet Cell) and sent to Directorate General of Inspection, Customs & Central Excise, New Delhi, before 10th of the month following the quarter for which the statement pertains. The proforma of statements are enclosed herewith:

1. Quarterly statement regarding imports under the convention.
2. Quarterly statement of re-exports.
3. Quarterly statement of re-exports in respect of imports made through other Custom Houses.
4. Quarterly statement of exports under the convention.
5. Quarterly statement of re-imports under the convention ; and
6. Quarterly statement of re-imports in respect of exports made through other Custom Houses.

(I) IMPORT

<u>Sr. No.</u>	<u>I.T.P.O. No.</u> (<u>Indian Trade promotion</u> <u>Organisation</u>)	<u>Passengers/Sponsors</u> <u>Name and address</u>	<u>Description of</u> <u>goods</u>	<u>B.T.N.</u> <u>No.</u>
(1)	(2)	(3)	(4)	(5)

<u>Carnet No.</u>	<u>Value</u>	<u>Rate of duty</u>	<u>Amount of Duty</u>	<u>Thoka/Registration</u> <u>No. & Date</u>	<u>Carnet issuing</u> <u>authority</u>
(6)	(7)	(8)	(9)	(10)	(11)

<u>Date by which</u> <u>Demand Notice</u> <u>to be issued</u>	<u>Name & signature</u> <u>of A.C.O.</u> (<u>Examining Officer</u>)	<u>Name & signature</u> <u>of A.C.S.</u> (<u>Appraising Officer</u>)	<u>Remarks</u> (<u>if any</u>)
(12)	(13)	(14)	(15)

(II) EXPORT

<u>Sr. No.</u>	<u>Date of Actual</u> <u>Export</u>	<u>Port from which</u> <u>exported</u>	<u>Export</u> <u>voucher</u> <u>No.</u>	<u>Date of issue</u> <u>of Demand</u> <u>Notice</u>	<u>Cash No. &</u> <u>date</u>
(1)	(2)	(3)	(4)	(5)	(6)

<u>Name & signature</u> <u>of A.C.O.</u>	<u>Name & signature</u> <u>of A.C.S.</u>
(7)	(8)

(III) RE EXPORT

<u>Date of Actual Export</u>	<u>Export through</u>	<u>Exportation</u> <u>voucher No.</u>	<u>Demand Notice</u> <u>issued</u>	<u>Name and sign</u> <u>of A.C.O. (E.O.)</u>
(1)	(2)	(3)	(4)	(5)

<u>Name and sign</u> <u>of A.C.S. (A.O.)</u>	<u>Remarks</u> (<u>if any</u>)
(6)	(7)

MISHANDLED BAGGAGE

Sometimes, the baggage of a passenger, though booked in the same aircraft/flight by which the passenger travels, does not arrive at the destination with the passenger due to mis-handling of the baggage by the airlines concerned. Such baggage arrives by a subsequent flight and conversely sometimes the baggage of a passenger may arrive by a flight prior to the flight by which the passenger eventually arrives. Such mishandled baggage should be sealed and kept for the period of 48 hours, in the place provided by Airport Authority in vicinity of Arrival Hall. Immediately, on arrival of such mishandled baggage, the airlines concerned will prepare Airlines Operators Committee (A.O.C.) card, mentioning thereon the description and available details of such baggage, seal the packages with airlines seals and deposit the same with the Customs after making due entries in the Register maintained for the purpose. The Register so maintained shall have the following columns.

Sl. No.	Date	AOC No.	Flight No.	No. of pkgs.	Description	Wt.	Signature & name of Airlines staff ,Time & date
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In the event of the owner/authorised person claiming the packages within 48 hours of detention, the airlines concerned shall handover the packages to him alongwith A.O.C. Card after obtaining his receipt in the Register. The passenger shall thereafter present such baggage to the Customs for examination and clearance on the strength of the A.O.C. and the Landing Certificate. In case the mishandled baggage arrives before the arrival of the passenger & if the passenger has arrived within 48 hours of its deposit in the Warehouse, he may directly receive such packages from the Airlines, acknowledge receipt of the same & clear the same through Customs, alongwith his other accompanied baggage

If the baggage remains uncleared even after 48 hours, the same should be transferred to Mishandled Baggage warehouse of Customs, by the airlines with due entries made in the Registers.

The Officer posted in Mishandled Baggage warehouse should receive the mishandled baggage in securely packed condition with A.O.C. tag thereon, seal the same with Customs seal, enter the relevant particulars in Mishandled Baggage Register. As and when claimant/passenger comes to clear such packages, he should forward the baggage in Arrival Hall to be cleared as per Baggage Rules. He should also ensure that the officers examining and clearing such baggage enter the details and clearance particulars against the respective entry in the Mishandled Baggage Register. On many occasions passengers, through airlines, request for re-export/Transshipment of the mishandled baggage. The officer should examine such packages and put up for orders to Supdt./Asstt./Dy. Commissioner, as the case may be, for orders.

Mishandled baggage which cannot be cleared within a period of 30 days from the date of deposit with Customs authorities is treated as unmanifested and excess-landed cargo as there are no passengers to claim the baggage and as such the Deptt. can proceed to confiscate the same after issuing due notice to the Airlines concerned.

Clearance of Mishandled Baggage by Airlines

After due consideration of the requests made by certain Airlines to permit them to clear Mishandled Baggage of passengers who have travelled on their Airlines, so as to enable them (Airlines) to deliver the same at the place of residence of the passenger, the department has decided, to allow the request and accordingly permit Airlines to clear Mishandled Baggage of passengers arriving at Sahar International Airport by their respective Airlines, subject to the following conditions:

1. The passenger shall hand over the Landing Certificate and / or P.I.R. issued by the Airlines (with the endorsement of the Customs in lieu of Landing Certificate), in original.
2. The passenger, in addition to above, shall also authorise the concerned Airlines, in a proper authorisation form as per Proforma in Annexure 'A', to produce the said Mishandled Baggage to the proper officer of Customs Airport, for the purpose of examination and clearance as per rules.
3. In order to comply with the provisions under section 77 of the Customs Act, 1962, the passenger shall prepare a list of all articles contained in the Mishandled Baggage under his signature and hand over the same to the Airlines alongwith the above authorisation. The passenger shall, in this list, indicate all major and valuable articles and other articles which could be specifically listed and also indicate their quantity and value. Wherever the quantity cannot be indicated, the total value of that particular item should be indicated against that item. Wherever, it is not possible to indicate the item specifically, for example, various items under dry fruits, etc., the same could be indicated in the list under a general category for example, Foodstuff, Small (children) games, toys, stationery items, etc. Only the value, in such cases, may be indicated. In case, however, if the item in the general category as above, is beyond reasonable quantity, the total weight of the same should be indicated, as in the case of dry fruits, etc.
4. The passenger shall further give an undertaking that he shall not hold the Customs, in any way, responsible for non-delivery or late delivery of his baggage, damage or pilferage, if any, provided the same, if caused during the time of examination by Customs in which case, the Airline representative shall immediately and before final clearance from Customs, bring the fact to the notice of the Asstt. Commissioner of Customs on duty and all responsibility before and after the Customs clearance shall lie with the concerned Airlines. The passenger shall also undertake to pay the duty, if any, payable on his mishandled baggage through the concerned Airlines. The duty thus paid shall be final, and no complaints or requests for refund of duty, in part or full, shall be entertained.
5. The passenger shall, in addition to the above, also produce through the concerned Airlines, attested copies of relevant pages of his passport showing his (i) Nationality, (ii) Name and Address, (iii) Passport No., Date and place of issue, (iv) Visa and (v) Last Departure (Emigration) Stamp from India, if any, and (vi) Last Arrival (Immigration) Stamp.
6. The representative of the concerned Airlines who would be approaching the Customs for clearance of any mishandled baggage of such eligible passengers, shall also produce a letter to the Customs, undertaking payment of duty, if any, on behalf of the passenger and an authorisation, as per proforma in Annexure B, issued by the Manager or the Duty Officer of the concerned Airlines. This authorisation shall also bear the Airlines stamp.
7. The facility, as provided above, for clearance of the mis-handled baggage shall be applicable only in case of bonafide baggage of a passenger and all restrictions/prohibitions/licence requirements, Bond/Bank Guarantee, etc., as provided in the Customs Act, 1962, and the rules made thereunder, shall continue to apply on the mishandled baggage clearance also and no exemptions/relaxation would be provided for them. The passenger would be answerable for any mis-declaration regarding the contents of the mishandled baggage and/or recovery of restricted/prohibited goods from the same. In case of such an eventuality, the entire or part of his baggage would be detained/seized, and necessary proceedings under the Customs Act, 1962, initiated, and in such circumstances, the authorisation given shall not be acceptable, and the passenger would be required to present himself in person, or authorise a specific person under a power of attorney, to appear before the adjudicating authority. In case the passenger fails to appear within the specified time limit, or till such time as granted by the Asstt. Commissioner on request of the passenger, disposal action shall be initiated as per rules or orders made thereunder.

8. As mentioned earlier, the concerned Airline alone, would bear full responsibility regarding the Mishandled Baggage, before and after its clearance from Customs, and the passengers or the Airlines, shall not hold the Customs responsible for any dispute arising between them, for any reason whatsoever, and the examination of the mis-handled baggage and the documentation thereof, shall be only for Customs purpose and will bear no evidential value for the settlement of any disputes, between the passengers and the Airlines.

9. The facility of clearance of mishandled baggage by the Airlines as indicated above, shall not be applicable in cases wherein, the passenger has such items in his Mishandled Baggage on which he desires to avail benefits under the Transfer of Residence Rules.

ANNEXURE – A

FORM OF AUTHORITY

I, _____ (name of passenger), holder of _____ (Nationality) Passport NO. _____ issued at _____ on _____ arrived from _____ (name of place and country) on _____ (date) by flight No. _____. My (_____) pieces of baggage has been mishandled for which I have been issued a P.I.R. No. _____ by the Airline and a landing certificate No. _____ dated _____ by the Customs.

As I am unable to come to the Airport personally to clear my abovesaid mis – handled baggage, I hereby authorise the Airline by which I have travelled viz. _____, to clear the said mishandled baggage through Customs for onward delivery at _____ which is the place where I shall be residing while in India.

I have handed over a list of all the items containing in my aforementioned mis – handled baggage along with their values, to the said Airline and I undertake to pay the Customs duty, if any, through the said Airline, immediately after the said baggage is examined by the Customs and their contents assessed.

I am aware, that this facility is being given entirely for my convenience and therefore, I accept the same at my risk and shall not hold Customs responsible, for any damage or pilferage of my baggage, or raise any dispute on the duty charged on the items.

Signature (of pax)

Date:

I accept on behalf of the Airline

Signature of Airline representative / Date

Name Designation _____

Airline _____

Before me

Signature Date of Supdt. (Customs)

Name

ANNEXURE – B

AUTHORISATION BY AIRLINE

I _____ Manager / Duty Officer of _____ (Name of Airline), hereby, authorise Shri _____ (Name of pax) for Customs clearance and to

collect the same after clearance from Customs for onward delivery to the said pax. The _____ (Name of Airline) hereby, undertakes to pay the Customs duty if any, immediately after examination and assessment of the said baggage otherwise provided in S.O. No. 3/99 dated 30.03.99. All necessary documents for clearance of the mishandled baggage, as required under the said S.O., are being produced along with this authority letter.

Signature / Date

Name

Air line Stamp

Designation

[Based on F.N.5/99 dated. 31.03.99 issued by Sahar Airport Mumbai]

DETENTION AND WAREHOUSING OF THE BAGGAGE

Dutiable/prohibited goods imported by passengers and in respect of which a true declarations has been may be held in safe custody or detained as provided for under section 80 of the Customs Act, 1962 for purpose of being returned to him on his leaving India for Reshipment (re-export).

Similarly, goods dutiable under various Baggage Rules which passengers desire to clear subsequent may also be detained temporarily for clearance on payment of duty and/or fine other dues under approval orders.

All confiscated goods are required to be detained/held in safe custody until appellate procedure is complete and disposal takes place by release to the owners as per Appellate orders or by sale under requisite orders. Unclaimed packages are also to be detained pending any (future) claims from the owners or final disposal.

(i) Re-shipment/ transhipment goods

The procedure for detention and ware housing for re-shipment/transhipment packages under instructions issued from time to time is as under:

The Detention Officer will receive all the reshipment/transhipment packages under issuance of Detention Receipts//Advices. He will enter all the particulars of such items and the name and address of the importer/owner in the Register maintained for the purpose, and have them sealed in the presence of the owner/passenger. The D.O. will then prepare forwarding-challans, serially numbered in the approved Proforma, in triplicate, for all such packages and enter the challan numbers against the entry in the warehouse register. Valuable articles will be kept in the cupboard in charge of D.O. The location of all the detained packages should be indicated in the respective register as well as the challans Such packages along with the challans will be handed over to relieving D.O.s if the D.O.s work in shift.

These packages will be handed over to the reshipment warehouse-Officer who will tally the items with the respective challans and make entries in the warehouse register and take custody of all packages. Thereafter the reshipment-warehouse-officer will enter the particulars, such as, description of the packages, name and address of the passenger and challan number, in the register maintained by him As and when the passenger/owner approaches the reshipment. Warehouse Officer for taking delivery of these packages during day, for transhipment/reshipment he will ensure before delivery of such packages, that warehouse charges if any are recovered on such items. The reshipment warehouse

officer should hand over the packages meant for transshipment/reshipment during night or outside office house to the D.O. if attached to each batch.

(ii) Dutiable items imported by passengers (pending payment of duty)

Where the passengers are unable to clear dutiable items imported as baggage on the day of arrival and desire to clear the same subsequently, the same will be forwarded by the Baggage Officer under issue of a detention receipt duly signed by him, his bay Supdt and A.C. on duty to the D.O. The D.O. will receive all such packages or items under issue of proper Detention receipt, seal the same in the presence of the passenger and enter the description of the goods, the name and address of the importer and the reasons for detention in the Register maintained by him for this purpose. Preparation of challans and handing over the packages and the challans to the relieving D.O. are similar to the procedure laid down for T.P./R.S. The valuable items will be kept safely in the cupboard. The main Warehouse/Officer will receive all such packages after tallying the particulars on the challan with the goods. He will then have them properly stacked in the warehouse and enter particulars of detention (including the original entry number) in his register maintained for this purpose and indicate location in the said register.

(iii) Confiscated goods

The Baggage Officer will ensure correct inventory and secure packing the confiscated goods before the same are forwarded for detention. If there are any perishable items he should necessarily separate these items and have them packed separately. Thereafter all the confiscated goods will be forwarded to the D.O. under escort of a sepoy for the purpose of detention along with the case papers. The D.O. will check the packing and have them sealed in the presence of the passenger and then receive for safe custody. He will record the required particulars in the 'Confiscated' Register maintained by him. No detention receipt is required to be issued in such cases. However, he will enter the Warehouse (Register) Entry number/date in both the copies of the adjudication papers and hand over the duplicate thereof to the passenger which will serve the purpose of a Detention Receipt. The Original copy of the adjudication order should later on, be sent back to the Baggage Officer for further disposal. The valuable items will be kept safely in the separate cupboard provided to him for the purpose.

The D.O.s will maintain a Charge Register for the purpose of handing over/taking of the confiscated items.

At 9 a.m. on all working days, the D.O. will hand over the packages detained during the preceding 24 hours ending 7 a.m. to the Main Warehouse/Strong Room Officer along with two copies of the challans who will verify the particulars of goods with the challans as also the entries made in the relevant Registers before accepting such goods. The Main Warehouse/Strong Room officer will ensure proper stacking/custody of such goods after making necessary entries in the registers maintained by him (also showing the original entry number made by D.O.) The main warehouse/strong room officer will retain one copy of the challan with him and return, the other copy after entering therein his Register-entry number and location back to D. O.

(iv) Record of Challans

The main warehouse Officer 'CON' Officer and Transshipment/Reshipment Officer will sign all the three copies of challans in token of the receipt of the packages. One copy of the challan will remain on the records of Detention Officer, which will be kept in guard files arranged serially. The remaining two copies of the challans will be taken over by the receiving officers. After making relevant entries in their registers, one copy of the challan should be sent to the Disposal Unit indicating therein relevant entry numbers and location.

(v) Unclaimed Packages:

Unclaimed packages found in the Baggage Hall and handed over by Airlines will similarly be received by the D.O. along with the Officers' report for safe custody. The handing over and forwarding

procedure for such unclaimed goods will be on the same line as in the case of other goods received by him.

OFFICE OF THE COMMISSIONER OF CUSTOMS

Air Customs Pool, N.I.P.T., Sahar, Mumbai – 400 099.

DETENTION RECEIPT

Batch

Receipt No.

Goods detained for payment of duty shall be disposed of after 15 days from the date of issue of this receipt without any further notice

- | | |
|---|-------------------------------|
| 1. Name of Passenger: | Flt. No. & Date: |
| 2. Full Address: | 3. Nationality: |
| | P. P. No. |
| 4. Accompanied by (Adults / Minor) | 5. F. A. Availed |
| 6. Total No. of Pkgs. | 7. Total value of goods |
| 8. Reasons for Detention of Goods: | |
| a) Appraisalment / Valuation | d) Re-export out of India |
| b) Payment of Duty | e) Transshipment out of India |
| c) Payment of Duty / Fine / P. P. | f) Production of document |
| (Air Cus 49 / /) | g) Any other reasons |
| 9. Detailed Description of items detailed | |

DescriptionQty.C.I.F. Value

Signature of A.C.O.
with Name & Date

Signature of A.C.S.
with Name & Date

Signature of AC/AP

I have noted the condition regarding disposal. The goods have been detained at my request and sealed in my presence over my signature.

(Please see Instruction on the Reverse)

Signature of the Passenger
with date.

Received the above mentioned goods contained in _____ Pkgs. and warehoused under
APs No. _____ dt. _____ Seal No. _____

Signature of the Detention Officer
Name in Block Letters
Date

LOSS OF DETENTION RECEIPT

In the event loss of Detention Receipt the passenger should execute Indemnity Bond in the following Proforma.

PROFORMA OF INDEMNITY BOND FOR LOSS OF DETENTION RECEIPT

(On a non-judicial Court Fee Stamp Paper of Rs.100/-)

In consideration of the Commissioner of Customs, Mumbai having agreed to release to me goods which were detained by Airport Customs for payment of duty / Reshipment / T.P. out of India / Valuation and clearance as per rules against Detention Receipt No.....dated..... APS No./R.S. No. now misplaced by me, I undertake to hold the Commissioner of Customs, harmless and to indemnify him from all the consequences that may arise by his release of the said goods, and I further undertake to return to him to original Detention Receipt No.dated..... APS No. / R. S. No.should this be subsequently found / recovered of otherwise restored my possession.

Signature of the Passenger

Name in full:

Passport No. and Date of issue

Address:

Witness Signature

Name and Address

Eight report of Estimates Committee (11th Lok Sabha)

In Para No.1.25 the Committee had observed that goods are detained at the international Airports temporarily at the request of the passengers either for payment of duty or for the purpose of re-export or subsequent production of documents. If the passenger does not come up for clearance of goods within the time limit given in the detention receipt, action is initiated by the Customs authorities for disposal of goods after confiscation. The Committee had recommended in their report that the Government after deducting Customs duty etc., from revenue obtained on disposal of the confiscated goods, should refund the balance amount to the owner / passenger. The Ministry has accepted the above recommendation of the Committee.

To give effect to the above decision it may be ensured that the full address of passengers in India is retained at the time of issue of the Detention Receipt. In case the passengers are not resident in India, they should be requested to give the name of an authorised representative who would be accepting the amount due to the passenger from the Department. From the sale proceeds the Customs Duty etc. be deducted and the balance may be sent to the passenger.

[Circular No. 53/98-Cus., dated 29-07-1998 From F .No. 520/136/92-Cus. VI]

OUTGOING PASSENGERS

One of the important aspect of passenger clearance at the Airport is the clearance of outgoing passengers. Like the incoming passengers, the outgoing passengers can also be categorised into – a) Indians visiting abroad b) foreigners returning to their country c) members of the Airlines Crew.

The rules governing the export of articles as baggage are more or less applicable to all these class of passengers/crew.

Foreign Trade (Exemption from Application of Rules in certain cases) Order 1993 provides that nothing contained in Foreign Trade (Regulation) Rules, 1993 shall apply to any goods constituting the

bona fide personal baggage of any person including a passenger or member of a crew in any vessel or conveyance going out of India, provided that the Wild Life (dead, alive or part thereof or produce therefrom) shall not be treated as part of such personal baggage.

Departure Clearance

A. Submission of advance pre-flight manifests for departure flights by Airlines and starting of Customs check 3 hours before the scheduled time of departure - Instructions regarding –

During the FAL committee meeting held on 19.02.1980, the Chairman A.O.C. mentioned that the pre-flight manifests were not being returned by the Customs after checking well in advance. The Chairman was informed that as per earlier instructions, the pre-flight manifests are required to be submitted to Customs 6 hours in advance, so that these could be checked by the Customs Officers and returned to the Airline in time.

Following the discussion, it has been decided that the pre-flight manifests shall be submitted by the Airline concerned 6 hours in advance to the P.R.O. (Export) who shall note down the time of receipt thereon in the presence of the Airline representative. The manifest, duly checked, shall be returned to the Airline concerned 3 hours in advance of the scheduled departure of the flight. At the time of return of the duly checked manifest acknowledgement of the Airline representative shall be obtained on the Customs' copy alongwith the endorsement of time at which the manifest was returned to the Airline. The Superintendents in charge shall keep a register indicating datewise the names of the Air-lines alongwith the relevant flights for which the manifests were not submitted in time by the airline. The register shall be put to A. C. on every Monday for suitable action, if necessary.

It was also brought to the notice that even though the Airlines start checking, their passengers say about 3 hours in advance of the scheduled flight, the Customs Officer do not permit the passengers to start Customs clearance immediately. Since the Customs staff is on duty 24 hours, there is no apparent reason why they should refuse to clear the passengers after they have been cleared by the Airlines. The Superintendent (Export) will therefore, ensure that the passengers are taken up for Customs clearance as soon as they report for that purpose.

B. Stamping of General Declaration and Boarding Cards on Departure:

Extract of letter No. 4/15/69-IR, dated 16.08.1975, forwarded by the Ministry of Finance vide Ministry's letter F. No. 481/34/75-Cus. VII, dated 20.10.1975, are reproduced below for necessary action by the staff concerned.

It has been decided that with effect from 18th September, 1975, the General Declaration in respect of out-bound flights would be stamped by the Immigration in addition to Customs Authorities at all the four international Airports, immediately after the last Passenger is cleared for Embarkation by Customs and Immigration Authorities.

It has now been decided to introduce the following procedure with regard to departing and transit passengers with effect from 1st October, 1975:

Departing Passengers:

(a) Check-in-at Airline Counter: The Airline staff at the time of checking in of the Passenger, handover to the Passenger a Boarding card, showing on it's stub his Sr. No. on the manifest, the date of departure and flight number. If the Airline concerned is unable to give the seat number at the time of checking-in, it will be given by the Airline at any time, before the anti-hijacking security check of the Passenger.

(b) Immigration Check: On completion of the Immigration Check the Immigration Officer will stamp the detachable stub of the Boarding Card of the Passenger.

(c) Customs Check: On completion of the Customs check, the Customs Officer will stamp the stub of the Boarding Card of the Passenger.

(d) Anti-Hijacking Security Check: On completion of the Security check, the security staff will also stamp the stub of the Boarding Card of the Passenger.

Before permitting the Passenger to board the air-craft, the Airline staff will verify at the ladder of the aircraft that the Customs, Immigration and Security Officials have all stamped the stub of the Boarding Card. Thereafter the stub will be detached from the Boarding Card for out-bound Passenger at the Airport and given to Immigration.

In terms of para 11.6 of the new Import Export Policy 1997-2002 bona fide personal baggage may be exported either alongwith the passenger or if unaccompanied within one year before or after the passenger's departure from India. However, items mentioned as restricted in the ITC (HS) Classifications of Export and Import items ' will require a licence except in the case of edible items.

Export of Foreign Exchange and Indian currency

In terms of the Notification No. FEMA 6 /2000-RB dated 3.5.2000, the Reserve Bank of India has issued the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000 which permit

(i) any person resident in India to take outside India (other than to Nepal and Bhutan) currency notes of Govt. of India and RBI Notes upto an amount not exceeding Rs. 5,000/- per person at any one time.

(ii) any person to take or send out of India to Nepal or Bhutan, currency notes of Govt. of India and RBI notes (other than notes of the denominations of above Rs.100/- in either case) and Indian coins or other notes which are the currency of Nepal or Bhutan.

(iii) currency in the safes of vessels or aircraft which has been brought to India or which has been taken on board a vessel or aircraft with the permission of the Reserve Bank to be taken out of India.

(iv) any person in India but not resident therein to take out of India an amount of Foreign Exchange; not exceeding the amount brought in by him in foreign exchange provided that he had made, on arrival in India, a declaration to the Customs authorities, in such form as may be specified by the Reserve Bank of India in this behalf, of the amount of foreign Exchange brought in by him.

(v) any person in or resident in India, to take out of India foreign currency or currencies held or acquired by such person in terms of provisions of the foreign Exchange Management Act, 1999, and various Regulations issued thereunder.

Export of Indian coins which are covered by the Antique and Art Treasure Act, 1972, is prohibited.

Issuance of Advance Export Certificate

With increasing trade interaction, many Business Executives are travelling abroad quite frequently. They carry expensive equipments like Camera, Camcorder, Cellular Phone, Note-Book Computers etc. with them. At the time of departure, they have to take a Export Certificates with them to enable them to bring back the said goods without payment of duty on return. Normally, some of those goods are packed in the baggage of the passengers. It is, therefore, inconvenient for them to take out these articles packed in the baggage for presenting before the customs officer to obtain export permit. The number of such passengers is increasing and the frequency of their travel is also increasing and hence instances of such inconvenience is on increase.

2. Board have examined the issue and it is felt that there is a genuine need for issuing the Export Certificate before the departure of the passenger as a facilitation measure. It is decided that such certificates may now be issued in advance in the Custom Houses, International Airports and Sea Ports.

The certificate shall remain valid for a period of one year. The certificate should be serially numbered; stamped with the official seal of the issuing authority and should contain the details of:

- (a) Name of the product,
- (b) Manufactures name,
- (c) Marks/number/Mode, and
- (d) Year of Manufacture.

[Board's Circular No. 66/96 CUS. VI in F. No. 495/13/96 CUS. VI dt.26.12.1996]

Issue of Advance Export Certificate to frequently travelling International Passengers

It is to bring to the notice of the public that as a facilitation measure, it has been decided to issue special export certificate to those who travel overseas quite frequently on business trips and carry along with them expensive articles such as Camera, Camcorder, Cellular phone, Notebook computer etc. This will obviate the necessity of obtaining an export certificate for every trip and of presenting such items for examination by the customs officer at the time of every departure.

This certificate, named as 'Advance Export Certificate' can be obtained any time prior to the actual departure of the passenger and will be valid for one year from the date of issue.

Those, who are desirous of availing of this facility, may approach the following officers, personally, alongwith their passports and the articles for which the Advance Export Certificate is to be obtained: -

1. Air Customs Superintendent, Departure Module – I, Sahar Airport, Mumbai. (Round the Clock).
2. Air Customs Superintendent, Departure Module – II, Sahar Airport, Mumbai. (Round the clock).
3. Asstt. Commissioner of Customs (Admn.), Sahar Airport, Mumbai, (From 9.30 a.m. to 6 p.m. except Saturdays, Sundays and Govt. holidays).

[Public Notice dt.13.5.97 issued in F. No. Air Cus/50-99/97 by Sahar Airport, Mumbai]

Export of personal jewellery through the mode of baggage

In view of the amendment in Section 13 of Foreign Exchange Regulation Act, 1973 and consequent withdrawal of Notification No. 107/92-RB dated 03.02.92 issued by the Reserve Bank of India permitting export of personal jewellery upto a value limit of Rs.1 lakh, some Commissionerates had sought clarification from the Board on the question of value limits, if any, on the export of personal jewellery through the mode of baggage.

2. The matter has been examined by the Board in consultation with the Department of Economic Affairs and the Export Commissioner in Ministry of Commerce. The position is thus (As far the Export-Import Policy is concerned, there is no restriction on the export of any goods (including gold jewellery) as baggage so long as they constitute the bona fide baggage of the passenger. It is also observed that incentives for export of jewellery through legal commercial channels are more attractive.

3. It has, therefore, been decided that so long as the personal gold jewellery being exported through the mode of baggage constitutes bona fide baggage of the passenger, there should be no value restrictions on its export.

[Ministry's letter F. No. 495/19/93-Cus dt.06.10.94.]

Export of Commercial goods as baggage

In terms of para 129 of the Exim Policy (1992-97), bonafide personal baggage of a passenger is permitted to be exported as accompanied or unaccompanied baggage. Instances have, however, been brought to the notice of the Board where passengers, especially passengers leaving for CIS countries, Pakistan, Thailand etc. were exporting in their baggage commercial goods like leather goods, hosiery goods, betel leaves etc. in large quantities in gunny bags through chartered flights of by train from Delhi, Amritsar etc.

2. The matter has been examined by the Board in consultation with the Department of Economic Affairs and the Ministry of Commerce. If we go strictly by the Exim policy, the quantities being taken by such passengers cannot be said to be their bonafide baggage and hence their export could be objected. However, it has been reported that in most of these cases, the passengers are able to give some evidence or the other for exchange of the foreign currency to buy these goods in India. The Department of Economic Affairs has opined that there is nothing wrong in allowing export of such goods as passenger's baggage so long as the source of funds for buying these goods is established to be the foreign exchange brought by the passengers on their arrival in India.

3. In view of the facts stated above, the Board is of the view that in the interest of the expeditious passenger clearance and the current liberalisation scenario, such exports through passengers baggage may be allowed so long as proper proof of the goods having been procured against payment in foreign exchange is provided by the passengers. In case any large scale abuse is suspected, it may be brought to Board's notice immediately giving the details of such cases/instances.

[Board's Circular No. 17/95-Cus. dated 01.03.95 in F. No. 520/118/93-Cus. VI]

DEPARTMENTAL PRICE LISTS

In order to help the airport customs staff in asserting the fair prices of the various articles commonly imported by the passengers and apply the same uniformly, the Commissionerate should prepare a price list of such baggage articles. While preparing these lists care should be taken to see & ascertain the various types of concessions & prevalent discounts by consulting & studying various catalogues, magazines mail order price lists of leading international brands, various journals & such other media, should be resorted to in order to determine fair prices of the items. Revision & updating of such price lists should also be done periodically in order to keep pace with the constant introduction of new items & improved models of existing ones and consequent revision of prices of other models. These prices are essentially intended to serve as reference & guide lines to the staff while assessing the values of baggage items. The staff are therefore exhorted to invariably consult these price lists before making the assessment in order to avoid discrimination and / or disparity between the assessment arrived at by different officers.

IMPORT OF HIGH- VALUE ARTICLES

On many occasions, import of high valued articles for temporary import through tourist is noticed. Such goods may not fit under rule 5 of the Baggage Rules, 1998. However, tourists on business tours may require such articles for display, exhibition, & demonstration etc. (not covered under notification No. 157/90) & detaining his goods for reexport may not be in the interest of the tourist. The Asst. Commissioner on duty, at his discretion may allow such goods on execution of Bank Guarantee /

undertaking as the case may be for temporary duty free import for a period not exceeding six months. Section 143 of the Customs Act, 1962, empowers the Asstt. Commissioner to effect such clearances. In the event of failure to re-export such goods, the same shall be deemed to be goods of which import has been prohibited under the Customs Act, 1962. This provision has been spelt out in para 3(h) of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993.

Proforma of Bank Guarantee/Bond Undertaking for temporary importation of goods allowed clearance

(on Rs. 100/- Stamp Paper)

To,
The President of Indian Union,

Know all men by these presents that whereas the Commissioner of Customs, Airport, Hereinafter referred to as the said Commissioner which expression shall include the person for the time being as performing the duties of the Commissioner of Customs,, as having permitted the clearance of the goods in the schedule hereunder written/ as per list attached, we

- (1) (name of the passenger)
- (2) (name of the Bank)

DRAWBACK OF DUTY ON BAGGAGE ARTICLES

Section No. 74 of the Customs Act, 1962, amended by the Customs (Amendment) Act, 1985 covers the grant of drawback on goods exported by post or as baggage. It would be noticed that in terms of Section 74 (1) (ii), of the said Act, if baggage is to be exported under claim for drawback, a formal declaration under Section 77 of the Customs Act has to be taken from the passenger, (which will be deemed to be an entry for export) and an order permitting clearance of the goods for export should be made by the proper officer.

The format of the declaration cum drawback claim is reproduced for information.

PASSENGER'S DECLARATION CUM DRAWBACK CLAIM FORM

(to be filled in by the passenger)

Exporting Aircraft:Destination:

Passenger's Name:

Date of arrival in India:.....Port:

Import Duty Receipt No.Duty paid on

D.D,R, attached No.:

Description of articles: Particulars of identification:

.....

I hereby authorise Shri / Smt.

Address.

Whose full signature is given on the pre / receipt foil and which is attested by me to receive payment of the drawback amount on my behalf.

Passengers signature & full

Address:

Before me.

Air Customs Superintendent

.....
N.B.: The above particulars are to be filled in by the passenger and handed over to the Air Customs Officer on duty, along with the "Duty Receipt in original". If payment is to be made to a person other than the passenger, the particulars on the reverse of the acknowledgement below will have to be filled and surrendered to Accounts Dept., at the time of receiving payment. A receipt stamp should be affixed if the amount involved exceeds Rs.500/-
.....

Cut here

ACKNOWLEDGEMENT

No.Air Cus/

Received from Shri / Smt.
One drawback Bill in respect of.....
.....

Air Customs Officers

I, A.C.O. Shri.have examined the articles (declared on the reverse) brought for export by passenger Shri/Smt.going by..... to.and have satisfied myself as to its / their identify with the article (s) on which duty was paid and it has / they have been taken on board by the passenger for re-export and has / have not been relanded. Drawback of Rs..... is admissible and the D.D.R. is attached.

Signature of Air Customs Officer.

Export permitted. I have personally satisfied myself that the above report is correct in all respects an that drawback is admissible.

Signature of Air Customs Superintendent

A note of drawback has been made in the relative D.D.R. Check Register.

Enquiry Officer.

Sanctioned drawback of Rs.(Rupees.....)
.....)

Asstt. Commissioner of Customs,

Audited

Audit Clerk

Pay

Chief Accounts Officer

The drawback of duty Rs.....Rupees.....
only) sanctioned above is paid to the
 authorised representative of passenger. The passenger's receipt for the full amount obtained and passed
 below:

Cashier
 (Paste the pre/receipt foil here)

Received the amount of Rs.....(Rupees.....
only)

Signature of the passenger.

Name of authorised person.....
 Address.....
 Full signature of the authorised person.....
 (Passenger's full sign.)

Attested by.....

Note: A memo intimating that the amount of drawback involved has been sanctioned will be issued to you
 shortly. The memo and this receipt should be presented at the counter of the Accounts Deptt., before 12
 noon on any working day. The receipt should be fixed with a revenue stamp of Rs.2 if the amount
 involved exceeds Rs.500/-.

[Authority: Ministry of Finance letter F.No. 492/6/85/Cus.VI dated. 01.01.86]

Drawback rates in respect of goods taken into use after importation

In exercise of the powers conferred by sub-section (2) of section 74 of the Customs Act, 1962 (52
 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance
 (Department of Revenue) No. 48-Customs, dated the 1st February, 1963, the Central Government hereby
 fixes the rates mentioned in column (2) of the Table below as the rates at which drawback of import duty
 shall be allowed in respect of goods used after their importation, which have been out of Customs control
 for the period specified in the corresponding entry in column (1) of the said Table:

TABLE

Length of period between the date of clearance for home consumption and the date when the goods are placed under customs control for export.	Percentage of import duty to be paid as drawback
(1)	(2)
Not more than 6 months	85%
More than 6 months but not more than 12 months	70%
More than 12 months but not more than 18 months	60%
More than 18 months but not more than 24 months	50%
More than 24 months but not more than 30 months	40%
More than 30 months but not more than 36 months	30%
More than 36 months	Nil:

Provided that where the period referred to in column (1) is more than 24 months, drawback shall be allowed, only, if the [Commissioner of Customs] concerned on sufficient cause being shown, has in that particular case extended the period beyond 24 months:

Provided further that when any of the goods specified below have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India.

- (i) Wearing apparel.
- (ii) Tea-chests.
- (iii) Exposed cinematograph films passed by the Board of Film Censors in India.
- (iv) Unexposed photographic films, paper and plates, and X-ray films.

(2) Notwithstanding anything contained in paragraph 1, in respect of a motor car or goods (other than the goods specified in the second proviso to that paragraph), imported by a person for his personal and private use, drawback of duty shall be calculated by reducing the import duty paid in respect of such motor car or goods by 4%, 3%, 2 1/2% and 2% for use for each quarter or part thereof during the period of first year, second year, third year and fourth year respectively:

Provided that where the period aforesaid is more than 2 years, drawback shall be allowed, only if the Board, on sufficient cause being shown, has in that particular case extended that period beyond 2 years:

Provided further that no drawback shall be allowed if such motor car or goods has or have been used for more than 4 years.

[M. F. D. R. Notification No. 19-Cus., dated 6th February, 1965 as amended by Notification No. 154-Cus., dated 8th November, 1969 and No. 45-Cus., dated 2nd May, 1970.]

PROFORMA OF REFUND ORDER

(Below Rupees.....)

THIS ORDER MUST BE PRESENTED FOR PAYMENT WITHIN 30 DAYS OF ISSUE

File No.....

Air Customs Pool,
Add:-
Date:-

REFUND ORDER

To,

Date of Order:

Date of issue:

Sir / Madam,

Ref: Baggage Receipt No.dated.....

With reference to your application/Appeal/Revision Application dated.....Baggage Receipt No.....dated.....regarding the payment of duty / Personal Penalty / Redemption Fine / Excess Recovery; I have the honour to inform you that the Assistant commissioner of Customs / Appellate Commissioner of Customs / Govt. of India / Central Board of Excise and Customs, after due consideration, is pleased to grant refund of sum of Rs. (Rupees.....) Vide his / their order No..... datedbeing the duty / Personal Penalty / Redemption fine / Excess Recovery.

On presentation of this order duly receipted below (with 0.20 Ps Revenue Stamp) the above sum will be paid at the Cash Department, Customs House, Add:.....

Noted in the Fair Duty Register and certified that no previous order for refund of the same has been issued.

Asstt. Commissioner of Customs,
Air Customs Pool,

Date:	Received the above sum. Signature of Payee	Rs.2.00 Revenue Stamp for sum exceeding Rs.500/-
Passed Accountant Customs Below Rs.		Pay Treasury Officer.....Customs House,

Note:

1. This order should be presented to the Accounts Dept. Customs House,(Add.).... With a stamped receipt discharged by the party to whom this order is payable before 3-00 P.M. on all working day. It may be endorsed to the bearer of transferred to credit of deposit account. Separate signature when the order endorsed for payment of bearer is indispensable.
2. Payee's signature should be verified by their respective bankers, if the signature of the person authorised to discharge such receipts is not already been registered in the Accounts.
3. This order is issued without prejudice to the limitation and provided by section 27 of the Customs Act, 1962.

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CHAPTER - SEVENTEEN

CARNET AND TRIPTIQUE

PRELIMINARY

India is one of the important tourist destinations in South East Asia. Thousands of foreign tourists from far and wide places all over the world visit India every year. Unlike in our country, the foreign tourists, many a times intend to travel the length and breadth of India, specially the countryside, in their own vehicles. For this, they often carry along or travel on their cars/automobiles and bring the same into and use within the country throughout their stay in India.

Through a convention, many countries in the world have resolved and allow temporarily import of cars/automobiles for the purpose of tourism. India is a signatory to this convention on the Triptique/Carnet de Passage.

Triptique / Carnet De Passage En Douane is a travel document for the purpose of temporary importation of private road vehicles into India by the tourist free of duty if issued by an approved Automobiles Associations abroad, list of which is printed on the front page of the Triptique/Carnet itself.

Carnet and Triptique are identical in purpose, except that the Triptique is meant for a single country while the Carnet is for more than one country.

Purpose of Carnet Procedure

In order to facilitate the development of International tourism, the Government of India has accepted and ratified the International Convention on the "Temporary Importation of Private Road Vehicles" in terms of which motor vehicles imported into India for private use by tourists for temporary use are admitted free of duty and I.T.C. restrictions. Persons claiming this concession should normally be resident outside India, who, during their temporary visit to India should not take up any paid employment or any other form of gainful occupation.

The essential requirement for the exemption is that the importer of Vehicle should produce a Carnet / Triptique issued by one of the approved Automobile Associations abroad. The Automobile Association in the form approved by Alliance International De Tourist issues Carnet and each booklet bears a distinct serial number. The back cover shows the particulars of the subject and bears the signatures of the importers and officials of the issuing Automobile Association. This booklet consists of a number of sheets showing the name of the Carnet holder, the particulars of vehicles, Engine Number, Chassis Number, Registration Number, value of the vehicle and validity of the Carnet. It is in French language. Each sheet of document is divided in three parts, Part I is called "Volet d' Entree" which should be signed by the dealing Customs Officer on import and be retained at the port of importation. Customs House reference number should be shown in the lower portion of Part II called "Volet de Sortie". Import endorsement should also be made in the upper half of part 3 (souche) at this stage. At the time of departure, portion number 2 called "Volet de Sortie" should be signed and retained by the Customs House from where the vehicle has been re – exported out of India and forwarded to the Custom House from where the vehicle entered into India, to be matched with the "Volet D' Entree" and endorse exit particulars in the lower half of sheet No. 3 ("Souche"). This part of the sheet is bound in the Carnet and serves as the owner's proof of entry and exit of the vehicle. A separate sheet should be used for each entry / exit.

Triptique

The document known as "Triptique" serves identical purpose except that it consists of only a single sheet and is designed for use when the owner intends to visit only one country.

Importation of Motor Vehicles under the Carnet / Triptique – Procedure

On arrival in India, the owner of the vehicle is required to complete particulars in form 'X' and form FT (Annexures 1 & 2). These forms shall be registered and particulars checked with reference to the Passport and Carnet.

The File shall then forwarded to Intelligence Section along with the Passport to verify any information, if received, against the tourist or the vehicle. Incase, any information of smuggling is received, the Intelligence Staff shall examine the vehicle in the light of such information. In case, no such information is received, suitable endorsement will be made by the Intelligence Section.

The vehicle is then examined by the dealing Customs Officer in the light of particulars shown in the Carnet Book. Extra Fittings if any, shall be shown in the form 'X' and "Volet De Sortie" portion.

After examination, the Preventive Officer shall submit the examination report along with his comments to the Assistant Commissioner (Preventive) Baggage and obtain orders for releasing the vehicle under Carnet procedure. In case of additional fittings like Stereo, Refrigerator, etc. other than those mentioned on the Carnet, specific orders may be obtained to release the same under an undertaking / or Bank Guarantee according to the circumstances of the case.

Prior to release of the vehicle, the Preventive Officer shall endorse the Passport, Volet de Entree, and "Souche" of the Carnet de Passage suitably.

While endorsing Passport, special care shall be taken to indicate:-

- a) Carnet number and registration number of the vehicle
- b) The last date expiry of validity of the retention period of the vehicle.
- c) Probable place of last port of call in India prior to final exit of the vehicle.

and to make sure that the contact or permanent addresses of the Tourists are obtained.

After obtaining orders for release from Assistant Commissioner of Customs, the Preventive Officer shall cause suitable endorsements on the form 'X' and Carnet de Passage and Passport for clearance of the Vehicle and advise the Gate Officer to pass out the vehicle. He shall also transcribe all relevant particulars of vehicle and Carnet and the name and other details of the Tourist and his journey on the Carnet Register maintained by him, and make endorsement of case file number, date of release order and place of importation on the last column of "Volet de Entree" and handover the Carnet and Passport to the tourist or his agent and obtain his signature on file in token of having received the same. The Gate Officer shall pass the vehicle and return the 'X' form and Volet de Entree to the Carnet Officer.

Noting of 'X' form in Import Department

The Officer in charge of Carnet of Baggage Section shall get the form 'X' noted in the Import Department so that I.G.M. shows that the vehicle has been cleared on Carnet procedure.

He shall send the case file for provisional audit to Internal Auditor after clearance of the vehicle under Carnet Procedure on importation.

[D.R.I Letter F. No. 25/23 INT/75 dated 03.07.1974]

Form 'X'

Form 'X' has a function like a Bill of Entry in which the tourist gives a declaration to the effect that he will re – export the vehicle within its permitted retention period, failing which he would be liable to

action under the provisions of the Customs Act. 1962. On the reverse of the Form 'X' there is a column for Departmental use only, where the model, year of manufacture, period of use till the date of importation, mileage, etc., of the vehicle are to be shown for the purpose of valuation. In case, the vehicle is coming by road, then names and nationalities of other occupants are to be indicated. There is also a column for the remarks of Intelligence Section.

From 'FT'

The Form 'FT' will have to be filled in by the tourist indicating all the particulars of the vehicle imported. This has to be done also for the purpose of road taxation under Motor Vehicles Rules or Similar rules (Annexure II)

Endorsement on the Passport

When a Vehicle is cleared under the Triptique / Carnet, the tourist's Passport shall be endorsed in indelible ink for having cleared a vehicle under the said procedure. Such endorsement on the Passport should also indicate the exact date by which the vehicle is to be finally re – exported out of India, so that the tourist does not plead ignorance of the need to re-export within 6 months. The tourist's Passport shall also be endorsed with a capital 'C' and the entry be signed in full by the Customs Officer allowing clearance.

[Ministry's letters F.No. 8/10/60 – Cus. V dt. 11.10.60 and F. No. 575/66 – 71 Lc II dt. 19.09.71 and 13.07.73]

Carnet Register

After the clearance of vehicle suitable entry shall be made in the Carnet Register and the Carnet Register shall be submitted to Asstt./Dy. Commissioner for his approval after filling the columns of the Carnet Register.

Form of Carnet Register

Sr. No. & Date	Particulars of vehicle	Particulars of Carnet	Carnet Value	Particulars of the tourist	Particulars of re-export of vehicles	A.C.'s orders of re-exp.	A.C.'s orders of imp.
1	2	3	4	5	6	7	8

A separate Carnet Register shall also be maintained by the Preventive officer (Carnet) for those vehicles imported at Customs Port other than the port of clearance and such cases shall also be registered by the concerned clerk in the Baggage section.

Procedure for Re – Export

The tourist or his representative shall file a Shipping Bill for export of motor vehicles imported under Triptique concession in the Export Department. In the case of motor cycles which were originally imported under the Triptique system and are shipped as unaccompanied baggage during the valid period of the Carnet, the Shipping Bill can be dispensed with.

The Export Department, after the necessary processing shall send the Shipping Bill to the Intelligence Section for 'No Objection' (i.e. verification of information received if any). At the time of re –

export of the vehicle, the Preventive Officer will verify that the vehicle is being re – exported within the prescribed period of 6 months, or such extended period as allowed by the Commissioner of Customs / Govt. of India. The Preventive Officer supervising the shipment will check up the particulars of the vehicles with those shown in the Shipping Bill and Carnet. And if he is satisfied of the identity, shall give 'let ship' order on the Shipping Bill. While examining the vehicle, all the possible places of concealment for smuggling of contraband goods should be checked thoroughly. The Shipping Bill duly passed will be given to the Cargo supervisor of the steamer. The vehicle is to be re – exported in the same general state except the wear and tear. On the production of Mate Receipt or Bill of lading, the Preventive Officer will sign the "Volet de Sortie" (Voucher No.2) of the Carnet de Passage and on the export part of the voucher No. 3 (Souche) in token of discharge of the Carnet.

The "Volet de Sortie" will be detached and sent to Preventive Officer for retention with the case file and for making entry on shipment of vehicle in Carnet Register and the Carnet returned to the tourist as proof of discharge of the Carnet.

In case where the tourist travels in the vessel in which the motor vehicle is shipped, the Preventive Officer supervising the shipment will follow the same procedure as outlined in preceding paragraph.

The extra copy of the Shipping Bill and "Volet de Sortie" portion of the Carnet constitutes a file of re – export of vehicle. The same is then filed in Baggage Section with relative file. If the vehicle was imported at same port, the re – export particulars will be entered in the same register in which the import particulars were entered. If the vehicle is re – exported from some other Customs station, then the re – export particulars will be entered in the other Carnet register maintained for that purpose.

The re – export file along with the Carnet Register is then submitted for Astt. Commissioners approval.

In cases, where the vehicles under the Triptique are entered into India through other Customs Ports, 'Volet de Sortie' will be sent to the port of entry with an advice that the vehicle has been re – exported during the validity period of the Carnet, to enable that Custom House to close its case file. The Passport entry of the tourist regarding clearance of the vehicle under Carnet procedure will then be cancelled and the file forwarded to IAD (Internal Audit Department) for Final Audit.

[C.B.R Letter F.No. 45/B/59-CUs. IV dt. 02.04.1966]

Cases of Non – export of vehicles – How to deal with

In case the re – export particulars of the vehicles are not received within the permitted retention period of the vehicle of any extended period, appropriate Duty Demand notice shall be served to the Guaranteeing Association. In accordance with the Article 26 of the Convention, the Guaranteeing Association can only be asked to pay Duty within a year from the date of expiry of validity of the papers.

The import file regarding the clearance of vehicle under the Carnet procedure (Form X From FT and Volte De Entree of the Carnet) will be first forwarded to the Appraising Department for favour for valuation of the vehicle imported. Duty demand notice will then be served on the Guaranteeing Association on the basis by the valuation. The period of one year after the expiry of period permitted by the convention is quite long and there is no reason why action to serve duty demand notice should not be taken earlier by the Customs Department. The importance of dealing with the Carnet cases speedily, after the Carnet period is over so that Government's right in the matter does not go by default, has to be borne in mind.

The concerned officer shall therefore ensure that proper Duty Demand notice is served against Guaranteeing Association for payment of duty and that it's acknowledgement is duty received and placed in the file, as early as possible.

[Ministry's letter F. No. 82/20/80 – VI dt. 11.10.60]

Guaranteeing Association after acknowledgement of duty demand notice, conducts necessary enquiry with the Carnet issuing Club. In case the vehicle has been left behind in India, Guaranteeing Association will communicate the same to the Customs, on which action for effecting seizure under the Provisions of the Customs Act. 1962 could be initiated.

After the seizure of the vehicle, action regarding issue of Show Cause Notice, adjudication etc. shall be taken. In case the vehicle has not been re – exported out of India and the whereabouts of the vehicles are not available, then the Guaranteeing Association shall pay the duty as demanded, within the time limit specified in Article's of Convention.

Acceptance of surrender of Motor Vehicles imported under the triptique concession

Under Article 13 of the Customs Convention on Temporary Importation of Private Road Vehicle, the re – exportation of badly damaged vehicle, shall not be required, in the case of fully authenticated accidents, provided the vehicles:

- a) are subject to import duties and import taxes to which they are liable, or,
- b) are abandoned free of all expenses to the Exchequer of the country in which they are imported temporarily, or ,
- c) are destroyed, under the official supervision at the expense of the parties concerned, as the Customs authorities may require.

Apart from the above, surrender of vehicles imported under triptique concession shall also be accepted, provided such surrenders are made to the Customs Authorities free of all expenses to the Exchequer and without any condition whatsoever. This is, however, subject to the condition that such surrender is made within 6 months of the date of original entry, of the vehicle into India or such extended period as may be allowed by the component authority and Commissioner of Customs (Govt. of India) in terms of the provisions referred to in para above.

[Ministry's of Finance (Dept. of Revenue) No. 15/31/63-LC II dated 09.5.1963]

Surrender of the vehicle to be accepted by Commissioner or Additional Commissioner

Normally surrender of vehicle should be accepted after taking orders of the Commissioner or Addl. Commissioner and no reference need be made to the Board provided the date of entry of such vehicles is verified from the port of entry so as to ensure that the vehicles surrendered are within the period permitted for permitted for retention. A reference to the Board may only be made in such cases where due to peculiar circumstances of the case, the Commissioner feels that it is necessary to take Board's Orders. However, such reference should be made sufficiently in advance of the tourists' departure from India so that no inconvenience is caused to him.

[M. F., D.R., No. 15/27/63-LC II dt.17.08.1964/F. 15/104/80 LC II dt.01.04.1971]

Extension for the retention period of the Vehicle-Provision therefore

The power to extend the Retention period of vehicles brought under Carnet Procedure vests only with Central Government in terms of the provisions of notification No. 296 dated 02.08.76 wherein it is stated that the Central Government if it is satisfied that it is necessary in the public interest so to do may extend the retention period of initial 6 months by further period of 6 months. The Commissioner of Customs do not enjoy the powers of extension retention period beyond initial 6 months.

[Ministry's Letter F. No. 575/62/79-LC II dated 18.02.81 and dated 01.06.1981]

For allowing any extension, it is necessary that Carnet should be valid till such time or the tourist gets the validity of the Carnet extended by Guaranteeing Association and also Guaranteeing Association agrees to extend the Guarantee till such time.

Delegation of powers of extension of retention period of vehicles brought under carnet

It is directed to say that in adherence to the Customs Convention of Temporary Importation of Private Road Vehicles, Notification No. 296/76-Cus., dated 02.08.1976 has been issued. Vide said Notification any person, who is normally not a resident of India can bring a vehicle duty-free for a period not exceeding six months on the strength of a carnet. Further extension upto a maximum period of six months can be granted by the Central Government in the public interest.

2. With a view to decentralise decision making for expeditious decisions on the requests of tourists for extension of retention period of vehicles brought under carnet, it has been decided that the power to grant extension may also be exercised by the Commissioners of Customs. Accordingly notification 160/94-Cus. has been issued on 08.08.1994.

3. It has also been decided that the Commissioners shall exercise the powers in the following situations:

- (a) Prolonged illness/death of the tourist or close relative rendering the tourist unable to re-export the vehicle;
- (b) Damage/accident to vehicle necessitating repairs; and
- (c) Requirement of vehicle for visiting historical/tourist interest places.

[Ministry's of Finance (Department of Revenue) letter F. No. 575/14/93-L.C. dated 27.08.1994]

Grace Period of 14 days allowed

When the vehicles are presented to the Customs authorities for re-exportation within fourteen days from the expiry of the papers and satisfactory explanations of the delay are given, no action would be called for.

PROCEDURES / CLARIFICATIONS ON CERTAIN SPECIFIC POINTS

(a) Definition of Legal Persons

Article 1 (c) of the Convention says that term "Persons" shall mean both natural and legal persons unless the context otherwise requires. The expression "legal persons" is accordingly used in contract to "Natural persons". It would, therefore, follow that firms, corporation etc. on when juristic personality has been conferred by the status would be "legal Persons".

(b) Carnet Holder may be owner or hirer

A person normally resident outside India can temporarily import vehicle which is not his own and which he has borrowed or hired. Article 8 prescribes that the importation paper should be made in the name of the person who owns the vehicle temporarily imported or who has the "possession or control of the vehicle. If the vehicle has been hired the papers shall be made out in the name of hirer. The main restriction is that the vehicle should be used in accordance with Article 2(1) and Article II. Even if the owner of the vehicle is not a natural person the person who imports it for private use as defined, if he is a natural person, is entitled to the concession.

(c) The tourist should be in possession of vehicle abroad

It will be permissible to import a car under triptique system for a tourist, say from Kenya who intends to visit India and buys a car in the U.K. and after registration there, the car is shipped to India.

In view, however, of the words "Imported and Utilised" appearing in Article II of the convention on the Temporary Importation of Private Road Vehicle, arrangements should be such that the tourist could be deemed to have been in possession of the car abroad before importing into India. A scheme in which the tourist formally takes delivery in India from hiring company would not qualify him for the concession.

[M.F. (DR) letter F. No. 8/17/60-Cus. VI dated 08.02.61. (Inst. No. 6/61-Cus. VI)]

(d) Hired Vehicles-Position regarding

A person other than " legal persons" can hire a vehicle owned by a commercial organisation and Import if for the private use of himself and others if not normally resident in this country and who fulfil the other condition (Sec Article 1). The fact that these persons share the expenses of hiring the vehicle themselves would not be repugnant to the definition of Private use as given in articles 1 (c).

(e) Carnet in name of Designated post

Carnet which is issued in favour of designated post without mention of name of the holder shall not be valid for Temporary Importation of Private Road Vehicles under triptique concessions. (the Customs Concessions do not contemplate grant of Carnets in favour of designated post in terms of clause 1 of Article 2. The preamble clearly provides that legal persons should be excluded from the categories of person to whom concession envisaged in Convention are applicable)

(f) Definition of normally resident abroad

The meaning of expression "Normally resident outside its territory:

In relation to a foreigner, Its interpretation presents no difficulty, read particularly in the light of the reservation against person taking up paid employment or other gainful occupation. In the case of an Indian National who takes up residence abroad, it is a question of intention that is relevant for interpreting the above expression. The term "Normal" indicates some permanency of residence abroad, deducible from circumstances surrounding. For instance an Indian National may start a business in foreign country and may take up residence there for running that business. If it is clear that the running of the business requires his residence there, then he should be regarded as normally resident abroad. Such cases of Indian National who comes home temporarily should be judged on the merits of each case.

(g) Clarification regarding gainful employment

In cases where the person has come to India only to attend to some work in connection with his business interest in India should not be deprived of the facilities under Carnet procedure. Only those persons who take up paid employment or any other forms of gainful occupation have been excluded from the concessions of duty free importation of Motor Vehicles.

[Ministry's letter F. No. 15/52/66-LC II dated the 5th Dec., 1966]

Taking up of gainful employment by Carnet holder – Full rigour of law to be applied

If the owners of the vehicles imported under Carnet Concession commit offence such as taking up gainful employment etc. the full rigour of the law must be applied and surrender of the vehicle cannot be accepted.

[M. F. (DR) Letter No. 15/27/63-LC II dated 26.09.1963]

(h) Import of Tourist Buses

In the interest of tourist promotion, triptique concession may be granted to the tourist vehicle viz. tourist buses, coaches and trucks etc. subject to the following conditions:

- (i) The vehicle should be covered by a valid Carnet or a triptique issued by the Association affiliated to one of the recognised automobile clubs or institutions, an international Registration Certificate for motor vehicles and nationality plate.

- (ii) The driver should possess an international driving permit and valid third party policy insurance "Green Card".
- (iii) All the occupants of the vehicles (excluding the driver and a legal guide approved by the tourist Deptt.) should be bonafide tourists and able to produce proof of residence outside India.
- (iv) The vehicle should not be used for commercial purposes within the country but this should not bar any passenger (s) from leaving the vehicles in India nor should it prevent the organisers of the Cost tour from picking up tourist passengers in India for transporting them out of the country, the points where passengers are being discharged and new ones picked up for the return portion of the journey being determined beforehand.
- (v) The vehicle should be re – exported within the period stipulated in the triptique/Carnet, failing which action should be taken.

[M.F. (D.R) letter F. No. 8/8/58-Cus. VI dated. 17.10.1960]

Importation of Motor Vehicle under the Triptique Procedure by a person other than the holder of the Carnet/Triptique

Importation of Motor Vehicle under Triptique procedure by a person other than the holder of Carnet may not normally be allowed. But in exceptional bonafide cases, the Commissioner in his discretion may extend this facility provided the actual importer is otherwise entitled to the triptique concession. It is also subject to his holding a proper authority from the holder of the Carnet/triptique. The Federation of Indian Automobile Association Bombay or similar authorised Association should also give a specific guarantee that although the vehicle has been imported by a person other than the holder of triptique/Carnet the Association Guarantees the re – export of the vehicle in time, failing which they would be liable to pay duty leviable thereon.

[M.F.(DR) No. 15/11/63-LC II dated. 02.10.63.]

Abuse of Concession under Triptique System – Measures for Prevention

- a) In case where the car is imported in advance of the passenger, Custom House should take general precaution to see that the car is not used by unauthorised persons pending the arrival of the passenger. It is, however, certainly not the intention that any complicated procedure like taking of bond / guarantee of garaging under Customs supervision, should be prescribed in this behalf.
- b) No alteration of any details of the vehicle shown in the Customs Carnet should be permitted unless such alteration is considered by the Customs Commissioner to be of "bonafide" nature and is accepted by the Carnet issuing authority or is covered by a specific guarantee from the Guaranteeing Association.
- c) No vehicle which has been first registered abroad its registration papers cannot be produced should be passed under the triptique system.
- d) When passenger leaves the country without the car, an immediate intimation should be sent (by the port of passenger's departure) to the port/and Customs Station where the car was imported so that the necessary action can be taken without waiting for the expiry of the period of validity of the Carnet, to see that the car is not left behind.

[M.F. DR No. 8/10/61/Cus.VI dated. 07.04.61 inst. 11/61-Cus. VI]

Discrepancy in Engine Number in Carnet

When the Chassis and engine numbers of the vehicle as recorded in the triptique pass or Carnet de passage are found to be different from those actually ascertained on examination, the Preventive Officer will endorse on the triptique pass/or Carnet de passage, the actual ascertained numbers next to

the declared Numbers and draw a small circle round the numbers in dispute. The endorsement should be initialed both by the Preventive Officer and the tourist or his representatives and the clearance of vehicle allowed by the superintendent. A separate Report giving full details of discrepancies should be forwarded to preventive Deptt. for bringing it to the notice of concerned Association through Guaranteeing Association.

[Board's letter F. No. 8/15/58-Cus. VI dated 15.12.1958]

Passport endorsement – Intimation to other ports of Passenger's Departure

The Passport of a Passenger who imports a car under the "Triptique" concession shall be endorsed with a capital 'C' and the entry signed in full by the Customs Officer at the port of entry. Due care for such compliance will be necessary in the cases where the car arrives either before or after the arrival of the passenger himself. It will be necessary to find out at the time of departure of the passenger importing the car under the "Triptique" concession, whether he has already exported the car or is leaving the same behind. If it is found that there is no justifiable reason for the passenger leaving his car behind, the Custom House should ascertain full particulars of proposed shipment of the car from the passenger or present location of the car as the case may be and send prompt report to the port of clearance giving the following information.

1. Full name of the passenger,
2. Make and Registration number of the Car
3. Port of entry and date
4. Particulars of shipment (if the car is already shipped)

Or

5. Full address where the car is located and reasons for retention after the owner's departure.

[M.F. (DR) letter F.No. 8/8/58 – CUs. VI dated. 09.11.1962]

Taking up gainful employment / Abuse of concession

Persons normally resident outside India when on the occasion of temporary visit to India take up paid employment or any other gainful occupation are excluded from the benefits of duty free Import of cars.

As such where a person who brings a car under triptique system, asks for extension for the retention period beyond the normal period of 6 months, discreet enquiries should be made as to whether the person has taken up any gainful employment, before granting extension.

[Ministry's letter F. No. 15/38/66 –LC / II dated. 18.10.1965]

Triptique retention of car beyond the Permitted period

There are tourists who had imported cars under the triptique procedure and who subsequently tried obtain import licence for permanent retention of their cars in India and while his application for import licence were under consideration, the cars continued to be used by them. Irrespective of the outcome of the application of Import licence, the Customs Authorities concerned should seize the car immediately after the expiry of the permitted period of the Triptique / Carnet so that the concession is not abused in case of rejection.

However, confiscation of the car may be kept in abeyance, till a decision regarding Import Licence for the car is taken by the Chief Controller of Imports and Exports (*now Director General Foreign Trade*). Since the duty will have to be paid even if the car is finally retained in India, or re – exported out of India after the expiry of the permitted period under triptique action on that account need not be delayed.

[CBR Letter No. 95/159/62 – LC II dated 20.12.62 and 26.09.1963]

Validity of the Carnet to be extended if the retention period expired after the validity of the Carnet

Even in cases where the unexpired portion of the validity period of the Carnet is less than 6 months at the time of importation of the car, the car may be allowed to be retained for 6 months, provided that the validity of the Carnet is suitably extended and the liability during such extended period is assumed by Guaranteeing Association. In all such cases where, retention of car for 6 months under the Triptique concession will run beyond the original validity of the Carnet, the Custom House must take necessary action to ensure that the validity of the Carnet is expended.

[M.F. (DR) letter F. No. 8/10.60 – CUs. VI dated 11.10.1960]

Non re – export of the vehicle within the permissible or extended period – due to circumstances beyond this control- facilitating therefrom

Sometimes due to circumstances beyond the control of a tourist it becomes impossible or difficult for him to arrange re-export of the car within the period of 6 months or such extended period as might have been permitted by Commissioner or the Board. This is often attributable to non-availability of shipping space; sometimes some unforeseen circumstances necessitate the sudden departure of the importer from India, in which case it becomes impossible for him to arrange the re-export of the vehicle within the given time limit or at any rate before his departure from India. Sometimes the Board may have already granted the request for maximum permissible extension of retention period up to 12 months and further extension is not considered desirable, nevertheless for genuine reasons it may not be possible for the tourist to leave India say due to sickness of his own or his family members and it might be a genuine hardship or uncalled for expenditure. In such circumstances, a constructive step would be to permit the tourist to surrender the custody of the car to Customs before expiry of the 6 months or extended period as the case may be and ensure that the car during its retention in India beyond the period of 6 months (or one year, as the case may be), is not used by the Tourist or in his absence by third parties etc. It should be noted that surrender in Customs Custody does not necessarily mean that the Commissioner should provide any garage or parking space. If no such space is available in the Custom House, it will be in order to ask the importer to arrange for garage or space as the Commissioner deems fit and ask him to surrender the keys of the door lock and ignition in Customs custody. As a further safeguard, a written declaration should also be obtained from the tourist in such cases that the car has been stored in the garage entirely at their own risk.

[M.F. (DR) letter F.No. 15/8/64-Cus. LC II dated 26.10.1964]

TEMPORARY DUTY FREE IMPORTATION OF MOTOR VEHICLE OTHER THAN TRIPTIQUE/CARNET

In case of foreign tourists who want to bring motor vehicles into India temporarily on their way to other countries but who can not produce any Carnet/Triptique due to the circumstances beyond their control, the concession of duty free importation on the motor vehicles will be extended to them on ad-hoc basis provided:-

- (i) they give valid reason for non-production of Triptique papers:
- (ii) their cases are strongly supported by either Indian Missions abroad or Missions of their countries in India and
- (iii) they also produce an assurance from the Missions of their country in India or a suitable Bank Surety for re-export of the vehicle within 2 months of the date of importation or on failure, for payment of duty fine and/or penalty leviable on the vehicle.

Non-possession of Triptique due to circumstances beyond the control of tourists is elucidated as follows:-

- (i) In some countries there is no organization competent to issue documents.
- (ii) In some countries motor cycle are not treated as motorized vehicle requiring registration.
- (iii) Some Associations stipulate. Apart from membership, a minimum residence of years in the country which may not be possible to satisfy for a tourist.

[M.F. (DR) letter F. No. 15/65/63-LC II dated 15..1964]

The Commissioners may in their discretion extended the facilities of clearance of vehicles imported without Carnet to the tourist on the aforesaid conditions. The form of Bond in such cases should clearly provided for re-export of the vehicle within a given period not exceeding 6 months or such extended period as may be permitted by the Commissioner and should also further stipulate that during its retention in India the use of the vehicle by the tourist shall be subject to exactly the same limitations as apply to a vehicle imported under the Convention on the Temporary Importation of Private Road vehicles. With the aforesaid limitations any extension of the period fixed as on date for re-export of the vehicle should be considered by Commissioner on merits as would have been done if the vehicle had in fact been imported under the regular Carnet.

[M.F. (DR) F. No. 15/87/64 LC I dated 26.10.1964]

Expeditious disposal of application

It should be ensured that the application of tourists are dealt with as promptly as possible. It is also necessary that any such request made by the tourist should be decided one way or other before the validity period read with the grace period, and decision communicated to the tourist sufficiently in time.

[M.F. (DR) F.No. 15/87/64 LC I dated 26.10.1964]

Liability of duty on vehicles imported under the triptique procedure but confiscated and allowed to be re-exported on payment of fine in lieu of confiscation

Whenever it is held that condition of the relevant notification have been infringed duty has to demanded even if the car is re-exported. In that case the drawback only can be allowed as admissible.

[Board's letter F. No. 15/64/63-LC II dated 7.10.1963]

Acceptance of Alternative evidence of re-export of Motor Vehicle under article 24 of the convention:

According to article 24(I) of the convention for temporary importation of Private Road vehicles, if temporary importation papers have not been regularly discharged, Customs authorities of the Country of importation shall accept as evidence of re-exportation of the vehicle or component parts, the presentation of a certificate issued by official authority attesting the facts that the vehicle or component parts in question have been presented to it and are outside the country of importation. The last sentence of clause (I) of article 24 provides that in the case of Carnet, account shall be taken, as evidence of re-exportation of the vehicle or component parts, if the visas entered thereon by the Customs Authorities of the countries subsequently visited.

In such cases before accepting alternate evidence of re-exportation of the vehicle under article 24 of the convention, the antecedents of the party should be checked up to ensure that the vehicle has not been used for contraband goods and further that the production of certificate prescribed in the said article should be insisted upon:

[M.F.(DR) F.No. 15/22/61-LC II dated 9.7.1963]

Person Entitled to surrender the vehicle

In every cases of surrender, the authority accepting the surrender will have to ensure that the person effecting the surrender is the owner of the vehicle. Hired cars can also be brought by hirers under the triptique system but such surrender, if effected by hirer will be bad in law.

As a matter of safety, therefore,

- (i) Where the Commissioner on scrutiny of such evidence as can be reasonably had, is satisfied about the rightful title of the person effecting the surrender, a formal confiscation is not necessary, but to avoid any dispute it would be advisable to obtain from the importer a letter stating the details of the accident and police report if any, or circumstances in which he is effecting the transfer and a formal documents effecting a valid transfer of the title should also be got signed from him.
- (ii) Where there is any doubt, the title of the person effecting such surrender, to be on the safe side, a formal order of confiscation should be issued.

[M.F. (DR) F.No. 15/50/65 LC II dated 16.11.1965]

DISPOSAL OF CONFISCATED VEHICLES UNDER CARNET/TRIPTIQUE

Sometimes prompt steps are not taken to dispose of motor vehicles initially imported under a Carnet/triptique and subsequently confiscated for contravention of Customs and other allied laws. Continued storage of such vehicles, besides considerable expenditure on maintenance of garaging facilities also lead to depreciation in the value of vehicles.

(i) Where the order of confiscation gives the option to redeem the vehicles on payment of fine in lieu of confiscation, period allowed should be only upto 30 days and not four months as is the usual practice for ordinary goods. Where an option to re-export the vehicle is given, the period allowed for re-export should normally be two months, if the party does not clear the motor vehicle by paying a fine in lieu of confiscation or does not arrange to re-export the vehicle within the permitted period, a final notice of a week or ten days should be given to him, after which the vehicle should be disposed of and

(ii) Where the motor vehicle has been confiscated absolutely steps should be taken to dispose of the confiscated vehicle straight away.

In disposal of motor vehicles, care should be taken to see that as far as possible such vehicles are not found suitable for departmental use, are sold at the best available market price so as to avoid any loss to the owner in the event of adjudication order being set aside on appeal or revision and to avoid any possible dispute with the owner regarding the adequacy of the price at which the vehicle was sold. In case the party succeeds in appeal or revision it can claim the sale proceeds and not the restoration of the seized vehicle, which may not be of such use to him after lapse of considerable time.

[F.No. 15/61/66 LC II dated 25.1.1967]

No liability to pay the duty when the vehicle is confiscated

If a vehicle is absolutely confiscated the party's liability to pay duty will cease and in such cases there will be no question of raising demand against the guarantying association.

[M.F. (D.R. & I), F. No. 575/16/71- LC II dated 06.06.1972]

Vehicle can be used during the period of Hospitalization-Clarification

Where the vehicle is not exported out of the country within permitted period of retention due to the illness of the tourist, who brought the car or a person accompanying him or a family member, the condition of garaging has been waived if the tourist or person accompanying him or a family member is hospitalised. This relaxation has been introduced to avoid hardship to the tourist if they were to be

deprived of the use of the car in times of need due to the hospitalisation. Re-export of the car on the expiry of six months from the date of its importation into India extended by a period of garaging or hospitalisation is also allowed. In the event of death or illness of the tourist or a family member accompanying him, the above facility is given.

Even if the family member does not accompany the tourist but remains in India, this concession will still be available.

[M.F. (DR) Letter F. No. 15/51/70-LC II]

CARNET CONVENTION

In order to facilitate to the development of International tourism, the United Nations Conference on Road and Motor Transport was held in Geneva on 23rd August to 19th September, 1929. The Convention was agreed and drafted which is called "Customs Convention" on the temporary importation of private road vehicles.

The draft of Convention contains 44 articles explaining the provisions of issue of temporary importation papers, exportation of vehicles, surrender of vehicles, liabilities and function of Automobile Associations, Customs regulations, etc.

On 24th January 1958, the Government of India also signed the Convention.

Some of the important articles are a under:

Article—2

Each of Contracting States shall grant temporary admission without payment of import duties and import taxes and free of import prohibitions and restrictions subject to re-exportation, and to the other conditions laid down in this convention, to vehicles owned by persons normally resident outside its territory. Which are imported and utilised, for the private use on the occasion of temporary visit, either by the owners of the vehicles or by other persons normally resident outside its territory.

Such vehicles shall be covered by temporary importation papers guaranteeing payment of import duties and import, and if the case should arise, of any Customs penalties incurred, subject to the special provision of paragraph 4 of article 27.

Note: Notwithstanding the provisions of article 2 of this Convention, persons normally resident outside India who, in the occasion of a temporary visit to India, take-up employment or any other form of gainful occupation would be excluded. (Difference filed by the President of India for the above Convention).

Article—5

1. Subject to such guarantees and under such conditions as it may determine, each contracting State may authorise associations, such as those affiliated to an International Organisation to issue either directly or through corresponding associations the temporary importation papers covered by this Convention.
2. Temporary importation papers may be valid for a single country or Customs Territory, or for several countries of Customs Territories.
3. The period of validity of these papers shall not exceed a year from the date of issue.

Article—9

1. The weight to be declared on temporary importation papers is the net weight of the vehicles. It shall be expressed in the metric system. In the case of papers valid for one country only, the Customs Authorities of that country may prescribe the use of another system.

2. The value to be declared on temporary importation papers valid for one country only shall be expressed in the currency of that country. The value to be declared on a Carnet de passages endouane shall be expressed in the currency of the country where the Carnet is issued.

3. The articles and tool-kit which form the normal equipment of vehicles need not be specially declared, in the temporary importation papers.

4. When the Customs authorities so require, parts (such as wheels, tires and inner tubes) and accessories not considered as constituting the normal equipment of the vehicle (such as radio sets, trailers not declared on a separate document, or luggage carriers) shall be declared on the temporary importation papers with the necessary particulars (such as weight and value) and shall be produced on exit from the country visited.

Article—11

1. Vehicles admitted under the cover of temporary importation papers may be used, for their private use by third persons duly authorised by the holders of the papers provided that those third persons normally reside outside the country of importation and also fulfill the other conditions laid down in this Convention. The Customs authorities of the Contracting States have the right to require evidence that such persons have been duly authorised by the holders of the papers and fulfil the aforesaid conditions. If this evidence does not appear sufficient the Customs Authorities may refuse use of the vehicle in their country under cover of the papers. In the case of vehicles which have been hired, each Contracting State may, in the case of fear of abuse, require that the holder of the temporary importation paper be present at the time of importation of the vehicle.

2. Notwithstanding the provisions of the preceding paragraph, the Customs Authorities of the Contracting States may permit, in special circumstances and under conditions of which they shall be sole judges, a vehicle circulating under cover of temporary importation papers to be driven by a person who is normally resident in the country of importation, in particular when the driver drives the vehicle on behalf of or under instructions from the holder of the temporary importation papers.

Article—13

1. Notwithstanding the requirement of re-exportation laid down in article 12, the re-exportation of badly damaged vehicles shall not be required. In the case of fully authenticated accidents, provided that the vehicles:

- (a) are subjected to the import duties and import taxes to which they are liable; or
- (b) are abandoned free of all expenses to the exchequer of the Country into which they were imported temporarily; or
- (c) are destroyed under official supervision, at the expenses of the parties concerned as the Customs authorities may require

2. When a vehicle temporarily admitted cannot be re-exported as a result of the seizure, other than a seizure made at the suit of private persons. The requirement of re-exportation within the period of validity of the temporary importation papers shall be suspended for the duration of the seizure.

3. The Customs authorities shall notify, as far as possible to the Guaranteeing Association, seizures made by or on behalf of these Customs authorities of vehicles admitted under cover of temporary importation papers guaranteed by the association and shall advise it to the measures they intend to take.

Article—14

Vehicles imported into the territory of one of the Contracting States under cover of temporary importation paper may not be used even incidentally for transport against payment, reward or other consideration between points within the frontiers of the territory.

Article—18

When the Customs authorities of a country have finally and unconditionally discharged temporary importation papers they can no longer claim from the guaranteeing association payment of import duties and import taxes, unless the certificate of discharge was obtained improperly or fraudulently.

Article—26

Customs Authorities shall not have the right to require from the guaranteeing association payment of import duties and import taxes on vehicle or component parts temporarily imported when the non-discharge of the temporary importation papers has not been notified to the guaranteeing association within a year on the date of expiry of the validity of those papers.

Article—27

1. The guaranteeing associations shall have a period of one year from the date of notification of the non-discharge of temporary importation papers in which to furnish proof of the re-exportation of the vehicle or component parts in question under the conditions laid down in this Convention.
2. If such proof is not furnished within the time allowed the guaranteeing association shall forth with deposit or pay provisionally the import duties which became final after a period of one years from the date of deposit or provisional payment. During the latter period, the guaranteeing association may still avail itself of the facilities provided by the preceding paragraph with a view to re-payment of the sums deposited or paid.
3. For countries whose regulations do not provide for the deposit or provisional payment of imports duties, payments made in conformity with the provisions of the preceding paragraph will be regarded as final, it being understood that the sums paid may be refunded when the conditions laid down in this article are fulfilled.
4. In the case of the non-discharge of temporary importation papers, the guaranteeing association shall not be required to pay a sum greater than the total of import duties and import taxes applicable to the vehicles or component parts not re-exported, together with interest if applicable.

Article – 28

In the event of fraud, contravention or abuse the Contracting States shall notwithstanding the provisions of this Convention, be free to take proceedings, against persons using temporary importation papers, for the recovery of the import duties and import taxes and also for the imposition of any penalties to which such persons have rendered themselves liable. In such cases, the guaranteeing association shall lend their assistance to the Customs authorities.

Article – 29

The Contracting States shall endeavour not to introduce Customs procedures which might have the effect of impeding the development of international touring.

Article – 31

Any breach of the provisions of this Convention, any substitution, false declaration of facts having effect of causing a person or an article improperly to benefit from any system of importation laid down in

this Convention, may render the offender liable in the country where the offence was committed to the penalties prescribed by the laws of that country.

ISSUE OF NEW CARNET FORMS

The Ministry of Finance, vide Circular No. 44/95 dated 01.05.1995 from F. No. 575/2/95-LC., has informed that a new format of AIT/FIA Carnet De Passages for clearance of motor vehicles has been issued by ALLIANCE INTERNATIONALE DE TOURISME with effect from the year 1995. Letter No.FT/298/94 dated 28th June 1994 of the Hon. Secretary, THE FEDERATION OF INDIAN AUTOMOBILE ASSOCIATIONS, MUMBAI, on the subject is reproduced below:

TO ALL THE CUSTOMS AUTHORITIES CONCERNED

Sub: **NEW FORMAT AIT/FIA CARNET DE PASSAGES**

We are enclosing herewith a photocopy of Circular No.A 419/94 dated 9th March 1994 concerning the above we have received from the Alliance Internationale de Tourisme, Geneva, Switzerland, which is self-explanatory. This is for your information and records-

ALLIANCE INTERNATIONALE DE TOURISME

A 4191/94
9 March, 1994

To the clubs of the
AIT customs documents network

**NEW FORMAT AIT/FIA CARNET DE PASSAGES
Note for the Issuing Associations**

Dear Madam / Dear Sir,

Further to our circular letter A 4178/94 of 28th January, 1994, we are pleased to inform you that specimens of the new format AIT/FIA Carnet de Passages en Douane are now ready for distribution to the clubs. Enclosed herewith are CPD specimens for your information. If your association wishes to receive additional copies, please let us know and we will forward these to you immediately.

You will note that each line of print on the cover and inside pages of the Carnet is numbered. These numbers were added as a reference guide to facilitate the translation of the information included in the Carnet. Several clubs have underlined that a translation into their national language would be useful for their customs authorities as well as for their members. The numbering system thus provides a comprehensive format for this purpose.

Clubs may begin to issue the new format AIT/FIA CPD beginning on the 1st of May 1994. An order form for the new document is attached for those associations wishing to place members at this time.

May we ask you to bear in mind that the existing Carnet (series "Z", "Y" and "V") will remain valid for issue until the 31st of December 1994 and that after this date only the new format CPD will be valid for issue.

**TIMETABLE for the launch of the
New format AIT/FIA Carnet de Passages**

March – April 1994	<p>Distribution of specimens to the clubs of the AIT and FIA, and forwarding of information by the guaranteeing clubs to their respective Customs Authorities</p> <p>Diffusion of specimens by the UN to Contracting Parties of the 1954 and 1956 Conventions</p> <p>Diffusion of specimens by the CCC to Customs administrations of member states</p>
May 1994	<p>New CPD may begin to be issued on 1st May 1994 by clubs which have depleted stocks of old Carnets</p> <p>Guaranteeing clubs should remind their Customs authorities that new CPD may be in use as from 1st May 1994, concurrently with old Carnet</p>
June – Dec. 1994	<p>Clubs may continue stocks of old Carnets until 31st December, 1994</p> <p>Clubs will be requested to grant NO extensions of validity for old Carnets beyond the date of 31st December 1995.</p>
Jan. – Dec. 1995	<p>From the 1st of January 1995, clubs will issue exclusively the new CPD, and will be asked to destroy any remaining stocks of old Carnets.</p> <p>Clubs will be reminded to grant NO extension of validity of old Carnets beyond the date of 31st December 1995.</p> <p>Guaranteeing clubs should remind their customs authorities that the new CPD as well as current (old) Carnets will be in parallel use until 31 December 1995.</p>
January 1996	<p>Guaranteeing clubs should inform their customs authorities that from 1st January 1996, only the new CPD will be valid for use.</p>

ALLIANCE INTERNATIONALE DE TOURISME

A 4278/94

15 December, 1994

To the issuing clubs of the AIT
customs documents network**Re: Validity of Carnets de Passages en Douane to be issued beginning on 1 January 1995**

Dear Sir / Dear Madam,

The AIT Secretariat wishes to bring to the attention of the issuing clubs of the AIT customs documents network the following information:

The **new format AIT/FIA Carnet de Passages en Douane**
will be the **only** Carnet valid for issue beginning on
the **1st of January 1995**.

As from January 1995, **only** Carnets with the serial letters
Aas, Aad, Aat, and Aax will be valid for issue.

The old format Carnets held in stock at the end of 1994 will no longer be valid and must consequently be destroyed. (For issuing clubs with AIT Contract "B" insurance, please refer to separate special instructions given.)

ANNEXURE – I

Sr. No.

Year

FORM – 'X'

Application for the Import of vehicle components parts free of duty under the Carnet De Passport
or triplicate

-
1. Name and Nationality of the Applicant
 2. Name of carrier, date and place of arrival
 3. Passport No. date and place of issue
 4. Purpose of visit and duration of stay
 5. Details of the component parts and accessories
(other than normal equipment) imported along
with the vehicles *

Description *

Quantity

Value

* (Where possible the description should include the part number)

Form of declaration and undertaking

1. I hereby declare that the particulars given above are true and correct.
2. I also declare that it has been explained to me that as per the difference filed by the Government of India to the Customs Convention temporary importation of private road vehicles. I am not entitled to any of the concessions admissible under the said conventions, if I take up a gainful employment during my stay in India I also further declare that I am not gainful employed in India. I also further declare that for breach of this undertaking, the vehicle will be liable to confiscation.
3. I also declare that the provisions of item (n) clause 11 of imports control order of 1955 have been explained to me that according to the same, the vehicle alongwith the Parts if any, must be exported out of India within 6 months from the date of importation, or on expiry of period of validity of the Carnet, whichever is earlier, and further that they shall not be sold in India. I further declare that if I fail to fulfil any of the above conditions, I shall pay the Customs duty on the vehicle, and spare part, and other articles, if any, not exported in time and also any fine and penalty which may be imported, if I fail to obtain the necessary import Licence.
4. I hereby undertake that in the event of any occasion arising for surrender of any motor vehicle to the Customs Department, I shall surrender the motor vehicle myself personally to the Assistant Commissioner of Customs (Prev.) of the Custom House through which I leave the country or to the Commissioner of Central Excise and Customs in whose jurisdiction I wish to surrender.

Signature of the Applicant or
Authorised Agent.

Note: (I) The term "Vehicle" means all Road Motor vehicles (including cycles with engine) and trailers (whether imported with the vehicle or separately together with its component parts and normal accessories equipment, when imported with the vehicle.

(ii) The Motor vehicle is being passed without payment of duty on the understanding that it will be used only by the applicant or by a person who is normally not a resident in India. Persons normally resident in India may be employed as paid drivers by Carnet Holders. In no circumstances the use of the vehicle by person normally in India is permissible.

General Instructions

The application form should be presented to the Baggage Officer in the Preventive Department alongwith the following documents, which are required to check the correctness of the value furnished.

- (a) Original receipts, if any showing the actual cost of the vehicle, extra fittings, special alterations etc.
- (b) Re-valuation certificate of an automobile Association.
- (c) Memo of freight and Insurance charges.
- (d) Registration Cards.

In case the Preventive Officer wished to examine the vehicle for the purpose of determining the value, notwithstanding the documents produced., it is open to him to do so.

For Department use only.

- 1. A report on valuation:
 - (a) Model
 - (b) Year of manufacturing
 - (c) Period of use till date of importation
 - (d) Mileage

In addition to the foregoing details checked and found correct the details shown in the import **foil** the Triptique as also at entry 6 on the application form subject to the following.

Name and Nationalities of other occupants.

- (i)
- (ii)
- (iii)

Prev. Officer/Inspector
Inspector/Dy. Supdt./Supdt.

- 2. Remarks of Intelligence section, if any.

Prev. Officer/Inspector
Inspector/Dy. Supdt./Supdt.

- 3. Passed out of Customs Control

Divisional Inspector/Prev. Officer
Inspector/Dy. Supdt. / Supdt.

ANNEXURE – II

Form “FT”

(see rules 21 & 23 of Bombay Motor Vehicles Rules 1959)

Form of Declaration for Motor Vehicles Brought into THE State.

Iresiding (Temporarily) at.....
(permanently) hereby declare that I have brought the undermentioned motor vehicle into the State of
..... onand that I intend to keep it in the State uptofor use.

*a Solely within the limits of:
which has levied a tax):

*b Both within and without the limits of

- 1. Class of Motor Vehicle
- 2. Registration Mark

3. Maker's name
4. Type of the body
5. No. of chassis
6. No. of Engine
7. Unladen weight.
8. Seating Capacity if plying for hire
9. Registered laden weight (if a goods vehicle)
10. (a) Date on which it has last removed from the State of
- (b) Date on which it has last removed from the State of Maharashtra.
11. The fuel used in the vehicle
12. Name of insurer
13. Insurance Certificate No.
14. Date of validity formto.....

Date:

Signature of the Declarant.

Tax token No.expiring on.....has been issued by me after recovering Rs.....being the tax dues.

Taxation Authority

- * Strike out whichever is in applicable.
- * Here mention local authority.

Municipality

Motor vehicle No. 6

Name and address

Govt. Tax paid Rs. for the period fromtofor.....

Non-use accepted fromto.....

ANNEXURE III

Form for Surrender of Motor Vehicles imported into India under triptique system:

1. Name of the Importer
2. Passport No.
3. Nationality
4. Profession
5. Country in which the Importer:
Normally resides and address
6. Importer's Permanent Address
7. Particulars of the Carnet
de Passage under which the
motor vehicle was imported into India
8. Description of Motor Vehicle Imported:

- 1. Make:
- 2. Model:
- 3. Chassis No.
- 4. Engine No.
- 5. Present value.
- 9. Date of importation and Port through which the motor vehicle imported:
- 10. Whether the vehicle is the Importer's own property or a hired one
- 11. If the vehicle is hired one, the particulars of the actual owner:
- 12. Name of the owner of the vehicle as given in the Certificate of Registration
- 13. Certificate of Registration No. date and place of issue
- 14. Reasons for non-re-exporting the vehicle out of India and circumstances under which the import is effecting the surrender:
- 15. If the reason is due to damage caused to the vehicle on account of accident
 - (i) details of accident in brief.
 - (ii) Particulars of Police report if any

Ithe importer above named hereby declare that the particulars furnished above are true and correct in every respect to the best of my knowledge and belief.

I the importer above named hereby transfer and surrender the motor vehicle/motor car, the particulars of which are given in Column 8 above for the reasons stated in Columns 14/15 to the Government of India unconditionally and free of all incumbencies and expenses and the title thereto shall vest in the said Government. I also agree for the disposal of the said motor vehicle/motor car by the Customs Authorities in a manner whatsoever under any law for the time being in force in India.

I the importer above named hereby further declare that the aforesaid motor vehicle/motor car is my own property and that no one else either in India or abroad ha any claim whatsoever over the said vehicle/car, and undertake to settle all claims which may be made by any person in respect of the surrender in of my car and any compensation which may be demanded in respect thereof.

SIGNATURE OF IMPORTER

@ @ @ @ @ @ @ @ @ @ @ @ @ @ @ @

CHAPTER - EIGHTEEN

IMPORTS AND EXPORTS BY POST

PRELIMINARY

India is one of the countries signatory to the Universal Postal Union thereby facilitating free exchange of Mail between India and other countries of the world. Before the advent of couriers on the international scenario, overseas Mail/Post Services were the prime media for the exchange of goods/information across the world. This included the receipt and despatch of Mail, postal parcels and packets, small packets containing gifts, samples, etc. to and from India. Though, the movement of a sizeable quantity of letters, parcels, etc. is now being handled by the International Courier Companies, yet the receipt and despatch of letters, packets, etc. through Foreign Mail is still popular among the people across the world.

The movement of letters, packets, parcels, etc. via Foreign Mail is handled by Postal & Customs Authorities through designated Foreign Post Offices. The postal authorities acting as custodians, collect all the articles of post which are imported or exported by post at a central designated Post Office and present the same to the customs authorities posted at these stations. The export articles are allowed to be loaded for export and imported articles are delivered to the consignee after the same have been examined and cleared by the Customs authorities and customs duty for dues, if any, payable thereon have been paid.

The provisions regarding goods imported or exported by post are contained in Section 82 to Sec. 84 of the Customs Act, 1962.

As per Section 82 of the Customs Act, 1962, any label or declaration which contains the description, accompanying the goods imported or exported by post shall be deemed to be an entry for import or export. It implies that a label or declaration, accompanying the import & export postal goods, which contains the description, quantity and value thereof, shall be deemed to be an entry for Customs purposes.

Section 83 of the Customs Act, 1962 stipulates that the rate of duty and tariff value, if any, for the goods imported or exported by post shall be the rate and valuation in force on the date of presentation to the proper officer, the list of such imported goods by the postal authorities. However, in case of goods imported by a vessel, if such list has been presented before the arrival of the vessel, the same shall be deemed to have been presented on the date of such arrival.

In the case of goods exported by post, the rate of duty and tariff value, if any, shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities for exportation.

Section 84 of the Customs Act empowers the Board to make regulations for examination, assessment, clearance, etc. of imports and exports by post. Even though, no regulations have been framed under this section; the 'Rules regarding Mails' made in 1950 under the Sea Customs Act, 1878 are still in force. These rules contain the procedures to be followed by the Postal Authorities and the Customs Department for receipt, clearance and despatch of goods imported or exported by post.

RULES REGARDING MAILS

In exercise of the powers conferred by section 75 of the Sea Customs Act, 1878 (*now sections 81,84 of the Customs Act, 1962*), and in supersession of all previous notifications on the subject, the Central Board of Revenue is pleased to make the following rules for the landing and clearing, at the ports

of Bombay, Calcutta, Madras, Dhanushkodi and all the Land Customs Stations and Airports, of parcels and packets forwarded by the foreign mails or by passenger vessels or air liners, namely: -

I. Postal Parcels and Letter Packets from Foreign Ports out of India

(i) Landing

(1) The boxes or bags containing the parcels shall be appropriately labeled e.g., "Postal Parcels" ("Colist Postaux") , "Parcel Post", "Parcel Mail", "Letter Mail", and as such will be allowed to land pass, either with or separately from the regular mails, at the Foreign Parcel Department of the Government Post Offices in the case of port of Calcutta and Madras, at the Foreign Parcel Department of the Foreign Post in the case of the port of Bombay and the Foreign Parcel Department of Office at Madurai in the case of the port of Dhanushkodi, at the Sorting Air Mail Office at Delhi and the Office of Foreign Post at New Delhi in the case of airports of Delhi and at the Foreign Parcel department of Golakganj in the case of the Land Customs Station at Golakganj in Assam.

(ii) Clearing

(2) (a) The Postmaster shall, on receipt of the parcel mail, hand over to the Principal Postal Appraiser (a) a memo showing the total number of parcels received by that mail from each country of origin, (b) parcel bills (in triplicate) in the form approved by the Chief Customs Officer, or the senders' declarations and any other relevant documents that may be required for the preparation of the parcel bills by the Customs Department, (c) the relative Customs declarations and despatch notes (if any), and (d) any other information required in connection with the preparation of the parcel bills which the Post Office is able to furnish.

(b) The Postmaster shall, on receipt of letter mail bags and in consultation with the Principal Postal Appraiser get the bags opened and scrutinized under the supervision of the Customs Appraiser with a view to detain all packets suspected to contain dutiable articles. The packets thus detained will be presented in due course to the Customs Appraiser with letter mail bill and assessment memos for assessment as per rule (6) (b).

(3) On receipt of those documents, the Customs Appraisers shall scrutinize the particulars given therein and shall mark off on the relative declarations on parcel bills, as may from time to time be directed, all parcels required to be detained for examination either for want of necessary particulars or defective description or suspected misdeclaration or undervaluation of contents. They shall assess the remaining parcels by showing the rates of duty on the declarations or parcel bills, as the case may be. For this purpose, they will generally be guided by the particulars given in the parcel bills or Customs declarations and despatch notes (if any). When any invoice, document or information is required whereby the real value, quantity or description of the contents of a parcel can be ascertained, the addressee may be called upon to produce or furnish such invoice, document and information.

(4) The Customs clerk shall then transcribe on the parcel bill whenever necessary the value from the declarations and after converting them into Indian currency at the ruling rates of exchange shall calculate and enter the amount of duty. The parcel bills with the declarations so completed, shall then be audited by the Audit clerks and the original and duplicate copies shall be returned to the Postmaster with as little delay as possible, the triplicate being retained in the Customs Department.

(5) The Postmaster shall then detain all parcels marked for detention in the manner indicated above, and shall allow the rest to go forward for delivery to addressee on payment of the duty marked on each parcel.

(6) (a) As soon as the detained parcels are ready for examination, they shall be submitted together with the parcel bill to the Customs Appraisers, who, after examining them and filling in details of contents of value in the parcel bills, will note the rate and amount of duty against each item. The remarks "Examined" shall be entered by the Appraiser against the entry in the parcel bill relating to each parcel examined by him. The parcel bill shall then be audited and the original and triplicate copies returned to the Postmaster, the duplicate being retained in the Customs Department.

(b) As soon as packets detained as per rule (2) (b) are ready for examination and assessment, they shall be submitted together with the relative letter mail bill and assessment memos to the Customs Appraising Officer, who, after examining them and filling the details of contents of value in the bill, will note the rate and amount of duty against each item. He will likewise fill in these details on the assessment memo, to be forwarded along with each packet. The bill and the assessment memo shall then be audited.

(7) All parcels or packets required to be opened for Customs examination shall be opened, and after examination re-closed by the Post Office officials and shall then be sealed by them with a distinctive seal. The parcels or packets will remain throughout in the custody of the Post Office officials, but if it comes to the knowledge of the Appraiser at the time of examining any parcel or packet that its contents are damaged or short, a note thereof shall be made on the parcel or packet bill.

(8) If on examination the contents of any parcel or packet are found to be misdescribed or the value understated or to consist of prohibited goods, such parcels or packets shall be detained and reported to the Customs Commissioner, and the Postmaster shall not allow such parcels or packets to go forward without the Customs Commissioner's orders.

(9) The duties as assessed by the Customs Appraiser and noted in the parcel bill or letter mail bill shall be recovered by the Post Office from the addressees at the time of delivery to them. The credit for the total amount of duty certified by the Customs Appraisers at the end of each bill shall be given by the Post Office to the Customs Department in accordance with the procedure settled between the two Departments from time to time.

(10) The duties imposed by these rules upon Customs Appraisers shall be performed at Madurai by such officer as the Chief Customs Officer may determine.

(11) The parcel bills or letter mail bills and other document on which assessment is made shall remain in the custody of the Post Office, but the duplicates, where these are prepared, shall be kept in the Customs Department for dealing with claims for refunds, etc., and shall be preserved for three years.

The parcel bill or letter mail bill shall show the following particulars: -

- (a) Number assigned by office of posting.
- (b) Name of office of posting.
- (c) Name of office of destination.
- (d) Weight of insured parcel.
- (e) Local number.
- (f) Contents as ascertained by the Customs
- (g) Declared value in foreign currency.
- (h) Rupee value.
- (i) Rate of duty.

- (j) Amount of duty, and
- (k) Remarks.

II. Postal Parcels or Packets from Foreign Ports in India

(12) Postal parcels or packets from foreign ports in India may be forwarded as ordinary mails to the Foreign Parcel Department of the General Post Office.

(13) For assessment and other Customs purposes such parcels will be treated in the same manner as postal parcels from foreign ports out of India and the procedure prescribed in Rules (2) to (10) above shall be followed.

[Notfn. No.53/50–Cus. dtd 17.6.1950, as amended by Notfn. No. 111 / 55-Cus. dtd 8.7.1955]

IMPORT OF GIFTS BY POST / AIR/ COURIER

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 107/91-Customs, dated the 25th July, 1991, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts bonafide gifts as are exempted from any prohibition in respect of the import thereof under the Foreign Trade (Development and Regulation) Act, 1992, and either imported by a courier as defined in the Courier Imports (Clearance) Regulations, 1995, or falling under heading 98.04 of the First Schedule to the Customs Tariff Act, 1975, from the whole of the duty of customs leviable thereon under the said First Schedule and the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act:

Provided that the value of such bonafide gifts imported by post or as air freight does not exceed rupees five thousand.

Explanation: - For the purpose of this notification, postal charges or the air freight shall not be taken into account for determining the value limit of rupees five thousand.

[Notificationn No. 171/93-Cus.dt.16.9.1993, as amended by Notifications No. 100/95-Cus. dt. 26.5.1995, No. 28/98-Cus. dt.2.6.1998 and No. 87/99-Cus. dt.6.7.1999]

Postal Articles Unclaimed, Refused, etc.:

The contents of postal articles, which having originally been posted in India or the State of Pondicherry and not having left the custody of the post office at any time since their original posting, are imported into India or the State of Pondicherry on return to the post offices in India or the State of Pondicherry as unclaimed, refused or redirected, are exempt from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act:

Provided that no drawback of duty was obtained when the article was exported from India or the State of Pondicherry.

[Notfn.No.273/58-Cus.dt.25.10.1958,as amended by No.128/86-Cus. dt.17.2.1986]

Exemptions To Goods Imported By Post

(1) Gift parcels: The bonafide gift articles (excluding tobacco, liquor and fire arms etc.) are exempted from customs duty upto the value of Rs.5,000/- (FOB i.e., excluding the cost of postage or airfreight)

(2) Samples parcel: The bonafide imported samples are exempted from customs duty subject to the value limit of Rs.5, 000/- and not more than 2 piece of each item is allowed. The samples should be supplied free of cost by the supplier.

There are no hard and fast rules for deciding the application of exemption notification as far as the trade goods' are concerned but for consumer goods. Care should be taken to grant the exemption notification to the genuine samples.

(3) Diplomatic bags: (a) The parcel bags containing diplomatic mail are exempted from duty and examination subject to the declaration made on the bags.

(b) Parcels and packets containing goods (other than mail, letters) addressed to consulates or consular officers, are not required to be examined without their prior concurrence.

(4) Medicines and life saving drugs: The import of medicines for personal use and 'life saving drugs' upto the value of Rs.5,000/- are allowed duty free.

(5) Food articles: The food articles and provisions (except fruit products, alcohol and tobacco) Imported by the foreigner for their personal use are exempted from duty upto the value of Rs.50,000/- in one year vide Notification no. 207/89 as amended by notification no. 45/92 Cus. dated 1.3.1992. The parcels may be released after making entry in their passport. The parcels containing food articles other than for personal use may be released subject to the clearance from the public health authorities. In no case the parcels should be detained longer lest these may be spoiled.

Prohibitions On Imports / Exports By Post

The import of dutiable goods by post is prohibited as per Notifications No. 151/1938 and No. 44/1941, otherwise than complying with the following conditions: -

(a) Such letter or packet shall

- (i) Bear on the front a declaration stating the nature, weight and value of the contents of the letter or packet, or
- (ii) Is accompanied by a declaration as aforesaid either enclosed therein or fastened to the outside by a string tied crosswise and shall in the former case bear on the front a label indicating that the letter or packet may be opened for customs examinations.

(b) Such parcel shall comply with clause (1) of condition (a) except when the declaration referred therein is sent separately attached to the parcel bills, and

(c) The Commissioner of Customs is satisfied that the nature, weight, and the value of the contents of such letter, package or parcel are correctly stated in the declaration.

To give effect to the above orders, all letter mail packets or parcels containing dutiable goods which do not bear a green label or other declaration showing correctly the nature, weight and value shall be detained and reported for orders as regards confiscation, with a note as to when last warning was issued and whether there are any obvious signs of attempted evasion. For the purpose of the notification, a declaration of value on the label need not be insisted upon if the label indicates that invoice is enclosed in the packet.

The following goods are prohibited from import by post: -

- (1) Arms, ammunition and military stores including toy, dummy or imitation revolvers or pistols.
- (2) Explosives, inflammable or dangerous substances such as magnesium wader tapers, sparklers, amorces, Chinese crackers, fireworks pyrotechnic matches, rockets, spirits.
- (3) Coin or bullion exceeding (Rs.65/-) in value except coins clearly intended for the purpose of ornament.
- (4) Anything which, by its nature is likely to injure postal articles or officials

(5) All plants including bulbs, American cotton and seeds of cotton, bersin and flax (6)
 Prohibition/restriction also exists for the import or export of various articles by post, such as intoxicants, obscene literature, crude drugs, antiquities, etc.

Guidelines regarding the clearance of following articles when imported by post-

(1) Explosives, etc.: - As per the provisions of Art, 60 of Universal Postal Convention, explosives, inflammable or dangerous substances are prohibited from transmission by post.

(2) Unloaded weapons (rifles and pistols): - If imported by post can be allowed for clearance on payment of redemption fine in lieu of confiscation under Sec. 125 of Customs Act, (subject to Import Policy and Board's instructions) provided the addressee is in possession of an valid and appropriate Arms Licence. Ammunition should, however be confiscated absolutely as it falls under Art. 60(3) of the Universal Postal Convention.

(3) Sulphur: Sulphur is not allowed to be imported by post parcel, whether in pure or crude form.

(4) Plants: No relaxation should be made in enforcement of rules issued by Government of India prohibiting importation of plants other than sugar cane for planting intended to be grown under conditions specified under rules, by means of the letter or sample post. Accordingly, the plant so imported should not be released even on payments of penalties and even if accompanied by health certificates.

(5) Coins, as articles of curio or hobby: Import of coins received as articles of curio or hobby is allowed provided bonafide is proved.

(6) Magnesium wire and ribbon: Importation of magnesium wire and ribbon by post parcel is prohibited.

(7) Fictitious stamps: If any postal article received in India is found to contain such stamps it should not be delivered to the addressee and should be confiscated.

(8) Opium, morphine, cocaine and other narcotics: The bringing into India through the medium of the post is prohibited of any narcotics drugs other than;

- (i) Those which are dangerous drugs within the meaning of the Dangerous Drugs Act 1930 and
- (ii) The Medicinal preparations which have been declared by a notification for the time being in force under clause(g) of Sec. 2 of the Dangerous Drugs Act, 1930 not to be manufactured drugs. This prohibition is in addition to the prohibitions and restrictions imposed by the Dangerous Drugs (Import, Export and Transshipment Rules) as amended.

The postal authorities have been empowered under the Sec. 25 of the Indian Post Offices Act to search for those goods in the postal articles in transit referred above. Such postal articles whether received for delivery in India or for transmission to foreign territory should not be confiscated but should be returned by the post offices to the country of origin.

(9) Prohibited publications: An up-to-date copy of the list of prohibited or objectionable publications should be maintained in the Postal Appraising Department and this list should be referred to when parcels and packets are examined for prohibited publications. Such prohibited literature and books should be confiscated after issuing the show cause notice to the addressee.

(10) Cinema films/video films etc.: The Cinema and video films are to be released on the basis of certificate granted by the central film censor board. Also the video cassettes are released only after screening in the Postal Appraising Department. The parcels containing such films will be got sealed with Customs seal and will be allowed to be removed to the Film Censor Board office under Preventive escort. After screening, the parcels will be returned to the Postal department.

(11) Chemicals: Parcels and packets containing chemicals in liquid or powder form, imported either as samples or otherwise, which are not branded and/or not dispatched by well known

manufacturers to well known importers should invariably be, before release, got tested in the Custom House laboratory for ascertaining the composition.

(12) Currency: The parcels/packages containing foreign currency as well as Indian currency should be detained and cases adjudicated on merits. The parcels/packages containing Indian currency are to be confiscated by the Postal authorities under Indian Postal Act. The parcels/packages containing foreign currency are to be released on the basis of no objection certificate issued by the RBI.. The particulars of such release may be forwarded to the RBI, and Enforcement Directions for information, etc.

[Release of imported currency- under Section 13(i) of FERA, 1973, no person can bring or send into India any foreign exchange or Indian Currency except with special or general permission of RBI. Further, import of Indian currency notes or coins by post is not permitted. As per the existing practice, whenever such notes / coins, received by post, are confiscated by the Customs authorities, RBI is approached for grant of ' no objection certificate ' on merits of each case. Impounded currency is released by Customs on the basis of such no objection certificates.

2. Some difficulties are reported to have been faced by individuals/Customs Officers in following the aforesaid procedure, as it causes undue delay in the release of post parcels. RBI has considered the matter and has decided to permit Customs authorities to allow import of both Indian and foreign currencies received by post provided the value does not exceed Rs.1000/- subject to certain conditions.

3. The matter has been examined by Board and it has been decided that henceforth individual cases of import of foreign/Indian currency received by post of value not exceeding Rs.1,000/- need not be referred to RBI subject to the following conditions:-

- (i) The power to grant approval may be exercised by an officer not below the rank of Additional Commissioner/Joint Commissioner.
- (ii) A detailed record should be maintained of the exemption granted.
- (iii) Record of the name and addresses of the remitter and addressee in India should be maintained.
- (iv) Where a spurt is noticed in the number of covers received over a time, the matter may be reported in the concerned Regional Office of Reserve Bank of India.]

[M.F. (D.R.) Circular No. 22/99-Cus., dtd. 07.05.99]

(13) Precious stones, diamonds and Jewellery: The assessment of such parcels should be done by the Expert Appraisers. In case of dispute about the valuation, etc. the case may be referred to the panel of Appraisers to ascertain the correct valuation.

(14) Live plants, seeds etc.: As soon as the parcels containing plants, seeds, or raw cotton, etc, received which require fumigation, a call notice will be issued to the addressee asking him to arrange for necessary fumigation. When such arrangement is made, the parcel/package will be allowed to be taken away for fumigation under Preventive escort. After the contents have been fumigated and parcel/package will be assessed in usual manner and returned to the postal authorities.

(15) Labels/tags: Import of labels, price tags and like articles for export product, supplies made by foreign buyers of labels, price tags and trimming materials like buttons and belts to be attached to the goods against specific orders placed by them on Indian exporters, may be allowed clearance without a licence provided the Customs authorities are satisfied with the bonafide of the case. This will also cover the import of 'hangers' supplied free of charge to be re-exported with the garments, which are exempted from import licence.

These goods are also exempted from customs duty for value upto Rs.10,000/- in each case as per exemption notification no. 219/89 cus. as amended by notification no. 183/93 cus. dated 6.12.1993.

Free importability of certain category of goods

Subject to compliance with the provisions of any other law for the time being in force, imports may also be made without a licence by the categories of importers specified below provided the imports do not involve foreign exchange remittances: -

- (1) Import of goods by officials of U.N.O. and its specialised agencies who are exempted from payment of Customs duty;
- (2) Paintings and other display articles required for competitions or exhibitions;
- (3) Food-stuffs, medicines, clothing and blankets received by any charitable organization or any individual as a gift from any philanthropic organization or individuals abroad, for free distribution either by themselves or other charitable organization or individuals to the poor and needy without any distinction of caste, creed or colour;
- (4) Goods received as free gift by the Indian Red Cross Society from abroad provided such goods are exempted from Customs duty;
- (5) Relief supplies and packages received as gift through a government agency or any other approved agency covered by an agreement entered into by the Government of India with a foreign Government, provided they are exempted from Customs duty; and articles donated to National Defence Fund or to the Govt. of India for use of the defence personnel;
- (6) Equipment and raw materials imported by foreign TV companies coming to India on visits sponsored by the Ministry of External Affairs/Ministry of Information and Broadcasting or Department of Tourism, on re-export basis.
- (7) Imports of exhibits, including constructions and decorative materials required for the temporary stands of the foreign exhibitors at the exhibitions/fairs for period of six months on re-export basis.
- (8) Bonafide technical and trade samples of items not appearing in the negative lists of imports (restricted items) supplied free of charge for value not exceeding Rs.30, 000/- (CIF) in one consignment except vegetable seeds, bees and new drugs by any importer;
- (9) Bonafide technical and trade sample of tea supplied free of charge not exceeding Rs.2000/- in CIF value, in one consignment, by any person connected with the tea industry on the recommendation of tea board, Calcutta.
- (10) Import of prototypes and samples not exceeding 5 in numbers in a year by actual users engaged in the production of item for which the prototype/sample is sought for, upon a self-declaration to that effect to the satisfaction of the Customs authorities.

PROCEDURE FOR CLEARANCE OF GOODS IMPORTED BY POST

When goods are imported by sea or air, the Bill of Entry procedure is adopted for assessment of duty and Customs clearance. This procedure is not applicable to goods imported by post.

Imports by Post may be by sea or land as "surface mail" or by air as "air mail".

The Postal Department divides goods imported or exported by post into two categories –

(i) parcels, and (ii) packets or Letter Mail Articles (LMA), which are generally based on the weight and dimensions of the package.

A Post Parcel or L.M.A. is required to be accompanied by a Customs declaration or a label (green label) indicating the description of the contents, value, quantity, etc. The import of parcel or packet without such a declaration or with a declaration, which is incorrect, is prohibited under Customs Notification No. 78/1938. Even though no Bill of Entry is required to be filled by an importer of goods by post, this declaration or label furnished by the sender of the parcel or packet is deemed to be an entry for import,

under Section 82 of the Customs Act, 1962. Hence Customs Authorities can take action against mis-declaration even though the importer himself has not made the mis-declaration.

The Postal Department prepares waybills in triplicate for all parcels or packets imported from abroad. This way bill has been referred to as 'list' in Section 83 (1), Customs Act. It contains the following particulars: -

- (a) Number assigned by office of posting,
- (b) Name of Post Office of posting,
- (c) Name of Post Office of destination,
- (d) Weight of insured parcels,
- (e) Local number (assigned by the Postal authorities in India),
- (f) Contents as ascertained by the Customs,
- (g) Declared value in foreign currency,
- (h) Rupee value,
- (i) Rate of duty,
- (j) Amount of duty, and
- (k) Remarks.

The particulars regarding (a) to (e) above are filled in the waybill by the Postal authorities. The waybills are then presented (along with the Customs declarations wherever available) to the Customs Postal Appraising Department. The Receiving Clerk of the Postal Appraising Department affixes on them the date of receipt.

Section 83 (1) specifies the relevant date for determining the rate of duty (or Tariff Value) applicable to goods imported by Post. It may be noted that the provisions of Section 15 are not applicable for this purpose as there is no Bill of Entry for Postal imports. The correct rate of duty applicable is the one, which prevails on the date on which the waybill for the parcels or packets is presented by the Postal authorities to the Customs Postal Appraising Department. If the waybill is presented by the Postal Department before the arrival of the vessel bringing the parcels or packets, the rate of duty prevailing on the date of arrival of such vessel is the rate applicable to the imported goods.

There is no legal provisions in the Customs Act (similar to Section 14 (1) (a) proviso in respect of Bills of Entry) specifying the relevant date for applying Exchange Rates. In practice the Exchange Rate prevailing on the date of presentation of waybill in the Postal Appraising Department is adopted for assessment.

Assessment of parcels:

When bags containing foreign parcels arrive by sea or air, the Foreign Parcel Department of the concerned jurisdictional Post Office receives the mail bags and transports them to the Foreign Parcel Department. The Postal Appraising Department of the Custom House functions as a Unit attached to the Foreign Parcel Department of the Post Office. The Assessing Officers in the Postal Appraising Department are Appraisers and Examiners. A contingent of Preventive Staff consisting of Preventive Superintendent and Preventive Officers is also posted in the P.A.D., who look after the storage, disposal, etc., of the confiscated articles.

Sheet Assessment: -

The waybills along with Customs declarations are presented to the Assessing Officers of the P.A.D. The Assessing Officer scrutinises the declaration and if he feels that the declaration is acceptable in respect of description of goods, value, etc. he indicates the rate of duty chargeable on the declaration itself. Where he feels that documents are required for assessment, he indicates the nature of documents

(such as invoice, import licence, passport, landing certificate) on the declaration itself.. The Customs clerk assisting the Assessing Officer transcribes on the waybill the particulars of assessment such as value, rate of duty, wherever assessments have been made. He also calculates the amount of duty and indicates it in the relevant column of the waybill against the respective parcel numbers. The waybills are then passed on to the postal staff who make arrangements for the amount of duty to be collected on the respective parcels and for onward transmission of the parcels (not the waybills) to the respective destination post offices. If he considers that a parcel has to be examined before assessment he marks the letter 'D' (indicating 'detain') on the declaration

In cases where the assessing officer has indicated that certain documents are required, the Customs clerk sends a call-memo to the addressee, which also serves as a Show cause notice in cases where the addressee is unable to produce the necessary documents such as import licence for clearance. The call-memo also contains a clause that if the documents are not produced within 28 days, the parcel is likely to be returned to the sender. This time limit has been agreed under an International Postal Convention. However, it does not imply that the parcel must be returned to the senders especially in a case where there is a contravention of the provisions in the Customs Act and the party chooses not to respond.

Detained Parcels

In the case of parcels not assessed during sheet assessment either for want of documents or for examination of the parcels, the Customs Clerk gives a requisition to the Postal staff to produce the parcels. When the parcels are produced by the Postal staff and the required documents have also been furnished by the addressee, the assessing officer scrutinises documents, decides whether assessments can be made on the basis of the particulars available in the documents without opening the parcels. Wherever he considers it necessary to examine a parcel, he asks the postal staff to open it, and examines the same. The Assessing Officer writes down on the waybill the description of the goods, value, and the rate of duty applicable. Wherever an import licence is required and has been produced he debits the licence and indicates the licence number in the remarks column on the way bill. If any shortage or damage is noticed in the contents of the parcel, the assessing officer asks the postal staff to prepare an "Error Slip", signs it and puts it in the parcel. He then passes on the waybill to the clerk who calculates the amount of duty and notes it in the relevant column on the waybill. The waybill is thereafter pre-audited and handed over to the Postal staff for marking the amount of duty on the parcels and for making arrangements for onward transmission of the parcels to the post office of destination.

Assessment of Letter Mail Articles:

When bags containing Foreign Letter Mail Articles are received at the Foreign Postal Department, the assessing officer witnesses the opening of the bags and decides quickly on the spot which of the packets do not attract any duty or prohibitions and restrictions and segregates them for allowing onward transmission by the Postal authorities to the Post Offices of destination. The remaining packets are detained by him. The Postal authorities prepare an assessment memo for each such detained article. The Postal staff also prepares waybills for the detained packets. The waybills, assessment memos and the detained packets are thereafter presented to the Customs Assessing Officer.

Assessment is carried out by examining the packets and calling for documents wherever necessary as in the case of detained parcels. The assessing officer writes down the description of goods, value and rate of duty on each assessment memo. The Customs clerk transcribes the assessment particulars on the waybill and also works out and indicates the amount of duty in the appropriate column, both in the assessment memo and in the waybill. After pre-audit, the postal staff marks the rate of duty on the packets and despatch them to the Post Offices of destination.

Collection and Realisation of Customs Duty

The amounts of duty entered in the waybills are credited by the Postal department to the Customs department without waiting for the parcels or packets to be actually delivered to the addressees on payment of the amounts. When the parcel or packet reaches the Post Office of destination, the concerned postmaster/postman delivers it to the addressee after collecting the Customs duty indicated on the parcel or packet.

Writebacks

Sometimes the parcels or packets on which Customs duty has been assessed by the P.A.D are not taken delivery of by the addressee who may not be available or who may refuse to pay the duty imposed. In such cases the Post Office returns the parcels/packets to the senders in the foreign country. The Postal authorities submit a statement of the parcels/packets which have been returned to senders and claim writeback of the respective amounts of duty, if any.

Sometimes the addressee of a parcel/packet feels that the Customs duty assessed by the P.A.D. is too high and requests the Post Office of destination to return the parcel/packet to the P.A.D. for assessment (without paying the duty and taking delivery). Such parcels/packets are re-examined to consider whether the addressee's request for re-assessment is justified.

If on re-examination the original duty is revised to a lower amount or a high amount, a separate memo called Write back memo is sent by the P.A.D., to the Foreign Parcel Department authorising them to collect the revised duty instead of the original duty and claim the difference as write-back, or credit the same to P.A.D.

Mode of Assessment

Bulk of the parcels/packets received from abroad are addressed to individual persons and not intended for trade. In order to simplify the process of classification and assessment of such parcels/packets, a separate heading No.98.04 carrying a flat rate of duty has been provided in the Customs Tariff. This heading covers all dutiable articles imported by Post or air, even if such articles are also covered under chapters 1 to 97 of the Customs Tariff. The conditions for classification of goods imported by Post under this heading are: (1) the goods should be for personal use, and (2) they should not come under any Import Trade Control restrictions. Goods which do not fall under 98.04 (for example, imports for commercial or professional purposes, trade parcels, etc.) are assessable at the appropriate rate of duty under the relevant heading in chapters 1 to 97 of the customs tariff together with the corresponding auxiliary and countervailing duties.

Import Trade Control:

All imported goods, even if they are imported by post, attract the provisions of the Foreign Trade (Development and Regulation) Act, 1992, rules made and order issued thereunder. In other words, even goods imported by post require an import licence for Customs clearance, unless they are covered by OGLs etc. However according to Section 3 (i) of The Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993 issued under Foreign Trade (Development & Regulation) Act, 1992, nothing contained in the Foreign Trade (Regulation) Rules, 1993 shall apply to the import of any goods by any person through the Post or otherwise for his personal use, or by any institution or hospital for its user except-

- (a) vegetable seeds exceeding one lb in weigh;
- (b) bees;
- (c) tea;

- (d) books, magazines, journals and literature which are not allowed to be imported under the policy for the time being in force;
- (e) goods, the import of which is canalised under the policy;
- (f) alcoholic beverages;
- (g) fire arms and ammunition;
- (h) consumer electronic items (except hearing aids and life saving equipments, apparatus and appliances and parts thereof);

Provided that the C.I.F. value of goods imported as aforesaid at any one time shall not exceed rupees five thousand;

- (i) by or on behalf of Diplomatic personnel, consular officers and Trade Commissioners in India who are exempted from payment of Customs duty under Notification No. 3 dated the 8th January, 1957 of the Government of India in the Ministry of Finance (Department of Revenue);

PROCEDURE FOR CLEARANCE OF GOODS EXPORTED BY POST

Goods intended for Export by Post may be booked from any of the Post Offices in the country. However, the Postal Department must route all such export parcels through any of its foreign post offices where the Postal Appraising Department subjects them to customs scrutiny.

Export parcels must be accompanied by a Custom declaration or Despatch Note which is deemed to be an entry for export under Section 82 of the Customs Act, 1962. It is filled up by the exporter at the time of booking the parcel and contains information like description, quantity and the value of the contents besides names and address of the consignee/addressee and the exporter. In the absence of a shipping bill this declaration is the entry for export.

PP Form which is similar to the GR form is filed for Exchange Control purposes as per the requirement under FERA, in case the exports involve any foreign exchange transaction. The exporter declares the Full Export Value in this form which he expects to realise from the export. This Full Export Value is verified by the Appraisers. For this purpose the Invoice and copy of contract/agreement entered between the buyer and seller are submitted by the exporter. After verification, the PP Form is endorsed by the Appraiser under his seal. Thereafter the PP Form is sent to the R.B.I. to ensure that foreign exchange earned out of these exports is repatriated through the R.B.I. Outstation parties will attach self addressed envelope along with the PP Form for return of duplicate PP Form.

However in the case of gifts, samples or unaccompanied baggage this PP Form is not required as there is no foreign exchange involved in such cases. A gift parcel or a commercial sample parcel should be accompanied by a self declaration stating that it does not involve any transaction of foreign exchange. For parcels of high value a certificate from an authorised dealer (a bank) in foreign exchange or an R.B.I. waiver would be needed to justify the claim that it does not involve any transaction of foreign exchange. All such self-declarations, certificates or waivers have to be pasted on the face of the parcel so that they may be checked at the time of Customs clearance by Postal Appraising Department.

In the case of Unaccompanied Baggage, no such document is required. Their only requirement, besides the Customs declaration is that the Passport Number of the passenger should be clearly mentioned on this declaration form.

Whenever needed, exporters are also required to furnish a pre-shipment inspection or Quality Control Certificate from then Export Inspection Agency or any other agency authorised for such purpose, viz., ISI, Silk Board or Agmark etc. In such cases the certificate indicates the validity and details of the

seal used to seal the packages. If the seals are intact, the packages need not be opened and examined. In case of doubt a percentage check shall be carried out.

Where necessary, export of goods by Post requires an Export Licence if the goods are listed in the Export Policy under the restricted or controlled commodity list or if they do not satisfy the conditions mentioned in the Postal Notice No. 13/73.

Postal Notice No. 13/3.12.73 fixes certain monetary limits beyond which any post parcel would have to be accompanied with a valid Export Licence. In addition, Arms and Ammunition, Explosives, Inflammable material, Obscene literature, Dangerous Drugs, Snake skins, Antiquities, etc. are also prohibited from being Exported by post.

In the absence of any Shipping Bill, the licences are not in the form of endorsements but are issued as a separate document by the Export Trade Control authorities. In case of canalised items an export permit has to be produced from the canalising agency.

It is the responsibility of the exporter to ensure that the parcel is covered by a proper Export Licence where such a licence is necessary, failing which the parcel is liable to be returned. The fact that a parcel is accepted by a Post Office in the first instance does not in itself constitute a guarantee that the requirements of Export Control have been fulfilled.

After verifying all the documents, the Appraiser in the Postal Appraising Department asks the Postal Staff to open the parcels selected by him. Parcels are opened by the Postal staff and also closed by them. At no point of time the parcels are in the custody of Customs department. If the contents are in conformity with the entries made in the declaration and all other documents are in order, a 'Customs Passed' stamp is put on the face of the parcel.

The rate of duty and Tariff value, if any, applicable to any goods exported by post shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities for exportation. Authority for this date is Section 83 (2) of Customs Act 1962.

Drawback was given under Section 74 & 75 on exports by post until the Customs Act was amended in 1983. As a result of the amendment any drawback could be given on any exports only when a "let export" order has been passed under Section 51 by the proper officer. Hence drawback claims were held up till 1985 when the Customs Act was amended to allow drawback by Post also giving retrospective effect to the amendment.

Goods which are being exported under claim for drawback cannot be despatched directly from any Post Office. They must be produced at the P.A.D. first along with all the required documents, as mentioned above. In addition it must be accompanied by the 'D' Form (in Quadruplicate) also. The parcels must be examined with reference to their weight or any other criterion relevant for Duty drawback. After their examination the parcels are sealed. Thereafter, a stamp "Passed under Drawback claim" is put on the face of it. Claims made in the 'D' Form regarding their quantity and value are also verified on the basis of examination report.

The exporter takes this sealed parcel along with the copies of 'D' Form and presents it for exportation to the Foreign Postal Department, or any other Post office for that matter. The post office retains 2 copies of 'D' Form and returns one to the exporter after endorsing the parcel No. and date of booking on it. This copy of the D. Form, which is also known as pre-shipment copy, is then submitted to the Postal Appraising Department for the processing of drawback claim. After the shipment of the parcel, the Postal department endorses the date of shipment and the parcel number (which was earlier assigned to the parcel) on one of the copies of D-Form which was retained by them at the time of booking. This is

known as Post shipment copy of the D. Form. It is sent to Postal Appraising Department by registered post. On receiving this copy, the Postal Appraising Department takes both the pre-shipment and post-shipment copies and the D-Form and completes their processing and grants drawback. (In the absence of post-shipment copy of the 'D' Form, a certificate from bank is obtained to the effect that amount has been realised, which in turn will be proof that the parcels were shipped out).

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CHAPTER -NINETEEN

IMPORTS AND EXPORTS THROUGH COURIER

PRELIMINARY

Around 1986, the facility of clearance of goods brought through couriers was first introduced. The facility of courier service was initially restricted to clearance of documents. But Notification No. 33/86 dtd. 07.02.1986 permitted importers to import samples or prototypes (with certain conditions) through courier mode. Although the courier service appeared to be combination of cargo and postal service, with a view to facilitate expeditious clearance of documents and samples of urgent nature, the same were permitted to be cleared as baggage. Though the articles imported through courier were considered and cleared as courier baggage under Customs Tariff Heading 98.03, the articles did not belong to the courier. As such, the importer / consignee hesitated to pay duty at the rates prescribed for courier baggage which was higher than the effective rate of duty on normal passengers' baggage or cargo. This created resentment among the consignees, which lead to disputes and detention of articles for long. Most of the consignees, who were 100% Export Oriented Units, Govt. of India Undertakings, Foreign Embassies, Charitable Institutions, etc., insisted on clearance without payment of duty under various schemes, an Exemption Notification which could not be accepted as the same was considered as Courier Baggage under CTH 98.03.

The entire issue was examined in-depth by the Ministry from the point of view of withdrawing imports through courier from CTH 98.03 and assessing the same as regular cargo.

Accordingly, Courier Import (Clearance) Regulations, 1995 governing clearance of goods through courier mode came into force. The Board vide Circular No.56/95 –Cus. dated 30.5.1995 explained & clarified issues relating to assessment and clearance of goods Imported by Courier mode, by issuance of Courier Import (Clearance) Regulations, 1995. The salient features of the same are reproduced below:

GUIDELINES ON ASSESSMENT OF GOODS IMPORTED BY COURRIER MODE

The Finance Bill 1995 has received the assent of the President of India on 26.5.1995 and with the coming into force of the Finance Act, 1995 Chapter 98 of the Customs Tariff Act, 1975 stands amended such that vide NOTE 4 “goods imported through courier service” are excluded from the said Chapter. Accordingly, imports by courier shall **NOT** henceforth be classified as baggage under heading 98.03 of Tariff for the purpose of assessment to duty and clearance thereof. The practice of charging a uniform duty of 80% *ad valorem* on articles imported through couriers in terms of exemption notification No. 86/94-Cus dated 1.3.1994 should be **DISCONTINUED WITH IMMEDIATE EFFECT**. The said Notification No. 86/94 dated 1.3.1994 has also been accordingly rescinded.

2. Imports by courier shall now be classified on merits in the respective Customs Tariff Headings. To illustrate, imports of an “instrument” and “machinery” by a courier will be classified under Chapter 90 and Chapter 84 respectively and the duty charged suitably and not at a uniform rate as baggage. Thus, the courier imports will now be subject to “merit” assessment.

3. For implementing the new system of assessment and clearance of goods imported by couriers, the Board has framed the Courier Imports (Clearance) Regulations, 1995 notified vide Notification No. 35/95- Customs (NT) dated 26.5.1995. The salient features of these regulations are as follows :

(i) The new scheme of assessment of imports by couriers applies only to imports by authorised couriers at the Customs airports of Bombay, Delhi, Calcutta and Madras. Thus the facility is for the time being restricted to the Airports where the couriers normally operate at present.

(ii) The new scheme shall also apply ONLY to imports by couriers when carried by the courier's representative on incoming scheduled passenger flights. Hence it would not be applicable to imports either as cargo (including unaccompanied baggage) or by charter / freighter flights.

(iii) To qualify for the facility of assessment under the regulations the applicant must register himself as an "authorised courier" with the concerned Commissioner of Customs at the airport of import. For eligibility of registration the conditions are that the applicant must establish his financial viability (Rs.5 lakhs) and furnish a security bond etc. Further, the regulations impose certain obligations on the courier who may also in certain situations be "deregistered" by the Commissioner of Customs.

(iv) For the purpose of the scheme, the goods imported by courier have been divided into three categories namely (a) documents; (b) samples and free gifts; and (c) dutiable goods. These goods are to be packaged distinctly as the scheme of assessment and clearance of the goods is different for the three categories. Essentially, goods in the first two categories are duty free, here simplified Bills of Entry have been specified (Form III and IV of the Regulations) for their clearance. One single Bill of Entry (Form III or IV as the case may be) will be sufficient for the clearance of any number of such goods imported by any authorised courier on a particular flight. It is however necessary that for the purpose of clearance of "documents" the manifest filed by the authorised courier (Regulation 5) specifies the nature of document, which may be letters, brochures etc. This is necessary to verify that indeed the item of import viz. "document" is duty free and correctly cleared as per Form III of the regulations. It may also be seen that for the purpose of duty free clearance of goods in category of samples and gifts the value limit has been made Rs.2000/- by Notification No. 100/95-Customs dated 26.5.1995. This value is exclusive of freight and insurance element.

(v) For the category of dutiable goods the Bill of Entry shall be in an aggregated Bill of Entry (Form V) for a number of individual consignments imported by one courier on behalf of more than one consignee. However, here a detailed assessment is provided for on revenue considerations.

(vi) It is to be observed that the scheme of clearance of imports by courier mode introduces certain procedural relaxations as regard the customs clearance procedures. Such imports will however continue to be governed by the EXIM Policy provisions applicable to imports of the various items. Thus it is to be ensured that all imports by the courier mode satisfy the provisions of the EXIM Policy and any other law for the time being in force.

(vii) A crucial element of the new scheme is that the authorised courier is obliged to obtain an authorisation from the consignee for acting as his agent in clearance of the goods. This has implication on liability of the parties in terms of the Customs Act, 1962, and for this the Bills of Entry provide for certain declarations which must be ensured. In the normal course, it is not necessary for the Customs to insist upon the production of consignee's authorisation in support of the declaration of the courier.

(viii) It may also be seen that, vide regulation 7, the goods imported by an authorised courier may with his concurrence be also cleared through Customs by the consignee. It is further provided that for certain goods such as the goods requiring a licence, or imports of Export Oriented Undertakings, DEEC imports etc., the normal Bill of Entry as per the Bill of Entry (Forms) Regulations, 1976 is to be necessarily filed. A normal bill of entry may also be directed to be filed by the Deptt. in certain situations such as where the

assessing officer requires corroboration of the declaration and where an enquiry may be necessary before finalising the assessment (under valuation, misdeclaration of description etc.)

4. As may be seen the new system of assessment is aimed at facilitating the expeditious clearance of imports by courier. This is a necessary requirement of the trade. Therefore, it is provided that certain categories of goods may be cleared on a simple Bill of Entry with the minimum of declarations. However, while the endeavor of the Customs shall be to ensure against the hold up of any goods, the right to verify the declarations by screening of packages or examination is not diluted in any manner. At the same time in view of the time sensitive nature of imported goods, it is to be ensured that the checks are carried out only in cases of *bona fide* doubt or suspicion. The dutiable goods will however be subject to the normal procedure of assessment.

5. The important aspect of the clearance facility which is not covered by the Regulations is that the manner of payment of Duty on the imported goods. It is suggested that the courier companies may be asked to maintain account current (deposit account) so that the payment of duty round the clock is facilitated. However, the Commissioners of Customs concerned will evolve a suitable procedure keeping in mind the local conditions. The Duty collection must take into account the convenience of the trade as well as the fact of round the clock clearances.

6. Another aspect to be noted is that in certain cases the consignee of the imported goods may seek certification from the Customs regarding the Duty paid on the said goods for the purpose of claiming Modvat benefit. In this regard it may be seen that the scheme of courier import clearance provides for the filing of a Bill of Entry as per the Bill of Entry (Forms) Regulations, 1976. It is accordingly expected that when any consignee wishes to claim Modvat benefit then in such case he should be advised to file the normal Bill of Entry, which document will serve as the document for claim of Modvat. In no case is the Customs to issue separate certificates for Modvat purpose.

7. There may also be situations where the courier imports goods, which are expressly not covered as per the new regulations (Regulation 2). In such cases the courier concerned is to be advised that such goods shall be dealt with on merits, in terms of the legal provisions, on the filing of a normal Bill of Entry as per the Regulations of 1976. For this purpose the courier may also like to transfer the goods to the Air Cargo Complex for which the Customs may have no objection.

8. As may be seen the scheme of clearance of courier goods envisages the constant interaction of the Customs with the IAAI which is to provide the infrastructural facility as well as with the courier companies and the airlines to ensure expeditious movement of imported goods unloaded from the aircraft to the facility for clearance. The Board desires that this matter be personally attended to by the Commissioner of Customs.

9. It is also necessary that particularly at the start of the new facility, the associations of courier companies be taken into confidence and consulted so that the new scheme of customs clearance is understood by all concerned without any element of doubt. This may be done by organising seminars etc. where opportunity is given to both the couriers as well as Department officers to interact.

10. As may be appreciated the objective of the new scheme of courier imports clearance is to ensure timely clearance without any delay whatsoever. At the same time there may be occasions when the imports goods may not be cleared immediately and have to be necessarily detained by the Customs. On such occasions, it is important that the reasons for the detention and requesting for remedial action by the consignee to facilitate immediate clearance of the goods. This approach will be helpful to the trade as the

mode of courier imports is normally resorted to for time sensitive goods and any hold up would not be appreciated.

11. It is expected by the Board that the new system of courier import will facilitate the trade. However, for this the concerned officers to be posted at the earmarked courier terminals, **on cost recovery expense of the courier association**, must be specially briefed regarding the new procedure and emphasis on speedy clearance. In this direction the Board expects that seasoned officers will be posted for attending to the work. The work must also be supervised by senior officers on day to day basis. Needless to say the Commissioner of Customs are expected to keep the Board informed of any procedural difficulty that may be noticed.

[Board's Circular No. 56 / 95- Cus. Dated 30.5.1995 in F. No. 446 / 18 / 94-Cus – IV]

Courier Imports and Exports (Clearance) Regulations, 1998

With the growing volume of import / export of goods through Courier mode, it was felt necessary by the Government to include hitherto untouched aspects of the process of clearance as well the important issue of export of goods through Couriers.

The Govt. has issued the new Courier Imports and Exports (Clearance) Regulations, 1998, w.e.f. 9.11.98 Vide Notn. No. 87/98Cus (NT). This Notification has further been amended by Notfn. No. 28 / 99-Cus.- (N.T.) dated 28.4.1999, No. 54/99-Cus. (N.T.) dt.21.9.99 and No. 66/99-Cus. (N.T.) dated 25.11.1999'

Salient features of these Regulations are as under :-

Application – (1) These Regulations shall apply for assessment and clearance of goods carried by the Authorised couriers on incoming or outgoing flights on behalf of a consignee or consignor for a commercial consideration.

(2) These Regulations shall not apply to –

- (a) the goods imported or export goods from the airports other than the Customs airports at Mumbai, Delhi, Chennai, Calcutta, Bangalore, Hyderabad, Ahmedabad and Jaipur;
- (b) the goods where the weight of the individual package exceeds 70 kgs.
- (c) the goods which requires specific conditions to be fulfilled under any other Act for the time being in force or any rule or regulation made thereunder.
- (d) The following import goods requiring testing of samples thereof or reference to the relevant statutory authorities or experts before their clearance, namely;-
 - (i) animals and parts thereof, plants and parts thereof;
 - (ii) perishables;
 - (iii) publications containing maps depicting incorrect boundaries of India;
 - (iv) precious and semi-precious stones, gold or silver in any forms; and
 - (v) goods falling within Chapters 28, 29 and 38 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975);
- (e) the following export goods, namely:-
 - (i) the goods which are subject to levy of any duty on their exports;
 - (ii) the goods proposed to be exported with the claim for drawback;
 - (iii) the goods proposed to be exported under Duty Entitlement Pass Book Scheme, Duty Exemption Schemes, Export Promotion Capital Goods Scheme or any other similar export promotion schemes;

- (iv) goods in respect of which the proper officer directs the filing of Shipping Bill in prescribed form;
- (v) goods where the value of the consignment is above rupees twenty-five thousand and transaction in foreign exchange is involved. Provided that the limit of Rs. twenty five thousand as provided in this sub-clause shall not apply to such export consignments where the G.R. Waiver on specific permission has been obtained from the Reserve Bank of India.

(3) Notwithstanding any thing contained in sub-regulation (2) these regulations shall apply to import of gems and jewellery including samples thereof by Export Oriented Units in Export Processing Zones and export of cut and polished diamond, gems and jewellery under any scheme of Export and Import Policy 1st April 1997- 31st March 2002 published by the Government of India under Ministry of Commerce notification No. 1/1997-2002, dated the 31st March, 1997 as amended from time to time from Export Oriented Units, Units in Export Processing Zones or units in the Domestic Tariff Area if the value of each export consignment under such export does not exceed rupees twenty lacs.

3. Definitions – In these regulations, unless the context otherwise requires –

- (a) “Authorised Courier” in relation to import or export goods means a person engaged in the international transportation of the goods on express door to door delivery basis and is registered in this behalf by a Commissioner of Customs;
- (b) “documents” include any message, information or data recorded on paper, cards or photographs and of no commercial value which is for the time being not liable to any customs duty or subject to any prohibition or restriction on their export out of or import into India;
- (c) “samples” means any bonafide commercial samples and prototypes of goods supplied free of charge of a value not exceeding ten thousand rupees for exports or five thousand rupees for imports which are for the time being not subject to any prohibition or restriction on their export out of or import into India and for which no transfer of foreign exchange is involved;
- (d) “free gifts” means any bonafide gifts of articles for personal use of a value not exceeding rupees twenty-five thousand for a consignment in case of export goods and rupees five* thousand for each consignments in case of import goods which are not subject to any prohibition or restriction on their export out of or import into India and for which no transfer of foreign exchange is involved;
- (e) the words used and not defined in these regulations but defined in the Customs Act, 1962(52 of 1962) shall have the meaning respectively assigned to them in that Act.

4. Packaging of goods to be imported or exported by courier. –

- (1) For the purposes of these regulations, the import or export goods shall be packed separately in identifiable courier company bags, with appropriate labels, in the following categories, namely:-
 - (a) documents;
 - (b) samples and free gifts;
 - (c) dutiable or commercial goods;
- (2) Each package of import or export goods shall bear a declaration from the sender regarding the contents of the package and the value thereof.

5. Clearance of import goods.- In case of import of goods through courier, the following procedure shall be followed namely:-

- (1) (a) The on-board courier or the person incharge of aircraft shall file a statement, immediately on arrival of the import goods at the airport by such aircraft with the proper officer in Form Courier Bill of Entry-I (C B E-I) appended to these regulations;
- (b) the Authorised Courier shall file a statement with the proper officer in respect of such import of goods in Form Courier Bill of Entry-II (CBE-II) appended to these regulations.
- (2) (a) The courier bags containing the imported goods shall not be dealt with in any manner

except as may be directed by the Commissioner of Customs;

(b) no person shall, except with the permission of proper officer, open any packages of imported goods brought by an on-board courier as the person incharge of aircraft.

- (3) The Authorised Courier shall make entry of goods imported by him by presenting to the proper officer a bill of entry in Form Courier Bill of Entry-III (CBE-III) / Form Courier Bill of Entry-IV (CBE-IV) or as the case may be in Form Courier Bill of Entry-V(CBE-V) appended to these regulations:

Provided that the Authorised Courier, or with the concurrence of the Authorised Courier, the consignee or a Customs House Agent on behalf of the consignee, may file a Bill of Entry in the form prescribed in the Bill of Entry (Forms) Regulations, 1976 for clearance of any of the imported goods.

Provided further that for the following goods, the entry shall be made in the form prescribed in the Bill of entry (Forms) Regulations, 1976, namely:-

- (i) goods in respect of which an exemption from the levy of duty applicable to hundred percent export orientated undertakings or to units in a free trade zone, as defined under section 3 of the Central Excise Act, 1944, is claimed;
 - (ii) goods imported under the Export Promotion Capital Goods Scheme or the Duty Entitlement Pass Book Scheme or the Duty Exemption Scheme specified under the Export and Import Policy (1st April 1997 – 31st March 2002) as amended from time to time or any relevant Export and Import Policy issued by Government of India and in force at the time of the Import;
 - (iii) goods imported against any other licence issued under the Foreign Trade (Development and Regulation) Act, 1992;
 - (iv) goods imported by or on behalf of a person who is related to the consignor within the meaning of Rule 2 of the Customs Valuation (Determination of Price of Imported goods) Rules, 1988; and
 - (v) goods in respect of which the proper officer directs filing of a Bill of Entry in such form.
- (4) The authorised courier shall present all the imported goods brought by on-board courier or the person incharge of aircraft to the proper officer for examination and assessment thereof.
- (5) Any imported goods which are not taken clearance, shall be detained by the Customs and shall be disposed of after issuing notice to the Authorised Courier after the expiry of a period of thirty days of the arrival of the said goods and the charges payable for storage and holding of such goods shall be payable by the Authorised Courier.

6. Clearance of export goods – In case of export of goods through courier the following procedure shall be followed namely:-

- (1) The Authorised Courier shall file a statement before departure of any flight containing such export goods at the airport with the proper officer in Form Courier Shipping Bill-I (CSB-I) or Form Courier Shipping Bill-II (CSB-II), appended to these regulations.
- (2) (a) The courier bags containing the export goods shall not be dealt with after presentation of documents to the proper officer in any manner except as may be directed by the Commissioner of Customs;
- (b) no person shall, except with the permission of proper officer, open any package of export goods to be taken on board a flight.
- (3) The Authorised Courier shall make entry of goods for export in shipping bill in Form Courier Shipping Bill-I (CSB-I) or Form Courier Shipping Bill-II (CSB-II) as the case may be, appended to these regulations, before presenting it to the proper officer;

Provided that for the following goods, such entry shall be made in the form prescribed in the Shipping Bill and Bill of Export (Form) Regulations, 1991, and shall be processed at Air Cargo Complex or the Export Oriented Unit or Export Promotion Zone or Free Trade Zone or Software Technology Park

or Electronic Hardware Technology Park and thereafter the Assistant Commissioner of Customs, may, if requested by the exporter, handover such goods to a courier agency for onward despatch subject to such condition and limitation as may be imposed by him –

- (a) goods oriented from Hundred percent Export Oriented Undertaking or Unit in a Free Trade Zone or Software Technology Park or Electronic Hardware Technology Park, as defined under section 3 of the Central Excise Act, 1944;
 - (b) goods proposed to be exported under the Export Promotion Capital Goods Scheme or the Duty Entitlement Pass Book Scheme or Duty Exemption Scheme as specified under the Export and Import Policy (1st April, 1997 – 31st March, 2002) issued by the Government of India as amended from time to time or relevant Export and Import policy issued by the Government of India and in force at the time of the export;
 - (c) goods proposed to be exported under claim for drawback in terms of provisions laid down under the Customs Act, 1962;
 - (d) goods which require licence to be issued under the Foreign Trade (Development and Regulation) Act, 1992, for their export;
 - (e) goods in respect of which the proper officer directs filing of a Shipping Bill in such form.
- (4) The Authorised Courier shall present the export goods to the proper officer for inspection, examination and assessment thereof.
- (5) Any export goods brought into Customs area for export purpose and have not been exported within seven days of arrival of such goods into such area or within such extended period as permitted by the proper officer, in case of delay due to such reasons which the proper officer considers to be beyond the control of the concerned Courier, may be detained by the proper officer and disposed of after issuing notice to the concerned courier and the charges payable for storage and handling of such goods shall be payable by such courier .

7. Registration of Authorised Couriers – Every person intending to operate as an Authorised Courier shall apply, in writing to the Commissioner of Customs at the Customs Airport at Mumbai or Delhi or Chennai or Calcutta or Bangalore or Hyderabad or Ahmedabad or Jaipur from where the goods are to be imported or exported, for registration in this behalf.

8. Condition to be fulfilled by the applicant – The person applying for registration as an Authorised Courier shall disclose to the satisfaction of the Commissioner of Customs that he is financially viable and in support thereof he shall produce to the said Commissioner of Customs a certificate issued by a Scheduled Bank or such other proof acceptable to the Commissioner of Customs evidencing possession of assets of a value not less than five lakh rupees.

9. Scrutiny of application – On receipt of application under Regulation 7, the Commissioner of Customs, may make enquiries for verification of the particulars set out in the application and also such other enquiries as the Commissioner of Customs may deem necessary for such registration including enquiries about the identity, bonafide and reputation of the applicant.

10. Registration – (1) If on scrutiny of the application filed by a person under regulation 7, the Commissioner of Customs is satisfied that the applicant fulfils the requirements of the registration, the said applicant may be so registered as an Authorised Courier.

(2) The registration granted under sub-regulation (1) shall be valid for a period of three years, but may be renewed from time to time in accordance with the procedure provided in sub-regulation (3).

(3) The Commissioner of Customs may, on application made before the expiry of the validity of the registration under sub-regulation (2) renew the registration for a period of three years from the date of expiration of the original registration or of the last renewal of such registration, as the case may be, if the performance of the Authorised Courier is found to be satisfactory with reference to the absence of

any complaints of misconduct including non-compliance of any of the obligations specified in Regulation 13.

11. Execution of bond and furnishing of security – The Commissioner of Customs shall require the applicant to enter into a bond in such form with a security of two lakh rupees in case in case of major international airports of Mumbai, Delhi, Calcutta and Chennai and Rs. One Lakh rupees in case of other airports or in the form of postal security or Bank guarantee or National Savings Certificate in the name of the Commissioner of Customs for complying with the provisions of the Customs Act, 1962, and the Rules and Regulations made thereunder. The condition of the said bond shall also be that the applicant shall agree to pay the duty, if any, not levied or short levied, with interest if applicable on any goods taken clearance by the Authorised Courier if in the opinion of the Assistant Commissioner of Customs the same cannot be recovered from the importer or the exporter.

12. The Authorised Courier who has been granted a registration under Regulation 10 would be entitled to apply for and to be granted registration in any other airport provided that he shall furnish the bond and security as prescribed under regulation 11 for each such registration.

13. Obligations of Authorised Courier – An Authorised Courier shall –

- (a) obtain an authorization, from each of the consignees of the import goods for whom such Courier has imported such goods or consignors of such export goods which such courier proposes to export, to the effect that the Authorised Courier may act as agent of such consignee or consignor, as the case may be, for clearance of such import or export goods by the proper officer;
- (b) advise his client to comply with the provisions of the Customs Act, 1962, and Rules and Regulations made thereunder and in case of non-compliance thereof shall bring the matter to the notice of the Assistant Commissioner of Customs;
- (c) exercise due diligence to ascertain the correctness and completeness of any information which he submits to the proper officer with reference to any work related to the clearance of import goods or shipment of export goods;
- (d) not withhold information communicated to him by an Officer of Customs, relating to assessment and clearance of import goods as well as inspection, examination and shipment of export goods, from a client who is entitled to such information;
- (e) not withhold any information relating to assessment and clearance of imported goods or shipment of export goods, from the Assessing Officer;
- (f) not attempt to influence the conduct of any Officer of Customs in any matter pending before such officer or his subordinates by the use of threat, false accusation, duress or offer of any special inducement or promise of advantage or by the bestowing of any gift or favour or other thing or value;
- (g) maintain records and accounts in such form and manner as may be directed from time to time by an Assistant Commissioner of Customs and submit them for inspection to the Assistant Commissioner of Customs or an officer authorised by him, wherever required;

14. Deregistration :- (1) The Commissioner of Customs may revoke the registration of an Authorised Courier and also order forfeitures of security on any of the following grounds namely :-

- (a) failure of the Authorised Courier to comply with any of the conditions of the bond executed by him under regulation 11;
- (b) failure of the Authorised Courier to comply with any of the provisions of these regulations;
- (c) misconduct on the part of the Authorised Courier whether within the jurisdiction of the said Commissioner or anywhere else, which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station.

Provided that no such revocation shall be made unless a notice has been issued to the Authorised Courier informing him the grounds on which it is proposed to revoke the registration and he is

1.								
2.								
3.								

(Please indicate all other charges such as commissions, includible in the assessable value as per Section 14 of the Customs Act, 1962)

Declaration

- (i) I / We hereby declare that I / We have obtained the authorisation from each of the consignees mentioned above to act as an agent for the clearance of the goods described above.
- (ii) I / We declare that I / We have not received any other documents or information showing a different price, value, quantity or description of the said goods and that if at any time hereafter I / We receive any documents from the importer showing a different state of facts I / We will immediately make the same known to the Commissioner of Customs.
- (iii) I / We hereby declare that the contents of this Bill of Entry are true and correct in every respect and are in accordance with the Airway Bills and the invoices and other documents attached herewith.
- (iv) I / We enclose herewith(number).... of airway bills and (number)..... of invoices for the aforesaid consignments with this Bill of Entry.

Signature and Stamp of
Authorised Courier

Signature of Assessing Officer

Signature of Audit Officer

(Passed out of Customs charge)
Signature of the Proper Officer

FORM COURIER SHIPPING BILL – I (CSB-I)
(see regulation 6)

COURIER SHIPPING BILL FOR DOCUMENTS

Name and Address of Courier Company

<u>Airport</u>	<u>Departure</u>	<u>Flight No. / date</u>	<u>Airport of shipment</u>	<u>Expected date of</u>	<u>Customs Department</u>
				<u>Landing at</u>	<u>Serial No. / date</u>
				<u>Destination</u>	

S. No.	Airway Bill No.	Name and Address of Authorised Courier	No. of Bags	Weight
1.				
2.				
		Total		

Signature/stamp of
Courier Co.

Declaration

- i) I / We hereby declare that I / We have obtained the authorisation from each of the consignors mentioned above to act as an agent for the clearance of the goods described above.

- ii) I / We hereby declare that the goods as per this shipping Bill include only documents of no commercial value and do not include goods which are liable to duty or are prohibited or restricted for export from India under any law for the time being in force.

Signature and stamp of
Authorised Courier

Signature of Proper Officer of Customs.

COURIER SHIPPING BILL – I (CSB-II)

(see regulation 6)

COURIER SHIPPING BILL

Name & Address of the Authorised Courier	Airport of Departure	Flight No. / Date	Airport of Shipment	Customs Deptt . Serial No. / Date
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S. No.	Airway Bill No.	No. of Packages	Weight	Description of goods	Consignor's Name & Address	Value	Port of Shipment	Consignee's Name and Address
1.								
2.								
3.								
4.								

Declaration

- i) I / We hereby declare that I / We have obtained the authorisation from each of the consignors mentioned above to act as an agent for the clearance of the goods described above.
- ii) I / We hereby declare that the goods for export as per this shipping bill include only bonafide commercial samples, prototypes of goods and bonafide gifts of articles for personal use of a value not exceeding Rs.25.000/- in a financial year and which are for the time being not subject to any prohibition or restriction on their export from India and no transfer of foreign exchange is involved.
- iii) I / We enclose herewith (number)... of airway bills and . . . (number)..... of invoices for the aforesaid consignments with this shipping bills.
- iv) I / We hereby declare that the contents of this shipping bill are true and correct in every respect and are in accordance with the Airway Bills, the invoices and other documents attached herewith.

Signature and stamp of
Authorised Courier

Signature of Proper Officer of Customs

Courier Imports & Exports (Clearance) Regulations, 1998 – Amendments

Please refer to Notification No. 54/99-Cus. (N. T.) dated 21st September, 1999 on the above subject. This notification has effected significant changes in the Courier Imports and Exports (Clearance) Regulations, 1998, the details of which are as follows:

- (i) The weight limit for courier/express material has been raised from the existing 32 Kg. to 70 Kg.

(ii) Sub-regulation (2) (e) of Courier Regulations, 1988, provides that the Courier Imports & Exports (Clearance) Regulations, 1998, would not be applicable to export goods where the value of the consignment is above rupees twenty-five thousand and transactions from the foreign exchange is involved. After considering representations from the trade, it has now been decided to allow export of goods of higher value, i. e. value exceeding Rs.25, 000/- through the courier mode subject to the condition that GR Waiver or specific permission has been obtained from the Reserve Bank of India.

(iii) Clause (d) of regulation 3 of Courier Regulations, 1998 defines 'free gifts' as *bona fide* gifts of articles for personal use of a value not exceeding Rs.25, 000/- has been found to be a difficult task. Therefore, as a practical measure, the limit of Rs.25, 000/- for free gifts in a year has been changed to Rs.25,000/- per consignment.

(iv) The value limit of bona fide commercial samples and free gifts imported through the courier mode has been raised from existing limit of Rs.2, 000/- to Rs.5, 000/-.

(v) As per sub-regulation (5) of regulation 5 of Courier Regulations, 1998, the imported goods are required to be cleared within the period of 30 days of the arrival of the said goods. In case of failure to do so, the goods can be detained and disposed of by Customs. This regulation has now been amended to provide that before disposal of the goods, notice would be given to the authorised couriers.

(vi) Sub-regulation (5) of regulation 6 of Courier Regulations, 1998, provides for goods to be exported within a period of seven days of arrival of same in the Customs area. In case of failure to do so, the goods may be detained and disposed of by giving notice to the concerned courier. However, there can be cases where it may not be possible to export within the said time limit due to genuine reasons such as bad weather, cancellation of flights, which may be beyond the control of the authorised courier. To deal with such extraordinary situations, it has now been provided that the time limit of seven days can be extended by the Assistant Commissioner of Customs in deserving cases.

(vii) The requirement of furnishing security alongwith bond to the Commissioner of Customs by the authorised couriers has been significantly lowered. It has now been decided that at four major international airports of Mumbai, Delhi, Chennai & Calcutta, the authorised couriers would be required to furnish the security of Rupees two lakhs in place of the existing requirement of Rupees five lakhs, and in other cases (i. e. other than four major international airports), the security would be kept at Rupees one lakh. Further, it has been decided to give an option of bank guarantee in lieu of National Saving Certificate, cash or postal security allowed earlier.

(viii) In the Courier Regulations, 1998, a limit was placed on the number of authorised couriers to be registered at an airport. This limit has now been removed.

2. It has been brought to the notice of the Board by the Ministry of Commerce that a present, the permission for amendment in the Import General Manifest is given by the Assistant Commissioner of Customs (Preventive) only, with the result that whenever he is absent, the authorised courier finds it difficult to get the same amended. This results in delays. The matter has been considered and it has been decided that the permission to amend the Import General Manifest could be granted by any Assistant Commissioner of Customs on duty. Suitable administrative arrangements may please be made to implement the above decision.

3. Further, a number of references has been received in the Board pointing out that clearance of express/courier material is delayed because of non-availability of Appraising Officer at night, when the courier packages arrive. The matter has been considered by the Board and it has been decided that the services of an Appraising Officer will be made available at the four major international airports, namely, Mumbai, Delhi, Calcutta and Chennai at night. Necessary administrative arrangements may be made by the concerned Commissioner of Customs and the Board may please be informed of the action taken.

4. The Circular No. 85/98-Cus., dated 13.11.1998 on the above subject stands modified to the above extent.

[Board's Circular No. 63/99-Cus., dated 24.09.1999 from F. No. 450/120/97-Cus. IV]

Assessment and clearance of goods imported/ exported through courier mode

Please refer to Courier Imports & Exports (Clearance) Regulations, 1998, dated 9th November, 1998, issued by the Government of India vide Notification No. 87/98 –Cus. (N.T.), dated 9th November, 1998, and subsequent amendment vide Notification No. 54/99-Cus. (N.T.) dated 21st September, 1999. The said Regulations have been examined by Committee on Subordinate Legislation of the Rajya Sabha and certain suggestions had been received from the Committee.

2. The suggestions have been examined by the Board and it has been decided that :-

- (i) All the Customs formations responsible for courier clearance will maintain a record of import of bona fide samples imported through the courier mode in order to have a proper check on import of such samples.
- (ii) The Commissioners will take decision on an application for registration as an authorised courier within 30 days of the receipt of such application along with all the relevant documents.
- (iii) All the Commissionerates should prescribe records and accounts to be maintained by registered authorised courier and they should ensure that these records/accounts are checked by Customs at regular intervals.

[C.B.E. & C. Circular No. 78/99-Cus., dated 19.11.1999]

PROCEDURE FOR CLEARANCE OF COURIER PARCELS & OTHER MATTERS PERTAINING TO IMPORTS / EXPORTS THROUGH COURIER MODE

1) Registration of Courier Company:-

The registration of courier Company would take place through an application made by a person intending to operate as an authorised courier. Such applications would be made in writing to the Commissioner of Customs (Airport) where the goods are to be imported, for registration in this behalf. Such application would also invariably be accompanied with a certificate issued by a scheduled bank or such other proof acceptable to the Commissioner evidencing possession of assets of a value not less than Rs.2 lakhs in case of registration at Mumbai, Delhi, Calcutta, Chennai & Rs.1 lakh in case of other airports. After scrutiny of such application and enquiry which may be conducted for verification of the particulars set out in the application and also such other enquires as the Commissioner may deem necessary and on being satisfied that the applicant fulfills the requirements of registration, the said applicant may be so registered as an authorised courier. The registration would be valid for a period of 3 years on renewal basis from time to time in accordance with the procedure provided under the Regulations. The applicant is also required to enter into a bond with a security of Rs.2 lakhs in cash or in the form of postal security or national savings certificates or a bank guarantee pledged in the name of Commissioner of Customs complying with the provisions of Customs Act 1962 and the Rules and Regulations made there under. The conditions of the bond would also provide for recovery of duty, if any, not levied or short levied, with interest if applicable on any goods cleared by the authorised courier which in the opinion of the Assistant Commissioner of Customs, are not recoverable from the consignee.

IMPORTS

2) IGM and noting:-

On arrival of the flight, the On Board Courier (OBC) or the person incharge of the Aircraft would file copies of Courier Bill of Entry I (CBE) I in the prescribed format to the designated officer in the arrival

hall of the Airport. He will in turn assign IGM No, already assigned to the particular flight and shall detain second and third copy of CBE-I. The original, fourth and fifth copy shall be returned to the OBC or the person incharge of the Aircraft or the representative of the airline (if the CBE I is filed by the person incharge of the aircraft).

3) While returning the copies the Officer shall put his dated signature alongwith the customs stamp and also shall indicate the date, time of arrival. After handing over the copies of the CBE-I, he shall attach third copy of CBE-I retained by him to the flight manifest filed by the Airlines and forward second copy to the Courier Baggage Cell (CBC) officer.

4) The OBC will submit the original CBE-I duly attested by the officer to the Noter posted in Courier Cell who will be on duty round the clock. On receipt of this CBE-I, the noter shall affix the stamp "Received CBE-I" on the original as well as the duplicate copy of CBE-I and put his dated signature with time and open a file indicating the IGM number and file number. Noter shall also put his dated signature on the fifth copy of CBE-I and return the same to the OBC or Airline representative.

5) The individual courier company will file CBE-II with the noter in duplicate and on receipt of the same, the Noter shall affix the stamp "Received CBE-II" on both the copies and put his dated signature with time and return the duplicate copy of the representative of the authorised courier. The original CBE-II shall be kept in the respective IGM file by the Noter.

6) On arrival of the courier parcels, the representative of the authorised courier shall file CBE-III with the noter in quadruplicate. On receipt, the noter shall assign separate Thoka numbers for these forms and enter all the particulars in the noting registers and hand over all the copies back to the representative of the authorised courier company. While assigning the Thoka numbers, the noter shall tally shipment details i.e., the number of shipments and number of packages with the CBE-II. Any discrepancy noticed shall be brought to the notice of Superintendent, (Admin.) CBC immediately or on the next working day.

7) Clearance of CBE-III:-

After noting of CBE-III, bags containing goods covered under CBE-III, i.e., documents shall be screened by the CBC officer under the supervision of CBC Superintendent and if satisfied regarding the contents, the same shall be allowed clearance after assessment, audit and Import Duty Free (IDF) number assigned by the noter. The "out of charge" for these bags shall be given by the CBC Superintendent after the IDF number has been assigned. If any goods other than the documents are found in these bags, the same shall be transferred to be cleared under CBE-IV or CBE-V as the case may be. However, if prohibited goods or such other sensitive goods are found, then the same shall be detained by the CBC officer for further necessary action by the appropriate authority for which normal detention receipt shall be issued by the CBC officer. However, no parcels shall be detained without the approval of the Assistant Commissioner on duty. The Assistant Commissioner on duty shall also periodically supervise screening and clearance of the CBE-III. The officer posted at the gate shall permit removal of the bags after verifying the "out of charge" endorsement given on the CBE-III.

8) Transferring of packages from Arrival to Courier Baggage Hall:-

After clearance of CBE-III the remaining bags shall be transferred from the arrival hall to the courier baggage hall under the supervision of CBC officer. The CBC officer shall ensure that all the bags landed are transferred to the courier baggage hall and certify to this effect on the third copy of the CBE-I received from designated officer. This certified copy of CBE-I shall be handed over to the noter which will be placed in the IGM file by the noter.

9) Sorting :

The authorised courier companies are expected to bring the courier bags duly sorted out as per the CBE-III, IV and V. However, if the courier company desires sorting of CBE-IV and V bags, the same can be permitted by the CBC officer under the supervision of CBC Superintendent. It is clarified that

during the sorting the authorised courier company is permitted only to transfer the parcels, from CBE-IV to CBE-V or vice-versa. The officer supervising the sorting shall ensure that none of the parcels are opened by the representative of the courier company during this sorting operation or by any other person. After the sorting the authorised courier company shall file CBE-IV or CBE-V in the prescribed format to the noter indicating the number of shipments and packages duly certified by the CBC officer. Any sort landing or excess landing found during sorting shall be reported by the CBC officer. Each courier company will maintain a register showing the number of bags, number of consignments and number of parcels imported flight wise. After sorting, they will furnish the particulars to the CBC officer supervising the sorting. The CBC officer shall check the particulars with CBE-IV and V including short landing / excess landing report and after tallying the particulars shall counter sign the register. The said register will be in the custody of the courier company and will be produced to customs authorities whenever called for. The short landing / excess landing report shall be made in duplicate and the original copy shall be given to the noter. The duplicate copy shall be handed over to the authorised courier company and the original shall be retained in the IGM file after noting. The sorted out bags containing goods under CBE-IV shall be retained at the Courier Hall. The bags containing goods covered under CBE-V shall be transferred under Preventive escort to the courier terminal.

10) After the receipt of CBE-IV, CBE-V and the CBC officer's report, the Noter shall allot the Thoka number to each document after reconciling the same with CBE-II. If any discrepancy is found while reconciling, the same shall be reported to the Superintendent, CBC (Administration) of the Courier Cell immediately or on the next working day.

11) Clearance of CBE-IV:-

After noting of CBE-IV, the representative of authorised Courier Company will present the CBE-IV to the customs officer attached to courier cell on the same day or the immediate next working day. The officer shall scrutinise the CBE-IV thoroughly, specially in relation to the description of the goods vis-à-vis its weight, value, status of the importer, etc. After scrutiny, he shall select a minimum of 25% of the shipments for 100% examination. The authorised representative of the courier will make-available the selected consignments for examination. After examination, if found as declared, the CBE-IV shall be assessed as per rules. In case of any discrepancy found at the time of examination or assessment, the parcel may be detained after taking permission from the Assistant Commissioner of Customs, Courier Cell. The parcels so detained shall be transferred to the courier terminal under Preventive escort on the strength of transfer challan. After depositing the detained packages, the registration number given by the custodian at the Courier Terminal shall be mentioned against the particular serial number of the CBE-IV. The duplicate copy of the transfer challan showing the receipt of the Courier Terminal shall be handed over to the noter who is turn shall keep it in the IGM file. The CBE-IV assessed by the officer shall then be audited by the officer assigned for audit. After auditing, all the CBE-IV shall be put up to Assistant Commissioner, Courier Cell for random check. The Assistant Commissioner, Courier Cell during the random check may call for or inspect any parcel, if deemed necessary. Assistant Commissioner Courier Cell will counter sign the CBE-IV in respect of parcels inspected by him. Thereafter DDR's shall be prepared and after payment of duty by the Courier Company, the CBE-IV will be submitted by the authorised representative of the Courier Company to the noter. The noter shall retain the original of the CBE-IV and keep the same in the IGM file after giving IDF number for goods assessed duty free. He shall give an endorsement on the duplicate copy of the effect "Original Bill of Entry retained" and put his dated signature. The authorised representative of the courier company will then present the duplicate copy to the concerned officer for issuing "out of charge" order. The officer shall then check the details of duty payment and after being satisfied that all the above said formalities have been completed shall give the endorsement "out of charge" and allow the physical removal of the goods by the authorised courier

representative under this supervision. The duplicate copy shall be taken over by the concerned officer and handed over to the noter. On receipt of the same, the noter shall place it in the IGM file after connecting with the original already retained.

12) Clearance of CBE-V:-

All the clearance of parcels of CBE V shall be effected only from the Courier Terminal located at approved place. However, in exceptional cases, like in the case of Life Saving Drugs, which call for immediate delivery, the goods can be cleared without depositing the same at Courier Terminal after taking permission from Assistant Commissioner, Courier Cell. If clearance of such medicines is required during night shift or on a holiday, the same can be done by the CBC officer and Superintendent with the permission of Assistant Commissioner of Customs, in charge of the Airport Batch. Such clearances shall be effected on part Bill of Entry. The procedure for clearance of parcels of CBE-V shall be the same as CBE-IV. However, there shall be 100% examination of all the parcels and all the CBE-V shall be countersigned by the Assistant Commissioner, Courier Cell. The goods covered by CBE-V predominantly being dutiable goods, utmost care shall be exercised for assessment etc of these documents. The Assistant Commissioner of Customs shall also closely monitor these assessments. In case of goods imported by Government bodies, Public Sector Undertaking Services, the parcels need not be examined as a routine if all the documents are in order. In case any goods are to be detained for want of information such as value, catalogue, write-up, etc. or for clearances under regular Bill of Entry in terms of para 3 (i) to (v) of the Regulation, the goods shall be detained with the concurrence of Assistant Commissioner, Courier Cell. The packets so detained shall be handed over to the custodian under a detention memo. The procedure for audit, payment of duty, retaining original, duplicate, out of charge shall be the same as of CBE-IV. However, since the clearance is effected at the Courier Terminal the duplicate will be taken over by the delivery officer at the Courier Terminal delivery gate who will in turn forward the same to the noter on the same day.

13) Re-shipment:-

Goods consigned to a person or firm in India shall be dealt on merit. The permission for re-shipment shall be given by the Assistant Commissioner / Additional Commissioner or Commissioner depending upon the value. After the order for reshipment is passed by the appropriate authority, the details of the parcel shall be entered in a separate reshipment register maintained at the courier cell and each reshipment order will be assigned a number. The packages ordered to be reshipped will be collected from Courier Terminal warehouse situated at the approved place by the courier company under escort of Customs Officer posted at the Courier Cell. The reshipment number assigned to the respective parcel shall be given to the Express Industries Council of India (EICI) at the time of withdrawing the parcel for reshipment and closing the entries at the EICI register. Thereafter, the parcels shall be escorted by the Customs Officer, and the same will be deposited at the reshipment –Warehouse. The escorting officer shall obtain the endorsement of warehouse officer in the reshipment register and also note down the corresponding warehouse register number in the reshipment register. On the next day of depositing the package with warehouse officer, from courier cell will again obtain the reshipment details from warehouse officer and close entry in the reshipment register. Before taking the parcel from EICI warehouse, the escorting officer shall obtain confirmation in writing from the Courier Company that the parcel shall be exported within 24 hrs from the time of depositing of the package in reshipment warehouse. However, the delivery of the package by warehouse officer shall be done only after the registered courier completes the Courier Shipping Bill (CSB) procedure. The assessing officer of CSB II shall ensure safe handing over of the courier bag containing re-shipment parcel to the Airlines.

14) Re-shipment of misrouted shipments:-

The procedure of reshipment of misrouted shipments shall be as per para above. However the permission for reshipment shall be granted by Asst. Commissioner Courier Cell if satisfied that the reshipment is on account of mis-route only.

15) Clearance of detained goods part Bill of Entry:-

Goods which have been detained for want of necessary information other than those covered under the category of the goods covered by Para 3 of the Regulations shall be allowed to be cleared on part Bill of entry. In such cases, the authorised courier shall file part Bill of entry IV or V as the case may be with the noter. On receipt of the part Bill of entry, the noter shall make an endorsement against the respective Serial No on the relevant original parent Bill of entry. In this regard the noter will affix a stamp "Part Bill of Entry filed on " and assign the same Thoka number by hand and put his dated signature. When detained packages are to be examined, the assessing officer shall ask the custodian to forward the same by giving endorsement 'Please Forward' on the copy of the respective Bill of Entry. Thereafter the assessment & delivery shall be completed as per the usual procedure. The original & the duplicate also shall be retained by the Noter and kept in the respective IGM file.

16) Procedure for dealing with goods not covered by Regulations:-

Registered Couriers are not expected to carry goods, which are not covered by the Regulations. Hence for violation of the regulations, permission for clearance or confiscation of such goods shall be decided as per the merits of the case by the appropriate authority.

17) Refund:-

The claims of refunds arising out of assessments made at the Courier cell shall be attended by the Courier cell. In order to ensure speedy disposal of refund claims an officer will be specially assigned for this task. As soon as the claim is received, the officer shall enter the particulars of the claim in the refund register and assign file number. In many cases it has been noticed that the refund claims are not as per the proforma in Form 'A' (as prescribed under Section 27 of Customs Act, 1962). The officer upon receipt of all the claim shall scrutinise to see whether the claim is in order and whether all the required documents are enclosed. If found in order, the same shall be processed immediately and finalised within 15 days. If the documents furnished are insufficient a letter calling for the required documents shall be sent to the claimant within 1 week of the claim with specific instructions to furnish the documents within 7 days failing which the claim will be liable to be rejected. After the expiry of the time limit, the file shall be put up for rejecting the claim as unsubstantiated. Many cases of claims by individuals are noticed in Courier cell wherein the claim is made by way of a simple request letter. In such cases the officer shall verify whether prima-facie the claim can be allowed or rejected. If the claim merits rejection then the person shall be intimated by way of a letter from the Assistant Commissioner of Customs giving the reasons thereof and in other cases proforma of Form 'A' shall be sent to the claimant for resubmission of the claim in the said proforma. The refund claim if admissible, shall be sanctioned by Assistant Commissioner, Courier Cell and the file forwarded to Assistant Commissioner, Administration for further action. In case of rejection, an appealable order shall be issued to the claimant.

18) Adjudication:-

In order to facilitate speedy clearance of courier parcels for violation of ITC Regulations of minor value, on request from courier company adjudications thereof can be done by the Assistant Commissioner (in their adjudication competence) on the Bill of entry itself. In such cases, the courier company, being authorised agent of the importer may give the following endorsement on the Courier Bill of Entry "As authorised agents we accept the value determined and also agree with the adjudication proposal in this form. In this regard we waive 'Show Cause Notice' and 'Personal Hearing' ". However it may be noted that these adjudications shall be restricted only to minor offences and shall not be extended

to Regular Bills of entry and adjudications above the level of Assistant Commissioner shall be done in accordance with law and procedure.

19) Transfer of packages from Courier baggage hall to Courier Terminal:-

Each courier company shall present two copies of transfer challan along with 2 copies of list of packages (that is extra two copies of courier bill of entry V) to the escorting officer supervising the escorting. The escorting officer shall check the number of packages with reference to the entries mentioned in the challan and Courier B/E file of respective-couriers. A register shall be maintained in Courier cell where transfer challans shall be entered and running serial numbers will be assigned to each transfer challan. Packages shall be put in the bags (Courier wise) and loaded in the vehicle with door and lock facility. When all the bags are loaded in the vehicle, the escort officers from courier cell posted for escorting the goods shall lock/seal the vehicle and escort the vehicle to the Courier Terminal. There, the escort officer shall present the challan showing the permission for transfer and hand over two copies of challan and details of packages (CBE V) to the custodian. All packages shall be unloaded in warehouse of Courier Terminal. After satisfying himself the custodian shall retain one copy of the challan and one copy of the details of packages (CBE V) and return the other copies of detailed list of packages (CBE V) and transfer challan to the escort officer after duly acknowledging the receipt of the packages mentioned therein. The escort officer shall return the acknowledged copy of challan to courier cell for record. The same procedure shall be followed in respect of packages detailed in CBE IV.

20) De-registration:-

Para 14 of the regulations provides for actions against the authorised courier. As and when instances are noticed which call for actions proposed in the said para, the same shall be brought to the notice of the Commissioner immediately for examining the case for suspension and conducting inquiry.

21) Disposal of uncleared goods:-

Para 5 of the Regulations provides that any imported goods not cleared after the expiry of a period of 30 days of the arrival of the goods shall be disposed off by the Customs after issuance of notice to the authorised Courier. Presently, since all the detained goods will be lying with the custodian at the Courier Terminal, the officer posted for disposal of goods in the courier cell shall take regular inspection of the register maintained by the custodian and identify such packages and direct the custodian to handover the packages to customs along with the copies of detention memo. The packages so handed over shall be examined and forwarded to disposal unit after obtaining the order for confiscation from the Asst. Commissioner Courier Cell. The action for disposal of these parcels shall be initiated by the disposal sections by following the procedure stipulated in this behalf.

22) The maintenance of Detailed Duty Receipts (DDR's) shall be attended by courier cell:-

The DDR's will be in the custody of Superintendent Administration Courier cell or officer specially assigned by him in this regard. On each working day DDR's will be distributed to the officers attending the assessments. At the end of the day the DDR books shall be returned to the Superintendent Admin or officer assigned with the duty collection statement in respect of each DDR. The courier cell shall also maintain a register showing all the particulars of collection of duty, redemption fine and penalty. The customs copy of DDR book (triplicate) shall be forwarded to Administration for audit and record.

EXPORTS

23) Hitherto exports of parcels carried by On Board Courier were having the status of baggage. As per the new regulation, the courier parcels can be exported through On Board Courier or directly through Airlines. Para 6 of the regulation stipulates 2 types of shipping bills i.e., courier shipping bill CSB-I and CSB-II. While CSB I is purely for documents, CSB II are for other goods namely: (1) Bonafide commercial samples, (2) Prototypes of Goods, (3) Bonafide gifts or articles of personal use of a value not exceeding Rs.25, 000/- in a financial year and which are for the time being not subject to any prohibition or

restriction on their export from India and no transfer of foreign exchange is involved. The limit of Rs.25,000/- shall not be applied to such export consignments where guaranteed Remittances (G. R.) waiver or specific permission to that effect has been obtained from RBI.

24) Registration of CSB-I and CSB-II

The Export Courier Cell shall maintain two separate registers for registering CSB I and CSB II respectively. On presentation of the Shipping Bill in triplicate, the ECC shall enter the particulars in the registers and assign a running serial number on all three copies by a numbering machine. The number shall be changed on every first of January.

25) Clearance of CSB-I

Goods covered by CSB I shall be cleared straightway without examination but only by screening. The representative of the authorised courier company shall intimate the officers posted in export courier cell the time of screening of bags by the Airlines Security. In order to avoid duplication of work and to facilitate faster clearance, the officer posted at export courier cell shall supervise the screening at airline screening machinery and in case of doubt, examine the bag/parcel. If found in order CSB I shall be endorsed "passed for shipment" by the officer which will be countersigned by Superintendent Incharge of export courier cell.

26) Clearance of goods covered under Courier Shipping Bill II (CSB-II):-

On receipt of the CSB-II, the officer posted at ECC shall scrutinise the CSB with respect to description, value and other relevant details. During the scrutiny, the officer shall select parcels for examination not exceeding 25% of the consignments. If a particular consignment contains more than one package, the examination of the consignment shall be restricted to 10% of the number of packages. After selection, the officer shall direct the authorised representative of the courier company to produce the parcel for examination. If, on examination, the goods are found to be as declared and in order, the officer shall make an endorsement against the particular consignment so examined "examined". If any discrepancy is noticed, the parcel shall be detained and a report regarding the discrepancy be submitted to the Assistant Commissioner, Courier Cell or Assistant Commissioner on duty for further orders. The officer shall also make an endorsement "detained" in CSB-II against the particular consignment. Thereafter, the CSB-II shall be endorsed "Passed for Shipment (number of) bags" and the original copy of CSB- II shall be retained. Thereafter, the authorised representative of the courier shall be directed to handover the packages to the airlines. Before starting the examination, the officer shall inspect the complete lot of bags and ensure that all the bags have been security checked by the airline and bear the airline security checked stickers. During the inspection of the lot, if the officer feels it necessary to open any other bags which is not selected for examination, the officer may open the doubtful packages. However, this shall be exercised judiciously and should be kept to the minimum. He should also ensure that maximum limit of 25% examination should not be exceeded. After the bags are opened for examination of the selected consignments, the bags shall be taken back to the airline security check under the supervision of the examining officer and have the bags security checked. The assessing officer shall also ensure that only the bags covered by the particular shipping bill are handed over to the airline for shipment. The duplicate and the triplicate copy of the CSB-II shall be handed over to the authorised representative of the courier who will obtain the shipment endorsement on the duplicate copy and return the same to the officer attending the assessment. The officer in turn shall attach original and duplicate and forward it to the noter on the next working day for record. The noter shall maintain the record day wise of all the CSB's.

27) Amendment of shipment Flight details :-

In the event of airlines not accepting all the bags, endorsement to this effect shall be taken from the airline. If the remaining bags can be exported by some other flight on the same day, the authorised

representative of the courier after oral confirmation from the airline shall approach the Superintendent, in charge of ECC and request him in writing to allow the export by the concerned flight. On receipt of such request, the Superintendent shall permit the export by making an endorsement "Shipment of bags allowed by flight number" Thereafter, the bags shall be handed over to the concerned airline under the supervision of the officer. The authorised representative of the courier company shall obtain an endorsement from the airline confirming the acceptance of the parcels. After the receipt of the duplicate copy with the endorsement from the airline, the officer assessing the CSB shall attach it with the original and forward it to the noter in the Courier Cell.

28) Shut out parcels:-

In the event of bags which have not been shipped due to non acceptance of any airline, the authorised representative shall report the matter in writing in the CSB itself and hand over the duplicate and triplicate to the Superintendent of ECC who will permit back to town on both the copies and hand over the triplicate to the authorised representative of the courier.

29) Detained packages:-

In the event of any detained packages for which a report has been submitted to the Assistant Commissioner and the Assistant Commissioner finds it necessary that the same need to be detained for further action, the parcel shall be deposited at the Warehouse under Preventive escort under orders of Assistant Commissioner on duty. If the parcel is not cleared within seven days of detention, the same shall be disposed off after giving a notice to the concerned courier.

30) Goods covered by regular Shipping Bill:-

Para 6(3) of the Regulations permit export of parcels through courier which are assessed on regular Shipping Bills by other Commissionerates subject to condition and limitation that may be imposed by the jurisdictional Assistant Commissioner. These packages shall be permitted for shipment by the officer in ECC after entering the details in a register maintained for the purpose. However, before permitting the shipment, the officer at ECC shall ensure that the authorised courier has fulfilled the conditions and limitations imposed by the jurisdictional Assistant Commissioner and if the parcels have been dispatched under Customs Seal, the officer shall ensure that the Customs Seal is intact. After ensuring that the parcels have been handed over to the airlines, the officer shall make the necessary endorsements on the Shipping Bill or the letter, as the case may be and hand it over to the courier for submission to the jurisdictional Assistant Commissioner. In case of non compliance of any of the conditions and limitations imposed by the jurisdictional Assistant Commissioner, the officer shall report the matter to the Superintendent, ECC, who in turn, if required, shall submit the matter to the Assistant Commissioner on duty, for directions. It is however clarified that the permission for export shall not be denied without the orders of the Assistant Commissioner on duty.

31) Over time Payment:-

The authorised courier or EICI may apply to, for the services of Customs official beyond working hours or on holidays, or to attend work of Individual Courier Company outside the area of operations at the Airport, i.e., Terminal Building and Courier Terminal application will be made to the Assistant Commissioner, Courier Cell and with his permission, Superintendent, Administration shall make the necessary posting.

CHAPTER – TWENTY

SHIP'S STORES

PRELIMINARY

Stores has been defined under Section 2 (38) of the Customs Act, 1962, meaning as “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”.

By the above definition it is clear that anything which is going to be used or consumed in a vessel or aircraft is to be termed as stores or ship's stores. This also includes items intended for human consumption on board such as provisions, daily bazar, soft and hard drinks, tobacco etc.

The provisions governing the ship's stores have been laid down in Section 86 to 90 of Chapter XI of the Customs Act, 1962.

WAREHOUSING OF STORES WITHOUT ASSESSMENT

Section 85 of the Act stipulates that if any imported goods are entered for warehousing and if the importer makes and subscribes to a declaration that the goods are to be supplied a stores to a vessel or aircraft without payment of duty under these provisions, the proper officer may allow such goods to be warehoused without the same being assessed to duty.

TRANSIT / TRANSHIPMENT OF STORES

Sub-Section (1) of Section 86 specifies that any stores imported in a vessel or aircraft, may remain on board such vessel or aircraft, without payment of duty, while it is in India. The Central Government has issued the following regulations in this regard. –

Imported Stores (Retention on Board) Regulations, 1963

In exercise of the powers conferred by section 157 of the Customs Act, 1962, the Central Board of Revenue hereby makes the following regulations, namely: -

1. Short title. – These regulations may be called the imported Stores (Retention on Board) Regulations, 1963.

2. Consumable stores on board to be sealed. – Any imported stores on board a vessel arriving from a foreign port or an aircraft arriving from a foreign airport may remain on board such vessel or aircraft without payment of import duty leviable thereon during the period such vessel or aircraft is not a foreign-going vessel or aircraft, subject to the condition that where such stores are consumable stores –

(a) in the case of alcoholic liquor, cigarettes, cigars and pipe tobacco, such stores are kept under Customs seal;

(b) in the case of consumable stores other than those specified in clause (a) such of other stores are likewise kept under Customs seal:

Provided that if the proper officer is satisfied that it is not practicable so to do, he may, after taking inventory of such other stores, allow them TO remain on board without being put under Customs seal.

3. Customs seal not to be broken. – Where any stores have been kept under Customs Seal, such seal shall not be broken until the vessel or aircraft becomes a foreign-going vessel or aircraft.

Transfer of Stores under Section 86(2) of the Customs Act, 1962

Sub-section (2) of Section 86 of the Customs Act, 1962, permits the transfer of any stores imported in a vessel or aircraft, with the permission of proper officer as stores, to any vessel or aircraft for consumption thereon provided the latter is either a foreign going vessel or aircraft or such stores are for consumption on bond a ship of Indian Navy or are as per Section 90 of the Customs Act, 1962 or the Agents shall apply for the services of the officers required to supervise the transaction and shall pay the fees leviable under the overtime rules.

CONSUMPTION OF STORES ON BOARD A VESSEL OR AN AIRCRAFT

Section 87 of the Customs Act, 1962, stipulates that any imported stores, other than those meant for the Indian Navy on board a vessel or aircraft may, without payment of duty, be consumed on thereon as stores during the period such vessel or aircraft is a foreign-going vessel or aircraft.

The Section clearly prohibits consumption of imported stores, without payment duty on board a vessel or aircraft which does not have foreign-going character. The imported stores meant for Indian Navy have been dealt with in Section 90.

Section 90 (1) of the Act stipulates that imported stores for the use of a ship of the Indian Navy as well as imported stores supplied free by the Govt. for the use of the crew of a ship of Indian Navy, may, without payment of duty be consumed on board a ship of the Indian Navy.

In view of consumption of imported stores free on board a foreign going vessel and on board a ship of the Indian Navy, have a bearing on Section 69 and Chapter X of the Customs Act, 1962.

Section 88 and Section 90 (2) of the Customs Act, stipulates that provisions of Section 69 (which deals with the export of warehoused goods without payment of import duty) and of Chapter X (which deals with the Drawback of duty) if the Customs Act, shall apply to stores as they apply to other goods with slight modifications.

The modification prescribed under these two Sections are –

- a) for the words “exported to any place outside India” or the word “exported”, the words “taken on board any foreign going vessel or aircraft as stores” or “taken on board a ship of the Indian Navy” shall be substituted.
- b) the case of drawback on fuel and lubricating oil taken on board any foreign going vessel or aircraft as stores and in the case of Navy also, sub-section (1) of the Section 74, of the Act shall have effect as if words “ninety eight percent” have been substituted by the words “the whole”.

Ship stores of daughter vessels engaged in lightening of mother vessels

The Board has recently examined the issue of assessment of ship stores of “daughter” vessels engaged in lightening of “mother” vessels. After reviewing the practice at various ports and also various court cases and orders of the Tribunal on the levibility of duty on stores supplied to “daughter” vessels, it has been decided that in respect of “daughter” vessels which arrive from foreign ports for the purposes of lightening “mother” vessels and which go back to foreign ports thereafter, no duty shall be charged on ships stores consumed on the “daughter” vessels during their lightening operations. If the same vessel is, however, diverted to coastal run, it would then be treated as coastal vessels and duty would be chargeable on stores consumed by it.

[Ministry’s letter F. No. 450/109/92-Cus. IV, dated 24.12.1992]

Check on Stores of Foreign Going Vessels in Port

(a) The Section Officer in whose Section the foreign going vessel has berthed shall place all arms ammunitions, explosives, spirits, tobacco, cigarettes and valuable stores under seal and see that no excessive stocks of stores such as liquor, tobacco, cigarettes etc. remain unsealed in the bars, lockers and store-rooms. A record of the lockers, store rooms etc., placed under seal and the Number and letter of the seal used, shall be recorded in the store-list. The stores required for immediate use of the personnel of the ship may be left unsealed. The quantity of such stores shall be decided by the Section Officer at his discretion on the basis of the number of Crew.

(b) If the vessel moves from the jurisdiction of one Section Officer to that of another, the store lists with records thereof shall be immediately sent to the latter.

(c) (i) On receipt of the store list, the Section Officer shall check the sealed stock. The issues already allowed should have been noted in the store list. All subsequently issues, shall be noted against the items in the Store list. The Section Officer shall also check a percentage of other stores. Wherever such checks are carried out, the Section Officer shall endorse the Store list accordingly.

(ii) After the necessary checks and verifications have been completed the Section Officer concerned shall sign the prescribed certificate on the Store list and endorse a similar certificate on the duplicate manifest of the Stores, filed if any, and shall submit special report to the Assistant/Dy. Commissioner with regard to any material discrepancies noticed by him. A note regarding the submission of such a report shall be made in the store list and the duplicate Manifest of stores if submitted.

(d) During the Vessel's stay in Port, the seals on the Bonded lockers etc. should be frequently checked by the Section Officers., and the fact indicated in the diary maintained in the Section. In case of suspicion that the seals have been tampered with or otherwise broken, the matter should be immediately reported to the Preventive Superintendent on duty, who shall order a complete inventory of the Store before initiating any action.

(e) The Divisional Preventive Superintendent should exercise control through a frequent check of the Section Diaries and check at least once during vessel's stay in port, the account of stock of bonded stores as maintained on Board and the store list of the vessel. The Divisional Superintendent should endorse the records every time such check is carried out. Particulars of such checks should also be recorded in their diaries for information of Assistant Commissioner, Preventive.

(f) On the day preceding a vessel's departure for a foreign or customs port the Preventive Officer shall sign the certificates and the store list as to the stores, equipment and private property remaining on board after verifying the particulars of stores or other articles-

- (i) issued for consumption on board, or
- (ii) landed for home consumption or warehousing, or
- (iii) transferred to another vessel, and
- (iv) received on board during the vessel stay.

After the vessel's departure the copies of the store list duly certified shall be forwarded to the Manifest Clearance Department through the Divisional Superintendent.

Issue of stores during the vessels stay in port--quantum thereof.

All issues of stores should be made against the written requisition from the Master of the Chief Steward or the Ship's Officer in charge of the Stores.

During the vessel's stay in the port, the quantum and condition of issue of liquor, cigarettes tobacco from the sealed bonded stores may be determined by the respective Customs Houses taking into consideration the number of officers and crew of the vessel and restrictions imposed by the State

Government and local authorities. It should be ensured that the issues at a time are in reasonable quantities for consumption of the ship's personnel. The bottles of spirits such as whisky, Brandy etc. should be issued in open condition after breaking the manufacturers' seals.

Caterer's stores on Board – Check of

On arrival of the vessel in the port, caterers on board, shall furnish to the Boarding officer or to the Preventive Officer in whose Section the vessel has berthed, a complete list of stores belonging to them. The officer concerned shall check a percentage of the stores as far as possible with the list and seal articles such as cigarettes, tobacco, liquor, wines etc., Prior to the vessel's departure, the Preventive Officer shall re-check the articles with the list and report discrepancies, if any, to the Assistant/Dy. Commissioner through the Divisional Superintendent for orders. The list shall finally be filed with Import general Manifest (store list) of the vessel.

Serving of dutiable items during parties on board a Foreign/Indian navy vessels

Duty is leviable on the quantity of dutiable stores served to persons not borne on the books of Indian Naval Ships, on the occasion of parties held on such ships. However, the information furnished by the Commander of the vessel with regard to the quantity served to non-entitled persons may be accepted without any check or verification. If it is felt that this concession is being misused, the matter may be reported to the Board/Ministry for further consideration.

As regards foreign naval vessels, though the duty is legally leviable on the dutiable stores served on board a foreign naval vessel to persons not belonging to the ship, yet in view of the practice being followed in some other countries and with a view to avoiding impolite strictness in enforcement, no objection may be raised to the serving of limited quantities of Bonded goods to persons not belonging to these vessels, on the occasion of parties held on board such vessels. Custom House shall keep themselves informed that there is no abuse of this courtesy.

[M. F. (DR) F. No. 21/9/56-Cus. IV/VI dated 25.6.57]

Cocktail parties on board Merchant vessels by Steamer Agents

When shipping agents are permitted by the Customs House to hold cocktail parties on board the vessels under their agency, they shall be required to produce a Custom Clearance permit from I.T.C. authorities for bonded stores required for consumption at the party and also produce the requisite permits granted by local Excise authorities for excisable and/or prohibited goods. The stores consumed on such occasions shall be chargeable to duty.

In such cases the agents are asked to deposit with the Custom House, as revenue deposit, an amount which shall cover the duty leviable on the bonded stores intended for use during the party. Final duty on actual consumption shall be adjusted against the deposit on the Steamer Agents filing a bill of entry. The Preventive Officer in charge of the vessel shall intimate to Office Superintendent, the bonded stores taken out from the stocks for consumption and the stores actually consumed. The unconsumed stores shall be placed back into the Bonded store room. Part bottles shall be charged. In ports where any local prohibition and restrictions in respect of consumption of alcoholic liquors apply, the vessel's agents shall produce the requisite permission from the State authorities.

SHIP'S STORES AND EQUIPMENT – LIABILITY TO IMPORT DUTY ON TRANSFERENCE FROM FOREIGN TRADE TO COASTING TRADE

a) When a vessel is transferred from Foreign Going trade to the Coasting trade, as defined Sec. 2 (21) of Customs Act, 1962, the consumable stores and other goods such as provisions, oilman's stores,

liquor, tobacco, cigars, cigarettes, consumable articles (not forming part of vessel's equipment such as canvas, oil paints, varnish etc.) would be liable to payment of import duty. In the case of such transfers to Coastal Trade where a vessel, which has arrived with foreign cargo, after discharge, proceeds in ballast to a Custom Port for picking up coastal cargo, without being succeeded by a foreign voyage, and where a vessel after unloading the foreign cargo loads coastal cargo without any indication of the succeeding voyage being a foreign one, duty on stores would be charged from the date the vessel has completed the discharge of her foreign cargo at the first Indian Customs Port of arrival for her subsequent coastal run. The exact time of the completion of the discharge of foreign cargo is the time when the last sling of the cargo is landed as recorded by the Port Trust/Port Commissioner's staff in charge of the section where the vessel is working. The Preventive Department shall furnish a list of all vessels reverting to coastal run to the Import Department once every week to enable Import Department to keep a watch on the vessels from which duty on ships stores is due.

- b) A NIL report shall also be furnished to ensure that no vessel has escaped scrutiny.
- c) The above principle is also to be applied for the purpose of shipping stores ex-bond. In such case, inventory of stores on board the vessel has to be taken by the Preventive Officer.
- d) At the time of transfer from foreign run to coastal run, however, articles forming part of the equipment of the vessel, upto the extent the vessel may reasonably have on board, should not be charged to duty. The articles forming part of the vessel's equipment should fall under any of the heads in the list below: -

Articles not covered by the list shall also be considered as ship's equipment and exempted from duty provided they are verified to be so and specific orders of the Assistant Commissioner of Customs. Appraising Department are obtained in each case.

Doubtful cases only shall be referred by the Assistant Commissioner, Appraising Department to the Commissioner.

List of articles that ordinarily comprise Ship's equipment

1. Telescopes, Binoculars and Sextants.
2. Barometers.
3. Direction finding apparatus including compasses.
4. Line throwing appliances.
5. Signals all kind i.e. storm danger., Distress, Fog etc.
6. Radio Telegraph installation.
7. Auto Alaram
8. Clocks
9. Logs.
10. Emergency Lights.
11. Lamps all kinds, viz. signalling masthead, etc.
12. Lights, green and red.
13. Fire fighting appliances.
14. Ensigns and flags.
16. Ropes, cables, hawsers, wires, and chains for ship's use.
17. Hatch wedges and Boards.
18. Cook's Gallery.
19. Parts of engines.
20. Fire arms (if declared in the stores list) including gunpowder, explosives and cartridges in sufficient quantities.
21. Spares anchors.
22. Medicine Chest.
23. Derricks.
24. Fire bars.
25. Tanks for oil, water etc.
26. Rafts and Boats.
27. Hardware, Ironmongery and tools in sufficient quantities.
28. Life saving appliances.
29. Deep sea sounding appliances.
30. Dunnage wood and mats (These shall be liable to duty if landed and cleared).

e) In addition to these articles, there would be spare articles of ship's furniture, apparels, etc. Any excesses over the normal requirements of the vessel should be subject to duty.

f) The personal property including arms and ammunition of the officers and crew of the vessel shall be dealt with in accordance with the Baggage Rules in force and duty levied, if any. In the case of restricted articles like arms and ammunition and wireless sets it should be ensured that articles are covered by the appropriate licences issued by Police authorities etc and are with the owners.

g) In the case of vessels stores landed either as condemned or for home consumption shall be liable to import duty unless bonded for re-export to a foreign port.

PROCEDURE FOR CONVERSION OF VESSELS FROM FOREIGN TRADE TO COASTING TRADE

The following procedure is laid down for conversion of vessels from foreign to coastal run and vice versa:

- 1) Prior to applying for conversion of vessel from foreign to coastal, Steamer Agent should obtain necessary licence from D. G. Shipping as per Section 406/407 of Merchant Shipping Act 1958.
- 2) Whenever vessels in the foreign run convert to coastal trade, the steamer agent should present an application in triplicate to the Assistant Commissioner of Customs, Export Department, requesting for permission for conversion and also services of a preventive officer for inventorying the ship stores and the personal property of the crew members on board the vessel. The application should indicate the estimated period of coastal run, the itinerary of coastal voyage if possible, and also whether the steamer agent does not wish to pay duty on the entire quantity of ship stores carried by the vessel, he should indicate in the application the quantity of ship stores he wishes to withdraw for use on board the vessel.
- 3) At the time of conversion from foreign to coastal run, the steamer agent shall also file a Bill of Entry in the Export department for payment of customs duties on the full quantity of ship stores or the quantity of ship stores estimated to be consumed during the coastal run (as the case may be). If the duty is recovered not on the full quantity of stores on board but on a part quantity, the assessment of the Bill of Entry at this stage shall be provisional. Provisional assessment shall be at an amount which is 110% of the duty leviable on the quantity estimated to be consumed. If duty is being collected on full quantity, assessment of the bill of entry shall be done only after receipt of certified inventory from the Preventive department vide provisions of paragraph 5. On receipt of the Bill of Entry in the Custom House, the Export Department shall assess the bill of entry and return the same to the Steamer Agent for payment of duty.
- 4) The permission for conversion shall be granted only after the payment of amount assessed on the Bill of Entry vide paragraph 3. Permission for conversion can be granted prior to payment to those Steamer Agents who maintain a provisional deposit account with the customs and authorize the customs to debit their provisional deposit account with the amount assessed on the Bill of Entry. In other cases, permission for conversion without payment would be granted only by the Commissioner of Customs (Export). Adequate reasons should exist for permitting conversion without payment of dues assessed on the Bill of Entry.
- 5) The duplicate/triplicate copies of the application shall be forwarded by the Export department to the Assistant Commissioner (Preventive) for deputing a preventive officer for taking the inventory as per the Steamer Agent's request. If the Steamer Agent in his application has indicated his desire to withdraw only a portion of the total stores on board the vessel, the Preventive Officer concerned should supervise the withdrawal and seal the remaining stores on board. The quantity withdrawn and also the quantity sealed should be clearly indicated in the inventory list prepared by the Preventive Officer. In regard to oils on board, the inventory of furnace oil, diesel oil, lubricant oil, etc. should be given separately. It should be clearly mentioned in the inventory whether the stock is duty paid or non duty paid.

Inventory of the private property of the crew would similarly be taken by the Preventive Officer. For liquor, cigarettes and other high value items, the brand names should also be mentioned in the inventory. The inventory list of ship stores and private property of crew members prepared by the Preventive Officer should be countersigned by the Master of the Vessel or his agent and by the Preventive Officer making the inventory.

Five copies of the inventory shall be prepared. The preventive Officer concerned shall forward one copy to the Export department, another to the Preventive department. One copy shall be handed over by Preventive Officer to the Steamer Agent and two copies to the Master of the Vessel – one for his record and second for handing over to the Preventive Officer at the port of reversion to foreign run.

- 6) After taking the inventory, the Preventive Officer should forward the triplicate copy of the Steamer Agent's application, with an endorsement that Port Clearance may be granted, to the Coastal Trade Establishment, for grant of Entry Outward to the coastal vessel.
- 7) As regards private property of the crew, the Steamer Agent would give an undertaking to the Preventive Department to the effect that the Baggage would be cleared as per the Rules. This undertaking shall be cancelled when a certificate from the Custom House, where the vessel is reverted to foreign run, is produced showing that all the private property of the crew inventoried at earlier Custom House has been duly accounted for.
- 8) If at an another Indian port, the vessel on the coastal run needs any further bonded stores, the Steamer Agent should make a similar application at the port concerned and pay duty on such stores as are taken out of the bond.
- 9) At the time of reversion to foreign run, the Master of the Vessel or the Steamer Agent should make an application to the Assistant Commissioner of Customs along with a copy of the application to the Preventive Department requesting for the services of a preventive officer for inventorying the stores and the private property of crew on board the vessel.
- 10) Five copies should be made of the inventory. On completion of inventorisation a copy shall be retained in the Preventive department, one copy would be forwarded to Assistant Commissioner of Customs to whom application was made for reversion of the vessel to foreign run, one copy shall be sent to the Export department of earlier Custom House and two copies shall be given to the Steamer Agent or the master of the vessel. On the basis of the copy of final inventory and the triplicate copy of the Bill of Entry the Steamer Agent would file a refund claim in the Export Department of the earlier Custom House.
- 11) The refund application so received shall be dealt with in the Export department in the usual manner after considering the same along with the copy of the final inventory forwarded by the Preventive Department of the port of reversion.
- 12) In so far as the private property declaration is concerned, the Custom House, at which the reversion to foreign run takes place, should verify that the private property has been properly accounted for, either by retention on board by the crew or by its clearance through Customs in that port or in any other intermediate port in India. A certificate to that effect shall be issued by the Preventive Department to the Steamer Agents so that the same could be produced by the Steamer agent before the Preventive Department of earlier Custom House in order to get his undertaking cancelled.

ANNEXURE 'A'

(On Steamer Agent's Letter Head)

We, M/s the local agents to the vessel now lying at the port of hereby undertake that the private properties of the officers/crew on board the said vessel now reverted to coastal trade at shall not cause to be landed without proper clearance from the Custom House through which the said officer/crew shall get signed off during the period of coastal voyage or the baggage of the crew members re-exported when the vessel reverts to foreign voyage, which ever is earlier.

A list officers and crew on board the vessel now under reversion is enclosed.

(AS AGENTS)

PLACE:

DATE:

[Standing Orders No. 7347 dated 20.01.1998 and No. 7484 dated 27.10.1999 issued by Commissioner of Customs (EP), Mumbai, In File No. S/6B-21585/97 EXP]

Transfer of stores from a Vessel in the Foreign trade to a vessel in the coasting trade

Transfer of stores from a vessel in the foreign trade to a vessel in the coasting trade shall only be permitted on production of a completed Bill of Entry showing that duty has been duly paid on such stores and on production of a Shipping Bill authorising shipment of the goods on board the receiving vessel.

In cases, however, where either of the vessels is due to depart within 48 hours of arrival of the other, the transfer of provisions and stores may be permitted in anticipation of payment of duty provided that the Agents have executed a standing guarantee on stamped paper undertaking to pay duty and to deliver a completed Bill of Entry, showing credit of such duty, in the Preventive Department within 48 hours in case of transfer of such stores. The procedure for dealing with such transfer applications shall be the same as described above. In addition to this –

- (a) the preventive officer supervising the discharge of the stores shall endorse against the relative items in the application or the accompanying list- the quantity, weight and value of each description of stores. He shall also make a note of such transfer in both copies of the Ship's store list after the stores have been discharged.
- (b) The Preventive Officer in charge of the receiving vessel shall certify shipment of the goods under his supervision on the transfer application and then forward the document to the Divisional Superintendent's Office for entry of the date of shipment against the relative item in the Register.
- (c) When the transfer has been effected, the Agents shall prepare a Bill of Entry and present it in the Import /Appraising Department for "noting" and assessment of duty leviable on the stores. After duty has been paid and credited to Government, the duplicate Bill of Entry shall be delivered in the Divisional Superintendent's Office. The officer concerned shall enter the cash number and date of payment of duty against the relative item in the special register of transfer applications. The Bills of Entry shall then be forwarded to the 'Manifest Clearance Department' for check and record for the relative ship's file. Any case in which duty is not paid within the prescribed time limit should at once be brought to Divisional Superintendent's notice for necessary action.

Transfer of personal effects

- (i) When the personal effect of a ship's officer or seaman are transferred from a vessel in the foreign or coasting trade to a vessel in the foreign trade or from one vessel to another in the coasting trade, special care should be taken to see that a note of the transfer of any restricted goods, e.g. arms and wireless sets, etc., is made in the respective store lists or in the case of arms or ammunition transferred from or to a General Pass Vessel, in the register maintained on board under Rule 4A of the General Pass Rules and to verify that such articles when transferred to vessels in the coastal trade are covered by the requisite licences or permits.
- (ii) (a) The instructions regarding transfer of personal effects of officers and seamen from a vessel in the foreign trade to coastal trade shall be as per Baggage Rules applicable.
 - (b) When such transfer is effected at night or any other occasion, when duty leviable, if any, cannot be conveniently collected or when there is any doubt as to whether the vessel to which the owner is transferred is on coastal trade, a report of the dutiable articles, if any, included in the personal effect transferred from one vessel in the foreign trade to another which may or may not be in the coastal trade, shall be made to the Assistant/Deputy Commissioner (Preventive) through the Divisional Superintendent for further action.
- (iii) In all cases in which articles are transferred necessary action should be taken to ensure that an entry is made on the store-list of the vessel on which the articles have been shipped and that note of the

transfer is made against the corresponding entry, if any, in the store-lists of the vessel from which they have been removed.

(iv) When a Ship's officer on a foreign going vessel on transfer to another foreign going vessel in port wants to remove his personal effects with him, such transfer shall be effected on an application, countersigned by the Agent/ Master, to the Divisional Superintendent and that he shall be escorted by a Preventive Officer if the personal effects contain dutiable articles.

Vessels in coastal trade which have reverted to Foreign Trade Temporarily and re-enter the Coastal Trade – Procedure regarding

(a) In case a vessel (which, at the time of her transfer to the foreign trade, had duty paid stores on which no drawback was claimed) re-enters the coastal trade, duty shall be levied on the articles shown in the foreign stores list after deducting therefrom the following: -

(i) The stores on board at the time the vessel left the coastal trade and entered foreign trade (without reference to the length of time that has elapsed between the vessel's entry into the foreign trade and her subsequent re-entry into the coastal trade).

(ii) Shipments, if any, from duty paid stock made on Shipping Bills after the vessel left the coastal trade.

Note: Care should be taken to ensure that shipments of spirits etc. out of bond are not so set off.

(iii) Local purchases of cigars, cigarettes, tobacco etc. for which cash receipts are produced.

(b) When the vessel in the coastal trade is initially cleared for a foreign port, the Agent may apply to Assistant Commissioner (Preventive) at least 2 days before the vessel sails for such foreign port, for the services of a preventive officer to take inventory of the stores on board for the purpose of claiming exemption from payment of duty thereon at the time of vessels return to the coastal trade. The Preventive Officer shall take an inventory of the stores in triplicate in the prescribed store-list form which shall be applied by the Agents. He shall sign all the copies of the inventory and endorses them as follows:

"The stores mentioned in this inventory were on board the S/Sbefore she sailed for(.....Preventive Officer's signature.....) and forward to Preventive Office for obtaining counter-signature of Assistant Commissioner (Preventive). The original copy shall be delivered to the Agents on payment of the necessary fee and the duplicate and triplicate retained by the Preventive Department.

(c) In the case of personal effects of the ships officers and crew of such vessels the latest Baggage Rules, shall apply.

Unconsumed stores on board vessels reverted from coastal to foreign trade

The Master or Agent claiming drawback on such stores shall apply to the Asst. Commissioner of Customs, Preventive Department, two days before the departure of the vessel to foreign port for the services of a Preventive Officer to take an inventory of the stores remaining on board. The Preventive Officer deputed for the purpose shall examine all the stores on which drawback is claimed, enter them in the prescribed store-list form, in duplicate which shall be supplied by the Master or the Agent concerned and seal them with the customs seals. These seals shall be examined before the vessel sails and the Preventive Officer concerned shall then endorse both the copies of the store-list as follows:-

"Stores examined and sealed on Found seals intact before the departure of the Vessel," and forward them to the Preventive Department for the countersignature of the Asst. Commissioner (Preventive) and consideration of the claim of Drawback by the Drawback Department.

Coastal Vessels with General Pass-touching a foreign Port and reverted to coastal trade-collection of duty:

- (a) Vessels on coastal trade under "general pass" touching foreign port are allowed to bunker Fuel oil from bond, when proceeding direct to a foreign port and may also take bonded stores. These vessels may also take fuel oil and other dutiable stores at foreign ports.
- (b) On reversion to coastal trade which occurs at the first Indian Port, duty is leviable on all the bonded stores including fuel oil remaining on board and also on all the stores, taken at foreign ports, including purchases of dutiable goods by the officers and crew.
- (c) The Boarding officers should obtain from the Master of the vessel a list including fuel oil and private property of the officers and crew with all details for purposes of assessment. The list should be verified by a physical check of a few representative items, if it is not possible to check the entire stores.
- (d) The Import Department on receipt of the list from the Preventive Section shall ask the steamer agents to file a Bill of Entry in respect of dutiable items, which shall be assessed by the Appraising Section. The Superintendent shall see that the Boarding Officers take necessary steps for obtaining the store list, which should be forwarded with report to the Import Department through the Assistant/Deputy Commissioner (Preventive).

Duty on Fuel Oil supplied ex-bond stock to vessels which are in the foreign run but which subsequently divert to coastal run

The Import Department shall intimate the fact of reversion from foreign to coasting trade and vice versa to the Export and Preventive Departments, to enable them to take such action as such reversion may call for. A "FREE" shipping bill shall be filed in the Export Department to cover shipment of excise bonded oil as ship's stores, with duplicate and triplicate copies of AR-4 forms. The words "Shipment from excise bonded stock" may be superscribed conspicuously on the shipping bill. (In respect of shipment of warehouse goods, on the Customs side, (S.P.No. A R-4 No., Grade of oil, quantity shipped, source of supply) etc. shall be entered at the appropriate place in the vessel's store list, in the same manner as stores supplied from Customs bonded stocks are entered. These particulars should be entered in the copy retained in the Preventive Department and also in the "Circulating Copy" if the vessel is touching Customs Port (s) on route to a foreign destination. If the vessel is expected to touch any Customs Port (s) en-route to foreign destination, the certifying Preventive Officer should mention in the certificate the names of all such ports and in the same order as mentioned in the port clearance of the vessel, instead of mentioning only the foreign port of destination.

If a vessel reverts from foreign to coastal trade at any of the Custom Ports en-route to a foreign destination, the Custom Authorities at the port of reversion shall forthwith intimate the Central Excise Department which permitted supply of oil ex-bond under AR-4 procedure, any such change in the character of her voyage together with such particulars as grade and quantity of oil on which excise duty may be recoverable.

[Ministry's letter F.No.55/31/64-Cus IV dtd. 23.08.1965]

Indian goods supplied as Stores

Section 89 of the Customs Act, 1962, prescribes that goods produced or manufactured in India and required as Stores on any foreign going vessel or aircraft may be exported free of duty. The quantity of such goods shall be determined by the proper officer depending upon the size of the vessel or aircraft, number of passengers and crew and the length of outward voyage or journey of the vessel aircraft.

Stores unfit for Human consumption

Stores certified unfit for human consumption by the Port Health Officer may be passed free of duty and destroyed by the city/port authorities under Preventive supervision.

Removal of Refrigerated Ships Stores from the Vessel, whose refrigerating system has gone out of order, to cold storage in the city

The steamer agents concerned should make an application for removal of such goods to the bonded freezer premises and storage there pending reshipment, attaching complete and detailed list of the stores which are proposed to be removed giving description, unit, quantity, weight and value (wherever possible). They should enclose along with the application a letter of guarantee Bond on necessary stamp paper, binding themselves to pay duty on such of the stores as are not re-exported within the stipulated time or are lost or missing or have deteriorated during storage in the bonded premises and any penalty leviable thereon. The Asst. Commissioner may allow the request, but before actual removal from the ship the Preventive Officer should check up the stores with the detailed lists furnished by the steamer agents and endorse the inventory to that effect and then escort the stores to the bonded premises for storage. Endorsement in token of receipt should be made by the Preventive Officer in charge of the Bond, if posted or by the bonder of the premises. In the bonded room these stores should be kept segregated from the other bonded stores in the premises. As far as possible, a separate room should be provided for storing such stores.

At the time of removing the stores back to the docks for shipment, the officer posted for the job, shall check up the items again and see that they tally with those originally allowed to be kept noting down any discrepancies in the lists. He should then escort the goods to the docks and leave them in the charge of the Section officer who should supervise the shipment and make an endorsement to that effect. (If the shipment is effected out of office hours, the officer supervising the ship should supervise shipment). The letter of guarantee bond should be cancelled after pre-audit.

REMOVING SHIP'S GEAR OR EQUIPMENT INTO TOWN FOR REPAIRS

(a) Articles forming part of Ship's gear or equipment shall be permitted to be removed into town for purposes of repair without payment of duty. The facility for passing such articles without payment of duty shall be allowed only in the case of:

- (i) The firms and merchants of repute who have a permanent deposit in the Custom House as security for payment of duty and who have executed a standing guarantee/bond in the prescribed form for due compliance of the Rules.
- (ii) Other firms and merchants who execute a separate guarantee/bond in the prescribed form on the occasion of each application.
- (iii) The local steamer Agents who are allowed to remove gear and equipment for repairs without payment of duty from vessels under their agency through their authorised firms have also to execute a guarantee bond in the prescribed form to pass out any articles or set of articles at one time.

(b) The grant of this concession shall also be on condition that the articles being re-shipped normally within a period of 90 days. The time limits can be relaxed on the merits of the case by the Assistant Commissioner of Customs.

(c) (i) Articles so passed on machinery passes/repair passes or guarantee/bonds are treated as part of ship's equipment and therefore, (unless the ship is broken up) are not liable to duty until it has been decided not to put it back on the ship. The decision not to replace the articles should be taken

before the expiry of the currency of the repair pass/machinery pass in which case the valuation and assessment to duty shall be done by the Appraising Department. During the currency of the repair pass/machinery pass, the articles shall be treated as goods that have been imported and recovery of duty on which is postponed and shall be entirely waived if the goods are reshipped in due course. The reshipment could be effected on the same vessel or other vessel under the same agency or belonging to the same owners.

(ii) The amount of the permanent deposit shall be fixed by the Assistant/Dy. Commissioner keeping in view and value of the transactions of each firm or merchant and shall be liable to be increased or decreased in proportion to any corresponding variation in the volume of such transaction.

(iii) Application from new firms for this concession on long term basis shall not be entertained until the firm concerned has worked for at least six months under the Individual Guarantee system as provided for in sub-para a (ii) above and if the bonafides of the firm do not come under question during this period of probation. For this purpose the firm be required to furnish a statement of its financial position. Confidential enquiries shall be caused to be made by the Custom House to verify the financial stability and turnover of the firm. Income Tax certificates may also be demanded and scrutinised. The firm should produce a promise of regular orders from at least two major shipping companies.

(iv) Individual Guarantee should be extended by Assistant/Dy. Commissioner (Preventive), after satisfying himself as to the adequacy of the amount deposited as security.

(v) When articles are entered for removal under Para a (ii), the guarantees shall be executed for an amount equivalent to twice the duty leviable on the value of the articles entered for removal, and shall be stamped with a Revenue Adhesive Stamp of the prescribed value.

(vi) Any firm or merchant from whom a permanent deposit and a standing guarantee/bond have been accepted and who is duly authorised by the local Steamer Agent, executing a standing letter of guarantee with Customs allowing the firm or merchant to operate for them under this concession, may remove such articles into town for repairs under cover of a machinery pass in the prescribed form in Pink colour which shall be prepared in quadruplicate and shall contain an accurate specification of the description, quantity, type, serial number, maker's name and value of the articles, to facilitate identification and show the name of the vessel and the I.G.M. No. and name of the Gate or Bunder through which they are to be passed. The original copy of the pass shall bear Court Fee Stamp as prescribed at the port.

(vii) The removal of such articles by other merchants or firms may be effected under cover of the prescribed form of grantees in quadruplicate containing the particulars as those described above. Only the Original copy of the guarantee shall be stamped. In effect, however, in all 5 copies of the guarantee shall have to be prepared i.e. one with the Revenue Adhesive stamps to be preserved in the Custom House for observing the rules regarding custody of guarantee and 4 copies to serve the purpose of removal etc. on the same basis as of machinery pass.

The disposal of the four copies of the machinery pass shall be as follows:

The original should be retained by the Section Officer or the Boarding Officer the despatched to the Custom House after the vessel sails.

The duplicate should be taken from the party at the time of passing of the machinery etc, by the Gate Officer or the Bunder Officer and sent to the Custom House for registration.

The triplicate should accompany the machinery etc. at the time of reshipment and should be returned to the Section Officer by the party. The Section Officer shall then forward the triplicate and the original together to the Custom House (Preventive) Department.

The quadruplicate shall be retained by the party.

(d) Removal of Articles

Before removal of items for repairs from a vessel, the firm shall make out a repair pass/machinery pass in the prescribed form in quadruplicate. After the pass has been duly completed by the firm and countersigned by the Ship's officer it shall be presented to the Preventive Officer in charge of the Section where the vessel is lying. The Section Officer shall satisfy himself that the details have been correctly given on the pass or guarantee by check of the goods and then allow and supervise landing. He shall endorse on all copies and impress the Custom Rubber stamp on the duplicate and triplicate copies. He shall then return three copies to the applicant retaining the original copy in the section with the other papers of the vessel concerned. The section officer shall be constantly on the alert to ensure that no items are landed and removed for repair unless necessary prior permission has been accorded by him as indicated above. If the officer has reason to believe that altogether inadequate value has been entered against an item for the purpose of passing it into town, he shall detain the articles for appraisalment. Articles declared as 'Condemned' in the pass or guarantee shall be sent for assessment of duty at once and allowed to be cleared on a Bill of Entry. If any of the articles specified in the pass or guarantee are not landed to the passed out, the Preventive Officer shall score out of the entry of the items under his initials with the consent of the applicant or his representative. When he is satisfied that the documents are in order, he shall endorse all four copies to show the items covered by them are allowed to be passed into town.

When any articles or ship's parts are required to be landed for the purpose of being shown as samples, templates or models, for purchase or manufacture of similar parts, they may be landed on a Machinery pass but should be declared as such on the Machinery Pass. On completion of the work, the parts so removed should be reshipped as provided in the Machinery pass Procedure.

(e) The Gate Officer shall entertain a Repair Pass/Machinery Pass only after verifying that the Section Officer has properly allowed landing of the articles and duly endorsed and stamped the pass. He shall also check the signature of the applicant against the list of authorised persons maintained at the gate. He shall carry out a physical check of the goods in the lorry or other conveyance to satisfy himself that they correspond with the declaration in the pass. He shall see that in the case of gear or equipment which do not bear any marks, numbers or other distinctive feature for easy identification, suitable mark or seal should be affixed to them. Where this is not possible, it should be ensured that the same are fully described in the covering machinery pass. The gate officer shall endorse the duplicate, triplicate and quadruplicate copies. The duplicate copy shall be retained by him and be sent to Office of the Preventive Department for registration and further action.

(f) Reshipment of Articles

On return of the goods for reshipment after repairs, the Gate Officer shall check the details with the Machinery Pass and the validity of the pass, before allowing the items to pass in. The Gate Officer shall make necessary endorsement on the triplicate and quadruplicate copies, but return them to the applicant.

The Section Officer who shall, as far as possible, supervise the shipment or otherwise verify by check on board that the goods have been duly reshipped. The firm shall, after shipment, endorse the pass and obtain the signature of the ship's officer in token of receipt. The two copies of Repair Pass/Machinery Pass shall then be presented to the Section Officer for endorsement. The quadruplicate copy duly endorsed, shall be returned to the firm. The triplicate shall be retained. This copy along with the original pass from the ship's file shall be endorsed and returned to the Preventive Officer to enable cancellation of the entry in the register. Should the articles be reshipped on a vessel other than from which they were landed, or on the same vessel on a subsequent voyage, the Preventive Officer in charge of the receiving vessel shall endorse the triplicate and quadruplicate pass accordingly.

(g) Part Shipment of Machinery Pass items

In the case of part shipment or if the goods have not been returned at all before the vessel sails, the Section Officer shall send the original copy to the Office with a report regarding part shipment or non-shipment of the goods. On receipt of the report an entry shall be made in the register and special watch maintained, for reshipment. Should such reshipment not take place before the validity of the pass expires, the party should be called upon to pay the duty involved forthwith. In the case of part shipment, the Section Officer after his endorsement shall return both the triplicate and quadruplicate copies to the party.

The duties of the Section Officer as laid down in the above paragraphs, shall also be performed outside the office hours by the officer posted on O.T. Basis in charge of the ship, if the ship is working and by a special officer posted for this purpose on prior application from the party, if the ship is not working otherwise. In the event of vessel is not working or is in dry dock and any machinery items are to be landed for repairs after office hours, services of a special Preventive Officer may be obtained on application to the Divisional Superintendent on payment of usual O.T. Fees.

After the check of the original repair pass/machinery pass or guarantee, the special officer concerned shall forward the same to the Section Officer concerned to be retained in the Section along with the ship's papers.

Items landed from Vessels in stream

The articles may be landed from vessels in stream and taken to prescribed Bunders and gates for passing with prior permission of the Boarding Officer/attached Officer in the same way as to the Section Officer in the Docks. The Boarding Officer/Preventive Officer shall retain the original copy of the machinery pass and endorse the duplicate, triplicate and quadruplicate copies. These copies shall then accompany the goods to the place of landing, serving as boat-note. Meanwhile, the Boarding Officer shall send an advice to the gate through which the goods are to pass out. The Original Pass shall be retained with the ship's papers and dealt with in the usual manner at the time of sailing of vessel. If the vessel moves to the Docks, the original machinery pass shall be sent to the concerned Section Officer along with the other papers of the vessel.

The Machinery Passes/Repair Passes shall be of distinctive pink colour. All firms on approved list and concession are required to have these forms printed and bound in booklets. These pass-books or repair pass books with printed serial numbers in reasonable quantity as per requirement of the firm shall be presented in the Customs House where the same shall be signed by a Preventive Officer and thereafter returned to the firm for use. Proper record of issues and returns of these books shall be kept by the firms and should be subject to surprise check by Customs Officers. Each firm shall submit quarterly statement of the passes issued. These statements shall be approved for such purpose by the Asst./Dy. Commissioner and whose specimen signatures shall be kept at all gates with the Section Officer for the purpose of check.

Supervision and checks by Divisional Superintendents

The Divisional Superintendents shall exercise proper checks on vessels, on gear and machinery moving in the docks and also at the gates. The Superintendents should see that the procedure is properly understood and followed by both section and gate officers. The list of authorised persons should be maintained carefully at each gate. Superintendents should frequently carry out examination of goods passing out under Machinery Pass at the Gates themselves, and record the same in their diaries for information of Asstt. / Dy. Commissioner.

No articles shall be permitted to be reshipped after lapse of the period of currency of the relative passes or guarantees, until the import duty leviable has been paid.

An extension of the period of currency of Machinery Passes/Repair Pass or guarantees required in special cases may be granted by the Asst./Dy. Commissioner on receipt, within the normally permitted period, of an application accompanied by the triplicate and quadruplicate passes or guarantees from the firm or merchant concerned, provided the articles are first examined and their condition and value certified by the Appraiser, specially deputed for this purpose. When an extension is granted all the four copies shall be endorsed accordingly and triplicate and quadruplicate copies returned to the applicant.

Assessment and Recovery of Duty

Action to recover duty on articles not shipped is ordinarily taken on the expiry of the period of the currency of the repair pass/Machinery Pass or guarantees. In the case of condemned articles or of articles about which it has been decided not to reship owing to their having been found unserviceable after removal or for any other reason, it shall be incumbent on the firm or merchant to apply for the services of a Customs Officer to check the valuation and to assess the duty leviable immediately.

When any article has not been reshipped before the expiry of the period of currency of the pass, the Prev. Deptt. shall issue a memorandum in the prescribed form calling on the firm or merchant concerned to arrange for check and valuation of the articles and assessment of the duty within three days. A copy of this memo shall be addressed to the Divisional Superintendents concerned to send the original pass or guarantee if not already returned. In dealing with the application for assessment of unserviceable articles, the Appraiser shall on being satisfied of the validity of the claim, note the word 'condemned' against the relative item on the triplicate and quadruplicate copies of the Machinery Pass, appraise the articles, enter the value and assess the duty under the appropriate items of the tariff.

(i) On the articles being entered for assessment by the firm or merchant the Appraiser concerned shall assess the articles to duty on the basis of value declared in the relative documents or upon such increased value as may be estimated by him on examination of the goods at the place where they are stored. No claim for assessment on a value than that stated in the relative machinery pass or guarantee shall be admitted in such cases except when the vessel from which the articles were landed has not left port before the expiry of period of currency of the covering document. After examination of the articles and verifying the particulars required for purpose of assessment the officer concerned shall enter value and the rate of duty applicable against the relative item in the triplicate and quadruplicate copies of the machinery Pass to the party for payment of duty through Preventive department where the Machinery Pass clerk shall calculate the duty involved and endorse all the four copies of the machinery pass entering the particulars in the machinery pass register.

(ii) The date of delivery of triplicate and quadruplicate passes or guarantee, for assessment of any item included therein shall be noted on the document as soon as it is received by the Appraiser concerned. All entries relating to the valuation or the rate of duty shall be made in red ink and shall be initialled and dated by the Appraiser on all the copies of the pass or guarantee dealt with by him.

(iii) The triplicate and quadruplicate copies of Machinery pass or guarantee assessed under the procedure described in above shall be presented by the owner within a week from the date of assessment to the Machinery Pass Clerk in Preventive Department who shall compare them with the relative original and duplicate copies and see that the details relating to the value of the articles and the rate and amount of duty are correctly entered in the document. After the document are found to be in order and if the duty assessed is recoverable by debit to the firm's deposit account all the four copies of the machinery pass shall be forwarded to the Accounts Department for adjustment. When, however, the duty is to be paid in cash the four copies of the pass shall be sent to the cashier through a transit book in charge of a sepoy who shall be accompanied by the firm's representative.

(iv) After the duty has been paid or recovered by debit to the firm's deposit account, all the four copies of the pass, bearing the oval stamp in token of credit of the amount shall be returned by the accounts Department to Preventive Department where the clerk concerned shall enter the cash number and date of credit of duty against the relative item in the register., and return quadruplicate copy of the pass or guarantee to the owner and retain the other three copies.

Machinery passes shall be entered in a special register in the prescribed form wherein all the particulars of Machinery pass shall be registered immediately on receipt of the duplicate pass or guarantee in Preventive Department and assigned serial No. of an annual series.

When the original and triplicate copies are received the papers shall be submitted to Assistant / Dy. Commissioner (Preventive) for information and cancellation of the item through supervisory head of the Department. The register should be periodically checked by Assistant / Dy. Commissioner (Preventive) to ensure that all items are duly accounted for and that necessary action is taken against the firms in respect of goods not re-shipped in time.

The internal audit department shall audit all the machinery passes and guarantee covering articles which have been reshipped or otherwise accounted for with the respective entries in the register. It shall also see that the procedure laid down has been followed in all respects and that necessary action has been taken on all items which have not been re-shipped before the expiry of the currency of the Machinery pass.

The concession of passing articles of Ship's gear or equipment on Machinery passes or guarantees into town for repairs without payment of duty shall be liable to withdrawal without previous notice for any serious or frequent breaches of these rules.

Articles forming part of ships stores, equipment and private property belonging to ship's crew

Such articles and articles like band instruments and wireless sets whether belonging to the ship or officers and crew of the ship may be landed for repairs and passed without payment of duty on repair passes or guarantees in accordance with the above procedure after making due notes in ship's store-list/private proper list of the repair pass number. In the case of wireless sets so landed for repairs the usual application to import wireless receiving apparatus need not be demanded so long as the sets are returned to the ships before the latter leaves the port and are not used during their temporary import into India. A declaration to the effect that the sets shall not be used should be taken on the relative machinery pass or guarantee.

Passing out the Ships Linen for Washing

(a) Linen of Vessels in port may be passed out for washing on execution of a general guarantee in the proforma by the Steamer Agents, valid for the duty and fine/penalty involved on the linen. The guarantee to be registered in the Preventive Department shall be renewed every year in January if the Steamer Agents desire that the concession should be continued. Copies of specimen signature of those empowered to sign the Gate Passes should also be furnished by the Steamer Agents along with the guarantee.

(b) Linen of vessels in port shall be passed out on a Pass triplicate (in the proforma appended to guarantee) which shall be presented to the Preventive Officer at the Gate or to the Section Officer at such ports where gates are not manned by Preventive Officers, who shall retain the original copy. The duplicate and triplicate copies shall accompany the linen passed out.

(c) The linen should be reshipped on the same vessel before she leaves the port. At such ports where Preventive Officers are posted at the Gates, the duplicate and triplicate copies of the Pass shall be

presented to the Gate Officer who shall examine and allow the linen to pass in. In all cases, the duplicate and triplicate copies of the pass prior to shipment shall be presented to the Section.

The Section Officer, after supervising the shipment, shall endorse the copies accordingly, retain the duplicate copy and forward the same to the proper gate through which the linen was originally passed out or to the concerned Section Officer, as the case may be, where the original copy of the Pass shall be endorsed accordingly.

In case the vessel calls at the port for brief period and it is not possible to reshipe the mattresses, pillows, linen etc. after washing repairs on the same vessel, then the Repair pass / Machinery pass procedure should be adopted.

(d) The 'Letters of Guarantee' executed by the Steamer Agents shall be registered in the Preventive Office and a register for the same shall be maintained in Annexure 'A' appended by the clerk dealing with Machinery Passes. The dealing clerk shall keep a watch at the end of every year, as the guarantees are to be renewed every January, and obtain fresh 'letters of guarantee' from those agents who desire that the concession should be continued.

(e) In order to ensure due reshipe of linen, a register in proforma at Annexure 'B' shall be maintained by the Gate Officers. In the case the linen is not reshipped, a report should be made to the Assistant/Dy. Commissioner / Preventive Department through the Divisional Superintendent for taking action in terms of the letter of guarantee executed by the Agents.

(f) The Divisional Superintendent shall check the Registers once a fortnight. He should satisfy himself that all the entries therein made upto a month previous to the date of his visit have been accounted for by reshipe of the linen or otherwise that a report as envisaged in sub-para (5) above has been sent to the Assistant / Dy. Commissioner / Preventive Department for taking further action.

Annexure 'A'

Register of 'Letter of Guarantee' for removal of linen for washing from ships in port.

Sr. No.	Date of acceptance of 'Letter of guarantee'	Date of expiry of letter of guarantee.	Steamer Agent's Name.	Remarks
1	2	3	4	5

Annexure 'B'

Gate Register for ship's Linen

Date	Application No. & Date.	Vessel's & Agent's Name.	Washing Company's Name.	Description & No. of articles passed out.
1	2	3	4	5

Clause	No. of Articles reshipped	Date of Reshipe	Remarks.
6	7	8	9

Empty Aerated Water Bottles from vessels- for re-filling

The following procedure shall be adopted for the removal of empty aerated water bottles from vessels for re-filling.

(1) The firms concerned in passing out empty aerated water bottles shall present a Gate Pass in duplicate of Yellow Colour in the form at Annexure "A" to the Section Officer. The pass shall clearly indicate whether the vessel, from which the empty bottles have to be landed, is in the foreign trade or in coasting trade. After satisfying himself, the Section Officer shall stamp and endorse the Gate Pass. The pass and empty bottles shall be presented at the Gate. After check, the Gate Officer shall pass out the bottles and retain the original pass. These passes shall be kept company wise and separately for coasting vessels and foreign vessels, and sent weekly to the clerk in Preventive Service Office.

(2) In the case of shipment, the filled bottles shall be passed in on a pass as in form at Annexure "B". The Gate Officer shall endorse the pass but not retain the same. The pass shall then be presented to the Section Officer who shall certify on both copies shipment of the bottles onboard the vessel after check. The Section Officer shall retain the original and file the passes in two bunches (Coasting and Foreign separately). The passes shall be sent to the clerk in Preventive Service Office weekly.

(3) In order to ensure that the bottles landed from vessels on the foreign trade are accounted for by an equal number of similar bottles shipped on vessel on the foreign trade, the clerk in the Preventive Service Office shall maintain a register as in proforma at Annexure "X" which shall show company wise the bottles passed in and out. A separate page or pages shall be kept for each company and an abstract prepared at the end of the month. The companies shall also furnish monthly statements showing separately items landed and shipped on (a) Foreign vessels and (b) Coasting vessels. The account maintained in Preventive Service Office shall be checked against these statements each month and put up to the Assistant Commissioner(Preventive) through Dy. Superintendent. The register shall be forwarded to Internal Audit Department for check. Any discrepancies noticed should be reported separately.

[Mumbai Custom House File No. S/50-55-P.]

At the end of every six months a consolidated statement shall be prepared showing the total number of bottles passed out and passed in company wise. This shall be subject to audit.

ANNEXURE "A"**OUT**

Serial No.
Original (For Customs Gate
Officer)
Duplicate (Company copy)

Gate Pass for Empty Bottles

(Yellow Colour)

(Name of Company)

M/s. _____

To

The Customs Officer,
.....Docks.

Kindly allow the following to be landed and passed out for re-filling from the s. s. _____ in the Foreign/Coasting Trade.

Description	Quantity
Empty ----- aerated bottles	.....dozen
	(Firm's representative)
	M/s. -----
Steward	
s. s. -----	

Allowed.

Time

Date

Stamp and signature of Customs
Dock Section Officer.

Checked, Passed out.

Time

Date

Signature of Customs Gate Officer.
.....Gate.

ANNEXURE "B"
IN

Gate Pass for Filled Bottles
(Yellow Colour)

Serial No.....

Original, (Dock Section Officer)
Duplicate (Company copy)

To

The Custom Officer,
.....Docks.

Kindly allow the following to be passed in for shipment on s. s. -----in the foreign/coasting trade against empty bottles passed out.

Description.	Quantity
Full Aerated bottles	.....dozen.
	(Firm's representative)
	Messers.....

Checked	Passed in.	
Time.....		Customs Gate Officer,
Date.....		.....Date

Received in full on s. s.

Date

Steward s. s.

Shipped in full on s. s.

Time

Date

Customs Dock Section Officer.

ANNEXURE "C"

Form of Register to be maintained in the Preventive Department.

M/s.

Month(year)...

Date	Gate Pass	Vessel	For Foreign Vessels		For Coastal Vessels	
			Passed out	Passed in	Passed out	Passed in
1	2	3	4A	4B	5A	5B
Total						

Abstract (at the end of the month for each company)

	As per above entries.	As per company's statement	Difference
Empty bottles passed out from vessels in foreign trade.	}dz.	.....dz.	
Filled bottles passed in and shipped on vessels in foreign trade.	}dz.	.....dz.	

Remarks regarding shortage, if any, and action taken.

Audit Stamp Initials.

Initials of Clerk and Dy. Supdt.

Signature of Asstt. Commissioner.

Filled / empty gas cylinders- taking in/out of Docks

Certain marine supply companies of repute have been granted permission for taking out empty cylinders from vessels berthed in Docks area and in stream for refilling on exchange basis.

The following procedure should be adopted for the same:

- (1) The supply of gas cylinders on exchange basis under challan should be carried out between 10.00 A.M. and 6.00 P.M. against an order received in writing from the shipping company.
- (2) the suppliers shall present the Cylinder Pass, as per proforma given below, in quadruplicate showing the number of cylinders intended to be landed with their description, identifying particulars and value and the vessel's name, to the concerned Section Officer. After granting lading permission, the Section Officer shall retain the original copy.
- (3) At the gate, the Gate Officer shall endorse for 'passing out' and retain the duplicate copy.
- (4) In the case of filled bottles/cylinders, the triplicate and quadruplicate copy will be presented at the Gate. After 'passing in' endorsement, the said copies will be presented to the concerned Section Officer, who will permit the reshipment after satisfying himself.
- (5) The original and triplicate shall be sent by the Section Officer and duplicate copy shall be sent by the Gate Officer to Preventive Service Office without delay.
- (6) Regarding the shipment of gas filled in, the suppliers shall follow the rules in force.
- (7) The accountability of the cylinders shall rest with the suppliers.

IN & OUT FILLED / EMPTY GAS CYLINDERS PASS

(Articles for Cylinders only shall be entered on this form)

NAME OF THE SUPPLYING COMPANY

No. and Date of Custom House Authority, permitting
the company for taking in/out, filled / empty gas cylinders :

Amount of permanent BOND :

TO,

THE ASSISTANT COMMISSIONER OF CUSTOMS,
PREVENTIVE DEPT.,

.....Custom House.

Kindly permit the following empty Gas Cylinders to be removed for refilling from M. V. _____
which is in the foreign / coasting Trade.

The items will be returned within 30 days. The vessel is lying at _____ Dock.

Description of Cylinders with Nos. & Makes if any	Quantity	Weight in kgs.	Value Rs.

Date: _____ Certificate

Signature of Firm's Representative

Stamp of the Company

Signature of ship's officer

Items Checked, Landing permitted.

Time: _____

Date: _____

Signature and stamp of
Custom Dock Section OfficerDescription, number and value verified by physical examination,
passed out in full / part through _____ gate.

Time: _____

Date: _____

Signature of Customs Gate Officer

(Reverse)**Gate Officer's endorsement on Passing in of goods through Gate**

Articles shown obverse identified and checked by physical examination

Passed in Full/Part through _____ gate

(in case of in part passed, the items not brought in shall be clearly indicated on the reverse by note
against each item)

Time: _____

Date: _____

Signature of Custom
Gate Officer,

Certificate of Reshipment

Certified that the articles detailed observe have been shipped on board M. V. / M. T. _____ in the foreign / coasting trade lying at _____ dock.

Date _____

Signature of Firm's representative

Date _____ Received on board,

Signature of Ship's Officer

Certified that the articles have been checked, identified by me. Reshipped in full /part

Time _____

Signature of Custom Dock

Date _____

Section Officer,

Special Gear Pass

Firms having fixed deposits with the Custom House are permitted to bring into the Docks temporarily from outside items of special machinery for effecting repairs. These items are allowed to be passed in on a Gate Pass and then passed out. The Gate Pass for such items shall be of green colour and shall be in the form as in the schedule to this order. The Gate Pass shall be presented in duplicate. The Gate Officer will check and verify the items and then endorse both the copies retaining the original. Subsequently, items may be passed out through the same Gate. After identifying the items, the Gate Officer will pass them out, endorse both the copies and send the documents for filing to the Divisional Superintendent's Office.

[Mumbai Custom House File No. S/50-206/55-P]

*Pass for Special Gear in and out
(Green Colour)*

Messers.....

Original (To Customs Officer on passing in)

Duplicate (To Customs Officer on passing out)

To,

The Customs Officer,
..... Gate,
..... Docks.

Kindly allow the following items to be passed into the Docks for use in repair work. The items will be passed out after use.

Date

Signed

For Messers

Description	Model No./ Serial No	Quantity	Remarks
-------------	----------------------	----------	---------

Checked, Passed in

Identified and Passed Out in full

Date

Date

Customs Officer

Customs Officer

.....Gate,Docks.

.....Gate,Docks.

SUPPLY AS SHIP'S STORES OF EXCISABLE GOODS WITHOUT PAYMENT OF EXCISE DUTY FOR FOREIGN GOING VESSELS / AIRCRAFTS FROM THE PVT. / PUBLIC BONDED WAREHOUSES

In order to exercise effective control over the storage, accountal and removal of excisable goods like Cigarettes, Aerated Water, prepared and preserved for in Public Bonded Warehouse under Section 57 and Private Bonded Warehouse under Section 58 of Customs Act, 1962, the following procedure is laid down.

The party shall apply for this facility in the prescribed proforma to the Commissioner of Customs, who shall them separately notify the warehouse wherein the excisable goods can be received without payment of duty. The Bond Department shall issue a certificate to the said party to the effect that they have been permitted to receive excisable goods without payment of duty in Bond for supply as stores to foreign going Vessels/Aircrafts, within a period of six months or such extended period. A copy of the certificate duly certified by the Customs Officer incharge of the warehouse, shall be sent of the Central Excise Officer-in-charge of the factory from where the goods are intended to be cleared. Before giving certificate to the party, Superintendent (Bond) shall inspect the warehouse and shall submit his report to the Asst. Commissioner of Customs, Bond Department regarding separate compartment for storing these excisable goods. Regarding the movement of the excisable goods from factory to the Customs Warehouse following procedure is laid down.

(i) Each package intended for supply as stores shall be clearly marked and stamped with the f following words :-

“EXCISABLE GOODS FOR SHIP STORES TO BE STORED IN CUSTOMS WAREHOUSE”

- (ii) Any manufacturer desiring to avail of this facility shall have to execute the necessary bond in the prescribed form in terms of rule 153 of the Central Excise Rules, 1944.
- (iii) Movement of goods from the category and their receipt at the warehouse etc. shall be governed by the procedure prescribed under chapter VII as amended by Chapter VII-A of the Central Excise Rules, 1944. The procedure is at Annexure `B.’

It shall be the prime responsibility of the Preventive Officer in-charge of Private Bonded Warehouse and the Warehouse Keeper in the case of Public Bonded Warehouse under Sec. 58 and 57 respectively to receive the excisable goods in the Customs Bonded Warehouse. All these excisable goods shall be stored in a separate compartment with a notice board “Excisable goods for ship stores to be stored in Customs Warehouse.” The Preventive Officer incharge shall ensure that no other goods/package are kept in the premises. The Preventive Officer incharge shall maintain a separate Bond Register for such excisable goods in the same form that of under Sec. 58. The owner of the excisable goods who has warehoused the goods in the Customs Warehouse shall have to maintain the account and statement of the receipt, supply and balance of the goods and shall send the statement to the Central Excise Officer in-charge of the factory with a copy to the Bond Department. The Preventive Officer in-charge/Warehouse Keeper shall also send a monthly statement showing the total quantity of receipt and supply and the balance remaining to the concerned Central Excise Officers at the factory with a copy to the Bond Department. The clearance of these excisable goods specified above shall be allowed directly from the factory of production to the Customs Warehouse and in any case the further movement shall not be permitted. For the purpose of this facility under Notification 180/79 CE dtd.5.5.79 the Customs Officer in-charge of Warehouse have been conferred with all the powers of the Central Excise Officers referred to in chapter VII intending amendment made thereto by Chapter VII-A of Central Excise Rules, 1944.

If the excisable goods, cannot for any reason be supplied as stores within the prescribed period of six months from the date of warehousing, the owner of such excisable goods shall :-

Either ask for the extension of this prescribed period of six months, subject to clearance by Health or other authorities concerned.

OR, return such goods to the factory of production and follow the same procedure for the return of the goods as was followed at the time of removal of such goods from the factory of production. The relevant procedure is at Annexure C.

Supply of bonded Stores to supply vessels and Rigs Chartered by O.N.G.C.

In order to exercise control over ex-bond supplies of liquor, cigarettes and tinned food stuffs that are drawn by Vessels/Rigs and other vessels chartered by O.N.G.C. for operation in the Bombay High area; the following procedure shall be adopted.

1. The preventive Officer posted in the Bonded Warehouse from which supplies are to be drawn shall maintain a register in respect of each supply vessel/rig indicating the total number of crew and technical persons working on board the vessel.
2. The P. O./inhcharge shall scrutinise the supply order signed by the Master of the vessel and counter signed by the owner of the vessel, and compare it with the ex-bond shipping bill presented to him for issue thereof and make sure that the quantity ordered is not in excess of the quantities worked out in accordance with the following scale: -

(a) Liquor: One bottle per crew per week. Liquor should not be supplied to any of the Rigs, since O.N.G.C. does not permit the use of liquor on drilling Rigs.

Such goods as are not fit for consumption shall be destroyed with prior permission of the officer-in-charge of Customs Warehouse.

Clearance of all Excisable goods from the Customs Warehouse for supply as stores shall be governed by the provisions of the Customs Act, 1962.

(b) Cigarettes: One carton (200 cigarettes) per crew per week.

(c) Beer, Tinned Food And Other Consumable Items:

In reasonable quantity, if the Preventive Officer feels that the quantity requested for is in excess of the normal requirements, order of A.C. (In-charge Bond) should be obtained before the supply of the same.

3. The quantity of items supplied should be shown in the Register mentioned at para 1 above, supply vessel-wise/rig-wise in addition to the entries made in the Bond Register normally maintained .
4. If requests for additional supplies are made by the Master of any vessel, order of the A.C. Incharge Bond should be obtained before the issue.
5. Supdt. of Customs (P) Bond should verify the Register once in a month and satisfy that no excess supplies are made by the Preventive Officer.
6. A monthly statement showing the quantity of liquor, Cigarettes and other items supplied to the various Supply Vessels and Rigs should be sent to the A.C. Incharge Bond by the 5th of every month without fail.

Form of standing guarantee

To,

The Asstt. Commissioner of Customs,
Preventive Department,
.....Custom House.

Sir,

In consideration of Commissioner of Customs allowing to us to remove into town articles forming part of ship's gear and equipment for purpose of repairs payment of duty under the Machinery Pass Repair / Pass Concession, we hereby undertake.

1. to abide by all rules and regulations under the Machinery Pass / Repair Procedure,
2. to pay duty, fine and / or penalty that may be imposed upon us by the Customs Commissioner and to forfeit the amount of Revenue Deposit for any breach of the rules for the time being in force or which may thereafter be made from time to time by the Customs Commissioner in this respect and also,
3. to allow any Customs Officer to enter Workshop and / or office at any time to check the articles lying therein with our office stock books.

Yours faithfully,

Proprietor.

ORIGINAL (with stamp)

Duplicate

Triplicate

Quadruplicate

(Name of the firm)

(Address of the firm)

File No.....

The President of India.

Know all men by these presents that we.....Ship Repairs of S. S. / M.V.....are held firmly bound to the PRESIDENT OF THE REPUBLIC OF INDIA, the sum of Rs.....to be paid, to the said President of the Republic of India, his successor or assigns for which payment shall and truly be made.

We,.....do hereby bind ourselves, our legal representative and assigns by these presents dated theday of.....(year).....

Description	Quantity	Weight	Value
-------------	----------	--------	-------

Signature of the firm's
Proprietor.

The particulars of the items mentioned in the above sheet.

The above bonden,.....having applied to the Commissioner of Customs, and obtained his permission for the removal into the town of outside the limits of the harbour docks without payment of Customs Duty for the purpose of repairs of the articles described in the schedule above and which articles are parts, fixtures or instruments belonging to the above named vessel. Now the condition of this bond is that if the said.....or their legal representative or assigns shall submit the said articles for inspection to the proper Officer of

Customs at the time of landing thereof and also at the time of reshipment. The said.....or their legal representatives or assigns shall re-ship or cause to be re-shipped all or any of the said articles within Thirty days from the date on which each of such articles is landed and shall forthwith pay to the said Commissioner of Customs on demand the full and proper duty leviable according to the value, and rate of duty in force on the day following that of departure from the port of the above named vessel or on expiry of the guarantee whichever is earlier on all or any of the articles which are not re-shipped as aforesaid. This obligation shall be void otherwise on breach of failure, in the performance of any part of this condition the same shall be and remain in full force and virtue.

And it is agreed that any amount becoming due by us under this Bond. Inst., may be recovered in manner laid down under such section I of section 142 of the Customs Acts, 1962 without prejudice to any other mode of recovery.

Signed in the presence of:

Signature of the Firm's proprietor

Original Bond accepted by: -

	Quantity	Particulars
Date		Signature of Ship's Officer.
Time		
Date		Check and Landing Permitted
Time		
Date		Section Officer
Time		
Date		Passed out in full
Time		
Date		Gate Officer
Time		
Date		Passed in Full
Time		
Date		Gate Officer
Time		
Date		Articles Reshipped in Full
Time		
Date		Ship's Officer
Time		

Certified that the articles have been checked and identified by me at the time of shipping:

Section Officer

MACHINERY PASS/REPAIR PASS

Serial No.

(Articles for Repairs only shall be entered on this form).

Name of the Company..... Original (for section Officer)
 Duplicate (to be handed to Gate Officer and sent by him to Customs House).
 No. and date of the Custom House authority admitting Triplicate (to accompany the goods and to be

firm to concession or removing goods for repair. handed to Section Officer on reshipment.)

Amount of permanent deposit Rs.....Quadruplicate (Company copy)

To,

The Asstt. Commissioner of Customs,
Preventive Department.
.....Custom House.

Court Fee Stamp
20 Paise.

Kindly permit the following articles to be removed for repairs from the s.s.....
which is in the Foreign/Coasting vessel is lying at.....dock.

Description of articles showing marks & numbers, If any	Quantity	Weight		Value (Rs.)
		Tons	kgs. gms	
1	2	3	4	

Date Certificate Signature of Firm's representative for M/s.
.....
Signature of Ship's Officer

.....
items checked, Landing permitted.

TimeSignature and stamp of
DateCustoms Dock Section Officer
Description, number and value verified by physical examination passed out in full in part throughgate.

Time :
Date : Signature of Customs Gate Officer

Gate Officer's endorsement on passing in of goods through Gate.
Articles shown obverse identified, and checked by physical examination.

Passed in full/in part throughGate. In case of part passes,
the items not brought in shall be clearly indicated on the reverse by note against each item).

Time :
Date : Signature of Customs Gate Officer.

CERTIFICATE OF RE-SHIPMENT

Certified that the articles detailed above have been shipped on board S. S.
..... in the foreign/coasting trade, lying at
.....Dock.

Date : Signature of Firm's representative
for M/s.....

Received on Board

Date : Signature of ship's officer

S. S.....

Certified that the articles have been checked and identified by me.

Reshipped in full/in part

Time :

Date :

Signature of Custom Dock
Section officer

Custom's Appraiser's assessment of condemned value and Duty

Condemned Value

Signature

ANNEXURE – VI

Preventive Service Office
..... Custom House,
Date :

With reference to the **Machinery / Repair Pass No. / Guarantee**
..... dated filed by Mr./Messrs.
the period of currency of which expired on
Mr./Messrs is/are informed that as the articles covered by it
have NOT yet been reshipped he/they should arrange with the Preventive Department of Divisional
Superintendent Appraising Department for check of the Valuation of the articles and assessment of duty
thereon within three days from the date hereof.

Assistant Commissioner of Customs,
Preventive Department

Copy forwarded to D.S. and S/Appraising, for information.

ANNEXURE – VII

Machinery Pass Repair Pass/Register

S. No.	Date of Registry	Name of Co. removing the gear or equipment	Name of the vessel	Serial No. of the Machinery Pass
1	2	3	4	5

Date of Expiry of Validity of pass	Date of receipt of Section Officer's report and Original Pass	Whether item's reshipped or not	Date of reshipment of effected subsequent but before expiry of time of pass
6	7	8	9

ANNEXURE – VII

GUARANTEE TO BE FILLED ON STAMP PAPER

In consideration of being allowed by the Commissioner of Customsto remove more articles of Ship's equipment such as mattresses and pillow for restuffing and linen etc., washing and repairs from vessels under our Agency without payment of duty, and I.T.C. licence, 'we undertake that goods shall be covered on each occasion by passes in triplicate as appended here to which shall be signed by duly authorised persons, specimens of whose signature are attached herewith. We further undertake to produce such linen to Customs Officer at the prescribed Gates for registration to whom the original copy of the pass shall be delivered after all the three copies of the pass have been duly endorsed by him and that the linen shall be taken back board for reshipment to the same vessel before she leaves the port, after such articles are again produced to the gate duty officer for registration covers by the duplicate and triplicate copies of the aforesaid pass before such reshipment, the triplicate copy duly endorsed being returned to us.

Failing satisfactory registration at the time of reshipment we bind ourselves to pay the duty on the linen and such other fines and penalties as may be leived and it is agreed that any amount becoming due by us under the Bond Instruments may be recovered in the manner laid down under sub-section (1) of Section 142 of the Act, 1962, without prejudice to any other mode of recovery.

The guarantee shall remain in force for one year from 1st January, ..(year)....and must then be renewed if it is desired that the concessions contained therein should continue.

Signature of Agents.

ANNEXURE 'B'

Movement of goods from the factory and their receipt at the Warehouse etc. shall be governed by the procedure as laid down below.

1. On production of Bond in the prescribed form in terms of rule 153 Central Excise Rules, to the Officer in-charge of Warehouse of removal or of the Warehouse of destination, accordingly as the Bond is executed by the consignor of the consignee.
2. Such Bond shall not be discharged until such goods are produced to the Officer at the Warehouse of destination and are duly warehoused or otherwise accounted for to the satisfaction of the officer having jurisdiction over the executor of the Bond nor until the duty due upon the deficiency in such goods not so accounted for has been paid
3. For purpose of such a discharge, if the Bond has been furnished by the consignor, as essential condition shall be the prior receipt by the Officer in charge of the warehouse of removal, of the duplicate

application from the Officer-in-charge of the warehouse destination with re-warehousing certificate recorded thereon, as hereinafter provided under sub-rule (3) of 156-A)

4. 154 Remover may enter into a general bond – The Commissioner may permit any person entitled under these rules to remove warehoused good from warehouse to another to enter into a general bond with such surety or sufficient security, in such amount, and under such condition, as the Commissioner approves for the removal from time to time, of any goods from one warehouse to another, and for the due arrival and re – warehousing thereof at the warehouse of destination within such time as the proper officer directs.

(Provided that, in the event of death, insolvency or insufficiency of the surety, or where the amount of the bond is inadequate, demand a fresh bond and may if the security furnished for a bond is not adequate demand additional security.)

5. 155. Bond under rule 140 and rule 164 to continue in force notwithstanding removal. Every bond executed under rule 140 and 164 in respect of such goods shall, unless the Commissioner in any case deems a fresh bond to be necessary, continue in force notwithstanding the subsequent removal of such goods to another warehouse.)

6. 156. Certificate regarding consignee to be produced along with his application for the removal of the goods, the consignor shall produce before the proper officer a Certificate in the proper form stating the particulars of the Central Excise Licenses held by the consignee and the bonds, if any, executed by him.

ANNEXURE 'C'

While returning such goods the Bonder/Owner shall file with the proper Officer for approval the list) in triplicate) of the goods showing the following details.

- 1. Date of manufacture.
- 2. Date of warehousing.
- 3. Full description of the goods.

The owner/bonder, should also state the reason for non-disposal of the goods as “Stores” within the prescribed time-limit.

After scrutiny of the above forms, the proper officer may approve the request for return of the goods to the factory. The P.O. in charge shall endorse all the copies of the form after making entry in warehouse Register, P.O. shall retain the original copies and handover the duplicate copies for removal of the goods under preventive escort of the factory.

CHAPTER - TWENTY ONE

COASTAL TRADE

PRELIMINARY

India is a vast sub-continent, which is having an extremely long coast line of over 3,500 Kms. Owing to this, transportation by waterborne vessels whether riverline or lying in the sea, constitutes the cheapest mode of transportation of bulk cargo, as compared with any other form of transportation.

Bulk items like coal, salt, building materials etc. are transported from the areas wherein they are mined/manufactured, to the consuming centres on the coast, by coastal vessels both sailing as well as mechanised. Another major important bulk item, which constitutes a sizeable proportion of coastal traffic, is transportation of petroleum products from the refineries located on the coast, to the storage tanks/depots as well as sales and distribution outlets, located at various points on the coast. Thus, it is but obvious that movement of coastal goods by sea is an extremely important day-to-day activity.

It is clear that coastal traffic of normal and bulk cargo is important to the country's economy as it reduces the pressures on other modes of bulk transportation, which are not only expensive but already over-stretched. As the coastline of India is vast, there are large number of coastal ports, bearing importance and quantum of coastal traffic, depending on their locations as well as size.

Accordingly, controls of each of such minor ports and the traffic entering as well as emanating from the them, vary from port to port. Procedures for transactions of work from the Customs point of view, have been laid down and defined. The movement of coastal goods and vessels carrying coastal goods, which is mostly through Bunders/Minor ports, is monitored by the Coastal Trade Establishment (CTE) section of the Custom House.

DEFINITION OF COASTAL TRADE:

The expression "Coastal Trade of India" should be taken to mean the conveyance of goods (other than imported goods) or passengers from one port of India to another port thereof, but a vessel engaged in a voyage starting from or ending at port outside India or which in the course of a voyage between two ports in India touches a port outside India for the purpose of embarking or disembarking passengers or goods should not be regarded as engaged in the coastal trade in India.

Provisions relating to Coastal Vessel and Coastal Traffic have been made in Chapter XII of the Customs Act, 1962.

Section 91 of the Customs Act, 1962, stipulates that provisions of Chapter XII of the Act, relating to coastal goods and vessels carrying coastal goods, shall not apply to Baggage and Stores.

ENTRY OF COASTAL GOODS-

Section 92 of the Customs Act, 1962, prescribes that the consignor of any coastal goods shall make an entry thereof by presenting to proper officer a bill of coastal goods in the prescribed format duly endorsed of its truthfulness.

The prescribed Bill of Coastal goods requires, inter alia, a description of the goods and remarks whether they are inland goods or foreign merchandise. The declaration has to be elaborate, the consignor has to declare value, "sort", specification, quantity, composition and description to the best of his knowledge, and belief, and further certify that the goods are in accordance with the contract entered into with the buyer. The proforma is similar to that of import and export goods, in respect that consignor has to make a declaration as to the truth of the contents.

Bill of Coastal Goods (Form) Regulations, 1976

In exercise of the powers conferred by section 157, read with section 92, of the Customs Act, 1962 (52 of 1962), the Central Board of Excise and Customs hereby makes the following regulations, namely: -

1. Short title and commencement. – (1) These regulations may be called the Bill of Coastal Goods (Form) Regulations, 1976.

(2) They shall come into force on 1.1.1978.

2. Bill of Coastal Goods. – The Bill of Coastal goods to be presented by the consignor of any coastal goods under sub-section (1) of section 92 of the Customs Act, 1962 shall be in the Form appended to these regulations.

Bill of Coastal Goods

(Original/Duplicate)

Consignor's Name

Date of Presentation.....

Address.....

Name of vessel: Port of Loading Master or Agent Colour Port at which goods to be discharged
Rotation No.

Year:

Packages

(Details of goods to be given for each class of description).

Number and Description (in words and figures)	Marks and numbers	Quantity and weight	Description of goods	FOB value	Remarks whether inland goods or foreign merchandise.
--	-------------------	---------------------	----------------------	-----------	--

Total :

Total No. of Packages (in words)
(For Customs Use only)

I/We declare that:

(a) the value, sort, specification, quality, composition and description of goods mentioned in this Bill are stated to the best of my/our knowledge and belief and I/We certify that they are in accordance with the terms of contract entered into with the buyer/consignee in pursuance of which the goods are being loaded and transported; and,

Custom House Passed for Loading
Seal Proper Officer

(b) the particulars given above are true.

Signature of the Consignor/Agent if acting for consignor.
Place and date

.....Packages landed

.....Packages short landed

Proper officer

.....Packages passed out of Customs Control.

Proper Officer.

Loading / Unloading of Coastal goods

Section 93 of the Customs Act, 1962, stipulates that loading of any Coastal goods on the vessel shall not be permitted by the Master of the vessel unless a bill relating to such goods has been passed by the proper officer and has been delivered to the master by the consignor.

Section 96 of the Customs Act, 1962, prohibits loading/unloading of coastal goods from any vessel at any port other than a Customs Port or a coastal Port appointed under Section 7 of the Act for the purpose

Similarly, Section 98 (1) of the Act prescribes that Sections 33, 34 and 36 shall also apply to the Coastal goods as they apply to the imported goods or export goods. Section 98 (2) of Act stipulates that Section 37 & 38 shall also apply to Coastal vessels as they apply to vessels carrying imported goods or export goods. Section 98 (3) empowers Central Government may make rules regarding application of all or any of the provisions of Chapter VI & of Section 45 of the Act, to coastal goods or vessels carrying coastal goods.

Section 99 of the Customs Act, 1962, empowers the Central Government to make rules for preventing the export of any coastal goods which are dutiable or prohibited under the Act or under any other law in force. Further the Government can also make rules for preventing the substitution of imported or export goods by goods in the case of a vessel carrying coastal goods as well as imported or export goods.

RULES RELATING TO COASTAL TRADE

Rules have been framed under the provisions of Sec. 98 of the Customs Act, 1962, for regulating the coastal trade by coastal crafts, that is, vessel with sails or motor. The same are reproduced hereunder:

With the approval of Government, the following Rules have been framed by the Chief Customs Authority under Sections 158-162 of the Sea Customs Act, 1878, (**Note** : Sections 158 to 162 of the Sea Customs Act, 1878, correspond to Sections 94 to 98 of the Customs Act, 1962) for regulating the coasting trade carried on in native craft i.e. vessels other than squire rigged or propelled by steam :

i) The Export General Manifest shall be in the same form as that prescribed for other vessels under Sec. 63 and 158 of the Sea Customs Act, 1878. It shall contain, besides the required particulars, the following information.

a) In the case of a vessel to which cargo from another Customs port has been transhipped from another native craft, a note should be made opposite each item of transhipment cargo to the following effect:

“Originally manifested at the port offor transhipment to the port of

or

“Subsequently manifested at for transhipment to

according as the goods were originally manifested at the port of export for transhipment at the port in question or their destination was changed on arrival there.

b) It shall include all goods brought from another port and not landed or transhipped and also all arms and ammunition, on board.

ii) If the vessel has arrived originally from another port, the manifest prepared as above, shall be presented in duplicate along with the document on which the cargo has been discharged endorsed by the Officer who supervised the landing to the effect that all the cargo manifested for the purpose has been discharged and inward clearance obtained.

iii) Both the copies will then be presented to the proper officer together with the original Transshipment Permits for goods for which Tranship Permits have been granted all Shipping Bills with endorsements showing the quantity of goods actually shipped. The Master shall also produce the following documents: -

- a) the clearance certificate from the Port Office
- b) vessel's register
- c) port and light dues, if any
- d) certificate that the vessel is furnished with side lights; and
- e) Health Certificate in the case of vessels arriving from infected places.

iv) If any of the goods for which Shipping Bills or transshipment permits have been granted are not shipped, the master shall, at the same time, put in a certificate in the form of an endorsement on the reverse of the Shipping Bills or the duplicate transshipment permits to the effect that the goods have not been shipped or transhipped as the case may be.

v) One copy of the manifest will be returned and signed by the Proper Officer together with the Shipping Bills and transshipment permits and it shall be the port clearance for the vessel.

vi) In the case of native craft clearing in ballast for a Customs Port, port clearance will be granted in the form attached. The form shall be filled in counterfoil by the master or agent, and, after inward clearance has been obtained in the manner above described, the Proper Officer who will sign the original and return it to the master as his clearance.

vii) In the case of native craft, entering and leaving a port in ballast it shall be entered and cleared like other vessels and shall take a port clearance in the same form as in the case of a vessel entering with cargo and clearing in ballast.

viii) Within 24 hours of the arrival of any native craft at any Customs port the master must obtain a certificate of entry from the Port Office and present it at the Custom House along with the following documents:

- a) the port clearance from the last port of call
- b) extract from manifest and Shipping Bills for all cargo to be discharged at the port
- c) a list of the vessel's stores
- d) port and light dues receipts, if any;
- e) the original manifest of which the above is only an extract; and
- f) an application to enter the vessel towards if the dutiable goods on board.

ix) After the vessel has been entered, the Export General Manifest will be signed by the Proper Officer who entered the vessel and returned to the master and will be his authority to break bulk, except in the case of free goods intended for transshipment which shall not be discharged until a transshipment permit has been prepared and completed by the owner and presented, along with the document on which the import cargo is to be discharged, to the Officer deputed to supervise the Transshipment.

x) If free goods originally manifested for importation are subsequently required to be transhipped for another port, the Export General Manifest shall be presented to the Proper Officer for amendment before a permit is granted.

Export General Manifest

Manifest of all goods exported per of
tons, Commander, to undercolour.

Marks and number of packages	Number and kind of packages	Description of goods	By whom consigned	To whom considered	Index number of Shipping Bills	Remarks
1	2	3	4	5	6	7

Cleared outward the of

Assistant Commissioner of Customs

I do hereby declare that the contents of the above Manifest are truly stated, Madras, this day of

Commander

Note: The Manifest should also contain full particulars of all arms and ammunition kept on board whether they form part of the ordinary equipment of the vessel or are the personal property of the master, the officers or the crew working on board.

Form of Empty Port Clearance for Native Craft

No.

Cleared inwards general manifest No.

Name of Vessel

Tindal's Name

Painted No.

Burthen in Tons

Colours

To what place

Cargo

I hereby declare that the foregoing information regarding cargo and destinations is truly stated.

Port,

Dated

Tindal

Port

Port Clearance granted.

Dated

Customs Commissioner.

Form of Export General Manifest for Native / Coasting Craft

No. of Export General Manifest

(Native Coasting Craft)

Vessel's Register No. Manifest of Goods
exported perof.....tons, Tindal
.....under.....
... coloursto

Port Dues Certificate No. Cleared Inward as per General Manifest Register No.	No. and kind of packages	Description of goods	Weight or Quantity	Real value of goods	By whom shipped	Shipping Bill No.	Remarks
1	2	3	4	5	6	7	8

I do hereby declare that contents of this Port-clearance granted at the Manifest to be truly stated.
Custom House for on the(date)...

Assistant Commissioner of Customs

Marks of Tindal

Note – Port-clearance granted aton subject to the counter-signature of the Preventive Officer at the Bunder before departure.

Note : if any goods are landed from a coasting vessel which has touched at a foreign port or which has on board goods brought from a foreign port in contravention of Section 82 of the Sea Customs Act, 1878, (*this corresponds to Section 32 of the Customs Act, 1962*), i.e. without being entered in the original or an amended or supplementary manifest, the Commissioner may impose a penalty under Section 167(33) of the Sea Customs Act, 1878 (*Sections 167 (1) to (81) of the Sea Customs Act correspond to Sections 111 to 119 of the Customs Act, 1962*) and a note of the fact of such landing shall be endorsed on such manifest by such Customs Officer as the Commissioner may from time to time direct.

[G.O. No. 3629 –Rev. dtd. 5.12.1911]

Coastal Vessels – Masters Responsibilities

The Masters of coastal vessels are, directly responsible for complying with the statutory requirements imposed on them by the provisions of the Customs Act, though there is no objection to their employing licenced Custom House agents for the preparation and delivery in the Custom House of any documents or other papersprescribed in connection with the entry or clearance of any vessel. Such documents of other papers must however be signed or otherwise duly attested by Master who is designated in some ports as a “Tindal”.

Section 95 of the Customs Act, 1962, stipulates that the master of every vessel carrying coastal goods shall be supplied by the Customs authorities with a book called " advice book " and master of such vessel shall carry the advice book on board the vessel. The proper officer at each port of call shall make such entries in the advice book as he deems fit, relating to the goods loaded on the vessel on that port.

IMPORTS BY COASTAL VESSELS

The provisions regarding clearance of coastal goods at destination have been outlined in Section 94 of the Customs Act, 1962.

As per Section 94 (1) of the Act, the master of a vessel carrying any coastal goods shall carry on board the vessel all the Bills relating to such goods and shall immediately on arrival at any customs or coastal port, deliver to the proper officer all bills relating to the goods to be unloaded at that port.

Further, Section 94 (2) of the Act stipulates that 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.

The following working procedure is followed in respect of coastal vessels in coastal trade-

i) Coastal vessels arriving from Customs Ports will on arrival, anchor at the discharging line of the Free Anchorage or at any of the Bunders or wharves/jetties at which they are permitted by the local Custom House to land any part/full of their cargo. Within 24 hours of arrival of the coastal vessel, the Master/Tindal will report to the Preventive Officer in-charge of CTE. The Master/Tindal on reporting will deliver the following documents in connection with the entry inward of his vessel;

- a) the copy of Export General Manifest tendered by him at the previous port;
- b) duplicate copies of all Shipping Bills relating to the items indicated in the Manifest;
- c) the vessel's register;
- d) port dues receipt (if the vessel is of 10 tons and above)
- e) light dues receipt, if any;
- f) list of vessel's stores and such other documents as required.

ii) In case of coastal vessel arriving in ballast, the Tindal will present in lieu of Export Manifest and relative Shipping Bills, an I.G.M. in the prescribed form together with empty port clearance issued at the port of the departure.

The officer-in-charge of wharf/ jetty/bunder etc., or CTE where the Master/Tindal reports, shall as soon as the E.G.M. from previous port and the duplicate copies of Shipping Bills and the other documents stated above, are received, check up whether the same are in order in all respect and shall enter the requisite particulars of the vessel in the Inward Entry Register and give the entry a serial number such as C1, C2, C3 and soon of annual series, note the serial nos. and date of entry on the Export Manifest from previous port (which shall become the Import Manifest) and duplicate copies of Shipping Bills or empty Port Clearance and return the documents to the Master/Tindal with suitable direction for payment of the port dues/wharfage charges involved. As soon as Tindal submits the same E.G.M. (i.e., now I.G.M.), after the payment of port dues/wharfage charges, the officer concerned will note the payment for port dues receipt No. and date in the Inward Entry Register. Thereafter, he shall permit the Master/Tindal to land the goods for granting delivery to the various consignees. While being passed out from the Bunder/wharf/jetty, the Preventive Officer should occasionally scrutinize a few items to see if they agree with the manifest. This scrutiny is not for the purpose of accounting for all the cargo, but merely a check against the smuggling of other good. After landing of all the goods is completed, the officer-in-charge of the wharf/Bunder/jetty shall endorse the landing certificate issued to the Master/Tindal by the Customs Officer at the previous port of shipment for resubmission to him. He shall also make necessary landing endorsement on both, EGM from previous port and the duplicate copies of Shipping Bills. If any short landing to the previous port of shipment. He should also issue a notice to the Master/Tindal calling upon him to explain as to how short landing took place. In respect of such case of short landing, the officer concerned shall after obtaining the explanation of the Master/Tindal, submit a report to the Assistant/Dy. Commissioner of Customs (Preventive). After all formalities in respect of the cargo brought by the sailing vessel are over and after the statistical returns are prepared the officer concerned shall ensure the proper filing of the EGM and all the connected duplicate copies of the Shipping Bills and other documents.

REGISTER OF ONWARD/INWARD ENTRY OF VESSELS

Clearance Rotation No.	Date and hour of entry Date	Hour	If prior to arrival	Vessel	Nationality
1	2	3	4	5	6

Tonnage	Agents	Port or Ports	Commander General Description Cargo	Remarks
7	8	9	10	11

EXPORTS BY COASTAL VESSELS:

i) Any Master/Tindal of sailing vessel intending to carry goods to other Indian ports, shall obtain entry outwards on presenting to the clerk-in-charge in C.T.E. a landing certificate issued at the time of entry inwards of the vessel. After noting down the requisite particulars of the vessel in the Outward Entry Register and assigning a rotation No. to it, the clerk shall grant outward entry.

REGISTER OF VESSELS CLEARED OUTWARDS

Date and No. of Export General Register.	No. of Vessel's Register	Burthen	Description of Vessel and Name as per Register
1	2	3	4

Tindal's Name	Colours	Destination	No. of Export Entries granted for the shipment of goods	Date of Port Clearance granted.
5	6	7	8	9

ii) Any person desirous of effecting shipment of goods to other coastal ports by the vessel for which an outward entry has been given and duly notified, will be required to file a Shipping Bill in duplicate. Shipping Bills so filed shall be carefully scrutinized by the dealing clerk. If everything is found to be in order, he shall pass the Shipping Bills. Shipping Bills in respect of restricted goods shall be signed by the officer-in-charge C.T.E. The original copies of the Shipping Bills shall thereafter be returned to the party for effecting the shipment.

iii) After all the goods allowed for shipments are loaded on to the vessel, the Tindal/Master of the vessel shall apply for port clearance by presenting Export General Manifest in duplicate along with the original Shipping Bills and landing intimation. The clerk concerned shall carefully scrutinise both the copies of the EGM and other documents and after making sure both the copies correctly reflect the particulars of goods indicated in the EGM, shall grant port clearance after entering the requisite particulars in the Port Clearance Register and assigning a serial number. The original copy of the Export General Manifest together with the duplicate copies of the relative Shipping Bills and the landing intimation should thereafter be returned to the Master/Tindal of the vessel for submission at the next port of call. The return of the original E.G.M., duly signed, to the Tindal shall itself constitute the port clearance. Thereafter, the Tindal will present these documents to the Bunder Officer or the department concerned, as the case may be, for countersignature on the reverse of the Export General manifest.

iv) If no cargo is taken by the vessel, an empty port clearance shall be issued against an intimation to that effect by the Master/Tindal and after verifying the necessary documents required under the rules.

- v) The original Shipping Bills which are retained will immediately thereafter, be utilized for preparing statistical returns. On receipt of landing intimation from the port of destination, the duplicate EGM should be closed and properly filed together with all the relative documents.
- vi) Prior to granting the port clearance, it shall be the responsibility of the dealing clerk to make sure that the Indian Coastal light dues and other dues if any have been paid.

STEAMERS ARRIVING AT AND DEPARTING FROM ENCLOSED DOCKS OF THE PORTS

- i) In so far as imports of coastal goods by steamers are concerned, the same procedure as stated above should mutatis-mutandis be followed. The Master of the vessel or the local steamer agents, will file within 24 hours of the arrival of the vessel, a copy of the EGM presented at the previous port of shipment together with duplicate copies of all relative Shipping Bills. The out of customs charges shall be indicated on the separate delivery order issued by the steamer agents to each consignee.
- ii) In cases where the above procedure is not followed, the usual procedure in force shall be followed, i.e. the steamer agents shall, within 24 hours of the arrival of the vessel, file an Import General Manifest in duplicate in respect of all the goods brought by the vessel, in coastal Trade Establishment or in concerned departments as directed by the local Custom Houses. In such cases it will have to be ensured that copies of the EGM with relative Shipping Bills filed at previous ports have been received and on receipt of which the earlier Import General Manifest filed by the Agents/Master shall be verified and compared with the same to ascertain (i) that no discrepancy or short landing are involved, (ii) that the coastal goods cleared on bills of entry are coastal goods only and (iii) that no transshipment cargo has escaped payment of duty.
- iii) On receipt of the IGM the clerk dealing with coastal (imports) shall carefully scrutinize the same and enter their requisite particulars in the entry Inward Register and give the entry a serial number of an annual series, note the register serial no. and date of entry and the No. of receipt for the payment of dues, in the IGM and grant entry inwards to the vessel after making sure that all dues have been paid. After entry inwards is given, a serial No. assigned to the IGM shall be duly notified. Thereafter, bills of entry in duplicate filed in Coastal Trade Establishment/Import Department by or on behalf of the respective consignees shall be received, numbered stamped and scrutinized to see that they agree with all the material particulars in the Import General manifest. If everything is found in order, the same shall after nothing (in the manifest) be put up to the officer-in-charge Coastal Trade Establishment or clerk concerned in the Import Department for giving which will be returned to the consignees for effecting clearance of the goods through Port Authorities after payment of port dues. The original copies of the duplicate bills of entry and the outturn statement from the Port Trust, the IGM should be closed and filed together with all the relevant documents.
- iv) Country craft/sailing vessels which arrive with coastal goods from Customs ports and take berth in the enclosed docks in the port, where the steamers engaged both in the foreign trade and coastal trade are berthed, shall observe the same procedure as indicated in sub-para (iii) above the clearance of coastal goods in the town.

Export by Steamers

- i) Any Master or agents of a steamer intending to carry goods to other coastal ports will be required to make an application in the prescribed form in Coastal Trade Establishment or Export Department as directed by Local Custom House for obtaining entry outwards. After obtaining the necessary orders of the proper officer (as directed by the Local Custom House) on the application so received to each such outwards entry granted after noting down the requisite particulars No. of each outward entry should be notified.

- ii) Shipping Bills filed in respect of goods proposed to be shipped in the steamer for which outward entry has been granted shall be numbered, stamped and carefully scrutinized by the dealing Clerk/Superintendent/Export Department. If everything is found to be in order, he shall pass the Shipping Bills in respect of restricted goods and ship's stores should be signed by the officer-in-charge Coastal Trade Establishment or such other officer as directed by the local Custom House. The duplicate copies of Shipping Bills should thereafter be returned to the party for effecting the shipment. After payment of port dues, if any, the Shipping Bills then be straightway presented to the Section Officer for supervising the shipment.
- iii) After all the goods are loaded on to the steamer, the Master or the Agents, will apply for port clearance in the prescribed form together with two sets of Export General Manifest, and all the duplicate copies of Shipping Bills. The clerk dealing with coastal goods (Exports) shall carefully, scrutinize the application for port clearance and the two copies of Export General Manifest and after making sure that both the copies of the Shipping Bills correctly reflect the particularity of goods indicated in the Export General Manifest, grant port clearance in the prescribed form, after obtaining signature of the officer-in-charge Coastal Trade Establishment or such other officers as directed by particulars and assigning a serial no. one copy of Export General Manifest together with the submission.
- iv) The original Shipping Bills retained will be passed on to the clerk preparing statistical returns. The other copy of the EGM and the original copies of the relative Shipping Bills should thereafter be filed and recorded after formal closing of the Export General Manifest.
- v) In cases when the Master or the agents is/are not able to produce the Export General Manifest and relative copies of duplicate Shipping Bills at the time of Port clearance, the steamer agents will after the goods are loaded in vessel apply for port clearance in the prescribed form together with requisite documents. After making sure that all the documents are in order, the proper officer will grant port clearance in the prescribed form, and after entering the requisite particulars in the Port Clearance Register and assigning a serial number.
- vi) The steamer agents shall within seven days of the due departure of the vessel, file an Export General Manifest in duplicate, along with the duplicate Shipping Bill. On receipt of the Export General Manifest and duplicate copies of Shipping Bills, the latter should be passed on to the clerk preparing statistical returns. One copy of export general manifest, should be forwarded to the port of destination and the other together with original copies of Shipping Bills filed and recorded after formally closing the Export General Manifest.

Transhipments

If the IGM of the previous port of shipment or IGM of this port, as the case may be, include any items involving transhipment, filing of a transhipment permit in duplicate in the prescribed form will be necessary. The transhipment permit so presented should be checked, to make sure that the particulars in the manifest are the same and should thereafter be put up to the Superintendent-in-charge of the Division or other officer or department concerned for allowing transhipment. After these orders are passed, the original copy of the transhipment permit should be returned to the party for effecting the transhipment and the duplicate filed along with the EGM of the previous port or the IGM of this port, as the case may be. In cases where the on-carrying vessel has been granted outward entry by the Export Department, both the copies of the Transhipment permit should be returned to the steamer agents for arranging the transhipment. In such cases after the transhipment permit has been processed by any department other than the coastal trade establishment or concerned department, the duplicate transhipment permit should be returned to the officer-in-charge Coastal Trade Establishment or the clerk

of the department concerned, dealing with the coastal trade, as the case may be, after signing the “Let Tranship Order” for filing the same with the relative Import General Manifest.

PORT CLEARANCE OF COASTAL VESSELS

Section 97 (1) of the Customs Act, 1962, stipulates that 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.

Section 97 (2) of the Act outlines the conditions for grant of such order which are-

- a) the master should have answered the questions put to him under Section 38 of the Act,
- b) all the charges and penalties due in respect of such vessel or from the master have either been paid or the payment has been secured by guarantee to the proper officer,
- c) the master should have satisfied the proper officer that no penalty is leviable on him under Section 116 of the Act, or the payment of any penalty has been secured by a guarantee to the proper officer,
- d) all the provisions, rules and regulations relating to the coastal goods and vessels carrying coastal goods have complied with.

As per Notfn. No. 93 / 50 dated 9.9.1950, the Board has prescribed that the Port Clearance granted to the Coasting vessels other than native craft shall be in the same form as that prescribed under Section 65 of the Sea Customs Act, 1878 (**Note:** Sections 62 to 66 of the Sea Customs Act, 1878, correspond to Sections 41 and 42 of the Customs Act, 1962).

Form of Port Clearance

No.

Port clearancefor
 theburthen Tons.....Captain
 underColours bonded for

This is to certify, to whom it may concerns, that the agents/owners of the above-mentionedhave rendered an account of her import and export cargoes, and have complied with all the regulations of this port.

Crew

Passengers..... Custom House, Commissioner of Customs
 has cargo/no cargo.

Irregularity in tonnage declared – check of

Whenever Customs Officer dealing with sailing vessel has any good reason to suspect any material discrepancy between the tonnage stated in the relative certificate of register and the actual tonnage of a vessel, they should notify in writing to the nearest Port Trust/Port Commissioner office who will take necessary action for detention of the vessel and cause it to be re-measured if necessary.

Issue of passes to Sailing Vessels

- a) Sailing vessels, which sail from one coastal port to another, will be issued with passes in prescribed form valid for a period of 12 months .These passes should ordinarily be issued immediately after the monsoon is over. The passes so issued should bear the condition that the Tindal of the vessel shall get it checked up by the Officer-in-charge or any other officer entrusted with this work as the case may be, once in every calendar month. It should be made clear to the Tindal that the pass will become automatically invalid if the same is not got checked up in this manner.

b) Before any goods are discharged, notice of intimation to discharge shall be given to the Customs Officer on duty at the wharf/jetty/bunder where they are to be discharged and/or the department/officer concerned.

c) If the vessel arrives in ballast or with passengers only the pass must be produced to the Customs Officer or department concerned for endorsement before the vessel leaves port.

d) Special care should be taken by all officers dealing with such vessels to see that no vessel is allowed to discharge cargo or to leave port with expired passes and to require such passes to be renewed before permitting any operation.

e) The Master of a vessel plying under such pass is required on arrival in port to deliver to the concerned officer on duty where the cargo is to be discharged or to the department concerned, the pass held by him together with a Kutcha Import Manifest for the cargo. After verifying that the Port Trust/Port Commissioners fees have been paid he will permit to discharge the cargo and when discharge has been completed, this officer will sign an endorsement to the following effect on the passes and on the manifest, if any.

“Landed atBunder/Wharf/Jetty from Port”.

f) The pass will then be returned to the Master as his authority to leave the port in ballast. When any provisions and stores which are liable to export duty are taken on board a vessel plying under such pass, the concerned officer will enter the quantity so shipped on the pass. The import manifest if any delivered will be forwarded on the following day to the Statistical Department for registration of Trade Statistics.

g) When the Master of a vessel plying under such a pass wishes to load cargo for Customs port, he shall enter his vessel outward and obtain port clearance in accordance with the ordinary procedure.

Proforma of pass

No.

To,

The Asstt. Collector of Customs

Signature

Sir,

Please permit my vessel

Tindal..... P No.of Tons employed in bringing

.....from the port ofto discharge the said goods

at the port offor 12 months before entry inwards.

Port.....

Toney No.

Signature or the Mark of Left Hand Thumb Impression of

Tindal.

Permitted on the conditions prescribed in the Central Board of Revenue Notfn No. 57 of 9th July, 1927

L.C. No.

D. B. C. No. PH

P. D. No.

..... Assistant Commissioner of Customs

Note:

1. A special pass shall be granted to sailing vessels/ country craft only when they are employed in bringing from Customs Port Chunam, sand stones for building purposes green grass, poultry, fresh fruits, vegetables or other market produce.
2. To such vessel a special pass may be granted to be in force for 12 months. But before any goods are discharged notice of intention to discharge them shall be given to the Customs Officer on duty at the wharf where they are to be discharged.
3. The Tindal of the vessel shall get such pass checked up by the officer-in-charge, once in every Calender month.
4. The Pass will become automatically invalid if the same is not get checked up in the manner at (3).
5. The Master of the vessel plying under such pass is required on arrival in port to deliver to the officer on duty where the cargo is to be discharged the pass held by him together with a Kutcha Import Manifest for cargo consisting of building material and other market products.

CARGO JETTISONED DURING THE VOYAGE

When the Master of a Tindal of a coastal vessel reports on arrival, that he has jettisoned some cargo during report in the form of a statement and shall obtain the Tindal's signature or the left hand thumb impression if he is an illiterate. The officer concerned shall then closely question the Tindal concerning the facts and also whether he has touched at any port having jettisoned the cargo.

The vessel shall then be inspected with a view to ascertain whether she bears any indications to support the Tindal's statement. The result of the officer's examination should then be noted at the foot of the statement which should be sent on to the Divisional Superintendent for acceptance of such action as he considers fit to take.

After the Divisional Superintendent has dealt with the report, entry inward shall be completed and report sent to Coastal Trade Establishment or concerned department in the Custom House.

LANDING AND SHIPMENT OF PERISHABLES LIKE FRESH FISH, FRUITS AND VEGETABLES

- a) Fresh fish caught within port limits may be landed and passed from any authorised bunder/place of landing at any time without documents.
 - b) Sailing vessels plying under monthly/yearly passes may land their daily market produce of fresh fruits and vegetable at any time where the Port Trust/Port Commissioners collect their fees at all hours of the day or night.
 - c) Consignments of fresh or frozen fish, fruits and vegetables by steamers from Customs Ports may be passed by the Preventive Officer on duty/department concerned at any time including Sundays and holidays without the Asst. Commissioner's order on presentation of an incomplete bill of entry in duplicate signed by the owner containing full particulars of goods. No supervision fee will be charged for such operations which will be carried out by the preventive staff posted at the Docks gates as per local orders.
- Note: Potatoes, onions are not considered as perishable for the purpose of these orders.

STORE LIST FOR COASTING VESSELS

Vessels in the Coasting Trade arriving via a port/ports outside India should furnish a separate list of stores taken (with details of brand/type and quantity for each kind of article) and quantity of each type of stores remaining unconsumed on arrival. Vessels engaged in regular sailing trade other than plying under general pass, need not file an Import Stores List in the prescribed form provided that :

- a) Details of the stores on board for consumption of tindal and the crew as well as the articles owned by the crew are endorsed on the manifests both import and export.
- b) A list of arms and ammunitions carried by such vessels is included in the cargo book or presented with the vessel's manifest, and
- c) When a vessel has touched a port/ports outside India, a statement showing all the stores, if any, taken at such ports and remaining unconsumed on arrival is submitted.

Note 1: If the store list has not been prepared when the Boarding officer boards the vessel, he should obtain a list of arms and ammunition forming part of ship's equipment and private property declaration of the officers and crew members as in the case of vessels in foreign trade, seal up all the stores and arms and ammunition for check when the store list is submitted.

Note 2 : If any sailing ship proceeds direct to any port, outside India, she may be given ex-bond supplies of stores on the clear understanding that on reversion to the sailing trade, duty will be leviable on the entire stores brought by the vessel (and not merely the unconsumed portion of ex-bond supplies taken by her at the first Indian port on her return journey).

Sailing of Vessels (Statement of Crew) Rules, 1960 attestation by the Customs officer in the prescribed statement of crew forms

Under the sailing vessels Rules the Tindal or the owner of a sailing vessel is required to maintain an up-to-date statement of crew in the prescribed proforma which is required to be produced by him for inspection on demand by the Registrar of the Port, the Regional Officers (Sails) or by any other officer appointed in this behalf. The Ministry of Shipping and Transport vide their Min. Notification No. 9 MT (6)/61 dated the 23rd July, 1964 issued in pursuance of Rule 4 of the aforesaid Rules have appointed officers of customs are officers competent to exercise the powers under the sailing vessels (statement of crew) Rules, 1960.

Contravention of statutory provisions under Sailing Vessels (Inspection) Rules, 1952 by the owners of sailing vessels

All the sea-going sailing vessels/fishing vessels should be in possession of valid Inspection Certificates in the interests of safety of life and property at sea. The non-compliance of the statutory provisions is a punishable offence. It is, therefore, necessary that all the officers should strictly ensure that no port clearance is granted to any sea-going sailing vessels/fishing vessels which does not fully comply with the rule requirements pointed out above except the cases where the specific permission of the Directorate has been obtained.

Implementation of The Merchant Shipping (Sailing vessels) Rules, 1997

Attention of all Officers and Staff is hereby drawn to the 'The Merchant Shipping (Sailing Vessels) Rules, 1997 issued by the Ministry of Surface Transport, published in the Gazette of India, March 1, 1997. As per Part III, Para 43(3) under Sub heading 'Crew and identity card' of the said rules "No Officer of Customs may clear outward any vessel unless the tindal thereof in possession of permit and the other crew members of the crew thereof are in possession of valid identity card issued by Regional Officer (SAILS)."

This Order is issued on the basis of the Gazette of India, March 01, 1997, and Regional Officer (SAILS), Mercantile Marine Department, Director general of Shipping, Ministry of Surface Transport letter No. 57-MURD (1)\98 dated 18.9.98.

This Order takes immediate effect and should be adhered to scrupulously.

[Standing Order No. 7414 dated 24.11.98 issued by Commissioner of Customs (Gen.), Mumbai]

ISSUE OF PASSES TO MECHANISED FISHING VESSELS-FIXING OF VALIDITY PERIOD

In supersession of Ministry's instruction contained in circular F. No. 574/5/77-LC-II dated 1.1.79 and F. No. 581/8/92-LC dated 30.11.92 regarding issue of passes to mechanised and non-mechanised fishing vessels, I am directed to say that it has now been decided that the periodicity for renewal of fishing passes should be as under.

- (i) Non-Mechanised/Mechanised Fishing vessels – 6 months from the date of issue
- (ii) Fishing trawlers (both small & large) - 3 months from the date of issue

2. Necessary instruction to this effect may please be issued to all concerned immediately. They should also be instructed to ensure that renewal of the seasonal fishing passes is as far as possible completed on the same day on which the renewal is requested, without giving any cause or complaint of harassment or delay. Further at the time of renewal full verification may also be carried out.

[Circular No. 18/95-Cus. dated 6/3/95 in F. No. 581/8/92-LC]

VESSELS CARRYING COASTAL GOODS – RELAXATION IN CUSTOMS PROCEDURES

Section 98-A of the Customs Act, 1962, empowers the Central Government to grant exemptions generally, either absolutely or subject to certain conditions, to the coastal goods or to vessels carrying coastal goods from all or any of the provisions of the Chapter XII of the Act.

(A) Please refer to Notification 43/97-Customs (N. T.) date 11th September, 1997 issued under Sec. 98 A of the Customs Act, 1962 to exempt vessels from the provisions of Section 92, 93, 94, 97 & 98 (1) of the said Act.

2. The relaxations are applicable to the vessels which exclusively carry coastal goods and ply as coastal vessels. It will not be applicable for vessels which convert the status from foreign run to coastal run & vice-versa. The loading & unloading operation by coastal vessels must take place at separate & exclusive berths in the ports where both coastal and foreign traffic is handled. The provisions of Section 95, 96 & 98 (2) will also remain operative in case of such vessels. In terms of section 95, the master of vessels is required to maintain "advice book" and the proper officer of customs can inspect the book and make entries as deemed fit, relating to goods loaded at the port.

In terms of section 96 the coastal goods can only be loaded or unloaded at places notified under section 7 of the Customs Act, 1962. In terms of section 98 (2), the provisions contained in section 37 & 38 are applicable for coastal goods as applicable to vessels carrying import and export goods.

Accordingly, the Customs Officers would continue to have powers to board and vessels carrying coastal goods and can require the person incharge of Vessels to produce any documents & to answer any question. They should devise selective checks of coastal vessels, at random both at the ports, of loading and unloading so that there is effective check and the impression that the department has abdicated its responsibility, does not gain ground.

The light dues charges leviable on such coastal vessels may be collected by the customs till alternate arrangements are made by Ministry of Surface Transport.

In case of the vessels which change their status from foreign to coastal or vice versa, the existing provisions contained under Chapter XII of the Customs Act, 1962 shall continue to be operative.

[Circular No. 40/97-Cus.dated 19/9/97 in F.No. 450/86/92-Cus. IV]

(B) Please refer to circular No. 40/97-Cus (NT), dated 19.9.97 on the above subject. In continuation of earlier measures, the following further relaxations have granted in the case of vessels carrying coastal goods exclusively.

2. By notification 14/98 Cus. (NT) dated 27.2.98, the earlier notification No. 52-Cus, dated 1.2.63 has been rescinded. The earlier notification 52-Cus, dated 1.2.63 required the vessels carrying coastal goods to file IGM/EGM in terms of the provisions contained in section 30 and 41 of the Customs Act, 1962, Consequently the vessels carrying exclusively coastal goods will not be required to file IGM/EGM.

3. In terms of notification 15/98-Cus. (NT) dated 27.2.98, vessels carrying exclusively coastal goods have been exempted from the delivery of Advice Book on arrival at each port of call to the proper officer of Customs at that port, as required u/s 95 (1) and 95 (2) of Customs Act, 1962. However, the master of each vessel shall carry the Advice Book on Board the vessel, and the proper officer of customs may, whenever the deems necessary, call for the Advice Book for his inspection or inspect the same on board the vessel.

[Circular No. 16/98-Cus. dated 11.3.98 in F. No. 405/86/92-Cus.IV]

(C) Apropos Govt. of India Notification No. 43/97-Customs (N.T.) dated 11.09.97 and followed by Ministry of Finance, Department of Revenue Circular No. 40/97 in F.No. 450/86/92 Cus IV dated 19.09.97 issued under Section 98 of Customs Act, 1962, the vessels carrying coastal goods exclusively are hereby exempted from the provisions of Section 92, 93, 94, 97 and 98 (1) of the said Act.

Henceforth

1. The consignor of coastal goods need not make an entry for the goods being shipped nor file any bill as prescribed in Section 92 of Customs Act, 1962, with the customs authority.
2. Master of such vessel need not obtain permission from Customs authorities for loading and unloading.
3. The mater of such vessel need not carry or deliver the bill pertaining to the goods carried by the vessel.
4. The master of such vessel need not obtain permission for clearance of the cargo at the destination from the customs authority.
5. No written permission from customs authority is required for the master of such vessel to cause or permit the vessel to depart from the port.
6. No customs supervision is required for loading and unloading operation of such vessels at the designated place.
7. No customs restrictions will be there on such vessels for loading and unloading operations on Sundays, holidays and after working hours.

These relaxations are applicable to the vessels that exclusively carry coastal goods and are engaged in plying as coastal vessels only. These relaxations are not applicable for the vessels that convert the status from foreign run to coastal run and vice-versa.

The loading and unloading operations must take place at a separate and exclusive berth in the port, notified under section 7 of the Customs Act 1962 for this purpose, so that mixing of the coastal goods with foreign goods is prevented. A Shed in the Docks has been nominated as a place for loading and unloading of the coastal cargo by Port Trust , which is now notified as a designated place under Section 7 of the Customs Act, 1962.

Such coastal vessels berthing at the designated place as above are exempted from the provision of the Section 92.93. 94. 97 and 98 (1) of the said Act. However, they are not exempted from the provisions of the Section 95 and 96 of the Customs Act. As such the customs officers incharge of the respective shed/section in the Docks would continue to have powers to board these vessels and require

the person incharge of the said officer shall carry selective checks on such vessels, at random. The checks as a matter of routine would no longer be necessary. If any discrepancies are noticed suitable endorsement will be reported to Assistant Commissioner of Customs (Docks)/(Preventive General). As such if becomes imperative on the master of the vessel to maintain advice book on board and produce the same to the customs officer for inspection whenever demanded as laid down under Section 95 of the Customs Act, 1962.

The light dues may be collected by the customs authorities until alternate arrangements are made by the Ministry of Surface Transport.

The carting and delivery of the coastal goods will be carried out through the gate exclusively assigned for this purpose. The Port Trust has assigned a Gate in the Docks as a gate to be exclusively used for this purpose. The delivery/transport challans shall be distinct and separate for the coastal goods wherein the details such as number of packages, name of the vessel and time of delivery at the gate or the shed as the case may be shall be mentioned on the said challan.

[Based on Standing Order No. 7438 dtd. 15.03.99 issued by Commissioner of Customs (General) in F.No. S/43-705/97P]

Use of Foreign Going Vessels as Lightering Vessels

It has been observed that the Steamer Agents of foreign going/foreign flag barges/tankers seek / obtain permission for use of the same for stream discharge of petroleum products/chemicals/cargo (bulk) from the importing vessels (i.e. mother vessels). For a vessel to be used as a lightering vessel, it has to be a coastal vessel, as, such vessel are plying between the mother vessel in stream and the place of landing of cargo. It has also been observed that such vessel after arrival from abroad, discharge import cargo and thereafter obtain Export rotation number and remain in anchorage for indefinite period without giving export programme of the vessel.

Here it may be clarified that the vessel which has already entered for export cannot be used for the purpose of Coastal Trade or for lightering purpose, since these vessel are eligible for supplies of Bonded Stores/provisions/fuel on the strength of export rotation number. Thus such vessels ply in the harbour/coastal area and often simultaneously enjoy the benefits of foreign going vessels. This is not only irregular but also incurs loss to the govt. revenue. It may also be clarified that such lightering vessels are required to obtain necessary certificate from the Director General of Shipping in terms of provision of the Merchant Shipping Act and also required to be converted from Foreign Trade to Coastal Trade.

In the light of the above, it is hereby directed to all concerned that while recommending/granting permissions for stream discharge it should be ensured that vessels in which the cargo is to be discharged (i.e. lightering vessel) is a coastal vessel or is converted into a coastal vessel, if it is a foreign flag/foreign going vessel. Secondly, the officer posted for supervision over the stream discharge of import cargo/or concerned Section Officer or Boarding Officer if notice that the lightering vessel is also a foreign going vessel, he should seal the bonded store on board the vessel and also stop supply of bonded stores/provision/fuel till such vessel is engaged in coastal run. However, it is clarified that such vessel can be allowed to accept stores/provision/fuel under the cover of free Shipping Bill. Also such incidents may be brought to the notice of A.C./Export [through A.C.P.(G)] for cancellation of Export rotation number.

CHAPTER – TWENTY TWO

OIL & PETROLEUM

PRELIMINARY

Unlike general cargo, the import and clearance of oil Petroleum etc. are covered by certain special procedures. Bulk of the oil imports is effected in bulk carriers which pump out the oil directly into bonded tanks (both Customs & Central Excise) away from the docks. In order to attend to these special procedures, a separate unit, known as Oil Unit, has been functioning in major Custom Houses.

The Oil Unit is comprised of Appraising, Preventive & Ministerial staff. The work attended to by the Appraising Unit is confined to the assessment and completion of the Bill of Entry, covering the imports of oil. It is the Preventive staff attached to the Unit, that attends to field work, acceptance of Bonds, supervision of discharge of oil into tank-lorries, coordinating the procedure with Central Excise, wherever necessary and attend to all items of work connected with the closure of IGM.

The import, transportation & possession and storage of Petroleum is governed by the provisions of the Petroleum Act, 1934 and the Petroleum Rules, 1976.

DEFINITIONS

In order to gain basic knowledge about Petroleum and allied terms, it is necessary to turn to Section 2 of the Petroleum Act, 1934 and Rule 2 of the Petroleum Rules, 1976 which lay down definitions of Petroleum and other important terms.

Section 2 of the Petroleum Act, 1934 defines that –

“**Petroleum**” means any liquid hydro-carbon or mixture of hydrocarbons and any inflammable mixture (liquid, viscous or solid) containing any liquid hydro-carbon;

“**Petroleum Class A**” means petroleum having a flash-point below twenty-three degrees centigrade;

“**Petroleum Class B**” means petroleum having a flash-point of twenty-three degrees centigrade and above but below sixty-five degrees centigrade;

“**Petroleum Class C**” means petroleum having flash-point of sixty-five degrees centigrade and above but below ninety-three degree centigrade;

“**Flash-point**” of any petroleum means the lowest temperature at which it yields a vapour which will give a momentary flash when ignited, determined in accordance with the provisions of Chapter II of the Petroleum Act, 1934, and the rules made thereunder;

Rule 2 of the Petroleum Rules, 1976 defines that –

“**Installation**” means any premises wherein any place has been specially prepared for the storage of petroleum in bulk, but does not include a well-head tank or a service station;

“**Petroleum in bulk**” means petroleum contained in a tank irrespective of the quantity of petroleum contained therein;

“**Store shed**” means a building used for the storage of petroleum otherwise than in bulk, whether forming part of an installation or not, but does not include a building used for the stores petroleum exempt from licence under Sections. 7, 8, or 9 of the Petroleum Act; 1934;

“**Tank**” means a receptacle for petroleum exceeding 1, 000 liters in capacity;

“**Well-head tank**” means a tank into which crude petroleum flowing or being pumped from an oil well is first discharged.

IMPORT OF PETROLEUM

Under Rule 14 of the Petroleum Rules, 1976, licence granted under these Rules is necessary for import of Petroleum (except Petroleum in small quantities as mentioned under Sections 7, 8, & 9 of the Petroleum Act, 1934).

However, Petroleum Class 'B' & Class 'C' comprising in a Ships Stores & manifested as such is exempted from Licence.

Importation by Sea

As laid down in **Rule 16 of the Petroleum Rules, 1976**, Petroleum shall not be imported into India by sea except through the ports of Mumbai, Calcutta, Cochin, Haldia, Kandla, Chennai, Marmagoa, Ocha Port Blair, Visakhapatnam, Tuticorin or Mangalore.

However, Commissioner of Customs, may on the recommendation of the Chief Controller allow importation of Petroleum Class B or Petroleum Class C otherwise the bulk through any other port.

Rule 17 of the Rules stipulates that – (1) The master of every ship-carrying petroleum shall deliver to the pilot before entering any port mentioned in sub-rule (1) of rule 16, a written declaration in Form I under his signature:

Provided that no such declarations is necessary if the agent of a ship deliver such declaration signed by him to the Conservator before the arrival of such ship.

(2) The pilot shall make over the said declaration to the Conservator without delay and the Conservator shall forward the declaration to the Commissioner of Customs of the port with all convenient despatch.

FORM 1

(See rules 17 and 26)

Declaration to be made by the Master or agent of a ship carrying petroleum by sea before entering port or by the importer or his agent before importing petroleum by land.

Name of the ship

Particulars of the carriage

Name of Petroleum	Total quantity in the ship or carriage.	Quantity of petroleum to be landed in India. Name of port place of import	Remarks
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Petroleum Class A which can be used in an internal combustion engine.

Other petroleum

Class A

Petroleum

Class B

Petroleum

Class C

Signature of Master or agent of the ship

Signature of importer or his agent.

Rule 19 of the Rules stipulates that – (1) every person desiring to import petroleum shall furnish personally or through his agent to the Commissioner of Customs –

(a) certificate of storage accommodation in Form II signed by such person or his agent; and

(b) the licence or an authenticated copy of the licence for the import and storage of such Petroleum:

Provided that nothing in this rule shall apply to the importation, otherwise that in bulk, of petroleum exempted under Sections. 7, 8, 9 and 10 of the Petroleum Act, 1934.

Provided further that the furnishing of a licence under Clause (b) shall not be necessary for the importation of petroleum Class C in bulk in quantity exempted under Section. 7 of the Act.

(2) Notwithstanding anything contained in sub-rule (1) a person may import petroleum Class A in bulk, even, if –

- (i) he is not holding a licence for storage at the port of importation; or
- (ii) the storage accommodation in the premises licensed in his name is not sufficient to hold the quantity of petroleum intended to be imported:

Provided in both cases adequate advance arrangements to the satisfaction of the Conservator are made by the importer to distribute the petroleum from the port of import to premises licensed to store such petroleum.

FORM II

(See rules 19 and 26)

Certificate of storage accommodation

I hereby declare that I propose to store the following consignments of petroleum arriving per(name of ship or particulars of carriage)..... in(name of port or place of import)... on or about...(date, month, year)..... at the storage tanks or sheds, particulars, of which are given in items (i) and (ii) of Col. (1) of the statement below and I certify that the capacity as shown as available in item (iii) of the said column are duly licensed for the storage of petroleum in question.

Signature of importer or his agent.

Dated the

STATEMENT

Description of import and storage capacity	Petroleum	Petroleum	Petroleum
	Class A	Class B	Class C
(1)	(2)	(3)	(4)
A. (i) Total licensed capacity of storage tanks.			
(ii) Total capacity available in storage tanks.			
(iii) Capacity to be utilized by present consignment.			
B. (i) Total licensed capacity of storage sheds.			
(ii) Total capacity available in storage sheds.			
(iii) Capacity to be utilized by present consignment.			

As per **Rule 20 of the Rules** – (1) No imported petroleum shall be landed except with the permission of the Commissioner of Customs.

(2) If the Commissioner of Customs after receiving –

- (a) of the testing officer's report on the petroleum;
- (b) the certificate of storage accommodation in Form II if required under rule 19;
- (c) the licence or an authenticated copy of the licence if required under rule 19,

and after making such further enquiries as he deems necessary, is satisfied that the petroleum can be lawfully imported and that there is suitable accommodation for it, he shall permit it to be landed.

(3) If the Commissioner of Customs is satisfied that any petroleum imported otherwise than in bulk is not intended to be stored in India but is intended to be despatched immediately after landing to any place outside India, he may waive the requirements of rules 14 and 19 and by written order permit subject to such conditions as he may specify such petroleum to be landed for the purpose of immediate despatch to that place.

(4) Nothing in this rule shall affect the power of the Commissioner of Customs to detain the petroleum under any other law or rule for the time being in force.

Storage tanks for petroleum imported in bulk

Only such storage tanks in companies installation at(at different ports)....., shall be used for reception and storage of petroleum imported in bulk from foreign or Indian Refineries, as have been previously calibrated by C.P.W.D. and for which duly certified calibration charts have been received and accepted by concerned Asstt. Commissioner.

Recalibration of Storage Tank:

- i) For the tanks with bottoms, the calibration should be carried after ten years.
- ii) For tanks with oil bottoms:
- iii) Second calibration should be carried out five years after the first calibration.
- iv) The third calibration should be carried out ten years after the second, if the variation observed at full product height is less than 0.25% during the second calibration as compared with the previous calibration. However, any calibration the variation is less than 0.25% was compared with the last calibration, subsequent calibration should be at 10 years intervals.

[M.F. (D.R.) F. No. 8/41/63-CXIII dated 3.7.64]

LICENSING OF STORAGE TANKS FOR USE AS PRIVATE BONDED WAREHOUSE

When any of the tanks authorised for reception and storage of dutiable petroleum in bulk under section 8 (1) of Customs Act, 1962 are intended as private warehouses for storage of petroleum product in bond under provisions of Chapter IX of Customs Act, 1962 the owner shall submit in the prescribed forms for issue of licence under section (58) of Customs Act, 1962. The oil Officer should verify whether the tank is empty and whether calibration chart duly certified by C.P.W.D. is valid. After scrutiny of the submitted documents, the Oil Officer, shall forward the relative documents to the concerned Asstt. Commissioner for granting the licence.

Warehousing & Clearance from Bond

The procedure for warehousing and clearance of Oil from Bond detailed in Chapter "Warehousing" of this Manual shall broadly apply in the case of oil also.

PROCEDURE FOR DISCHARGE, DRAWAL OF SAMPLES, ASSESSMENT & CLEARANCE FOR HOME CONSUMPTION/ WAREHOUSING OF LIQUID CARGO IN BULK

The following procedure is prescribed in respect of discharge and clearance of liquid in bulk through pipe lines / tank containers for home consumption / warehousing in the bonded warehouse.

(1) The quantity shown in the Bill of Lading reflected in the Import General Manifest should be prima facie, accepted as the cargo on board the vessel brought for unloading at the port. The Bill of Entry covering the liquid cargo in bulk shall be assessed to duty by the dealing group or the oil unit, as the case

may be, in usual manner. On duplicate Bill of Entry the dealing Appraiser will give the following examination order:-

- (i) Before allowing discharge, please inspect and verify whether the person in-charge of the vessel or his agent has produced the ullage survey report prepared at the port of Loading and certified by an independent Surveyor. If so please state the quantity mentioned in the ullage survey report.
- (ii) Please inspect the cargo. Before allowing discharge, please inspect and certify the ullage survey report prepared at this port and state the quantity mentioned therein. Thereafter allow discharge through the pipeline/tank lorries and forward samples in duplicate to Dy. Chief Chemist's laboratory for test.
- (iii) After discharge, certify the fresh survey to ascertain the quantity discharged and record shortages/excess if any.
- (iv) Allow samples for consignee's laboratory (wherever necessary).

(2) Immediately on arrival of the vessel, the concerned Steamer Agent shall arrange for the ullage Survey before discharging liquid cargo and shall apply to the Preventive Superintendent of the Division where the vessel has taken the berth for supervising the survey. The cost of such survey will be borne by the Steamer Agents. In case of the failure on the part of the Steamer Agents to arrange for such ullage survey, the Steamer Agents will be liable under section 116 of the Customs Act for the lose of duty on account of short shipped liquid cargo which is not properly accounted for after fully discharge of the cargo. In case of liquid petroleum products, the Boarding Officer who is normally posted round the clock at the point of discharge shall attend the survey. In case of any other liquid cargo, where the Boarding Officer is not available, the Preventive Supdt. of the concerned Division shall depute a preventive officer for this purpose.

(3) The importer shall present the duplicate B/E to the Preventive Officer/Boarding Officer, attending the survey. Before conducting survey, the Preventive Officer/Boarding Officer shall obtain a declaration from the person in charge of the vessel, the type of crude of liquid bulk cargo brought by the vessel and the quantity of such items. In case the person in-charge of vessel or its agents produces the ullage survey prepared at the port of loading and certified by an independent Surveyor, the Prev. Officer/Boarding Officer should retain a copy of such survey report to be attached to the duplicate B/E and quantity mentioned in the said ullage survey report should be accepted as the correct quantity brought by the vessel for unloading. The copy of said ullage survey report should be signed by the Preventive Officer/Boarding Officer, by the ship owner and the consignee's representative. A spare copy of Bill of Lading will also be obtained and attached to the duplicate Bill of Entry.

In order to ascertain the short landed quantity the Master of the vessel/ship owner shall produce a load port ullage survey report along with Bill of Lading. This, report shall also be given to the Preventive Officer attending to the ullage survey at the port of discharge.

(4) Before, permitting discharge of liquid bulk cargo an ullage survey should be carried out under the supervision of the Preventive Officer/Boarding Officer and such ullage survey report shall also be signed by the Preventive Officer/Boarding Officer, the ship owner and the consignee's representative and attached to the duplicate Bill of Entry.

Importers shall give a copy of pre-lightering and post-lightering ullage survey report to the Preventive Officer attending to the survey immediately on completion of survey who shall pass it on to the Appraising Officer/Oil Unit under acknowledgement within 24 hours thereof.

(5) The vessel shall thereafter be permitted to discharge liquid bulk cargo. Samples are drawn as usual. In case of liquid bulk cargo other than petroleum product, examination and drawal of sample will be done by the shed appraiser/examiner in usual manner. Sealed samples will be forwarded to Dy. Chief Chemist's laboratory for test and wherever necessary to the consignee's in laboratory, Central Excise lab. in HPCL.

(I) IMPORT BY GOVERNMENT/SEMI GOVERNMENT/ UNDERTAKINGS :

The testing of the goods imported by Govt./Semi Govt./Undertakings shall be dispensed with where it is felt that there is no dispute regarding classification. However, the drawal of samples and testing of very sensitive goods should continue to be carried out only if it is warranted and discretion of Asst. Commissioners i/c Groups.

(II) GOODS SUPPLIED BY REPUTED MANUFACTURERS

Sample testing of goods supplied by reputed foreign manufacturers shall be dispensed with and may be drawn at random. Similarly, testing of the goods of reputed brand name shall also be dispensed with but resorted only at random basis. However samples of repeated imports by regular importers should be drawn at random and by surprise. The goods which are standard/straight and having no dispute regarding classification need not be tested only for the purpose of composition.

(III) GOODS IMPORTED UNDER DEEC

Sample testing of the goods imported under DEEC scheme shall be restricted to one per book. However, the decision to test goods should be taken at the level of Asst. Commissioner i/c. Groups and if there is no need for the testing sample of imported goods, then clearance may be allowed without testing.

(IV) VALIDITY OF TESTS :

At present the test reports issued by Dy. Chief Chemist's Laboratory is valid for two years and three years in case of imports by traders and manufacturers respectively. It has been decided that in case of chemicals imported under brand name, the validity of the test will be for 3 years and 5 years for traders and manufacturers respectively.

(6) After discharge, a fresh survey shall be carried out in the presence of the Customs Preventive/Boarding Officer and the discharge completion survey report shall also be signed by the Customs Officer, the ship owner and the consignee, immediately after discharge of bulk liquid cargo such survey reports along with the quantity ascertained on board the vessel before and after discharge, shortages, if any, shall be duly endorsed on duplicate B/E for onward submission to the Oil Unit or the MCD as the case may be-for appropriate action.

(7) In the case of any difference between the quantity mentioned in the Bill of Lading or the Ullage survey report at the port of Loading and the ullage survey report at the time of discharge, such difference shall be considered as cargo short landed and for which the ship owner shall be held responsible.

The mater of the vessel/ship owner shall be liable to pay penalty as per the provision of Sec.116 of the Customs Act, 1962 in case the discharged quantity is less than the quantity mentioned in the ullage report of the load port. In all such cases port clearance for the vessel would not be given before the case is adjudicated or a Bank Guarantee equal to twice the amount of duty difference on the short landed quantity is furnished by the steamer agent/master of the vessel.

(8) If any excess quantity is detected after discharge, the Oil Unit will finalise the assessment of liquid petroleum product after taking into consideration the excess quantity and recover the differential duty leviable therein. In case of other liquid bulk cargo, the excess quantity, if detected after discharge, the Customs Officer before giving out of charge shall immediately refer the duplicate B/E to the dealing group for recovery of differential duty on post Bill of Entry in usual manner.

(9) The discharge quantity as per the ullage survey report carried out under the supervision of the Customs as indicated in the above para shall be treated as the quantity cleared for home consumption or removed for warehousing as the case may be. Hence the existing practice of taking dips of the shore tanks will be discontinued. In case of into-bond Bill of Entry, the importer shall ensure that the entire discharged quantity is warehoused and no quantity remains in the pipe line or shipped into any other tank than the nominated tank. If the importer fails to produce proof of warehousing the entire discharged quantity, necessary action to recover duty on such short received quantity will be taken by the Oil Unit or the Bond Deptt., as the case may be, against the defaulter.

(10) The Oil Companies shall take the store tank dip measurements in the presence of P.O. and give a copy of the same to P.O., who will pass on this document to the Appraising Officer/Oil Unit for enabling him carry out the assessment and determine the duty liability. The importer shall submit a Bank attested invoice or certified copy thereof for purpose of assessment. In order to ascertain the actual freight paid to the shipping company, the importer shall submit the copy of the charter party agreement in addition to the documents which are being submitted at present.

Procedure for storing in the same tank of duty paid, indigenous and imported stock of Oil, for shipment out of India under claim for rebate of central excise duty or drawback of Customs duty

The tanks earmarked by the Oil Companies for the purpose will be licensed and such tanks will be known as "L.M. Tanks" (Licences Mixed Tanks) and such tanks will be duly calibrated by the C.P.W.D. authorities.

Each receipt into and delivery from the L.M. Tanks shall be under the direct supervision of Central Excise/Customs Officer designated for the purpose, who will be responsible for due accounting of the oils also for the purpose of granting rebate of Central Excise duty or drawback of Customs duty, as the case may be, against claims made by the Oil Companies, in respect of shipments out of India.

For determining the actual quantity covered by each consignment dips shall be taken before and after the transfer of the oil into the tanks. As soon as the filling is complete, actual tonnage of the oil is determined on the basis of instructions already in force and the particulars thereof duly entered in the "Tank Register" (Annexure – A).

For withdrawing oil from the L. M. Tanks, the oil companies shall apply in the prescribed proforma (Annexure- B). After its due admission by the Central Excise/Customs Officer in charge, the oil shall be permitted to be withdrawn. For determining the actual tonnage withdrawn, dips shall be taken "before" as well as "after" each withdrawal; and the tonnage arrived at and recorded in the tank register.

In the case of withdrawals for direct shipment out of India, a duly processed shipping bill will, in addition, be required before permitting transfer of oil from the L. M. tank to the vessel (either for bunker purpose or as trade stocks).

Each delivery from the L. M. Tank whether for home consumption or export will be adjusted against the receipts, on the basis of "First in first out".

In respect of each withdrawal for shipment out of India, the actual quantity lifted from the tank together with other relevant particulars shall be communicated, in proforma at Annexure 'C' to the Central Excise Office or the Custom House depending upon the allocation of the withdrawal either to the Indigenous or to the imported stock put into the tank.

On the basis of the above advice, Central Excise rebate/Customs drawback shall be considered and sanctioned by the respective office. However, individual claims shall have to be made in this respect by the oil Companies.

ANNEXURE 'A'**TANK REGISTER**

Tank No.

Name of Oil Company.....

Grade of Oil.....

S. No.	Date	Whether Indigenous or imported	A.R.I. or B/E No.	Quantity of oil received ('Before & After dip readings also to be indicated)	Amount of duty	Supervising Officer initials	Remarks
1	2	3	4	5	6	7	8
WITHDRAWALS							
S.No.	Whether for Shipment or Home consumption & if for shipment	Quantity withdrawn (before & after dip readings also to be indicated)	Allocated to indigenous/ imported stock (Corresponding receipt entry no. to be stated)	Amount of rebate of Central Excise or drawback of Customs duty involved			
9	10	11	12	14			
Date of despatch of intimation of shipment particulars to Central Excise or Custom House concerned					Signature of officer in-charge	Remarks	
15					16	17	

ANNEXURE 'B'**APPLICATION FOR WITHDRAWALS**

From :

To, The Officer in-charge,
L.M. Tank No.

Sir,

We request you to allow us to take delivery for home consumption (or for shipment out of India) of (Quantity in Kilolitres or tonnes) of (grade of) oil from L.M. Tank No.

Duplicate copy of Shipping Bill No..... dtd..... is enclosed herewith.

(strike this out if not necessary)

Yours faithfully,

.....

ANNEXURE `C`

INTIMATION OF SHIPMENT PARTICULARS

From : the Officer in-charge,
L.M. Tank No.

To, The Assistant Commissioner of Central Excise (or Customs)

Sir,

Re : Withdrawal of (grade oil) oil from L.M. Tank No.for Shipment out of India.

.....

On(date) quantity(in kilolitres and tonnes) of Oil was withdrawn for shipment out of India. This quantity is allocated to the stock received into the above mentioned tank under cover of ARI No./Bill of Entry No.....

Yours faithfully,

Procedure for checking the out-turn

As soon as the documents are received in the Oil Unit, the U.D.C. in the Unit shall first compare the original and duplicate dip Statement and verify the same with the out turns received. In order to convert the density which would nature 15⁰ C from the sample temperature, table no. 53 of the ASTM-IP should be referred to.

In order to find out the volume reduction factor from the density at 15⁰ C, refer to table No. 54. To facilitate easy location, refer to the given density at 15⁰ C at the given rank temperature. To arrive at the correct volume reduction factor example shown below may be borne in mind as a guide line.

In the case the dip readings are as under: -

1.	Height of oil water	860.2 cms.
2.	Temperature in oil tank	29 ⁰ C.
3.	Density of sample	0.8899
4.	Sample temperature of density	29 ⁰ C.

If the density 15^o C is 0.8988 and the tank temperature is 29^o C, then refer to calculation upto .895 at 29^o C which will give V.R.F. as .9897. If the V.R.F. shows any difference between .895 and .900 then multiply the difference by what you get between .8988 and .8950. If the multiplied figure is between 25 and 75 add one of the V.R.F.

In order to get the quantity of oil at 15^o C by V.R.F. multiply the quantity at 15^o C by V.R.F.

Mineral oils – Indigenous and imported bonded stock of oil of same grade – storage of in the same tank for clearance for home consumption and or for shipment out of India – Procedure for

The tank, which is intended to be used for storing indigenous and imported bonded stock of oil of the same grade, should be earmarked by the Oil Company and should be got approved by the Superintendent of Central Excise. Such a tank or tanks will be known as “Bonded Mixed tanks” and after approving such tank/s, the Superintendent will inform the Commissioner of Customs, of the particulars of such tank approved for storage of indigenous oil.

If such a tank or tanks are not already in operation but are to be brought in operation for the first time, the oil company should apply to the Superintendent of Central Excise, for including the tank/s in their L-5 licence, if it/they is/are in the same installation and for approving them as bonded mixed tanks. Such tanks should be got calibrated from the (P.W.D.) authorities as usual and the calibration charts also got approved by the Central Excise officer, concerned.

After all the formalities are complied with, the oil company will be allowed to store indigenous as well as imported bonded oil in such tank/tanks. Each consignments of oil required to be stored in such bonded Mixed Tank should be duly covered by either AR-3 application in case of receipt of indigenous bonded oil from another bonded warehouse or by into Bond Bill of Entry duly passed in case of imported oil.

Actual quantity covered by each consignment will be ascertained by the Central Excise Officer in charge of the installation by taking dip before and after receipt of oil and tonnage of oil determined as per instructions in force and particulars thereof duly entered in the tank Register.

Each delivery from the Bonded Mixed tank, whether for home consumption or for export will be adjusted against the receipt of indigenous oil on the basis of “First in first out” .

Before clearance of the consignment for home consumption from the Bonded Mixed Tank, the Oil Company should file a clearance document in form AR 1 in case of indigenous oil; ex-bond Bill of Entry in the case of imported oil which will be determined on the basis of “First in first out”. In case of indigenous oil, the usual Central Excise procedure for adjusting duty provisionally on the proposed quantity to be cleared and finalising the AR 1 on the basis of actual quantity determined on the dips taken before as well as after each delivery and recorded in the tank Register, will be followed. In the case of imported oil, the company will get the provisional duty adjusted from the Customs authorities in the deposit account maintained by them with the Customs and on production of ex-bond bill of entry on which provisional duty has been adjusted by the Customs, the Central Excise Officer in charge of the installations will permit clearance of the consignment after taking dips. The actual quantity cleared will be ascertained after taking the final dip on the closure of the operation of clearance and recorded in the Tank

Register. The Central Excise Officer in charge of the installation will then communicate the particulars about clearance of imported oil to the Customs Officer at the Customs House in the proforma 'A' for final adjustment of duty in the Deposit Account maintained by the Oil Company with the Customs. In this respect the Oil Company should follow the usual customs procedure and present a copy of the Ex-bond Bill of Entry to the Central Excise Officer in charge of the installation, on which the Customs Authorities have made final adjustment of duty.

PROFORMA 'A'

FORTNIGHTLY REPORT TO BE SUBMITTED BY PREVENTIVE OFFICERS IN-CHARGE OF OIL INSTALLATIONS

1. Installation

2. Number of Tanks

a. Bonded

b. Mixed bonded

c. Duty paid

Note: State reasons if there is any increase or decrease in the number of tanks

3. Total number of dips recorded during the period as under

a. Budget dips

b. Special dips

c. Monthly dips

d. Weekly dips

e. Before receipt dips

f. After receipt dips

g. Before transfer dips

h. after transfer dips

i. Before loading dips

j. After loading dips

k. Before bonding dips

l. After bonding dips

m. Before pumping dips

n. After pumping dips

4. Number of bonded transfers from the Installation to the other installations

a. No. of tank lorries/wagons or through pipeline

b. Total quantity in kilo-litres covered by (a)

5. Number of transfers from one bonded tank to another bonded tank in the installation

6. Quantity in Kilo litres withdrawn for Home-consumption

7. Quantity supplied as Bunkers to (in Kilo litres)-

1. Indian Navel vessels

2. Foreign going Vessels

8. Number and quantity of shipments to other Customs Ports.

Adjustment of duty on AR I will be made under the head "II Union Excise Duties – Excise duty on (Products concerned).... " and adjustments of duty on Bills of Entry will be made under the head "I Customs Central Sea Customs Import Duty".

As regards clearance made from such "B.M. Tanks" for direct shipment out of India either for bunker purpose or for trade stocks in the case of imported oil a duly processed Ex-bond Shipping Bill should be presented by the Oil Company and the usual Customs procedure should be followed in exporting oil consignment. In the case of indigenous oil, the oil company should present the AR 4 application and follow the usual procedure for export of such oil either under claim for rebate of duty or in bond.

In respect of imported stock received in the B.M. Tanks and cleared either for shipment out of India or for home consumption, the particulars of actual quantity received into the tanks and cleared, on the basis of "first in first out", will be communicated by the Central Excise Officer in charge of the Bonded Installations to the Customs Authorities in the Proforma 'A' mentioned above, depending upon the allocation of the clearance to the imported stock of oil received into the tank.

CUSTOMS DUTY AND DRAWBACK / REBATE OF DUTY OF CENTRAL EXCISE IN RESPECT OF FUEL AND LUBRICATING OIL OF INDIAN AIRLINES AIRCRAFT

The following procedure will be followed in respect of the aircraft of Indian Airlines operating on the foreign route:

The Indian Oil Corporation will furnish to the Assistant Commissioner, Central Excise, Refunds, and to the Assistant Commissioner of Customs, Oil Unit, Custom House, a detailed statement indicating flightwise figures of the quantity of indigenous duty paid fuel taken on Indian Airlines aircrafts which proceeded to foreign ports and the quantity of fuel imported on such aircrafts when they arrive from foreign ports; during one year period. This statement will be certified by the Customs preventive officer attached to the Bonded Warehouse of Indian Oil Corporation at the Airport, after verification of the records. The Indian Oil Corporation will also indicate that they will withdraw the claims filed by them with the Asstt. Commissioner Central Excise, Refunds, in respect of the duty paid on indigenous fuel taken on such aircrafts of Indian Airlines during the period.

If on the basis of the figures furnished above the total quantity of fuel imported in the tanks of the aircrafts works out to be more than the total quantity of duty paid on indigenous fuel that was taken in the tanks of the aircrafts, the duty of customs on the resultant difference will be paid by Indian Airlines by filling in the oil unit of the Custom House a consolidated Home Consumption Bill of Entry wherein details of the resultant quantity or fuel chargeable to Customs duty will be shown. Indian Oil Corporation will also subscribe a declaration to the effect that they have not claimed rebate of duty of Central Excise in respect of indigenous duty paid fuel taken on these aircraft.

If on the other hand, the total quantity of fuel imported in the tanks of the aircrafts works out less than the total quantity of duty paid on indigenous fuel that was taken in the tanks of the aircrafts, the claim for rebate of duty of Central Excise, in the prescribed forms, will be filed by Indian Oil Corporation with the Asst. Commissioner, Central Excise (Refunds).

Fuel Loaded on the Indian Airlines Aircrafts proceeding abroad

Prior to refueling of the Aircrafts proceeding abroad, the Indian Oil Corporation will furnish the figures of the fuel in the tanks of the aircraft from the metres/dips. The readings will be taken in the presence of the Customs Preventive Officer attached to Indian Oil Corporation, Bonded Warehouses at Airport. The Customs Preventive officer will verify the metre readings and certify the figures. These figures will be shown in the Export General manifest of the flights.

The Customs Preventive Officer will also Supervise the fueling of the aircraft and certify the quantity of the fuel supplied to the aircraft from the Central Excise Bonded Tanks. In this regard, the Indian Oil Corporation will file the shipping bills and AR-4 forms as usual.

When the aircraft returns from abroad, the Customs Preventive Officer will ascertain from the meter of the aircraft the quantity of fuel in the tanks of the aircraft. This quantity will be shown in the Import General Manifest of the flight.

The Indian Oil Corporation at Airport, will maintain a Register in the proforma as at Annexure 'D'.

ANNEXURE 'D'

STATEMENT OF THE FUEL AND OIL TAKEN ON ABROAD AND IMPORTED BY AIRCRAFTS OF INDIAN AIRLINES / AIR INDIA DURING THE MONTH OF

Sr.No.	Date of Department	Marking of Air-carft	Flight No.	Total quantity of duty paid fuel in the tanks Prior to refueling	Total qty. of fuel supplied from the Central Excise Bonded tanks	
1	2	3	4	5	6	
Shipping Bill Nos. for the Fuel supplied at Col.6		AR-4A forms Nos. for the fuel supplied as at Col 6.		E.G.M. No.	Date of Arrival	Flight No.
7		8		9	10	11
Total quantity of fuel found In the tanks of the aircraft Immediately on arrival			Total quantity of Lubricant oil found in the tanks of the aircrafts immediately on arrival			I.G.M. No.
12		13		14		

- Total quantity of duty paid indigenous fuel in the tanks of the aircrafts prior to refueling at the time of departures, during the month (i.e. monthly total of column 5)
- Total quantity of fuel in the tanks of the aircraft on arrival during the month (i.e. monthly total of column 12)
- Total quantity of fuel chargeable to customs duty (b-a)
- Total quantity of fuel on which rebate of duty of Central Excise due (a-b)
- Total quantity of lubricating oil in the tanks of the aircrafts on arrivals during the month (i.e. monthly total of column 13)

Signature of the Customs Preventive Officer I.O.C.

Bonded warehouse at Airport

Date

Signature of I.O.C.

Representative

Date

Amt. of Customs Duty recovered on fuel as at (e) Rs. Cash No. and Dt.

Amt. of Customs Duty recovered on lubricating oil Rs. Cash No. and Dt.

Application No. / Form 'B' filed for rebate of Central Excise if any as at (d)

Signature of the Customs
Preventive Officer I.O.C. Bond, Date.

After Completion of each Calender month, on the first of the succeeding month, the Indian Oil Corporation will prepare a statement (in five copies) indicating all the details as shown in the register at Annexure 'D'.

(A) The distribution of the copies of this statement will be as under: -

- (a) One copy will be attached to the Home Consumption Bill of Entry or to the application for rebate of duty of Central Excise, as the case may be,
- (b) One copy will be detained by the Customs Preventive Officer,
- (c) One copy will be handed over to Indian Oil Corporation,
- (d) One copy will be handed over to Indian Airlines and,
- (e) One copy will be forwarded to Asstt. Commissioner, Oil Unit.

After adjusting the quantities of the duty paid indigenous fuel against the imported fuel, Indian Oil Corporation will indicate the resultant quantity of fuel on which duty of Customs is payable or the quantity of fuel on which rebate of duty Central Excise is admissible, as the case may be. The resultant figures thus arrived at will be shown in the Register at Annexure 'D' and also in the statement that will be compiled as above.

In case the resultant quantity of fuel is chargeable to duty of Customs, the Indian Oil Corporation will subscribe an endorsement on the Home Consumption Bill of Entry that in respect of the duty paid indigenous fuel in the tanks of the aircraft prior to departures for abroad, during the proceeding month, no rebate of duty of Central Excise was claimed by them. This Statement will be countersigned by the Customs Preventive Officer.

The Indian Oil Corporation or Indian Airlines, as the case may be, will file Home Consumption Bill of Entry, in the Oil Unit, at the Custom House, Bombay, for the quantity of fuel on which Customs duty is recoverable. In case rebate of Central Excise duty is due, then Indian Oil Corporation will file claims with Asstt. Commissioner, Central Excise, Refunds.

The aforesaid procedure will be applicable in respect of the fuel (a) of the same type left in the aircraft at the time of arrivals and departures, (b) the rate of duty of Customs and the rate duty of Central Excise, as the case may be, leviable on such fuel, is the same at the time of arrival and departure of such aircraft and (c) no drawback of duty of Customs or rebate of duty of Central Excise, as the case may be was followed on such fuel at the time of departures of such aircrafts from India.

Lubricating oil on Indian Airlines Aircrafts proceeding abroad

The lubricating oil is normally supplied to such Indian Airlines aircraft from the Customs Bonded Warehouse of Indian Oil Corporation, against ex-bond Shipping Bills. Therefore, there is no question of any drawback or rebate in respect of such lubricating oil in tanks and the quantity so supplied shall be ascertained by Indian Oil Corporation and the Customs Preventive Officer and record in the Import General Manifest of the flight. The particulars of such oil shall also be shown in the register. As in the case of fuel, duty of Customs on the total lubricating oil imported during the month will be paid by Indian Oil Corporation by filling a Home Consumption Bill of Entry for the said lubricating oil.

Maintenance of Record regarding recovery of Customs Duty on fuel / Oil etc.

One copy of the Bill of Entry will be forwarded to the Preventive Officer at Indian Oil Corporation Bond. The details of the recovery of duty on fuel and lubricating oil i.e. cash numbers etc. will be indicated in the Register at the end of monthly statement by the Preventive Officer. In case rebate of duty of Central Excise is due, then particulars of the claim filed by Indian Oil Corporation should also be recorded at the end of each month.

RECEIPT OF CRUDE OIL FROM BOMBAY HIGH

The following procedure shall be in force to regulate the arrival and departure of the tankers transporting the crude from Bombay High to Butcher Islands.

The oil produced at the Bombay High will be treated as indigenous crude oil and only cess will be leviable under section 15 of the Oil Industry (Development) Act, 1974, which would be paid directly by the O.N.G.C. to the Central Excise Authorities at the Refineries.

The Crude oil will be transported by Tankers from the Bombay High to the oil jetty at Butcher Islands. The Tankers transporting the crude will be treated as coastal run and the "General Pass" facility will be extended to these tankers, General Pass will be issued by the C.T.E. after taking the prescribed Bond from the Agents for such vessels.

The O.N.G.C. will prepare a despatch note in the prescribed format for the quantity delivered to each tanker. Immediately on arrival, the vessel will be permitted to break bulk in anticipation of filing the I.G.M. The Master / Agents will file the usual "Arrival Report" with the Preventive Officer posted at Butcher Island alongwith the despatch note which will be forwarded to Coastal Trade Establishment for completion of Inward Entry. The consignee will file a coastal Bill of Entry alongwith a local I.G.M. (as there will be no E.G.M.) within seven days of the arrival of the vessel of such extended period as may be allowed by the Assistant Commissioner indicating the actual quantity / grade of crude oil received at the Refineries. On completion of discharge of the cargo, the vessel will sail after obtaining the usual P.C. from the C.T.E. Department.

The Preventive Officer at Butcher Island will maintain a Register showing arrival and departure of the Tankers with full particulars of cargo.

Since the pipe lines through which the crude from Bombay High will be pumped into shore tanks will require flushing with imported crude, in order to avoid congealing which results in plugging of the submarine pipeline, M/s. Bharat Refineries Limited have indicted that tankers carrying imported crude for Bombay will partly discharge into refinery tanks either of Bharat Refineries Limited or the Hindustan Petroleum Corporation. Thereafter the remaining cargo of imported crude from the tanker will be pumped into smaller tankers stationed at the Marine Oil Terminal, Butcher Island. This quantity in most cases will be approximately 4000 Tons. The smaller tank load the cargo of Bombay High Crude. The imported crude in the tanker will be used for flushing the crude oil discharge line at Bombay subsequent to the discharge of Bombay High Crude. After the Bombay High Crude is loaded in such tankers which will contain a part of imported crude received earlier in other tankers, the O,N.G.C. will prepare a quantity receipt in the form indicated above in respect of the crude loaded in the tanker.

The tanker after reaching Bombay will discharge into the Bharat Refineries Tanks. The quantity of Bombay High Crude discharged will be determined by the normal method of taking dips before and after receipt of the Bombay High Crude. During this period the imported crude will be remain on board the tanker. After discharge of the entire cargo of the Bombay High Crude, approximately 4000 tons of the imported crude retained on the tankers will be used to flush the pipeline system used for discharging the Bombay High Crude. The quantity of imported crude oil discharged earlier from the tanker carrying the crude oil will be determined separately by tank dips and to that quantity will be added the amount of imported crude discharged in the second operation for flushing the pipelines, to arrive at the out-turn of the imported cargo. Though all efforts will be made to prevent the mixing of the imported and Bombay High Crude and attempts will be made to prepare separate out-turn for the two types of crudes, in cases where the imported crude carried in the tanker which will be used for bringing Bombay High Crude get mixed up with the indigenous crude the losses in respect of the imported crude in such tankers will be worked out on pro-rata basis by taking into account the entire quantity of the oil on the tanker. The total losses in respect of imported crude oil will be arrived at by adding the loss worked in respect of the

imported crude brought by the second voyage to the loss in respect of the imported crude the upper limit of 1% will be adhered to.

For the imported crude the Import General Manifest will be filed in the Import Department for the full quantity. The part quantity of the imported crude will be accounted for as direct discharge and the Balance of the imported crude will be first transported to Bombay High and will be brought back in the tanker carrying indigenous crude. No separate manifest will be filed for the quantity of the balance crude carried to Bombay High and brought back. For the Bombay High Crude brought by each of the tankers local I.G.M. will be filed as indicated above.

It is possible that occasionally foreign tankers with a part of imported crude required for flushing the pipe line may be diverted to bring Bombay High Crude. In such cases the Customs Officer at Butcher Island will certify the quantity of imported Crude retained on board the tanker before its departure for Bombay High.

On return from Bombay High the agents of the tankers will file a local I.G.M. for the quantity of Bombay High Crude brought on the basis of the despatch note issued by the O.N.G.C. officials.

The quantity of imported crude / Bombay High Crude will be accounted for as stated above.

The Agents will apply for inventory of stores prior the departure of the tanker Bombay to Bombay High and will also file a list of stores remaining on Board at the time of its departure for foreign port and will pay duty on stores consumed between its departure to Bombay High and her final reversion to foreign run. The Agents will also have the option to get the stores sealed with Customs seal which they do not wish to consume during the period when the vessel will ply between Bombay and Bombay High.

Declaration of ONGC installations in Bombay High as Designated Areas

Attention is drawn to Ministry's instruction F. No. 450/65/92-Cus-IV dated 28.9.94 wherein the legal position regarding levy of Customs duty on rigs brought in the designated area of the Exclusive Economic Zone and levy of excise duty on oil produced at such sites was clarified. The implication of these legal provisions is that any oil produced in the off-shore installations in the said designated area or within the territorial waters of India would be deemed to be produced in India and subject to the levy of Central Excise duties under Section 3 of the Central Excise & Salt Act, 1944. In case, however, the oil is produced at such of the installations which have not been designated by the Ministry of External Affairs and which lie outside the territorial waters of India, such oil would be deemed to be imported into India when this oil is transferred to the mainland and be subject to customs duties as specified in the Customs Tariff Act, 1975.

2. In this regard the Ministry of Petroleum has proposed some time back the inclusion of certain new ONGC installations at specified coordinates in the Continental Shelf and the Exclusive Economic Zone in the designated area. This has been concurred with by this Department, however, the issue of the notification by the Ministry of External Affairs is pending*. It may be appreciated that till such time the notification is issued, the said coordinates would lie outside the scope of the Customs Act, 1962 and the Central Excises & Salt Act, 1944 with implication duty chargeability on the oil produced when brought into India. While no excise duty can be levied on such oil, it would be subject to customs duties when imported into the country.

3. Accordingly as directed by the Board the list of coordinates indicating the ONGC installations that are presently not notified as being in the designated area is forwarded herewith. There may be other areas where drilling operations are in progress which may not have been notified as designated areas.

The Board desires that it be considered appropriate to alert the concerned staff so that such oil is subjected to duty appropriately as indicated above.

[Circular No. 28/95 Cus. dt.27.3.95 from F. No. 450/76/93-CUS-IV]

* Note: the Ministry of External Affairs has subsequently issued Notification on the above subject, which is reproduced below alongwith previous Notification of 1986:

Customs Act 1962 and Customs Tariff Act, 1975 extended to areas in the Continental Shelf and the Exclusive Economic Zone of India. –

(1) In Exercise of the powers conferred by Clause (a) of sub-section (6) of section 6 and Clause (a) of sub-section (7) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby extends the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975) to the designated areas in the Continental Shelf and the Exclusive Economic Zone of India as declared by the Notification of the Government of India in the Ministry of External Affairs Number S.O. 429 (E) dated 18th July, 1986, with effect from 15th day of January, 1987.

[Notification No. 11/87-Cus., dated 14.01.1987.]

(2) In exercise of the powers conferred by clause (a) of sub-section (6) of section 6, and clause (a) of sub-section (7) of section 7, of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zone Act, 1976 (80 of 1976), the Central Government hereby further extends the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975) to the designated areas in the Continental Shelf and the Exclusive Economic Zone of India as declared by the notification of the Government of India in the Ministry of External Affairs No. S.O. 643 (E), dated the 19th September, 1996 with immediate effect.

[Notification No. 64/97-Cus., (N.T.), dated 01.12.1997.]

Designated areas in the Continental Shelf and the Exclusive Economic Zone of India

(1) S. O. 429 (E) : - In exercise of the powers conferred by clause (a) of sub-section (5) of section 6 and clause (a) of sub-section (6) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby declares the areas in the continental shelf or, as the case may be, in the exclusive economic zone of India where the installations, structures and platforms, the coordinates of which are given in the Schedule below, are situate and the areas extending upto five hundred metres from area for the purposes of the said sections.

[Ministry of External Affairs Notification No. F. L-III/3/86 dated 18th July, 1986.]

SCHEDULE

WELL PLATFORMS BOMBAY HIGH NORTH

NAME	CO-ORDINATES	
	Lattitudes	Longitudes

NB	19 ⁰ 33' 18"	71 ⁰ 18' 17"
ND	19 ⁰ 36' 38"	71 ⁰ 20' 00"
NE	19 ⁰ 38' 17"	71 ⁰ 19' 52"
NH	19 ⁰ 38' 53"	71 ⁰ 20' 56"
NI	19 ⁰ 32' 35"	71 ⁰ 21' 01"
NJ	19 ⁰ 30' 00"	71 ⁰ 21' 33"
NK	19 ⁰ 28' 55"	71 ⁰ 19' 32"
NL	19 ⁰ 27' 46"	71 ⁰ 16' 42"
NM	19 ⁰ 25' 37"	71 ⁰ 16' 09"
NP	19 ⁰ 36' 38"	71 ⁰ 22' 54"
NQ	19 ⁰ 34' 25"	71 ⁰ 21' 48"
NR1	19 ⁰ 34' 00"	71 ⁰ 28' 37"
NU	19 ⁰ 29' 55"	71 ⁰ 17' 58"
NV	19 ⁰ 31' 09"	71 ⁰ 19' 44"
NX	19 ⁰ 30' 56"	71 ⁰ 23' 06"

WELL PLATFORM BOMBAY HIGH NORTH

SB	19 ⁰ 24' 01"	71 ⁰ 18' 54"
SD	19 ⁰ 21' 23"	71 ⁰ 17' 04"
SE	19 ⁰ 19' 52"	71 ⁰ 20' 01"
SF	19 ⁰ 20' 54"	71 ⁰ 24' 24"
SG	19 ⁰ 18' 16"	71 ⁰ 22' 47"
SI	19 ⁰ 26' 40"	71 ⁰ 20' 37"
SJ	19 ⁰ 26' 09"	71 ⁰ 18' 31"
SK	19 ⁰ 27' 30"	71 ⁰ 22' 49"
SM	19 ⁰ 23' 33"	71 ⁰ 16' 43"
SN	19 ⁰ 24' 36"	71 ⁰ 21' 09"
SP	19 ⁰ 21' 58"	71 ⁰ 19' 28"
SQ	19 ⁰ 22' 59"	71 ⁰ 23' 54"
SR	19 ⁰ 19' 21"	71 ⁰ 17' 48"
SS	19 ⁰ 20' 22"	71 ⁰ 22' 14"
ST	19 ⁰ 17' 45"	71 ⁰ 20' 33"
SU	19 ⁰ 18' 49"	71 ⁰ 24' 57"
SV	19 ⁰ 15' 39"	71 ⁰ 21' 06"
SW	19 ⁰ 16' 09"	71 ⁰ 23' 19"

COMPLEX IN BH NORTH

NA	19 ⁰ 31' 40"	71 ⁰ 18' 12"	Co ordinates of
NF	19 ⁰ 31' 40"	71 ⁰ 18' 17"	four corners
BHN	19 ⁰ 31' 43"	71 ⁰ 18' 12"	of
	19 ⁰ 31' 43"	71 ⁰ 18' 17"	Complex
NC	19 ⁰ 35' 09"	71 ⁰ 19' 25"	
WLN	19 ⁰ 35' 09"	71 ⁰ 19' 29"	
	19 ⁰ 35' 11"	71 ⁰ 19' 25"	

19° 35' 11"

71° 19' 29"

COMPLEX IN BOMBAY HIGH SOUTH

SA	19° 22' 21"	71° 21' 30"	Coordinates of Four courses.
BH	19° 22' 21"	71° 21' 39"	
SLQ	19° 22' 27"	71° 21' 30"	
WIS	19° 22' 27"	71° 21' 39"	

WATER INJECTION PLATFORMS IN B H NORTH

WI2	19° 37' 48"	71° 17' 46"
WI3	19° 35' 23"	71° 16' 40"
WI4	19° 33' 29"	71° 16' 14"
WI5	19° 31' 06"	71° 15' 55"
Panna	19° 20' 10"	72° 01' 16"
South Bassein	19° 21' 50"	72° 06' 48"
Heera A	18° 34' 58"	72° 14' 28"
HB	18° 32' 17"	72° 15' 27"
HC	18° 39' 40"	72° 13' 20"
HRA	18° 34' 56"	72° 14' 27"

(2) S. O. 643 (E). – In exercise of the powers conferred by clause (a) of sub-section (5) of section 6 and clause (a) of sub-section (6) of section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 (80 of 1976), the Central Government hereby declares the areas in the continental shelf or, as the case may be, in exclusive economic zone of India where the installations, structures and platforms, the coordinates of which are given in the Schedule below, are situated and the areas extending upto five hundred metres from the said installations, structures and platforms as designated areas for the purposes of said sections.

[Ministry of External Affairs Notification No. F. L.-III /2/94 dated 19.09.1996]

SCHEDULE**Well Platforms/Single Buoy Mooring in Bombay High : North**

Name	Latitude	Longitude
NA	19° 31' 42"	71° 18' 16"
NC	19° 35' 09"	71° 19' 28"
NO	19° 36' 09"	71° 21' 07"
NS	19° 32' 15"	71° 23' 59"
NT	19° 29' 53"	71° 24' 40"
NW	19° 33' 13"	71° 19' 42"
N-1	19° 31' 45"	71° 17' 24"
N-2	19° 34' 17"	71° 17' 46"
N-3	19° 36' 28"	71° 18' 52"
N-4	19° 34' 44"	71° 20' 33"

N-5	19 ⁰ 29' 48"	71 ⁰ 19' 29"
N-6	19 ⁰ 30' 56"	71 ⁰ 21' 20"
N-7	19 ⁰ 32' 51"	71 ⁰ 22' 44"
WA	19 ⁰ 28' 24"	71 ⁰ 12' 31"
N-8	19 ⁰ 37' 21"	71 ⁰ 21' 34"
NA-SBM(S)	19 ⁰ 31' 42"	71 ⁰ 18' 47"

Well Platforms/Single Buoy Mooring in Bombay High : South

SY	19 ⁰ 14' 36"	71 ⁰ 26' 04"
EA (SUBSEA CLUSTER)	19 ⁰ 24' 50"	71 ⁰ 24' 38"
EB	19 ⁰ 22' 45"	71 ⁰ 25' 08"
EC	19 ⁰ 20' 38"	71 ⁰ 25' 42"
ED	19 ⁰ 18' 32"	71 ⁰ 26' 14"
EE	19 ⁰ 16' 25"	71 ⁰ 26' 47"
IA	19 ⁰ 25' 13"	71 ⁰ 16' 51"
IB	19 ⁰ 23' 09"	71 ⁰ 17' 25"
ID	19 ⁰ 18' 57"	71 ⁰ 18' 30"
IE	19 ⁰ 15' 16"	71 ⁰ 21' 48"
IF	19 ⁰ 25' 08"	71 ⁰ 21' 01"
IG	19 ⁰ 23' 31"	71 ⁰ 21' 32"
IH	19 ⁰ 20' 48"	71 ⁰ 21' 57"
II	19 ⁰ 19' 05"	71 ⁰ 23' 46"
IJ	19 ⁰ 17' 40"	71 ⁰ 24' 21"
IK	19 ⁰ 15' 23"	71 ⁰ 24' 43"
IL	19 ⁰ 13' 39"	71 ⁰ 26' 54"
WB (BH-25)	19 ⁰ 19' 28"	71 ⁰ 14' 00"
ICG	19 ⁰ 20' 59"	71 ⁰ 18' 12"
SH-SBM	19 ⁰ 15' 59"	71 ⁰ 25' 59"
BHS-SBM	19 ⁰ 22' 25"	71 ⁰ 22' 29"

Water Injection Platforms in Bombay High

WI-6	19 ⁰ 28' 09"	71 ⁰ 14' 33"
WI-7	19 ⁰ 25' 01"	71 ⁰ 14' 29"
WI-8	19 ⁰ 21' 58"	71 ⁰ 15' 28"
WI-9	19 ⁰ 19' 48"	71 ⁰ 15' 20"
WI-10	19 ⁰ 17' 34"	71 ⁰ 16' 53"
WI-11	19 ⁰ 15' 46"	71 ⁰ 18' 57"

Complex in Bombay High

NQG, NQO, NQD, NQP	19 ⁰ 34' 23"	71 ⁰ 21' 45"
SC-1, SC-A	19 ⁰ 25' 02"	71 ⁰ 23' 22"
OCP, ICW, ICD	19 ⁰ 20' 57"	71 ⁰ 18' 08"
SHD, SHP, SHQ	19 ⁰ 16' 41"	71 ⁰ 25' 34"

Platforms/Complexes in Heera Field

HRG	18 ⁰ 34' 56"	72 ⁰ 14' 26"
WIH	18 ⁰ 34' 54"	72 ⁰ 14' 22"
HS	18 ⁰ 32' 42"	72 ⁰ 13' 49"
HD	18 ⁰ 36' 13"	72 ⁰ 14' 00"
HE	18 ⁰ 33' 39"	72 ⁰ 14' 57"
HF	18 ⁰ 38' 17"	72 ⁰ 14' 03"
HQ	18 ⁰ 35' 42"	72 ⁰ 12' 49"
HR	18 ⁰ 34' 07"	72 ⁰ 13' 27"
HT	18 ⁰ 31' 16"	72 ⁰ 14' 31"

Platforms/Single Buoy Mooring in Panna Field

PA-SBM	19 ⁰ 20' 10"	72 ⁰ 02' 07"
PB	19 ⁰ 19' 15"	72 ⁰ 00' 30"
PD	19 ⁰ 18' 45"	72 ⁰ 01' 34"
PE	19 ⁰ 19' 35"	72 ⁰ 02' 08"

Platforms/Single Buoy Mooring Ratna Field

R-12	18 ⁰ 16' 24"	72 ⁰ 22' 48"
R-13	18 ⁰ 16' 54"	72 ⁰ 23' 24"

Complex in Bassein Field

BPA, BA, BLQ-1	19 ⁰ 12' 47"	72 ⁰ 06' 48"
BPB, BC BLQ-2	19 ⁰ 08' 41"	72 ⁰ 07' 02"

Well Platform in Bassein Field

BB	19 ⁰ 10' 50"	72 ⁰ 07' 02"
BD	19 ⁰ 14' 42"	72 ⁰ 06' 27"

Well Platform in Mukta Field

NLM-1 (B-131)	18 ⁰ 40' 23"	72 ⁰ 21' 28"
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Well Platforms in Mukta Field

MUKTA-1 (B-57)	19 ⁰ 21' 25"	71 ⁰ 50' 08"
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Declaration of Customs Area in Continental Shelf and Exclusive Economic Zone

In exercise of the powers conferred on me under section '8' of the Customs Act, 1962, I. S. Biswas, Commissioner of Customs Mumbai, notify the places in the continental shelf or as the case may be, in the exclusive economic zone of India, where the installations, structures and platforms are situated and the area extended up to 500 meters from the said installations, structures and platforms as Customs Area for the purpose of unloading import goods and loading of export goods or any of such good under Section 8 (a) of the Customs Act, 1962. And under Section 8 (b) of the Customs Act, 1962. I Specify the limits of Customs Area as under.

PLATFORMS/SINGLE BUOY MOORING IN BOMBAYHIGH : NORTH

NAME	LATTITUDE	LONGITUDE
NA	19 ⁰ 31' 42"	71 ⁰ 18' 16"
NC	19 ⁰ 35' 09"	71 ⁰ 19' 28"
NO	19 ⁰ 36' 09"	71 ⁰ 21' 07"
NS	19 ⁰ 32' 15"	71 ⁰ 23' 59"
NT	19 ⁰ 29' 53"	71 ⁰ 24' 40"
NW	19 ⁰ 33' 13"	71 ⁰ 19' 42"
N-1	19 ⁰ 31' 45"	71 ⁰ 17' 24"
N-2	19 ⁰ 34' 17"	71 ⁰ 17' 46"
N-3	19 ⁰ 36' 28"	71 ⁰ 18' 52"
N-4	19 ⁰ 34' 44"	71 ⁰ 20' 33"
N-5	19 ⁰ 29' 48"	71 ⁰ 19' 29"
N-6	19 ⁰ 30' 56"	71 ⁰ 21' 20"
N-7	19 ⁰ 32' 51"	71 ⁰ 22' 44"
WA	19 ⁰ 28' 24"	71 ⁰ 12' 31"
N-8	19 ⁰ 37' 21"	71 ⁰ 21' 34"
NA-SBM (S)	19 ⁰ 31' 42"	71 ⁰ 18' 47"

PLATFORMS/SINGLE BUOY MOORING IN BOMBAY HIGH : SOUTH

SY	19 ⁰ 14' 36"	71 ⁰ 26' 04"
EA (SUBSI A CLUSTER)	19 ⁰ 24' 50"	71 ⁰ 24' 38"
EB	19 ⁰ 22' 45"	71 ⁰ 25' 08"
EC	19 ⁰ 20' 38"	71 ⁰ 25' 42"
ED	19 ⁰ 18' 32"	71 ⁰ 26' 14"
EE	19 ⁰ 16' 25"	71 ⁰ 26' 47"
IA	19 ⁰ 25' 13"	71 ⁰ 16' 51"
IB	19 ⁰ 23' 09"	71 ⁰ 17' 25"
ID	19 ⁰ 18' 57"	71 ⁰ 18' 30"
IE	19 ⁰ 15' 16"	71 ⁰ 21' 48"
IF	19 ⁰ 25' 08"	71 ⁰ 21' 01"
IG	19 ⁰ 23' 31"	71 ⁰ 21' 32"
IH	19 ⁰ 20' 48"	71 ⁰ 21' 57"
II	19 ⁰ 19' 05"	71 ⁰ 23' 46"
IJ	19 ⁰ 17' 40"	71 ⁰ 24' 21"
IK	19 ⁰ 15' 23"	71 ⁰ 24' 43"
IL	19 ⁰ 13' 39"	71 ⁰ 26' 54"
WB (BH-25)	19 ⁰ 19' 28"	71 ⁰ 14' 00"
ICG	19 ⁰ 20' 59"	71 ⁰ 18' 12"
SH-SBM	19 ⁰ 15' 59"	71 ⁰ 25' 59"
BHS-SBM	19 ⁰ 22' 25"	71 ⁰ 22' 29"

WATER INJECTION PLATFORMS IN BOMBAY HIGH

WI-6	19 ⁰ 28' 09"	71 ⁰ 14' 33"
WI-7	19 ⁰ 25' 01"	71 ⁰ 14' 29"
WI-8	19 ⁰ 21' 58"	71 ⁰ 15' 28"

WI-9	19° 19' 48"	71° 15' 20"
WI-10	19° 17' 34"	71° 16' 53"
WI-11	19° 15' 46"	71° 18' 57"

COMPLEX IN BOMBAY HIGH

NQG, NQO, NQD, NQP	19° 34' 23"	71° 21' 45"
SC-1, SC-A	19° 25' 02"	71° 23' 22"
ICP, ICW, ICD	19° 20' 57"	71° 18' 08"
SHD, SHP, SHQ	19° 16' 41"	71° 25' 34"

PLATFORMS/COMPLEXES IN HEERA FIELD

HRG	18° 34' 56"	72° 14' 26"
WIH	18° 34' 54"	72° 14' 22"
HS	18° 32' 42"	72° 13' 49"
HD	18° 36' 13"	72° 14' 00"
HE	18° 33' 39"	72° 14' 57"
HF	18° 38' 17"	72° 14' 03"
HQ	18° 35' 42"	72° 12' 49"
HR	18° 34' 07"	72° 13' 27"
HT	18° 31' 16"	72° 14' 31"

PLATFORMS/SINGLE BUOY MOORING IN PANNA FIELD

PA-SBH	19° 20' 10"	72° 02' 07"
PB	19° 19' 15"	72° 00' 30"
PD	19° 18' 45"	72° 01' 34"
PE	19° 19' 35"	72° 02' 08"

PLATFORMS/SINGLE BUOY MORRING IN RATNA FIELD

R-12	18° 16' 24"	72° 22' 48"
R-13	18° 16' 54"	72° 23' 24"

COMPLEX IN BASSEIN FIELD

BPA, BA, PLQ-1	19° 12' 47"	72° 06' 48"
BPB, BC, BLQ-2	19° 08' 41"	72° 07' 02"

WELL PLATFORMS IN BASSEIN FIELD

BB	19° 10' 50"	72° 07' 02"
BD	19° 14' 42"	72° 06' 27"

WELL PLATFORMS IN NEELAM FIELD

NLM-1 (B-131)	18° 40' 23"	72° 21' 28"
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WELL PLATFOMS IN MUKTA FIELD

MUKTA-1 (B-57)	19° 21' 25"	72° 50' 08"
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[Public Notice 94/98 dated 06.08.1998 issued by Mumbai Custom House from File No. S/43 – 169/98 P]

SLUDGE OIL – Procedure for clearance

Sludge oil is accumulation of thick dirty oil especially in sump of internal combustion engine, & at the bottom of petroleum product storage tanks.

The ship's sludge oil which contains waste oil, water, chemicals (used for cleaning tanks) is collected in slop tanks on the ship. In routine course, the sludge from the slop tanks are discharged into the sea. The sludge oil is a necessary evil of the Shipping Industry.

The International Maritime Organization adopted an International convention called MARPOL 73/78 to Prevent marine pollution, including pollution by slop & sludge from ships.

The Government of India is signatory to the International Convention for the Prevention of pollution from ships 1973 & of the Protocol of 1978 (MARPOL 73/78) & deposited its instrument of accession to MARPOL 73/78 on 24.9.1986 & the convention entered into force for India a 24.12.1986. The Port of India has undertaken to provide adequate reception facilities for receiving sludge, bilge water, slops & other wastes from ships calling at its ports.

Private agencies were allowed to receive such sludge & waste with due permission from concerned authorities, licencing them from reception transportation, storage, treatment & disposal of the same. [Ref. Letter no.T-5/1-02/DDISTdt.5.4.95 from IMO, Marine Environment Division & letter No. 1-8 SSMD dt.25.2.96 from Ministry of Environment & Forests]

Waste oil and oil emulsions have been specified as Hazardous wastes as per Schedule to Rule 3 (i) of the Hazardous Wastes (Management & handling) Rules 1989 issued under the Environment (Protection) Act, 1986. Rule 11 of the above Rules stipulates that import of hazardous wastes from any country to India shall not be permitted for dumping end disposal of such wastes. However, import of such wastes is allowed for processing or reuse as raw material, after examining & approving by the State Pollution Control Board. Waste oil which is derived from the normal course of ship's operation & covered by the MAROL (73/78 Protocol Convention) is permitted to discharge without a licence & on payment of Customs duty. The permission to discharge waste oil is allowed only to those persons who have reprocessing facilities approved by the State Pollution Control Board. The person/s / firms so authorised are required to obtain order / permission from ship owners to take sludge derived from normal course of a ship engines operation. On the strength of this order, a local invoice is prepared with appropriate value & quantity. Alongwith all the above mentioned documents a Bill of Entry shall be filed for clearance of sludge oil. The assessment shall be done under Customs Tariff Heading 2710.00 without C.C.P. The Bill of Entry shall be assessed provisionally under test Bond. As regards drawal of sample, once the sludge is routed into drums & properly Closed & rolled on the ground in order to make the contents homogenous, a small sample shall be drawn there from & poured into a previously cleaned empty drum (as many samples as there are drums) & the drum containing samples should be properly closed & rolled on the ground to make its contents homogenous.

After this has been done, a representative sample shall be drawn into a previously cleaned bottle, seal with Customs seal & sent to the Customs laboratory for test. The final assessment shall done on the result of test report.

DUTY ON FUEL OIL – SUPPLY EX-BOND STOCK TO VESSELS WHICH ARE IN THE FOREIGN RUN BUT WHICH SUBSEQUENTLY DIVERT TO COASTAL RUN

The following procedure is prescribed for collecting Duty when a Vessel on a foreign run after taking duty free stock of fuel oil as bunkers diverts to coastal run, without prior notice.

(i) Steamer Agents' arrival advice

On the arrival of a vessel, the steamer agents shall address a letter to the Asst. Commissioner (Imports), intimating the shipping activities of the vessel at the port of the arrival. On receipt of this letter, the Import Department should forthwith determine the character of the vessel's voyage and, in the event of any change, intimate the fact of reversion from foreign to coasting trade and vice versa to the Export and Preventive Departments, to enable them to take such action as the reversion may call for :

(ii) Filing of shipping Bills

"FREE" Shipping Bills are being filed in the Export Department to cover shipment of Excise bonded oil as ship's stores, with duplicate and triplicate copies of AR-4 forms. The words "Shipment from excise bonded stock" may be superscribed conspicuously on the shipping bill. (In respect of shipment of warehoused goods, on Customs side, the Shipping Bills is marked "Shipping Bill from Bond.")

(iii) Entry to be made in the vessel's stores list

Full particulars of oil supplied from excise bonded stock (S.P.No. AR-4 No. Grade of oil quantity shipped source of supply) should be entered at the appropriate place in the vessel's ore list, in the same manner as stores supplied from Customs bonded stocks are entered. These particulars should be entered in the copy retained in the Preventive Department and also in the "Circulating copy" if the vessel is touching Customs Port(s) on route to a foreign destination.

(iv) P.O.'s Certificate in AR-4 Form

If the vessel is touching any Customs Port (s) on route to a foreign destination, the certifying Preventive Officer should mention in the certificate after the words "which left for" the names of such ports and in the same order as mentioned in the port a clearance of the vessel, instead of mentioning only the foreign port of destination. From such a certificate, the Central Excise Department which permitted ex-bond supply of stores will come to know that the vessel did not clear directly for a foreign port, after bunkering.

(v) Reversion at an intermediate Customs Port

If a vessel reverts from foreign to coasting trade at any of the Custom Ports on route to a foreign destination, the Customs Authorities at the port of reversion shall forthwith intimate the Central Excise Department which permitted supply of oil ex-bond under AR-4 procedure, any such change in the character of her voyage together with such particulars as grade and quantity of oil on which excise duty may be recoverable.

Transfer of Oil under Sec. 86(2) of Customs Act :

- (i) Oil imported in bunkers is "Stores" and therefore Section 86(2) does apply. Transfer of oil from the bunkers of one foreign going vessel to the bunkers of another foreign going vessel may be permitted.
- (ii) Oil imported as cargo by one foreign going vessel should not be allowed to be manifested for transshipment to the bunkers of another foreign going vessel as oil imported as cargo are not "Stores" within the meaning of Sec. 86(2). The correct procedure to be followed in such cases is the drawback procedure under Sec.74.

Transfer of Liquid fuel to Bunkers

(i) Agents may be permitted to retain on board any portions of oil for bunker use by entering them originally on a separate sheet of the Import General Manifest. Should the Agents desire to transfer further quantities to bunkers from cargo tanks or holds such transfers will be allowed on amendment of the relative manifest and on fulfillment of the following conditions:-

- (a) The oil should be transferred direct from the cargo tanks or holds to the bunkers without having been landed at an intermediate stage.
- (b) No Bill of Entry should have been filed for the quantity transferred.
- (c) The ship should remain in the foreign trade and;
- (d) The Department should be satisfied that the quantity transferred has been accurately measured.

The last condition will be considered as satisfied if the Agents produce a certified extract from the Chief Engineer's log showing the quantity retained on board as ascertained by measurement or ullages.

- (ii) Where, however, the liquid fuel has first been landed and the Agents wish to transfer a quantity from the local cargo to the bunkers the correct procedure is to pay duty on the quantity on a Bill of Entry and then to reship it under claim for drawback on a drawback shipping bill. If the consignment is boned, the transfer should be effected on a ex-bond shipping bill.
- (iii) It should be clearly understood that in cases in which a Bill of Entry for consumption of the full manifested quantity has been filed before a decision to transfer the fuel oil to bunkers has been reached, the only course open is to submit a shipping bill under claim for drawback.
- (iv) If the transfer takes place on a ship that is transferred from the foreign to the coasting trade, duty becomes leviable on the fuel oil under the Customs Act. Fuel oil imported as cargo by one vessel should not be allowed to be subsequently manifested for transshipment to the bunkers of another vessel, as fuel oil imported as cargo is not "stores" and therefore section 86(2) does not apply.

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CHAPTER - TWENTY THREE

DISPOSAL OF GOODS

PRELIMINARY

As discussed earlier, the main object of the Customs Act, 1962, is not only to regulate imports & exports but also to safeguard interest of the nation. There are number of legislation which prohibit/restrict import or export of a product or item. The imported/export goods, which infringe the prohibitions/restrictions, are detained/seized. Till the time the importation/exportation/acquisition is adjudged to be licit or illicit, the goods in question remain in the custody of the Deptt. or the Custodian (like Port Trust, CWC, AAI, etc.). If the goods are confiscated, the same become property of the Govt. & are disposed of as per instructions laid down. Certain goods, as notified by the Govt., after completion of action under Section 110 (b) of the Customs Act, 1962 and perishables are disposed off without awaiting decision of the adjudicating authority.

At the same time, Cargo lying unclaimed uncleared in the sea ports, air ports, Air cargo Complexes, ICDs for more than the time limit fixed under Sec. 48 of the Act, are taken over and sold by the Custodians as per provisions laid down under Section 150 of the Act, & Ministry's various circulars issued in this regard.

RECEIPT / CUSTODY AND STORAGE OF SEIZED / DETAINED / CONFISCATED GOODS

Receipt, Custody and Storage of seized / detained / confiscated good is very important and responsible function entrusted to the Preventive staff posted in Warehouses.

Board's instruction on receipt/storage/custody are reproduced below :

1. Whenever goods are seized or detained, a complete inventory of the goods together with the identification marks, serial numbers etc. should be made out in triplicate in the proper form (Form I). this should be done at the earliest opportunity and if possible immediately after the seizure. Separate inventories should be made out in respect of (a) valuables and (b) other than valuables.

2. **Definition of valuables:**

The term 'valuables' will include:

- 1) Precious and semi-precious stones
- 2) Gold and articles made of gold.
- 3) Jewellery
- 4) Silver and articles made of silver
- 5) Watches; and
- 6) Such other articles of small bulk and high value as may be by special or general order be classified as valuables by the Commissioner.

FORM I
(para 1)

ORIGINAL (FOR OWNER)
DUPLICATE (FOR CUSTODIAN)
TRIPLICATE (FOR CASE FILE)

Inventory of Goods Seized / Detained

1. Name and address of owner
2. By whom seized (or detained)
3. Place and Date of seizure
- (or detention)
4. Custom House case file No.

Sl. No.	No. of Packages	Detailed description of goods (packagewise)	Quantity	Estimated ex-duty value	Remarks.
1.	2.	3.	4.	5.	6.

Signature of owner

Date:

Signature of the Seizing officer

Date:

Receivedpackages with seals intact.

Signature of the
Custodian

Note: -

1. The packages should be sealed with the seal of the seizing /detaining officer and the seal of the owner or his authorised representative or that of a gazetted officer.
2. The packages should be forwarded to the Custodian within 24 hours of seizure/detention.

3. Disposal of inventory and sealing of goods: The inventory should be signed by the Seizing or Detaining Officer and also countersigned by the representative of owner of goods, if available. If the owner or his authorised representative is not available, the inventory should countersigned by a Gazetted Officer after due verification. The goods should then be sealed with the seal of the Seizing or Detaining Officer and the seal of the owner or his authorised representative. If the owner or his authorised representative is not available, the seal of the Gazetted Officer countersigning the inventory should, instead, be affixed. The **Original** copy of the inventory should be given by the Seizing or Detaining Officer to the owner of the good or his representative, if available, the original copy should kept with the case file, The goods together with the **duplicate** and **triplicate** copies of the inventory should be forwarded to the

concerned departmental officer who has the custody of such goods (Seizure Shed Officer, Currency Officer etc.), hereafter called the "Custodian", without avoidable delay and in any event within 24 hours of seizure or detention. Immediately on receipt of the goods and the **duplicate** and the **triplicate** copies of the inventory, the Custodian should satisfy himself that the packages have been properly sealed and that the inventory has been made out in a proper manner to indicate the complete details of the contents of the packages. It is not necessary for him to examine the contents of the packages provided the seals are intact and the inventory is in the proper form.

If the seals and the inventory are in order, the Custodian should acknowledge receipt of the sealed packages in the **duplicate** and **triplicate** copies, retain the **duplicate** with him and return the triplicate to the Seizing / Detaining Officer to be kept with the case file. If there is any discrepancy, the Custodian should get the discrepancy reconciled before acknowledging receipt.

4. Register of Seized / Detained goods: The Custodian should enter the details given in the inventory in the **Register of Seized / detained goods** prescribed for the purpose (Form 2). Separate register should be maintained in respect of (a) valuables; and (b) other than valuables. Each package should then be securely tied, pinned or stuck with a stock card in the proper form (Form 3).

FORM 2 (para 2)

Register of seized / detained goods

S. No.	Date of receipt	By whom deposited	Nature of sealing	Customs House case file No.	Whether inventory (in the prescribed form) accompanied the goods.	Name of owner, if known	No. of packages	Description of goods	Quality	Estimated value/duty
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.

Date of preparation of detailed Inventory	Name of officers presents at the time of preparation of detailed inventory (if necessary)	Nature of sealing (after invention and identifying marks given on packages)	Where stored	PARTICULARS OF REOPENING				RELEASE OF THE GOODS TO THE OWNER		
				Date of reopening	Name of officers present at the time of re-opening	How re-sealed	where re-stored	Date of release (if so ordered)	signature of the recipient	
12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	

DISPOSAL BY THE DEPARTMENT

Date of re-opening for purposes of valuation by jewellery	Auction lot No. & other particulars of the lot in which included.	Price fetched at auction	Date of delivery to the bidder at the auction	Signature of the recipient	Amount paid as godown rent (receipt No. & date to be indicated also)	Signature (with date) of Custodian	Remarks
22.	23.	24.	25.	26.	27.	28.	29.

FORM NO. 3
STOCK – CARD

1. Sl. No. in the seized/detained goods register.
2. Date of receipt
3. Name of owner of the goods, if known.
4. No. of packages.
5. Description of goods, quantity and value.
6. History of the consignment (here enter the date of check made by an officer , date of opening , seal, date of auction, etc.)

5. Storage of valuables: Valuables should be kept invariably in a special safe in the Custom House Treasury or in a locker in the Reserve Bank of India or State Bank of India, obtained exclusively for the purpose. Wherever they may be deposited, such packages shall be stored systematically, serialwise and yearwise to facilitate easy check and location. Relevant particulars of the storage arrangements should also be recorded in the register of Valuables. The key of the safe or the locker shall be kept securely in the personal custody of the Custodian. It should also be arranged that the Treasury Officer or the Bank Manager, as the case may be, that access to the safe or the locker, shall not be allowed except on a written authorisation in an agreed form bearing the running number, signed by the Asstt./Dy. Commissioner, incharge of the Preventive Department. Such authorisation should be issued normally in the name of the custodian or in exceptional circumstances when the Custodian is not available, in the name of any other responsible officer. The serially numbered authorisation forms should be kept in the personal custody of the Assistant Commissioner, Preventive Department.

6. Storage of goods other than valuables: Goods other than valuables should, as far as possible, be kept on racks and almirahs. Special care should be taken to prevent damage to the good by rodents and insects. The almirahs and racks should be serially numbered commencing from 1 and the partitions in the almirah and racks should be lettered commencing from A. The almirahs and racks should be so arranged and the packages so systematically stored that there should be no difficulty at any time to check and locate the packages. The key of the Godown in which the goods are stored should be kept in the personal custody of the Custodian.

6A. Detained / seized vehicles

Detained or seized motor vehicles, watercrafts and other types of machinery should be properly looked after during storage. Particular care should be taken of the spare parts and tools. The vehicles are to be properly garaged and the machinery kept at a proper place. The engines of the vehicles (not the vehicles themselves) should, if possible, be run twice week for a few minutes to keep the parts under lubrication. Wherever necessary, due to possible delay in the disposal of the vehicle, the same should be jacked up . If suitable garage facilities are not available, temporary sheds may be erected or the vehicles be handed over to an Automobile Association (if such an organisation exists) for proper storage and maintenance, at place mutually agreed upon and found to be reasonable and comparable to those asked for by private garages. As regards water crafts, due attention should be paid to maintain them in a proper state of river/sea worthiness, and to keep them, as far as possible in proper running order. In such of these places where suitable mooring facilities are not available, the watercraft may wherever possible be handed over to the Port authorities for custody and Superintendent/launches or the Officer in-charge/ Launches (wherever such an officer is available) will look after this; otherwise (this will as usual) be attached to by the Custodian.

7. Opening and re-sealing of the packages: As far as possible, the necessity for opening of the sealed packages for further investigation should be avoided. Whenever, such sealed packages are required to be opened, such opening should not be done without the specific authorisation of the Asstt. Commissioner, Preventive. When such authorisation has been obtained, the Custodian should arrange to produce the packages for opening. After the due verification of the seals, the packages should be opened in the presence of the Custodian, the owner or his authorised representative (if available), the seizing or detaining officer or a Gazetted Officer senior to the Custodian. After necessary verification, the packages should be resealed with the seals of the custodian, the owner or his authorised representative, if available, the seizing or detaining officer or a Gazetted Officer senior to the Custodian. After necessary verification, the packages should be immediately re-sealed with the seals of the Custodian, the owner or his authorised representative, if available and the seizing or detaining officer or the Gazetted Officer witnessing the opening. The stock card should also be suitably endorsed and the packages should be re-deposited in the original place of storage. If on such re-examination any discrepancy is noticed, such discrepancy should immediately be brought to the notice of the higher officer for appropriate action.

8. Return of goods to the owner: Whenever seized or detained goods are ordered to be returned to the owner, the Custodian should after satisfying himself that all the moneys due to the Government have been paid by the owner, give delivery of the goods against the owner's endorsement on the duplicate copy of the inventory that the packages have been received by the owner with the seals intact. In case the owner wishes to have open delivery, the Custodian should comply with the request but the presence of the Seizing or Detaining Officer should also, as far as possible, be secured. If the seizing or detaining officer is not available, the presence of a Gazetted Officer should be secured.

9. Responsibility of the custodian: The Custodian will be responsible for the physical custody of the packages with seals intact. He will not be responsible for the inner contents of the packages if they have been sealed. The Custodian should, however, insist before accepting the sealed packages that the inventory covering the goods should be completed in all respects. He should ensure that the packages are carefully stored and protected against the ravages of weather, rodents and insects. He should also take adequate precautions against theft and pilferage and keep watch on the condition of the goods. If the

goods show signs of deterioration or damage, he should immediately bring it to the notice of the Assistant Commissioner, Preventive, for appropriate action. Fragile goods should be handled with care and if any goods are damaged in handling, he should immediately report the matter to the Asstt. Commissioner, Preventive. He will be responsible for maintaining the Register in the proper manner and for submitting the monthly return of goods ripe for disposal. Copies of all orders of confiscation should be endorsed to the Custodian.

[Board's letter F. No. 11/6/61-Cuslv dtd. 2.12.1961]

Operation Of Strong Room

(a) The strong rooms storing valuables such as Gold, Silver, Diamonds, Gems & Jewellery and Precious / Semi-precious Stones, should invariably have a double lock system;

(b) The two keys for operating the strongroom should be entrusted to two separate officers; one to the incharge of the strongroom or godown and the other to superior/supervising officer – higher in rank to the officer-in-charge of the strongroom/godown. The superior officer should be an officer of gazetted rank;

(c) Wherever the custodian or his superior officer proceeds leave or on transfer, a regular substitute should be posted who shall take proper charge of the strongroom and keys in writing. Under no circumstances, both keys for operating the strong room should be put under the custody of the same person.

(d) Only experienced officers (who have put in minimum 10 years of service), and whose integrity is absolutely beyond doubt, should be posted in charge of the strong room/godowns (similar check for the superior officer given the over all supervision of the strongroom and custody of the second key, from vigilance & integrity angle, should also be ensured);

(e) The stock-taking and stock challenges of the goods stored in strong room/godowns, should be got conducted every six months by Commissioners earmarking an officer of the rank of Asstt. Commissioner of Customs, who will prepare a written detailed report on the functioning of the strongroom/ godown highlighting shortcomings/deficiency and any irregularities noticed, with his considered recommendations for action required, and put up the same to the Commissioner. These reports should be scrutinised by Commissioners themselves and they should order further immediate remedial action, where required;

(f) No officer, including custodian-in-charge of the strongroom/godown, should be allowed to open the strongroom/godown on any holiday (including Saturday/Sunday) without a prior specific written permission from the Addl. Commissioner/Commissioner of Customs concerned; and

(g) Any incident of theft/loss/substitute on of the government property or property under control of Deptt., which comes to light should not only be immediately examined personally by concerned Commissioner, but it should also be, with the exceptions for petty cases, immediately reported to the Principal Accounts Officer and the Statutory Audit Officer etc. as laid down under Rule 16 of General Financial Rules. Board should also be kept informed of all such cases, on immediate basis, with a report of action initiated. Action should also be initiated immediately in terms of provisions of Rule 19 of G.F. R.”

[Extract from Ministry's letter F. No. 393/91/98-Cus (AS) dt.12.11.98]

Proper storage / segregation and safe custody of seized / confiscated goods including valuables

Attention is invited to the Ministry's various instructions on the above subject, particularly those issued under F. No. 11/6/61-Cus-iv dated 13.6.61, F. No. 30/43/64-Lc-I dated 15.4.68 & F. No. 393/91/98-Cus(AS) dated 12.11.98 regarding storage & safe custody of seized/confiscated valuables.

2. Recently , a case has come to the notice of the Board, where the laid down instructions in relation to storage, custody, disposal etc. of seized/confiscated goods were not followed strictly by the concerned officers, due to which Department was put to embarrassing position and had to face a lot of litigation as certain goods deposited with the custodian could not be accounted for properly when question of their release came up , after adjudication etc. In this case in the year 1975 certain quantity of primary gold and gold ornaments were seized and after investigations, issue of SCN etc., the Commissioner ordered the confiscation of the primary gold but permitted redemption of the ornaments. However, before the ornaments could be released to the party, the Income Tax Department had put an embargo on their release by the Central Excise Department. The party challenged the Income Tax Department's order in the High Court, which decided the case in favour of the party. However, when the party approached for release of the ornaments, in year 1995. It was discovered that the ornaments, although they were not ripe for disposal, had already been deposited in the Government Mint, sometime in year 1991-92, alongwith some other confiscated gold. The ornaments, in the circumstances, could not be released to the party.

3. The matter went to Court and contempt petition was also filed by the party, against the concerned Commissioner and Assistant Commissioner. Department of Economic Affairs was approached, and Mint was asked to release equivalent amount of standard gold bars. The party once again moved the High Court for passing on orders for compensation for the loss of precious stones studded in the ornaments, cost of its making and the mental agony suffered. However, the High Court did not pass any order on this petition & directed the party to approach Civil Courts. The party, thereafter, filed an SLP in the Supreme Courts and the Supreme Court directed the department to pay a compensation of Rs. 2 Lakhs to the party.

4. Subsequently, in the enquiry conducted by the DG. (Vigilance) for fixing responsibility in the matter, DG (Vig.) has interalia observed that the main reason for these complications could be attributed to the fact that the Custodian did not carefully study the orders of adjudicating authority while disposing off the gold & gold ornaments. The gold ornaments which were not ripe for disposal were also sent, perhaps inadvertently to the Mint, whereas only gold had been confiscated and the ornaments had been ordered to be released by the adjudicating authority but were separately under embargo by Income Tax. Even, if these two items were kept in the same packet, at the time of seizure, these could have been segregated when adjudication order had been passed, and a note kept with the gold ornaments stating that these should not be parted with in view of the orders of Income tax Department.

5. The Board, therefore, desires that Commissioners incharge of Warehouses/godown storing seized/confiscated goods including valuables should ensure that instructions in regard to receipt, inventory, safe custody/storage, accountal and disposal of seized/confiscated goods are scrupulously followed and complied with in their jurisdiction. Extreme care should be taken by the custodian/officer incharge of the seized/confiscated goods godown/Warehouse while releasing any lot to the rightful owners or disposing it off otherwise, to avoid lapses of the type mentioned above.

6. A critical scrutiny of the orders passed by the proper officer, or courts/other agencies claiming jurisdiction on the seized/confiscated goods should be undertaken before releasing the goods to the owners or disposing them off otherwise, so that no wrong release/disposal is effected – specially where there may be a stay or embargo on disposal (on the whole or part of the originally seized goods kept in the Godown/Warehouse). Wherever, there is a stay or embargo on disposal – on part or whole of any seized / confiscated consignment, it must be carefully noted in the Godown Registers and even on the inventory or identification Card normally kept tagged with the lot and its disposal/ release should await till final orders are known. Proper physical inventory/ stock of any goods being taken out for disposal

(preferably in red ink) or on release to the owners (in part or whole) must be taken and proper records kept, at the time of removal from the godown by the custodian with clear signatures (with date).

10. Board would like further to emphasize on the need to take extra special care in regard to the inventory, receipt, custody and disposal of Gold & Gold ornaments / jewellery (specially studded jewellery for which separate instructions exist) as well as other precious & semi – precious stones. The laid down instructions must be scrupulously followed so that no inadvertent or deliberate improper disposal / release is effected jeopardising revenue interests. Any lapse(s) noticed in this regard should be viewed seriously.

[M.F., D.R. F. NO. 591/34/96 – Cus. (AS) DT 11.11.99]

DISPOSAL UNIT

There shall be a separate unit called the Disposal Unit, which should be assigned the task of taking over all good ripe for disposal from the Custodian and disposal by auction or otherwise. Immediately after the close of the month but before the 5th of the month following, the Custodian should prepare an up-to-date list in duplicate in the form prescribed (Form-5) of all cases which in his opinion have become ripe for disposal and send it to the Supervisory Head Incharge (By name) of the dealing department or section concerned for obtaining a 'No Objection Certificate'. On receipt of such a list the Supervisory Head Incharge of the dealing department of section shall after all necessary verification certify that there is no objection to dispose of the goods. If there are any goods which should not be disposed of, remarks DELETE shall be put before such entry. The list should then be returned within one week of receipt to the Custodian. The Custodian should keep the original with him and forward the duplicate to the Disposal Unit for further action.

FORM 5
LIST OF CASES RIPE FOR DISPOSAL
(in triplicate)

From

The Officer-in-charge,
Disposal Unit

To

.....Department.

The undermentioned cases have become ripe for disposal. Kindly indicate within a week hereof whether you have any objection to disposal by action being proceeded with.

Sl No.	Disposal Unit Registration No.	Original case file No.	No. of packages	Marks & Nos.	Description of goods	Weight	Valuation	Remarks
1.	2.	3.	4.	5.	6.	7.	8.	9.

Officer-in-charge,
Disposal Unit

Date:

1. No objection to the disposal of the above mentioned

DEPARTMENT

DATE.....

On receipt of the list from the Custodian, the officer incharge of the disposal unit should examine in the presence of the Custodian the packages with the list and with the detailed inventory relating to the goods. If there are discrepancies, he should immediately bring them to the notice of the Assistant Commissioner, Preventive. The officer incharge of Disposal Unit should then prepare a complete list of goods for disposal. Simultaneously, he or any other officer nominated by the Commissioner for the purpose should make appropriate market enquiries and also consult the appraising groups, if necessary, to ascertain the fair price for the goods. An auction list should be made out in respect of each commodity or group of commodity in the prescribed proforma (Form 6). The list should be put up to the Assistant /Dy. Commissioner in charge of disposal.

FORM NO. 6

AUCTION LIST

Auction held onat.....

1. Sl. No. in the seized /detained goods register.
2. Custom House case File No.
3. No. of packages.
4. Description of goods/quantity/weight.
5. Ex-duty value.
6. Reserve price.
7. Name(s) of bidder(s)
8. Knocked down price.

Signature

AUCTION OFFICER

Disposal – when?

In a recent case of State of Gujarat vs Memon Mohd Haji Hussain of Junagadh, the Supreme Court in dismissing the appeal ruled that the State Govt. had either to return the vehicles in the same condition in which they were seized or in the alternative to pay their value, in the course of their judgement, their Lordships laid down certain dicta, the gist of which is as follows:

The order of confiscation issued by the Customs Officer is not final as it is subject to appeal/revision and if so decided therein, the property has to be returned. There is not only a statutory obligation to return but until the order of confiscation becomes final there is an implied obligations to preserve the property intact and for that purpose to take such care of it as a reasonable person in like circumstances will. There being thus a legal obligation to preserve the property intact and to enable the Govt. to return it in the same condition in which it was seized, the position of the Govt. until the order of confiscation become final, would be that a bailee. Even if the Govt. cannot be said to be in the position of a bailee, it is in any case bound to return the property by reason of its statutory obligation or to pay its value if it has disabled itself to return it either by its own act or by an act of its agents and servants.

2. Normally, goods seized or confiscated should not be disposed of until all the normal processes of adjudication, appeal and revision petition have been completed. However, in the following types of cases the confiscated goods may be disposed of observing the prescribed formalities and after due intimation to the party of the date, time and manner of sale:

- (i) Where goods are likely to deteriorate or perish.
- (ii) Where the recurring cost of upkeep is disproportionately high e.g. in the case of animals.
- (iii) Where arrangements for storage cannot be provided except at disproportionately high cost e.g. dangerous good.

3. Where the goods have been disposed of after confiscation but before the case is decided in appeal or revision petition owing to any mistake on the part of any officer or to avoid deterioration of the goods or disproportionately high expenditure and the confiscation order is subsequently set aside, the party "would be entitled to the value of the goods. The question is what would be the value to be refunded. If the Deptt. has taken reasonable precautions for storage of the goods and prevention of deterioration and the sale has been conducted in a manner so as "to realise the maximum price, the party should be satisfied with the return of the sale price. However, if there is any dispute, each case will have to be examined on its merits.

[Board's letter F. No. 30/43/64 LCI dt.15-4-1968]

DISPOSAL OF PERISHABLE GOODS SEIZED UNDER THE CUSTOMS ACT, 1962

It would be against the interest of the party concerned as well as the government to let the perishable goods lie under seizure till such time the case against the party is adjudged by the competent authority. Ordinarily seized goods should be kept intact up to the final adjudication, but where this is impossible as in the case of perishable goods it is not merely permissible but obligatory on the part of the Customs and Central Excise Authorities to sell the goods before they deteriorate and to keep the sale proceeds with them in order to protect the interest of the party concerned. Where, therefore, perishable goods have been seized for the contravention of the Customs Act and it is not advisable for any reason to release them against a bond or cash deposit they should be sold in auction before they can deteriorate. The sale proceeds will be held in deposit to be returned to the owner if it is eventually held that penal action is not justified. Where, however, it is ultimately held that an offence has been committed and the goods, if they were in the Custody of the Customs and Central Excise authorities, would have been confiscated, the adjudication order should state that the goods are liable to be confiscated but as they were perishable they were auctioned / sold pending adjudication, and the sale proceeds which were held in deposit on behalf of the owner are confiscated and the owner given an option, (if deemed fit by the adjudicating authority) to redeem the sale proceeds on payment of a specified fine. Utmost care should be taken to ensure that the goods are as far as possible sold for fair price.

Perishable Goods

The matter regarding disposal of perishable goods has been considered afresh in the light of the recommendations of the Commissioner's Conference held in June, 1983. On a review of the existing instructions issued by the Department, it is found that the list of perishable goods approved by the Board covers goods which are prone to rapid deterioration like vegetables, fruits, foodstuffs, etc. as well as certain other goods having a limited storage life such as medicines, photographic goods, etc. The

instructions do not, however cover items, which become obsolete due to prolonged storage. Rapid changes in technology, changing consumer preferences influenced by changes in fashions and designs, introduction of new models incorporating new features, etc. diminish the marketability of such products and have a depressing effect on their prices. It has, therefore, been decided to broaden the existing list of perishable and other items which could be disposed of early.

The entire stock of seized/confiscated goods in the custody of the Department has been grouped under four different heads and for each category a maximum period of retention in departmental custody has been prescribed. Steps for early disposal of the goods falling under the first three categories may be taken by the Commissionerates as prescribed therein.

(a) CATEGORY – I : Goods to be disposed of immediately after seizure.

The goods available under this Category are prone to rapid decay may also require special arrangements for their preservation and storage. These goods may, therefore, be disposed of immediately after seizure by the custodian of the goods after issue of notice to the owners and obtaining orders from the competent authority.

The following goods are listed under the above head:

- (i) Fresh fruits and vegetables, meat, fish, poultry, eggs and other fresh uncanned/unprocessed food materials;
- (ii) Salt and hygroscopic substances (other than in sealed containers);
- (iii) Raw (wet and salted) hides and skins;
- (iv) Livestock;
- (v) Medicinal herbs;
- (vi) Molasses;
- (vii) Newspapers and periodicals;
- (viii) Confectionery;
- (ix) Cigarettes, biris, biri-leaves and tobacco, which are liable to deterioration due to dryage or humidity;
- (x) Menthol, Camphor, Saffron;
- (xi) Cells; batteries and re-chargeable batteries;
- (xii) Cereals, sugar and other grocery items;
- (xiii) Tea and Coffee;
- (xiv) Re-fills for ball-point pens;
- (xv) Lighter fuel, including lighters with gas, not having arrangement for re-filling;
- (xvi) Beer.

(b) CATEGORY – II : Goods to be disposed of within six months from the date of seizure or where the date of expiry is indicated; well before that date.

These articles have a short span of life and deterioration in quality starts after a few days of storage and the risk/expenses for storage/maintenance of these goods are expected to be heavy. These goods may be disposed of within six months of their seizure or, where the date of expiry is indicated, well before that date.

The following goods would fall under this category:

- (i) Medicines and drugs which remain officious only for a limited period;
- (ii) Photographic goods such as films, photographic chemicals and papers;
- (iii) Spices;
- (iv) Resin;
- (v) Catechu;
- (vi) Hides, Skins, features and products thereof;
- (vii) Rubber goods and erasers;
- (viii) Rubber and articles made of paper;
- (ix) Perfume, Toilet waters and essential oils;
- (x) Raw – jute;
- (xi) Tinned and preserved provisions, condensed milk and milk powder;
- (xii) Liquer other than Beer;
- (xiii) V.N.E. oils;
- (xiv) Petroleum products;
- (xv) Pre-recorded cassettes (Audio/Video);
- (xvi) Boats and Launches (other than those meant for departmental appropriation);
- (xvii) Electronic watches, time pieces and clocks and parts thereof.

(c) CATEGORY – III : Goods to be disposed of immediately after adjudication, if unclaimed / abandoned.

Items which are liable to rapid depreciation in value on account of the fast change in technology or designs or introduction of new models, etc are included in this list. Such goods, if unclaimed/abandoned should be disposed of immediately after adjudication.

- (i) Electronic goods such as TV Sets, VCRs, VCPs, Tape Recorders and their combinations, music systems, Calculators, etc.
- (ii) Electronic components like Diodes, transistors, Integrated circuits light emitting diodes etc.
- (iii) Wrist watches, Time-pieces and clocks – movements and parts thereof (other than electronic).
- (iv) Hypodermine needles and syringes;
- (v) Costume – jewellery;
- (vi) Textiles and ready-made garments;

(d) CATEGORY – IV : All other goods

All other goods not listed under the above three categories are brought under this category. Disposal of goods falling under this category may be effected after completion of all due formalities.

[M.F.,D.R., Letter F. No. 711/31/83-LC (AS) dt.22-5-1984.]

PROCEDURE UNDER SECTION 110 (1B) OF THE CUSTOMS ACT, 1962

Section 110 (1A) stipulates that the Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine.

Notification No. 36/86 Cus dt.5.2.1986 as amended from time to time specifying good for the purposes of sub sec. (1A) sec. 110 of the Act is reproduced below: -

Seizure of Perishable or Hazardous Goods – Section 110 (1A) of Customs Act. – In exercise of the powers conferred by sub-section (1A) of section 110 of the Customs Act, 1962 (52 of 1962), the Central Government, having regard to the perishable nature, depreciation in the value with the passage of time, constrains of storage space and valuable nature, of the goods, mentioned in the Schedule hereto annexed, hereby specifies the said goods for the purposes of that sub-section.

THE SCHEDULE

1. Liquors;
- 1A. Photographic Films;
- 1B. Patent or Proprietary medicine; i.e., any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in, human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a Pharmacopoeia or Formulary;
2. Primary cells and primary batteries including re-chargeable batteries;
3. Wrist watches including electronic wrist watches; watch movements, parts or components thereof;
- 3A. Zip fasteners;
4. All electronic goods including television sets, Video Cassette Recorders, Tape recorders, calculators, components, and spares thereof including diodes, transistors, integrated circuits, etc.;
- 4A. Gold in all forms including bullion, ingot, coin, ornament, crude jewellery.
- 4B. Silver in all forms including bullion, ingot, coin, ornament, crude jewellery.
5. Dangerous drugs and psychotropic substances;
6. Conveyance;
7. Man-made yarn and fabric; and
8. Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
9. Currency, Indian and Foreign.
10. Diamonds, precious and semi-precious stones.
11. Ball Bearings;
12. Cellular Phones.

[M.F. (D.R.) Notification No. 31/86-Cus., dated 5-2-1986 as amended by Notifications No. 42/89 (N.T.), dated 30-6-1989; No. 7/93-Cus. (N.T.), dated 25-1-1993; No. 10/95-Cus. (N.T.) dated 1-3-1995; No. 12/96-Cus. (N.T.), dated 11-3-1996; No. 72/97-Cus. (N.T.) dated 22-12-1997 and No. 90/98-Cus. (N.T.), dated 12-11-1998.]

Sub Sec. (1B) of Sec. 110 of the Act lays down procedure to be followed in case goods specified above have been seized.

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

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

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

Sec. 52 (a) of the N.D.P.S. Act, 1985 is analogous to Sec. 110 (A) of the Customs Act, 1962. For details, see Chapter on “Narcotic Drugs”.

Before passing the order to dispose of the seized property notice to the person from whom the property was seized by the custom authorities is necessary. – It is not open to the Customs Department to contend that the application moved under Sec. 110 (1B) of the Customs Act, with implicit object of disposal of good in exercise of the powers under Sec. 110 (1A) of the Customs Act, can be disposed by the Magistrate without notice to the accused or any other person from whom goods may have been seized. The order passed by the learned Metropolitan Magistrate without notice to him, on application under Sec. 110 (1A) of the Customs Act, was not sustainable, because it stands vitiated owing to the lapse committed in not affording opportunity of hearing, or showing case against such an application being allowed.[I. P. Punjabi v/s Union of India (1990)].

Precautions to be taken before Action under Sec. 110 (1 A)

1. Before action under Sec. 110 (1A) is initiated, a written notice to the concerned party shall be given with a clear 15 days notice.
2. All cases of goods notified under Sec. 110 (A) shall be processed for disposal under Sec. 110 (1A) on completion of a period of two months from the date of their seizure. The process of seeking sanction of the Magistrate whenever needed shall be completed within a month thereafter.
3. However, the aforesaid instructions in para (2) above should not be followed in cases where the party claims legal ownership of the goods and requests for their release. In such cases, since the issue relating to title of the goods has not yet been adjudicated upon by the competent adjudicating authority, attempt should be made to expedite the investigation and adjudication proceedings. A decision regarding disposal of the goods under Sec. 110 (1A) should be taken in such cases immediately on completion of the adjudication proceedings.

4. There may be instances where the seized goods are of highly perishable nature and may not have remaining shelf life even of three months time which is required in terms of para (2) above. In all cases, the file may be processed and put up for seeking approval to dispose of the goods under Sec. 110 (1A) immediately after the seizure has been affected and preliminary investigation are over.

5. The fact of the goods having been disposed of should be clearly reflected in the Show Cause Notice so that the adjudicating authority as well as the appellate authority pass appropriate orders in this regard. In cases where the action under Sec. 110 (1A) is initiated after issue of Show Cause Notice, an addendum shall be issued immediately after the disposal of goods to indicate the fact of disposal.

6. After the disposal orders have been passed in terms of Sec. 110 (1A) and the goods disposed of accordingly, appropriate entries should be made in adjudication file as well so that at the time of adjudication, the adjudicating authority is aware of the goods having been disposed of and does not give an option of redemption to the party since no goods exists for exercising such an option.

[Excerpts from Standing Order No. I /99 dt.16.7.99 issued by Mumbai (Prev.) Commissionerate]

DESTRUCTION OF GOODS

In the procedure for the disposal of confiscated goods prescribed vide Board's circular letter No. 100/102/55-LC dt.6-12-55 the designation of the authorities competent to order destruction were not specified. It has now been decided to delegate full powers to the Commissioner of Central Excise and Land Customs to order destruction of goods seized under the Land Customs Act and Sea Customs Act under intimation to the Board. The powers of Asstt. Commissioner in this respect will be up to Rs.250/-. In addition, goods like obscenities, substandard drugs, plants, seeds or bulbs, Chinese Provisions which must normally be destroyed as well as goods unfit for human consumption, or those which might enable spurious use etc, could be authorised to be destroyed under orders of the Asstt. Commissioners.,

2. It has been further decided that all such destruction should be supervised as follows:

Goods up to a value of Rs.500.00	Destruction to be supervised by a Dy. Supdt. of Central Excise.
Goods exceeding Rs.500/- but not exceeding Rs.1000/- in value	Destruction to be supervised by a Supdt. of Central Excise.
Goods exceeding Rs.1000/- in value	Destruction to be supervised by an Asstt. Commissioner.

[Board's letter F. No. 30/3/58-LCI dt.23.9.59]

The instructions contained in the Central Board of Revenue's letter No. 30/3/58-LCI dt.23.9.59 (Sl. No. 15) will apply mutatis mutandis to the destruction of goods in all the Custom Houses also. Reference to the Dy. Supdts of Central Excise, Supdts of Central Excise and Asstt. Commissioner in the appended letter should be deemed to be reference to preventive Inspector, Preventive Chief Inspector and Asstt. Commissioner of Customs respectively.

[Board's letter F. No. 11/4/59-Cus. IX dt.27.11.59]

DISPOSAL OF DRUGS & MEDICINES

The Drugs Controller (India), Directorate General of Health Services, New Delhi has been consulted by the Ministry regarding disposal of seized/confiscated drug formulations.

2. Drug formulations would ordinarily fall in two categories. The first category would consist of such seized/confiscated drug formulations which are labeled in accordance with the provisions of the drugs and Cosmetic Act and Rules framed thereunder. The Drug Controller (India) has advised that if the samples drawn from the seized/confiscated consignments of such formulations are found to be of standard quality then the goods may be released for use in hospitals only.

3. The second category would consist of seized/confiscated formulations which are not labeled in accordance with the provisions of the Drugs and Cosmetics Act and Rules made thereunder. The Drugs Controller (India) has opined that such formulations would be deemed to be "mis-branded" drugs under this Act. Further, it would ordinarily not be possible to relabel such products as the information to be given on the label would have to be provided by the manufacturer. He has, therefore, advised that such seized/confiscated drug formulations falling in the category of "mis-branded" drugs should be destroyed.

4. It has, therefore, been decided that seized/confiscated drug formulations should be disposed of in accordance with the advice of the Drugs Controller (India) as stated above. In this connection, attention is invited to Ministry's instructions No. 545/1/78-LCI, dated 21.12.1978 in which it was emphasised that the Assistant Drug Controllers should be consulted without fail at different stages from the time of seizure till disposal particularly in regard to identification of the medicine/drug, its physical condition, quality and valuation. Further, that a certificate should be obtained from the Competent Authority for ascertaining whether the medicine/drug in question was damaged or deteriorated and also whether it was fit for human consumption. It is again reiterated that the State Drug Controllers/Zonal and Port Officers of the Drug Controller (India) should invariably be consulted as above in the case of seized/confiscated drug formulations and action to release them to hospitals or to destroy them, as the case may be, should be taken only on the advice given by these authorities.

[M.F.,D.R., Letter F. No. 549/8/80-LCI dt.18.12.81]

DISPOSAL OF CURRENCY & OTHER MONETARY INSTRUMENTS

It has come to the notice of the Board that a uniform procedure is not being followed in all the Commissionerates of Customs and Central Excise for the realisation of the proceeds of the confiscated foreign currency, traveler's' cheques and bank drafts. It has also been observed that due to the long time taken in adjudicating cases involving seizure of foreign currency, traveler's cheques and bank drafts, the validity of travellers cheques and/or bank drafts expires, and difficulties are experienced in obtaining the credit against such documents. Such delays also afford opportunity to the concerned persons to receive the amount against the seized documents on the pretext of these having been lost or destroyed. The following instructions are accordingly issued to ensure uniformity in procedure and to avoid difficulties enumerated above:

i) As soon as traveler's' cheques and/or bank drafts and/or other instruments of exchange are seized, an intimation in the enclosed proforma No. 1 should be sent to the bank/Office of issue informing it of the seizure so that the person from whom these are seized may not obtain duplicates and claim cash against the cheques and drafts from the bank of issue on the pretext of the originals having been lost

some where. A copy of the intimation should also be sent to the office of the Reserve Bank of India through which the collection is eventually proposed to be made.

ii) Adjudication of the seized bank drafts and/or traveler's' cheques and/or other instruments of exchange should as far as possible be completed sufficiently ahead of the expiry of the period of validity of these documents which normally extends from 3 to 6 months from the date of issue.

iii) The confiscated foreign currency, traveler's' cheques, bank drafts and other instruments of exchange should be sent to the Reserve Bank of India immediately after the adjudication is completed for affording credit of the proceeds to the Govt. account. The confiscated currency and documents should be sent to the Reserve Bank of India alongwith necessary details as in the enclosed proforma No. II.

2. Normally there is no difficulty in getting early credit so far as foreign currency is concerned. In regard to the travellers' cheques and foreign bank drafts the credit can also be had immediately provided that (i) the documents are fully discharged i.e. duly signed by the person in whose favour these were issued and (ii) these are presented within the period of their validity. Most of the confiscated bank drafts and/or travellers' cheques do not however, contain discharge of the payees/beneficiaries and, as such cannot be encashed or credited in the Govt. account in the normal way. Under the procedure followed by the Reserve Bank of India, to send an intimation of credit in respect of the confiscated travellers' cheques and bank drafts which are not fully discharged within a period of 4 months from the date of receipt of the documents by them. If the intimation is not received within this period, the Commissionerate should remind the Reserve Bank of India to expedite the intimation. Wherever it is possible it would be worthwhile to obtain discharge of the payee/beneficiary on the confiscated documents since this will reduce the work of the Reserve Bank of India to a considerable extent.

3. It should, however, be noted that when the Govt. (i.e. the Customs Deptt) acquires title to cheques, hundis and such other negotiable instruments by operation of Law (i.e. by endorsement and delivery as required by Sec. 50 of the Negotiable Instruments Act), the Govt. is not entitled to the rights of a holder in due course thereof as defined in the said Act and therefore, the proceeds of such confiscated instruments could be realised as a matter of course from the foreign banks only if orders passed under Indian laws were binding on them. Even a suitable amendment of the Negotiable Instruments Act will not serve any purpose because that Act is also not binding on banks situated in foreign countries. In the circumstances, before realising the proceeds of these confiscated instruments from the foreign banks the Reserve Bank has to furnish an indemnity to the bank concerned guaranteeing the refund of the amount on the propriety of the payment being subsequently challenged by the drawer from one reason or other. The Reserve Bank in turn obtains an undertaking from the Commissioner of Customs concerned to refund the amount to the Reserve Bank on demand. Proforma No. II mentioned in para III above indicates the form in which this undertaking should be given by the Commissioner.

4. However, the Reserve Bank have stated that whenever they approach the Commissioner concerned for the refund of such an amount, all sorts of queries as to the propriety of the refund, the question of time-limit are raised by the Customs authorities and thus considerable time is taken to make the actual refund placing the Reserve Bank in an embarrassing position vis-à-vis the foreign banks and harming its reputation abroad. It should be clear from the facts stated in the foregoing para that the legal position regarding realisation of proceeds of confiscated cheques drawn on foreign banks is very weak and proceeds in these cases are realised only because the Reserve Bank acts as the agents of the Govt

and also given a proper indemnity to the paying bank. Therefore when the Reserve Bank approaches the Customs authorities for refund of the amount , there should be no question of challenging the propriety of the refund – claim and the amount should be refunded to the Reserve Bank forthwith.

5. No question of time-limit as envisaged in Sec 27 of the Customs Act, 1962, also arises here because that Sec is applicable only to refund of duty whereas in this case it is a refund of proceeds of a confiscated instrument which has been realised not strictly by the enforcement of any order passed by the Govt. but through mutual arrangement between the Reserve Bank and the paying Bank.

PROFORMA NO. I

INTIMATION OF THE SEIZURE OF CREDIT INSTRUMENT CURRENCY

1. Description of the credit Instrument / currency.
2. Full name and address of the person / bank drawing instrument
3. Name and address of the drawee.
4. Name and address of the payee.
5. Authority under which seized.
6. Action contemplated.

NB: The bank of issue of the credit instrument may please take note of the above seizure and any request for issue of duplicates and claims for cash against the above noted instrument should not be acceded to without prior reference to this Custom House. Undertaking of further commitments in respect of the above instrument with the drawer/payee may please be deferred until the confiscation proceedings contemplated are completed.

(Seal)

Customs Officer.

Address of the issue/drawing bank.

2. Copy to Manager, Reserve Bank of India, Public Accounts Deptt,

PROFORMA NO II

From

The Commissioner of Customs / Central Excise

To

The Reserve Bank of India

Subject: Confiscation of credit instruments/currencies under the Customs Act, 1962 and the Foreign Exchange Regulation Act, 1973.

.....

Dear Sir,

We have caused to be handed over to you for collection and credit to Government account Travellers' cheques/Bank drafts/Currencies as per details given in the attached statement.

2. These cheques/drafts currencies are being hereinafter referred to as "the cheques".

3. We hereby represent and warrant that we are duly entitled to arrange for the collection (for and on behalf of the President of India) of each of the cheques by virtue of the cheques having been duly confiscated by us in exercise of the powers conferred under the Customs Act and Foreign Exchange Regulation Act. We hereby request that the aggregate of the face amounts of the cheques be collected and credited to Govt. account.

4. In order to induce you to comply with our above request we hereby agree to indemnify and hold THE RESERVE BANK OF INDIA harmless and indemnified from any and all claims, demands and/or actions which may be asserted or instituted against it by any third party(ies) with respect to all or any of the cheques, and at any time upon its request, to appear and defend against each and every such claim, demand and/or action. In any event, we will pay any judgement(s) which may be obtained against said Bank and will reimburse it for any and all expenses which may be incurred by it in connection therewith.

Yours faithfully,

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For and on behalf of the President of India.

[Board's letter F. No. 22/22/62 LC II dt.8.5.64]

Reserve Bank of India vide their letter ECS 39/122 A-88/89 dated 20.7.88 have conveyed their approval to State Bank of India receiving the foreign currency from Customs and crediting the sale proceeds to Customs account subject to the following conditions:

- i) In case State Bank find that some of the confiscated currencies are not encashable and Customs authorities desire to have those currency destroyed, necessary permission from Reserve Bank of India, Exchange Control Deptt., should be obtained.
- ii) If an occasion for refunding in foreign exchange part or full value of confiscated foreign currency, already credited to Govt. account arises, Customs will arrange to obtain, through State Bank of India, prior approval of Reserve Bank for the release of foreign exchange.

SEIZED GOODS – VALUATION OF

Uniformity in Prices – Factors behind formation of Joint Prices Committee

In order to secure uniformity in prices changed for the same type of commodities, it is desired that there should be more co-ordination between not only the Central Excise Commissionerate and Custom House in the same town but also between them and sub-ordinate formulation at other outside places in the same jurisdiction.

[Extract from Board's letter F. No. 30/29/62-LCI dt.18.5.63]

It is necessary to ensure that there is no wide disparity between the value of the goods as at the time of seizure and at the time of final disposal merely because of an unrealistic high valuation of the goods at the time of seizure and the department is not faced with the responsibility to account for the difference. There are also cases where goods seized are ultimately ordered to be restored to the owner of the goods but before issue of such orders, for one reason or other the goods have been disposed of. In such cases unless the valuation has been done realistically in the earlier stage the department will be hard put to make the sale proceeds actually realised being acceptable to the owner of the goods. For this reason as well, a realistic fixation of the price at the time of seizure with reference to the prevailing market prices, becomes important.

[Ministry's Letter F. No. 30/69/67-LC dt.23.9.67]

Disposal of confiscated, detained and uncleared goods – fixation of fair and retail prices

(1) The pace of disposal of confiscated, detained and uncleared goods has been engaging the attention of the Board for some time and after a careful analysis of the factors that have contributed towards delay in the disposal of goods either through public auction or retail sales in departmental retail shops, the Board is of the view that one of the major reasons for delay is the unrealistic fair price/retail price fixed.

2. It is no doubt true that as public servants, Customs officials are answerable to various authorities for every action of theirs and in so far as disposal of confiscated goods are concerned they should not expose themselves to the possibility of allegations of collusion, favouritism or underselling being levelled against them. All the same it is equally incumbent on them to ensure that goods confiscated to Government are disposed of at the earliest opportunity and at the best possible price so that the interests of the Govt. are adequately served.

3. The earliest stage of valuation of goods that are ultimately confiscated being at the time of seizure/detention of goods, it is necessary to ensure correct appraisal of the market value of the goods even at that stage. The tendency, if any, to inflate the value of seized/detained goods on account of extraneous considerations, should be severely curbed. This is necessary not merely to avoid the book value of the goods in the custody of the Deptt. totalling up to an unrealistic figure but also to remove one of the major impediments in arriving at a reasonable price for purpose of disposal.

4. While the "fair price" of goods ripe for disposal through auctions should continue to be fixed with reference to instructions contained in Board's letter F. No. 4/63/57- Cus. III/Cus. IV dt.7.9.61 (CBR Bulletin Cus Tech Vol VII No. 3 P 325) due considerations should be given to the size of the consignment, condition of the good, type of packing etc in arriving at the "fair price". Similarly in fixing the quantum of "discount" representing the margin of profit for the buyer at the auction on resale of the goods, the fact that no warranty as to quality is attached to the goods, sold should be given its due importance. Once all these aspects are taken note of and a realistic fair price is fixed, normally there will be little scope for withdrawal of lots once offered in auction sales on the sole ground of lack of proper bids.

5. Now that some months have elapsed since revision of the par value of the rupee, it is reasonable to assume that the effect of devaluation will be fairly reflected in the retail market price of consumer and luxury articles offered for sale to consumers through departmental retail shops. The retail price of such

articles may therefore be fixed by conducting market enquiries to ascertain the price at which good of like kind, quality, shape, design, etc are available in the retail market and deducting therefrom a "discount" representing the compensation for the buyer in the retail shop for (i) absence of guarantee regarding quality, workmanship and the like, (ii) lack of provision for after – sale – service facilities, and (iii) the fact the goods may not always be in their original packing and condition. The quantum of such discount may be varied depending upon whether they are fast selling popular brands or otherwise.

[M.F., D.R., Letter No. 30/51/66-LCI dt.7.1.67]

(2) Reference is invited to Board's letter F. No. 30/29/62-LC I dt.18.5.63. It has been noticed that retail prices of similar type and quality of confiscated luxury consumer articles to be sold at the Departmental retail shops, widely differ in different Commissionerates and Custom Houses. While some variation in the market prices of similar articles at different centres and at different periods, is understandable, there cannot be wide variations if marked prices are correctly ascertained. In order to avoid such wide variations the Board desire that the list of retail prices fixe at Bombay, Calcutta and Madras should be circulated to all other Commissionerates as and when they are ready so as to serve as a guide in fixing retail prices. If a Commissioner finds, that the price for a particular article indicated in the list received from Bombay/Calcutta/Madras is too high or too low the matter should be looked into further so that the retail price can be fixed in a realistic manner.

2. It has also been reported that at times the prices fixed for the same type and quality of goods by the Customs and Central Excise Departments whose Headquarters are the same (e.g. Bombay, Calcutta, Madras) are not identical. I am to reiterate the instructions contained in Board's letter No. 30/29/62-LCI dt.18.5.63 and to request that the Commissioners who are having their headquarters at the same place, should ensure that there is close consultation and coordination between them so that the retail prices fixed for similar type and quality of goods to be sold in retail at the same city, are identical .

[Board's Letter F. No. 30/72/67-LC I dt.10.10.67]

DISPOSAL OF VALUABLES

1. Cut & polished diamonds, rough and uncut diamonds, precious and semi-precious Stones – procedure for outright sale directly by Customs in open auction: -

It has been decided by the Government to dispose of confiscated cut & polished diamonds, rough & uncut diamonds, precious & semi-precious stones through Public auctions.

The following procedure has been devised for the disposal of confiscated cut & polished diamonds, rough & uncut diamonds, precious & semi-precious stones which are ripe for disposal: -

- (a) The sale of confiscated diamonds, precious and semi precious stones can be centralized in Mumbai under CC(P) Mumbai. Since out of the total stock of these items stocks valued at Rs.21.30 Crores is at Mumbai.

- (b) Since the diamonds, precious stones & stone are being offered to the public for the first time in India, utmost care should be exercised to get the best possible price after proper sales promotion giving wide spread publicity, both in India and abroad.
- (c) The venue & date of auction should be decided well in advance to allow maximum participation.
- (d) The services of a reputed auctioneering firm may be taken to conduct the auction. The auctioneer should be selected after ascertaining his past performance in conducting auctions, expertise in auctioning diamonds, precious stone, jewellery etc. The contract between auctioneer and the department should also include responsibility of the auctioneer to advertise the goods/auction in at least 4 national news papers, including wide spread publicity in a vernacular language paper. The department should however be free to use other form of media, if it so desires to give wider publicity, in India and abroad.

The terms & conditions for the auctioneer would be decided by Chief Commissioner of Customs, Mumbai.

- (e) Entire stock of such items can be segregated into identifiable 'lots' by the office of CC(P) Mumbai either on the basis of seizure case or any other practical and discernible categorization. Each 'lots' must be properly photographed. He photographs to it being used in the Catalogue which should be prepared for the purpose of giving wide publicity & also for conducting the auctions.
- (f) An Entry fee or Participation fee of Rs. One lakh, by D.D. may be prescribed/charged from each prospective bidder. Only on payment of the entry fee the bidders would be eligible to examine and to bid in auction.
- (g) The 'lots' can be allowed for examination by prospective bidders by following a strict procedure to ensure there is no substitution. Procedure shall consist of application fee giving details of the bidder (address, name, Telephone No., Income tax PAN number, details of entry fee payments etc.), examination by only one bidder at one time who can bring one additional person for construction & expert examination. Examination shall be in presence of AC (Disposal). Jewellery appraiser of deptt. and the warehouse Supdt.
- (h) Reserve Price shall be fixed by a Pricing Committee consisting of Addl. Commissioner of Customs, Asstt. Commissioner of Customs, Jewellery Appraiser, an eminent person in Commerce/trade in such items and a Govt. approved Valuer in respect of these items. The selection of persons for pricing committee shall be by Chief Commissioner of Customs, Mumbai on the recommendation of Commissioner of Customs, Mumbai. To ensure Secrecy the reserve price list should be kept sealed with CC(P) to be handed over to the Asstt. Commissioner (Disposal) supervising the auction only on the day of the auction.
- (i) The reserve price may be fixed taking into consideration the value of seizure, escalation in value of these goods over the years, present market demand and existing restriction in free import of these goods.
- (j) Supervision of auction should be by the Asstt. Commissioner (Disposal) or any other AC nominated by CC(P) for this purpose. In addition the auction should be attended by Commissioner of Customs (Prev.). Addl. Commissioner (Prev.) and Senior Officers of Customs to ensure maximum fairness. The supervising officer shall have the discretion to withdraw from the sale 'lots' for which no satisfactory bids are received. The reserve price would however be known only to the Asstt. Commissioner supervising the auction or to the auctioneers, to enable initiation of bids.

(k) Considering high value of goods a record of all the highest bids for each lot at every auction should be maintained. The record of bid list should mention name of bidder & value/amount bid for the lot in question.

(l) The highest bidder shall on fall of the hammer deposit 25% of the value of the bid as earnest money on the spot. The bidder will be informed about the acceptance of rejection of bid within 48 hours of completion of the auction proceedings by way of listing of successful bids on the Notice Board of the Customs House at Mumbai.

In case of rejection of bid the rejection letter will be issued and entry fees and earnest money collected from the bidder will be refunded to the party within two weeks time. The successful bidder will be required to pay the balance amount and take delivery of the goods within 3 days of the receipt of the communication regarding acceptance of their bids. On sufficient cause being shown, this period can be extended by the Commissioner of Customs (Prev.), Mumbai by not more than 10 days. If a party fails to pay the balance amount and take delivery of the goods within the stipulated period as above, the Earnest Money shall be forfeited.

(m) Revision of prices: Since the disposal of diamonds etc., may be spread over a period of time, prices fixed at a time may not hold good subsequently and this may call for periodic revision. The reserve prices so fixed shall be liable for revision once in three months or such time as is considered reasonable by the Chief Commissioner of Customs, Mumbai.

Available stocks of cut & polished diamonds, rough & uncut diamonds, precious & semi-precious stones which have been confiscated & can be disposed off may be transferred to Commissioner of Customs (Preventive) Mumbai immediately.

[Ministry's Letter F. No. 711/56/90 CUS (AS) dt. 16.07.97]

DISPOSAL OF GOLD/SILVER

The Government of India has permitted sale of seized/confiscated gold in bullion form through the Customs retail shop at Custom House, Mumbai. The scheme will come into effect from 01.02.1994. The sale will initially be restricted to gold in biscuit or similar forms, bearing marks indicating foreign origin and with clear indication of the purity on the gold piece itself.

The sale will be subject to further conditions as follows :-

- (i) The gold will be sold in 'as is where is' condition.
- (ii) The sale will be as per weight of each piece of gold i.e. the piece of gold should not be cut or otherwise varied in size.
- (iii) The price shall be fixed every day based on the closing bullion exchange price of the previous day of gold of the same purity at Mumbai less 1% discount. Where such price for the same purity is not available, it can be worked out on the basis of such price recorded for the nearest purity, by appropriate calculations : (e.g. 995 to 999).
- (iv) The minimum quantity of sale will be 1 Kg. The maximum quantity of gold sold to any single person on firm should not exceed 5 Kg. on any day.
- (v) All sales of gold shall ordinarily be against a banker's cheque. However, if there is some difference between the value of gold bought and face value of banker's cheque tendered

by the purchaser, the balance amount may be accepted by cash remitted into Customs House Treasury or Scheduled bank counter in the Customs House.

- (vi) Gold shall be sold only to such individuals/firms etc. who possess a Permanent Account No. allotted by the Income Tax authorities. The purchaser should also indicate the Assessment Office/Rang where he filed his income tax returns.
- (vii) A representative of Central Revenue Control Laboratory (CRCL) and officer nominated by Commissioner of Customs (Prev.), Mumbai shall certify the weight and purity of each piece of gold to be sold. The weight of each biscuit/bar/ingot should be entered in records upto the 2nd decimal of gms, e.g. 1101.01gms, 1102.59 gms.

The Custom House may provide for a suitable and simple declaration form to be filed by the purchaser and also maintain a register to enable monitoring of the sales on day-to-day basis. All sales made during a week shall be reported to the Chief Commissioner of Income Tax, Mumbai, indicating the particulars of individual sales, the name of the purchaser, with address, I.T. Permanent A/C No. , quantity of gold sold and value thereof and the Sl. NO. in the Register. A weekly report may be sent to the Board on the working of the Scheme showing the number of purchasers, the total quantity of gold sold and the value realized.

The Scheme of sale of confiscated gold can now be sold through custom retail outlet's at Delhi, Calcutta and Chennai in addition to the Mumbai on the pattern of sale of confiscated silver. On the pattern for sale of confiscated silver the sale price for gold at all centers of sales would be the previous day's closing bullion exchange price of the gold of the same purity at Mumbai less 1% discount.

[Ministry's Letter F.No. 711/164/93 Cus(AS) dtd. 17.11.1994 and dt. 12.03.1996]

The Govt. has decided to permit sale from retail outlets at Jaipur, Cochin and Bangalore also for the stock of gold and silver bullion.

[Ministry's Letter F.No. 711/164/93 CUS (AS) dt. 03.11.97]

Procedure to be followed for sale of gold :

The quantity of the gold ripe for disposal (in Biscuit form) available with the Custodian (Strong room) shall be transferred to the Custodian i/c. Retail shop immediately, and the same shall be stored in an almirah,

At the start of each day, the custodian will hand over gold to the Disposal Officer (Gold), under receipt in the form annexed (receipt to be serially numbered), which will be kept by the Disposal Officer (Gold) in his safe provided for this purpose.

The gold-biscuits remained unsold at the end of the day will be returned to the custodian under receipt.

The gold ripe for disposal received from the outside Commissionerates/Agencies shall henceforth, be received directly by the Custodian Retail Shop and (not by the Custodian (Strong room) stored separately. Outstation stocks shall be received in open form after satisfying the weight and purity of each bar received.

A register in the following proforma shall be maintained by the Disposal Officer (Gold) and the same shall be put up to A.C. (Disposal)/Addl. Commissioner (Prev.) everyday for their perusal.

<u>Date</u>	<u>Sl. No.</u>	<u>Name of the Purchaser</u>	<u>Qty. of Gold sold (kg.)</u>
1	2	3	4
<u>Price of the Gold (Per kg.)</u>		<u>Sale Value (Rs)</u>	<u>Amount of A.E.S.T. (Rs.)</u>
5		6	7
<u>Total amount (5+6)</u>		<u>Signature of the Disposal Officer</u>	
8		9	

Supdt. (Disposal) Warehouse will ensure that the weekly report to be sent to the Chief Commissioner of Income-tax, Mumbai as well as the weekly report to the Board on the working of the scheme as prescribed in para 3 of the Board's letter F.No. 711/164/93-CUS (AS) dt. 17.11.94, is prepared and put up by every Monday morning.

The weight and purity of each gold biscuit to be sold shall be suitably certified as required vide para 2(vii) of the Board's letter as referred to above. For this purpose, a register in the following proforma should be maintained:

Register regarding the certification of weight and Purity of the Gold

<u>Date</u>	<u>No. of Gold Biscuits</u>	<u>Marks & No.</u>	<u>Purity</u>	<u>Weight (in gms upto 2 decimal point)</u>
1	2	3	4	5
<u>Signature of Supdt.</u>		<u>Signature of representative of CRCL.</u>		
6		7		

A register of fixation of gold prices, on the basis of closing Bullion prices of the previous day of gold of the same purity, shall be maintained and the prices will be got approved by Asst. Commissioner (Disposal), before start of the sale of gold on every day.

Each gold-biscuit to be sold will be actually weighed before delivery of the same, and if there is any discrepancy with the weight indicated on the gold-biscuit, the same shall be brought to the notice of Asst. Commissioner (Disposal) immediately. If Asst. Commissioner (Disposal) is not available, it should be brought to the notice of Addl. Commissioner.

A cashier/auditor posted from the Custom House, shall sit in the retail shop to attend work relating to receipt of Banker's cheque/Cash and every transaction before delivery shall be audited. Only after obtaining delivery order from the cashier/auditor gold biscuits shall be delivered to the buyers.

OFFICE OF THE SUPDT. OF CUSTOMS (PREVENTIVE)

Sl. No.

Date :

Received a quantity of ----- pieces of Gold Biscuits from the Custodian/Disposal Officer(Gold).

Countersigned by
Supdt.

(Signature of Recipient)
NAME OF FULL WITH DESIGNATION

DISPOSAL OF CONFISCATED GOLD & SILVER ORNAMENTS JEWELLERY BY CUSTOMS

The Government of India has not permitted sale of confiscated stocks of gold & silver ripe for disposal which are in ornament/jewellery form. It has also been decided to dispose of the stock of gold in biscuit or similar form but do not bear any marks indicating foreign origin and indication of purity on the gold piece. The sale will be subject to further conditions as indicated below:

(I) Disposal of fine jewellery, gold ornaments & silver ornaments

(a) In respect of fine jewellery/gold & Silver ornaments it has been decided to dispose these jewellery items by way of open auctions at the following centres – Delhi, Mumbai, Calcutta and Chennai.

(b) Since the confiscated gold jewellery/ornaments are being offered to the public for the first time in India utmost care should be exercised to get the best price after giving widespread publicity. The venue and date of auction should also be decided well in advance to allow maximum participation of public.

(c) The services of a reputed auctioneering firm may be taken to conduct the auctions. Auctioneering firm should be selected after ascertaining its past performance in conducting jewellery etc. The contract between department and auctioneer to advertise the goods under auction in at least 4 national news papers including widespread publicity in a vernacular language paper. The department should however be free to use other forms of media if it so desires for wide publicity both in India and abroad. The terms for the auction should be decided by the Chief Commissioner of Customs & Central Excise at each of the above referred centres.

(d) Entire stock of such items should be segregated into identifiable 'lots' either on the basis of the seizure case or in any other practical and discernible categorisation. Each 'lot' must be properly photographed. The photograph would serve as a record in addition to it being used in the catalogue which should be prepared for the purpose of giving wide publicity and also for conducting auctions.

(e) The entry fee or participation fee of Rs.10,000/- (Rs Ten thousand only) by demand draft may be prescribed/charged from each prospective bidder. Only on payment of entry fee the bidder would be eligible to examine and bid in auction. The 'lots' can be allowed for examination by prospective bidders by following a strict procedure to ensure there is no substitution. Procedure shall consist of application fee in prescribed forms giving details of bidder (name, address, telephone, I.T. PAN number, details of entry fee payments etc.). Examination by only one bidder at a time who can bring one additional person for

consultation & expert examination may be allowed. Examination shall be in presence of AC (Disposal), Jewellery appraiser of department and the warehouse Supdt.

(f) Reserve price shall be fixed by a Pricing Committee consisting of Addl. Commissioner (Customs), AC(Customs), Jewellery appraiser, an eminent person in commerce/trade in such items and a govt. approved valuer in respect of these items. The selection of persons for Pricing Committee shall be by the Chief Commissioner of Customs & Central Excise on the recommendation of Commissioner of Customs. To ensure secrecy the reserve price should be kept sealed with Commissioner of Customs and be handed over to the Officer supervising the auction only on the date of auction. The reserve price may be fixed taking into consideration the value of seizure, escalation in value of these goods over the years, present market demand and existing restriction in free import of these goods.

(g) Supervision of auction should be by Asstt. Commissioner (Disposal) or any other A.C. nominated by Commissioner of Customs for this purpose. In addition the auction should be attended by Commissioner of Customs, Addl. Commissioner (P) and other senior officers of customs to ensure maximum fairness. The supervising officer shall have the discretion to withdraw from the sale 'lots' for which no satisfactory bids are received. The reserve price would however be known only to the officer supervising the auction i.e., Asstt. Commissioner to enable initiation of bids.

(h) Considering high value of goods a record of all the highest bids of each 'lot' at every auction should be maintained. The record of bids should mention the name of highest bidder and the value/amount bid for the lot in question.

(i) The highest bidder shall on the fall of the hammer deposit 25% of the value of the bid as earnest money on the spot. The bidder will be informed about the acceptance or rejection of the bids within 48 hours of completion of auction by way of listing of successful bids on the notice board of the custom house.

In case of rejection of bid the rejection letter will be issued and entry fees and earnest money collected from the bidder will be refunded to the party within two weeks time.

(j) The successful bidder will be required to pay the balance amount and take delivery of the goods within three days of the receipt of the communication regarding acceptance of their bids. On sufficient cause being shown this period can be extended by the Commissioner of Customs by not more than ten days. If a party fails to pay the balance amount and take delivery of the goods within the stipulated period as above, the earnest money shall be forfeited.

(j) Revision of Prices: - Since the disposal of jewellery/ornaments may be spread over a period of time the prices fixed may not hold good subsequently and this may call for periodic revision. The reserve price so fixed shall be liable for revision once in 3 month or till such time as may be thought reasonable by the Commissioner of Customs.

(II) Studded jewellery / ornaments

These include fine gold and silver Jewellery ornaments studded with diamonds and precious and semi precious stones.

The procedure prescribed under para (I) above would apply for ornaments/jewellery which are studded with diamonds, precious and semi precious stones. However in view of the instruction F. No. 711/56/90-Cus (AS) dated 16.7.97 prescribed for outright sale of cut and uncut diamonds, precious and semi precious stones in open auction to be conducted at Mumbai only all such gold and silver ornaments/jewellery, which are studded with diamonds, precious and semi precious stones may be transferred immediately to Commissioner of Customs (Preventive), Mumbai.

The gold and silver ornaments of this category would thereafter be sold as per the prescribed procedure in open auction at Mumbai alongwith diamond, precious & semi precious stones. The reserve

price fixed should take into account the value of gold & silver content; the value of the stones & diamonds in addition to value for workmanship.

(III) Crude jewellery, gold & silver

As regards crude jewellery, gold & silver pieces and unmarked gold & silver in bullion form etc. which do not have standard weight and purity specification, it has been decided that these may be considered for conversion into standard gold bars and silver bars by Govt. of India Mint. Accordingly all such crude jewellery, unmarked gold and silver bullions and other forms of gold and silver which are not categorised as fine jewellery may be immediately transferred to Commissioner of Customs (Preventive), Mumbai.

CCP Mumbai would get the conversion of these goods into Standard gold bars and silver bars through Govt. of India Mint, Mumbai on payment of the prescribed fee. Thereafter the standard bars would be sold in retail sale at the Customs retail outlet of Mumbai itself.

All efforts must be made to ensure immediate disposal of gold and silver ornaments as per the procedure given above. Commissioner (Preventive Operations) Lok Nayak Bhawan, New Delhi is requested to monitor the progress on a monthly basis & submit report to the Board.

[Ministry's letter F. No. 711/21/97 dt.15.10.97]

Disposal of confiscated Silver through Customs Retail Shops

It has been decided by the Government to dispose of confiscated silver in primary/Bullion form through Customs Retail Shops.

The following procedure should be strictly adopted for disposal of confiscated silver: -

- (a) silver bricks should be disposed of in as-is-where-is condition;
- (b) the stock will be sold as per the weight of each brick as seized and it will not be cut or otherwise varied in size and shape;
- (c) the price should be fixed every day based on closing local bullion exchange price of the previous day, minus 5% discount.
- (d) the sale will be effected to start with in the four metropolitan cities namely, Bombay, Delhi, Calcutta and Madras at the Custom Houses. Based on our experience, it may extended to other cities;
- (e) the existing stock of confiscated silver in the interior Commissionerates should be sent to the nearest zonal metropolitan city for disposal,
- (f) the maximum quantity that can be sold to a person will be 105 kgs enhanced to 210 kgs vide Letter No. 711/100/93 Cus (AS) dt.4.2.94
- (g) all sales will be against cash remitted in Custom House Treasury/Bank counter in the Custom House and
- (h) all other conditions, as may be, will apply to the sales, as applicable to other goods disposed of in the retail shops.

[Ministry's Letter F. No. 711/100/93-CUS (AS) dt.3.8.93.]

The Commissionerates are advised to strictly adhere to the following instructions: -

- (a) Henceforth all stocks of confiscated silver shall be disposed of by way of sale through Customs retail shops only.
- (b) Silver should be sold only to such individuals, firms etc. who are registered with the Income Tax Authorities as assesseees.

- (c) Initially, only such stocks of silver should be disposed of, which were seized prior to the introduction of Silver Import Scheme, i.e. prior to 8.3.93.
- (d) All sales of silver shall ordinarily be against a banker's cheque. However, if there is some difference between the value of the silver bought and face value of banker's cheque tendered by the purchaser, the balance amount may be accepted by cash remitted into Custom House Treasury, or scheduled bank counter in the Custom House.
- (e) The weight of each silver Ingot/brick should be entered in all the records up to the third decimal in Kg. e.g. 31.134, 30.867 etc.

[Ministry's Letter F. No. 711/108/93-CUS (AS) dt.10.8.93.]

Following further decisions have been taken for disposal of silver through Customs Retail Shops: -

- (a) Seized silver can also be disposed of by following the prescribed procedure u/s 110 (1A) of the Customs Act, 1962.
- (b) Sale of price of silver henceforth shall be fixed every day based on the closing bullion exchange price of the previous day of silver of the same purity at Bombay less 3% discount. Where such price for the same purity is not available, it can be worked out on the basis of such price recorded for the nearest purity at Bombay, by appropriate calculations.

[Ministry's Letter F. No. 711/100/93-CUS (AS) dt.4.2.94 & 12.12.94]

DISPOSAL OF ARMS & AMMUNITION

Disposal of confiscated Arms & Ammunition

The Board has decided that confiscated arms and ammunition should also be made available for sale to MPs and MIAs and the arms/ammunition be sold at fair price fixed by the Deptt.

[CBEC F. No. 549/86/73-LCI dt.2.11.74]

Sale of fire-arms to Departmental officers

(1) After careful review of the matter of sale of confiscated fire-arms of non-prohibited bore to Departmental officers it has been decided by Government in supersession of Ministry's earlier instructions F. No. 711/35/82-LC (AS) dated 17.6.83 as modified by the Ministry's letter F. No. 711/18/84-Cus (AS) dated 26.3.85 that –

- (i) the sale of non-prohibited bore weapons to the Departmental officers should be discontinued.
- (ii) confiscated weapons of non-prohibited bore may, in suitable cases, be loaned to executive Customs/Central Excise officers who require them for self-protection in the course of their work on condition that the weapons are returned by the officers to the Departments when no longer required or in any case on their retirement/superannuation.
- (iii) The requests received from officers who wish to obtain weapons on loan in accordance with (ii) above should be carefully screened by the Commissioners and forwarded with their specific recommendation to the DPO.

- (iv) The weapons will be loaned only to officers who possess the necessary arms licence, and not more than one weapon will be given to an individual officer.

[M. F.,D.R. letter F. No. 711/54/86-Cus (AS) dated the 30th Oct., 1987]

(2) Please refer this Ministry's instructions of even No. dated the 30th October 1987 on the above subject.

As per the revised Policy enunciated therein, confiscated weapons of non-prohibited bore may, in suitable cases, be loaned to executive officers of the Customs and Central Excise department who require them for self-protection in the course of performance of their duties on condition that the weapons are returned by the officers to the department when no longer required and in any case on their retirement/superannuation or their leaving the department for any reason whatsoever.

In order to ensure that a proper account is maintained in respect of the weapons that are given on loan in terms of the above policy, the following, instructions may be strictly adhered to: -

- (1) A remark should be made in the Service Book of the officer concerned to the effect that a non-prohibited bore weapon bearing numberhas been loaned to the officer.
This remark should be attested by the Head of the department.
- (2) The officer should give an undertaking in the proforma annexed. This undertaking should be kept in the custody of the controlling head of the department of the officer concerned.
- (3) A copy of this undertaking should be forwarded to the Directorate of Preventive Operations for record.
- (4) The Directorate of Preventive Operations should maintain a register which should clearly indicate the names of the officer to whom the weapon has been loaned, the date of superannuation of the officer and the number of the weapon. The 6 Monthly review of this register should be made by the Directorate of Preventive Operations and the result of the review submitted to the Member (Anti-smuggling) stating that in all cases where the officers have retired and left the department, during the period of the review the weapons have been resumed and taken back into stock.
- (5) As and when weapons are returned, the undertaking should be cancelled by the Commissioner concerned under intimation to the Directorate of Preventive Operations. Suitable entry should be made in the service book of the officer concerned regarding the resumption of the weapons and cancel the undertaking given by the officer. The Directorate of Preventive Operations should, on receipt of this intimation, enter the fact of resumption of the weapon in the register maintained by it and cancel the copy of the undertaking.
- (6) During his tours, the Director of Preventive Operations should inspect the Commissionerate record of the weapons loaned out and satisfy himself that in all cases where the loanee officer has retired/left the department the weapon loaned to him has been resumed.
- (7) Where a loanee officer has been transferred out of the Commissionerate the undertaking given by him should be transferred to his new Commissionerate along with the service records.

**DRAFT UNDERTAKING FOR LOANING OF NON-PROHIBITED BORE ARMS WEAPONS TO
OFFICERS OF CUSTOMS & CENTRAL EXCISE**

I.....son ofresident of
.....hereby undertake to abide by the following stipulations made by the Govt. of India
which may be changed or amended from time to time.

1. The loaned arms/weapons/ammunitions will be returned on my attending superannuation or voluntary retirement or resignation or dismissal from service or any other natural calamity whichever occurs earlier.
2. The Govt. of India is, and shall, continue to be the owner of the arms/weapons/ammunitions and that this is given purely on loan basis by the Govt. to me and that there cannot and shall not be any legal heir or successor or claimant for the loaned gun/weapon/arm/ammunition to me.
3. In case of loss or damage or theft or accident or any other natural calamity or act of nature, I undertake to pay full price/cost of the loaned/arm/gun/weapon/ammunition to the Govt. of India as determined by the Govt. of India.
4. I acknowledge that for purpose of recovery of the cost, the same shall be calculated on the basis of the price (CIF value) plus the rate of customs duty as fixed by the Govt. from time to time and at any particular given situation.

THE SCHEDULE

Description of weapon
 Maker's Name
 Description
 Sl. Number
 CIF Price Rs.

IN WITNESS WHEREOF the Mortgage or / Borrower has hereunto set his hand and Shri..... for and on behalf of the president of India has hereunto set his hand

* Signed by the saidin the presence of

1

2

(Signature of Witness)

.....

(Signature & Designation of the Borrower)

Signed by (name and designation)

.....

for and on behalf of the President of India in the presence of

1

2

(Signature of Witness)

.....

(Signature & Designation of the Office)

* Name & Designation of Borrower.

(3) The Government has accorded approval to the proposal for sale of confiscated ammunition for non-prohibitive fire-arms to the Customs Officers who possess necessary arms licences and fire-arms for their self protection.

The ammunition will be sold to the executive officers of Customs/Central Excise/Narcotics Department at a price equivalent to c.i.f. value. Sales Tax and other local taxes, if any, will also have to be paid extra.

The officers will be allowed to purchase 25 rounds of ammunition at a time subject to the number of rounds permitted in the arms licence.

The departmental officers already possessing fire-arms, on request, will also be allowed to purchase the ammunition subject to the number of rounds of ammunition referred to in para 3 above.

The ammunition may be sold to the officers after the production of valid arms licence and the fire-arms they possess.

[Ministry's Letter F.No. 711/27/85-LC (AS) dtd. 11.07.85]

Disposal of arms and ammunition to National Security Guards

This is to say that in addition to various existing modes of disposal of arms and ammunition, Govt. have decided that hence forth arms and ammunition of the description given below should first be offered to the National Security Guard (N.S.G.). The Director General/Inspector General, National Security Guard, Ministry of Home Affairs, East Block-5, R.K. Ruram, Delhi-110 066 should directly be informed immediately after the following weapons or any unusual arms are seized, under intimation to this Ministry:-

1. 9MM SMG
2. 9MM Pistols.
3. 12 Bore (Automatic)
4. AK 47 Rifles.
5. Senior Rifles (Bolt Action) (7.62/5.56) Calibre
6. Self Loading Rifle (7.62/5.56) Calibre.
7. G.III NATO Rifle (7.62/5.56) Calibre.
8. Hand Fired portable Rocket Launches (Any Calibre)

The National Security Guard authorities would thereafter inspect and select the weapons for their use which would be earmarked and given to them after adjudication proceedings, etc. are over. The rest of the weapons and ammunition should be disposed of in accordance with the approved manner of disposal of fire-arms and ammunition. The value of the weapons selected by the National Security Guard will be determined by the Pricing Committee on the basis of the prices fixed by the Ordnance Factories for similar type of weapons manufacture in India.

[M.F., D.R., letter F.No. 394/36/85 CUS(AS) dtd. 30.08.1985]

DISPOSAL OF WATCHES AND WATCH MOVEMENTS

(1) Bulk sales of seized/confiscated consumer goods, including watches, will be made to all Co-operative Societies approved by the Central and State Governments and duly registered under the Co-operative Societies Act ;

Such goods will also be sold to State Civil Supplies Corporations/State Co-operative Federations;

Watches, both mechanical and electronic, may also be allowed to be disposed of by retail sales from retail counters in the Customs and Central Excise Commissionerates, subject to the condition that not more than one watch will be sold per person.

The sale to Co-operative Societies, State Co-operative Federations and State Civil Corporations will be made subject to the following conditions;

- (a) The goods so purchased are in turn organized for sale directly to bonafide consumers at retail prices fixed by the department. The sales to consumers will be restricted to one piece/set/consumer quantities as the case may be;
- (b) No 'pick and choose' (other than in the case of damaged/deteriorated/ unsaleable items) will be allowed;
- (c) The Co-operative Societies, State Co-operative Federations, State Civil Supplies Corporations will keep full accounts for scrutiny by the department as and when necessary;

As for discounts :-

Discount of 10% on sale prices fixed in the Customs/Central Excise Commissionerates will be allowed to Co-operative Societies/State Co-operative Federations/State Civil Supplies Corporations;

[M.F.,D.R., letter F.No. 711/20/83-LC (AS) dt. 10.08.1983]

(2) Serviceable watch movements and parts received from dismantling of damaged watches may be sold in auction, watch movements to actual users and parts by public auction as is the practice in the case of watch movements and parts recovered from the fake watches.

Old and used watches may be sold as per the existing mode of disposal of watches, viz. to NCCF, Military and Para-Military Organisations and Police Canteens.

[M.F.,D.R. letter F.NO. 549/35/80 LCI DT. 3.3.1983]

Sale of Alcoholic Liquor

Liquor may be sold to all hotels, restaurants and clubs having the necessary liquor licences directly, without any reference to ITDC but subject to compliance with State Excise requirements.

[M.F.,D.R. letter F.NO. 711/20/83 LC (AS) dtd 10.08.1983]

DISPOSAL OF CONSUMER AND LUXURY CONFISCATED GOODS THROUGH THE NCCF LTD

I am directed to say that it has been decided in consultation with the Deptt of Expenditure and Ministry of Food, Agriculture, Community Development and Cooperation that all confiscated consumer goods hitherto sold in retail through departmental retail shops should be offered for sale to the National Cooperative Consumers' Federation, an apex organisation of all the Consumer Cooperative Societies in the country at the prices fixed for retail sales less a reduction of 25% . The sale to NCCF Ltd, will be subject to the following conditions:

- i) the NCCF Ltd would lift all consumer goods (except the goods to be lifted by Canteen Stores Deptt (India) and the Cooperative Stores run by the Ministry of Home Affairs on the basis of 10% discount as hitherto) within a period of about 3 months and thereafter at quarterly intervals as soon as sizeable quantity of confiscated goods become ripe for disposal at a particular place and intimation to this effect is sent to NCCF and in no case the value of such goods ripe for disposal should be allowed to exceed Rs.25,000/-.
- ii) goods will be sold to the Federation only on cash basis / or payment by Bank Draft in the name of Commissioner of Customs on a scheduled bank situated at the head quarters of the station from which the goods are lifted and there shall be no pick and choose except the damaged and

unsaleable goods may be rejected by the Federation. Such rejected goods will be sold by public auction.

- iii) where statutory possession of prescribed licences is a precondition for obtaining supplies as a dealer NCCF Ltd. or its constituents should hold such a licence e.g. for dealing in radio and television sets, a Dealers' Possession Licence issued by the Posts & Telegraph Deptt is necessary.
2. Prices of goods may continue to be fixed by you in a realistic manner in accordance with the instructions contained in para 5 of this Ministry's letter F. No. 30/51/66-LC.I dt.7.1.67 and that if in any particular case the NCCF felt that the price fixed was unduly high, the matter be reconsidered after making fresh market enquiries if necessary.
3. The representative of the NCCF, may be afforded the facility of inspecting good before lifting them. A broad indication of description of goods together with quantity that are available for disposal may be given to NCCF if and when required.
4. The orders contained in CBR letters No. 30/3/64-LCI dt.10.2.64 and F. No. 30/44/64-LCI dt.3.10.64 would continue to remain in force i.e. confiscated goods may continue , as hitherto, to be offered for sale to Military Canteens and Central Govt. Employees Consumers Cooperative Stores Ltd run by Ministry of Home Affairs at retail price less 10% on the basis of 'first come first served'.
5. Once the NCCF Ltd have made arrangements to lift all consumer articles (other than damaged and unsaleable at the stations, retail sale by the Deptt will cease; but in the initial stages retail sale at a centre by the Deptt may continue until all goods at that centre available for sale to the NCCF Ltd are lifted by the Federation.

[M.F.,D.R. letter No. 30/33/67-LCI dt.19.1.68 & F. No. 30/71/68-LCI dt.8.11.1968]

Sale of Confiscated Consumer and Luxury Goods to Customs Officers

Please refer to the correspondence resting with this department's letter F. No. 549/61/79-LC I, dated the 24th June, 1980 on the above subject whereby the facility given to the officers of the Customs and Central Excise Departments to purchase confiscated goods from the departmental retail sale counters were withdrawn.

The question of revival of the policy and allowing departmental officers to purchase confiscated goods has been reviewed and it has been decided to permit such sales to the departmental officers through the Customs Retail Shops subject to the following checks:

- (i) The departmental officers would be permitted to purchase only first quality goods at prices fixed by the Joint Pricing Committee and would not be permitted to purchase damaged goods or partially empty containers at prices other than those fixed by the Joint Pricing Committee.
- (ii) The departmental officers would not be permitted to resell the items of confiscated goods purchased from the departmental retail shops for a period of 5 years. For this purpose, every departmental officer making the purchase(s) will be required to sign an undertaking to this effect on each occasion.
- (iii) This will not exempt the departmental officers from the declaration as required under the CCS (Conduct) Rules, 1964, relating to acquisition of movable property and financial transactions.
- (iv) As regards items, the prices of which have not been fixed by the Joint Pricing Committee, the prices will be fixed by the Pricing Committee of the Commissionerate/ Custom House. The Pricing Committee will include an officer of the rank of Assistant Commissioner of Income-Tax to be nominated by the Commissioner (Income-Tax) of jurisdiction.

To ensure that the departmental officers do not appropriate to themselves the favoured items and leave only unattractive items for sale to the general public, it has been decided that the retail shops operating in the various Commissionerates/Custom Houses shall display daily on a notice board a list of items which carry a premium such as electronic gadgets like VCRs, VCPs, TVs etc. available for purchase by the general public including departmental officers.

[Ministry's letter No. 11412/89-CUS (AS) dated 11.7.1990]

DISPOSAL OF DETAINED / CONFISCATED GOODS BY AUCTION

Confiscated/uncleared trade goods conveyances etc are sold by way of auction.

Section 64 of the Sale of Goods Act, 1930, governs auctions as under: -

Auction sales are peculiar type of sale of goods. The way and the method of auction sale are different from those of ordinary sales. It may be summarised thus –

In an auction sale, the sale is complete when the auctioneer announces it by the fall of the hammer or any other customary manner. Until that is done, a bidder can retract his offer.

A bidder is at liberty to withdraw his bid at any time before it is accepted finally by the auctioneer. The bid is merely an offer, and it becomes irrevocable only when its acceptance is announced by the auctioneer. In short, the bidder can retract his bid till the hammer falls or until a similar announcement is made. So also the auctioneer is not bound to sell the articles advertised to the highest bidder, except when the sale is without reserve, nor is he bound to hold the auction sale on the day advertised; his advertisement is not an offer, but a mere invitation.

In a sale by auction –

1. When goods are sold in lots, each lot is prima facie deemed to be the subject of a separate contract of sale.
2. The sale is complete when the auctioneer announces his acceptance by the fall of the hammer or in any other customary manner.
3. A right to bid may be reserved expressly by, or on behalf of, the seller, and if it is not so expressly reserved, it is unlawful for the seller to bid, either himself or through any other person.
4. The sale may be notified to be subject to reserve or upset price.

Implied warranties in an auction sale

When an auctioneer sells goods, he impliedly undertakes the following four obligations –

1. He warrants his authority to sell.
2. He warrants that he knows of no defect in his principal's title.
3. He undertakes to give possession against the price paid into his hands.
4. He undertakes that such possession will not be disturbed by his principal or himself.

For the purpose of sale of goods by way of auction, the Commissionerate is required to appoint an Auctioneer. The Agreement of appointment remains in force for a period of one year which can be reviewed & renewed thereafter. The Auctioneer who is so appointed is required to conduct sales by public auction or a private treating such goods entrusted for disposal by the Commissioner.

The Auctioneer is required to advertise the goods to be auctioned at their cost in the two leading English newspapers, or Hindi newspaper & two vernacular newspapers. He is also required to prepare a notice in consultation with the Commissioner or his representative & advertise the sale of goods, time,

date & venue of auction sale. The sale should be conducted by him in the manner as directed by the Commissioner.

The Auctioneer is required to put up the goods for sale in such lots as approved by the Deptt. & conduct sales as per conditions laid down by the Deptt. He should announce & publish such conditions at his own cost.

The notice issued by the Auctioneer must stipulate that the officer supervising the auction reserves to himself the right of fixing reserve price for the property/goods put up for sale and of withdrawing part or whole of the goods from the auction if considered necessary by him without assigning any reasons. On fall of the hammer, the successful bidder should immediately pay the full amount of the accepted bid on the spot or at least 25% of his bid in cash as earnest money. Deptt. however, may reserve its right to require payment of a larger percentage of the bid in cash as earnest money for any lot without assigning any reasons.

The amount of money should be forfeited to the Govt. if the successful bidder fails to pay the balance within the prescribed time limit. The Auctioneer is required to immediately credit the amount so collected to the Deptt. If the bidder fails to pay the earnest money, his bid should be cancelled forthwith and lot or lots the auctioned. In case the auctioneer accepts the bid without collecting earnest money, he should deposit the said amount within 24 hours of the bid with the Deptt. This is without prejudice to any other remedy the Deptt has an account of such breach against the Auctioneer.

The amount of earnest money and any other amount realised on the day of auction should be deposited immediately with the Deptt. for credit in the Custom House Treasury. The balance amount of the bid shall be collected from the bidder within three working days from the date of auction or within such extended time be paid in RESERVE BANK OF INDIA (DRAFT) A/C Commissioner of CUSTOMS, by the auctioneer & the receipt thereof should be deposited with the Deptt. The delivery of the goods can be taken by the bidder within three days from the date of balance amount paid or within such period as allowed. The Auctioneer should submit a separate bill in duplicate for his Commissioner (as fixed by the Deptt.)

The auction will be supervised by the said Commissioner or his representatives and no bid shall be deemed to be accepted without his concurrence. The Officer supervising the auction shall be at liberty to withdraw from sale lots for which no satisfactory bids are received. The Officer supervising the auction shall be at liberty to withdraw from sale lots or lot or property/goods for which bids are lower than the reserve price or if there is ring among the bidders to keep the price from going up. When the bids are accepted provisionally subject to confirmation by the Deptt., the auctioneer shall communicate to the bidder the decision of the Deptt. which shall be notified to the auctioneer in writing within 7 days from the date of the auction.

The auctioneer shall prepare in triplicate the sale sheet in form as shown in appendix 'A' prior to sale. The said sale sheet will be signed immediately after the sale, by the representative of the said Commissioner supervising the auction and the auctioneer's representative, one copy of the sale sheet shall be sent to Customs Warehouse, Superintendent and the other copy to the Chief Accounts Officers, Customs House.

APPENDIX "A" Sale Sheet

COMMISSIONER OF CUSTOMS.....

Name of the auctioneer.....
 Officer Supervising sale.....
 Place of Auction.....
 Auction conducted by

Date and time of auction

Approximate No. of Bidders

Highest bid.

Sr. No.	Sr. No.	Items	Name of highest bidder	Rs.
No.	as per form 7(a)	auctioned		

Total (in words) Rupees.....

Total Rupees

Checked and found correct

The auction was held
under my supervision

Superintendent of Customs/
Assistant/Dy. Commissioner of Customs

.....

Auctioneer

Date.....

On the completion of a sale and collection of entire sale proceeds, the auctioneer shall be entitled to a fixed commission on the gross proceeds thereof. (When a bid is subject to subsequent approval by the Commissioner, the auctioneer shall not be entitled to commission till the full price is paid and credited to the Custom House treasury account, Commissioner of Customs). A resale shall be treated as a fresh sale. In case of re-sale, the Auctioneer shall be entitled to commission only in the goods sale proceeds of resale and not on the goods sale proceeds of previous sale.

On completion of auction the Auctioneer shall prepare in triplicate a final sale account in form as shown in Appendix 'B' within three working days, showing the proceeds realised and shall then submit a copy of the sale account to the representative of the Deptt. conducting the auction sale and to the Chief Accounts Officer.

APPENDIX 'B'

Serial No.....

COMMISSIONER OF CUSTOMS.....

Sale account held at on
at.....

Sr. No.	Sr. No. as per form 7(b)	Accepted bid Rs.	Remarks
			Total Rs.....

Total of accepted bids delivered Rs.

Total earnest money abandoned for Rs.....

Total Rs.....realised for sale

To.

The Assistant /Dy. Commissioner of Customs/
 Superintendent of Customs/Chief
 Accounts Officer.

Sir,

I beg to report the sale held at.....on
by us the sum of Rs.....was due to the
 Government. The same was deposited in the Reserve Bank of India, vide T. R. No.
 dated.....copy enclosed.

Yours faithfully
 AUCTIONEER.

The Auctioneer should conduct the auctions at the godowns owned or hired by the Deptt. Where property/goods are stored at any place within the jurisdiction of the said Commissioner or at such places determined by the Commissioner for conducting auctions in the godowns or at such places outside the Custom House, the Auctioneer will not be entitled to get from the Government conveyance charges of their staff or any other charges, incurred in connection therewith same and except the commission.

Before offering any goods for auction, the auctioneer should arrange, if required to do so, by the Commissioner for inspection of the good offered, by the respective bidders before the date fixed for auction.

The Auctioneer or their servants/Agents should not directly or indirectly bid for or purchase any lot not have or acquired any interest therein at any auction sale held under these presents except with the prior permission of the Deptt. in writing.

The Deptt. will be at liberty to offer any goods whatsoever for sale by tender or/by private treaty or any other means other than a Public Auction whenever deemed fit to do so.

Periodicity of AUCTION SALES

(1) At least one auction should be held every month. Wide publicity should be given either by publication in newspapers or by hand bills or by circulation among the traders and chambers of Commerce, depending upon the volume and variety of the goods offered for auction. Auctioneers may also be appointed for the purpose. The lots to be included in the auction, the time and date of auction

and the nature of publicity to be given etc. shall be decided by an Auction Committee consisting of the Assistant Commissioner incharge of disposals, and other Assistant Commissioner nominated by the Commissioner and the senior most subordinate officer who is concerned with the work of disposals. The Assistant Commissioner incharge of disposals shall be present at the time of auction. Goods in respect of which bids are higher than the reserve price, may be sold outright to the purchasers if the Asstt. Commissioner incharge of disposals is satisfied that the bids are fair. The auction Committee may also recommend cases to the Commissioner for disposal of goods by tender, where such goods have not fetched or are judged to be unlikely to fetch, a fair price at the auction.

[C B R, letter F. NO, 11/6/61/ - CUS . IV DATED 13.06.61]

(2) The Board considers that the method adopted by some Custom Houses by determining the reserve Price of all goods on the basis of quantity, fair value and customs Port Trust charges, as the case may be, is not correct because it ignores the fact that in a free auction, the amount realised would be based on the price which the articles are expected to fetch when resold in the market and not on any theoretical considerations concerning the departments liability in respect of Port Trust levies or its claims in respect of its own warehouse and other charges. The Board. In fact does not consider it necessary that there should be any "reserve price" as such in respect of goods which are assessed on ad valorem basis. It will be enough in the case of such goods if a fair price is determined as correctly as possible after taking into consideration the saleable value of the goods in question in the market. I.e. the price at which the goods are expected to fetch when resold in the market by the purchaser in auction, taking into consideration the condition in which they are at the time of sale.

It is observed that some confusion exists regarding the exact significance of the expressions "Reserve Price" should be the absolute minimum price below which for legal or other reasons a consignment cannot be sold. (Ordinarily goods should fetch appreciably more than the reserve price). A "fair Price" on the other hand should be regarded as the best price at which the Custom House can sell the goods under normal conditions. This fair price can be expected to be some what lower than the price at which goods of the same kind and in the same condition could be sold by the purchaser in the wholesale market, the difference representing the profit which the buyer at the auction expects to make and/or the margin to cover him against the risk of possible loss. The Board considers that fair prices should be fixed by ascertaining the probable sale price of such goods in the market and subtracting from it a "discount" which will represent the margin of the buyer at the auction. This discount will vary with the nature of the goods and the rates of discount for different categories of goods should be fixed periodically (say once in six months) by the local conditions. The discount may be 5 to 10% more than the estimated reasonable profit which the buyer at auction can expect to make on resale. This increase is intended as an additional incentive to the prospective purchasers.

As an example if certain goods in their present condition can be expected to fetch Rs. 100/- in the wholesale market, and usual profit margin for wholesale transactions in such goods is approximately 20% the discount may be fixed at say 25% or 30% the fair price of the consignment, that is the price below which it should not normally be sold, would then be Rs. 75/- or Rs. 70/- .

Similar considerations would apply to the fixation of a fair price for goods assessable to specific rates of duty or on tariff values. In such cases, however, it will be necessary to ensure in addition that the price fetched at the auction is at least equal to the duty leviable thereon .

The Board would also like to emphasize that the goods should not be withdrawn from auction on flimsy reasons, e.g. because it is considered that a slightly higher price might be fetched at a later auction. Where, however, on account of a clique having been formed during the auction, the goods have to be withdrawn at the first auction, the Board considers that it would be more appropriate to dispose of

them by tender on terms most advantageous to Govt. rather than by putting them up again at a subsequent auction. Sale by private negotiation- to guard against allegations of favouritism or underselling, such sales should be effected under the orders of the Commissioner or Addl. Commissioner as the case may be after he has personally satisfied himself that every thing is in order, and the sale is in the best interests of the Govt. . Statutory requirements should also be taken into account, e.g. in the case of abandoned goods, Section 88 of the Customs Act does not permit sale by tender.

[Board's letter F.NO. 4/63/57 CUS III / CUS IV Dtd. 07.09.1961]

(3) While the "fair price" of goods ripe for disposal through auctions should continue to be fixed with reference to instructions contained in Board's letter F. No. 4/63/57-Cus. III/Cus.IV dt. 07.09.61 due considerations should be given to the size of the consignment, condition of the goods, type of packing etc in arriving at the "fair price". Similarly in fixing the quantum of "discount" representing the margin of profit for the buyer at the auction on resale of the goods, the fact that no warranty as to quality is attached to the goods sold, should be given its due importance. Once all these aspects are taken note of and a realistic fair price is fixed, normally there will be little scope for withdrawal of lots once offered in auction sales on the sole ground of lack of proper bids.

The retail price of articles may be fixed by conducting market enquiries to ascertain the price at which goods of like kind, quality, shape, design, ect are available in the retail market and deducting therefrom a "discount" representing the compensation for the buyer in the retail shop for (i) absence of guarantee regarding quality, workmanship and the like, (ii) lack of provision for after-sale-service facilities, and (iii) the fact the goods may not always be in their original packing and condition. The quantum of such – discount may be varied depending upon whether they are fast selling popular brands or otherwise.

[M of Fin. (DR & I) letter F.NO. 30/51/66. LCI Dt. 07.01.1967]

Fixation of Fair price for goods to be auctioned - acceptance of bids lower than Fair Price

The following instructions are issued for implementing the Board's Orders contained in their letter F. No. 4/63/57-Cus. III/Cus. IV dated 7.9.61. below.

If wholesale price appears to be Rs. 1000/- or less the Examining Officer (or Appraiser) attached to the Sale Unit will determine the wholesale price of the goods.

Goods estimated to be of wholesale price above Rs. 1000/- shall be valued by the respective Appraising Group. The main file should not be released but a part file should be started and sent to the Group for this purpose. The condition of the goods should be clearly indicated in the part file. If the goods have deteriorated, have been damaged or are old, representative samples should be sent. The Appraiser concerned will make enquiries from reputed firms regarding wholesale price of the goods. The Appraiser will record in the part file the names of the dealers from whom he has made the enquiries and any other relevant details. The file then be put up to the group Asstt./Dy.Commissioner. He will check up that the dealers from whom the enquiries have been made are reputed ones and that the price fixed appears to be reasonable. In case of doubt and in all cases where the wholesale price is over Rs. 5000/- the Asstt. /Dy. Commissioner should himself make enquiry from at least one more reputed dealer, whose name he will record. After recording his observations and reasons he will indicate what should be the wholesale price. In cases where the wholesale price is above Rs. 5000/- he will resubmit the papers to the Assistant Commissioner for his countersignature. Where the wholesale price is above Rs. 20,000/- Joint Commissioner's countersignature will be required and where it is over Rs. 50,000/- the Commissioner's countersignature should be contained. The duty of the Assistant Commissioner and the higher officers is to ensure that considering the circumstances of the case the Appraiser and Asstt. / Dy. Commissioner have made proper enquiries from enough number of reputed dealers and that any special aspects

concerning the particular case have been properly dealt with. They are not technical officers conversant with the price of the goods.

The next steps is to fix the bidder's margin which should be done by an Auction Committee consisting of the Assistant Commissioner in-charge of the Sale, the Inspector (or Appraiser) in-charge of the Sale, and the Asstt. Commissioner (or the Examining Officer attached to the Sales unit) who has approved the wholesale price. The bidder's margin should be fixed at 10% to 25% of the wholesale price depending upon whether the goods are fast selling or slow moving and taking other relevant factors into account.

The wholesale price less the bidder's discount will be 'fair price' of the goods.

The Assistant Commissioner in-charge of the Sales should keep a watch whether the competition amongst the bidders is responsible considering the nature of the goods. If in his opinion there as been reasonable competition he may accept the highest bid in the following cases even f the highest bid is lower than the fair price: -

- (a) In case of small lots of which the fair price is less than Rs.1000/-
- (b) Where the highest bid is within 10% of the fair price.
- (c) Where the highest bid falls short of the fair price by more than 10%, he will be competent to accept the highest bid if it is within 20% of the fair price provided the difference between the two does not exceed Rs.1000/-.

[Extract from Central Manual of Appraising Department in the Custom House – Volume IV]

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CHAPTER - TWENTY FOUR

RECOVERY OF ARREARS OF CUSTOMS REVENUE

PRELIMINARY

As discussed in Chapter 3 of this Manual, there exists a provision under Section 28 of the Customs Act, 1962 to recover any duty which has been not levied, short levied or erroneously refunded and interest, if any thereon, through a demand notice. Many a times, there are also other dues payable under the various Sections of the Customs Act, 1962.

If the aforesaid duty or dues payable to the Government have not been paid, Section 142 of the Customs Act, 1962 provides for recovery of the same. The Section prescribes that such amount may be deducted from any money owing to such person or by detaining and selling any goods belonging to such person which are under the control of proper officer. The Section further stipulates that if the sum cannot be recovered from such person in this manner, the Collector of the District – in which such person owns any property or resides or carries on his business – may be requested to recover such amount from such person. Alternatively, the Section also empowers the Commissioner of Customs to distrain any movable or immovable property belonging to or under the control of such person and detain the same until the amount payable is paid. Further, in case any part of the said amount payable remains unpaid, the said property may be sold and the amount payable may be satisfied with the sale proceeds.

The Rules and clarifications issued by the Ministry of Finance in this regard are reproduced below-

CUSTOMS (ATTACHMENT OF PROPERTY OF DEFAULTERS FOR RECOVERY OF GOVERNMENT DUES) RULES, 1995

CHAPTER I

Preliminary

1. Short Title and Commencement.- (1) These rules may be called the Customs (Attachment of Property of defaulters for Recovery of Government Dues) Rules, 1995.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definition. – In these rules, unless the context otherwise requires-

- (i) 'Act' means the Customs Act, 1962 (52 of 1962);
- (ii) 'Government dues' means any duty or drawback to be recovered from any person or any interest or penalty payable by any person under the Act and has not been paid.
- (iii) 'Certificate' means the certificate required to be issued by an Assistant Commissioner of Customs under Clause © of sub-section (I) of Section 142 of the Act.
- (iv) 'Commissioner' means any person appointed as Commissioner of Customs or Commissioner of Central Excise under the Act.
- (v) 'Proper Officer' means an officer subordinate to the Commissioner and not below the rank of Assistant Commissioner of Customs or Assistant Commissioner of Customs and Central Excise, who is authorised by the Commissioner for the purpose of attachment and sale of defaulter's property and for releasing the amount mentioned in the certificate.
- (vi) 'Defaulter' means any person from whom government dues are recoverable under the Act.
- (vii) Other words or terms used in these rules shall have the same meaning assigned to them under the Act.

CHAPTER II

Procedure for Attachment of Property

3. Issue of Certificate.- Where any government dues are not paid by any defaulter, the Assistant Commissioner of Customs may prepare a Certificate signed by him specifying the amount due from such person and send the same to the Commissioner having jurisdiction over the place in which the defaulter owns any moveable or immovable property or resides or carries on his business or has his bank account.

4. Issue of Notice.- On receipt of the certificate mentioned in Rule 3 above, the Commissioner may authorise any officer subordinate to him to cause notice to be served upon the defaulter requiring the defaulter to pay the amount specified in the Certificate within seven days from the date of the service of the notice and intimate that in default, such subordinate officer is authorised to take steps to realise the amount mentioned in the Certificate in terms of these rules.

5. Attachment of the property.- If the amount mentioned in the notice issued in terms of the preceding rule is not paid within seven days from the date of the service of the notice, the Proper Officer may proceed to realise the amount by attachment and sale of the defaulter's property. For the purpose, the Proper Officer may detain the defaulter's property until the amount mentioned in the Certificate together with the cost of detention is paid by the defaulter.

6. Attachment not be excessive. – Attachment by arrest or distrain of the property shall not be excessive, that is to say, the property attached shall be as nearer as possible proportionate to the amount specified in the Certificate.

7. Attachment between Sunrise and Sunset.- The attachment of the property of the defaulter by arrest or distrain shall be made after sunrise and before sunset and not otherwise.

8. Inventory.- After attachment of the property of the defaulter, the Proper Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is detained.

9. Private alienation to be void in certain cases.- (I) Where a notice has been served on a defaulter under Rule 4, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Proper Officer.

(ii) Where an attachment has been made under these rules, any private transfer or delivery of the property attached or any debt, divided or other moneys contrary to such attachment shall be void as against all claims enforceable under the attachment.

10. Share in property. – Where the property to be attached consists of the share or interest of the defaulter in property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

11. Attachment of property in custody of court or public officer. - Where the property to be attached is in the custody of any court or Public Officer, the attachment shall be made by a notice to the such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Proper Officer by whom the notice is issued.

Provided that, where such property is in the custody of a court, any question of title or property arising between the Proper Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment, or otherwise, shall be determined by such court.

12. Service of notice of attachment. – The order of attachment shall be served on the defaulter in the same manner as prescribed for the service of order or decision in Section 153 of the Act.

13. Proclamation of attachment. -The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office and the Proper Officer.

14. Property exempt from attachment. – (I) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from the attachment and sale under these rules.

(ii) The decision of the Proper Officer as to what property is so entitled to exemption shall be final.

CHAPTER III

Part A

Procedure for Sale of Property

15. Sale of property. – If the amount mentioned in the Certificate together with the cost of detention of the property is not paid within a period of three days from the date of attachment of the property, the Commissioner may authorise the Proper Officer to proceed to realise the amount by sale of the defaulter's property in public auction :

Provided that the Commissioner shall be competent to fix the reserve price in respect of any property of the defaulter to be sold in public auction and order that any bid shall be accepted only on the condition that it is not less than such reserve price.

16. Negotiable instruments and shares in a corporation. – Notwithstanding anything contained in these rules, where the property to be sold is a negotiable instrument or a share in a corporation, the Proper Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

Part B

Special Provisions in respect of sale of immovable property

17. Proclamation of sale.- Where any immovable property is ordered to be sold, the Proper Officer shall cause a proclamation of the intended sale to be made in the language of the district.

18. Contents of proclamation. – A proclamation of sale of immovable property shall be drawn up after notice to the defaulter and shall state the time and place of sale and shall specify as fairly and accurately as possible.

- (a) the property to be sold;
- (b) the revenue, if any, assessed upon the property or any part thereof;
- (c) the amount for the recovery of which sale is ordered;
- (d) the reserve price, if any, below which the property may not be sold; and
- (e) any other thing which the Proper Officer considers it material for a purchaser to know in order to judge the nature and value of the property.

19. Mode of making proclamation.- (I) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Proper Office.

(ii) Where the Proper Officer so directs, such proclamation shall also be published in a local newspaper and the cost of such publication shall be deemed to be cost of the sale.

(iii) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Proper Officer, otherwise be given.

20. Setting aside of sale where defaulter has no saleable interest.- At any time within thirty days of the sale, the purchaser may apply to the Proper Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

21. Confirmation of Sale.- (I) Where no application is made for setting aside the sale under the forgoing rule or where such an application is made and disallowed by the Proper Officer, the Proper Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(ii) Where such application is made and allowed and where, in the case of any application made to set aside the sale on deposit of the amount and penalty and charges the deposit is made within thirty days from the date of the sale, the Proper Officer shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to the person affected thereby.

22. Sale Certificate.- (I) Where sale of any immovable property has become absolute under these rules, the Proper Officer shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.

(ii) Such Certificate shall state that the date on which the sale become absolute.

23. Purchaser's title.- (I) Where any property is sold in terms of these rules, there shall vest in purchaser's the right, title and interest of the defaulter at the time of the sale even though the property itself be specified.

(ii) Where immovable property is sold in terms of these rules and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale become absolute.

24. Irregularity not to vitiate sale, but any person injured may sue.- No irregularity in the conduction of sale of any property shall vitiate the sale but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a Civil Court against him for compensation or (if such other person is the purchaser), for the recovery of specific property and for compensation in default of such recovery.

25. Prohibition against bidding or purchase by officer.- No officer or other person having any duty to perform in connection with any sale under these rules, either directly or indirectly, shall bid for, acquire or attempt to acquire any interest in the property sold.

26. Prohibition against sale on holidays.- No sale under these rule shall take place on a Sunday or other general holidays recognised by the State Government or on any day which has been notified by the State Government a local holidays for the area in which the sale is to take place.

CHAPTER IV

Miscellaneous

27. Disposal of the sale proceeds.- The sale proceeds of the property of the defaulter shall be utilised in the following manner, namely:-

- (a) the sale proceeds shall first be utilised for meeting the cost of sale;
- (b) the balance shall be utilised for satisfaction of the amount mentioned in the Certificate issued under Rule 3 together with the cost of detention of the property;

(c) the balance, if any, shall be utilised for recovery of any other government dues payable by the defaulter; and

(d) the balance, if any, shall be paid to the defaulter.

28. Procedure on death of the defaulter.- If at any time after the Certificate has been issued by the Assistant Commissioner of Customs, the defaulter dies, the proceedings under these rules may be continued against the legal representatives of the defaulter, and the provision of these rules shall apply as if the legal representative were the defaulter.

[Notfn. No. 31/95-Cus.,(N.T) dtd. 26-5-1995 as amended by Notfn. No. 67/97-Cus.,(N.T) dtd 11-12-1997.]

CLARIFICATIONS

a) This is to say that in terms of the amended section 142 of the Customs Act, 1962, in addition to the existing modes of recovery of govt. dues mentioned therein, a provision has been made to empower custom officers to attach and sell the movable and / or immovable property of a defaulter as per the rules to be framed in this behalf by the Central Government. These rules have since been notified vide Notification No.31/95-Cus (NT) dated 26-05-95.

2. In this connection, it may be noted that the provision of recovery through district authorities has been retained under section 142 (1) (c) (i), while empowering proper officer to take recourse to recovery through custom officers. However, simultaneous action through district authorities and through customs officers for recovery of govt. dues should not be taken. The proper officer should take recourse to action under clause (a) or (b) of section 142 (1).

3. For action under clause (c) of section 142 (1) of the Custom Act, 1962, the following guidelines may be followed:-

- a) Where the amount recoverable does not exceed rupees one lakh, certificate action should first be taken through the district authorities under sub-clause (I)
- b) In case the amount is not recovered by the district authority within three months, the district authority should be informed by registered A / D letter to discontinue recovery and action should be taken to initiate recovery under sub-clause (ii) through the Commissioner of Customs / C. Excise having jurisdiction over the place where the defaulter is having property, or is residing, or is carrying out his business, or has his bank accounts.
- c) In case the amount recoverable exceeds rupees one lakh the proper officer should initiate recovery action directly through the concerned Commissioner of Customs / C. Excise under sub-clause (ii).

4. A proper record should be maintained of cases in which recovery action is initiated under sub-clause (ii) of clause (c) of section 142 (1) of the Customs Act, 1962.

[Board's Circular no. 54/95- Customs in F. No, 495/15/94-Cus VI dated 30-5-1995]

b) Please refer to amended section 142(1) of the Customs Act, 1962, read with Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995, which enable the Department to create a legal framework to realise dues of the Government by attaching, distraining movable and immovable property of the person and then disposing the said property to recover the dues. These provisions are in addition to the existing other modes of recovery. The scope of these instructions is to prescribe a procedure for implementing the amended provisions. Board's existing instructions regarding implementation of certificate action etc. remain unchanged.

2. It would be noted that recovery through District Collector has been retained under sub-clause (I) of Section 142 (1) of the Act while empowering the Proper Officer to recover dues through

Customs officers. However, the Board has already issued appropriate directions vide its letter F. No. 495/15/94-Cus. VI dated 30/5/95 to the effect that simultaneous action for recovery of Government dues should not be taken through district authorities and through Customs Officers. It has further been laid down in the aforesaid communication that even action under clauses (c) of Section 142 (1) of the Act should be taken only when Government dues have not been recovered under Clause (a) or (b) of the aforesaid Section 142 (1) of the Act.

3. You are further aware that the Board has already laid down guidelines to initiate recovery action directly through the concerned Commissioners of Customs / Central Excise under sub-clause (ii) of Clause (c) of Section 142 (1) the Act only in cases where the recoverable amount exceeds Rs. One lakh or where the District Collector to whom a Certificate stipulated under sub-clause (I) of clause (c) of Section 142 (1) of the act had been sent, has not been able to affect the recovery within 3 months. In such cases the District Collector should be informed by a letter through Regd. Post to discontinue recovery and action should be initiated for recovery under sub-clause (ii) to clause (c) of Section 142 (1) of the Act.

4. Where the Government dues have not been paid by the defaulters, the Assistant Commissioner of Customs should under Rule 3 of the Rules prepare a certificate in the endorsed form i. e. as Appendix – I, specifying therein the amount due from such person and should send the same to the Commissioner having jurisdiction over the place in which the defaulter owns any movable or immovable property or resides or carries on his own business or has his bank accounts.

5. To have ready access to the information about the defaulter's movable or immovable property, his residence and details about his business or bank accounts, it would be necessary to build a data base from the information available in appropriate quarters such as the DGFT'S office, (where applications for grant of an importer - exporter code number are filed). The Custom House should also develop such data base from other sources such as Income Tax, Sales Tax etc.

6. The Commissioner of Customs or Commissioner of Central Excise would direct the concerned Authorised Officer to cause a Notice (Appendix – II) to be served upon the defaulter requiring to pay the amount specified in the Certificate within 7 days of the Notice. The Authorised Officer should thereafter take steps to realise the amount mentioned in the Certificate in terms of the rules after expiry of stipulated period of seven days.

7. If the amount mentioned in the certificate (Appendix - I) notice (Appendix – II) is not paid within seven days from the date of the service of the notice, the Authorised Officer should proceed to realise the amount by attachment and sale of the defaulters property in accordance with the procedure of attachment and proclamation and sale explained in the Annexures A & B respectively.

8. One of the Assistant Commissioner of Customs may be authorised as proper officer under the rules and special cell may be created in the Customs House / Central Excise Head quarters for implementing the provisions of these rules.

9. The Commissioner may issue suitable Standing Order on the subject endorsing a copy to the Board and the Directorate General of Inspection, Customs & Central Excise, New Delhi. With the issuance of these instructions it is expected that speedy action would be initiated for the recovery of pending Government dues under the provisions of the Customs Act, 1962. This procedure should be reviewed after one year. The Commissioners are requested to bring the difficulties faced to the Board's notice within 6 months.

[Board's Circular no. 56/96-Customs in F. No. 450/72/96-Cus.IV dated 14-11-1996]

c) This is to say that in terms of the amended section 142 of the Customs Act, 1962, in addition to the existing modes of recovery of govt. dues mentioned therein, a provision has been made to

empower custom officers to attach and sell the moveable and / or immovable property of a defaulter as per the rules to be framed in this behalf by the Central Government. These rules have since been notified vide Notification No. 31/95-Cus (NT) dated 26-05-95, a copy of which is enclosed for information.

2. In this connection, it may be noted that the provision of recovery through district authorities has been retained under section 142(1) (c) (i), while empowering the proper officer to take recourse to recovery through custom officers. However, simultaneous action through district authorities and through customs officers for recovery of govt. dues should not be taken. The proper officer should take recourse to action under clause (c) of section 142 (1) only when the amount in question cannot be recovered under clause (a) or (b) of section 142 (1).

3. For action under clause(c) of section 142 (1) of the Custom Act, 1962, the following guidelines may be followed:-

- (a) Where the amount recoverable does not exceed rupees one lakh, certificate action should first be taken through the district authorities under sub-clause (I)
- (b) In case the amount is not recovered by the district authority within three months, the district authority should be informed by registered A/ D letter to discontinue recovery and action should be taken to initiate recovery under sub-clause (ii) through the Commissioner of Customs / C. Excise having jurisdiction over the place where the defaulter is having property, or is residing, or is carrying out his business, or has his bank accounts.
- (c) In case the amount recoverable exceeds rupees one lakh the proper officer should initiate recovery action directly through the concerned Commissioner of Customs / C. Excise under sub-clause (ii).

4. A proper record should be maintained of cases in which recovery action is initiated under sub-clause (ii) of section 142 (1) of the Customs Act, 1962.

[M. F. (D. R.) F. No. 495/15/94-Cus., VI dated 30-5-1995]

ANNEXURE 'A'

ATTACHMENT

1. There is in Law a distinction between moveable & immovable property. The mode and procedure of attachment of the two categories of properties differ in significant respects. Hence the standard format for the two types of property which are being prescribed as distinct from each other. The standard format which should be used for ordering the attachment for the movable and immovable property is given respectively in **Appendix III B**. A copy of the order of attachment is to be served on the defaulter in the same manner as is prescribed for the service of an order or decision in Section 153 of the Act.

2. It is also necessary that the order of attachment should be proclaimed at some place on or adjacent to the property attached by customary mode. A copy of the attachment order is to be affixed on a conspicuous part of the property as well as on the notice board of the office of the authorised officer.

3. While issuing the order of attachment the provisions of Rules 9 and 10 of the Rules should be kept in view. It is necessary to bring the provisions of the aforesaid Rules to the defaulter's notice by a written communication served in the same manner as has been stipulated for the service of the principal notice of attachment in the foregoing paras. The standard format, which could be used for doing so, is given as **Appendix IV**.

4. In some odd cases it may happen that the property to be attached is in the custody of a court or public officer. In such cases the authorised officer is required to give a notice (in Appendix VI) to

such court or officer requesting that such property, and any interest or dividend becoming payable thereon may be held subject to the further orders of the authorised officer issuing the notice. In case there is any dispute relating to the question of title or priority between the authorised officer and any other person not being the defaulter who claims to be interested in such property by virtue of any assignment, attachment or otherwise, the same would have to be determined by the court and not by the authorised officer.

5. If the defaulter does not pay the Government dues as mentioned in the Certificate (Appendix – I) within a period of 30 days together with the cost of detention of the property, the authorised officer should obtain the commissioner's order for realising the amount by sale of the defaulter's property in public auction.

6. Commissioners are competent to fix the reserve price in respect of any property of the defaulter to be sold in public auction and further order that any bid shall be accepted only on the condition that it is not less than such reserve price. They may utilise the services of the Valuation Cell of the Income Tax Department, or authorised Govt. approved valuers,. Similarly in regard to valuation of shares, authorised agencies like SEBI, Stock Exchanges could be consulted.

7. The order of attachment of negotiable instrument shall be in the form Appendix VIIIA.

8. In the case of shares held by the defaulter in a company, the order in Appendix VIIB shall be issued both to the defaulter and the principal officer of the company prohibiting them from making any transfer of the shares. A copy of prohibitory order should also be affixed on the notice board of the authorised officer.

ANNEXTURE 'B'

PROCLAMATION AND SALE

1. When the authorised officer acting under Rule 15 has obtained the Commissioner's order to the effect that the immovable property belonging to the defaulter should be sold he has to give proclamation of such intended sale.
2. The proclamation should be in the language of the district in which the particular property is situated and one proclamation should be issued for each defaulter. It is not necessary to give notice to the defaulter before the sale proclamation is settled. Once a notice is issued, there is no necessity of issuing a fresh notice if subsequently a sale is to be adjourned.
3. The proclamation, which is the prelude to sale, should contain the following particulars i. e.
 - (i) The revenue assessed upon the property or part thereof;
 - (ii) The reserve price below which the property may not be sold; and
 - (iii) Any other thing which the authorised officer considers it material for the purchaser to know in order to judge the nature and value of the property.
4. Every proclamation of sale should be made in the following manner :
 - (A) By customary mode (announcement by loud speaker may also be resorted to) at some place on or near the property to be sold. Omission to beat drum as required by Rule 19 is 'material irregularity'.
 - (B) A copy of the proclamation shall be affixed:
 - (i) Where several properties are put up for sale, copy of the proclamation should be affixed on each property separately.

- (ii) Upon a conspicuous part of the office of the authorised officer. This condition must be scrupulously followed in every case.
5. The sale of immovable property made in execution of a Certificate becomes absolute when the authorised officer makes an order confirming the sale. It is mandatory upon the authorised officer to make the order confirming the sale when the following conditions are fulfilled.
 - (i) When no application is made for setting aside a sale under Rule 20;
 - (ii) (a) When such an application has been made and the same is disallowed by the authorised officer; and
 - (b) the full sum of the purchase money has been paid.

6. The authorised officer can also make an order not confirming the sale but setting the same aside, if;
 - (a) an application under Rule 20 has been made and is allowed by him,
 - (b) an application under Rule 20 has been made and all the conditions mentioned in that Rule are satisfied.

Before setting aside the sale the authorised officer is required to give notice to the person (s) affected thereby which expression includes the defaulter, the auction purchaser, a transferee from the auction purchaser after the sale but before the same is confirmed.

7. The order of confirmation of sale of immovable property under Rule 21 should be in the form of Appendix X. The notice to interested parties under Rule 21 (ii) of the Rules, to show cause why sale should not be set aside, shall be in the form of Appendix. IX.
8. When the sale of immovable property becomes absolute, the authorised officer should grant a certificate in which are certified the details of the property sold, the name of the person declared as purchaser and the date on which the sale had become absolute. The certificate as given in Annexure XI is to be granted to the purchaser. Where a purchaser is dead, the certificate may be granted to his legal representative.
9. It is to be noted that departmental officers having any duty to perform in connection with any sale under the Rules either directly or indirectly are prohibited from bidding for, acquiring or attempting to acquire any interest in the property sold through public auction. Needless to say that similar instructions also exist in respect of the sale of confiscated goods or goods sold through public auction in terms of Section 48 of the Act.
10. The rules specially prohibit conducting any sale through public auction on a Sunday or other general holidays recognised by the State Government or Government as local holiday for the area in which the sale is to take place. The provisions of this rule are at variance with the instructions as contained in the Disposal Manual for holding public auction in respect of confiscated goods or goods proposed for sale under Section 48 of the Act. Since there is a statutory bar on conducting public auction in respect of the property arrested and distrained under Section 142 (1) (c) (ii), particular care should be taken to scrupulously abide by the provisions of Rule 26 as non-compliance may vitiate the sale altogether.
11. Once the movable or immovable property of the defaulter is sold in terms of sub-clause (ii) of clause (c) of Section 142 (1) of the Act and / or the provisions of the Rules, the sale proceeds are to be utilised in the manner laid down under Rule 27 of the Rules. The expression "sale proceeds" connotes the conversion of the property into its equivalent value of money.
12. When the property belonging to the defaulter is sold and the sale proceeds realised, the sale proceeds will have to be distributed in the following order of priority:
 - (a) In the first place, the authorised officer shall be paid the cost incurred by him. An instance of the cost so incurred by the authorised officer is where under Rules 13, 17 and 19 (ii) of the Rules the authorised officer is to insert advertisement (s) in the local newspaper. Sums payable by the

authorised officer for incurring such expenditure should be deemed to be the cost of sale and would have to be deducted from the total sale proceeds of the defaulter's property.

- (b) The amount due under the Certificate issued under Rule 3 together with the cost of detention of the property shall then be utilised for specification of the amount mentioned in the Certificate. It may, however, be noted that in the case of sale of immovable property no disbursement should be made until the sale has been confirmed by the authorised officer under Rule 21 of the Rules.
- (c) If any balance remains over after defraying the amount (s) mentioned at (a) and (b) above, then out of such balance any amount recoverable from the defaulter under the Act which may be due upon the date of realisation of the sale proceeds shall be paid to the Asstt. Commissioner of Customs to whom such payment is due.
- (d) The balance, if any, left over after making the payment (s) referred to at (a), (b) and (c) above shall be paid to the defaulter.

APPENDIX I

FORM OF CERTIFICATE UNDER SECTION 142 (1) (c) (ii) OF THE CUSTOMS ACT 1962

From

Assistant Commissioner of Customs,
-----Custom House,

To

The Commissioner of Customs & Central Excise,

Subject: Realisation of Government Dues recoverable form ----- under the provisions of Sec 142 (1) © (ii) of the Customs Act, 1962 .

Pursuant to Sec 142 (1) © (ii) of the Customs Act, 1962 (Act LII of 1962) I, -----, Assistant Commissioner of Customs do hereby certify that a sum of Rs. ----- has been demanded form and is payable by ----- by way of duty / penalty / drawback / interest under the said Act and has not been paid and cannot be recovered form the said ----- in the manner provided in Sec 142 (1) (a) or (b) or (c) (I).

The said ----- owns property / resides / carries on business, in your jurisdiction particulars of which are given hereunder:-

I am, therefore, to request you to kindly take early steps to realise the amount in accordance with the provisions of Section 142 (1) (c) (ii) of the Customs Act, 1962 and the Customs (Attachment of Property of Defaulters for recovery of Government Dues) Rules, 1995.

On realisation, the aforesaid sum together with the interest and cost of distress may please be credited to the following Head of Account:

Yours faithfully,

Assistant Commissioner of Customs

Custom House -----

Dated the -----

APPENDIX – II
NOTICE OF DEMAND TO DEFAULTER

Office of the Asstt. Commissioner of
 Customs and Central Excise.

 Dated -----

To

Please take notice that certificate No. ----- dated ----- had been forwarded by the Assistant commissioner of Customs ----- to the Commissioner of Customs and Central Excise, ----- for the recovery of an amount of Rs. ----- details of which are given herein below: -

1. The said commissioner has sent the said certificate to the undersigned who has been authorised by the said Commissioner under Section 142 (1) © (ii) of the Customs Act, 1962, read with Rule 4 of the Customs Attachment of Property of Defaulters for Recovery of Customs Dues) Rules 1995 specifying that an amount of Rs. ----- is to be recovered from you.
2. You are hereby required to pay the amount aforesaid within seven days from the date of service of this notice.
3. A copy of the challan in Form TR 6 is enclosed for the purpose.
4. You are hereby informed that in case of default, steps would be taken to realise the amount in accordance with the provisions of the Customs (Attachment of Property of Defaulters for the recovery Government Dues) Rules, 1995.
5. In addition to the amount aforesaid, you will also be liable for –
 - (a) such interest as is payable in accordance with Section 28AA of the said Act for the period commencing immediately
 - (b) all cost, charges and expenses incurred in respect of the service of this notice of warrants and other process and of all other proceedings taken for realising the arrears.

(Seal)

Authorised Officer
 (NAME IN BLOCK LETTERS)
 DESIGNATION.

Dated:

(Score out whichever paragraph is not applicable).

N. B. – Attention is invited to Rule 9 of the Customs (Attachment of Property of Defaulters for Recovery of Customs Duties Rules 1995 which is reproduced below:-

- 6 (I) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative interest shall not be competent to mortgage, charge, lease, or otherwise deal with any property belong to him except with permission of the Proper Officer, not shall any civil court issue an process against such property in execution of decree for the payment of money.
 - (iii) Where an attachment has been made under the Rules, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, divided or other monies contrary to such attachment shall be void, as against all claims enforceable under the attachment".

APPENDIX II A
NOTICE OF ATTACHMENT WHERE THE PROPERTY CONSISTS OF A SHARE OR
INTEREST IN MOVABLE PROPERTY.

Office of the Assistant Commissioner
 Customs & Central Excise

To

Where you have not paid the amounting to Rs ----- payable by you in respect of Certificate No. ----- dated ----- forwarded by the Assistant Commissioner of Customs, ----- and the interest payable under section 28AA of the Customs Act, 1962, for the period commencing immediately after the said date;

2. It is hereby ordered that you [-----] be, and are hereby prohibited and restrained, until the further order of the undersigned, from transferring or changing in any way your share or interest in the undermentioned items of movable property, belonging to you and ----- and --- -----as co-owners.

3. Given under my hand and seal at ----- this ----- day ----- of
Authorised Officer (OFFICE SEAL)
 (NAME IN BLOCK LETTERS)
 DESIGNATION.

APPENDIX III A
PANCHANAMA

ATTACHMENT OF MOVABLE PROPERTY

Panchanama drawn by the panchs, in the presence of Shri -----, Authorised Officer, of the office of the Assistant Commissioner of Customs during the course of the execution proceeds of the Warrant or Notice Form no. ----- in the case of ----- of -----, who is a defaulter for non-payment of arrears of Government Dues in the File No. ----- on the spot at House no. ----- Street no. ----- of ----- at the time ----- on -----(date)-----

S no.	Name of panch & father's Name	Address	Age	Profession

 We, the above mentioned Panchas, on being called by the above said Shri -----, Assistant Commissioner of Customs & Central Excise, -----, duly authorised by the Commissioner of Customs and Central Excise under Rule 4 of the Customs (Attachment of Property of

Defaulters for Recovery of Government Dues) Rules, 1995, gathered here at the place of -----
 ---- (address in full)..... belonging to Shri -----, and learnt that Shri / M/s -----
 ----- is a defaulter for non-payment of Government Dues and consequently the
 warrant of attachment of the movable property of the defaulter in the Form Appendix -----,
 to be executed on or before ----- date, and in execution thereof Shri -----, the
 holder of the warrant, today entered the premises of Shri ----- at -----(time),
 and after service of the warrant on Shri -----, demanded the payment of the
 Government Dues, and on its non-payment, attached movable properties as detailed in the inventory
 attached to this panchnama between the hours ----- (time) and ----- (time) in our
 presence.

We also hereby state that during the execution proceedings -----

 ----- (to be filled in case of occurrence of any incident)

Therefore, we solemnly declare that the facts of the Panchnama mentioned herein are true and
 correct to the best of our observation and knowledge.

Dated Time

- 1.
- 2.
- 3.
- 4.
- 5.

Drawn before me

OFFICE SEAL

Authorised Officer
 NAME IN BLOCK LETTERS
 DESIGNATION

INVENTORY

Inventory of movable properties attached at the premises of Sri ----- H. No. -----
 Street No. ----- of ----- under Rule 5 of the Customs (Attachment of Property of
 Defaulters for Recovery of Government Dues) Rules, 1995 while executing Warrant of attachment of
 movable issued by the Authorised Officer, Date ----- towards realisation of arrears of Government
 dues of Rs. ----- due from ----- and executed by Shri -----
 ----- Authorised Officer ----- on -----(date)----- between the hours -----

Sl . No.	Description of the Article	Estimated value(In Rs.)	Place where kept for safe custody (name of the person, if necessary)

Witness: -

Sl. No.	Name and address of Panch	Signature

Drawn by me today the -----(date)----- at ----- A. M. / P. M.

Signature of Defaulter:

Signature of Authorised Officer

APPENDIX III B

PANCHANAMA

ATTACHMENT OF IMMOVABLE PROPERTY

I / We -----

-S / o -----

(2) ----- residence of -----

on being called by Shri ----- Assistant Commissioner of Customs and Central Excise ----- duly authorised by the Commissioner of Customs and Central Excise ----- under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995 to witness the attachments / proclamation for the sale of the undermentioned property, for realisation of Government Dues from ----- in File No. ----- solemnly state as under:

(a) -----

(b) -----

(mention the properties here)

- (1) that we identified the property referred to above.
- (2) That a copy of the order of attachment / proclamation for sale was affixed to the outer door / to a pole fixed in respect of each property separately in our presence.
- (3) That the order of attachment / proclamation for sale has been proclaimed, near each property cited above and in the locality by beat of drum.
- (4) That the contents of this Panchanama have been explained to us in vernacular and having understood we certify that what is stated above is correct and true.

BEFORE ME/US

(1) (1)

(2) (2)

APPENDIX III C
ORDER OF ATTACHMENT OF IMMOVABLE PROPERTY

Office of the Assistant Commissioner ,
Customs & Central Excise

To

Where you, ----- (defaulter)..... have / has failed to pay the sum of Rs -----
-----payable by *you / him in respect of Certificate No. ----- dated -----
forwarded by the Assistant Commissioner of Customs, ----- and the interest
payable under section 28AA, 47 (2), 75A and Sec 124 of the Customs Act, 1962, for the period
commencing immediately after the said date;

It is ordered that you, the said ----- be, and are hereby prohibited and restrained,
until the further order of the undersigned, from transferring or charging the undermentioned property in
any way that all persons be, and that they are hereby prohibited from taking any benefit under such
transfer or charge.

SPECIFICATION OF PROPERTY

Given under my hand and seal at ----- this ----- day of -----(date)-----

(OFFICE SEAL)

Authorised Officer
(NAME IN BLOCK LETTERS)
DESIGNATION

APPENDIX IV
NOTICE OF ATTACHEMENT

[Under Rules 9 and 10 of the Customs (Attachment of Property of Defaulters for Recovery of
Government Dues) Rules, 1995]

Office of the Assistant Commissioner,
Customs & Central Excise,

To

Whereas a notice has been served upon you requiring you to pay the sum of Rs. ----- ,
being the amount of Government Dues payable by you as per the terms of an order issued under Sec 28,

28AA, 47,47(2), 61, 61 (2), 75A and Sec 124 of the Customs Act, 1962, under sub-clause (ii) of clause (c) of Section 142 (1) of the Customs (Attachment) of Property of Defaulters for Recovery of Government Dues) Rules, 1995.

2. Please take note that

(a) in terms of Rule 9 of the aforesaid Rules.

(i) you, or your representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to you except with the written permission of the undersigned.

(ii) Where an order of attachment has been served on you as per the terms of Rule 5 of the above mentioned Rules, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such attachment shall be void as against all claims enforceable under the attachment

(b) Further in terms of Rule 10 of aforesaid Rules, where belonging to you and / or another as co-owners, you are hereby prohibiting him from transferring the share or interest or charging it in any way.

Given under my hand this ----- day of -----(date)-----

OFFICE SEAL

Authorised Officer
NAME IN BLOCK LETTERS
DESIGNATION

APPENDIX V
NOTICE OF ATTACHMENT A DECREE OF A CIVIL COURT

Office of the Assistant Commissioner,
Customs & Central Excise
.....
Dated

To
The Judge of the Court of

Sir,

Where (defaulter).... has failed to pay the arrears due from him in respect of Certificate No dated forwarded by the Assistant Commissioner of Customs to the Authorised Officer (so authorised by the Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995) amounting to Rs. and the interest payable under section 28AA, 41(2) , 61(2), 75A and Sec 124 of the Customs Act, 1962, for the period commencing immediately after the said date.

And whereas the undersigned, in exercise of his powers under the Customs (Attachment of Property for Recovery of Government Dues) Rules, 1995, desires to proceed with attachment of a decree of Court, dated the day of made in suit No. of wherein was the plaintiff (and) was the defendant and which decree is pending execution in your Court.

You are, therefore, requested to say the execution of the said decree unless and until –

- (i) the undersigned cancels this notice; or
- (ii) the Assistant Commissioner of Customs or the above mentioned defaulter applies to you to execute the decree.

Yours faithfully,

(OFFICE SEAL)

Authorised Officer
(NAME IN BLOCK LETTERS)
DESIGNATION

APPENDIX – VI
NOTICE OF ATTACHMENT OF MOVABLE PROPERTY IN THE CUSTODY OF A COURT OR A PUBLIC OFFICER

Officer of the Assistant Commissioner,
Customs & Central Excise,

.....

.To

.....

Sir,

Whereas(defaulter)..... has not paid the arrears amounting to Rs.
. in respect of Certificate No. dated forwarded by the Assistant
Commissioner of Customs, and the interest payable under section 28AA, 47(2),
61(2), 75A and Sec 124 of the Customs Act, 1962, for the period commencing immediately after the said
date and the said Authorised Officer (so authorised by the Commissioner of Customs under Rule 4 of the
Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995)
specifying that an amount of Rs. is to be recovered by the undersigned from the
defaulter; and the undersigned desires to attach sums of money or other property, which is included in the
defaulter's property now in your custody;*

I request that you will hold the said money or property and any interest or dividend becoming
payable thereon subject to the further and other available details.

Yours faithfully,

(OFFICE SEAL)

Authorised Officer
(NAME IN BLOCK LETTERS)
DESIGNATION

Note: - *Here state how the money or property is understood to be in the hands of the Court of the Public
Officer addressed, on what account and other available details.

APPENDIX – VII A
ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT

To

(Attaching Officer)

Whereas the undersigned the passed on the day of (month/year). . . . an order for the attachment of the undermentioned property in the course of proceedings for the recovery of arrears due from(defaulter) in respect of Certificate No dated forwarded by the Assistant Commissioner of Customsto the Authorised Officer (so authorised by the Commissioner of Customs under Rule 4 of the Customs (Attachment of Property for Recovery of Government Dues) Rules, 1995, you are hereby directed to seize the said property and bring the same before me and hold the same subject to my orders.

DETAILS OF PROPERTY

Given under my hand and seal at this day of (date).. .. .

(OFFICE SEAL)

Authorised Officer
(NAME IN BLOCK LETTERS)
DESIGNATION

APPENDIX VII B
PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF SHARES IN A CORPORATION

Office of the Assistant Commissioner
Customs & Central Excise

To,

(1)

(2)

(Principal Officer)

.....

(Name of Corporation)

.....

Whereas (defaulter) has failed failed to pay the arrears due from him in respect of Certificate No. dated forwarded by the Assistant Commissioner of Customs amounting to Rs. and the interest payable under section 28AA, 47(2), 61(2), 75A and Sec 124 of the Customs Act, 1962, for the period commencing immediately after the said date;

It is ordered that you, No. (1) (above-mentioned, be, and you are hereby prohibited and restrained, until the further order of the undersigned, from making any transfer of the shares in the aforesaid Corporation standing in your name or from receiving payment of any dividends thereon, 1 (* It may be noted, that the property consisting of shares is included in the defaulter’s property).

And that you, No. (2) abovementioned, are hereby prohibited and restrained, until the further order of the undersigned, from permitting any such transfer or making any such payment.

Given under my hand and seal at this day of(date)

(OFFICE SEAL)

Authorised Officer
(NAME IN BLOCK LETTERS)
DESIGNATION

APPENDIX – VII C

**ORDER OF ATTACHMENT OF PROPERTY CONSISTING OF AN INTEREST IN PARTNERSHIP
PROPERTY**

Office of the Assistant Commissioner,
Customs & Central Excise,
.....

To
.....

Whereas (defaulter)..... has not paid the arrears amounting to Rs.
... in respect of Certificate No dated forwarded by the Assistant
Commissioner of Customs and the interest payable under section 26A of the Customs
Act, 1962, for the period commencing immediately after the said date and the said Tax Recovery Officer
has sent to the undersigned a certified copy of the said Certificate, specifying that an amount of Rs.
..... is to be recovered by the undersigned from the defaulter; and whereas the said
.. is a partner in the firm known as Messers.

It is hereby ordered:

(i) that the share of the said , in the partnership property and profits of the said
firm be and is hereby charged with the payment of the amount offoresaid due under the
said Certificate; and

(ii) * that

Given under my hand and seal at this day of (month/year) .
.....

(OFFICE SEAL)
Officer

Authorised

(NAME IN BLOCK LETTERS)
DESIGNATION

Note:- * Here incorporate any other order that may be considered necessary in the circumstances.
Score out portion in Italics if not applicable.

APPENDIX VIII

PROCLAMATION OF SALE

Officer of the Assistant Commissioner
Customs & Central Excise
.....

To
.....

Whereas the Assistant Commissioner of Customs, has forwarded
Certificate No. dated for the recovery of the sum of Rs.
... from(defaulter).....

Which sum is recoverable together with interest in accordance with section 28AA, 47(2), 61(2), 75A and Sec 124 of the Customs Act, 1962, for the period commencing immediately after the said date and the costs, charges and expenses of the proceedings for the recovery of thereof;

And whereas the undersigned has ordered the sale of the attached property mentioned in the annexed schedule in satisfaction of the said Certificate;

And whereas on the day of(month/year) (the date of fixed for the sale) there will be due thereunder a sum of Rs. including costs and interest;

Notice is hereby given that, in the absence of any order of postponement, the said property shall be sold by public auction at A. M. / P. M. on the said day of(month/year) at (place)

The sale will be of the property of the defaulter above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property to the said property, so far as they have been ascertained, are those specified in the schedule against each lot;

The property will be put up for sale in the lots specified in the schedule. If the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder. The sale will also be stopped if, before any lot is knocked down, the arrears mentioned in the said Certificate, interest payable under sections 28AA, 47(2), 61(2), 75A and Sec 124 of the Customs Act, 1962 and costs (including the costs of the sale) are tendered to the officer conducting the sale of proof is given to his satisfaction that the amount of such arrears, interest and costs has been paid to the undersigned.

At the sale, the public generally are invited to bid either personally or by duly authorised agent. No officer or other person, having any duty to perform in connection with this sale shall, however, either directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold.

The sale shall be subject to the conditions prescribed in the Customs (Attachment of Property of Defaulters for the Recovery of Customs Dues) Rules, 1995, and to the following further conditions:-

- i) The particulars specified in the annexed schedule have been stated to the best of the information of the undersigned, but the undersigned shall not be answerable for any error, mis-statement or omission in this proclamation.

2 [** (ii) The reserve price below which the property shall not be sold is Rs.]

3 (iii) The amounts by which the bidding are to be increased shall be determined by officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

4 (iv) the highest bidder shall be declared to be the purchaser of any lot provided always that he is legally qualified to bid and provided further that the amount bid by him is not less than the reserve price. It shall be in the discretion of the undersigned to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it inadvisable to do so.

1[(v)] For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of Customs (Attachment of Property of Defaulters for the Recovery of Customs dues) Rules, 1995.

[(vi)] In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment, the property shall forthwith be again put up and resold.

2[(vii)] In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration, a deposit of twenty-five percent of the amount of his purchase money to the officer conducting the sale and, in default of such deposit, the property shall forthwith be put up

again and resold. The full amount of the purchase money payable shall be paid by the purchaser to the undersigned on or before the 15th day from the date of the sale of the property, exclusive of such day, or if the 15th day be a Sunday or other holiday, then on the first office day after 15th day. In default of payment within the period mentioned above, the property shall be resold, after the issue of a fresh proclamation of sale. The deposit, after defraying the expenses of the sale, may, if the undersigned thinks fit, be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

SCHEDULE

No. of	Description property to be sold with the names of the other co- owners where the property belongs to the defaulter and any other persons as co- owners	Revenue assessed upon the property or any part thereof	Details of any encumbrances to which the property is liable	Claims, if any, which have been put forwarded to the property and any other known particulars bearing on its nature and value
1	2	3	4	5

Given under my hand and seal at this day of 19 ..

.....

(OFFICE SEAL)
Officer.

Authorised

(NAME IN BLOCK LETTERS)
DESIGNATION

** Applies only in the case of auction of immovable property where a reserve price is fixed.]

APPENDIX – IX

ORDER OF CONFIRMATION OF SALE OF IMMOVABLE PROPERTY

Office of the Assistant Commissioner
Customs & Central Excise

.....
.....

..... purchased for Rs. the immovable property specified below at a sale held by public auction on the day of (date). . . . in execution of Certificate No. dated forwarded by the Assistant Commissioner of Customs, to the Authorised Officer (so authorised by the Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulters for the Recovery of Government Dues) Rules, 1995) for recovery of arrears from The full amount of the purchase money has been paid on

Accordingly the said sale is hereby confirmed.

Given under my hand and seal at this day of (date) . . .

(OFFICE SEAL)

Authorised Officer
(NAME IN BLOCK LETTERS)
DESIGNATION

APPENDIX – X

NOTICE TO INTERESTED PARTIES TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE

Office of the Assistant Commissioner
Customs & Central Excise

.....

To

.....

Whereas the under mentioned property was sold on the day of in execution of Certificate No. dated forwarded by the Assistant Commissioner of Customs for recovery of arrears from (defaulter)

And whereas has applied to the undersigned to set aside the sale under rule 20 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs before the undersigned on when the said application will be heard and determined.

DESCRIPTION OF PROPERTY

Given under my hand and seal at this day of (date).....

(OFFICE SEAL)

Authorised Officer
(NAME IN BLOCK LETTERS)
DESIGNATION

APPENDIX XI
CERTIFICATE OF SALE OF IMMOVABLE PROPERTY

Office of the Assistant Commissioner
Customs & Central Excise
.....

This is to certify that Shri has been declared the purchaser at a sale by public auction on the day of of the undermentioned immovable property, in execution of Certificate No., forwarded by the Assistant Commissioner of Customs to the Authorised Officer (so authorised by the Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995,) for recovery of arrears from and that the said sale has been duly confirmed by the undersigned and became absolute on the day of

SPECIFICATION OF PROPERTY

Given under my hand and seal at this day of (date).....

(OFFICE SEAL)

Authorised Officer
(NAME IN BLOCK LETTERS)
DESIGNATION

APPENDIX – XII A
CERTIFICATE OF SALE OF MOVABLE PROPERTY

Office of the Assistant Commissioner
Customs & Central Excise
.....

This is to certify that Shri purchased for Rs the undermentioned movable property at a sale by public auction on the in execution of Certificate No. dated forwarded by the Assistant Commissioner of Customs for recovery of arrears from to the Authorised Officer (so authorised by the Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995) specifying that an amount of Rs. remains to be recovered from]

SPECIFICATION OF PROPERTY

Given under my hand and seal at this day of(date).....

(SEAL)

Authorised Officer
NAME IN BLOCK LETTERS
DESIGNATION

@ @ @ @ @ @ @ @ @ @ @ @ @ @ @ @

CHAPTER - TWENTY FIVE

MISCELLANEOUS

OVERTIME ALLOWANCE TO CENTRAL GOVERNMENT EMPLOYEES

[EXTRACTS FROM GOVT. OF INDIA, MINISTRY OF FINANCE, O. M. NO. 15011/2/E-II(B)/76 DATED 11TH AUGUST, 1976 AS AMENDED BY O. M. NO. 151012/3/86-ESTT. (ALLOWANCES), DATED 19TH MARCH 1991 FOR OVERTIME ALLOWANCE TO CENTRAL GOVERNMENT EMPLOYEES]

1. In supersession of all the previous orders on the subject, the grant of overtime allowance to Central Government employees will be governed by the following orders.

2. **Eligibility:-** All non-Gazetted central Government servants and also Gazetted Government servants who fall in the excepted category mentioned in paragraph 5(a) of these orders, paid from Civil Estimates (including those working in the Union Territories Administration) of the following categories, viz. 9i0 "office staffs" and (ii) those staffs whose prescribed hours and nature of work are comparable to those of "office staff" shall, in future, be governed by these orders.

OTA to be paid in the pre-revised scales of pay/pay slabs until further orders. – The Fifth Central Pay Commission have observed that there is no justification for the continued payment of Overtime Allowance in the Central Government Offices and have recommended its discontinuance. It has also been recommended by the Commission that in lieu of cash compensation in the form of OTA staff deployed on weekly off days may be entitled only to compensatory leave. However, the staff Car Drivers, Operational Staff and industrial Employees have been recommended to be governed by the existing rules and instructions on the subject.

2. The Government has, however decided to continue the status quo in regard to payment of OTA, subject to a review of the mater to make the eligibility for OTA more restrictive and commensurate with the interests of Government work. Accordingly, payment of Overtime Allowance may continue to be made as per the existing orders on the basis of notional pay admissible to the concerned Government employees in the pre-revised scales of pay/pay slabs as laid down in the existing orders.

3. These instructions will apply until further orders. Pending cases of OTA bills, if any may also be regulated under these instructions.

[G.I. Dept. of Per. & Trg. O.M. No.21017/3/97-Estt(Allowances.) dated 21st November, 1997]

3. Conditions for the grant :-

(a) The work in all offices should be so organized as ordinarily to be capable of being done during the normal office hours. The question of overtime work to be done should arise, only in special circumstances and where working beyond the prescribed office hours is a regular feature, the offices and the officers should so stagger the working hours that the staff working in the office or attached to officers attend to such work by rotation.

(b) Where, in special circumstances, it becomes necessary to perform overtime work, the competent authority may authorize such overtime work, after satisfying himself that the work is of such an urgent nature that it cannot be postponed in the public interest till the next working day and the competent authority shall, as far as possible, specify beforehand the time up to which a Government servant may be required to perform overtime work. In this regard following further instructions may be strictly observed :-

(i) If any employee is required to attend office earlier than the prescribed hours of work, he should normally be allowed to leave office correspondingly early. Where, however, it is not feasible to

allow him to leave office early, he may be paid overtime allowance after deducting the normal one hour of free work. If such an employee is also required to work beyond office hours on that day overtime allowance may be allowed for the total period of overtime work performed before and after the prescribed hours of work after deducting from total the normal one hour of free work.

(ii) The staff who are required to perform overtime duty for the full prescribed hours of work on Sundays (or other weekly or fortnightly off days or Second Saturdays) or on other holidays/Public holidays should, as a rule, be granted compensatory leave in lieu. Employees who are required to work on such days beyond a full day may be allowed a day's compensatory leave in lieu of the full day's work and paid overtime allowance for the excess time put by them minus one hour free duty. In case where an employee is required to work for half a day or less, e.g. from the time the office opens till lunch time, two such half days should be taken as equivalent to one full day for the purpose of grant of compensatory leave. Where necessary, half a day's compensatory leave may be given.

Cash Compensation in the form of overtime allowance for duty on Sunday/Weekly or fortnightly off-days/Second Saturdays/Public holidays may be granted only in very exceptional circumstances where the Head of the Department in the case of attached, subordinate or other office is satisfied and certifies that it is not possible to grant compensatory leave.

NOTE 1. Whenever duty is performed beyond a full day (beyond prescribed hours or work), overtime allowance for such duty is to be granted only after deducting one hour free duty. If an employee comes to office late, with or without previous permission, on any day and is required to work beyond office hours on that day, the following deductions should be made in calculating overtime allowance :-

- (a) the normal one hour of free work; and
- (b) the time by which he comes late.

NOTE 2. Normally compensatory leave under these orders should be granted within one month of its becoming due. The conditions may be relaxed in exceptional circumstances to be decided upon by Head of the Department in the case of staff of attached, subordinate or other office, who will satisfy himself and certify that the grant of compensatory leave to all the staff within a month would cause serious dislocation or current work. There will be no limit upto which compensatory leave maybe allowed to accumulate but not more than two days compensatory leave be allowed to be availed of at a time.

(iii) The maximum overtime allowance admissible to an employee in a month shall not exceed the amount corresponding to overtime allowance payable for 1/3rd of monthly working hours.

[Note : As per M. F.,(D.R.), letter F. No. A. 27016 / 3 / 91 – Ad –II – A (I) dated 01.12.1992, the maximum Overtime Allowance (both MOT and GOT taken together) that can be paid to an individual officer will be restricted to the total of ½ a month's emoluments, in a month]

In calculating overtime allowance under these orders, the actual time taken for lunch break should be deducted from the total hours for which the staff concerned is eligible for the allowance.

(iv) Overtime allowance under these orders may not be paid to Government servants required to perform duty at the site of an exhibition fair, in addition to his normal duty.

(v) All the regular Group 'D' staff, including Waiters, Cooks, Sweepers, farashes and Chowkidars, whose hours of work have been prescribed by the competent authority and who are at present eligible to overtime allowance may be paid overtime allowance at the same rate admissible to other Group 'D' staff working in offices except those who are paid overtime allowance under any statutory rules in force.

4. Definitions:-

For the purpose of these orders, unless the context other wise requires –

- (a) A "**Competent Authority**" means –

.....

- (ii) in the case of an office under the supervision of a Government servant holding a non-Gazetted post, a Government servant authorized by the Head of the Department to exercise the powers of a competent authority;
- (iii) in the case of any other office the Head of office declared as such for that office under the appropriate rule of GFR or under Rule 10(a) of the DFP Rule, 1958 (Now Rule 14 of DFP Rules, 1978) or any other officer in that office of a rank not lower than that of the Head of office;
- (b) **“Emoluments”** mean pay as defined in Clause (e) below including Dearness allowance, Compensatory (City) Allowance and Composite Hill Compensatory Allowance but excluding all other allowances/incentives.
- (c) **“Head of the department”** means the authority declared as such under Supplementary Rule 2(10).
- (d) **“Overtime Work”** means work done in excess of one hour over the prescribed hours of work on any working day and includes work done on any Sunday or any other holiday.
- (e) **“Pay”** means pay as defined in Fundamental Rule 9(12) (a). In case of employee who continue to draw pay in scales of pay which prevailed prior to 1st January, 1986, it will include, in addition to pay in the pre-revised scales, Dearness Pay, Dearness allowance, additional Dearness Allowance, *Ad hoc* Dearness Allowance and interim relief appropriate to that pay, admissible under the orders in existence on 31.12.1985.
- (f) **“Prescribed hours of work”** means hours of work prescribed in any office in respect of employee working in that office.

5. Categories of government servants to whom these orders shall not apply even though they may be of the nature of ‘office staffs’ or staff whose prescribed hours and nature of work are comparable to those of ‘office staffs’-

These orders shall not apply to –

- (a) government servants holding Gazetted posts.
- (b) Government servants holding non-Gazetted posts whose pay, as defined under these orders, exceeds Rs. 2,200 p.m.
- (c) Government servants who hold supervisory posts not excluded by Clauses (a) and (b) above, unless they fulfill the following conditions:-
 - (i) they are in direct and continuous contact with staffs they supervise;
 - (ii) they work the same hours as the staff under them; and
 - (iii) they are themselves subject to the kind of supervision which would enable them ordinarily to obtain prior approval for overtime.
- (d) Field staff and inspection staff.

.....

- (l) Such of the Government servants employed in the government of India Presses, the Government Controlled ports, the Mercantile Marine Department, the Customs (including Land Customs) Department, the Central Excise Department and the Overseas Communication service, as are already in receipt of overtime allowance under other schemes.

6. (a) Re-employed Pensioners

The drawl of overtime allowance in the case of re-employed pensioner shall be regulated as indicated below –

- (i) In the case of officers whose pay plus pension exceeds the sanctioned maximum pay of the post, overtime allowance, shall be calculated on that maximum plus the includible allowance referred to in paragraph 4 (b) above as may be admissible to them.

- (ii) In the case of officers whose pay on re-employment in Civil posts is fixed without taking into account the entire pension or part thereof the amount of pension so ignored shall be ignored for calculating emoluments under paragraph 4 (b) above.
- (iii) In other cases, the overtime allowance shall be calculated on pay plus pension plus the includible allowances referred to in paragraph 4 (b) above as may be admissible to them.

(b) Persons in receipt of emoluments from foreign Governments. Persons in receipt of any emoluments of the nature of pay, leave salary or pension from foreign Governments (e.g.. Burma, Sri Lanka, Pakistan, etc.), in addition to pay from the Government of India shall, subject to the total emoluments not exceeding the limits prescribed for eligibility for overtime allowance, draw the allowance on the basis of their pay *plus* the includible allowances referred to in paragraph 4 (b) above as may be admissible to them from the government of India alone.

NOTE.- For the purpose of sub-paragraphs (a) and (b) _

- (i) "**Pension**" means gross pension including temporary increase in pension, death-cum-retirement gratuity and other retirement benefits, if any.
- (ii) The amount of pension shall be the amount originally sanctioned (i.e., before commutation, if any) less the amount of pension, if any, held in abeyance as a condition of re-employment.

7. Rate of Overtime Allowance –

Where a Government servant to whom this order applies is required to perform overtime work, he shall be entitled to overtime allowance in respect of the overtime work done by him in accordance with the following rates :-

The rates of overtime allowance and the basis of reckoning them will, for the present, be as under

A) office Staff.

Emoluments Range	Overtime allowance per hours	
	Up to the first one hour in excess of the prescribed hours of work	Thereafter
Upto Rs.1,200	Nil	Rs. 6.25
Rs.1,201 to Rs.1,450	Nil	Rs. 7.50
Rs.1,451 to Rs.1,700	Nil	Rs. 8.95
Rs.1,701 to Rs.1,950	Nil	Rs.10.35
Rs.1,951 to Rs.2,200	Nil	Rs.11.80
Rs.2,201 and above	Nil	Rs.12.50

(B) Operative Staff:-

Emoluments Range	Overtime allowance per hours	
	Up to the first one hour in excess of the prescribed hours of work	Thereafter
Upto Rs.1,200	Rs. 7.95	Rs. 10.60
Rs.1,201 to Rs.1,450	Rs. 9.55	Rs. 12.75
Rs.1,451 to Rs.1,700	Rs.11.35	Rs. 15.15
Rs.1,701 to Rs.1,950	Rs.13.15	Rs.17.55
Rs.1,951 to Rs.2,200	Rs.14.95	Rs.19.95
Rs.2,201 and above	Rs.15.85	Rs.21.15

The above rates shall be applicable in respect of operative Staff whose prescribed hours of weekly duty are 48 hours. In respect of operative staff whose prescribed hours of weekly duty are different, the proportionate rates with reference to the aforesaid rates for 48 hours may be prescribed by the concerned Ministries/Departments in consultation with their financial advisers.

The detailed instructions for the grant of Overtime Allowance to operative staff will be issued separately by the respective ministries in respect of operative staff serving under them.

Rate of OTA to Casual employees. The question of revision of rates of OTA for casual employees has been under consideration of the Government for sometime past. Keeping in view the government policy regarding casual employees, these employees have been classified into the following categories and the formula/rate to be adopted for the purpose of payment of OTA is specified against each :-

Category	Hourly Rate of OTA
(i) Casual employees drawing minimum of wages as notified by the Ministry of Labour or the State government/UT Administration, which is higher	1/8 th of the daily wage.
(ii) casual employees drawing 1/30 th of the pay at the minimum of the relevant pay scale + DA red with Para.1 (iv) of this Department's O.M. No.49014/2/86-Estt. (c), dated 7.6.1988.	Minimum of the relevant pay scale + DA admissible at the current rates divided by 30x8.
(iii) Casual workers having temporary status under this Department's O.M. No.51016/2/90-Estt.(c), dated 19.09.1993.	As admissible for office staff at the rates contained in this Department's O.M. No.15012/2/86-Estt. (Allowances), dated 19.03.91.

2. Other conditions regarding deduction of one hour as free duty over and above the prescribed hours per day of duty, ceiling on earnings of OTA, etc., as applicable to regular staff vide this Department's O.M. No.15012/3/86-Estt (Allowances), dated 19.03.1991 and Ministry of Finance's O.M. No.15011/2/E.II(B)/76 dated 11.08.1976, as amended from time to time shall equally apply to the casual staff.

3. These orders will take effect from the date of issue.

4. In so far as persons serving in the Indian Audit and accounts Department are concerned, these orders issue in consultation with the C & AG of India.

[G.I., Deptt. Of Per & Trg. O.M. No 15011/4/90-Estt.(Allowances), dated 9th june,1994]

8. Where overtime allowance is payable to a government servant for the overtime work performed by him, he shall not be entitled to receive any other remuneration (whether in the form of conveyance charges or compensatory leave or otherwise), in respect of such overtime work :

Provided that where a Government servant has been recalled from his residence to perform overtime work, the competent authority may allow conveyance charges to such a Government servant in addition to the overtime allowance admissible to him.

EXPLANATION 1. – The first one hour of overtime work on a working day shall be free only where a Government servant works in continuation of the prescribed hours of work. Where a government servant

is recalled from his residence to perform overtime work, overtime allowance may be paid for the entire period of overtime work including the first one hour.

EXPLANATION 2. – The overtime work in excess of one hour up to half an hour and thereafter every period up to half an hour be reckoned as half an hour, e.g., a person working for 2 hours and 10 minutes in excess of one hour beyond the prescribed hours of work will get overtime allowance for 2 ½ hours.

EXPLANATION 3. - The overtime allowance payable to a Government servant shall be calculated to the nearest multiple of five paise, the fractions of three paise and more being rounded off to the next higher multiple of five paise and fractions below three paise being ignored.

EXPLANATION 5. – The overtime allowance payable under these orders shall be classified as “honorarium” under FR 9 (9) and shall not be treated as ‘pay’ as defined in FR 9 (21), or for the purpose of the Supplementary Rules.

EXPLANATION 6. - Government servants will also be eligible for overtime allowance for performing overtime work while on tour, subject to observance of the conditions prescribed under these orders, namely, limit applicable to total overtime earnings, deduction of one hour’s free work, maintenance of overtime register, grant of compensatory off, etc., and also subject to strict compliance with the conditions indicated below –

- (i) Employee who are not at present entitled to overtime allowance at their headquarters under the existing rules or schemes, shall not be entitled to overtime allowance on tour.
- (ii) Subject to (i) above, an employee would be entitled to overtime allowance on tour, provided overtime work is ordered on the spot (a) by his superior official in the tour party; or (b) where an employee on tour is attached to a local office at his tour station by the competent authority in such local office at the tour station.

NOTE. – Where the superior official, who orders his subordinate official on tour to perform overtime work, is a non-Gazetted officer, or is not the competent authority to order overtime work at the headquarters under the existing rules, he shall, on return to headquarters, submit a report to his controlling Gazetted officer and/or to the competent authority, as the case may be, explaining the circumstances necessitating the detailing of staff on overtime duty, and seeking his approval.

- (iii) Subject to (i) above, an employee on temporary transfer not exceeding 90 days (*now 180 days*) would also be entitled to overtime allowance provided the overtime work has been ordered by his superior official on the spot.
- (iv) For purposes of calculation of overtime, the time spent on travel shall be excluded. In other words, overtime shall be restricted to the period between the time when a halt on tour begins and the time when such halt ends.
- (v) Overtime allowance regulated under any statutory rules will continue to be governed by such rules only.

9. Certificate.

A certificate to be signed by the drawing officer in Form I shall be attached to the bill in which overtime allowance is drawn in respect of every Government servant to whom the overtime allowance is payable.

10. Register.

- (i) A register of overtime work shall be maintained in Form II in each office in which entries shall be made as and when overtime work authorized by the competent authority is performed by the Government servant concerned.
- (ii) This register shall be examined by superior officers and shall be liable to examination by Audit at the time of inspection or audit and any instance of undue grant of overtime allowance

shall be brought to the notice of the higher authorities. The superior officer shall particularly scrutinize cases where the same employee has been paid overtime allowance for more than 10 days in a month

11. If, in respect of any of the categories of staff excluded from the purview of these orders, there is no scheme of overtime allowance already in force and it is considered necessary to have such a scheme, a suitable scheme may be evolved in consultation with the Ministry of Finance, provided (a) the staff in question has prescribed hours of work; (b) the nature of work performed by the staff lends itself to a scheme of overtime allowance; (c) the staff is subject to the kind of supervision which would enable it ordinarily to obtain prior approval for working overtime; and (d) the scheme is in conformity with the principle laid down in this Office memorandum.
12. If any doubt arises relating to the interpretation of these orders, it may be referred to the Ministry of Finance.
13. These orders shall take effect from the date of issue.

ANNEXURE - I

FORM OF CLAIM FOR OVERTIME ALLOWANCE

Date	Whether working day or holiday	Period From To	Actual Time Charged	Time charged after deducting one hour and the time by which the official attended office late or lunch, as the case may be	Rate per hour	Amount claimed
1	2	3	4	5	6	7

Certified that I.....(*Name and Designation*) was on duty for the period mentioned against each date above after office hours/on Sunday/Holidays for official works. My pay and allowances during the period are as under -

Pay Rs.....DA Rs..... CCA Rs.....

Total Rs.....Amount of OTA claimed Rs.....

(limited amount corresponding to OTA payable for 1/2 of monthly emoluments)

Station:

(Signature of the Government servant)

Date:

Designation

FORM - I

Certificate

Certified that the Government servant/Government servants, in whose case the overtime allowance has been claimed in this bill was/were required under specific order to sit late in office after having put in work during prescribed hours on....., attended office on.....Sunday/holiday, for disposal of urgent work which, in public interest, could not be postponed till the next working day.

Certified that the amount claimed in this bill is in accordance with the rates specified in paragraph 7 of the Government of India, Ministry of Finance (Department of Expenditure's) Office memorandum No.15011/2/E-II(B)/76, dated 11th August, 1976, as modified by O.M. No.15012/3/86-Estt.(Allowances), dated the 19th March, 1991, and is according to the principles laid down therein and does not exceed the ceiling of overtime earnings prescribed in those orders, necessary certificates having been obtained from

the officers concerned for payment of overtime allowance to the “personal staff” in excess of the prescribed ceiling.

Also certified that the Government servant(s) concerned did not receive any other remuneration/conveyance charge or compensatory leave for the performance of that overtime work.

(Signature of Drawing Officer)

FORM – II

Overtime register

Sl. No.	Name	Designation of the Government servant required to perform the over time work	Emoluments	Hours of overtime work authorised by the competent authority	Hours of overtime work performed by the Government servant	Nature of work performed during overtime hours	Why the work could not be performed during the prescribed hours of work	Amount of overtime allowance paid	Initials of the competent authority
1	2	3	4	5	6	7	8	9	10

ANNEXURE – II

MISCELLANEOUS ORDERS

(1) Weightage for night duty on the recommendations of the Fourth Pay Commission. –

In paragraph 26.13 of its report , the Fourth Pay Commission as recommended, as below, on the above subject-

“Government employee eligible for grant of various allowances or given ‘night duty allowance’ or weightage for hours of work performed during night. It has not been possible for the government to introduce a uniform system of weightage for ‘Night Duty’ because the requirement of each organization are different. Suggestions have been received for prescribing uniform standard ‘Night weightage ‘ and ‘Night Duty’ hours . Government may consider the advisability of having the entire matter exempt as it has various aspects and implications. In the meantime the government may refix the rates of night duty allowances.”

(2) In pursuance of the above recommendation, a Committee was constituted in the Department of Personnel and Training, associating representatives of the major employing ministries/department , where the staff is required to perform the night duty. After careful consideration of the committees recommendation, the President is pleased to decide as follows:-

- (i) Wherever the working hours have been arrived at after taking into account the weightage factor, no further compensation may be admissible.
- (ii) Night Duty may be defined as duty performed between 2200 hours and 0600 hours.

- (iii) A uniform weightage of ten minutes may be given for every hour of night duty performed.
- (iv) The ceiling of pay for entitlement of Night Duty Allowances shall be Rs.2,200/- per month. There will be, however, no ceiling for entitlement for Night Duty Allowances in respect of the Officers who are, at present getting this benefit as per existing criteria.
- (v) Night Duty Allowances shall be computed as per the following formula:-

(a) For continuous and intensive duty.	Rates calculated on the basis of current rates of pay including DA and CCA divided by the number of working hours in a month. For administrative convenience, the pay scales may be fitted into convenient slabs and the option of the Department.
(b) For intermittent and excluded Class III.	2/3 rd of the rate worked out under (a) above.

- (vi) Where in revising the pay scales of any category in improvement over replacement scale has been granted after taking into account night duty or where the night duty factor has already been taken into account for grant of any allowance such as Nursing Allowance in the case of Nurses, no further compensation may be allowed for night duty.

(3) The existing orders on the subject in so far as they relate to night duty should be deemed to have been modified accordingly.

- (5) These orders shall come into force with effect from 01.01.1986.

[G.I., Dep. Of Per. & Trg. O.M. No.12012/4/86-Est.(Allowances), dated 4th October 1989]

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Rummaging Allowance

Preventive staff when posted for the Rummaging, Intelligence and Investigation duties in the Preventive Commissionerates are entitled to the Rummaging allowance. Extracts of the Govt. of India, Min. of Fin., O.M. No. A 27023 / 19 / 89 – Ad. II A, dated 18th October, 1989, in this regard are given below -

"2. After careful consideration, the President has been pleased to decide in supersession of all earlier orders in this behalf that the rates be revised as below :

Grade	Special pay component	Compensation for for loss of O.T.A.	Total
01. Supdt. of Customs	Rs. 125	Rs. 125	Rs. 250
02. Preventive Officers	Rs. 100	Rs. 100	Rs. 200
03. Group 'D' Staff	Rs. 30	Rs. 30	Rs. 60

3. The Rummaging allowance at the above rates should be paid only to the staff who are at present in receipt of this allowance. The officers, who are entitled to Rummaging allowance at the revised rates shall not be eligible to earn Government OTA.

ANNEXURE III
ORDERS ON HOLIDAYS

1. Holidays to be observed in the Govt. of India offices

The holidays policy has been reviewed and it has been decided that in supersession of the earlier instructions on this subject, the following holidays policy would be followed in the Central Government offices :-

- (i) Central Government offices will observe 17 holidays in a calendar year.
(ii) Of these 17 holidays, 14 holidays consisting of 3 National holidays, namely, Republic Day, Independence Day, and Mahatma Gandhi's Birthday and the following 11 occasions will be compulsorily observed in all Central Government offices throughout India :-

- | | |
|---------------------------------|---------------------------------|
| 01. Budha Purnima | 07. Idul Fit'r |
| 02. Christmas Day | 08. Bakrid (Idu'l Zuha) |
| 03. Diwali | 09. Mahavir Jayanti |
| 04. Dussehra (Vijaya Dashami) | 10. Muharram |
| 05. Good Friday | 11. Prophet Mohammed's Birthday |
| 06. Guru Nanak's Birthday | (Id – e – Milad) |

- (iii) The three remaining holidays may be chosen from out of the following festive occasions on year-to-year basis :-

- | | |
|---|--|
| 01. An additional day for Dussehra | 08. Rath Yatra |
| 02. Holi | 09. Onam |
| 03. Janmashtami | 10. Pongal |
| 04. Ram Navami | 11. Sripanchami / Vasant Panchami |
| 05. Maha Shivratri | 12. Vishu / Vaishakhi / Vaishakhadi / |
| 06. Ganesh Chaturthi / Vinayak
Chaturthi | Bahag Bihu / Meshadi / Ugadi /
Chaitra Shukladi / Cheti Chand / |
| 07. Makarsankranti | Gudi Padva / 1 st Nabratra / Nauraj |

The remaining nine occasions, after choosing the three optional holidays out of the occasions indicated in the sub-para (iii) above, will be included in the list of Restricted Holidays.

(iv) Central Government employees will also be entitled to avail of two restricted holidays from out of a list of such holidays. Such a list of holidays, may be drawn up each year by including the remaining occasions as mentioned in sub-para (iii) above, as also other occasions of local importance.

(v) The list of holidays will be notified by the Department of Personnel and Administrative Reforms in respect of Central Govt. offices in Delhi / New Delhi and in respect of offices outside Delhi / New Delhi by the Central Govt. Employees' Welfare Co-ordination Committees where they exist or by the Heads of Offices in consultation with the employees' representatives on the basis of local importance of the occasions.

[G.I, M.H.A., D.P. & A.R., O.M. No.9 / 37 / 82–JCA, dated 11th November,1982; No.12 / 20 / 87–JCA , dated 19th May, 1988 and No.12/ 8 / 91 / JCA, dated 11th October, 1991]

(2) Closing of Offices and industrial establishments on the death of high dignitaries. – The Fifth Pay Commission had recommended, *inter alia* discontinuance of the practice of declaring a holiday on the

demise of leaders and dignitaries except in the case of death of President or Prime Minister in harness. The relevant recommendation of the Commission is reproduced below:-

“ Having regard to the adverse implications of closure of offices due to the demise of leaders and political personage, the imperative need to develop a more committed work ethos and culture and to the fact that there are other respectful and dignified methods of paying homage, except in the case of death of the President or Prime Minister in harness, no holidays should be declared on the demise of any other leader or dignitary.”

(Para 118.20. Vol. III)

(2) The above recommendation has been accepted by the Government of India and it has been decided that no holiday may be declared in future on the demise of any leader or dignitary except in the case of death of the President or Prime Minister in harness.

.....
(4) This Supersedes all earlier instructions on the subject.

[G.I., M.H.A., O.M. No.3/2/97-Public, dated the 21st November, 1997]

Instructions regarding closure of government offices and industrial establishments in the event of the death of high dignitaries

1. President :- In the event of the death of the President-

(1) all offices of the Central Government will be closed throughout India on the day on which death occurs; and

(2) on the day of the funeral –

(a) all offices of the Central Government will be closed throughout India;

(b) Industrial Establishments of the Central government will be closed at the place where the funeral takes place; and

(c) A public holiday under the Negotiable Instruments Act, 1881, will be declared by the Ministry of Home Affairs at the place where the funeral takes place, it is not already a public holiday.

(2) Prime Minister. - In the event of the death of the Prime Minister, all offices of the central Government will be closed throughout India on the day on which death occurs and also on the day of the funeral.

SPECIAL INSTRUCTIONS

1. On receipt of the intimation of the death of the President, or Prime Minister, the Ministry of Home Affairs will inform the Central Ministries and departments, State Governments, etc. the All India radio will also make an announcement. Heads of Offices throughout India will arrange for closure of their offices as soon as intimation is received from the Ministry of Home Affairs or over the all India Radio, whichever is earlier.

2. If intimation of the death of the President, or Prime Minister is received after office hours, Central Government offices will be closed throughout India on the following day if it is otherwise a working day.

3. If intimation of the death of the President, or Prime Minister is received during office hours late in the afternoon, offices will be closed for rest of the day; but if it is not possible to effect closure for more than three hours, Ministry of Home Affairs may issue instruction for closing the offices on the following day also if it is otherwise a working day.

4. In the event of death of the President or Prime Minister, offices and industrial establishments of the Governments/administrations of Union Territories will follow the above instructions.

[Extracts from G.I., M.H.A. O.M. No.3.10.70-Pub.-III dated the 25th January, 1972]

(3) Guidelines for closure of offices/industrial establishments of the Central Government in connection with elections to Parliament/State Assemblies/Local Bodies. – Instructions already exist regulating closure of Central Government offices on the polling day(s) in connection with various elections and the same have been consolidated in the enclosed statement (Annexure) for information.

ANNEXURE

1. GENERAL ELECTIONS TO LOK SABHA/STATE ASSEMBLY

1. Facilities/Privileges to Central government employees :

(a) *Holiday/Closure of offices.* – In connection with general Elections to Lok Sabha or State Assembly, a local holiday is usually declared by the state Government on the date(s) of polling, if held on day(s) other than Sunday or other closed holiday. When such a holiday is declared, the central Government offices located in such place should also be closed on the polling day(s) in accordance with the practice adopted by the State Government.

(b) *Grant of Special Casual Leave.* – Every eligible voter is entitled to be registered in the electoral roll of a constituency in which he ordinarily resides. In some cases, it may happen that the Central Government employees residing, and enrolled as a voter, in a particular place/constituency, say Delhi (Where the elections to be held), may be employed in any office located at some other place, say Faridabad/Ghaziabad, etc. in such cases, the individual Central Government employee may be granted special casual leave, if his office does not happen to be closed on that particular day, to enable him to exercise his franchise.

II. BYE-ELECTIONS :

(i) LOK SABHA

II. (a) *Holiday/Closure of Offices.* – State Government normally declares a local holiday in that particular area/constituency on the polling day(s) if the election is held on day(s) other than Sunday/closed holidays. Central government offices may also follow the State practice in such cases.

(b) *Grant of Special Casual Leave.* – Permissible on the same grounds/circumstances as in the case of general elections (of I (b) above).

(ii) STATE ASSEMBLIES

(a) *Holiday/closure of offices.* – In bye-elections to State Assemblies, Central Government offices should not be closed. It would be sufficient if only those Central government employees who may be placed on election duty are permitted to absent themselves from office on the polling day(s). all other employees should be given facility to exercise their franchise either by way of coming late to office or by being allowed to leave office early or a short absence on the day, subjected to the exigencies of the service.

(b) *grant of Special Casual Leave.* - Permissible on the grounds/circumstances as in the case of general elections (of I (a) & (b) above).

(iii) PANCHAYAT/CORPORATION/MUNICIPALITIES OR OTHER LOCAL BODIES.

III. the Central Government offices shall not be closed. The government employees who are bona fide voters and desire to exercise their franchise should, however, be offered reasonable facility,

subject to the normal exigencies of service, either by way of coming late to office or by being allowed to leave office early or a short absence on that day.

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CHANNEL OF COMMUNICATION BETWEEN THE GOVERNMENT OF INDIA AND STATE GOVERNMENTS, FOREIGN GOVERNMENTS, ETC.

All communications with the Governments of countries, where India is represented and which involve negotiations or questions of policy as well as communications of a kind which though they do not initially raise or involve such questions but may lead to them, should be made only through the Ministry of External Affairs, which shall decide the form and manner in which they shall be made.

Communications which do not fall in the above category may be addressed directly to the Representatives of the Government of India in the country concerned for favour of onward transmission or communication and a copy sent simultaneously to the Ministry of External Affairs.

No communication, of whatever nature, to the Government of a foreign country where India has no locally established Mission or is not represented through an Indian Mission in another country shall be addressed directly by any Governmental authority, except by the Ministry of External Affairs.

Ministries of the Government of India, other than the Ministry of External Affairs, shall not communicate directly with the representatives of foreign countries in Delhi, though they (the representatives) may be furnished with copies of the relevant correspondence or informally informed that certain communications have been made to their Governments through the normal channels.

Direct correspondence between technical officers in the attached and subordinate offices of the various Ministries of Government of India with their counterparts or with non-official technical organisations in foreign countries on a purely technical matter is permissible provided that copies of all such correspondence are simultaneously endorsed to the Ministry of External Affairs and to the representative of India in the country concerned. If such correspondence on scientific matters requires the exchange of specimens, such an exchange may also be made provided that full details are provided simultaneously to the Ministry of External Affairs and the representatives of India in the country concerned.

II CHANNEL OF COMMUNICATION WITH INDIAN MISSIONS ABROAD

Correspondence on matters involving or which might in future involve negotiations or questions of foreign policy shall be carried on only by the Ministry of External Affairs with the Head of the Indian Mission abroad. Correspondence on technical questions which do not and are not likely to lead to negotiations or raise foreign policy issues, may be carried on between the appropriate Ministry of Government of India and technical officer entrusted with the work by that Ministry in the Indian Missions concerned or the Head of the Mission where there is no such technical officer provided that the Ministry of External Affairs is kept fully informed unless it concerns purely routine matters. There shall be no correspondence on matters of non-technical nature between the Ministries of the Government of India other than the Ministry of External Affairs and the Indian Missions abroad without prior consultation with the concurrence of the Ministry of External Affairs. Before such matters are processed by the Indian Missions with the local authorities, they should ensure from the Ministry of External Affairs that there is no objection to the implementation of any particular proposal.

All correspondence of regard to officers of the other Ministries working in the Indian Missions abroad on administrative matters which involved modification of basic principles of raise general issues of wider application such as terms of deputation abroad, period of tenure, approved method of travel,

conferment of diplomatic rank, determination of inter-se seniorities etc., should invariably be addressed by the Missions to the Joint Secretary (Administration) in the Ministry of External Affairs. The Missions will however, continue to correspond directly with other Ministries concerned in regard to routine personal matters such as postings, leave etc.

Correspondence between the Government of India and Delegations or Special Missions may be addressed directly to, or by the Ministry of the Government of India concerned, to the Delegation or the Head of the Special Mission, provided that copies of it are simultaneously endorsed to the Ministry of External Affairs, and to the Head of the Indian Mission in the country concerned.

Official letters and telegrams to the Head of an Indian Mission abroad, unless of a technical or routine nature, shall be drafted by the Ministry primarily concerned and sent to the Ministry of External Affairs for concurrence and issue, they shall obtain the agreement of other concerned Ministries of the Government of Indian before sending such communications.

III CHANNEL OF COMMUNICATION BETWEEN GOVT. OF INDIA AND FOREIGN DIPLOMATIC MISSIONS IN NEW DELHI :

[**NOTE** : In this section the phrase 'Foreign Diplomatic Mission' also includes representatives of International agencies e.g. UNICEF, WHO, ILO, UNESCO, UNDP, FAO, etc.]

All official communications between the Government of India and foreign Missions in New Delhi shall be addressed to and by the Ministry of External Affairs.

Informal correspondence or discussion on routine or technical matters, which do not involve negotiations or questions of policy may be carried on direct by other Ministries of the Government of India with representatives of foreign Missions in Delhi. Ministries should decide whether copies of such informal communications should be endorsed to the Ministry of External Affairs or not.

When, foreign Missions in India get in touch with an officer of the other Ministries on initially unimportant matters, but which might subsequently develop into more important questions, it is essential that the Ministry of External Affairs should be informed of the matter at the earliest possible stage.

All Ministries should adopt the practice of recording the substance of conversations, other than purely routine, with representatives of foreign Missions, and of endorsing a copy thereof or the minutes of the meeting held to the Ministry of External Affairs immediately afterwards. These should include a record of the minutes of discussions held between official/non-official delegations sponsored by foreign governments and their Missions and Ministries/Departments of the Government of India and concerned Public Sector Undertakings, Copies of such minutes should be sent to the Ministry of External Affairs.

Intimation of intended negotiations or discussions in India between any Ministry of the Government of India and representatives of foreign Mission should be invariably sent in sufficient time in the Ministry of External Affairs, which will decide whether it would be represented and at what level.

When communications which ought to be addressed to the Ministry of External Affairs are addressed by foreign Missions direct to other Ministries, the latter should consult the Ministry of External Affairs at the earliest opportunity and the reply should either be sent by the Ministry of External Affairs or by the Ministry concerned who should add a polite request that such communications should, in future, be addressed to the Ministry of External Affairs.

All matters relating to the negotiation and conclusion of treaties, agreements, exchange of notes, etc. between the Government of India and foreign Governments including the finalisations of the texts, signatures and ratifications of such treaties, etc, shall be dealt with in consultation with the Ministry of External Affairs.

There may be direct correspondence between foreign Missions (including their Trade Agent etc.) and the various Ministries of the Government of India including their attached and subordinate offices for

the collection of technical and purely factual data of a non-confidential nature. These attached and subordinate offices should, however, invariably take the advice of the administrative Ministry about the nature or implication of a particular enquiry. The administrative Ministry shall consult the Ministry of External Affairs when necessary.

Frequent enquiries are received in the various Ministries of the Government of India from Foreign Trade Commissioners about the production and manufacture in India of certain products or in regard to development schemes, details of which might have to be kept secret for reasons of security. Every care must, therefore, be taken to ensure that no information is supplied, however innocuous it may seem, which is likely to concern or affect security. Where, however, the information is published and available in the general public, there is no objection to its being furnished to Foreign Trade Commissioners. When in doubt, Ministries and attached and subordinate offices concerned should consult the intelligence Bureau (Ministry of Home Affairs) who will, if necessary, take advice of the Director of Military Intelligence and or the Ministry of External Affairs.

Officers of the Government of India should not call at diplomatic Missions in New Delhi. It is the foreign Missions which are accredited to the Government of India and not vice-versa. It is, therefore, incumbent on representatives of those Missions to come and see officers of the Government of India and not for the officers of the Government of India to go to the Missions.

Any request from a foreign Mission for messages on particular occasions, e.g., for various anniversaries, should be forwarded to the Ministry of External Affairs.

All invitations from foreign Government/Organisations to individuals/organisations in India must be routed through the Ministry of External Affairs. In order to enable the Indian Missions abroad to have timely intimation of the intended visits of Ministers or VIPs, it is essential that official communications regarding such visits should be handled by the Ministry of External Affairs. Subsequent telegraphic messages notifying alternation of programme from the visitors in transit may, however, be sent direct to the Missions concerned by other Ministries under intimation to Ministry of External Affairs.

Foreign Missions including Consulates are authorised to correspond direct with local police authorities for verification of antecedents of their staff and persons seeking employment in their Missions.

IV CHANNEL OF COMMUNICATION BETWEEN STATE GOVERNMENTS and

- A. Foreign Missions in India
- B. Indian Missions abroad and
- C. Foreign Governments

A. Between State Governments and Foreign Missions in India.

1. All official communications with Foreign Missions in India should normally only be addressed to and by the Ministry of External Affairs. Should any communication be addressed by a foreign Mission direct to a State Government including invitations to Ministers, Senior Government officials, etc. to visit abroad, the latter should consult the Ministry of External Affairs at the earliest opportunity. A reply will be sent by the Ministry of External Affairs who may, alternatively, ask the State Government to send a reply adding a polite request that such communication should, in future, be addressed to the Ministry of External Affairs.

2. There is no objection to direct correspondence between the Consuls General, Consuls and Trade Representatives of foreign Governments and the Deputy High Commissioners of Commonwealth countries in India on the one hand, and State Governments on the other on routine matters such as a request for factual information of a non-confidential nature on technical subjects. When in doubt, the advice of the Ministry of External Affairs should invariably be obtained. If security considerations arise, the Ministry of Home Affairs and/or the Ministry of External Affairs should be consulted.

3. Correspondence which relates to a matter involving, directly or indirectly, a question of policy or one which, though not initially, may eventually raise a policy issue, should be made only through the Ministry of External Affairs.

4. The Registrars General of Births Deaths and Marriages of States in India may forward directly to the foreign Missions concerned, certificates of births, deaths and marriages, in respect of foreign nationals.

B. Between State Government and Indian Missions in Foreign Countries:

1. There may be direct correspondence between State Governments and the Indian Missions abroad on routine matters provide copies of such correspondence are endorsed to the Ministry of External Affairs as well as to the administrative Ministry concerned.

The following types of cases belong to this category:

(a) Enquiries relating to births, deaths, residential addresses, antecedents whereabouts and welfare of Indian nationals residing abroad or in India.

(b) Verification of statements that may have been made by certain applicants for securing Indian or Foreign travel documents.

(c) Verification of the services of ex-employees of foreign Governments, their Medical examinations, etc. and vice-versa.

(d) Petitions and complaints from Indian nationals asking for miscellaneous kinds of assistance either from a Mission abroad or a State Government in India.

Exceptions

Correspondence on the following shall continue to be channelled through the Ministry of External Affairs:

(i) All communications Irrespective of their nature, between State Governments and South Africa, or its agencies.

(ii) Transmission of judicial documents. Once however, the documents have been transmitted, all further correspondence in the matter may take place between the State Government concerned and the Indian Missions abroad, copies of correspondence being sent to the Ministry of External Affairs, for information.

2. Subordinate officers of State Governments are not authorised to correspond direct with the Indian Missions abroad.

Exceptions

i. Between a Licensing Authority and Indian Missions abroad – Licensing authorities in India authorised to issue licences under the Indian Arms Act, and the Rules framed thereunder, may enter into direct correspondence with the concerned Indian Missions abroad in connection with the renewal of a licence granted by the latter; copies of the communications made should, however, be simultaneously endorsed to the Ministry of External Affairs.

ii. Between Directors of Public Instruction/Education and Indian Missions – Directors of Public Instruction/Directors of Education or other officers holding equivalent posts in the States may correspond direct with Indian Missions abroad in reply to the latter's request for verification of the educational qualifications and service rendered by teachers who were initially employed in India.

iii. Between the Registrars General of Births, Deaths and Marriages and Indian Missions – When an Indian Mission or Post abroad is approached by an Indian citizen for a copy of a certificate of birth, death or marriage, the, Mission may enter into direct correspondence with the Registrar General of Births,

Deaths and Marriages of the State Government concerned. The Mission or Post should also recover, on behalf of the Registrar General the requisite fee for the issue of such a certificate. The head of account to which such a fee is to be credited shall be indicated by the Registrar General.

lv When a foreign Government approaches an Indian Mission for the grant of an emergency certificate to a person of Indian origin to enable that Government to deport such person to India for violating local laws, the Mission, unless specific orders to the contrary exist, should contact the district authorities in India directly, and satisfy itself that the person concerned is an Indian Citizen in accordance with the Constitution of India or/and the Citizenship Act, 1955, and in accordance with such executive instructions as the Government of India may have issued or may issue in future in regard to Citizenship. Copies of all such correspondence should simultaneously be endorsed to the Ministry of External Affairs (If a Mission/Post abroad considers that a particular deportation has political implications, or if there is large scale deportation of Indian Nationals, it should obtain prior orders of the Government of India from the Ministry of External Affairs, before issuing emergency certificate to or agreeing to the deportation of the persons concerned.

C. Between Central/State governments and private individual/organisations abroad.

Ministries of the Government of India, their attached and subordinate offices, State Governments and other Governmental organisations in India may, in the transaction of day-to-day business correspond directly with appropriate individuals, non-official organisations in foreign countries, provided that copies of all such correspondence are endorsed to the Indian diplomatic or Consular representatives concerned and to the Ministry of External Affairs so as to keep them fully and to enable them to provide any further information or advice that may be sought by such organisations, as well as to make them directly aware of the relations between such organisations and Indian authorities.

The terms Governmental organisations also includes Municipal Committees, District Boards, Bodies of Part Commissioners or other authorities legally entitled to or entrusted by the Government with the control or the management of a Municipal or a local Fund.

VI. BETWEEN LOCAL BODIES AND FOREIGN GOVERNMENTS:

Local bodies should be advised by the State Governments that when they receive a communication from abroad, including invitations to visit abroad, they should refer it to the State Government, along with the proposed reply for instructions. If the matter under correspondence is of a routine and non-political character and the communication is not from a foreign Government authority, the State Government may authorise the local bodies to send a reply direct. But if a political issue is raised, or it appears that the correspondence may have important or embarrassing implications, the advice of the Government of India in the Ministry of External Affairs should be sought.

VII. BETWEEN THE GOVERNMENT OF INDIA AND U. N. AND ITS SPECIALISED AGENCIES AND OTHER INTER-GOVERNMENTAL ORGANISATIONS.

All correspondence with the United Nations, its head-quarters organisation, specialised agencies, regional economic commissions such international organisations as I.L.O., etc., and other inter-Government organisations, should normally be conducted only by the Ministry of External Affairs either directly or through the Permanent Mission of India at United Nations Headquarters, New York. To enable the Ministry of External Affairs and where necessary the Permanent Mission of India at U. N. Headquarters, New York, to maintain their records properly, two spare copies of each such communication should invariably be attached to the original when sent to the Ministry of External Affairs for onward transmission.

Correspondence on routine matters may, however, be addressed to the specialised agencies/and subsidiary organs of the United Nations direct, by the various Ministries concerned, provided that copies are simultaneously endorsed to the Ministry of External Affairs and where necessary to the Permanent Mission of India and United Nations Headquarters, New York.

VIII. MISCELLANEOUS:

1. The Indian Mission in the country concerned should be kept fully informed about important orders or contracts being placed or negotiated direct with foreign firms or Industries by Ministries of the Government of India, or other governmental authorities. Failure to do so places the Indian Missions concerned in an awkward position when enquiries are made from them in regard to such matters and they have no information on the subject.

2. Invitations to foreigners to visit India – No invitations should be sent by a Government, semi-Government institution, or organisation or local body in India to official or non-official delegations from foreign countries to visit India, nor is it desirable that private organisations do so, without consulting the Ministry of External Affairs as well as the Ministry of Home Affairs. Whenever it comes to notice that an invitation is being extended to a foreign delegation by any organisation, Government or private, the organisation should be advised to do so through the Ministry of External Affairs. An “Invitation” in the above context, includes an invitation for participation in fairs and exhibitions.

Indian Missions abroad should correspond with the respective Ministries of the Government of India only through the Ministry of External Affairs in such matters.

3. Indian Delegation visiting foreign countries – An organisation, Government or private, intending to send an Indian delegation abroad should be advised that an invitation to send an Indian Delegation to visit a Foreign country should not be accepted without the knowledge and consent of the Ministry of External Affairs. Such organisations should also be informed that, if the Ministry of External Affairs is not kept in the picture, it may not be possible for it to render facilities in the matter of passports etc. or other necessary assistance to the delegations. If any facilities in a foreign country are required by visitors/visiting delegations from India, the Ministry of External Affairs should be approached immediately for the purpose. No direct approach in the matter should be made to foreign Mission in India. When there is no time to do so, Indian Mission abroad may be approached direct, copy of the request being simultaneously endorsed to the Ministry of External Affairs. Communications of this kind should indicate clearly what specific facilities are required. If the visit is one in which the Government of India is directly concerned, it should be specified whether:

- (a) transport arrangements are required at the time of arrival and during the visit
- (b) hotel accommodation is required. If so, the status and pay as well as full details of the accompanying families, etc. should be given.
- (c) any payments have to be made by the Missions abroad. If so, the requisite sanctions should be forwarded as early as possible and positively on arrival of the delegation. All such sanctions should be specific in regard to expenditure to be covered e.g. compensatory allowances, the party's entitlement of railway or air fares, daily allowance etc. and whether any salaries or other allowances are to be paid in foreign currencies.

Indian Missions/Posts abroad are placed in an awkward position if Indian visitors for whom they are asked to make appointments and hotel reservations, and secure other facilities without adequate notice, either fail to turn up, or arrive so late that it suspends all their previously arranged programmes. This, apart from affecting the reputation of the Mission concerned, and seriously impairing its capacity in future to make the best arrangements for Indian visitors, generally affects Indian prestige as a whole in

the country concerned. Therefore, Indian visitors, should strictly adhere to the programme drawn up for them and if, for unavoidable reasons, they are compelled to alter it, they should endeavor to give notice of their inability to do so and make appropriate apologies to all the parties concerned as early as possible. Therefore, visitors should strictly adhere to the programme drawn for them and if, for unavoidable reasons, they are unable to do so, they should intimate to all the parties concerned well in advance of the necessity and reasons for the change.

Requests for facilities for the inspection of and visits to Governmental or private institutions abroad should be made to the Indian Missions in the countries concerned well in advance, so that whenever it is practicable, full information about their programme may be supplied to them well before they leave India, or at an early date before they arrive in the country to be visited.

It is the duty of the Indian Missions abroad to look after the interests of Indian nationals in foreign countries and render assistance in matters such as accommodation, visas etc. To enable them to discharge this responsibility Indian visitors should keep the Missions fully informed of their itinerary well in advance, and falling that, get into direct touch with the Missions immediately on their arrival, and also keep the Missions informed of their subsequent movements.

It is advisable for a visiting Indian delegation, official as well as non-official, to be briefed by the Head of the Indian Mission or by the concerned officer in the Mission, as may be appropriate or practicable, before negotiations with local authorities are started.

When Indian Missions are asked to reserve accommodation for visiting delegations on official business, they shall do their best to obtain the most suitable accommodation available at the authorised rates fixed for such purposes by the Government of India. The accommodation so engaged will be the accommodation officially provided by the Government for the delegation. If for any reason, such accommodation is not availed of and consequently some infructuous charges have to be incurred for the cancellation of the reservation made, such expenditure shall be debited to the account of the authority under whose direction the accommodation was originally engaged. Officers visiting foreign countries on tours sponsored by the Government should be requested to accept the accommodation that the Indian Missions are able to provide for them. Our Missions abroad are under no obligation and are not equipped to meet any demands on them to arrange hotel accommodation or arrange tours for Indian nationals going abroad on private business and such demands should be strictly discouraged.

Public bodies and private persons – Indian Missions abroad are occasionally approached direct by public bodies in India about proposed exhibitions, sports tournaments, etc. to be brought to the notice of local Governments and other organisations in foreign countries. They are also asked by such bodies to collect information or other materials required by them for some purpose or the other. It is not feasible to direct private persons or public bodies in India to route all their requests to Indian Missions through the Ministry of External Affairs. The question whether and, if so, to what extent such requests should be complied with, is left to the discretion of the Head of the Mission to deal with on its merits. The Mission may politely refuse such requests of private individuals or public bodies and ask them to apply through the Government of India if it thinks that they are unsuitable or not worthwhile complying with.

Indian Students and Missions abroad – Indian students applying for educational or practical training abroad from India shall not, as a rule, correspond directly with the Indian Missions concerned. They should apply through the Indian University last attended by them or through the Ministry of Commerce & Industry, or of Labour & Employment according to whether they are private students, or are already employed in some concern in India. The Ministry of Labour & Employment will scrutinise application for training facilities to the level of Foreman and the Ministry of Commerce & Industry for practical training above this level. Indian students already abroad may carry on direct correspondence

with the Mission concerned, and copies of such correspondence need not necessarily be sent to the Government of India.

Requests for the recovery of loans from private Indian students, as well as requests for the reception of the students returning to Indian on ground of health should not be addressed to the Ministry of Education, if the student concerned is studying/undergoing practical training on his own or under the auspices of a State Government. All such correspondence should be addressed direct to the State Government concerned.

{ Annexure to letter F. No. 14/3/97- COORD. dtd 13.07.1998 of Desk Officer (Co-ord.), Min. of Fin. }

VESSELS FOR BREAKING UP – Valuation and Assessment thereof-

1. The following procedure is laid down to expedite the clearance of the vessels for breaking/scrapping purposes through Customs.

2. Import of Vessels for scarping is permitted under “Free Importability” vide Chapter No. V, Para 78 of the Hand Book of Export and Import policy ,1992-97 (*now 1997-2002*). They are imported directly on international trade price as prevailing in the period of importation on “as is where is basis/conditions” delivery. Importers are permitted to file customs Bill of Entry for clearance on non-negotiable copies of import documents for early and expeditious customs clearance of the ships imported and in case of Indian Flag ship, which are to be scrapped, Bill of Entry can be filed after issuing a letter of acceptance of the higher tender value and a receipt of initial payment to the sellers. The sellers issue the letter of offer/acceptance with No Objection to the buyer for filling papers with the customs, along with a No Objection/approval certificate for scrapping of vessel from the Director General of Shipping, Mercantile Marine Department, Naval Head Quarters, other Government Departments and/or Port Trust etc. as the case may be.

3(a) All ocean going vessels, whether Indian or Foreign Flag, sold for scrapping purpose are treated as vessels imported into India and shall be liable to customs duty under Heading No. 8908 of CTA, 1975 at the Customs duty rates prevailing on the date of presentation of the Bill of Entry.

3(b) Generally, the price of the vessel shall be divided into full vessel, and parts, if assessable on merit, shall be assessed to duty under main heading 890800. Moveable Gears and Stores shall be assessed to duty on merits under the respective headings of the Customs Tariff Act, 1975.

4. The Bill of Entry should be filed with the Import Deptt. along with the required import documents and/or purchase documents, for noting and also with normal required documents for obtaining examination order to be endorsed on the Bill of Entry, from the Appraising Officer in the concerned Group. Normal required documents are as follows:

- a) Memorandum of Agreement, if any, duly signed, in original and Bank Certified commercial invoice with the other import documents in original along with copy of Letter of Credit and Bill of Exchange etc.
- b) Bill/Instruments of sale or proof of transfer of ownership of the purchased vessel.
- c) Lloyds Register (for verification of ownership, weight and Registration).
- d) Trim and Stability Book/Builders Certificate.
- e) Capacity plan and loadline chart for draft of the ship showing details for loading of cargo with stability and trim position effecting in Light Displacement Tonnage.
- f) Registration Certificate of the ship and last Port Clearance Certificate.

- g) Inventory list of the ship's property item with principal general ship's particulars and fittings and items on board the ship including moveable gears, ship's stores inventories required as per regulations and consumables including Remnant Oil Bunker, items etc., duly certified by the master of the vessel, at the time of allowing/arranging inward entry for such vessel for breaking/scrapping purpose.
- h) Original Ship Log Book from the Master of vessel.
- i) Payment receipts from seller/buyer, for commission involved into transaction of sale, if any.
- j) Possession Licence from Communication deptt. for wireless equip. on board the vessel, if any.
- k) Permission/provision if/as required under the Import Trade Control Act.
- l) I.T.C./Vendor licence for clearance/possession of Dangerous drugs, Narcotics, Tobacco and other prohibited items, if any, on board the vessel.
- m) And all other relevant documents pertaining to the transaction of sale/purchase of the vessel for breaking up purpose, such as (i) certificate/proof from the sellers regarding purchase price having received, along with proof of payment. (ii) Proof of price, for which the vessel is imported, in the International Market for similar old ship for scrapping/breaking, through/by the International publication such as "FAIRPLAY WEEKLY BULLETIN" LONDON, "LLOYD REGISTER OF SHIPS, Hellenic Register of Shipping, for verifications if duty is chargeable on Ad-valorem basis. (iii) statement of Bidders with their names, addresses and their Bids, in case of Indian Flag Vessels sold by public tender basis, should be furnished from the sellers/owners of Indian Flag Vessels.

5. a) The purchasers of the Foreign Flag Vessels or owners/purchasers of Indian Flag Vessels (who shall be deemed to be the importers for the Foreign flag Vessels for scrapping) shall approach the preventive Department directly or through their authorised steamer agents and/or Customs House Agents for getting the vessels rummaged and preparation of the inventory of the items of moveable gears, including all other items of ship's property and stores including consumables and R.O.B. Oil item etc., on board the vessel. This process/formalities may be arranged by the preventive Department (i.e. Rummaging and Boarding Offices) simultaneously, in order to expedite earliest customs clearance of such vessel imported/purchased for scrapping only on the anchorage at the time of allowing inward entry before taking them at inner anchorage. The rummaging report and Boarding Officer's inventory, in detail, should be submitted with the I.G.M. The work of rummaging, inventorying, customs examination and valuation of the goods in question should be carried out simultaneously in the inner anchorage on week days, instead of on Sunday and holidays, on payment of supervision charges for officers, wherever involved. The reports covering all the above should be forwarded to the Assistant Commissioner i/c of the Group not later than the next working day, to avoid any further delay and losses on account of this to the importer.

5. b) The vessel should be rummaged not only for contraband items but also for extra equipments, undeclared in the ships' property-list and other inventories of the vessel as required by rules and regulation of navigation. Such undeclared equipments and other items are to be treated unauthorised, and should be reported accordingly.

5. c) The Importers/CHA shall approach the Docks Appraising Department for getting the vessels examined for first appraisalment and for preparation of Local Invoice for the inventoried items, as per examination order endorsed on the Customs Bill of Entry.

6. The purchaser of Foreign Flag vessels or owners/purchasers of the Indian Flag vessels if they desire to remove their vessels to the Port Trust ship breaking yard before completing all customs

formalities and assessment of duty may be allowed to do so, only after rummaging of the vessels and complete inventory of the items of moveable gears including items of ship's property and stores including consumable and R.O.B. Oil items etc. has been made by Boarding Officers/Preventive Officers and examination of vessels with a local invoice prepared for such items on board and subject to :

- i) Making deposit of approximate duty leviable on the vessel with the stores' items, if any, and;
- ii) On execution of a provisional assessment bond. However, the vessel after beaching to the Port Trust scrap yard will remain under preventive guard round the clock, till assessment is completed, customs duty has been paid, the vessel is "Passed Customs out of Charge" and written permission is obtained for starting breaking operation from Appraising & Preventive(General) Departments, for home consumption clearance of the ship under scrapping/breaking.

7. For Indian Flag uncleared and ocean going vessels to be cleared for scrapping, the following Govt. Deptt. using ships and other floating structures, shall issue a No Objection Certificate for the sale of vessel for scrapping to the ship owners in favour of the prospective buyers subject to the following conditions:-

- a) The ship owners and/or purchaser shall be deemed to be the importers and the entire liability to pay the customs duty on the vessels shall rest of them. They should submit proof of "entry of vessels, sold for scrapping, made vide notification No. 133/87-Cus dated 14.03.87, since the exemption is "conditional" and not "absolute" hence is not considerable unless it is claimed appropriately under Sec 46 of the Customs Act, 1962.
- b) If the ship owners have never entered their vessels under Sec. 46 of the Customs Act, 1962, after it was purchased and brought into India, till it is discarded and/or permitted to be scrapped by the D.G. Shipping and/or other concerned Departments enforcing Mercantile Marine Act, the date of their No Objection Certificate will be deemed to the date of Import of vessels for scrapping and owners of the vessel should enter the vessel under Section 46 of the Customs Act, 1962 and the purchasers should file a fresh Bill of Entry for clearance of vessel for payment of appropriate duty of customs prevailing on the date of filing the customs Bill of Entry.

8. After the examination of the vessel with the help of inventory already made, the Dock Appraising Staff should give fair assessable values for items of moveable gears, ships property items, items of ships stores, consumables including R.O.B. and other oil items etc.

9. The purchaser/importer will thereafter re-submit the Bill of Entry with relative documents and evidence called for in the concerned Appraising Group for completion/assessment of the Bill of Entry.

10. The Assessing officer will accept the value declared on the basis of the Higher Tender price in case of Indian flag Vessels.

11. The assessing officer will accept the Invoice price declared on the Bill of Entry for Foreign Flag vessels after verification and/or comparing the average price for similar vessels sold in the International market, during the period of sale transaction of the respective ship imported for breaking up.

12. There is a dispute regarding the assessment of the moveable gears, ships property and fittings items, ships navigational items etc. The Boards decision in the matter is awaited and, therefore, assessment is to be made provisionally for such items on execution of PD Bond for 100% assessable value. The assessment of the vessel is to be made as per the provisions at Single Line assessment

under C.T. 890800 of Customs Tariff Act, 1975 provisionally. The copy of Inventory prepared by the Preventive Officer and the Shed Appraiser's Local Invoice should be kept on record with the P.D. Bond for further action subject to pending decision of the Department (i.e. Central Board of Excise & Customs , New Delhi) on the chargeability of duty on moveable gears' items of ships property and consumables etc. separately on merits.

13. As far as the consumables is to be taken into consideration which is preserved for ship's use in stand-by-condition of vessel while in arrival condition. The said quantity is considered internationally at 10% of the 100% capacity of consumables. Therefore, while making assessment it may be verified whether the consumables, especially the R.O.B., are generally within the permissible quantity of minimum 10% of the total capacity of such items and in case it is more than 10% on board before the contract (MOA) was signed or thereafter. In case if it was taken on board after signing the M.O.A. it should be verified that the quantity taken on board was necessary/required for delivering the vessel at the port of delivery into India from the place of its laid up. If it is found that the quantity taken was malafidely more, it should be assessable to customs duty on merit, which will be prevalent for malafide intention of taking more consumables on board the ships to be delivered/ brought for scrapping/breaking purposes. As such R.O.B. (old items) upto 10% of the total 100% capacity of the vessel should be considered with the L.D.T. of the vessel for breaking and if it exceeds more than 10% of the 100% capacity, the entire quantity on board the vessel should be charged to customs duty on merit. This can be verified from the ship's Log Book in operation.

14. Ship's stores and POL carried in extra tanks abroad the ship would be assessed on merits.

15. In order to avoid the delay in completion of the customs formalities, the buyer/owner of vessels imported/purchased for scrapping/breaking can file customs Bill of Entry with non-negotiable/duplicate import and/or purchase documents, as well as, they should be allowed to get the vessel, simultaneously, rummaged and inventoried all items i.e. moveable gears, stores, ship's property items & R.O.B. with the help of the declaration/details given/furnished by the master of the ship, from the Rummaging Department and from the Boarding officer , at the time/before Inward Entry is allowed for such vessel for breaking. The vessel imported for breaking/scrapping should simultaneously enter under the Sections 30 and 46 (i.e. should be inwarded as a carrier under Section 30 and inwarded as goods for customs clearance under Section 46). This will help in completion of assessment formalities within short time and will help in earliest collection/recovery of Govt. Revenue and the importer can save also unnecessary over-head expenses, such as Port Trust charges and Bank charges/interest on huge investments etc.

16. Beaching of the vessel will be allowed only after payment of duty. If the party is not willing to deposit duty and keep vessel under preventive Guard on payment of Guard fees, around the clock till payment of customs duty and get the goods/vessel "Passed Customs out of charge" as envisaged in para (5) above, the beaching will not be allowed.

17. Wrecked ship/s vessels and other floating structures when presented for the purpose of being salvaged by cutting in to pieces or by breaking up, such vessels may be complete or damaged and/or may have had their instruments machinery, etc. removed or lost prior to presentation, are required to file Customs Bill of Entry and pay duty of customs applicable vide Chapter Heading 8908 before commencing salvaging Operation of wrecked vessels.

[Standing Order No. 7058 dated 04.04.1994 issued by Commissioner of Customs, Mumbai]

CENTRAL CIVIL SERVICES CONDUCT RULES

The Conduct of all Govt. Servants is regulated by the Central Civil Services (Conduct) Rules, 1964. There are certain Do's and certain Don'ts under these rules. These are briefly listed below: (Please refer to the text of the C.C.S. Rules for detailed and full understanding).

Do's under the Conduct Rules:

1.	Maintain absolute integrity at all times.	-- Rule 3 (1)
2.	Maintain absolute devotion to duty at all times.	-- Rule 3 (1)
3.	Do nothing which is unbecoming of a Govt. servant.	-- Rule 3 (1)
4.	If holding a supervisory post, take all possible steps to ensure integrity and devotion to duty of those working under you.	-- Rule 3 (2) (i)
5.	While performing your duty, act in your best judgement except when acting under the direction of your official superior.	-- Rule 3 (2) (ii)
6.	Ordinarily, pass orders in writing only; any oral instructions issued should be confirmed in writing.	-- Rule 3 (2) (iii)
7.	As soon as any member of your family accepts employment in <u>any</u> company or firm, intimate the same to the prescribed authority and also state whether you have or have had official dealings with that company or firm.	--Rule 4 (2)
8.	Refer every matter or contract to your official superior if such matter / contract concerns any company or firm or person with which / whom any member of your family is employed.	-- Rule 4 (3)
9.	Maintain discreet neutrality in political movements or activities.	-- Rule 5 (1)
10.	Endeavour to prevent any member of your family from taking part in any movement or activity which is directly or indirectly subversive of the Govt.; if you are unable to prevent, report the same to Govt.	-- Rule 5 (2)
11.	Intimate the Govt. receipt of any gifts by you on occasions like weddings, anniversaries, funerals or religious functions (a) from near relatives or personal friends having no official dealings. if value of gifts exceed: Rs.5000 – Gr. 'A' officers. Rs.3000 – Gr. 'B' officers. Rs.1000 – Gr. 'C' officers. Rs. 500 – Gr. 'D' officers (b) in any other case, not without sanction, if value of gifts exceed: Rs.1000 – Gr. 'A' & 'B' officers. Rs. 250 – Gr. 'C' & 'D' officers.	-- Rule 13 (2)
12.	Report to Govt. if any member of your family is engaged in a trade or business or owns or manages an insurance or commission agency.	-- Rule 15 (3)
13.	Manage your private affairs in such a way as to avoid habitual indebtedness or insolvency.	-- Rule 17
14.	On first appointments, submit a return of your assets and liabilities in the prescribed form giving full particulars.	-- Rule 18 (1)
15.	If you are a Group 'A' & 'B' officer, submit an annual return in the	

	prescribed form giving full particulars of immovable property inherited by you or owned or acquired or held on lease or mortgage by you either in your own name or in the name of any other person.	-- Rule 18 (1)(ii)
16.	Intimate the prescribed authority , within one month any transaction in respect of movable property (like jewellery, insurance policies- the annual premia of which exceeds Rs.10,000/- or 1/6 th of the total annual emoluments- whichever is less; shares, securities and debentures ; all loans advanced or taken ; Motor cars, scooters or any other means of conveyance ; radios, TVs, refrigerators etc.) , If the value exceeds: (a) Rs. 15000 – in case of Class I or Class II posts. (b) Rs. 10000 – in case of Class III or Class IV posts In all other cases, obtain previous sanction of the prescribed authority.	-- Rule 18 (3)
17.	In case you have married or marry a person of other than of Indian Nationality, intimate the fact forthwith to the Govt.	-- Rule 21 (3)
18.	Strictly abide by the prohibition requirements in any area you happen to be in for the time being.	-- Rule 22 (a)
19.	Take due care that the performance of your duties at any time is not affected in any way by the influence of any intoxicating drink or drug.	-- Rule 22 (b)
20.	Refrain from consuming any intoxicating drinks or drugs in public place.	-- Rule 22 (bb)
21.	If any legal proceedings are initiated against you for e.g. recovery of dues or indebtedness etc. report the full facts to your official superiors as soon as possible.	
22.	Extend prompt and courteous service to the public.	-- Rule 3A(a)

DON'TS UNDER THE CONDUCT RULES:

1.	Do not use your position or influence to secure employment for any member of your family in any company or firm.	-- Rule 4 (1)
2.	Except with previous sanction do not permit your son / daughter or other dependents to accept employment in any company or firm or person with which / whom you have official dealings.	-- Rule 4 (2)
3.	Do not deal with any matter in a case concerning the company or firm or any other person if any member of your family is employed in that organisation.	-- Rule 4 (3)
4.	Do not become a member of any political party. Do not also otherwise associate with any political party or any organisation which takes part in politics.	-- Rule 5 (1)
5.	Do not canvas or otherwise interfere with or use influence or take part in an election to any legislature or local authority.	-- Rule 5 (4)
6.	Do not join or be a member of any association, the objects or activities of which are prejudicial to the interests of the sovereignty and integrity of India, or public order or morality.	-- Rule 6
7.	Do not participate in any demonstration which is prejudicial to the interests of sovereignty and integrity of India, friendly relations with foreign states,	

	public order, decency or morality or which involves contempt of court, defamation or incitement to an offence.	-- Rule 7 (i)
8.	Do not resort to or in any way abet any form of strike, etc. in connection with any service matter.	-- Rule 7 (ii)
9.	Except with previous sanction of the Govt., do not own, wholly or in part, or participate in management of any newspaper or periodical publication.	-- Rule 8 (1)
10.	Do not publish a book or participate in radio broadcasts without making it clear all times that the views expressed by you are your own and not that of Government .	-- Rule 8 (3)
11.	Do not make any statement of fact or opinion criticising the current or recent policy or action of Central or State Govt.	-- Rule 9
12.	Except with previous sanction, do not give evidence in connection with any enquiry conducted by any person, committee or authority; where permitted, do not criticise any policy or action of the Central or State Govt.	-- Rule 10
13.	Do not communicate any official document or information to any Govt. Servant or any other person to whom you are not authorised to communicate such document or information.	-- Rule 11
14.	Except with previous sanction, do not ask for or accept contributions to any funds or collections in cash or in kind in pursuance of any object whatsoever.	-- Rule 12
15.	Do not accept or permit any member of your family or any other person to accept any gift except in accordance with the provisions of these rules.	-- Rule 13 (1)
16.	Do not accept any gift from any foreign firm which is either contracting with the Government or with which you had, have or likely to have official dealings.	-- Rule 13 (4)
17.	Do not give or take or abet the giving or taking of dowry. Do not demand directly or indirectly from the parent or guardian of a bride or bridegroom as the case may be, any dowry.	-- Rule 13 A
18.	Except with previous sanction, do not receive any complimentary or valedictory address or accept any testimonial or attend any meeting or entertainment held in your honour or any other govt. servant.	-- Rule 14
19.	Except with previous sanction, do not engage directly or indirectly in any trade or business.	-- Rule 15 (1)(a)
20.	Without previous sanction do not take part in the registration, promotion or management of any bank or company required to be registered under the Companies Act 1956 or any cooperative society for Commercial purpose.	-- Rule 15 (1)(e)
21.	Unless provided by general or special order of Govt., do not accept any fee for any work done by you for any private or public body / or any private person without sanction.	-- Rule 15 (4)
22.	Do not speculate in any stock or share or other investment.	-- Rule 16 (1)
23.	Do not make or permit any member of your family to make any investment likely to embarrass or influence you in discharge of your duties.	-- Rule 16 (2)
24.	Do not lend or borrow or deposit money, as a principal or agent, to, or from or with any person, firm or private limited company within local limits of your authority or with whom you are likely to have official dealings.	-- Rule 16 (4)

25.	Except with previous knowledge of prescribed authority, do not acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise in your own name or in the name of your family members.	-- Rule 18 (2)
26.	Except with previous sanction, do not acquire or dispose of any immovable property in a transaction with any person having official dealings with you	-- Rule 18 (2)
27.	Except with previous sanction, do not acquire, purchase, mortgage, sell, gift or dispose of any immovable property situated outside India.	-- Rule 18 – A
28.	Except with previous sanction, do not have recourse to any court or to the press for vindication of any official act which has been the subject matter of adverse criticism or an attack of a defamatory character.	-- Rule 19
29.	Do not bring or attempt to bring any political or other outside influence to bear upon any superior authority to further your interests in service matters.	-- Rule 20
30.	Do not enter into or contract a marriage with a person having a spouse living.	-- Rule 21 (1)
31.	Do not enter into, or contract, a marriage with any person if your spouse is living provided that the Govt. may permit such marriage if it is satisfied that it is permissible under the personal law applicable or there are other grounds for so doing.	-- Rule 21 (2)
32.	Do not be under the influence of any intoxicating drink or drug during the course of your duty.	-- Rule 22 (b)
33.	Do not consume any intoxicating drink or drug in a public place	-- Rule 22 (bb)
34.	Do not appear in a public place in a state of intoxication.	-- Rule 22 (c)
35.	Do not use any intoxicating drink or drug to excess.	-- Rule 22 (d)

Under Rule 23 of the CCS Rules, it has been provided that if any question arises relating to interpretation of any of these rules, it should be referred to the Govt., whose decision thereon shall be final. On a number of such questions Govt. of India have given decisions, which may be referred to.

Where the exercise of a right is available to a Govt. servant or the availing of any opportunity which may come his way is subject to Govt.'s prior permission, in order that it does not become infructuous because of any delay on the part of Govt. to grant the necessary permission, the Govt. vide M.H.A. Deptt. of Personnel & Trg., O.M. No. 11013 / 2 / 88-Estt (A) dated 7th July, 1988 have prescribed the following time limits for granting or refusing permission in the following cases. The time limit is to be reckoned from the date of receipt of request of the Govt. Servant for which necessary acknowledgement showing the date of receipt may be given to the Govt. Servant when a request for permission is received.

Sl. No.	Rule No.	Provision relating to	Time limit for permission	
1.	8 (2) 13 (4) 18 (2) 18 (3)	Connection with press or radio Gifts Transaction in movable and immovable property	30 days	
2.	18 – A	Transactions in immovable property outside India or with foreigners		60 days

In the event of failure on the part of the competent authority to communicate its decision to the Govt. Servant concerned within the time limit mentioned above, the Govt. servant shall be free to assume that permission has been granted to him.

To sum up, when a person joins Govt. Service, he is automatically covered by the CCS Conduct Rules. It is therefore, necessary that all Govt. Servants strictly follow these Do's and Don'ts in their own interest.

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PREVENTIVE MANUAL (CENTRAL)
VOLUME II - (INTELLIGENECE)

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CHAPTER - ONE

INTELLIGENCE

PRELIMINARY

As brought out in several Chapters in Volume I of this Manual, the object of the Act is to regulate the Import and Export, earn revenue for the Union Government. However, the main object is not merely earnings revenue for the country but also to safeguard interests of the Nation. Parallely, the main aim of the Customs Act, 1962, is to maintain security of India, public order and standards of morality, prevention of smuggling, conservation of foreign exchange, protection of domestic industry, human, animal or plant life or health etc. For this purpose, the Central Government, issue notifications under section 11 of the Act prohibiting either absolutely or subject to certain conditions, import or export of goods of any specified description.

The prohibited/restricted goods attract lucrative premium, which prompts anti- social elements to indulge in bringing and take out of India, such goods. In such a situation, strict enforcement of Customs and Allied Acts is very important. The Customs officer is required to shoulder the burden and enforce the prohibitions / restrictions effectively. In order to discharge this heavy responsibility, the Customs officer is empowered with wide ranging powers of search, seizure, arrest, launching prosecution & confiscation of goods etc. To effectively combat the menace of smuggling, the officers must obtain first hand knowledge about smuggling rackets, their modus operandi, market trends regarding demand supply of sensitive goods etc. In order to obtain such information, each Commissionerate / formation has its own intelligence network. It is indisputable that even wars can be won if intelligence net work is very effective and one up above the opponent.

Naturally, every Custom House has its own Identity which may evolve its own intelligence culture and develop its formations depending upon the parameters like network of intelligence, market forces, financial aspects, culture of informers and their background, environmental forces etc. Though every Custom House has its own evolution, the actual formation/formalities go beyond the basic framework of the Customs Act, 1962, and the allied Acts. The central framework is, and should be common in all the Custom Houses. The broader aspects and basic necessities can be and should be as follows:-

1. The cultivation of informers
2. Collection of information
3. Compilation of Intelligence Reports.
4. Conducting investigations, making direct enquiry.
5. Carrying out searches and seizures; rummaging of vessels/conveyances/aircraft, and various other duties connected with the intelligence work.

SET-UP AND FUNCTIONS OF INTELLIGENCE UNITS IN THE CUSTOM HOUSE

A) SET – UP -The Intelligence Division may comprise of one or more units, depending on the size of the Customs formation and volume of work. Generally, the Division consists of the following units: --

1. Intelligence Unit.
2. Narcotics Unit
3. Rummaging Unit.

4. Docks Intelligence Unit.
5. Air Intelligence Unit.
6. Index Unit.
7. Investigation Unit.
8. Prosecution and Legal Unit.
9. COFEPOSA Unit
10. Adjudication Unit
11. Disposal Unit.
12. Reward Unit.

B) FUNCTIONS

1. Intelligence Unit:

- (a) Cultivation of informers and gathering useful information from them regarding smuggling.
- (b) Registration, scrutiny, collection and dissemination of all information reports received from the field staff and giving necessary instructions regarding actions to be taken.
- (c) Co-ordination and maintenance of close liaison with D.R.I., other Custom Houses, Commissionerates of Central Excise, Police Department, Enforcement Directorate and Income-tax Department, etc.
- (d) Compilation and interpretation of statistics with regard to Intelligence received and seizures effected.
- (e) Preparation and issue of the periodical intelligence bulletins for the guidance of the Intelligence staff about the trend, volume in smuggling, the areas of operation and names of smugglers and their modus operandi.
- (f) Conducting searches in town on the basis of intelligence / information for seizure of contraband in accordance with provisions of law.
- (g) Surveillance in town, observations at check posts and barriers, vigil on suspect premises.
- (h) Conducting enquiries based on intelligence reports and references received from other Custom Houses, Commissionerates, D.R.I. etc.

2. Narcotics Unit

To deal with all matters regarding dangerous drugs such as receipt of information, follow-up action, seizure, further enquiry & investigations etc.

3. Rummaging Unit

- (a) Collection of Intelligence regarding suspect vessels and their crew.
- (b) Search of suspect vessels.
- (c) Maintaining guard or watch on suspect vessels.
- (d) Processing of files in cases of all seizures effected by the section.
- (e) Patrols and surveillance at sea and on land as required.

4. Dock Intelligence Unit

- (a) Collection of Intelligence regarding smuggling activities in the docks / bunders and from the ships.
- (b) Follow-up of the information and effecting seizures.
- (c) Patrol the Docks area.

5. **Air Intelligence Unit**

- (a) To collect intelligence about the smuggling activities by Air Passengers, Air Crew, and other personnel working at the Airport.
- (b) To work out information regarding smuggling at the Airport.
- (c) To rummage the Aircraft / Vehicles.
- (d) Maintain guard / watch on suspect aircraft / vehicles and personnel.
- (e) Keeping watch on suspect passengers and their baggage.
- (f) Effecting seizures on the basis of Intelligence / Observation and follow-up action.
- (g) Patrolling in the Customs Area (Airport).
- (h) Lookout for suspect persons about whom alerts have been received from various other agencies.

6. **Index Unit**

- (a) Maintenance of indexing system for facilitating cross-references on the antecedents of suspects and preparation of dossiers on suspects and habitual offenders.
- (b) Keeping custody of seized documents / passports etc.

7. **Investigation Unit**

Follow-up action on the basis of information received. Seizure, Investigations and / or enquiries and issuance of Show Cause Notices.

8. **Prosecution and Legal Action Unit**

Attending to all court matters relating to remands and prosecutions of persons arrested, writ-petitions against Department, adjudication and other orders. Preferring appeals against lower court judgements where necessary.

9. **COFEPOSA Unit**

- (a) Prepare the material for detention of persons arrested in connection with the smuggling activities under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
- (b) Place the proposals before the Screening Committee.
- (c) After approval by the Screening Committee, submit the proposal to State / Central Governments for issue of Detention Orders, under COFEPOSA.
- (d) Assist the detaining authority in the execution of Detention Orders.
- (e) Attend the Advisory Board (Constituted by the State Government) Meetings with relevant documents etc. for perusal of the Advisory Board.

- (f) Attend the court on COFEPOSA matters.
- (g) Tracing of absconders and initiating action under Smugglers and Foreign Exchange Manipulation (Forfeiture of property) Act, 1976.

10. Adjudication Unit

To attend to post Show Cause Notice matters such as processing replies to the defence / notice, adjudication procedures and issue of Orders- in -Original. Also to attend to appeals arising out of such cases.

11. Disposal Unit

- (a) Receipt & custody of seized & confiscated goods.
- (b) Disposal of confiscated goods / seized goods (where action under section 110 (a) of the Customs Act, 1962, has been completed) as per existing orders.

12. Reward Unit

Processing seizure files for submitting recommendations for sanction of rewards to informants as well as to the staff.

INFORMANTS

Definition of Informer: Anyone who provides information of an investigative nature to law enforcement.

Informants are generally classified into one of four groups. These groups are (1) the average citizen, (2) fellow law enforcement investigators, (3) demented or disturbed persons and (4) criminals or criminal associates.

Individuals in the average citizen group can often be a good source of information. Even the new investigator is likely to have several good sources already established. A short list of some potential sources in the community include bartenders, cab drivers, barbers and beauty shop operators, hotel managers and employees, insurance and other private investigators, postmen, public utility employees, airline personnel, rental agency clerks, waiters and waitresses.

It is important that every investigator/officer, regardless of experience, consider everyone he/she comes in contact with as a potential source of information. An investigator / officer never knows when a particular talk, association or expertise may be helpful in a future investigation.

It is incumbent upon every agency and investigator to ensure the confidentiality of the informer. In those instances where the informer is exposed, society must respond to its "reciprocal duty...to protect those who have come to its assistance...

Police investigators usually exchange information with fellow investigators, and more often with a fellow investigator he / she has befriended. It will benefit every new investigator to meet and establish a friendly relationship with as many federal, state, and local officers as possible. After establishing these

contacts, stay cognizant of the fact that it is human nature for the fellow officers to seek recognition for their assistance. Whenever possible, credit should be given to the source of the information. Sometimes just a simple thank you letter from the supervisor of the office to the supervisor to the assisting officer will be tremendously appreciated and rewarding. A pleasing personality along with being sociable and professional is the key to success in this area.

A few people who provide information to law enforcement fall into the classification of Demented or Disturbed Persons with experience, an investigator can readily identify these persons whose information can often be attributed to newspapers, gossip, or hallucinations.

New investigations should be cautious not to discount these informants too readily. Simply because someone is mentally disturbed does not mean that they do not possess valuable information. Criminals will often say or do something incriminating in the presence of such a person because the criminals may not consider these persons as a threat to their criminal activity. Obviously, information received from an apparent demented or disturbed person should be corroborated through independent sources.

The most valuable informer is often the person who is himself/herself a violator or is or has been associated with the criminal element. This person is usually in a better position to have substantive information regarding violations of the law than the other classifications of informants. Criminal and Criminal Associate informants will be discussed in detail throughout this text.

Some investigative agencies make finer distinctions among informers and classify them into sub-groups as follows: (1) Informants, (2) Confidential Informants, or (3) special employees.

One informer may provide information openly and have no reservations about being identified as the source of the information. Another informant might request that his/her identity be kept confidential, and still another may be seeking employment as a full-time informant with the expectation and knowledge that he/she may be required to participate in a crime such as buying contraband in an undercover investigation.

The individual who furnishes the investigator with information regarding criminal activity and does not want to be identified is commonly referred to as a "confidential informant". Much information that an investigator receives comes from those persons whose mode of living, habits, and personal relations place them in close contact with the violators and their activities. These people are the informers whose identity usually remains secret, not only for their own protection, but because they have little value as a source of information once their identity becomes known.

The person who provides information and does not care if he/she is identified as the source of the information is often simply referred to as an "informer". Considerable information is available from persons whose legitimate occupations place them in a position to see hear, and possibly record facts of value to an investigator. These persons, because of their occupations, usually reveal such information as a civic duty and are usually willing to appear in courts as witnesses if needed.

The informant who provides information for pay, works undercover at the direction of an investigator, and sometimes actually participates in a crime is frequently referred to as a "Special employee."

Investigators should avoid using derogatory terminology when referring to an informant.

Uses of Informants

Before discussing uses of informants, it is important to recognize several problem areas associated with them, specifically the criminal or criminal associate informant. Often an investigator would not utilize a criminal or criminal associate informant if equivalent results could be achieved by other investigative methods.

The criminal or criminal associate informant is often difficult to control. Dependability and reliability are usually not characteristic of the criminal element. Therefore, it is critical that the investigator maintains firm control and direction of the criminal or criminal associate informant if the investigation is to be legally, morally, and safely concluded. Informants who disregard the investigator's guidelines should be severed from further association with the government before major problems or violations of the law occur.

Whenever it becomes necessary to terminate an informant from further association with an agency, the informant should be personally advised by the controlling investigator in the presence of the termination should be placed in the informant's file. The documentation will sometimes become very important at a later date when the same informant again offers his/her cooperation to another unsuspecting investigator or claims in court that he/she (the informer) violated the law while in a "Special Employee" status.

A second problem area with criminal and associate informants is that they sometimes become sources of public embarrassment for the agency. Usually this situation occurs when an informant, because of his/her own misconception or wishful thinking, feels he/she has not been appropriately compensated for their services. In some instances, these situations are unavoidable, but it is incumbent upon the controlling investigator not to make any promises to the informant that cannot be kept. Exactly what promises to the informant will be discussed throughout this text. An informant who makes unfounded accusations to the courts or press not only embarrasses the controlling investigator and agency, but hurts the total law enforcement effort by discouraging others from cooperating.

A third problem area associated with criminal and criminal associate informants is their questionable credibility in court. Since all criminal investigations are pursued with the ultimate objective of prosecution, an investigator must attempt, whenever possible, to obtain additional corroborative evidence, independent of the informant. An investigation based almost exclusively on the testimony of this type informant is likely doomed. A good defence attorney will expose the informant's criminal background and/or association and a jury will be extremely hesitant to find defendant guilty "beyond a reasonable doubt" based almost exclusively on the testimony of an informant who is himself/herself of questionable character and/or reputation. As stated above, an investigator would not normally utilize a criminal or criminal associate informant if equivalent results could be achieved by other investigative

methods. In fact, criminal or associate informants are often used by investigators because they are closely associated with the criminal element and have access to substantive information and evidence not usually available via other sources or techniques.

If one accepts informants, regardless of classification, as being a legitimate and necessary investigative technique, the logical question then comes, "how can an investigator/officer effectively utilize informants to accomplish the mission?"

Informants are most often used to provide information to law enforcement officials regarding violations of the law. More specifically informants are used to:

1. Make observations or perform surveillance in areas where strangers would be suspect.
2. Furnish information from a source not readily available to the investigator.
3. Conduct controlled undercover negotiations with or introduce undercover agents to criminal suspects.
4. Testify at legal proceedings.
5. Gather intelligence, i.e., determine "street prices" for guns and drugs, etc.

The above list of informant uses is not meant to be all-inclusive. Depending on the investigative situation, informants may be appropriately utilized in a variety of ways.

Informant Motivation

Most investigators/officers readily accept the tenet that informants are fundamental in law enforcement work. Once an investigator/officer embraces this premise, the question becomes "how do you develop informants?" Before this question can be answered, one must understand what motivates persons to become informants, particularly criminals or criminal associates.

Motivation for average citizens and law enforcement officers is usually easily recognized. The average citizen informant ordinarily supplies information or performs a service because of his/her civic duty and a desire to see justice done. Basically the same factors as the average citizen plus their additional professional responsibility as sworn officers to enforce the law and investigate violations thereof motivate Law enforcement officers.

What motivates a demented or disturbed person to become an informer is very complex and difficult to determine. In a majority of instances, information from these persons is useless and the question becomes moot since the investigator will not utilize them. When demented or disturbed persons possess valuable information or are able to provide a necessary service, they are usually motivated by one or a combination of motives associated with the criminal or associate informant.

For reasons previously discussed, the investigator often uses criminal or criminal associate informants. These informants present many legal, ethical and moral problems for the investigator not usually associated with the other three classifications of informants. Also, if an investigator/officer is to properly instruct, control, protect, and otherwise effectively utilize informants and evaluate their

information. IT IS CRITICAL in each and every instance that the investigator knows what is motivating the informant. The most common motivations are as follows:

Fear It is said that “self preservation is the first law of nature.” Therefore, many persons turn to law enforcement with a desire to cooperate when they are in fear of something. Probably the most typical of this situation is the person who has been arrested for an offense and is fearful of going to jail. Since man is a social animal and does not like to live alone, he/she will sometimes cooperate with law enforcement in return for a consideration of leniency by the court regarding pending charges. An investigator must be extremely careful not to make any promises to the potential informer beyond the scope of his/her authority. There is nothing wrong with telling a defendant who is a potential INFORMANT that his cooperation will be brought to the attention of the appropriate authority. However, any speculation of promises by the investigator relative to the disposition of the charges pending against the informant should be avoided. Some investigators associate this type informant almost solely with contraband investigations and/or vice crimes. History shows that this type informant usually makes an excellent informant regardless of the type crime of investigation being pursued.

Being proficient at the art of interviewing is particularly important when developing this type informant. Most fear motivated informants do not readily volunteer to cooperate with law enforcement. Information must usually be solicited from them and the investigator should stress the potential benefits to the informer, not just to society, when attempting to gain his/her cooperation. Usually this type informant must be convinced that his information will be welcomed and the law will do whatever it can to protect his/her identity from being publicly exposed. He/she must further believe that the law will do all within its power to protect him/her from reprisals from those he/she has informed on, should his/her cooperation become known.

Additional examples of persons motivated by fear are victims of rackets or swindles and those afraid of criminal associates for a variety of reasons.

Revenge The person who is motivated by revenge is usually overwhelmed with an all encompassing desire for retaliation and often has little if any concern about his/her identity being publicly exposed or openly testifying in court.

During a career, few investigators will come in contact with an extremely high quality, revenge motivated, and informant. The typical revenge motivated informer is a person who wishes to settle a grudge because someone else informed on him/her, took advantage of him/her or in some manner injured him/her. This type informant may exaggerate or make a report that is completely erroneous in an effort to accomplish his goal. Investigators should be particularly cautious when dealing with the “lover’s quarrel” situation where a husband-wife or boyfriend-girlfriend relationship exists. When confronted with a “lover’s quarrel” situation, the investigator should immediately obtain all possible information and, if possible, act on it quickly, but cautiously. These type informants are often willing to initially “tell all” but quickly change their mind and reconcile with their spouse or friend.

Mercenary Some persons provide information or render a service to law enforcement strictly for a fee. The device of paying a reward for information of law violations is perhaps as old as law enforcement itself. Too much reliance on the mercenary motive, or reward payments, may backfire.

Although financially motivated persons usually make good informants, the investigator must be cautious not to let the informant needlessly extend an investigation. Some informers, especially those on a continuous pay status during an investigation, will attempt this tactic by continuously supplying frivolous information since the informant knows his payments normally will stop when the investigation is concluded.

Another problem associated with mercenary informants is that they sometimes leave when things get "hot." This is especially true when investigating vice or contraband crimes dealing with criminals who have a general reputation of reprisals against informers. A mercenary informer will sometimes, usually without foundation, believe that the violator suspects him/her of being an informer. If this occurs, the informer is likely to cease his/her cooperation with law enforcement since he/she (the informer) believes that no amount of money is worth death or serious physical harm. This situation is not as much a problem with the revenge or fear-motivated informants.

An investigator must be extremely careful not to misinterpret an informer's motivation. There are many instances where an individual supplied information to law enforcement for purely altruistic reasons and was completely "turned off" when offered money by an investigator.

Egotistical or Vanity It seems to be characteristic of humanity that we delight in spreading news to interested listeners. Some persons take particular pleasure in passing information to law enforcement officials. These persons are sometimes said to have "police" complex because they attempt to magnify their own importance (ego) in the eyes of law enforcement by supplying "Quality" information to gain favorable attention from the investigator. The usual tip off to this motivation within the criminal or criminal associate category is the petty criminal who allegedly has substantive information on and contact with high level racketeers. Often the egotistically motivated informant does not possess the quantity and quality of information alleged.

Within the average citizen category of informers, these persons are usually those who subconsciously or consciously want to be a law enforcement officer, but for various reasons cannot qualify for law enforcement employment. The benefit to law enforcement of such persons should not be too quickly discounted. Since willingness to assist law enforcement is a positive characteristic of any informer, these persons can often be of substantial benefit if directed and motivated properly by a competent investigator or officer.

Perverse Characteristic of this type motivation is the informer who makes a disclosure in hope of some unusual advantage to himself/herself. The motivation is most prevalent in the areas of vice and/or contraband crimes when the informer is earning his/her living by questionable means and informs with the desire to eliminate his/her competition, or provides trivial or worthless information while attempting to learn investigative techniques, the identities of undercover agents or to direct attention away from himself/herself. In the main, law enforcement should not utilize perversely motivated informers. However, if an informer's motivation is to eliminate his/her competition, this type informer can often be successfully utilized. The controlling investigator must be meticulously careful not to condone criminal activity by the informer. An informer status should never be permitted to be licence for present or future misconduct.

Repentance or Reform Occasionally an informer will cooperate with law enforcement because he/she repents wrongdoing, because of a desire to make restitution or to break criminal alliances. Although infrequently seen, this informer can be very valuable. When interviewing a prospective informer, the astute investigator will sometimes use this motive as a basis for reasoning with the person he/she hopes will cooperate. The prospective informer may decide to cooperate for money, but subconsciously convinces himself/herself that he/she is cooperating with law enforcement for altruistic reasons.

The above mentioned motives for criminal or associate informers will cover the majority of situation to which the investigator will normally be exposed. However, this listing is not all-inclusive. Many investigators have allied informers for life, long after the informer's case has been adjudicated or the revenge motive situation no longer exists. By treating an informer honestly and fairly, they will sometimes continue to provide information or service because of appreciation or gratitude. All informers are grateful for fair and decent treatment, and it is not unusual for a good investigator to receive information from a grateful informer many years after the initial business was concluded.

DEVELOPING INFORMANTS

Probably the best technique for developing informants is being sociable and having a pleasing personality. Investigators who maintain good liaison and a friendly working relationship with both investigators in their own agency and other law enforcement personnel will find they have taken a large step forward to developing quality informants.

It is very common for law enforcement officers outside one's particular agency to come in contact with persons who possess information regarding violations of laws. For example, if a police investigator receives information regarding violations or the smuggling laws, there is really only one appropriate place for the officer to turn – to the Customs Service. The officer will usually contact an investigator he/she has befriended. Therefore, it benefits every investigator, regardless of agency to establish good working relationships with other law enforcement officers.

Everyone arrested should be approached as a potential informant. Some investigators, particularly those working vice and/or contraband investigations, which have a high incidence of arrests and case turnover, may work an entire career by developing informants from persons arrested in their own cases. This technique is not limited solely to vice and/or contraband investigations and is generally recommended.

Similar to the cliché, "the rich get richer and the poor get poorer," competent, proven investigators are most often assigned the better case referrals and investigative leads by supervisors. These referrals often lead to developing quality informants. Naturally, a supervisor will want those under his/her supervision to be productive and to develop an investigation to its utmost potential. Subsequently, being a hard-working investigator with a proven record for success is, per se, self-perpetuating in developing informants. It is important that the new investigator, who has not had the opportunity to prove himself/herself, enthusiastically and thoroughly pursue each investigation regardless of how routine it may appear. By so doing, the new investigator will develop a reputation of a competent hard-working investigator and such a reputation will aid tremendously in developing informants.

Some new investigators are referred informants by the older, more experienced investigators in one's office. Sometimes an investigator is transferred and will refer an informant to a less experienced investigator in the office. Sometimes an established investigator will have more informant and active investigations than he/she can effectively work. In these instances, the experienced investigator will often refer an informant to a new investigator if the new agent appears competent and enthusiastic and the experienced investigator believes that the favor will be returned at a future time.

Basically, techniques for developing informants are limited only by the investigator's imagination and his/her ability and desire to be a proficient, well-rounded investigator.

Interviewing

One key to developing and gaining the cooperation of most informants is proper interviewing technique. Most criminals or criminal associates do not readily offer information or agree to cooperate with law enforcement officials. However, a competent investigator who is a good listener and can communicate clearly and effectively can often gain cooperation. The criminal or criminal associate often has two principal concerns that must be addressed before he/she will seriously consider cooperating. First the potential informant will be concerned about the confidentiality of his/her identity and secondly that the investigator/agency will address the specific motivation of the potential informant, e.g. monetary payments. Therefore, it is imperative that the investigator be prepared to discuss these concerns with the potential informant if cooperation is to be gained.

Listed below are some suggested questions the investigator should attempt to find answers to when interviewing an informant or potential informant.

- 1.
2. What is his/her motivation.
3. Has the informant been reliable in the past.
4. How intelligent is the informant.
5. How does he/she know about the violation.
6. Does he/she have a personal interest.
7. Does he/she have direct knowledge relative to the information.
8. Does he/she have access to additional related information.
9. Does he/she have reason to be vengeful toward the violator.
10. Does he/she have experience enough to report the information accurately.
11. Is he/she with holding some of the information.
12. Has he/she fabricated information in the past.
13. Is he/she willing to testify in court.

If most of the above questions can be answered, the investigator should be able to objectively evaluate the informant and the information.

Control and handling of Informants

A cardinal rule is the investigator directs and controls the investigation, not the informant. Unfortunately, this is not as basic as it may sound, especially for the inexperienced investigator who in his/her enthusiasm to do a good job and establish his/her reputation may fall prey to a perversely motivated informant. There is nothing wrong with asking the informant for suggestions or showing appreciation for quality information; in fact, these techniques are encouraged. However, the supervisor must be the controlling and decision-making authority, not the informant.

A pitfall that must be meticulously avoided is promising inflated monetary payments or making other promises to an informant that cannot be kept or are outside the authority of an agent to make. Advising an informant of anticipated judicial disposition of a charge pending against him; indicating that an informant will receive probation or a reduced sentence because of his/her cooperation are examples of commitments that are beyond the authority of an agent to make. Promising inflated rewards for cooperation must also be avoided. Informant payments are not within the sole discretion of a case agent and are contingent upon such factors as supervisory approval, budget, agency guidelines, etc... Informants may be told that monetary payments are available and general payment guidelines. Inflated promises of payments or rewards may stimulate an informant one time but an informant is not likely to assist in future investigations once a promise has been reneged upon.

In order to maintain proper control of the informant and direction of the investigation, it is a good policy for the investigator to maintain frequent personal contact with the informant. When personal contact is not possible, telephonic contact should be utilized, but not solely relied upon. Personal meetings between the agent and informant are the best atmospheres for debriefing the informant, developing rapport and issuing instructions. Pre-arranged, secure meeting places should also be established. Utilizing government buildings, police departments, and other official buildings to meet an informant should be avoided to reduce the risk of exposing the informant. It is generally recommended that a second witnessing officer be present at these meetings. The second officer serves to corroborate anything said or done at the meeting. This could become important at a later time if the informant makes incriminating accusations against the controlling investigator. Secondly, exposure of a second investigator to the informant will make the transition of the informant, from one investigator to another investigator, easier in the event the controlling investigator is transferred, retires, etc...Although some agencies do not make it mandatory for two investigators to meet with an informant, all agencies recognize that meetings between agents and informants of the opposite sex and meetings where informants are paid monies are obvious situations that dictate two investigators being present.

One of the first things to be discussed with an informant is the law regarding entrapment. The investigator should ensure the informant understands the difference between providing an opportunity for a suspect to violate the law versus providing the motivation. Additionally, at no time should an investigator develop the opinion that an informant is strictly his/her personal property. An informant is actually accountable to the government through the agency to which he/she is providing information.

Some criminal or criminal associate informants have low moral and ethical standards. Therefore, an investigator must be on constant guard not to adopt these standards or in any way compromise himself / herself or the government. An investigator must be particularly wary of situations where he/ she

is forced to closely associate with a criminal or criminal associate informant, particularly over an extended period of time, to wit Undercover and witness protection assignments.

Good rapport and mutual trust between an investigator and an informant greatly enhances the likelihood of accomplishing the mission. Initially, creating this type atmosphere may be difficult especially when dealing with a fear-motivated informant who has recently been arrested. Generally, if the investigator is truthful and fair with the informant, a solid professional relationship will eventually develop. However, an investigator should always conduct personal and criminal background checks on an informant and attempt to corroborate the informant's information through independent sources.

Protection of informant's identity

Every investigator has a professional and ethical obligation to safeguard the identity of informants. Failure to fulfill this obligation may result in death, injury or intimidation of the informer and / or his /her family. Reprisals against an informant due to improper investigator technique weigh heavily on the investigator's conscience and undermines the total law enforcement effort. As a general rule, an investigative should not place an informant in a situation where the informant's identity will likely be exposed unless the investigator has previously explained to the informant that this is a likely result of his / her cooperation.

In addition to the individual investigator's professional obligation to protect the informant's identity, many judicial systems have adopted the informer privilege. This doctrine allows the government to withhold the identity of the informant under most circumstances. The rationale for this privilege is twofold; (1) It is to insure a constant and continuing flow of information regarding illegal activities to law enforcement authorities and (2) it is to protect the source of information from reprisals or revenge.

Other problem areas

As stated earlier in this text, control, credibility, agency embarrassment and entrapment are notable problem areas associated with some informants, particularly the criminal or criminal associate. Additional problem areas for the investigator are:

1. Involvement in informants personal problem

An investigator's ability to be objective is jeopardized if too friendly a relationship develops with the informant, and the investigator becomes deeply involved in the informant's personal problems. A professional relationship based upon mutual respect and trust is encouraged, but the investigator must guard against the relationship becoming too personal instead of professional. The background of the informant and the type investigation being conducted will give some guidance when developing the informant-investigator relationship. This is not to say that the investigator should not lend a sympathetic ear or get involved in an informant's personal problems. Some investigators have endeared informants for life because the investigators helped the informant through a personal crisis. Conversely, investigators have lost control of informants, investigations and in rare instances their personal values and integrity, because of misplaced loyalties to an informant.

2. Informants of the opposite sex

Special precautions should be exercised when dealing with informants of the opposite sex. During meetings between investigators and informants of the opposite sex, precautions should be taken to help prevent false and embarrassing accusations against the agent and / or his / her agency. One way of protecting the investigator is to have a second officer present whenever possible. Also, the location of meetings needs special consideration, especially if a second agent is not present.

3. Violation of the law by the informant

One of the most important areas to cover during the initial investigator / informant meetings is that violations of the law by the informant will not be condoned or tolerated. Sometimes an informant will believe, since he / she is working for the government, he / she has special privilege to violate the law for his / her own advantage. Nothing is further from the truth and the investigator must ensure that the informant understands this and will not be supported by the government in the event the law is violated.

An investigator is limited as to what he / she can allow an informant to do when assisting in an investigation. For example, an investigator may allow an informant to make a controlled purchase of evidence, but could not issue or authorize the carrying of a firearm or official credentials.

SUMMARY

Despite the vast technology available to today's investigator, we must never forget that law enforcement has to do with people, human beings whose acts and motives are not always subject to predication and mechanical measurement. The successful and efficient investigation of crime calls for skillful application of the old arts as well as the new.

No investigator who properly uses informants need be apologetic. The apology should come from the investigator who fails to utilize this device.

[Ref: - Drug Enforcement Manual]

RECORDING OF INFORMATION

- (i) All information given by informer or any other persons should invariably be recorded in writing.
- (ii) The officer recording the information must take care to see that it is informative as far as possible on the following points namely:
 - (a) The identity of the smuggler or smugglers.
 - (b) The nature quantity and value of the goods to be smuggled.
 - (c) Modus operandi followed.
 - (d) Manner of transport to be used.
 - (e) Names and particulars of carriers to be employed.
 - (f) The routes to be followed by the smugglers and the place where the smuggled goods are to be landed or are to be loaded for being smuggled.
 - (g) The approximate date and time when the smuggling is scheduled to take place.
 - (h) Where any premises are required to be searched the full details of the premises and it's location.

Recording and information an information in writing is a precautionary measures against unscrupulous person/ persons out of enmity, hatred of malice giving a false information to a Revenue Officer with a view to harass an innocent member of the public or the officer himself. Unless the officer can prove to the satisfaction in a court of law that he made any search, seizure or detention in pursuance of a secret information received, by him, the consequences can be serious. Should such necessity arise the only manner in which he can convince a court, that he did not vexatiously do the search or arrest is by producing the original information recorded in writing. An informer who gives false information to any public servant with an intention to cause injury or annoyance to any person is punishable under Section 182 of the Indian Penal Code, 1860.

Registration of Informers and Information Reports

As already indicated all Intelligence Officers should develop their own source of information through informers cultivated by them, after proper screening. After he is satisfied with the bonafides his name should be got registered with the Assistant Commissioner (R&I) in the form (App. A). The Assistant Commissioner will then enter personally the name and other details in the Register of informers (App. B) and allot code number to such informers. The Assistant Commissioner will be personally responsible for the custody to the register. The code number allotted to the informers will be on the basis of a code letter allotted to the Intelligence Officers in running serial numbers.

When an intelligence Officer is transferred, his informers should be made over to another only with his written approval. Where the officer is not willing to make over to another, the Assistant Collector (R&I) should check up with the informer whether they would like to work with another officer. The Assistant Commissioner shall remove the names of those who are not so willing from the Register. The names of those informers who have not furnished any useful information for a period of 12 months shall also be deleted under intimation to the officer concerned.

In case of casual informers who have only specific information to give and who do not wish to be regular, the Intelligence Officer shall prepare an index and submit to Assistant Commissioner in a sealed cover together with information report. The Assistant Commissioner shall also maintain a Register of such casual informer also.

As soon as the information is received, should be recorded, in the form DRI-I in the handwriting of the informer or the Intelligence Officer. It must be in the form of informer's statement in first person. In the information report, the informer's name will not be mentioned but only his code number if any, will be given. In case the informer is not registered, his name and full address (in form given at App. A) will be submitted in a sealed cover along with the information report. In case this is not done, the information shall not be treated as from an informer. As soon as the information report is ready, it should be registered and the same sent to the Assistant Commissioner and issue necessary instructions for its follow-up after scrutiny. The information report should also be immediately registered in the Register of Information (App. `D'). The Register should be prepared commodity wise. Cross-references should be given under other commodities mentioned in the information report. The information report itself should be filed in a separate guard file. Only such orders as are necessary to follow-up and such information will be conveyed to the concerned officer for further investigation or enquiry. The information report should be sent to the Directorate of Revenue Intelligence within 24 hours of its receipt by the Assistant

Commissioner and where the information is of interest to more than one Commissionerate and / or Custom House, such Custom Houses and the Commissionerates should also be informed.

In those rare cases, where there may not be enough time to record the information in writing before taking action, the Assistant Commissioner concerned and in his absence the Superintendent / Intelligence in the Custom House should be informed of the receipt of the information by telephone and of the action proposed to be taken.

A separate Register shall be maintained commodity wise for information received from other than informers such as from D.R.I., other Commissionerate / Departments. Anonymous or pseudonymous information may also be recorded in the Register.

At the end of each month an analysis of the information reports should be prepared to show (i) the information reports received during the month, including those pending from the previous Mont. if any (ii) disposals and (iii) pendency. The analysis should be submitted for information and orders to the Assistant Commissioner and Additional Commissioner of Customs.

APPENDIX 'A'

- | | |
|---|-------------------------|
| 1. Name and alias, if any | 2. Father's Name |
| 3. Permanent address | 4. Date of Birth |
| 5. Height | 6. Identification Marks |
| 7. Nature of Information to be supplied | 8. Code No. |

APPENDIX 'B'

- | | | |
|--|--|---|
| 1. Serial No. | 2. Date of Enrolment | 3. Name and alias, if any |
| 4. Father's Name | 5. Permanent address | 6. Date of Birth |
| 7. Height | 8. Identification Marks | 9. Nature of Information to be supplied |
| 10. Code No. | 11. Cross reference to the Information supplied by him | |
| 12. Cross reference to the seizures effected as a result of such Information | | |
| 13. Particulars of any Rewards sanctioned to him | | |
| 14. Date of discharge with reasons for the same | 15. Remarks | |

APPENDIX 'D'

- | | |
|---|---|
| 1. Serial No. (of registration) | 2. Date of Report |
| 3. Date of registration | 4. Name of the reporting officer |
| 5. Code No. of the Informer of source of Information (in case of reports received by post or through other Departments) | |
| 6. Synopsis of Information | 7. Action taken and number of Confidential or secret file |
| 8. Results with number of Penalty file | |
| 9. Original report filed at (page no. of the Information Guard File) | 10. Remarks |

[DRI. F. No.POL./1/60 OF 12.12.1960]

Procedure for recording Information

I. The orthodox and also the most effective method of collection of intelligence is of course through informers. The importance of this source of information for purposes of actual detection of cases of smuggling is incalculable because of its usual accuracy and precise nature. Protecting the identity of the informer is therefore of utmost importance.

II. In order to protect the identity of the informer, the Officer collecting information should immediately keep in a sealed envelope the information recorded with the informer's identifying particulars including his left hand thumb impression and signature (where possible) and hand over the sealed cover to CA-I within 24 hours of recording of the information. In case the recording of the information is on holidays the sealed covers should be handed over to the controlling Asstt. Commissioner within 24 hours who in turn will hand over the same to CA-I on the next working day. It is advisable that he may not keep it at his residence but keep it in the office with adequate safety measures.

III. Officer recording information from Preventive Commissionerate, Mumbai ((R & I Div. & M & P wing) will hand over DRI-I to CA-I immediately after recording of information. The CA-I will maintain 4 Register for receiving DRI-I. These Registers will be titled differently for different Commodities as follows:

i.	Gold & silver	:	A
ii.	Narcotics	:	D
iii.	Currency (Indian / Foreign)	:	B
iv.	Dutiable goods	:	H

IV. These Registers indicate the serial nos. of the concerned DRI-I, date and time of the information, name of the recording Officer, File No. and gist of information. The CA-I will put up the DRI-I for information of AC/Adm. Immediately after the same is entered in the Register.

V. The sealed cover containing the information is then entered by CA-I in a Register of sealed covers, which would indicate Serial no. Date on which it is received., the corresponding register no. of DRI-I Register, File No. and Officer recording the information. This cover duly sealed by the Officer recording the information will then be kept in specially meant cupboards, which are under the seal and signature of CA-I.

VI. After effecting seizure, if the value of the goods seized is more than RS. 10 lacs, a telex / fax should be issued on behalf of the CC (P) to Member, Anti-Smuggling and D.G. DRI (within 24 hours) after approval from Chief Commissioner of Customs. The Seizing unit will also issue DRI-II within 48 hours of seizure detailing part played by each and every staff member who has participated in the seizure.

VII. After Reward is sanctioned, the Reward cell will send the intimation to the concerned Officer. The said Officer should seek the appointment of disbursing Officer and inform the CA-I the date and time fixed for disbursement of Reward amount. The CA-I will then put up the file to Supervising AC and take his permission for withdrawing the sealed cover. He should keep it ready on the appointed date and time for handing it over to the Disbursing Officer. The concerned Officer will then withdraw the money for disbursement. The CA-I will personally hand over the cover to the Disbursing Office in the presence of the Seizing Officer and collect it back personally. Once the sealed cover is in the possession of CA-I, it will not be handed over to anyone except the Disbursing Officer.

VIII. On the appointed date and time the concerned Officer will report to CA-I after making necessary entry in the Register and after taking the signature of the concerned Officer and his signature will take out the sealed cover from the cupboard and hand it over to the disbursing Officer in the presence of the Seizing Officer for further necessary action.

IX. After the reward is disbursed the said sealed cover will be kept in another cover duly signed by the Disbursing Officer and the Officer who had originally recorded the information. This cover will give the details as per the original seal cover. It will be the duty of the CA-I to keep this new cover ready at the time of disbursement. This second cover duly sealed will be redeposited by at the CA-I in the cupboard after making the necessary entry in the Register again.

X. The present practice of each division i.e. R & I and M & P handling their own sealed envelopes will continue keeping in mind the nature and norms of receipt of information and its timely execution. However in all such cases the Commissioner of Customs (Preventive) and the concerned joint Commissioner (Preventive) must be immediately informed.

[S.O. No.7468/99 dt.22.07.099. issued by Mumbai (Preventive) Commissionerate]

ACTION IN PURSUANCE OF INFORMATION

Precautions

Irrespective of the nature and extent of reliability of the information certain basis precaution should be taken before action is initiated thereon.

(i) Source reports from the Directorate of Revenue Intelligence

Source reports emanating from the D.R.I. are received after preliminary scrutiny and verification. The column "special Directions" should be scrupulously observed and action should ordinarily be taken to the extent indicated. Results of action taken should be immediately communicated to the D.R.I. so that any further instructions as necessary may be issued without delay.

(ii) Source report from other Customs Houses / Commissionerates

The forwarding formation shall as a rule, carry out a preliminary scrutiny before forwarding the information to the other field formations. To the extent possible, the reliability of the source and the extent to which it can be acted upon should be indicated to facilitate the task of officers at the receiving end. If for any reason it has not been possible or practicable for the forwarding formation to carry out any scrutiny or verification of the information received and the same is desired to be conducted at the receiving end, a very clear mention must be made in the communication. The receiving formation will then take appropriate action on the information furnished in the source report.

(iii) Information emanating from Registered informants

Informants are given a "Registered" status after they have proved their worth and at least furnished two or three or more information which have turned out to be correct. Accordingly, information emanating from such sources could be relied upon after the necessary preliminary processing including verification of facts, if possible.

(iv) Information emanating from casual informants

In the case of casual informants a higher degree of cautions is indicated. The status and antecedents of the informants, his relationship, if any, or equation with those against whom information has been furnished, his motive in volunteering information, results achieved on the basis of previous information all these factors need to be carefully considered before it is decided to act. The officer concerned should obtain from the informant as detailed and precise information as possible. Details and clues furnished in the information need to be processed and worked out. If searches of premises are involved. Verification of the correct address and location of the premises together with a discreet watch and surveillance should ordinarily be undertaken in an effort to verify the veracity of the information. If this type of verification and working out of the information discloses that the same is reliable could then be acted upon.

(v) Source reports from Police, State Excise, Prohibition agency, Income-tax, CBI and other enforcement authorities

Unless the Government Department concerned clearly indicates that information emanates from one of their reliable and tried sources, such information should ordinarily be treated on the same basis as from casual informants. If the agency forwarding the information is locally available it would always be advantageous to discuss the details with it at appropriate level.

In the case of telegrams or telephone calls, purporting to be from a sister organization calling for immediate action, it would be worthwhile for the officer receiving such information to ring back the organization, make absolutely sure that the person at the other end is the officer of that organization which, claims to be and check up on the reliability of the information. This should be done before the information received over the telephone or in a telegram is acted upon.

(vi) Information from Anonymous / pseudonymous sources

The greatest possible care and circumspection are necessary where the source of the information is anonymous or pseudonymous, may it be a letter, telephone call or telegram etc. Such communications should first be examined in the light of background information available and only after ensuring that such background knowledge warrants it, action as detailed below should be taken. Efforts should also be made to ascertain the identity of the source. If specific clues are supplied, the same should be carefully verified by maintaining watch, mounting surveillance and going into such other details as are capable of verification or confirmation. Corroboration of information should be attempted from independent sources also. Action to "strike" should be taken only after cautious and detailed processing leads to a strong and reasonable belief that the information is reliable. Even so, orders of a senior officer, ordinarily of the rank

of Assistant Commissioner must be obtained before resorting to search senior most officers available either on the spot or on 'Phone'.

Action on the Basis of Judgement

- (a) Apart from acting on the basis of information received, officers on spot will, sometimes, find it necessary to act on the basis of their observation & judgement of the behavior of passengers / other persons. Where, however, detailed baggage examination of the packages has to be undertaken or a personal search conducted the senior most officers present on the spot should invariably be consulted.
- (b) In the case of diplomatic and consular officers and Trade Commissioners etc. who enjoy immunities from baggage examination, Government's instructions governing the concessions and privileges admissible to them should be very strictly observed. In case of any reliable information received which would appear to necessitate examination of their baggage, immediate contact should be established with the D.R.I. who in consultation with the appropriate Government of India agencies will work out the method and manner of action to be taken. The field formations on their own shall not take any precipitate action.
- (c) It is recognized that a detailed examination or a personal search, when they have to be resorted to, can never be made to look pleasant; nonetheless their rigor can be minimized by extending courtesy and expression regret in suitable words at what had to be done. It should be the endeavor of every officer to ensure that such examination and search are carried out with circumspection and restraint and is not made more distasteful than is inherent in nature of things.

[DRI letter F. No. 1/1/65. dtd. 23.07.66]

INFORMATION RECEIVED / RECORDED FROM CASUAL INFORMERS- instructions

1. It has come to the notice of the Board that recently on the basis of certain information received from a casual informer, relating to contraband gold carried on the person by an aged lady passenger travelling by Bus, the lady was detained and her personal search was carried out. The information however proved to be incorrect. The lady passenger was seriously upset and her husband about the undue harassment and great inconvenience caused to his wife made a complaint. The matter was also subsequently reported to the Human Rights Commission, who have taken cognizance of the complaint and secretary (revenue) had to send a detailed report after checking with concerned Commissioner.

2. It has been felt by Board that due care was not taken for checking about the propriety of the information, nor apparently the informer was available has felt it, when the search of the lady passenger was carried out. The concerned officers appear to have acted in a hurry, unmindful of the importance that is required to be given to an issue like personal search. Board is unhappy that such incidents are happening more so when under the Citizen's Charter. We are trying to project a better image of the Department by reducing their grievances in relation to searches / seizures etc., effected by the field officers. It is observed that laid down instructions are not being followed scrupulously

3. In this regard attention is also invited to the instructions contained in the Customs Preventive Manual relating to "Recording of Information" and the precautions to be taken in pursuance of receipt of information especially when the information is emanating from casual informants, which clearly provide that:-

".....a higher degree of caution is required in the case of casual informants. The status and antecedents of the informants, his relationship, if any, or equation with those against whom information has been furnished, his motive in volunteering information, results achieved on the basis of previous information, all these factors need to be carefully considered before it is decided to act. The officer concerned should obtain from the informant as detailed and precise information as possible. Details and clues furnished in the information need to be processed and worked out. If searches of premises are involved, premises together with a discreet watch and surveillance should ordinarily be undertaken in an effort to verify the veracity of the information. If this type of verification and working out of the information discloses that the same is reliable, it could then be acted upon".

4. Board desires that while making search / follow up action, the instructions contained in the Customs Preventive Manual, as stated above, should be scrupulously followed, in letter and spirit, so that infructuous searches and harassment to affected persons is avoided. Extreme care should be taken in cases of information received / recorded from the casual informants / anonymous / pseudonymous sources, (especially in the cases where ladies are involved) and the information recorded should be properly verified / checked before deciding strike action. The senior officers authorizing such searches will have to be held responsible if any casual approach is noticed in future in ordering searches of individuals / premises etc. leading to grievances of the type mentioned above.

5. All the field formations particularly the officers engaged in search / seizure operation under your charge and the senior supervisory officers may be properly sensitized and be directed to follow the enclosed instructions scrupulously to avoid recurrence of such incidents, reduce public grievances and to improve out public image.

[M.F.,D.R.,F.No.394/72/99-Cus. Dated 29.04.099]

KINDS OF ALERTS

Red Alerts- for attest of a person.

Light Blue Alerts- for search of baggage and / or person, keeping a watch, maintaining surveillance, obtaining information about a person etc. and where the lookout is to be maintained for a continuous period

And identifying particulars about a person are available. These will also be issued against person who has not taken income Tax clearance.

Letter Alerts— for search of baggage and / or person, keeping a watch, maintaining surveillance, obtaining particulars of a person etc., and where this lookout is to be maintained for a particular visit, over a short period or the identifying particulars of the person are not available. These may also be issued against person who has not taken income Tax clearance.

Warning Circulars—will be issued for banning entry of a person into India. The Ministry of Home Affairs issues these to all passport issuing and Immigration authorities on recommendation of the Directorate.

Basis for Issue of Alert Notices

1. The Red Alerts against smugglers will only be issued in those cases where a person is required to be arrested under the Customs Act, F.E.R.A., or allied Acts. The officer who detains a person on the basis of a red alert should follow the procedure laid down under section 104 of the Customs Act. He should also inform the officer as mentioned in the 'Special Directions' in the Alert. The officer who had requested for the issue of the alert would then take further action in the matter.
2. The Red Alert will also be issued against a person who is required to be detained under the COFEPOSA Act but is absconding. In such cases the person detained should be taken to the nearest Police Station who should be asked to keep the person under their custody till the detenu can be transferred to the concerned state. Here again, the officer mentioned in the 'Special Directions' should be contacted who would take further action for transfer of the detenu to the concerned jail.
3. The Light Blue and Letter Alerts for search of baggage / person would be issued where a particular person is suspected to be indulging in smuggling activities. As far as the examination of baggage is concerned, the Customs Officer at the point of entry or exit, is empowered to check the baggage in normal course. However, the search of person cannot be said to be covered under this provision. Here, it is proposed to issue instructions regarding search of person only in those cases where there is definite information that the subject is indulging in smuggling activities himself. It may be clarified that the responsibility to decide whether the person of a suspect is required to be searched or not, in all cases, would rest on the officer on the spot. The Directorate, in most of the cases, has been writing very clearly that the question of search of person may be decided on merit. This practice would be continued and it is suggested that the person on the spot should use his discretion fully to decide whether the person of suspect should be searched. In any case, the information contained in Letter Alert or Light Blue Alert should be treated as information received from any other source and then necessary action be taken. The reason to believe required to be formed under Section 100, 101 or 104 would thus be of the officer on the spot. It may however, be clarified that the issue of alert is an executive action of secret nature. We would, therefore, neither mention in writing nor verbally that the alert system exists; it is to be treated as information from a secret source.
4. Warning Circulars are issued in public interest under Section 3 of the Foreigners Act, 1946.

Issue, Review and Maintenance of Alerts

1. All categories of alerts will be issued on the basis of recommendations received from the field formations or on the basis of material available in the Directorate. The field formations are requested to send their recommendations, by name, to any officer of the Directorate's

Headquarters at Delhi. It may be clarified that though the request for issue of Red Alert can be sent by telex, the request for issue of Light Blue or Letter Alert should only be sent in a double sealed cover under Registered Post. In urgent circumstances, the request can also be made on telephone. In very urgent and exceptional circumstances the field formations may issue an alert directly to all exit points, but a copy of this letter should invariably be endorsed to the Directorate's Headquarters at New Delhi for the purpose of regularizing it.

2. In this regard it may be mentioned that agencies such as Directorate of Enforcement, Narcotics Commissioner, CBI, Directorate of Archaeological Survey of India, Income Tax Authorities etc. have been advised to send their requests for issue of alerts directly to the DRI Headquarters. In case they send the request directly, they may be advised to approach the system of the field formation. If no regularization takes place within a month, the field formations will be at liberty to withdraw the alert without further notice to the concerned authorities. The requests received from the Zonal Units of the DRI or Directorate of Enforcement should also be treated in the same manner.
3. This will however, exclude those cases in which the information is received by the field formations directly themselves and they decide to maintain a lookout on its basis. The responsibility for maintenance and withdrawal of such local lookouts would entirely rest on the concerned field formation.
4. Every alert issued by the Directorate will carry a validity period. In case the validity period is not mentioned the matter should be referred to the Directorate's Headquarters immediately. It may be clarified that no alert can be withdrawn by the field formations, particularly the exit and entry points, unless a formal withdrawal letter is received from the DRI. The field formations who had made the original request for issue of alert should inform the Directorate's Headquarters sufficiently in advance, say 2 months, before expiry of the validity period, in case they desire the alert to be continued.
5. The Red Alert will be issued to all Customs and Central Excise formations including entry and exit points, and copies of the Red Alert would also be endorsed to the Enforcement Directorate including Zonal / sub-Zonal units, Narcotics Commissioner and Zonal / Regional units of the DRI.
6. The Light Blue and Letter Alerts on the other hand will have limited circulation and will only be forwarded to entry and exit points and concerned Commissioners / formations. It is suggested that formations and Commissionerates, which do not control any entry or exit point, may stop maintaining Light Blue and Letter Alerts.
7. The receipt of all alerts should be acknowledged by the field formations, after the alert is entered in the visadex system or in the file maintained for the purpose.

The field formations should continuously review and advise the DRI as to the number of alerts required by each formation. Since we now follow the practice of sending the alerts directly to the entry and exit points, the field formations avoid endorsing copies from one formation to another, such as endorsement of copies received by the Commissioner to Airport, docks, etc. under his jurisdiction.

8. It may be clarified that the responsibility whether a particular alert will be issued or not and the selection of proper Performa would lie with the DRI. Similarly, unless the validity period is specifically fixed by the formation making the request, the responsibility of fixing the validity period would be of that of DRI.

RED ALERTS

1. The Red alerts for apprehension of a person will be issued in the following circumstances:
 - (a) A person is required to be arrested under the Customs Act / F.ER.A / any other allied Act.
 - (b) A person is required to be detained under Section 3 of the COFEPOSA Act.
 - (c) If a person arrested under Customs or Allied Acts is on bail and the Court has imposed condition on the bail that he cannot move out of the jurisdiction of the Court or cannot leave the country.
 - (d) Where a person is involved in an offence under the Customs or allied Act and is wanted for interrogation, which is likely to lead to his arrest. However, the red alert in such a case would be considered only in extra ordinary circumstances.

2. Red Alert would not be issued if the full identifying particulars of the person or his photograph are not available. Exception to this can only be made in very special circumstances, which should be clearly mentioned by the authority making recommendation for issue of Red Alert.

3. The Red Alert will be issued in a series indicating running 'R' number of the year.

4. The validity of the Red Alert would normally be till arrest. However, where the goods involved are of small quantity, or value the case involved is a baggage one, a person is a crew member of a dhow of foreign origin and who would normally not come back to India or the person is of foreign origin and who would normally not come back to India after he has absconded, the validity of the Alert may be indicated to be 5 years. It would, therefore, follow that in all these circumstances, the Red Alert may be reviewed to see whether it can be withdrawn.

5. The Red Alert may be withdrawn in the following circumstances:
 - (a) If the person has been arrested.
 - (b) If the person has died.
 - (c) If the investigations do not show adequate evidence to justify his arrest.
 - (d) If the person is of foreign origin particularly crewmember of a dhow and who travel without documents.

In such cases the withdrawal would be considered if the person is not noticed in India, for a number of 5 years, after his involvement in the case or after issue of the Red Alert, as the case may be.

6. The Red Alert will be issued to all the field formations and should not be removed from Visadex System unless withdrawal instructions are received from the Directorate. It is suggested that the field formations should continue to review all Red Alerts and recommend their withdrawal at the appropriate time.

LIGHT BLUE ALERTS:

1. The light blue alert shall be issued in the following cases:
 - (a) Where the person is suspected to be involved in smuggling activities over a period of time and it is likely that he will carry contraband / incriminating documents concerning smuggling or F.E.R.A. offences.
 - (b) The person is suspected to be a carrier of contraband / incriminating documents concerning smuggling or F.E.R.A. offences.
 - (c) Where a person is reported to be contacting another person who is known to be involved in smuggling activities.
2. The Light Blue Alerts will be issued in a series indicating running `LB' number of the year.
3. While making the recommendations, the field formations should make efforts to indicate as many identifying particulars of a person as available so as to avoid confusion. Where the full particulars are not available, the Directorate would normally issue a Letter Alert, which would have a short validity.
4. While making the recommendations, regarding search of person of the suspect, care should be taken to make sure that definite information about his activities is available. Wherever there is any doubt that a person may or may not be indulging in smuggling activities, request should only be made for examination of his baggage, the examination of the person being left to the Senior Most Officers on duty.
5. The names of associates are usually mentioned in the alert for the purpose of giving background material about the suspect. It is, therefore, clarified that no action is to be taken against the associates, unless specified otherwise. Normally, if action is required to be taken against an associate, a separate alert would be issued.
6. The validity of the L.B. alert would normally be 2 years. However, this can be reduced or increased taking in to account merit of individual case. It is reiterated that unless a formal withdrawal letter is received from the DRI, the alert should not be removed from their records by the field formations.

LETTER ALERTS

1. Letter alerts will normally be issued for specific purpose such as:
 - (a) Where a person is suspected to be involved in smuggling activities on a particular visit or for short period, say 15 days;
 - (b) Where personal particulars of a suspect are not available and are required to be collected.
2. The Letter Alert will be issued in the series indicating running `LA' number of the year. No standard Performa would be used for this category of alerts.

3. While making recommendations, the field formations should try to include as many identifying particulars of the person as may be available on their records; the Directorates would in any case add whatever particulars are available on its records.
4. The validity period of a Letter Alert will either be for a specific visit or for a short period not exceeding 3 months at a time.

WARNING CIRCULARS

1. Ministry of Home Affairs can, in certain circumstances, deny or restrict entry to foreigners into India. One of the several circumstances under which admission can be denied is indulging in undesirable activities. The foreigners who indulge in smuggling activities are covered by this provision. The names of persons alongwith their particulars are circulated to all Passport issuing authorities, all Indian Missions abroad, Foreigners Regional Registration Offices and Immigration Authorities at all exit and entry points. These circulars are known as `Warning Circulars`. In case of foreign smugglers these Warning Circulars are issued only at the recommendation of the Directorate of Revenue Intelligence.
2. It would be obvious that the facility of issue of Warning Circulars is duplication of our alert system. We therefore, use this facility as a compliment to our alert system. Here it would be pertinent to mention that even after issue of a Warning Circular it is possible for a person to enter into India either on a visa granted by our Mission in special circumstances or on the basis of temporary visa granted at the point of entry. It has, therefore, been decided that the recommendation for issue of a Warning Circular should be made to be Ministry of Home Affairs in very special circumstances, such as:
 - (a) Some foreign smugglers attract fancy of the press and receive wide publicity, which certainly hurts image of the department and the country. In some cases it may not be possible to issue / continue Light Blue or Letter Alerts issued against these persons and it may be more prudent to get `warning circulars` issued against them.
 - (b) The possibilities of a foreign carrier returning to India after he has been convicted and complete his sentence are remote. But in case he is an important member of a gang, the chances of his visiting India again after some cooling period cannot be ruled out. Issue of an alert in such cases may not be as useful as getting a Warning Circular issued.
3. The field formations may make the recommendation for issue of Warning Circular in all the above or similar circumstances. It may, however, be noted that the Directorate would either keep the alert current or a Warning Circular would lie on the Directorate. There is no validity period for Warning Circulars but they are reviewed by the Ministry of Home Affairs as well as by Directorate from time to time.

Receipt of Alerts and maintenance of Visadex system

All alerts, the officer to whom they are addressed should see including extension and withdrawal of alerts received from the Directorate. If that is not possible, a senior officer not less than the rank of Superintendent should see them and indicate proper disposal.

[Excerpts from DRI D.O. No. 348/XVII/7178 DATED.31/07/79]

RECEIPT OF INFORMATION AT THE AIRPORT

The different types of information received at the airport orally or in writing from the intelligence wing of the Custom House, other intelligence organisations, e.g. Directorate of Revenue Intelligence or the contacts of the Air Customs staff or A.I.U. of Airport will be recorded in the following records:

- 1) Telephone Book
- 2) Information Register
- 3) Visadex

Oral Information

All information received at the airport on telephone shall first be recorded in the Telephone Book. This will be a permanent record. All the information entered in the Telephone Book must then be properly recorded in the Information Register which will also be a permanent record. All the information received on telephone shall be confirmed in writing by the authority supplying the information. On receipt of confirmation copy of the telephone information, the entries in the Telephone Book, Information Register and the Visadex must again be checked to ensure that all entries are correctly made.

Writing the information

All information received by the Airport Customs staff from their own contacts as regards suspects must be recorded and submitted to the Asst. / Dy. Commissioner in charge who shall see the information and have it properly recorded in the Information Register and Visadex. Written information received from Customs Houses and other sources shall also be treated in the same manner.

Maintenance of Visual Index at Airports

The laid down initial procedure for recording and indexing of information relating to suspects is "Visadex or Cardex" which is still in vogue at some ports and airports. This system is designed for effective visual control at the shortest notice of the names appearing in it. These are 63 vertical cards arranged in each tray of a Visadex Cabinet. Each card has the brief particulars such as the name (aliases of the suspect), father's name, date of birth, nationality, passport particulars, occupation, address, local / permanent, modus operandi, associates, case details etc. The name of the suspect appears on the left-hand bottom corner of the card. On the right hand bottom corner are signals in different colours, i.e. red, dark blue, light green and yellow to indicate arrest, personal search including baggage, only baggage search and / or surveillance. At Preventive Commissionerate of Mumbai, Index cards are prepared in respect of suspect offenders, suspect vehicles and vessels on the basis of intelligence reports received. So also index cards are prepared in respect of all economic offenders who have been detained under COFEPOSA and those to whom show cause memos have been issued.

Visadex System - Operation of

At Chhatrapati Shivaji Airport, Mumbai, the Intelligence Bureau has provided computer terminals to the Customs authorities for carrying out Visadex checks. These terminals are installed in arrival / departure wings of the airport and also in the main Visadex office. All these computer terminals are connected to the main Computer Cell managed by the E.D.P. staff of the Intelligence Bureau.

The officer posted at the Immigration carries out the work of feeding and updating of Visadex pertaining to Immigration. The Customs authorities carry out computer Cell and work pertaining to Customs Visadex.

The alerts received from various enforcement agencies fed into the main system by the officer specially assigned to carry out such work, commonly called as Specially Visadex officer. This system is jointly linked with the Immigration counters. When the work of primary check of arriving or departing passengers is being carried out by the Immigration counter officers, the passenger's name is matched with the names maintained in both the Immigration and Customs Visadex. The software presently being used by the Immigration Computer Cell has been on the Soundex System. To illustrate, while a name is being checked by the Immigration officer, it is matched with all the similar sounding names or names having the same first alphabets in parts of the names as compared to the names maintained by both Immigration and Customs Visadex. Upon comparison with the Visadex, if it is found that the name figures on the Immigration Visadex, it is flashed alongwith other similar sounding names and names having the same cycle of first alphabets in their various parts of the screen of the Immigration officer. Similarly, therefore, if the name figures on Customs Visadex, it is flashed on the Customs Echo Terminal alongwith similar sounding names and names having the same cycle of first alphabets in their various parts. If, however, the names sound different or do not contain the same cycle of first alphabets in their various parts, they are not flashed on either Immigration Screen or the Customs Echo System.

As the system works on the soundex system, it is absolutely necessary that the name is fed correctly to enable the system to match it with the names mentioned in the Visadex.

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CHAPTER - TWO

GUARDS, PATROLS AND SURVEILLANCE

GENERAL NOTES:

Guard duties in Rummaging and Intelligence Division fall into two categories:

- (i) Guarding suspected places while searches are being conducted or when searches could not be completed, or prior to entering the premises before search in ensure that contraband is not removed from the premises.
- (ii) Guarding of suspect vessels.

As anti-smuggling measure, suspect vessels when in port shall be guarded round-the-clock by the Rummaging staff. The guard-duty officers shall work in shifts, the number of officers and sepoy in each shift depending on the availability of staff. Their main functions are;

- (i) Carefully search all members of the Ship's crew who leave or board the vessel. Ship's officers need not ordinarily be searched, but if necessity arises, they must be searched in a ship's cabin.
- (ii) Patrol various parts of the ship such as crew's quarters, hatches, engine room, boat-deck etc. Keeping a sharp look out for suspicious movements.
- (iii) Keep a lookout for unauthorized cargo boats or dinghies that loiter in the vicinity or tie up alongside the guarded vessel.
- (iv) If the vessel is working overside, exercise vigilance on the cargo boats alongside.
- (v) Keep a watch on the quayside lest any member of the crew attempts to throw any contraband overside.
- (vi) Keep a watch on the vessel from stem to stem to foil any attempt at unauthorised discharge or loading of goods, contraband etc. by members of the crew.

SURVEILLANCE ON SUSPECTS

To ensure uniformity of action the following phraseology will be used for the different types by the Officer doing surveillance work. Each alert memo wherein instructions regarding keeping surveillance on a suspect are communicated to the field staff will clearly indicate the type of surveillance required to be kept on any particular suspect.

- (a) Shadowing:** Maintain a 24-hour watch on the suspect and keeping record of all his movements.
- (b) Close-Surveillance:** Keeping track of activities of the suspect i.e. contacts made by him (personal or by telephone) movements etc. It does not necessarily mean keeping a physical watch but the movements of the suspect and his general activities are to be ascertained by a minimum of one check per day.
- (c) General-Surveillance:** It would mean keeping a general track of the activities and movements of the suspect by periodical checks.

SURVEILLANCE OPERATIONS

Surveillance is usually defined as the covert, continuous or periodic watching of persons and associations, vehicles, places or objects to obtain information concerning the activities and identities of

individuals. Very often surveillance is the only Investigation technique available with which to identify the sources, couriers and recipients of illicit drugs.

Officers planning a surveillance operation, whether on foot or by any other means, must take into consideration the possibility of counter surveillance by or on behalf of the suspect by similar means including electronic countermeasures.

A) Types of surveillance

For the most part there are three types of surveillance:

- (a) Moving surveillance, where the Investigator follows the subject on foot or in a vehicle;
- (b) Stationary surveillance, where a place, object or person is continuously watched from a fixed point;
- (c) Electronic surveillance, where electronic, mechanical or other devices are use to intercept the contents of any wire or oral communications.

The objectives of a surveillance operation are as follows;

- (a) To obtain evidence of an offence;
- (b) To protect undercover officers or corroborate their testimony;
- (c) To locate persons by watching their associates and the locations they frequent;
- (d) To check the reliability of informants;
- (e) To locate hidden property or contraband;
- (f) To prevent the commission of a criminal act or to apprehend a subject in the commission of an offence;
- (g) To obtain information for later use in interrogation;
- (h) To develop leads and information initiated by contacts with other sources;
- (i) To ascertain the whereabouts of a specific individuals at all times;
- (j) To obtain admissible evidence for use in court.

Surveillance strategies can also be categorized according to function. There is, for example, information-seeking surveillance, where the investigator attempts to learn everything he or she can learn about a criminal enterprise. The surveillance will assist in identifying the source of supply of the suspect, the couriers, the co-conspirators, and the recipient.

Pre-purchase surveillance is used to gather tactical information that will assist the undercover officer who will attempt to make a purchase from a suspect. The investigator tries to identify the associates of the suspect and his relationship or type of association with the suspect. The investigator also seeks to identify the sources of supply and couriers.

Cover surveillance is used primarily for the protection of the undercover officer. It is also used to corroborate the agent's testimony. This is done not only through testimony that an agent was seen entering a locate with money and leaving with drugs, but it is also designed for the surveillance officer to observe the actual transaction if that is physically possible. Cover Surveillance also encompasses the identification of approaches to the immediate purchasing area in case the undercover officer should find himself in trouble, the amount of force that might have to be use to assist the undercover officer, and the personnel and equipment needed in case the operation goes wrong.

Post purchase surveillance is usually conducted to determine where funds are channeled after a sale to identify other customers of the seller, and to keep the seller under observation in case the undercover officer bought a substance that was not what it was purported to be.

B) Preparation and equipment

Most competent investigations are capable of conducting a goods surveillance operation. However, there are certain qualities that may be particularly desirable in a surveillance officer. In

particular, the surveillance officer should have an ordinary appearance. Any outstanding physical characteristics such as being exceptionally tall, short or obese may attract the suspect's attention, the officer must have the ability to act in a natural manner under all circumstances and must suit the particular scene under surveillance.

The surveillance officer should be alert and resourceful, particularly in view of the fact that no matter how carefully a surveillance operation has been planned, there are always going to be unanticipated occurrences. The officer must have demonstrated good powers of observation and memory, as he or she may be unable to write down notes on events, descriptions, or times during the surveillance. The surveillance officer must also be patient and possess considerable powers of endurance. Surveillance operations invariably entail a great deal of waiting for a suspect to appear or a good deal of routine activity as the officer follows the subject through many innocuous activities day after day.

Disguises used by surveillance officers can be almost anything that the officer believes will help the operation. On a short term surveillance of a building, the officers may use utility belts with tools and hard hats to appear to be utility company employees, or some other kind of equipment to enhance the cover, Cameras, binoculars, telescopes and recording equipment are also quite helpful if the situation allows for their unobtrusive use.

One of the very first steps that should be taken in a surveillance operation is to designate an officer-in-charge. In operations where a number of officers are involved, a tactical plan for all eventualities, specifically outlining the duties of all participating officers, must be prepared if a surveillance is going to take a long period of time, decisions about relief assignment should be made before the surveillance begins. There must also be a prearranged, secure system of communicating with superiors and a system of central coordination established before the operation is begun. Signals for communicating between and among surveillance officer should also be agreed upon. Finally, a cover story and explanation for being in a particular place at a particular time, should be discussed in advance of the operation's inception.

C) Moving Surveillance on foot

A moving surveillance operation may be conducted on foot or in vehicles. Foot surveillance is used generally only in cases where relatively short distances are involved, or in cases where contact with a suspect must be maintained after the suspect has left a vehicle. However, all surveillance operations must be set up in a manner that allows a more lengthy foot surveillance to be maintained when necessary. There are four main methods for conducting surveillance on foot. These are a one-person surveillance, a two-person surveillance, the ABC method and the progressive method.

A one-person surveillance involves a single attempting to follow a suspect. It is very difficult to conduct successfully because the suspect must be kept in view at all times and close contact is required to enable the officer to observe the suspect if he turns a corner, enters a building or makes some other sudden move. The one-person surveillance is also impacted by the degree and type of pedestrian traffic and the physical characteristics of the area. It is not a preferred method of moving surveillance and should be avoided if possible.

A two-person surveillance provides for greater security against detection and lessens the risk of losing the suspect. On streets that are very crowded with pedestrians and vehicles, both officers involved in the surveillance should remain on the same side of the street as the suspect. The first officer should follow the suspect fairly closely. The second officer should remain some distance behind the first surveillant. On less busy streets one officer should walk on the opposite side of the street nearly abreast

with the suspect. In order to avoid detection the two officers should make periodic changes in their positions relative to the suspect under surveillance.

The ABC method utilizes a three-person surveillance team. The ABC method further reduces the risk of losing the suspect and provides far greater security against detection. The ABC method also permits greater variations in the positioning of the officers and allows surveillance officer who believes he or she has been identified to drop out of the surveillance. Under normal conditions, officer "A" keeps a reasonable distance behind the suspect while officer "B" follows officer "A" and concentrates on keeping "A" in view. Officer "B" also checks to make sure that the suspect is not employing a confederate to detect surveillance. Officer "C" walks on the opposite side of the street slightly behind the suspect. On streets with little or no traffic, two officers are usually positioned on the opposite side of the street, or one officer is positioned in front of the suspect. On very crowded streets, all three officers should be on the same side of the street as the suspect. The lead officer should follow closely to observe the suspect at intersections or for turns into buildings. As in the two-person method, the surveillance officers should frequently alter their positions relative to the suspect.

Under normal conditions, when the suspect approaches an intersection and there is a high probability of turning, officer "C" across the street should reach the intersection first. By pausing at the corner, officer "C" can watch the suspect and signal the direction taken to the other officers. If "C" signals that the suspect has turned the corner and stopped, both "A" and "B" may have to cross the intersection, proceed to a point beyond the range of vision of the suspect, and rely on officer "C" to signal to them when the suspect continues on. Whether a suspect stops or not, the turning of a corner provides a good opportunity to rotate the positions of the officers.

In the progressive method of surveillance, the suspect is intermittently kept under surveillance as he progresses along a certain routine or habitual route. The surveillance officer waits at a fixed point until the suspect disappears from view. If the suspect follows the same route each day, the destination may be determined without constant, close surveillance. The Officer should be positioned each day in the place where the suspect disappeared from view on the previous day, or more than one officer can be used to extend the period of observation. This method is of value in locating meeting places when the risk of trailing a suspect is too great.

D) Moving surveillance with vehicles

As is the case with foot surveillance, there are four types of vehicular surveillance one, two and three-car surveillance and the leapfrog method. In a one-car surveillance, the vehicle should be positioned behind the suspect's car, with the distance varying dependent on the amount of traffic in the area. In city traffic no more than two vehicles should be permitted between the suspect's car and the surveillance vehicle. In rural areas, it is advisable to give the suspect a good lead. If intersections and forks in the road are rare with a far distance between, the lead can be extended to a point where the suspect's car may even be temporarily lost from view over hills or around curves. Whenever possible there should be another car between the surveillance vehicle and the suspect's car.

When conducting two- car surveillance in urban areas both cars should remain behind the suspect's car. Occasionally, one car drive on a known parallel route, timing itself to arrive at intersections just before the suspect in order to observe his or her route at the intersection. For surveillance operations in big cities, the use of motor cycles is important since they avoid problems created by traffic jams. When the scale of the operation so demands, helicopters and electronic signal transmitters should be used.

In a three-car surveillance, parallel routes can be used more frequently, and the positions of the cars can be changed frequently enough to prevent the discovery of the surveillance. One car may be used to lead the suspect while the suspect's vehicle is observed in the rear-view mirror.

In a leapfrog surveillance method, for example, a suspect's vehicle may be observed intermittently, as it proceeds along its suspected route. From a fixed point the officers watch the suspect's vehicle disappear from view. After a number of such surveillance's, the suspect's finally detection is too great. At that point surveillance is called off for the day. The next time the suspect makes a routine trip the officers can initiate their surveillance at the same geographical point where the previous surveillance was cancelled.

As in the case of foot surveillance, a suspect who believes he or she may be followed can resort to various techniques to detect a surveillance operation. The most common techniques are as follows:

- (a) Alternative fast and show driving or parking the vehicle frequently :
- (b) Stopping suddenly around curves or corners or speeding up a hill, then slowing down on the other side;
- (c) Committing flagrant traffic violations such as U turns, driving the wrong way on one way streets and passing red lights;
- (d) Using double entrances to driveways, going in one entrance and out the other;
- (e) Crossing parking lots;
- (f) Crossing congested areas;
- (g) Deserting the vehicle beyond a blind area or comer.

E) Fixed surveillance

Fixed surveillance entails having officers watch from a stationary vantage point such as a room, house or outdoor fixture located near the premises being observed. Fixed surveillance are used for several reasons, including the following:

- (a) Detecting drug operations in a targeted area:
- (b) Identifying persons who frequent the domicile or business establishment and determining their roles in illicit drug activity;
- (c) Providing evidence for a search warrant or electronic surveillance authorization;
- (d) Determining the habits of the persons who frequent the locale under observation.

Before any fixed surveillance operation is initiated a very careful study of the surrounding area should be made. The investigators should note the residents, transients and the general character of the community. Binoculars are essential equipment in a fixed surveillance operation. Similarly, a still or motion picture camera with a telephoto lens can be used effectively.

F) Electronic surveillance

Electronic surveillance encompasses many different technologies, some of which require complicated and costly equipment, The use of electronic surveillance is strictly limited within the laws of many countries because of concerns for the right of privacy of the individual. It is most important for the drug enforcement unit to be mindful of these potential limitations to this investigative strategy and to plan electronic surveillance operations accordingly.

The use of the more complicated types of this investigative technology should ordinarily be reserved for those drug-trafficking organizations that are at the highest levels. Specialized instructions and training are necessary for the effective use of the various devices and techniques, that might be employed in this specialized investigative approach.

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CHAPTER – THREE

D R I SERIES OF FORMS

REVISION OF DRI SERIES OF FORMS – instructions

1. A review of the D.R.I. series of forms was undertaken by the Directorate of Revenue Intelligence with a view to simplifying them and making them more relevant to the changing offence scenario.
2. The revised formats have been numbered as D.R.I.—1 to D.R.I.—7 (proformae attached.). A new form D.R.I.—4 has also been introduced.
3. The D.R.I. proformae was designed primarily to facilitate the collection; co-ordination and dissemination of information on modus operandi; major offenders and emerging trends in Customs related offences, through the medium of the Directorate of Revenue Intelligence. This objective has, however, not been achieved for a variety of reasons. The importance of the DRI series through which details of the evolution of a case right from its initiation in the form of information, if any, recorded to the completion of the case in the form of a report relating to adjudication / prosecution, cannot be overemphasized. Valuable data can be collected if all these forms are filled and sent / maintained in the periodicity and time schedule prescribed. As the volumes involved may in the past have acted as a constraint to the Commissionerates in submitting the information prescribed in the various forms to the Directorate, realistic monetary limits have now been prescribed beyond which only the DRI will expect information to be sent to the Directorate.
4. The broad features of the scheme envisaged now are as follows:-
 - (i). The D.R.I.—1 to be sent in respect of all cases.
 - (ii). The D.R.I.—2 and D.R.I.—4 are to be sent in respect of all cases where the value of seizure / evasion of customs duty / commercial fraud cases contravention is Rs.10,00,000/ = (Ten lacs) and above only.
 - (iii). A new form D.R.I.—4A has been prescribed. This is history sheet of people / firm / companies found involved in commercial frauds and is a logical consequence of the D.R.I.—4.
 - (iv). The D.R.I.—3, D.R.I.—4, D.R.I.—4A, D.R.I.—5 and D.R.I.—6 are to be sent to the D.R.I. Headquarters only in respect of cases where the quantum of seizures / duty evasion is RS.50 lacs and above.
 - (v). The D.R.I.—7, which is a monthly report of searches, has been done away with and replaced with the D.R.I.—8 which was introduced in 1996, will now be numbered as D.R.I.—7 and is to be sent as and when a person is detained under COFEPOSA.
5. Thus, there will, in all, be eight D.R.I. series forms only and reports in the various D.R.I. forms only in respect of cases above the monetary limits indicated above need to be sent to the D.R.I. Headquarters. However, reports in these forms, even in respect of cases of lower value, should be sent to the office of the commissioner (Prev.) so that effective supervisory control can be exercised. A copy each of the reports being sent to the D.R.I. Headquarters may also be marked to the jurisdictional sub-regional / regional office of the D.R.I. and also the Zonal Unit of the D.R.I. are enclosed at Annexure 'A'.
6. It may be seen that basically what has been done is to limit the changes to the bare minimum with a view to get more relevant information pertaining to a case and individuals concerned with

the commission of offences.

7. It has been observed that, at present only D.R.I.—1 and D.R.I.—2 forms are generally sent to D.R.I. All the officers concerned are, therefore, directed to ensure that legible copies of these reports are invariably sent to the D.R.I. Headquarters and its appropriate units in the prescribed formats viz. D.R.I.—1 to D.R.I.—7. The salient features / changes contemplated in each of the forms is enclosed at Annexure 'B'.
8. Reporting in the D.R.I. series should not be reduced to a routine exercise. Ultimately, it would be the aim of the Directorate to ensure proper dissemination of the information gathered through these reports to the other Commissionerates also so that effective measures to combat economic crimes can be chalked out.
9. The new D.R.I. series of forms will come into effect from 1st July 1998 and the same has already been circulated immediately on its receipt.

[DRI F.No.XII A / 13-POL / 98 dt:- 21.04.1998 & dated 23.09.99]

ANNEXURE – 'A'

Commissioner	Jurisdictional Unit of DRI	Sub Unit of DRI
Ahmedabad I Ahmedabad II Ahmedabad Customs Vadodara Goa Surat Indore Raipur Rajkot Kandla	ADG Mumbai & DD Ahmedabad -do- -do- -do- -do- -do- -do- -do- -do-	AD – Goa AD – Surat AD –Jam Nagar AD –Jam Nagar & AD – Gandhidham
Patna Jamshedpur Allahabad Kanpur I Kanpur II Lucknow	OSD (Nepal) -do- -do- -do- -do- -do-	AD –Patna -do- AD Lucknow
Aurangabad Pune-I Pune-II Mumbai-I Mumbai-II Mumbai-III Mumbai-IV Mumbai-V Mumbai-VI Mumbai-VII Mumbai (General) Cus Mumbai (Prev.) Cus Nhava Sheva Sahar Airport (Gen.) Sahar (Air cargo)	ADG Mumbai -do- -do- -do- -do- -do- -do- -do- -do- -do- -do- -do- -do- -do-	
Chennai I	ADG Chennai	
Chennai II	-do-	

Chennai III	-do-	
Coiminator	-do-	
Guntur	-do-	
Chennai Port	-do-	
Chennai Airport	-do-	
Trichy	-do-	AD Trichy
Cochin	-do-	AD Calicut
Vishakhapatnam	-do-	AD Hyderabad
Hyderabad	-do-	-do-
Bangalore I	AD Chennai & DD Bangalore	
Bangalore II	-do-	
Bangalore III	-do-	
Belgaum	-do-	
Bangalore (Customs)	-do-	
Mangalore (CUs)	-do-	AD – Mangalore
Bhubaneswar I	ADG Calcutta	
Bhubaneswar II	-do-	
Bolpur	-do-	
Calcutta-I	-do-	
Calcutta-II	-do-	
Calcutta-III	-do-	
Calcutta-IV	-do-	
Calcutta (Port)	-do-	
Calcutta (Airport)	-do-	
West Bengal (Prev.)	-do-	OSD (Nepal)
Shillong	-do-	AD Shillong AD Imphal
Chandigarh I	DD (DZU)	AD Amritsar
Chandigarh II	-do-	-do-
Amritsar Customs	-do-	-do-
Jaipur I	-do-	AD Jaipur
Jaipur II	-do-	-do-
Jodhpur Customs	-do-	-do-
Delhi I	-do-	
Delhi II	-do-	
Delhi III	-do-	
Delhi CUs I, II, III	-do-	

ANNEXURE – “B”

SALIENT FEATURES OF DRI SERIES OF FORMS

1. DRI -- I (INFORMATION REPORTS)

- a) No changes prescribed presently from the existing form.
- b) To be sent in respect of all cases where information has been recorded.

(As soon as the information is received, should be recorded, in the form DRI – I (Appendix) in the handwriting of the informer or the intelligence officer. It must be in the form of informer's statement in first person. In the information report, the informer's name will not be mentioned but only his code number if any, will be given. In case the informer is not registered, his name and full address (in form given at App.A) will be submitted in a sealed cover along with the information report. In case this is not done, the information shall not be treated as from an informer. As soon as information report is ready, it should be registered and the same sent to the Assistant Commissioner and issue necessary instructions for its follow – up after scrutiny. The information report should also be immediately registered in the Register of Information (App. 'D). The Register should be prepared commodity wise. Cross-references should be given under other commodities mentioned in the information report. The information report itself should be filed in a separate guard file. Only such orders as are necessary to follow – up and such information

will be conveyed to the concerned officer for further investigation or enquiry. The information report should be sent to the Directorate of Revenue Intelligence within 24 hours of its receipt by the Assistant Commissioner and where the information is of interest to more than one Commissionerate and / or Custom House, such Custom Houses and the Commissionerates should also be informed.)

[Para from DRI letter F.No. POL / 1 / 60 dt. 12.12.60]

2. DRI – 2 (SEIZURE REPORT) – ANTI SMUGGLING CASES

a) While basically the format remains the same, additional information about the alleged offenders has been sought in column – 5. Thus, new sub – columns have been added in column – 5 relating to date of birth and particulars of passport / driving licenses and places of issue. The sub – columns of column – 5 have also been reorganized thereafter. The Notes at the end of the DRI – 2 form have been partially changed. A value limit of Rs. 10,00,000/- (Ten lacs) has been invited to instructions at iv (b) of the notes, wherein it has been clarified that DRI – 2 reports should be sent irrespective of the value of the goods in cases where wider ramifications are perceived. Similarly, attention is invited to instructions at iv (c) where even in cases where only documents are recovered but preliminary scrutiny suggests smuggling of contraband of more than Rs. 10 lacs, it has been decided that DRI – 2 forms should be submitted. It is strongly advised that the Commissionerate H. Qrs. may continue to insist on receiving DRI – 2s in respect of all cases, made by the officers of the Commissionerates irrespective of the value.

3. DRI – 3 – (HISTORY SHEET)

a) The DRI – 3 is to be sent only in cases where the value of seizures is Rs. 50 lacs and above; however, as has been specified in the notes at the end of the DRI – 3 form, even in cases of seizures less than Rs. 50 lacs where the persons involved are repeat offenders, or major operators, the DRI – 3 may be sent. The purpose of the DRI – 3 ultimately is to build up a data bank. Hence, care should be taken to ensure that all columns are filled. Care should be taken to ensure that the file number remains the same as shown in the DRI – 2.

b) While the format remains basically the same, slight changes have been made in column – 2, where particulars of telephone numbers have been included and also details of driving licenses / election card number. In column – 4 brief facts of the case and the role of the individual in the alleged offence have also been added.

4. DRI – 4 – (COMMERCIAL FRAUD IMPORT / EXPORT)

a) An exhaustive DRI – 4 to deal with cases of commercial fraud whether involving seizures or not had been prescribed in 1996, to distinguish cases of this nature from cases of outright smuggling. However, the response from the Commissionerates has been disappointing and reports in DRI – 4 have not been coming. It is reiterated that reports in DRI – 4 in all cases of commercial fraud should be sent. As has been specified in the notes, DRI – 4s would be expected in all cases where estimated loss of duty or the amount involved in the contravention of schemes such as DEEC, DEPB, EPCG, DBK etc. is Rs. 10 lacs or above; Cases involving violations of Trade & Merchandise Marks Act, Indian Patents and Designs Act, Copy Right Act, Wild Life Act and Antiquities and Art Treasures Act may be sent irrespective of the value of the case.

b) Minor additions have been made in the existing DRI – 4 form. Thus, in column – 6, sub – column (b) relating to furnishing the IEC No. Has been included. In Para 22 along with brief facts of the case specific mention has been made about the estimated loss of duty.

4.A It has been observed that there are large number of cases where the duty liability / penalty adjudged against the offenders could not be realized because the Department did not have any information on their assets. Similar problem arises when the cases are to be referred to Competent Authority under SAFEMFOPA / PITNDPS Act. It, therefore, becomes necessary particularly when the provisions of section 142 have been amended that Department should collect as many details as possible on the financial profiles of the offenders during investigations of the cases against them. As such during the recording of the statements, the persons under investigation should be questioned to find out their immovable properties e.g. house, plots, lands, commercial buildings; their moveable properties e.g. vehicles, boats, planes, jewelry, costly luxury items, their bank accounts, safe deposits, lockers, shares and securities; and their business interest in partnership firms, companies, etc. In order to incorporate these details in DRI series, certain further amendments are hereby made in DRI 3 and DRI – 4.

5. DRI – 4A – (HISTORY SHEET OF PERSONS INVOLVED IN COMMERCIAL FRAUD CASES OF IMPORT / EXPORT)

a) A new form DRI – 4A have been devised. This relates to the history sheet of companies / firms / persons involved in commercial fraud cases including violations such as DEEC, DEPB, and Drawback etc; it is the equivalent of DRI – 3. DRI – 4A would be expected only in cases where the estimated loss of duty / contravention is Rs. 50 lacs and above. However, as has been mentioned in the notes, in cases of repeat offenders / major operators the DRI – 4A may be sent irrespective of the value. Care should be taken to ensure that the file number remains the same as shown in the corresponding DRI – 4.

b) Specifically against column – 4 relating to brief facts of the case details regarding the firm involved in the offence, the custom house agent concerned, the clearing agent concerned should also be given.

6. DRI – 5 – (INVESTIGATION REPORT)

The DRI – 5 seeks to get the details of the case after the filing of a DRI –2 / DRI – 4. It may be sent only in cases where the value of the seizure / evasion of duty is Rs. 50 lacs and above. The idea is thus to focus on major offences only. Care should be taken to ensure that the file number remains the same as shown in the corresponding DRI –2 / DRI – 3 / DRI – 4 / DRI – 4A as the case may be.

7. DRI – 6 – (PROSECUTION REPORT)

The DRI – 6 is to be sent in cases where the value of seizure / estimated loss of duty is Rs. 50 lacs and above. The 1st report is to be sent after filing of complaint in the Court. All-important developments, which the Commissionerates feel should be brought to the attention of the DRI, may be communicated through subsequent reports in the same format. The final DRI – 6 report may be sent after pronouncement of the judgement. Care should be taken to ensure that the file number remains the same as shown in the corresponding DRI – 2 / DRI – 3 / DRI – 4 / DRI – 4A as the case may be.

8. DRI – 7 (COFEPOSA – DETENTION REPORT)

The DRI – 7 is to be sent in respect of all individuals who have been detained under COFEPOSA by either the Central or State Government. This is to be sent as and when a person is detained under COFEPOSA.

DRI – 1 (INFORMATION REPORT)

Commissionerate.....Division.....Unit.....

File No.....

Date.....

Code Number of informer.....

1. Commodity / Commodities
2. Value (where possible)
3. Names of the suspects with parentage and address
.....
4. Name (s) of the gang / main person or persons involved
.....
5. Links of the suspects with gang / main person or persons involved
.....
6. Place / places where goods are suspected to be secreted
.....
7. Proposed action
.....

INFORMATION RECORDEDTime, date and place of
recording the informationSignature, name and Designation of the
Officer recording the information

Notes: i) All information is to be recorded in the form of informer's statement in the first person.

ii) A copy of this report is to be sent to the Directorate of Revenue Intelligence, New Delhi in a sealed cover within 24 hours of its being recorded. Simultaneously, one copy should be sent to the Assistant Commissioner & the Commissioner concerned in accordance with the instructions issued by the Commissioner concerned.

DRI – 2 (SEIZURE REPORT)

Commissionerate.....Division.....Unit.....

File No.....

Date.....

1. Description of goods seized

2. Date & time of seizure

3. Place & state of seizure

4. (a) Quantity, value & country of origin of each description of goods seized (including conveyances).
.....
.....

(b) No. and type of packages & markings.
.....

5. List of alleged offenders:

- | | | |
|--|------------------------------|--|
| a) Name with alias | b) Date of Birth | c) Father's name |
| d) Address | e) Identifying particulars | f) Pass port / Driving License Particulars and places of issue |
| g) Whether assessed to Income-tax, if so, Permanent Account No. | h) Part played in the case | i) Whether interrogated and arrested |
| j) Whether any admission made about guilt | k) Place from which arrested | l) Place to which to go |
| m) Particulars of ship / aircraft or vehicle by which travelling | | |

6. Whether the seizure was on the basis of prior information. If so, No. & date of information report sent to DRI or the Alert Notice issued by DRI, if not, the circumstances which Led to the seizure.

7. Other departments associated in the matter or to which the matter has been reported.

8. List of officers of all departments who participated in the seizure, indicating the role played by each.

9. Brief facts of the case. (Here make a mention of copies of the important statements if any enclosed)

PLACE / DATE:

Signature, name in block letter,
Designation of Officer heading the
seizing party.

- Notes:-**
- i) The seizure report is to be sent to the DRI within 72 hours of the seizure.
 - ii) Separate sheets may be attached wherever necessary.
 - iii) The brief facts of the case should include results of investigations done till the time of writing this report and details not covered by other columns of this report, such as modus operandi, nature of evidence collected, offences involved, name of owner and / or tenant of premises from where the goods were seized, name of persons producing the keys in cases where the seizure was effected from locked premises, further line of investigation etc.
 - iv) DRI – 2 report has to be sent in the following category of seizure to the DRI II. Qrs. and to the jurisdictional offices of the DRI:
 - a) in respect of cases where the value of seizure is Rs. 10,00,000/- (Ten lacs) & above.
 - b) where, however, an isolated seizure appears to be part of a smuggling racket and wider ramifications are indicated, DRI – 2 reports should be sent irrespective of the value of goods seized.
 - c) Where only documents are recovered, DRI – 2 report should be sent only if the preliminary scrutiny of the documents prima-facie reveals transactions above Rs. 10,00,000/- (Ten lakhs). There may be cases in which subsequent scrutiny alone may reveal transactions over Rs. 10,00,000 (Ten lakhs). In such cases the report in DRI – 2 form should be submitted at that stage.
 - d) In respect of the seizures made by the officers of this Directorate or on the information furnished by this Directorate, DRI – 2 reports should be sent irrespective of the value of the goods seized. In respect of the seizure made by officers of the Commissionerates, DRI – 2s may be sent to the jurisdictional Commissionerates II. Qtrs. Irrespective of the value of goods seized.

DRI – 3 (HISTORY SHEET)

Commissionerate.....Division.....Unit.....

File No..... Date.....

Date of seizure.....Value of the seized goods.....

1.
 - a) Full Name:.....
 - b) Alias

 2.
 - a) Place & date of birth
 - b) Father's / Husband's name
 - c) Address in India including Telephone nos.....
 - d) Address abroad, if any.....
 - e) Pass port No.....
 - i) Place & date of issue
 - ii) Valid upto
 - f) Nationality
 - g) Profession / Occupation
 - h) Business address including Telephone nos.....
 - i) Driving license No. / Election identity card
- No. and places of issue

3. Details of Descriptive roll:
- a) Height..... b) Complexion.....
 c) Colour & condition of hair..... d) Colour of eyes.....
 e) Built..... f) Weight.....
 g) Visible marks of identification.....
 (Photographs in triplicate to be sent wherever possible along with this report)
4. Brief facts of the case, role of individual
 in the offence and Modus Operandi
5. Area of Operation.....
6. Details of vehicle used
7. Name of the gang to which he belongs &
 the role in it
8. Previous Offences, brief details there of, including particulars of adjudication &
 prosecution
9. Associates in offences (name, alias,
 parentage and address are to be given)
10. Whether assessed to Income-Tax and his
 Permanent Account Number
- 10-A Details of property
- i) Immovable properties (e.g. House, plots,
 lands, Commercial building)
- ii) Details of moveable properties (e.g. vehicles,
 Boats, Planes, jewelry, luxury items, bank
 accounts, safe deposits, lockers, shares, securities)
- iii) Business interests (e.g. partnership firms,
 companies)
- (if space is not enough, please attach a separate sheet).
11. Whether previously detained or ordered to be
 detained under COFEPOSA Act – brief details thereof.

Time, date and place

**Signature, name and Designation
 of the officer**

NOTES:

- i) This report should be sent within 1 month of filing of DRI – 2. This report should be sent in all cases where the value of seizure is Rs. 50,00,000/- or above normally. However, in cases where the alleged offenders involved are major operators or have come to adverse notice repeatedly in the past or are persons against whom substantial intelligence exists, DRI – 3 is to be sent irrespective of the value of seizure. However, a small note may accompany giving the background in which the DRI – 3 has been sent despite the value of the seizure being lesser than Rs. 50 lakhs.
- ii) This report should be sent in all cases, where any person is found involved whether the person is arrested or not. The directions regarding photographs as given below column 3 above should be carefully noted.
- iii) The information at column. No. 10 – A needs to be collected in every cases as it would be helpful for recovery of duty / penalty etc. under section 142 of the Customs Act, 1962 and also for taking necessary action under SAFEM (FOP) A / PITNDPS.

DRI – 4**COMMERCIAL FRAUD CASES OF IMPORT / EXPORT**

1. Commissionerate..... File no.....
Division.....
2. a) Date of seizure / Detection & Place
b) Port / Airport / ICD / FPO from where the
goods were seized / cleared
3. Commodity..... Value (LMV in INR).....
Brand Value (FOB or CIF in US\$).....
Model no.
4. Name of Person / Firm involved
5. Address
.....
6. a) Name of importer / exporter firm
b) IEC Number
c) RBI Code number
7. Address
.....
8. Name of Director / Partner Proprietor
9. Address (Residential) & Tel. Nos.
.....
10. Names of persons arrested
.....
.....
11. Address: (a) Office with Tel. Nos.
.....
(b) Residential with Tel. Nos.
- 11-A. (i) Immovable properties (e.g. House, plots,
lands, Commercial building) .
(ii) Details of moveable properties (e.g. vehicles,
Boats, Planes, jewelry, luxury items, bank
accounts, safe deposits, lockers, shares,
securities) .
(iii) Business interests (e.g. partnership firms,
companies)
- (If space is not enough, please attach a separate sheet).
12. Name of Overseas Consignor / Consignee firm
13. Address
.....
14. Name of key persons thereof
15. Whether any DRI – I filed, if Yes Date &
Reference No. YES/ NO.....
16. Name of the CHA firm involved
17. a) License No. Customs House.....
b) Address.....
.....

18. Name of Directors / Partners / Proprietor
19. Residential Address including Tel. Nos.
20. Name of authority older, if any
21. Residential Address including Tel. Nos.
22. Brief facts of the case including estimated loss of duty .
23. Any intelligence regarding operators or commodity or modus operandi learnt during the detection of the case and not covered by the above particulars .
24. Role played by the officers

Time, date and place

**Signature, name and Designation
of the officer**

NOTES:

- I) This report should be sent to the DRI immediately after a prima facie case of commercial fraud is noticed, where the value of seizure / estimated loss of duty amount involved in the fraud is Rs. 10,00,000/- (Ten lacs) or above.
- II) This report should be sent in all appraising cases of Import and Export e.g.
- a) forged documents such as bills of lading, licences and release orders;
 - b) duplication of marks and numbers;
 - c) mis-declaration of quantity, description and value (under / over invoicing) involving a value for ITC action or duty or foreign exchange over Rs. 10,00,000/-;
 - d) other ITC offences involving value of offending goods over Rs. 10,00,000/-;
 - e) diversion of export goods valued at Rs. 10,00,000/- from rupee payment area to hard currency area;
 - f) However, in respect of cases detected involving violation of allied acts such as Trade & Merchandise Marks Act, Wild Life Act, Antiquities and Art Treasures Act, Indian Patents & Designs Act, Copy right Act, a report in DRI – 4 may be sent irrespective of the value.
- iv) The information at column. No. 11 – A needs to be collected in every case as would be helpful for recovery of duty / penalty etc. under section 142 of the Customs Act, 1962 and also for taking necessary action under SAFEM (FOP) PITNDPS.

DRI – 4 A**HISTORY SHEET OF PERSONS INVOLVED IN
COMMERCIAL FRAUD CASES OF IMPORT / EXPORT**

1. Commissionerate..... File No.....
Division.....
2. a) Date of Seizure / Detection & Place
b) Port / Airport / ICD / FPO where the goods were seized / cleared
3. a) Full Name: ..
b) Alias ..
4. a) Place & date of birth
b) Father's / Husband's name
c) Address in India including Telephone Numbers ..
d) Address abroad, if any
- e) Passport No.
i) Place & date of issue ..
ii) Valid upto
- f) Nationality ..
g) Profession / Occupation ..
.....
- h) Business address including Telephone numbers ..
i) Driving License No. / Election identity Card No. & Places of issue ..
5. Details of Descriptive roll:
a) Height..... b) Complexion.....
c) Colour & condition of hair..... d) Colour of eyes.....
e) Built..... f) Weight.....
g) Visible marks of identification.....
- (Photograph in triplicate to be sent, wherever possible along with this report)
6. Details of firm / company involved in the Contravention:
a) Regd. Office address / Tel. No's. . b) Name, address & Tel. No's of Directors / partners of the Company / firm.....
c) IC Code Number..... d) IT assessment number.....
e) RBI code Number.....
- (Photographs in triplicate to be sent in cases where the offender has been arrested / convicted by Court).
7. Name of the Importer – Exporter firm including LEC No. and designation of the offender ..
8. Brief facts of the case, role of individual in the offence, estimated loss of Customs Duty and Modus Operandi ..
9. Previous Offences of the individual & the firm brief details thereof, including particulars of adjudication & prosecution ..
10. Associates in offences (name, alias parentage and address are to be given) ..
11. Whether assessed to Income – Tax and his Permanent Account Number ..
12. Whether previously detained or ordered

to be detained under COFEPOSA Act -
brief details thereof

Time, date and place

**Signature, name and Designation
of the officer**

NOTES:-

- i) This report should be sent within one month of filing DRI – 4. This report should be sent in all appraising cases of import / export where the value of the seizure / estimated loss of duty / amount involved in the contravention is Rs. 50,00,000/- or above normally. However, in cases where the alleged offenders involved are major operators or have come to the adverse notice repeatedly in the past or are persons against whom there exists substantial intelligence, DRI – 4A is to be sent irrespective of the value of the seizure. However, a small note may accompany giving the background in which the DRI – 4A has been sent despite the value of the seizure being lesser than Rs. 50 lakhs.
- ii) This report should be sent in all cases, where any person is found involved whether the person is arrested or not. The directions regarding photographs as given below column 5 above should be carefully noted.

DRI – 5 (INVESTIGATION REPORT)

Commissionerate.....Division.....Unit.....

File No. Date.....

Date of seizure / detection of case

Value of the seized goods / loss of duty

- 1. Brief facts of investigation conducted since submission of DRI – 2 / DRI – 4
- 2. Names of offenders including those absconding not furnished in DRI – 2 / DRI – 4 including parentage and address
- 3. Date of issue of Show Cause Notice (copy of SCN to be enclosed)
- 4. Date and Gist of Adjudication Order (Adjudication order to be enclosed).

Time, date and place

**Signature, name and Designation
of the Officer**

NOTE:

- i) To be sent only in cases where value of seizure / loss of customs duty is Rs. 50,00,000/- or above, or in all cases wherever a DRI – 3 / DRI – 4A has been sent.
- ii) Separate sheet may be attached wherever necessary.
- iii) The first DRI – 5 report should be submitted after three months from the date of seizure.
- iv) After the initial DRI – 5 report, the subsequent DRI – 5 reports should be submitted at the time of issue of show cause notice & issue of Adjudication order.

DRI – 6 (PROSECUTION REPORT)

Commissionerate.....Division.....Unit.....

File NO. Date.....

Date of seizure..... Value of the seized goods.....

- 1. Total no. of persons involved
- 2. Total number of persons arrested
- 3. Total No. of persons against whom the complaint has been filed (copy of complaint to be enclosed)
- 4. Progress of the case in the court
- 5. Names of persons convicted showing the punishment awarded to each (copy of judgement to be enclosed)

Time, date and place

Signature, name and Designation of the Officer

NOTES:-

- i) Separate sheet may be enclosed wherever necessary.
- ii) This report should be sent to DRI in all cases where the value of seizure / estimated loss of Customs duty is Rs. 50,00,000/- and above only or in all cases where DRI – 5 has been sent.
 - a) Imbed at by after filing the complaint in the court.
 - b) As and which there is any important development till the end of court (framing of charges) proceedings.
 - c) Immediately after the announcement of the judgement.

DRI – 7 (COFEPOSA DETENTION REPORT)

- 1. This report is to be sent to DRI (H.Qrs) addressed to Asstt. Director upon a detention order issued by either the Central or State Governments having been served.
- 2. Upon service of the order information relating to SL. No. 9 & 10 should be immediately communicated. Upon release of the detenu, information relating to SL. No. 11 & 12 should be immediately communicated.

1. Name of the formation

2. File No.

3. Detaining Authority:
File No:

4. Name of the Detenu:
Father's Name:

5. Address:
Res.
Off.
Contact

6. Personal Particulars
Age :
Date of birth :
Passport no. :
Date of issue :
Issued from :

PHOTOGRAPH

7. Names and addresses of co-accused

1.

2.

3.

8. OFFENCE IN BRIEF (Include value / quantity / date of seizure as well as duty evasion & hawala etc. if any; modus operandi; gangs linked with; role of the accused)

.....
.....

9. Date of service :

10. Jail Lodged in :

11. Date of Release :

12. Grounds of Release :

PLACE:.....
DATE:.....

(SIGNATURE OF ASSTT. COMMISSIONER)

@ @ @ @ @ @ @ @ @ @

CHAPTER - FOUR

CENTRAL INFORMATION BANK ON MAJOR ECONOMIC OFFENDERS

The Bureau of Central Economic Intelligence has set up a Central Information Bank of economic offences / offenders and has asked field formations to forward case data as per prescribed monetary limit, details of current cases within 48 hours of search / seizure action using the E I D C (Data entry) software formats.

]

Formats for flow of DATA from enforcement agencies, circulated by the Bureau vide letter F.No.294 / 10197 / C E I B (DB) dt.01.07.99, are reproduced below :

CENTRAL ECONOMIC INTELLIGENCE BUREAU

Central Information Bank on Suspect Major Economic offenders

Instructions for filling – up of Formats

General Instructions

1. Both the Formats may be filled in respect of the following type of Investigation / Intelligence cases:
 - Cases involving monetary limit for Rs. 50 lakhs or more of duty evaded or search / seizure carried out in respect of Central Excise, Customs and forfeiture of property.
 - Cases involving Rs. 50 lakhs or more of seizures and / or Rs. 1.00 crore or more of suspected concealment of income in respect of I.T. cases.
 - Cases of FERA violation of Rs. 10 lakhs or more (by Enforcement Directorate).
 - All cases of Narcotic Drugs detected by NCB and Custom formations, other than those of peddlers (by NCB).
2. To begin with, all the live cases in which search and seizures have been conducted or show cause notices have been issued since 01.01.96 may be sent. After the current case since 01.01.96 have been sent, past cases since 1991 – 92 may be transcribed in the formats and sent to CEIB.
3. Organisations / Field Formations having computer facility available with DOS environment, may send the details of cases through computer floppies using the data entry software supplied to them through floppies.
4. The field formations would send the FORMAT – I (Preliminary) to the Coordinating Agency within 48 hours of search / seizure, who in turn would send it to CEIB within a week of search / seizure.
5. The field formations would send the FORMAT – II (Update) within 48 hours of issue of Show Cause Notice (or preparation of appraisal report in case of IT cases), who in turn would send it to CEIB within a week of issue of the show cause notice or preparation the appraisal report.
6. Filling up of information in the two formats is obligatory for all Enforcement Agencies. In case some information is not available immediately after search / seizure, it may be furnished separately but as early as possible.

7. If some columns have been left blank in the first dispatch of formats, same may be updated on quarterly basis. A system should be built up in each of the Enforcement Agencies whereby a quarterly update of information already supplied is made necessary.

FORMAT – I (Preliminary)

General

- (a) The format – I comprises of three parts. In the first part (page – 1), in one page, details about the seizures are to be given. The second part comprises of a one page information sheet (page – 2) about the list of offender companies involved in the offence. A separate sheet should be used if more than 12 companies are involved in a case. The third part comprises of a three page information sheet (pages 3 – 5) about the offender. This three-page set may be filled separately for each offender involved in the case.

- (b) All names should be entered in BLOCK LETTERS in the following order:

First name	Middle name	Surname
------------	-------------	---------

- (c) All dates should be entered in the following order:

Dd / mm / yy
(d : day ; M : month ; y : year)

- (d) To write codes for * marked items, use lists at Annexures.
- (e) Use the abbreviations like K – Known, D – Declared, S – discovered to mention the following details of offenders known or declared or discovered.
- Occupation / Business Codes
 - Residential / Business Address
 - Passport Details
 - Offender's Associates
 - IT Permanent A / c No.
 - Offender's Bank A / c No.
 - Offender's Associated Companies / Firms

8. **Top Right Hand Corner:** Please put a tick at appropriate item and score out the others. If at the time of sending data of a case for the first time, i.e; after 48 hours of search / seizure action, if entry against some items is left blank for want of confirmed data, a second dispatch of the format for the same case may be sent within 2 months of search / seizure action giving the missing information. If in the second dispatch also some information is still missing, the same may be supplied as third & final dispatch, immediately after issue of 'Show Cause Notice' or preparation of 'Appraisal Report' but in any case within 6 months of search / seizure action. If information is being sent for the first time put a tick (-/) at first dispatch and scores out second dispatch and final dispatch. Similarly, for second and third dispatch.

9. **Item 1 -- Reporting Agency Code:** Please give the relevant agency code of the reporting agency as per the directory of codes enclosed.

10. **Item 2 -- Running Serial No. of Reporting Agency:** Please give year – wise serial number to each case reported in the formats. For example, 6th case sent in the format during 1996 may be shown as 6 / 1996 and so on.

11. **Items 3 to 6:** Self-explanatory.
12. **Item 7:** Give both the Estimated Market value (EMV) and CIF value of goods seized.
13. **Item 8:** Self-explanatory.
14. **Item 9:** This item is for offender's details. If there are more than one offender in a case, separate sheets of page – 3 (item 9) should be added for each offender. One sheet is meant for details of one offender.
15. **Items 10, 12, and 13:** Self-explanatory.
16. **Item 11:** Please mention the name and occupation of Associates. In case the Associates are perceived to be major / important economic offenders themselves, the FORMATS may be separately filled up for them. Associates include foreign associates or connections with organized gangs or relatives settled abroad.
17. **Item 14:** Details of all previous offences with value of offence more than Rs. 10 lacs should be reported. However, in case this information has already been reported, it need not be repeated but a mention should be made about the running serial number of Format through which it was sent.
18. **Item 15:** Self-explanatory.

FORMAT – II (Update)

19. **Top Right Hand corner and items 1 – 3:** As in FORMAT – I
20. **Item 4:** Not to be filled – in by the reporting agency.
21. **Col. 5 – 19:** Self-explanatory.

.....

First Dispatch
Second Dispatch
Final Dispatch

CENTRAL ECONOMIC INTELLIGENCE BUREAU

Central Informant on Bank on Suspect Major Economic Offenders

Format – I (preliminary)

1. Reporting Agency Code
2. Running Serial No. of Reporting Agency (calendar Yr. Wise)
3. Reporting Agency's Offence Case File Reference Number
4. Type of offence (To fill, pick up code from enclosed list)

Code*	Offence Description
<input style="width: 100%; height: 100%;" type="text"/>	<input style="width: 100%; height: 100%;" type="text"/>
<input style="width: 100%; height: 100%;" type="text"/>	<input style="width: 100%; height: 100%;" type="text"/>
<input style="width: 100%; height: 100%;" type="text"/>	<input style="width: 100%; height: 100%;" type="text"/>

5. List of Acts / Sections / Rules / Regulations

SR. No.	Act / Section etc. under which offence / offences fall / falls

6. Case Search Details

Search Date:

Search Place:

Searching Orgn

Details of seizures

# Value of Goods Seized – EMV:	
CIF:	
# Cash seized – Indian Currency :	
- Foreign Exchange:	
# Jewelry Seized	
# Imp. Documents Seized :	
# Other valuables like shares/ FDRs, etc. seized :	
# Seized Drug Type :	
# Qnty. Of Drug Seized :	

8. Details of offender Companies / Firms

Sl. No.	Company Name	Company Address (es) (K-known, D-declared, S-discovered)	IT, PAN No., Ward, Circle

9. Offender's Details

<p>Sr. No. Name of the Person (BLOCK LETTERS) <input style="width: 300px; height: 20px;" type="text"/></p> <p>Aliases</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">1. <input style="width: 60px; height: 20px;" type="text"/></td> <td style="width: 25%;">2. <input style="width: 60px; height: 20px;" type="text"/></td> </tr> <tr> <td>3. <input style="width: 60px; height: 20px;" type="text"/></td> <td>4. <input style="width: 60px; height: 20px;" type="text"/></td> </tr> </table> <p>Personal Identification Mark <input style="width: 250px; height: 20px;" type="text"/></p> <p>Father / Husband's Name <input style="width: 250px; height: 20px;" type="text"/></p> <p>Date of Birth <input style="width: 30px; border: none; border-bottom: 1px solid black;" type="text"/> <input style="width: 30px; border: none; border-bottom: 1px solid black;" type="text"/> <input style="width: 30px; border: none; border-bottom: 1px solid black;" type="text"/> <input style="width: 30px; border: none; border-bottom: 1px solid black;" type="text"/> <input style="width: 30px; border: none; border-bottom: 1px solid black;" type="text"/> <input style="width: 30px; border: none; border-bottom: 1px solid black;" type="text"/></p> <p>Nationality -----</p> <p>*Business / Occupation (s) (select codes) <input style="width: 40px; height: 15px;" type="text"/> <input style="width: 40px; height: 15px;" type="text"/> <input style="width: 40px; height: 15px;" type="text"/></p>	1. <input style="width: 60px; height: 20px;" type="text"/>	2. <input style="width: 60px; height: 20px;" type="text"/>	3. <input style="width: 60px; height: 20px;" type="text"/>	4. <input style="width: 60px; height: 20px;" type="text"/>	<p style="text-align: center;">Residential Address (es).</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px; text-align: center;">1.</td> <td style="border: 1px solid black; height: 40px;"></td> </tr> <tr> <td style="text-align: center;">2.</td> <td style="border: 1px solid black; height: 40px;"></td> </tr> <tr> <td style="text-align: center;">3.</td> <td style="border: 1px solid black; height: 40px;"></td> </tr> </table> <p style="text-align: center;">Business Address (es)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px; text-align: center;">1</td> <td style="border: 1px solid black; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">2</td> <td style="border: 1px solid black; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">3</td> <td style="border: 1px solid black; height: 20px;"></td> </tr> </table>	1.		2.		3.		1		2		3	
1. <input style="width: 60px; height: 20px;" type="text"/>	2. <input style="width: 60px; height: 20px;" type="text"/>																
3. <input style="width: 60px; height: 20px;" type="text"/>	4. <input style="width: 60px; height: 20px;" type="text"/>																
1.																	
2.																	
3.																	
1																	
2																	
3																	

Offender's Arrest & Detention Details

Arrest Date (dd / mm / yy)	Arresting organization	Detention Date	Detaining Orgn.
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Any Alert issued? If yes,

Alert Date (dd / mm / yy)	Alert Issuing Agency
<input type="text"/>	<input type="text"/>

Area of Operation	Mode of Offence
<input type="text"/>	<input type="text"/>

10. Offender's Passport Details

Pass port Number	Issue Place	Issue Date
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

11. Offender's Associate (s) Details

Associate's Name	Occupation code
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

12. Offender's Income Tax details

IT PAN NO.	WARD	CICRLE
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

13. Offender's Bank Details

Bank Name	Branch	Account No.
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

14. Offender's Previous Offence (s) during the last five years

Sr. No.	Reporting Agency Case file	Type of offence*	Date and Place of seizure	Total Value of seizure
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

15. Details of offender's associated Companies / Firms.

Sr. No.	Company	Company Address (es)	IT. PAN No.
---------	---------	----------------------	-------------

Name	(K – known D – declared S – discovered)	ward, Circle
1.		
2.		
3.		
4.		
5.		

First Dispatch
Second Dispatch
Final Dispatch

CENTRAL ECONOMIC INTERLLIGENCE BUREAU

Central Information Bank on suspect Major Economic Offenders

FORMAT – II (Update)

1. Reporting agency Code
2. Running Serial No. Of Reporting Agency (Calendar Yr. Wise)
3. Reporting Agency's offence Case File Reference Number
4. CEIB Unique Code
5. Name of Main Offender Company / Firm / Individual
6. Date of Search / Detection of offence
7. Value of Offence
- Amount of Duty Evaded on Seized Goods:
- Estimated Concealment of Income / wealth /
- Duty Evaded:
- Estimated Amount of FERA Violation:
8. Commodity Involved (with "Harmonised System of Nomenclature" Code)
 Description of Commodity:
- HSN Code:
9. Exemption Notification No. Involved
10. Legal Provisions Invoked or Likely To be Invoked (e.g; For Confiscation / Penalty) to deal with the offence
First: Section / Rule / Regulation Act / Rule / Regulation-----
Second: Section / Rule / Regulation Act / Rule / Regulation-----
Third: Section / Rule / Regulation Act / Rule / Regulation-----

11. Offence Code (to be picked from the enclosed list)
And Brief Description of modus – Operandi

Offence Code for
Major Offence (s): ----- Other
Offence (s): -----

Modus – Operandi: -----

12. Country / Place of Origin of Commodity -----

13. Country / Place of Destination of Commodity -----

14. Whether the Company / Firm / Individual Involved
is a Central Excise Registered Manufacturer /
Dealer / Stockiest / Sales Agent ? Yes / No

If Yes, indicate the:
Business Address: -----

Concerned Central Excise Commissionerate: -----

15. COFEPOSA / SAFEMFOPA / PITNDPS Order (if any)
Reference No. with Date & Issuing Authority's Name:

First: Date:_____ Issuing_Authority:_____ Act:_____
Second:Date:_____ Issuing_Authority:_____ Act:_____
Third: Date:_____ Issuing_Authority:_____ Act:_____

16. Date of Detention under COFEPOSA / PITNDPS, if any. -----

17. Date of Action Under SAFEMFOPA / Chapter 5A of NDPS Act. -----

18. Value of Property (ies) forfeited under
SAFEMFOPA / NDPS Act. -----

19. Date of Launching Prosecution, if any -----

Annexure to Format I

Central Information Bank on suspect Major economic Offenders

**List of Business / Occupation Codes
(For items 9 & 11 of Format I)**

<u>Business / Occupation</u>	<u>Code</u>
1. Advocate	001
2. Architect	002
3. Appraiser / Valuer	003
4. Artist	004
5. Auctioneer	005
6. Auditor	006
7. Banker / Financier / Money Lender	007
8. Chartered / Cost Accountant	008
9. Commission Agent / Broker	009
10. Contractor / Builder	010

11.	Decorator	011
12.	Doctor	012
13.	Engineer	013
14.	Goldsmith / Jeweler	014
15.	Hawala Agent	015
16.	Industrialist	016
17.	Insurance Agent	017
18.	Journalist	018
19.	Landlord	019
20.	Manufacturer	020
21.	Photographer	021
22.	Publisher	022
23.	Real Estate Agent	023
24.	Retail Trader	024
25.	Tax Consultant	025
26.	Travel Agent	026
27.	Wholesale Trader	027
28.	Transporter /Fleet Operator	028
29.	Job Worker	029
30.	Company Executive / Employee	030
31.	Others (please specify)	031

Annexure to Formats I & II

Central Information Bank on Suspect Major Economic Offenders

**List of Offence / Modus – Operandi Codes
(For items 4,9 & 14 of Format I and item 11 of Format II)**

<u>Offence / Modus – Operandi</u>	<u>Code</u>
1. Misuse of Banking Channel	001
2. Money Laundering through Bank	002
3. Money Laundering through Hawala	003
4. Investment in Real Estate	004
5. Benami Transactions	005
6. Use of Hawala Entries	006
7. Misuse of Incentive in Income Tax (like Sec. 80HHc)	007
8. Smuggling of Contraband	008
9. Smuggling of Explosive / Ammunition	009
10. Smuggling of Gold through Land Border	010
11. Smuggling of Gold through Sea	011
12. Smuggling of Gold through Air	012
13. Smuggling of gold through Carrier	013
14. Smuggling of Silver through Sea	014
15. Smuggling of Silver through Air	015
16. Smuggling of Silver through Carrier	016
17. Smuggling of Silver through Land Border	017
18. Misclassification of Product	018
19. Under – valuation of Assessable Value	019

20.	Misuse of Exemption Notifications	020
21.	Misuse of various Performa Credit / Set / off / Money Credit Schemes	021
22.	Under – valuation of Imports	022
23.	Over – valuation of Exports	023
24.	Drawback Frauds	024
25.	Import License Violation	025
26.	Un-disclosed Investment in Shares, FDRS, other Securities	026
27.	Introduction of Black Money through Bogus Creditors / Debtors	027
28.	Under – invoicing of Sales	028
29.	Over – invoicing of Purchases	029
30.	Claim of Bogus Expenses / Capital built – up cases	030
31.	Introduction of Black Money in the Books of A / Cs In the form of Squared up Loans	031
32.	Under – valuation of fixed Assets	032
33.	Wrong Claim of Depreciation / Investment Allowance	033
34.	Creation of Capital through Gifts in the names of Minors / Ladies	034
35.	Creation of number of Entities to reduce tax	035
36.	Misuse of MODVAT schemes	036
37.	Suppression of production and unaccounted manufacture	037
38.	Clandestine removal of excisable goods	038
39.	Wrong or Fraudulent availment of rebate, drawback, refund and other export incentives	039
40.	Technical Offences under Central Excise & Salt Act and Central Excise Rules not covered above	040
41.	Illegal sale – purchase of Foreign Exchange in the Open market	041
42.	Illegal sale – purchase of Foreign Exchange by Bank Employees by having Pseudo Counters	042
43.	Bogus Import Remittances through Bogus Import Documents	043
44.	Creating NRIs, obtaining Power of Attorney of their NRI Accounts, Selling checks at premium	044
45.	Remittances of Foreign Exchange through Hawala Bank TT	045
46.	Non – realization of Export Proceeds and retention of Export Proceeds abroad	046
47.	Bogus Exports	
	-- Availing VABAL scheme	047
	-- Repartition of Black Money as export proceed	048
48.	Importation of Gold and Silver – Purchased through Hawala	049
49.	Carrying of Foreign Exchange through “Diggi”	050
50.	Foreign Exchange Transaction	
	-- through Vostro Accounts	051
	-- through Escrow Accounts	052
51.	Cross Border Smuggling of narcotics	
	-- by air	053
	-- by sea	054
	-- by land	055
	-- by post	056
52.	Inland smuggling of narcotics	057
52.	Clandestine manufacture of narcotic and Pschotropic substances	058
54.	Smuggling of narcotics through carrier	059

Reporting Agency Codes for Customs & DRI Cases**AGENCY CODE 04**

<u>Reporting Agency</u>	<u>code</u>
I Directorate of Revenue Intelligence	
DRI Headquarters	0400
Ahmedabad Zonal Unit	0401
Bangalore Zonal Unit	0402
Bombay Zonal Unit	0403
Calcutta Zonal Unit	0404
Delhi Zonal Unit	0405
Madras Zonal Unit	0406
Surat Zonal Unit	0406
II Commissioners of Customs	
Bangalore	0407
Calcutta (Port)	0408
Cochin	0409
Delhi (General)	0410
Goa	0411
Chennai (Port)	0412
Mumbai (General)	0413
New Kandla	0414
Nhava Sheva	0415
Sahar International Airport	0416
Visakhapatnam	0417
Ahmedabad	0418
Lucknow	0419
NE Region, Shillong	0420
Patna	0421
Calcutta (Preventive)	0422
Amritsar	0423
Calcutta (Airport & Aircargo)	0424
Chennai (Airport & Aircargo)	0425
Delhi (Aircargo)	0426
Delhi (ICD)	0427
Jodhpur	0428
Mangalore	0429
Mumbai (Import)	0430
Mumbai (Export)	0431
Mumbai (Aircargo Complex)	0432
Mumbai (Preventive)	0433
Pune	0434
Trichy	0435

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CHAPTER – FIVE

SEARCHES

1. **Introduction** : One of the most important duties of the Customs Officers is that in which he will be called upon to conduct a search or to supervise other officers in a search operation. The chances of conducting a successful search increase proportionately with the planning, systematic procedure and thoroughness, which go into a search operation, whether it be directed to a person, premises, vehicle, vessel or some other object.

2. **Definition** : A 'search' can be defined as the examination of an individual's house, premises or person for the purpose of discovering proof of his guilt in relation to some crime or misdemeanor.

3. **Empowerment** : Chapter XIII of the Customs Act, 1962, deals with searches, seizures, etc. Sections 100, 101, 102, 103, 105, and 106 of the Customs Act, 1962, empower an Officer of Customs to carry out searches. Under Section 42, 43 and 44 of the NDPS Act, 1985, also, a Customs Officer is empowered to carry out searches.

4. **Categories** : Searches can be of three different categories as under :

1. Search of the person.
2. Search of conveyances/animals
3. Search of premises.
- 4.

5. **Search of Persons under the Customs Act, 1962** :

(i) Three sections namely, Sections 100, 101 & 102 of the Customs Act, 1962 deal with the power to search persons. Section 100 of the Customs Act, 1962 stipulates the general power. Section 101 of the Customs Act, 1962 extends the scope of the general power in respect of specified commodities and Section 102 of the Customs Act, 1962 stipulates the procedure to be adopted in connection with the search of such persons. The provisions of Section 102 of the Customs Act, 1962 apply to searches under both the Sections 100 and 101.

(ii) For proper understanding vis-a-vis, analysis of search persons, it is convenient to seek answers to the following questions,- (a) Who are the persons competent to search suspected persons? (b) What are the circumstances in which such persons can be searched? (c) Which of the persons can be searched? (d) For what purposes the persons can be searched?

6. The persons competent to search

Searches under Section 100 Of the Customs Act, 1962, can be conducted by the "proper officer" of the Customs. Searches under Section 101 of the Customs Act, 1962 can be conducted only by "an officer of Customs empowered in his behalf by general or a special order of the Commissioner of Customs." The Commissioner of Customs has specified the following officers as proper officers: Under Section 100 of the Customs Act, 1962 All officers of the Preventive Department except Clerks. Under Section 101 & 103 of the Customs Act, 1962 All officers of the Preventive Department except Clerks & Class IV officers.

7. According to Section 5(2) of the Customs Act, 1962, an officer of Customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Customs who

is subordinate to him. In view of this provision, the designation of the officer of the lowest rank authorised to perform the functions under the particular section of the Act has been indicated.

8. The circumstances in which persons can be searched

Under Section 100 of the Customs Act, 1962, a person can be searched in a Customs Area if the proper officer has reason to believe that the person to be searched has secreted on person, any goods liable to confiscation or any documents relating thereto. Under Section 101 of the Customs Act, 1962, the search can be conducted outside the Customs area provided there is reason to believe that the person to be searched has secreted on person, goods of the specified description which are liable to confiscation or documents relating thereto. The goods of the specified description are at present (a) gold, (b) diamonds, (c) manufactures of gold or diamonds, & (d) watches. The list of the aforesaid goods may be extended by inclusion therein of any other class of goods, which the Central Govt. may specify, by notification in the Official Gazette.

The expression 'Customs Area' has been defined in term of sec 2 (ii) and it means "the area of Customs Station and Includes any area in which imported goods or exported goods are ordinarily kept before clearance by Customs Authorities". In the context of vehicles, any person, who has got out of, or is about to get into, or is in a vehicle, which has arrived from, or is to proceed to any place outside India. The scope of the power to search has been extended to practically all persons under Section 101 of the Customs Act, 1962, but the extension is not wide and general. The extension has been circumscribed by the provisions that this extensive power would apply only where there is reason to believe that the articles secreted are of a specified description, or the documents pertaining to the goods of the specified description and the same are liable to confiscation.

9. Procedure for search of person

- (a) Section 102 of the Customs Act, 1962 lays down procedure for search of person. The person to be searched under Section 101 of the Customs Act, 1962 has the right to be taken to the nearest Gazetted Officer of Customs or Magistrate. If this requirement comes into operation, the officer of Customs has no other alternative than to take the person to be searched without unnecessary delay to the nearest Gazetted Officer of Customs or Magistrate. The Act specifically provides that the person to be searched can be detained until the officer of Customs can bring him before the Gazetted Officer of Customs or the Magistrate. The Gazetted Officer of Customs or the Magistrate before whom the suspected person is brought, is competent to decide if there is any reasonable ground for search and he has the obligation to discharge the person forthwith if he comes to the conclusion that there is no reasonable ground for search.
- (b) Before conducting the search of the person, the Customs officer shall call upon two or more persons to attend and witness the search. The Customs officer can issue an order in writing to the persons for attending and witnessing the search. The Act requires that a list of all things seized in the course of search in form of statement of facts/events shall be prepared by the Customs officer and shall be signed by the witnesses. The Act does not require that even nil list should be prepared.
- (c) The Act requires that no female shall be searched by any one except a female.
- (d) In case the contraband looked for is precious stones, a metal detector will show nothing and the visual examination of the armpits, public parts, groins and inside of the thighs has to be thorough. X-ray examination should be resorted to if suspicion of concealment in body cavities exists. In no case, the search should be confined only to feeling the various parts of the suspect person.

10. Recommendation and guidelines for search

When conducting searches of person, there are some recommendations and guidelines and the officer should constantly bear in mind. The most obvious of these is the need for two officers to be present whenever an individual is to be thoroughly searched. The second officer can physically assist in controlling the suspect if necessary. He can also witness the seizure of evidence or testify concerning any accusations made by the suspect about the conduct of the searching officer.

There are three types of searches that are commonly made of individuals: (a) the frisks search; (b) the fields search; and (c) the strip-search.

(a) Frisk search

The frisk is a cursory search also known as a pat-down. It is usually a brief search for weapons and is limited to the general area of the outer clothing. A frisk may be conducted on persons not subject to arrest. A frisk is lawful when the officer (1) has observed suspicious activity on the part of the person being frisked; (2) has reason to believe that the suspect is armed; and (3) the officer limits himself to a search for weapons. A suspect may also be stopped and searched when a reliable informant has advised that the suspect is armed. A frisk under either decision is restricted to a quick pat-down or its equivalent, plus an examination of bags or other objects that may contain weapons.

(b) Field search

A field search is conducted on the scene of arrest. The search is done subsequent to handcuffing. This is a systematic search performed by dividing the body down the middle and searching one-half of the body at time. This search is conducted for weapons, narcotics, narcotics paraphernalia and other contraband goods.

(c) Strip search

The Strip Search is conducted in a controlled and private environment such as a jail cell or detention area. This suspect is made to undress completely and all clothing is thoroughly searched. While in the wall position, the suspect is given a through search which includes body cavities – mouth, ears, nose and rectum.

11. Rectum concealment

Rectum is lower part of the large intestine between the sigmoid flexure and anal canal. The rectal region of the human body is a convenient cavity suitable for secreting contraband items like gold, silver and narcotics. Smugglers regularly employ carriers, both male and female, who specialize in carrying contraband in their rectums.

This is a very painful process and calls for great physical endurance. The standard procedure employed is to abstain from consumption of solid food several hours prior to the insertion, of the material. The bowels are purged by taking suitable laxatives. Thus all waste material inside the body is flushed out. Fresh intake of solid food is restricted well in advance. The contraband meant for concealment is reduced in size and length. Precious metals are converted into small pellets and put into latex condom. The condom and the anal region are subjected to large doses of lubrication in order to facilitate easy movement. Depending on the body size and structure, approximately, between $\frac{1}{4}$ kg and $\frac{3}{4}$ kg, can be stored inside the rectum.

Once inside the rectum, the body is capable of retaining this foreign matter for duration of four to six hours. After this duration, it becomes difficult to retain the material inside. The pressure to eject the material becomes tremendous.

Customs personnel are able to detect cases of rectal concealment because the presence foreign material inside the rectum affects the normal gait of the person. Normal waling becomes difficult, the legs

do not appear steady, and the person always adjusting his posterior posture. If such persons are examined, the heavy lubrication of the anal region becomes apparent. The possibility of bloodstains cannot be excluded. The material is ejected in the normal way and if necessary medical assistance is sought.

Vaginal concealment

The musculo- membranous passage extending from the cervix uteri to the vulva, is the vaginal passage in females. This affords a safe and private area for effective concealment. Vaginal concealment has been used from time immemorial by female couriers, spies and underground activists.

The advantages of this system of concealment area:

- Easy to insert and retrieve
- Does not cause physical injury
- Can be retained in the body for a long duration of time
- Cannot be detected easily
- When used in conjunction with sanitary napkin, it is a highly effective form of concealment.

The vaginal concealment technique is superior to the rectal concealment because of the above advantages.

Females can be searched only by females, hence trained female searchers are essential in an Investigating team. Since these are delicate the sensitive issues, the trained officer should be able to detect potential suspects by cleverly reading facial and body language. Any individual resorting to such devious means of secreting goods in their private parts are prone to display:

- A guilty look;
- An embarrassed look;
- Unseemly haste to leave the place as quickly as possible;
- Get unnecessarily hostile when questioned; and
- Put up resistance to be searched.

Only a highly observant female officer can successfully detect cases of vaginal concealment by visual observation. It would be most advisable to used confirmatory test by way of hand-held metal detector, which has so far proved to have unflinching records.

12. Power to screen or x-ray bodies

(a) Under Section 103 of the Customs Act, 1962, bodies of persons, who are liable to be searched under Section 100 of the Customs Act, 1962, can be screened and x-rayed if the proper officer has reason to believe that such a person has any goods liable to confiscation, secreted inside his body.

The proper officer should detain the person suspected by him and produce him without unnecessary delay before the nearest Magistrate. The Magistrate has the power to determine if there is reasonable ground for believing that the suspected person has any goods liable to confiscation, secreted inside his body. The Magistrate has the obligation to discharge the person forthwith if he comes to the conclusion that there is no such reasonable ground. On the contrary, if the Magistrate has for believing that the person produced before him has any goods liable to confiscation, secreted inside his body and he is also satisfied that for the purpose of discovering such goods, it is necessary that the body of such person should be screened or x-rayed, he may make an order to that effect. When such an order is made, the proper officer shall, as soon as practicable, take the suspected person before a Radiologist possessing qualifications recognised by the Central Government for the purpose of this Section. The Radiologist shall, after screening or x-raying the body of such person, forward his -report together with any x-ray

pictures taken by him .to the Magistrate without unnecessary delay. When, on receipt of the Radiologist's report, the Magistrate is satisfied that any person has any goods, liable to confiscation, secreted inside his body, he may direct that suitable action for bringing out such goods be taken on the advice and under the supervision of a registered Medical Practitioner and such person shall be bound to comply with such direction.

- (b) It is advisable to obtain order of the Magistrate for keeping the person in the custody of the Customs officers and also for the period for which the person may be kept in custody.
- (c) The aforesaid procedure for the screening or. x-raying of the bodies of suspected person can be waived only in the case of a person who admits that goods liable to confiscation, area secreted inside his body and who voluntarily submits himself for suitable action being taken for bringing out such goods.

13. Refusal to be x-rayed

Section 134 of the Customs Act, 1962 stipulates that - If any person –

- (a) resists or refused to, allow a Radiologist to screen or to take x- ray picture of his body In accordance with an order made by Magistrate under Section 103 of the Customs Act, 962; or
- (b) resists or refused to allow suitable action being taken on the advice and under the supervision of a registered Practitioner for bringing out goods liable to confiscation secreted in his body, as provided in Section 103 of the Customs Act, 1962; he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

14. Search of Conveyance/Animals

Section 106 of the Customs Act, 1962 stipulates that where the proper officer has reason to belief that any aircraft, vehicle or animal in India or any vessel in India or within the Indian Custom water has been, is being, or is about to be, used in the smuggling of any goods or any carriage of any goods, which have been smuggled, he may, at any time, stop any such vehicle, animal or vessel or, in the case of an aircraft, compel it to land and –

- (a) rummage and search any part of the aircraft, vehicle or vessel;
 - (b) examine and search any goods in the aircraft, vehicle or vessel or on the animal; and
 - (c) break open the lock of any door or package for exercising the powers conferred by clauses (a) and (b), if the keys are withheld.
- (2) Where for the purpose of sub-section (1)
- (a) (a) it becomes necessary to stop any vessel or compel any aircraft to land, it shall be lawful for any vessel or aircraft in the service of the Government while flying her proper flat and any authority authorised in this behalf by the Central Government to summon such vessel to stop or the aircraft to land, by means of an international signal, code or other recognised means, and thereupon such vessel shall forthwith stop or such aircraft shall forthwith land; and if it fails to do so, chase may be given thereto by any vessel or aircraft as aforesaid if after a gun is fired as a signal the vessel fails to stop or the aircraft fails to land, it may be fired upon;
 - (b) it becomes necessary to stop any vehicle or animal, the proper officer may use all lawful means fail, the vehicle or animal may be fired upon.

15. Automobile searching

The search of an automobile must be conducted methodically and thoroughly. The officer must have some definite notions as to where to look, and nothing must be dismissed as impossibility. The officer

must continue the search for evidence until the entire vehicle has been covered, even if he uncovers some contraband during an early part of the search.

Experienced investigators have learned that contraband is frequently hidden in relatively few locations on the vehicle. The motor and dashboard recesses, the seats, and the trunk compartment are the most widely used of these areas. However, the frequency of past usage of these hiding places must not lead the searching officer to overlook other places of concealment. The vehicle is divided into three search areas: (1) the front end, (2) the interior, and (3) the rear. Each section must be closely examined before the search is carried to the next area.

- (1) **The front end:** The grill, the bumper and the fender area provide excellent hiding places. Narcotics may be placed in a container between the grill and radiator or secured to the grill. Contraband has been discovered attached to the inner surface of the fender by means of a magnet, a magnetized container or tape. The back of the license plate, the bumper and the underside of the undersigned of the gravel pan should also be examined. The numerous recesses of the motor adjacent area are frequently used to hide narcotics. A small packet of narcotics may be placed in a watertight container and suspended inside the radiator. The battery, the battery case, the engine block, the clutch and starter housings have all been used in the past. Close attention must be paid to the ventilating ducts or any container found attached to the side of the motor well. The air filter of the carburetor should be examined. The body frame and supports also provide places of concealment that should be checked.
- (2) **The interior:** The back of the dashboard is undoubtedly the most extensively used place of concealment for narcotics packages. The profusion of electric wires, the almost inaccessible recesses and availability to the occupants all contribute to the popularity of this location. It is not uncommon to find within this area items attached by tape or pinned to the wiring. Fresh air ventilating outlets are also frequently used to hide contraband.

The ability to locate evidence in this area will necessarily depend on search tactics. The rear portion of the dashboard can be thoroughly scrutinized with a mirror held in one hand and the flashlight pointing up under the dash. Merely glancing in the general direction of this area and groping blindly into the dark is inadequate. The mirror also may be used under fenders and in other areas where visibility is difficult. The area beside and under the seats is used frequently to hide contraband. Remove the seats whenever possible, rather than merely looking or feeling under and between seat cushions. The front and rear floor mats are also removed whenever possible since contrabands are often hidden under this floor covering. Each object found in a vehicle must be inspected. Any flashlight, book, magazine, or container found in the automobile must be closely scrutinized.

3. **The rear:** The trunk must be given a complete examination and any item found in this compartment must be inspected, including clothing, rags, containers and tools. The spare tyre wheel must be checked. The interior of the trunk lid must also be examined for possible contraband. The underside of the fenders, the bumper and the gravel pan must all be carefully searched.

16. Protection against criminal liability under Section 155 of the Customs Act, 1962.

In *Costao Fernandes V State* (1996) 7 SCC 513: (1996) 82 ELT 433 (SC), the court observed that it is necessary to indicate a note of caution in the matter of consideration of protection against criminal liability if sought for under Section 155 of the Customs Act, 1962 at the threshold of the criminal trial. Since such immunity is claimed at the threshold, the court should carefully scrutinise the relevant facts and materials placed before it for the purpose of finding (a) that the concerned officer was authorised to act for prevention of smuggling activity and in fact had acted bona fide in exercise of his duties and functions in preventing the smuggling activities being carried or about to be carried, (b) there are prima facie materials to indicate that such officer had honestly attempted to stop the conveyance for effecting search

of the same, (c) that such an attempt to stop the vehicle was sought to be frustrated either by not stopping the vehicle or by attempting to forcibly taking away the vehicle despite attempt by the concerned officer to stop the vehicle and (d) that recourse to use of force on the driver or occupant of the vehicle was apparently necessary to immobilise the vehicle or to save himself from imminent danger of personal risk. If on consideration of the materials placed before the court, a possible view can objectively be taken that in discharge of the duties and functions under Section 106 of the Customs Act 1962, a competent officer had bona fide used force is not just a rise for high-handed action on his part which was not at all necessary in the facts of the case but prima facie there is justification for the course of action pleaded by the officer, the court would give effect to the protection under Section 155 of the Customs Act, 1962 by dropping the criminal case initiated against the concerned officer (*Bhappa Singh v Ram Pal Singh* 1981 (Supp) SCC 12 : 1981 SCC (Cri) 602 relies on).

17. Power to search the premises

Section 105 of the Customs Act, 1962 empowers Assistant Commissioner of Customs, etc. to search any place either personally or through other officers duly authorised, if he has reason to believe that any goods liable to confiscation, or any documents or things which in his opinion will be useful for or relevant to any proceeding under the Customs Act, 1962, are secreted there. The procedure for such search will be as provided in the Code of Criminal Procedure, as far as may be, subject to the modification as provided by sub-section (2) of the section. The object of the section is to make a search for the goods liable to be confiscated or the documents secreted in any place - which are relevant to any proceeding under the Customs Act, 1962. The legislative policy reflected in the section is that the search must be in regard to the two categories mentioned therein, namely, goods liable to be confiscated and documents relevant to a proceeding under the Customs Act, 1962.

In this context, the term 'document' occurring in Section 105 of the Customs Act, 1962 has not been defined in the Act. But Section 3 (18) of the General Clauses Act defines the term as hereunder: "document' shall include any matter written or expressed or described upon any substance by means of letters, figures or marks, or by more than one of these means which is intended to be used, or which may be used, for the purpose of recording matter'.

'**Document**', as defined in Black's Law Dictionary, 5th Edition, is 'an instrument on which is recorded, by means of letters, figures, or marks, the original official or legal form of something which may be evidently used. In this sense, the term 'document' applies to writings; to words printed, lithographed or photographed; to maps or plans; to seals, plates- or even stones on which inscription are cut or engraved. In the plural, the deeds, agreements, title papers, letters, receipts, and other written instruments used to fact.'

18. 'Secreted' - meaning of - The argument that the word 'secreted' is used in Section 105 of the Customs Act, 1962 in the sense of being hidden or concealed and unless the officer had reason to believe that any document was so concealed or hidden, a search could not be made for such a document, is not acceptable. The word 'secreted' must be understood in the context in which the word is used in the section. In that context, it means 'documents' which are kept not in the normal or usual place with a view to conceal them' or it may even mean 'documents which are likely to be secreted'. In other words, documents or things which a person is likely to keep out of the way or to put in a place where the officer of law cannot find it. It is in this sense that the word 'secreted' must be understood as it is used in Section 105 of the Customs Act, 1962.

19. Reason to believe

To search is the main weapon in the hands of a Customs officer engaged in the detection of smuggling activities. But, pre-condition to justify the act is that he should have reason to believe that the place to be searched has goods or documents secreted about it, which will be useful or relevant to any proceedings under the Act. This obvious reason behind the legislative provision is to save the citizen from unnecessary harassment. The expression 'reason to believe' which is the key to almost all action under the Customs Act, 1962, the Supreme Court made it clear that the expression is not synonymous, with subjective satisfaction of the officer. The belief must be held in good faith; it cannot merely be a pretence. It is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the Section.

Under Section 105 of the Customs Act, 1962, the Customs officer can himself issue a warrant if he himself has 'reason to believe'. He can in fact, though not lawfully, also do the act of issuing warrant even where really he has no reason to believe though he mentions in the warrant that he has reason to believe. But, in such a case, he is liable to punishment under Section 136(2) (c) of the Act. Obviously, the Legislature considered it necessary to introduce provision in Section 105, by giving power to the Customs officer to issue warrant himself but introduced safeguards by way of fixing a high rank for the officer and providing under Section 136(2)(c) for his liability to punishment if he abused the power entrusted to him under Section 105 of the Act.

It is not possible to lay down precisely or exhaustively as to what constitutes 'reason to believe'. It would depend on various circumstances. The issue of a warrant and the reason to believe for issue of a warrant would involve the following elements: (a) Articles of search; (b) place in which they are secreted; (c) manner in which they are secreted; (d) person who is in possession of the articles of search or the place where they are secreted. It may be that the information which the Warrant officer has regarding each of the elements is not precise or absolutely certain without any possibility or doubt. But still if the information is such as leads him to believe that articles of search are secreted in a place which is concrete, he may thereby have 'reasons to believe' as contemplated in Section 105. He may in such circumstances issue a warrant even he does not know the name of the person who is in possession of the articles of search or the place where they are secreted.

20. Procedure to be observed by the Customs officer while conducting a search

The Customs Act does not provide for any special procedure to be followed in conducting a search. Sub-section (2) of Section 105 of the Customs Act, 1962, however, provides that the provisions of the Code of Criminal Procedure, 1898, relating to searches shall, 'so far as may be', apply to searches under the Section subject to modification as specified therein. As regards the procedure for search is that if the Assistant Commissioner of Customs has reason to believe that any goods liable to confiscation or any documents or things are secreted in any place, he may authorise any officer of Customs to search or may himself search for such goods, documents or things. An officer of Customs conducting a search has to observe the following formalities under the Criminal Procedure Code.

- (a) The person of the officials and of the search witnesses must be searched before they are allowed to enter premises so as to avoid any suspicion that any member of the search party had planted the thing recovered, surreptitiously in the premises;
- (b) The officer of Customs about to make a search shall call upon two or more respectable inhabitants of the locality in which the premises to be searched is situated to attend and witness the search. A respectable person is one who is impartial and on whom the owner and occupier of the premises searched can prima facie rely; Presence of Independent witness is an essential requirement of

Section 100(4) to (8) of the Criminal Procedure Code and therefore of Section 105 of the Customs Act. Even though Section 100 of the Criminal Procedure Code says that the witness must be of the same locality, this is merely directory and not mandatory. So long as the persons are respectable, they can be from a different locality, An omission to get witness of the same locality will, therefore, be at the most an act of irregularity and will not render such as illegal. If respectable persons are not to be found very near the premises to be searched, it will not be illegal to bring person from half a mile away.

- (c) The search shall be made in presence of such witnesses and a list of all things seized in the course of the places in which they are respectively found shall be prepared by such officer or other persons;
- (d) The said list shall be signed by such witnesses;
- (e) The occupant of the place searched or some person on his behalf shall be permitted to attend during the searches;
- (f) The copy of the list prepared and signed by the witness shall be delivered to such occupant.
- (g) Where any person in or about such place is reasonably suspected of concealing about his person or any article for which search shall be made by another woman with strict regard to decency. A list of all things recovered from the possession of such persona shall be prepared and a copy thereof shall be delivered to such person.
- (h) Under Section 47 (2), Cr. P.C., the officer of Customs is authorised to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.
- (i) If any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested, who according to Customs, does not appear in public) such person or officer of Customs shall, before entering such apartment give notice to such woman that she is at liberty to withdraw. and shall afford her every reasonable facility for withdrawing and may then break open the apartment and enter it.
- (j) Under Section 165, Cr.P.C., a Customs officer has to make a search after completing certain formalities. One of these is the statement of the grounds of proof and specifications of the articles searched. Since sub-section (2) of Section 105 of the Customs Act, 1962, relating to searches says that the provisions of Criminal Procedure Code, 1898, shall apply to searches made it is necessary to observe these formalities also while conducting a search under Section 105 of the Customs Act, 1962, otherwise there will not be compliance of sub-section (2).

21. Offences by officers of Customs

Sub-section (2) (c) of Section ,136 of the Customs Act, 1962 stipulates that, if an officer of Customs searches or authorises any other officer of Customs to search any place - without having any reasons to believe - that any goods, documents or things of the nature referred to in Section 105 are secreted in that place, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, which may extend to one thousand rupees, or with both. Thus, sub-section (2) of the Section provides for adequate penal action against a Customs official, who regardless of the provisions of the statute searches or causes to be searched any place without reasonable belief that any goods, documents or things of the nature defined In Section 105 are secreted in that place. In other words, the provisions of sub- section (2) aim at screening innocent people from undue harassment in the hands of irresponsible or dishonest Customs officers, under threats of penal action.

22. Preliminary steps for the Execution of search warrants:

Before a search warrant is actually executed, the following preliminary steps shall be taken.

A complete survey should, in the first instance, be made of the building, premises/street/lane for the purpose of having a first hand knowledge of the location of such building/premises/street/lane etc. as also any special peculiarities of these places.

In the light of the information gathered by the survey, a co-ordinated action should be drawn up by the leader of the search party and submitted for Assistant Commissioner (Preventive or Rummaging)'s approval. This plan will inter-alia provide for (i) the number of Officers and Class IV (Group D) staff required for the raiding party, (ii) the detailing of Officer at various vulnerable points and (iii) suitable briefing regarding the things the officers are to look for and the precautions they should take.

Search Warrant – Execution of –

(a) The form of search Warrant to be used for searches shall be as under :

Noof(date).....

Whereas there are reasons to believe that prohibited and dutiable goods liable to confiscation and documents and things, which in my opinion will be useful for and relevant to proceedings under the Customs Act, 1962, are secreted in the places mentioned below.

I,.....Assistant Commissioner of Customs,Department,Customs House, hereby authorise Superintendent/s Shriand Preventive Officers of Customs S/Shri for the aforesaid prohibited and dutiable goods, documents or things in the places mentioned herein above and seize the same under Section 110 of the Customs Act, 1962 and produce them forthwith before me, to be dealt with under the Provisions of the Customs Act, 1962.

Given under my hand and seal of the Officer this day of(date).....

Assistant Commissioner of Customs,(Deptt.)

(b) The search warrant should be prepared in Triplicate. All these copies after execution will be suitably endorsed to the effect that the search warrant has been executed. In the event of non-execution of the search warrant for any reason, the search warrant would be endorsed to the effect that it is unexecuted. Thereafter, the file should be put up to the Additional Commissioner as laid down in Section 105 (2) of the Customs Act, 1962.

(c) The actual search under cover of the search warrant shall be executed as if it is a search made under the provisions of the Code of Criminal Procedure. The search shall be conducted in presence of two independent witnesses and the search list (panchanama) will be prepared in Triplicate. A clear copy will be furnished to the person whose place is searched, the triplicate copy of the search list (panchanama) alongwith the duplicate copy of the search warrant will be retained in the file giving the material relevant to the grounds of belief the original Search Warrant and the original search list (panchanama) duly endorsed will be returned to the Officer-in-charge, Prosecution Unit/Legal Section for being retained as permanent record after Assistant Commissioner of Customs has duly perused the endorsement with respect to the execution of the search warrant and search Unit giving the list of articles seized during the course of the search.

A search Warrant Register shall be maintained by the Legal/Prosecution Unit in the proforma shown below:

Sr. No.	S. W. No.	Date of issue	Date of Execution and time	Name of Officers Executing the search warrant
1	2	3	4	5

File No.	Particulars of premises	Description of goods/ documents/things seized	Approximate value of goods
6	7	8	9
Last date before which S/C memo must issue	Adjudication Order	Date of release of the seized goods/documents/things.	Remarks
10	11	12	9

(d) When any searches are conducted in town, search list (Panchanama) will have minimum 4 copies. The original Panchanama along with the original of the Search Warrant and a copy of the Seizure report shall be placed in the Prosecution file after perusal of the Assistant Commissioner. The second copy of the Search List along with a copy of the Search Warrant and copy of seizure Report shall be placed in the Investigation File (Penalty File). A third copy of the panchanama along with seizure Report will be placed; in the Reward file. A clear copy of the Panchanama should be given to the person from whose premises the goods are seized.

(e) Endorsement to be made on search warrants.

1. Submitted unexecuted

Preventive Officer

2. Submitted

The place ofwas searched under Search Warrant No. dated.....on.....by me with the assistance ofIntelligence Officer(s)/ Preventive Officers and the goods and the documents were seized.

Preventive Officer.

23. RUMMAGE OR SEARCH OF VESSELS

a) Object of search

An effective; method of prevention of smuggling is rummage of suspect vessels in the port. In a rummage the entire vessel has to be thoroughly searched for prohibited and restricted goods. (Viz. opium and other dangerous drugs, arms and ammunitions, gold and silver bullion, foreign and Indian Currency in excess of the permissible limits, obscenities, seditious literature, counterfeit coins, Leathers, fountain pens, watches, other consumer luxury goods the import and export of which are restricted and other goods which have not been duty declared but have been concealed in any; of the various parts of the vessels including the engine room, bridge, officers and crew quarters, saloons, cargo, hatches, lockers, life boats, coal bunkers, ventilators, paneling of cabins, cofferdam etc.

b) Rummage of vessels – Safety precautions to be observed:

The Superintendent or I.O. in-charge of the rummaging party will ensure that the officers and Sepoys under them take adequate precautions to safeguard themselves as well as the vessel under rummage:

The nature of all the precautions to be taken in this connection cannot normally be enumerated but this shall include the following:

- (i) Informing the Master of the Vessel or the Ship's Officer/Engineer on duty before commencement of a rummage.
- (ii) Informing the Ship's Officer/Engineer concerned before any oil tanks or water tanks, cofferdams etc. are opened.

- (iii) Allowing adequate time for escape of gas or fuel, air, before entering into such tanks etc, In such places, Officers must always work in pairs.
- (iv) Making sure that all those who have entered such tanks or other closed place have emerged therefrom before the tank etc. is closed.
- (v) Informing the ship's Officer/Engineers, before any vital portions of machinery are opened.
- (vi) Ensuring that all tank covers etc. are properly refitted and closed after inspection.
- (vii) Observing "No smoking" regulations wherever so required on the vessel.

c) Supervision

- (i) A rummage is generally carried out under the supervision of Rummaging Superintendent (R) who details the officers to different sections of the ship unless there is information about particular spots on the vessel, in which case the officers have to concentrate on these spots.
- (ii) The Customs Officers have in law full access to every part of the vessel. They have also the right to break open and search any place, box etc. Care should however, be taken to conduct the work in a manner that would cause the least annoyance and loss.

d) Search of vessels

Before rummaging a vessel, the officer in charge of the Customs party should communicate his intentions to the Chief Officer (and Chief Engineer, if the engine room is to be searched). Whilst insisting on making a thorough search, officers should avoid giving annoyance to the ship's personnel and damaging the ship in any way. They must not search vital parts of a vessel except in the presence of the Ship's Officers, provided that such officers do not refuse to attend. Officers' cabins and crew's quarters should not be searched unless the occupants are present. (Boiler suits, torches and certain tools should be provided for the use of searching officers).

- (ii) Two independent and respectable witnesses should be taken along when a ship is to be searched.
- (iii) When this is not possible and articles or contraband are found, such articles should be allowed to remain undisturbed in their original concealed place until they have been seen by two witnesses who should be procured as soon as possible.
- (iv) The containers in which contraband is concealed should also be seized, but if such containers happen to be articles of furniture belonging to the ship, they should not be removed except with the permission of the Assistant Commissioner in-charge.
- (v) In his report, the seizing officer should mention every detail down to the minutest which may have come bearing on the case, as any ; additional information subsequently recorded may not be considered, in court, to be reliable by virtue of the fact that it was not recorded in the original report.
- (vi) All seized goods should be properly sealed and labeled, the labels being signed by the witnesses as well as the accused (if any).

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CHAPTER – SIX

SEIZURE

PRELIMINARY

The natural corollary of a fructuous search is Seizure. Section 110 of the Customs Act, 1962, empowers the officers of Customs to seize goods, documents, etc., provided there is reasonable belief that such goods are liable to confiscation under the provisions of the Customs Act.

Seizure of goods, documents and things under the Customs Act, especially in anti-smuggling operations, is an important aspect of Customs procedures.

SEIZURE OF GOODS, DOCUMENTS AND THINGS

It has been laid down in Section 110 of the Customs Act, 1962, that-

(1) If the proper officer has reason to believe that any goods liable to confiscation under this Act, he may be seize such goods:

Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer.

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

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding six months.

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

In this context, the following lines enumerate definitions and elaboration of certain terms mentioned in the above Section:

'Proper officer'-who is. - Under sec. 2(34) of the Customs Act 'proper officer' in relation to any functions to be performed under the Act, means the officer of Customs who is assigned those functions by the Board or Commissioner of Customs.

As regards to the expression 'by the Board or Commissioner of Customs' the Supreme Court in *Gopikisan v Asstt. Commissioner of Customs* AIR 1967 SC 1298: 1967 Cr LJ 1194 observed that a fair reading of the provision is that the preposition 'by' refers both to the Board and the Commissioner. Both the Board and the Commissioner of Customs can assign functions to an officer of Customs. And in *Durga Prasad v H. R. Gomes* AIR 1966 SC 1209: 1983 ELT 1501, the court held that where the Commissioner of Customs has assigned the powers of a 'proper officer' to the subordinate officer, the said subordinate officer must himself be deemed to have the powers of a proper officer under sec. 110 of the Customs Act.

Expression 'seize'- meaning of. – The expression 'seize' means to take possession of goods contrary to the wishes of the owner of the property. Seizure must take place from the custody of an unwilling person in possession of goods that are liable to be confiscated – *Masood Ali v Metropolitan Magistrate* 1961 Tax LR 2961 (All). To 'seize' means to take possession of forcibly, to grasp, to snatch or to put in possession — Black's Law Dictionary, 5th Edn.

'Seizure' is a forcible or secretive dispossession of something against the will of the possessor or owner — Black's Law Dictionary, 5th Edn.

A 'seizure' under the authority of law does involve a deprivation of possession and not merely of custody – *Gian Chand v State of Punjab* AIR 1962 sc. 496: 1983 ELT 1365.

Action in sealing the godowns and removing the books of account amount to seizure within the meaning of sec. 110 of the Act- *Vilayat Hussain v Union of India* (1997) 95 ELT 19 (MP) (DB)

Reasonable Belief-meaning of – The seizing officer should have reason to believe that the goods in question are liable to confiscation under the Act. The “reasonable belief” is a prerequisite condition of the power of seizure that the law confers on the officer. The belief is subjective & need not be disclosed. It is also not subject to any judicial review. The court cannot examine whether this belief is reasonable or not. The court at the most can consider whether sufficient factors exist to warrant a reasonable belief.

‘Any goods’- what they include. – The words ‘any goods’ used in sec. 110 would obviously include both dutiable goods and goods as defined in Sec. 2(22). Therefore, any conveyance or animals, used as a means of transport in smuggling of goods or in the carriage of any smuggled goods, shall be liable to confiscation under sec. 110(2) unless the owner of the conveyance shows that it was so used without his knowledge or connivance- *Tarlok Singh v Supdt. Of Customs* 1978 ELT (Delhi): (1979)15 DLT 183.

Seizure of Documents

Sub-sec. (3) of sec. 110 empowers the proper officer to seize the documents, which in his opinion will be useful for or relevant to any proceeding under the Act. It is, therefore, obvious that sub-sec. (3) gives an independent power in the matter of seizure of documents and the said power is not subservient to the power exercisable by the proper officer under sub-sec. (1) of sec. 110. Since the purpose of the two sub-sections is different, the documents or things can be seized under sub-sec. (3) of sec. 110 even in those cases where there may be no seizure of goods on the ground that the goods are liable to confiscation. In other words, the seizure of goods on the ground that the proper officer has reason to believe that such of sub-sec. (1) of sec. 110 cannot be read as a condition precedent to the exercise of power of seizure of documents under sub-sec. (3) of sec. 110 of the Customs Act .

Document includes “any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter”. [Section 3(18) General Clauses Act]. This definition has to be applied to the Customs Act which does not define ‘document’.-

British Physical Labs. v. Asstt. Commissioner, DRI – 1983 (14) E.L.T. 2270(Kar.)

Passport – whether document.

Passport is a *prima facie* evidence of nationality, a document of identity and essential for exit / entry into countries. It has become a condition of free travel. – *Satwant Singh v. Ramarathnam* - AIR 1967 SC 1836.

The Criminal Court has the power to withhold or impound the passport of any person, more so of a foreigner, accused of a grave offence. – *Assistant Commissioner v. Abdul Samathu* – 1985 (22) E.L.T. 761 (Mad.).

Passport may be seized under FERA (on summons issued under Section 40 and in exercise of the powers under Section 38). It can be said to be both a document and a thing (vide Section 38), or at a least a thing which is capable of being perceived. – *Abdul Kadir Md. Jhaveri v. U.O.I.* – (1987) 14 ECC 81 (Guj.).

Passport is a document liable to seizure under sec. 110(3) – *Devadasan Dayalal v Commissioner of Customs* (1986) 26 ELT 728 (Ker) referred with approval in *P. O. Thomas v Union of India* 1990 Cr. LJ 1028 (Ker) (DB);

SECTION 110 (1A) OF THE CUSTOMS ACT, 1962

Section 110 (1)(A) of the Customs Act, 1962, stipulates that the Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant consideration, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-sec. (1) be disposed of by the proper officer in such manner as the Central Government may from time to time, determine after following the procedure hereinafter specified.

Notification issued in this regard has been reproduced below:

In exercise of the powers conferred by sub-section (1A) of section 110 of the Customs Act, 1962 (52 of 1962), the Central Government, having regard to the perishable nature, depreciation in the value with the passage of time, constraints of storage space and valuable nature, of the goods, mentioned in the Schedule hereto annexed, hereby specifies the said goods for the purposes of that sub-section.

The Schedule

1. Liquors;
- 1A. Photographic Films;
- 1B. Patent or Proprietary medicine, i.e., any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a Pharmacopoeia or Formulary;
2. Primary cells and primary batteries including re-chargeable batteries;
3. Wrist watches including electronic wrist watches; watch movements, parts or components thereof;
- 3A. Zip fasteners;
4. All electronic goods including television sets, Video Cassette Recorders, Tape recorders, calculators, computers; components and spares thereof including diodes, transistors, integrated circuits, etc;
- 4A. Gold in all forms including bullion, ingot, coin, ornaments crude jewellery.
- 4B. Silver in all forms including bullion, ingot, coin, ornament, crude jewellery.
5. Dangerous drugs and psychotropic substances.
6. Conveyance;
7. Man-made yarn and fabric; and
8. Currency, Indian & Foreign;
9. Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
10. Diamonds, precious and semi-precious stones.
11. Ball Bearings.
12. Cellular Phones.

[Notification No. 31/86-Cus. Dt. 5.2.1986, as amended by No. 42/89-Cus.(NT), dt.30.6.1989, No. 7/93-Cus.(NT), dt.25.1.1993, No. 10/95-cus. (NT), dt.1.3.1995, No. 12/96-Cus. (NT), dt.11.3.1996, No. 72/97-Cus.(NT), dt.22.12.1997 and No. 90/98-Cus.(NT), dt.12.11.1998]

SECTION 110 (2) OF THE CUSTOMS ACT, 1962

Sub-sec. (1) of sec. 110 authorizes seizure, the only requirement being reasonable belief on the part of the concerned officer at the time of seizure. The powers of seizure founded on a mere reasonable belief being obviously an extraordinary power, the second sub-section envisages completion of the enquiry within a period of six months from the date of seizure. But it provides that if such an enquiry is not completed within that period and a notice under Sec. 124(a) is, therefore not given, the person from whom the goods are seized becomes entitled to their restoration. However, on the supposition that in some cases such an investigation may not be completed owing to some difficulties, the legislature gave under the proviso power to the Commissioner, an officer superior in rank, to extend the time on two conditions, namely, (1) it does not exceed one year, and (2) on sufficient cause being shown. The policy of the legislature, therefore, clearly was that in view of the extraordinary power of seizure, the enquiry should ordinarily be completed within six months but since it might not be possible to do so in some cases, it gave power of extension to the Commissioner. The legislature was thus careful to entrust the power of extension would have to be asked for and granted are thus envisaged as exceptions to the general rule of six months laid down in sub-sec. (2). The second limitation to the power is that such as extension can be granted only on sufficient cause being shown, a phrase often used for condonation of delay, such as, sec. 5 of the Limitation Act, 1908.

There can be no doubt that the proviso of second sub-section of sec. 110 contemplates some sort of enquiry. The Commissioner, obviously, is expected not to pass extension orders mechanically or as a matter of routine, but only on being satisfied that there exists facts which indicate that the investigation could not be completed for *bona fide* reasons within the time laid down in sec.110 (2) and that, therefore, extension of that period has become necessary. He cannot therefore, extend the time unless he is satisfied on facts placed before him that there is sufficient cause necessitating extension. The burden of proof in such an enquiry is clearly on the Customs officer applying for extension and not on the person from whom the goods are seized. The question, therefore, is as to the nature of such a function and power entrusted to and conferred on the Commissioner by the proviso. It will be noticed that whereas sub-sec. (1) of sec. 110 uses the expression 'reason to believe' for enabling a Customs officer to seize goods the proviso to sub-sec. (2) uses the expression 'sufficient cause being shown'. It would seem that sub-sec. (1) does not contemplate an enquiry at the stage of seizure, the only requirement being the satisfaction of the concerned officer that there are reasons their illegal importation. Even so, such satisfaction, is not absolutely subjective in as much as the reasons for his belief have to be relevant and not extraneous. It is clear that the legislature was not prepared to use the same language while giving power to the Commissioner to extend time and deliberately used the expression 'sufficient cause being shown'. The words 'sufficient cause being shown' must mean that the Commissioner must determine on materials placed before him that they warrant extension of time. Where an order is made in *bona fide* exercise of power and reading the provisions of the Act which confers such power, the order undoubtedly is immune from interference by a court of law, and, therefore, the adequacy of the cause shown may not be ground for such interference. But there can be no doubt at the same time that the enquiry to be held by the Commissioner has to be on facts, i.e. materials placed before him. There is, therefore, no question in such cases of the subjective satisfaction of the Commissioner for, what he is asked to do by the proviso is to determine that the cause shown before him warrants an extension of time.

The right to restoration of the seized goods is a civil right which accrues on the expiry of the initial six months and which is defeated on an extension being granted, even though such extension is possible within a year from the date of the seizure.

An *ex parte* determination by the Commissioner would expose his decision to be one-sided and perhaps one based on an incorrect statement of facts.

Notice under section 124(a) of the Customs Act and service thereof. – Sub-sec. (2) of sec. 110 requires notice under sec. 124(a) to be ‘given’ to the person from whose possession the goods were seized within six months of the seizure of the goods. This is a mandatory provision in the sense that failure to do so entitles the person from whose possession the goods were seized to get return of the same. Incidentally, Sec. 124 of the Act provides that no order confiscating any goods or imposing any penalty under the Chapter (Chapter XIV) shall be made on any person unless the owner of the goods or such person –

- (a) is given a notice in writing;
- (b) is given an opportunity to make a representation in writing.

Interestingly, sec. 124(a) does not provide any time limit for issuing such show-cause notice. The object of service of such notice is also different so far as sec. 124 is concerned, through in view of sec. 110(2), the goods seized should be returned for non-service of such notice within the specified time frame. It does not, however, denude the adjudicating authority of the power to initiate proceedings even thereafter.

As to the service of notice, sec. 153 of the Act provides that it may be effected –

- (a) by tendering it or sending it by registered post; or
- (b) affixing it on the notice board of the customs house, if it cannot be served in the manner provided in clause (a).

Service of order, decision, etc. – Any order or decision passed or any summons or notice issued under this Act, shall be served-

- (a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or
- (b) if the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house.

Period of limitation under section 110(2) – whether affects proceedings under section 124. – Sec. 124(a) makes service of notice upon the concerned person or the owner of the goods, a pre-condition to confiscation of goods or imposition of penalty. Incidentally, the section does not provide any time limit for issuing such show-cause notice, through sec. 110(2) does. Now, sec. 110 relates to seizure of goods, which the proper officer has reason to believe, are liable to confiscation. Service of notice in respect of such seized goods under sec. 124(a) is necessary in order to enable the concerned person to show cause why such seized goods shall not be confiscated or why personal penalty should not be imposed on him. Sub-sec. (2) of sec. 110, in this connection, provides that where any goods are seized under clause (a) of sec. 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. Thus, so far, as sec. 110 is concerned, non-service of notice under sec. 124(a) within the prescribed period, renders such goods returnable. The legislative object behind this provision is obviously, not to allow the Customs authorities to keep the goods under seizure for indefinite time without a proper enquiry being held as to whether such goods are actually liable to confiscation. So, in relation to sec. 110, non-service of notice within the prescribed period affects merely the validity of the seizure. It does not affect the confiscation and penalty proceedings as contemplated by sec. 124. Because though the goods seized on a reasonable belief that they are liable to confiscation, proceedings may still be held and / or continued.

Time - limit of six months – whether applicable to seizure under section 110(3).

Sec. 110(1) of the Act deals with seizure of goods; sub-sec. (2) stipulates the condition when the seized goods are to be returned and sub-secs. (3) and (4) deal with the documents seized. The Legislature in its wisdom thought it proper to lay down condition and time for return of seized goods, but has not done so in case of seized documents. In view of this it cannot be urged that along with the seized goods, seized documents should also be returned. It is, however, expected that the seized documents would be retained so long they are required for investigation etc & should not held indefinitely.

CONFISCATION OF GOODS

Section 126 of the Customs Act, 1962, which deals with the confiscation of goods is reproduced below:

On confiscation, property to vest in Central Government. - (1) When any goods are confiscated under this Act, such goods shall thereupon vest in the Central Government.

(2) The officer adjudging confiscation shall take and hold possession of the confiscated goods.

Confiscated goods are vests in Central Government. – Section 126 of the Customs Act specifically provides that when any goods are confiscated under the Act such goods shall thereupon vest in the Central Government. It is also evident from the provisions of Sec. 141 of the said Act, that goods in the customs area shall be subject to the control of the officers of customs, undoubtedly, the imported goods were unloaded from the ship in the customs area. So these were under the control of the officers of Customs. Moreover, after confiscation of the entire consignment of imported goods, the same vested in the Central Government in accordance with the provisions of Sec.126 of the said Act.

A direction should be given to the Customs Authorities to start an adjudication proceeding for which they will make an enquiry on the documents and materials to be produced by the parties and thereafter shall come to a conclusion as to whether the writ petitioner is entitled to release of the goods in question. At the time of such hearing it will be upon to the Customs Authorities to decide as to whether in view of the order of the Commissioner of Customs confiscating the goods and liberty given to the importer to get the goods released on redemption in lieu of confiscation, the consigned goods which have been confiscated by the said order are to be held as properties of the Central Government on confiscation in terms of Sec.126 of the Customs Act.

In the instant case, the submission of Counsel for the petitioners is that pending the adjudication, the respondents be directed to sell the seized goods by public auction, as they are perishable in nature. These goods had been seized under Sec. 110 of the Customs Act, 1962, which is permissible under the provisions of the Excise Act. Section 126 of the Customs Act states that where any goods are confiscated under that Act, then such goods shall thereupon vest in the Central Government. This being so, no direction could be given to the respondents to sell the seized goods by public auction as prayed by the petitioners. The petitioners have also failed to substantiate that the seized goods are perishable in nature. The writ petition is, therefore, disposed of finally directing the respondents to conclude the adjudication expeditiously.

Provisions of Sec. 126 are applicable when goods are absolutely confiscated.– Condition of fixing time limit while extending the option for redemption of goods is not in exercise of any statutory powers given under the provisions of the Act, but is as an ancillary and the same has to be exercise rationally and

always carry with them an additional discretion to grant extension thereunder. As regards the provisions of Sec. 126 are concerned, the same only provided that where any goods are confiscated under the said Act, such goods shall thereupon vest in the Central Government. The confiscation in the instant case is not an absolute confiscation. The same with condition extending option to the appellant, to redeem the same. In case of exercise of option by the appellant, the vesting of such confiscated goods in the Central Government does not arise at all. The provisions of Sec. 126 are applicable in cases where the goods are either ordered to be absolutely confiscated or where the persons to whom the option have been given for redemption of the goods do not exercise such an option. The appellant having deposited the money also the provisions of Sec. 126 cannot be said to have any effect.

Certain officers required to assist officers of customs. - The following officers are hereby empowered and required to assist officers of Customs in the execution of this Act, namely, -

- (a) officers of the Central Excise Department;
- (b) officers of the Navy;
- (c) officers of Police;
- (d) officers of the Central or State Governments employed at any port or airport;
- (e) such other officers of the Central or State Government or a local authority as are specified by the Central Government in this behalf by notification in the Official Gazette.

1. Officers of the Enforcement Directorate – powers.- Sec. 151 of the Customs Act empowers the officers mentioned in the section to assist officers of customs in the execution of this Act. Officers of the Enforcement Directorate have no power to seize articles from persons. They can merely assist the officers of the customs in the execution of the Act – *Vasantlal Ranchhoddas v Union of India* AIR 1967 Bom 138.

2. Police officers – powers.- Sec. 151 does not empower police officers to exercise the powers of customs officers under the Customs Act, 1962. They can simply assist the customs officers. Where gold is seized by police officers and subsequently transferred to the customs authorities, the seizure could not be said to have been effected under the Customs Act by invoking sec. 151 – 1970 All LJ 390.

PANCHNAMA (SEARCH LIST) DRAWING OF –

- (i) The Search list, as far as practicable must be prepared in the premises from which the goods were recovered. In a case where more than one room is searched in a building the search list can be prepared in any; one of the rooms from which the goods are recovered. When goods liable for confiscation are found in different rooms they must be shown to the search witnesses in the rooms where they are found before they are removed to another room. It is to be borne in mind that immediately on detection, the goods should be allowed to remain in its original place until the search witnesses have seen them.
- (ii) In a case where goods are recovered from the person of a carrier as a result of personal search, the search list may either be drawn in the premises where the person is searched or if it is not practicable at the spot as near to the search premises as possible.
- (iii) Great care should be exercised in selecting exhibits, which have a bearing on the mode of concealment etc. The officers should invariably take possession of the packages, boxes, bags, writing papers, containers in which the goods were concealed etc.
- (iv) While seizing the documents, the following procedure should be adopted :
 - (a) All loose documents should be signed by the witnesses.

- (b) Each page of all exercise books registers etc. must be numbered and the pages containing writing must be signed by the witnesses. The number of written pages and the pages should be separately indicated in the documents.
- (c) The first and last document in the register, the exercise books etc. must be signed by the witnesses.
- (d) The seizing officer will also cause all seized goods to be property sealed with the Customs seal as well as the seal of the accused (if any) if he so desires.
- (v) As required under Section 103(2) of the Criminal Procedure Code a list of all things seized in the course of the search and of the places in which they are respectively found shall be prepared by the officer executing the search warrant and be signed by the two witnesses. As far as possible, a full inventory should be prepared before the seizure. Where for any reason this is not possible, with the owner's consent, the goods may be seized in packages, bundles, boxes etc. and the containers sealed carefully with the owners seal and the seal of the supervising Customs Officer. A memo should be served on the spot directing the owner to attend the Custom House on the specified day and time for the preparation of the detailed inventory, examination and valuation of his goods. If in spite of this memo, the owner fails to attend the Custom House within the specified time-limit for examination of the goods etc. the goods may be examined in his absence before two independent witnesses.

SEIZURE OF VEHICLES, MACHINERY GOODS – INVENTORY OF ACCESSORIES TO BE TAKEN

Whenever vehicles, cars or machinery goods are seized by Customs Officers, they should record not only all the specifications and descriptions of the articles but also clearly record the presence or absence of the accessories and tools such as stepney, battery, horn, condition of cushion, winding handles etc. for this purpose if the vehicle seized is in a very poor condition the services of a professional surveyor may be availed of, if necessary. All the Preventive Officers should, therefore, note that if any doubt arises at a later stage regarding the exact condition of such seized articles owing to acts of omission on the part of the seizing officers, the Senior Officer making the panchnama will be held responsible on the matter.

[Board's letter F. No. 20/21/60-Ad. V dated 7.2.1962]

Streamlining of procedure for seizure of goods and preparation of Panchnama-guidelines

The Central Vigilance Commission, in one of its annual report has observed that the procedures for seizure of goods, and preparation of "Panchnama" needed to be streamlined, as in a number of cases, several deficiencies were allowed to remain in these areas, due to which, the vigilance cases initiated against particular officers could not succeed at enquiry stage eventually. The officers stressed on certain omissions / deficiencies to counter department's relied upon evidence and this could not be ignored by the Enquiry officer. It has also come to Board's notice that as the laid down guidelines are not followed strictly, unnecessary complaints are received e.g. searches by unauthorized persons or seizures not recording all the goods recovered or copies of seizure memos / Panchnamas not being given. Deficiencies in Panchnama is often also exploited by the unscrupulous parties involved in smuggling / tax evasion and they escape penalty / punishment otherwise due, by establishing that the Panchnama did not reflect the facts properly & therefore could not be relied upon.

2. The Board would like you to ensure that officers under your charge, engaged in enforcement / preventive functions, scrupulously adhere to the laid down guidelines while undertaking any searches of any premise, place or person(s) or effecting seizure of any goods in such searches specially valuables

like currency, watches, precious and semi precious stones, gold / silver (including jewellery), sensitive goods like narcotics, arms and ammunition or other contraband goods of considerable value etc. Though a large number of instructions already exist on the procedure to be followed (some of which are given in the Department's Preventive Manual), some of the important points mentioned below are reiteration for guidance of field officers:-

- (a) The search of the premises / persons should be conducted, invariably, by persons with due authorisation / authorities, in the presence of two independent and respectable Panch witnesses of the locality and the occupants of the place or their representative(s). The leader of the party conducting search must show / read out the search authorisation to the Panch witnesses as well as the occupants of the premises or their representative(s) and must obtain their signatures on the search authorisation, in token of the same having been seen by them;
- (b) All the members of the search party, before starting search, must offer themselves for being searched by the witnesses and / or the occupants of the premises and / or their representative(s), and this fact must be clearly incorporated in the Panchnama. Great care must be taken in recording in the Panchnama, all relevant & precise details of the incriminating goods including valuables, currency notes or documents recovered and seized during the search. The denominations of currency & total amount, details of valuables or other contraband goods (with identification marks, wherever possible), both in quantities and value term and the manner of packing / sealing of the goods seized, should be clearly mentioned in the Panchnama, to avoid any controversy of the actual contents / value in different seized packages, at a late date;
- (c) Detailed inventory of all contraband goods on Customs side or clandestinely manufactured / unaccounted excisable goods etc. on central Excise side proposed to be seized under the reasonable belief that these are liable to confiscation under the provisions of Customs Act, 1962 / Central Excise Act, 1944 should be prepared & got duly authenticated by the Panchas as well as representative(s) of the person(s) whose premises are searched;
- (d) The description of places / packages etc., from where these goods / currency / valuables etc, were recovered & if concealed, the manner of concealment etc., in cases of sensitive goods and even other goods seized – should be clearly mentioned, (unless it becomes impractical to undertake a detailed inventory of contents of each packages) and each package should be got sealed and labelled, presence of Panchas and the owner / person incharge, from whose premises these goods are recovered and labels got duly signed;
- (e) The detailed inventory, as stated above, and copies of Panchnama, on each page, must be got signed by the Panchas and the owner / person incharge of the premises, who have witnessed the search / seizure & a copy of the Panchnama shall be handed over to him;
- (f) It should be clearly mentioned in the Panchnama that except for the documents / goods seized under Panchnama, nothing else was seized and / or taken in possession;
- (g) The time and date of starting the search as well as the time and date of concluding the search, should be clearly mentioned in the Panchnama and a facsimile of the seal used during the search should also be embossed on the Panchnama;
- (h) Any untoward incidence occurred during search should be clearly mentioned in the Panchnama. If search was conducted smoothly, this fact should be mentioned in the Panchnama;

- (i) On completion of the search, all members of the search party, must again offer themselves for being searched by the witnesses and / or the occupants of the premises, and / or their representative(s) and this fact should also be incorporated in the Panchnama;
- (j) On completion of the Panchnama, it must be read over to all concerned, in vernacular, and signatures of Panch witnesses as well as occupants of the premises / their representative(s) should be obtained on the Panchnama;
- (k) A copy of the Panchnama should be handed over to the occupants of the premises or their representative(s), under proper acknowledgement.

[Ministry's letter No. 394/226/98-Cus (AS) dt.30.8.1999]

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CHAPTER - SEVEN

INVESTIGATION

PRELIMINARY

Investigation constitutes one of the most important functions of the Intelligence branch. Establishing an offence depends entirely on efficient investigations. The nature of the investigations varies from case to case. However, in so far as, Customs cases are concerned, basically investigation will mean the efforts to locate the source of the offending goods, the brains behind the entire smuggling operations, the operators, funds, etc. The investigating officer is required to keep his knowledge update about all the relevant laws, rules / regulations so as to come to a proper logical conclusion about the case entrusted to him for investigation.

One of the important tools of investigation is interrogation, which is widely used in Customs cases. The main reason being that the statements recorded by Customs Officer are not hit by Sec. 25 of the Evidence Act.

In the Customs department, interrogation is very often treated as a casual recording of a statement in relation to a particular incident. Interrogation is entrusted to any one who is available without consideration whether the officer has the necessary background and ability to interrogate the person. Interrogation is an art, or perhaps even a science. The interrogator will have to approach his subject, i.e., the person under interrogation in the proper way so that he can elicit as much information as possible from a subject. The ability to conduct a good interrogation is closely related to the experience that the interrogating officer has. His personality counts a lot.

An interrogation cannot start in vacuum. The interrogator must prepare the outlines of his approach and his questions before actually commencing the interrogation. Preparation would include the acquisition of a thorough knowledge of the background data regarding the subject and complete details regarding the particular incident, which had resulted in the person being brought for interrogation. At the same time the officer should be capable of switching his approach depending upon the developments during the course of interrogation.

At the outset, every officer should inform the subject about the provisions of the Customs Act, particularly regarding the need for the subject to be truthful in his statement. The provisions of Section 108 of the Customs Act should be explained in a language, which the subject understands. The particular way in which an interrogation is commenced would naturally depend upon not only the personality of the subject but also the extent of his involvement.

STATEMENT UNDER THE CUSTOMS ACT

Recording of the interrogation is known as 'statement'. Section 107 of the Customs Act, 1962 stipulates that:

"Any officer of Customs empowered in this behalf by general or special order of the Commissioner of Customs may, during the course of any enquiry in connection with the smuggling of any goods –

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

Section 107 refers to an enquiry by a Custom Officer. Such enquiry does not have the attributes of judicial proceedings unlike the enquiry under Section 108. It also does not enable the enquiry officer to compel the attendance of witnesses or production of documents or things, and the witness also cannot be

compelled to speak the truth under penalty. What Section 107 contemplates, is therefore, a less formal and rigorous type of enquiry by Customs officer; whereas Section 108 contemplates an enquiry which is considered to be a legal proceedings. But neither the enquiry under Section 107 nor the enquiry under Section 108 can in any way, in substance or in law, be considered to be the same as an investigation into a Criminal offence, by an officer in-charge of a Police Station under Chapter XIV of the Code of Criminal Procedure.

Section 107 of the Act does not empower any and every Gazetted Officer of the Customs Department to record statements during the inquiry under the Section. It specifically says that only an officer of the Customs empowered in that behalf by general or special order of the Collection of Customs can record statements under the Section.

Under Section 5(2) of the Customs Act, 1962 vide Office Order No. 5 dtd. 1.2.1963 issued by Commissioner of Customs, Bombay, from the file C1086/63, all officers except Clerks and Class IV officers, of the Preventive Department are the officers empowered to record the statement under Section 107 of the Customs Act, 1962.

POWER TO SUMMON PERSON TO GIVE EVIDENCE AND PRODUCE DOCUMENTS

Sec. 108 of the Customs Act 1962 stipulates that –

- (1) Any gazetted officer of Customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods.
- (2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.
- (3) All persons so summoned shall be bound to attend either in person or by an authorised agent, as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required.

Provided that the exemption under Sec. 132 of the Code of Civil Procedure, 1908 (5 of 1908) shall be applicable to any requisition for attendance under this section.

- (4) Every such inquiry as aforesaid shall be deemed to be judicial proceedings within the meaning of Sec. 193 and Sec. 228 of the Indian Penal Code (45 of 1860).

DOCUMENTS :

Customs Act does not define 'Document.' Section 3(18) of General Clauses Act define 'Document' as under -

“ Document includes, “ any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording the matter.”

This definition has to be applied to Customs Act, 1962.

SMUGGLING:

In this context, the expression 'smuggling' has been defined in Sec. 2(39) of the Act to mean any act or omission which will render such goods liable for confiscation under Sec. 111 or Sec. 113. The same definition has been adopted in COFEPOSA Act. Even the general concept of the smuggling has two elements; one, the bringing into India of goods the import of which is prohibited; and two, the bringing into country's stream of goods the import of which is permitted, without paying the Customs duty which

they are chargeable. The second eventuality can occur not only where there is a Clandestine import evading the assessment of duty, but also where there is a clandestine removal without payment of duty

Under Sec. 108 of the Customs Act, 1962, a Customs Officer is given the power to interrogate any person in connection with the smuggling of any goods which is officers' duty to prevent. Such a person may have nothing to do with the smuggling although he may know the whereabouts of the goods and persons. Sub-sec. (3) of sec. 108 does not compel any person to make a statement, but if he makes a statement he has to state the truth in order to avoid punishment under Sec. 193, IPC. At that stage nothing may be known as to whether an offence has been committed or who has committed it and the person interrogated at that stage certainly is not a person accused of or charged with an offence. He is merely called upon to give evidence to facilitate the inquiry. He is not a witness giving evidence in a court and his testimony will make him liable under Sec. 193., IPC, because of the express provision of law in sub-sec (4) of [Sub-sec. (4) of sec. 108 of the Customs Act, 1962.]

SUMMONS -

Under Section 108 of the Customs Act, 1962, Section 14 of Central Excise & Salt Act, 1944, Summons, as understood in the legal parlance, is an intimation requiring the person to whom it is issued to appear to give evidence and/or to produce some documents. It is not an order in the sense that it decides any question or communicates a decision taken.

PROFORMA OF SUMMONS UNDER SECTION 108 OF THE CUSTOMS ACT, 1962.

OFFICE OF THE COMMISSIONER OF CUSTOMS,
(Name and address of the section)

SUMMONS UNDER SECTION 108 OF THE CUSTOMS ACT, 1962

Summons No. File No.

WHEREAS, I, of Customs, duly employed in the prevention of smuggling, consider the attendance of Shri necessary for giving evidence and / or producing relevant documents in respect of an enquiry being made by me in connection with the alleged smuggling / seizure of on

WHEREAS, I am satisfied that the relevant documents are in your possession or under your control. Now, therefore, in exercise of the powers conferred on me under Section 108 of Customs Act, 1962, I hereby summon you to appear before me in person to give evidence and / or produce the below mentioned documents at(place) on the day of(year) at hours.

You are not to leave the above-mentioned Customs Office without leave and - if the case is adjourned – without ascertaining the date of adjournment.

Non compliance with these summons is an offence under Sections 174 and 175 of the Indian Penal Code, 1880.

You are warned that giving false evidence in these enquiry proceedings is an offence punishable under Section 193 of the Indian Penal Code.

ISSUED TODAY, THE DAY OF ,(year)

Documents required:

..... OF CUSTOMS
.....(Name & address of Office).....

(Seal of Office)

ADMISSIBILITY OF A CONFESSIONAL STATEMENT MADE UNDER THE CUSTOMS ACT

As to the admissibility of a confession made by a person summoned for an enquiry under Section 107 of the Customs Act, 1962, it can be seen that such a person is not an accused person and the officer summoning that person is not a Police officer. Any confession made by such person is admissible in law since it is not hit either by Section 25 or Section 26 of the Evidence Act. However, if it is shown in a given case that such a confession was obtained by the Customs officer by exertion of inducement, threat, coercion or duress, or extracted by illegally detaining the person in an unauthorised prolonged custody, or obtained by using third degree methods, then the question about the acceptability and reliability of such involuntary confession would arise.

CONFESSIONAL STATEMENT – when admissible :

It is a fundamental basic principle of criminal jurisprudence that caution must be administered to a person from whom a confessional statement is recorded that the same could be used against him in a judicial proceeding. Section 164 Cr. P.C. uses and refers to the expressions, “Confessions and Statements”. In other words, the distinction between statements and confessions was kept in mind while enacting Section 164 Cr.P.C. It is well settled that all confessions are statements, but all statements are not confessions. Section 108 of the Customs Act authorising the empowered authority to record what the person summoned, states. A plain reading of Section 108 of the Customs Act, makes it clear that it does not enable the empowered authority to record a confessional statement from a person summoned thereunder. In the absence of any such power conferred under Section 108 of the Customs Act, the empowered authority can only fall back upon Section 164 Cr.P.C. to record a statement of confessional nature from the person summoned. As already stated, Section 164(2) Cr.P.C. enacts that the Magistrate while recording a confessional statement, must administer the warning or caution to the person making the confessional statement, that the same would be used against him. The same caution or warning, it follows, must also be administered to the person summoned, under Section 108 of the Customs Act by the empowering authority. Non-compliance with the mandatory provisions contained in Section 164(2) Cr.P.C. is not curable under Section 463 Cr.P.C. and renders the statement so recorded inadmissible in evidence. It, therefore, follows that unless the empowered authority under Section 108 of the customs Act administers the caution or the warning embodied under Section 164(2) Cr.P.C. before recording a statement of confessional nature, from the person summoned, the statement so recorded will be inadmissible in evidence for any purpose. In other words, the impugned statements recorded by the empowered authority under Section 108 of the Customs Act are inadmissible in evidence and liable to be eschewed from consideration for any purpose, as no caution or warning embodied under Section 164(2) Cr.P.C. was administered to the person from whom the said statements were recorded.

INTERROGATION OF SUSPECTS :

Whilst the following suggestions will apply to the majority of interrogations, they obviously have to be varied with particular circumstances and suspect. Perhaps, to assist in this performance, suspects could be divided into the following three categories:

- a) Suspects who will confess readily;
- b) Suspects who will confess their part in crimes, only after lengthy and skilful interrogation;
- c) Suspects who decline to answer questions.

One of the most consistent weaknesses in the interrogation of suspects who readily confess is that interrogators are apt to shorten the interrogation and not all essential questions are not put to cover every aspect of guilt. Additionally, they frequently overlook the fact that although the suspect did confess quite early in the interrogation, he almost invariably made certain denials at the start.

Before asking any specific questions about a particular crime, remember that the suspect may have committed other offences and that a vague question may lead him to confess a number of other offences. Very often, he himself will open the conversation by asking "Just what am I, supposed to have done this time?" Instead of mentioning the crime under enquiry a reply "you know very well why you are here, what about telling us the truth?" Can often lead to the clearing up of other crimes. This is particularly how this unintelligent suspects and juveniles who will very often admit crimes of which the interrogating officers were not even aware.

The following are rules that should be considered in all interrogations:

- (1) Open the interrogation as friendly and firmly as the circumstance may permit.
- (2) Attempt to develop in the suspect's mind impression that you are in possession of substantial evidence to establish his guilt.
- (3) The suspect will be attempting, early in the interrogation, to decide how much evidence you have against him and whether or not you are bluffing on certain aspects.
- (4) Sympathetic enquiries as to whether or not he is able to obtain bail, how his family may fare in his absence, whether they can obtain social services, accommodation, etc., whilst he is in jail, are undoubtedly the most convincing matters which can be put to develop in him the certainty that you have solid evidence against him.
- (5) Not only do these questions conform to your planning, but they are also enquiries which will, in most cases, convey to the suspect that you have a sympathetic and genuine interest in his welfare and the future of his family.
- (6) Be careful not to exaggerate the seriousness of his offence. If possible, take the opposite stand and look for factors, which will reduce the offensiveness of his crime and make confession easier for him.
- (7) In difficult cases, direct your questions to establish suspect's presence at the crime scene. This is vital and, having placed him at the scene, you may then question him about his complicity in the crime itself.
- (8) Avoid complicated or double questions.
- (9) Once the interrogation is well under way, keep a constant stream of questions directed to the suspect. Keep talking so that he is forced to think and answer questions fairly quickly.
- (10) Do everything possible to keep pressing on him so that he will go on answering your questions. The more he talks, the more he will lie or the more he will say things, which will establish his innocence or guilt.
- (11) Where he has not answered a question, repeat the question or state quite firmly "Come on now, what do you say about that?"
- (12) Avoid, at all costs, long periods of silence, suspects under pressure are often on the verge of confessing but if allowed time to reconsider will frequently change their minds.
- (13) Remember at all times that whilst he is talking about the crime, he is building up a word picture you can visualize. It may be true or false but in most cases it will be part truth and part falsity.
- (14) Where he is answering questions it is generally best to follow this order:
 - (a) a broad question first;
 - (b) then a narrower one; and
 - (c) a very specific question to remove any ambiguity.
- (15) Do not be too quick to tell the suspect you know he is lying. Allow him to commit himself to a false story at some length, then go back over it and point out some (not all, at this stage) of his lies.
- (16) This method makes him wonder just how much you know or more importantly whether there is anything in fact, you don't know.

- (17) At this stage, ask him to go over his story again, but tell him this time not to waste your time and his by telling you lies.
- (18) By not pointing out all his lies on the first occasion you have retained an important check on the next story he begins to tell you.
- (19) On the second occasion, stop him quickly and firmly at the first direct lie and let him see you are displeased with his false story. If the interrogator does this convincingly the suspect will, in most cases, immediately confess his part in the crime.
- (20) With difficult suspects, the interrogator should first question him about minor facts and surrounding issues; avoid direct questions as to the offence itself.
- (21) Having established the presence at the crime-scene and obtained his agreement to these minor points, gradually work up to the major issue of his part in the crime itself.
- (22) Not only have you now developed valuable evidence but you have made it more difficult for him to deny complicity and perhaps have made it easier for him to confess.
- (23) Having in your possession studies of his previous modus operandi you should be in an excellent position to question him on similarities between the present crime and those committed by him in the past.
- (24) Where suspect has been answering questions but now refuses to do so, a stage has been reached where it can almost certainly be assumed that he is the guilty person.
- (25) If he persists in his refusal to answer, make written notes about his physical reaction at this time. For example: Have his hands started to shake? Are there tears in his eyes? Have his lips commenced to tremble? Does he generally appear to be agitated or unsettled?
- (26) Do not overlook other questions, which can be put to him even though he still declines to answer.

HOW TO RECORD A STATEMENT :

As a direct result of interrogation, statements have to be recorded. It is significant to note that the Customs Act, 1962 does not prescribe any procedure for recording of statements.

The absence of a proper prescribed procedure for recording of statements has resulted in wide variance and disparity in the form and manner in which statements are being obtained. This has also resulted in officers having to face accusations of malpractice, unjustifiable exercise of power, irregularities, illegalities, etc.

As a matter of manifest convenience and usefulness, it is necessary that all officers follow a uniform manner and format for recording of statements. A systematic and detailed pattern of questioning and recording the statement is necessary to project a profile of fair functioning. Before recording of a statement particularly under Sec. 108 of the Customs Act, 1962 it is mandatory to incorporate the following clauses. The details of which are as under :-

“I am in receipt of your summon no.dated..... issued byI have been explained the provisions of Sec. 108 of the Customs Act, 1962 and have been warned that giving false evidence in these enquiry proceedings is an offence punishable under Sec. 193 of the Indian Panel Code. Further, I have also been warned that my statement can be used against me in this enquiry proceedings or in any other proceedings which may be initiated against me.”

PATTERN OF RECORDING OF A STATEMENT :

- (1) The relevant Act and section should be boldly indicated. e.g.
'Statement recorded under Section 107/108 of the Customs Act, 1962.'
- (2) Full name and address of the person giving the statement.
- (3) Full name and designation of the officer recording the statement.
- (4) If the person giving the statement has been summoned, indicate the reference number and date of issue of summons. If the summons is oral, it should be so indicated and also the manner, whether telephonic or through messenger.
- (5) Date and time of appearance of the person summoned for giving the statement.
- (6) Information about the person.
 - (a) Full Name and aliases if any.
 - (b) Address : (I) Business
(II) Residential
 - (c) Age. Date of Birth
 - (d) Occupation
 - (e) Names and addresses of partners, if any
 - (f) Annual income
 - (g) Marital status
 - (h) No of Children
 - (i) Languages known – read/write/speak
 - (j) Any known medical complaints

Note : The more background details that can be elicited, the better.
- (7) Why the person is giving the statement.
- (8) Factual details of the case as known to the person.
- (9) How the above facts are known to the person:
 - (a) Personal knowledge
 - (b) Hearsay
 - (c) Documentary evidence
 - (d) Material evidence
- (10) If the evidence is hearsay, explanation of the person as to why it is reliable.
- (11) If other people are sought to be implicated, get:
 - (a) Full identification
 - (b) Address
 - (c) Age
 - (d) Precise role played
- (12) The nature of the violation committed.
- (13) Affirmation that all details have been truthfully disclosed and voluntarily given.
- (14) Full signature and name to be obtained at the end of each page of statement. Check genuineness of signature.
- (15) Date and time of conclusion of statement.
- (16) Full name, signature and designation of officer recording the statement.

AUTHORISED AGENT :

In this regard, the expression `authorised agent' (of the person summoned) has not been defined, but Sec. 146 A of the Customs Act defines an `authorised representative' as hereunder:

- (a) his relative or regular employee; or

- (b) a Custom House Agent licensed under sec. 146; or
- (c) any legal practitioner who is entitled to practice in any civil court in India; or
- (d) any person who has acquired such qualifications as the Central Government may specify by rules made in this behalf.

Qualifications for authorised representatives. – For the purposes of section 146A, an authorised representative shall include a person who has acquired any of the following qualifications, being the qualifications specified under clause (d) of sub-section (2) of the said section 146 A, namely: -

- (a) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or
- (b) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or
- (c) a Company Secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980); who has obtained a certificate a practice under section 6 of that Act, or
- (d) a post – graduate or an Honours degree holder in Commerce or a post – graduate degree or diploma holder in Business Administration from any recognised University; or
- (e) a person formerly employed in the Departments of Customs or Central Excise or Narcotics and has retired or resigned from such employment after having rendered service in any capacity in one or more of the said Departments for not less than ten years in the aggregate.

Explanation. – In this rule, “Recognised University” means any of the Universities specified below, namely: -

- I. Indian Universities
Any Indian University incorporated under any law for the time being in force in India;
- II. Rangoon University
- III. English and Welsh Universities
The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales;
- IV. Scottish Universities
The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews;
- V. Irish Universities
The Universities of Dublin (Thirty College), the Queen’s University, Belfast and the National Universities of Dublin;
- VI. Pakistan Universities
Any Pakistan University incorporated under any law for the time being in force;
- VII. Bangladesh Universities
Any Bangladesh University incorporated under any law for the time being in force.

Authority under section 146 A (5) (b). – The Commissioner of Customs having jurisdiction in the proceedings in which a person, who is not a legal practitioner, is found guilty of misconduct in connection with that proceeding under the Act shall be the authority for the purposes of clause (b) of sub-section (5) of section 146 A.

However, as it is clear from sub-sec. (3) of sec. 108 that appearance through authorised agent (which expression, it may be assumed, is synonymous with the expression ‘authorised representative’ as defined in sec. 146A) is not discretionary with the person summoned to appear for examination. The discretion lies with the summoning officer, who may direct the person summoned either to attend in person or by an authorised agent. And Sec. 146A (1) of the Customs Act, 1962 as already seen, makes it imperative for the person to appear personally and

not by an authorised representative when he has been directed to do so. Thus, a person summoned to attend personally under sec. 108, for examination, cannot insist for the assistance of a lawyer. And the reason is obvious. As a matter of fact sub-sec. (1) of sec.146A authorises any person who is entitled or required to appear before an officer of Customs etc. in connection with any proceedings under the Act, may appear by his authorised representative, *'otherwise than when required under sec. 108 to attend personally for examination on oath or affirmation'* (emphasis supplied). So, here there is a statutory bar for a person directed to appear personally for examination under sec. 108, to insist for appearance through a lawyer. In such a situation the question that arises for consideration is whether such a person directed to appear personally, is entitled to the assistance of a lawyer at the time of his examination by the Customs Officer. The question, as already seen, has been answered in the negative by the Madras High Court in Anil G. Merchant's case, though with some reservation as reported in (1985) 20 ELT 292 (MAD). Article 22 (1) of the Constitution, which provides, inter alia, that a person arrested and detained shall not be denied the right to consult and to be defended by legal practitioner of his choice. But since a person summoned to appear under Sec. 108 of the Customs Act, 1962 is neither arrested nor detained, Article 22(1) of the Constitution cannot be brought in aid by such person. He will be fully governed by Sec. 108 (3) and 146 (1) of the Customs Act, 1962.

NATURE OF STATEMENT :

Section 108 of the Customs Act, 1962 is conspicuously silent about the nature of the statement i.e. whether it should be written or oral, whether the person summoned should give the statement in his own hand-writing or the officer summoning will record the deposition in his own hand-writing. Sub-Sec. (3) of Sec. 108 of the Customs Act, 1962 only states that – “ all the persons so summoned shall be bound to state the truth upon any subject respecting which they are examined or make a statement..... “ Thus, it is left to the person whether he should write the statement or not. No person can be compelled to make a statement in his own handwriting. The person can choose to answer the question orally.(In the matter of Vitthalnathan Vs. Collector of Customs, Madras High Court).

COPY OF STATEMENT – WHEN TO BE GIVEN :

A person who has given a statement to a Customs officer cannot insist that a copy of the same should be given to him immediately. The right to get a copy of the statement occurs only at the stage of departmental adjudication or criminal prosecution in a court of law against the person. During the stage of investigation copies of the statement are not given. But, if the person wishes to keep a note of the submissions made by him he is at liberty to do so. He can separately make a written note of the questions and submissions. The departmental authorities cannot object to this. (Delhi High Court, Cr. M(M) No. 205 of 1983, Cr.M(M) No. 251 of 1983, K.T. Advani Vs. The State).

ROLE OF LAWYER DURING RECORDING OF A STATEMENT :-

Requiring a lawyer to be present while examining or interrogating a person during investigation is not permitted as held by Supreme Court in the case of-

Poolpandi V/s Supdt. Central Excise in a Criminal Application No. 301 and 302 of 1987.

SEC. 108 OF THE CUSTOMS ACT, 1962 DOES NOT REQUIRE THAT THE STATEMENT SHALL BE TAKEN ON OATH OR AFFIRMATION :-

It was reported in order No. 75/Cal/90-75 in Appeal No. C-389 of 1989 by Shri Sankaraman, Member (T) and T.P. Nambiar, Member (J), CEGAT Calcutta in the case of Md. Alangir Vs. Collector of Customs (Prev.) that -

Under Sec. 108 of the Customs Act, 1962 any gazetted officer of Customs shall have power to summon any person to give a statement and such person so summoned shall be bound to state the truth upon the subject respecting which were examined makes statement. There is nothing in Sec. 108 of the Customs Act, 1962 which requires that the statement should be taken on oath or affirmation.

INVESTIGATING THE STATEMENT :

Mere recording of a statement is not sufficient in law. There has to be an Independent confirmation of the version given in the statement. Obtaining the independent confirmation is the fundamental responsibility of the investigating officer. The statement is only a narration of the activities and the people involved in it. It need not represent the truth or the genuine facts. It can be just explanatory fiction, doubtful observation, wrong inference or even suspect evidence. The conclusions in the statement can be superficial or based on unsubstantiated rumour and speculation. The investigating officer has to ensure that he is not duped by outright false and convoluted information. Hence his first duty is to investigate the statement to ascertain the correctness of it.

The investigation has to be done systematically and scientifically. It should not be forgotten that often falsehoods are asserted and reiterated as truth. Hence the object of any investigation is to reveal the truth.

The simple and direct way to commence the investigation is to identify the verifiable data given in the statement. Elementary information like names, addresses, telephone numbers and location, are readily verifiable and if found correct begins to give a ring of authenticity to the statement. The statement has to be evaluated with other evidence and attending circumstances to prove the fact in issue. (Orient Enterprises Vs. Collector of Customs, Cochin – Order No. 584/1985-A, CEGAT New Delhi).

Where Suspect refuses to answer

Very often, suspect, having had legal or other advice, will refuse to answer questions put to him by the interrogator. This situation can be very difficult, particularly as courts and judges vary considerably in their decisions as to the admissibility of questions put thereafter. There is only one safe method and that is for the interrogator to pursue his questioning as vigorously as possible in an attempt to ensure that all conceivable questions are put to the suspect. The following procedure can be of assistance:

- (a) Ask suspect why he refuses to answer.
- (b) Be patient, take him quietly and explain to him that your inquiries have brought him under suspicion but he is innocent his answer to questions will undoubtedly assist in clearing him of this suspicion.
- (c) Inform him that you are prepared to go to any lengths to establish his innocence and will interview anybody he wishes, make any inquiries or transport him anywhere to assist.
- (d) If he persists to answer, keep asking questions to cover every aspect of crime.
- (e) Ask him if he has any witnesses or people who can provide him with an alibi or assist in establishing his innocence.
- (f) Try to pin-point the defence he will later put forward and question him now to destroy or nullify its effect.
- (g) Finally, if he has answered, put this question to him:
 “Are we take it from your refusal to answer questions that you have in fact no answer to the allegations which I have put to you?”

RETRACTION OF STATEMENTS

Retraction of a statement means to withdraw or revoke a statement. Very often, persons who give statements under Section 107 or 108, as the case may be, give intimation to the Customs authorities about their decision to retract the statements given by them.

The general reasons given for retraction are:

- (1) Statement recorded under coercion, threat and duress
- (2) Statement recorded by giving inducement
- (3) Statement dictated by the authorities

Belated retraction does not merit consideration. What will constitute a belated retraction will depend upon the fact and circumstances, and the reasons for belated retraction.

IMPORTANT FEATURES

	SECTION 107	SECTION 108
1.	Examination by any officer of Customs empowered in this behalf by general or special order of the Collector of Customs	Examination only by a Gazetted officer of Customs
2.	No requirement that person summoned is bound to state the truth	Person summoned is bound to state the truth
3.	Not a judicial proceeding	Deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860)
4.	Not a statement made by a person accused of an offence	Not a statement made by a person accused of an offence
5.	Not covered by Section 25 of the Evidence Act	Not covered by Section 25 of the Evidence Act
6.	--	Cannot be considered as an investigation into a criminal offence, by an officer-in-charge of a police station under Chapter XII of Code of Criminal Procedure, which is the test for the application of Section 25 of the Evidence Act
7.	--	Statement not hit by Article 20(3) of the Constitution
8.	Not applicable	If a person does not answer he is liable to be prosecuted under Section 228 IPC
9.	Not applicable	If a person gives false evidence he is liable to be prosecuted under Section 193 IPC for giving false evidence in a judicial proceeding
10.	--	Section 132 of the Evidence Act not attracted
11.	--	Not competent to administer oath to any person making statement

12.	--	Lawyer cannot be present
13.	--	Inducement, threat, coercion, duress not permissible
14.	--	Prolonged custody not permissible
15.	Not applicable	Cannot be treated as a confession recorded by a Magistrate, under Section 164 Cr. P.C.

The above are the prominent aspects of statements recorded under Sections 107 and 108.

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CHAPTER - EIGHT

ADJUDICATION

1.0 Introduction:

1.1 Customs Act is a complete code with its own procedure and its own papers. As far as the adjudicating proceedings in respects of seized goods are concerned, clear cut proceedings are prescribed under the Act. The Customs Department is functioning as a quasi-judicial tribunal.

1.2 When there is a power to decide and determine to the prejudice of a person the duty to act judicially is implicit in the exercise of such power. The duty to act judicially arises from the very nature of the function. It need not be shown to be super added.

1.3 When acted in a quasi-judicial capacity, the rigid court room proceedings are not called for. What is required is only to follow the principles of natural justice.

1.4 The doctrine of natural justice principally consists of two rules. "Nomo debit esse judex in propria causa", no none shall be a judge in his won cause and "Audi alteram partem", no decision shall be given against a party without giving him a reasonable hearing. (Menaka Gandhi vs. Union of India, AIR 1978 SC 597 per Bhagavati of P 626).

The audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed, should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral and documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence in his defense.

1.5 Section 124 of the Customs Act, which provides for issue of a Show Cause Notice, is in conformity with the principles of natural justice enumerated above.

2.0 Statutory provision:

2.1 Section 124 of the Customs Act, 1962, stipulates the provisions for issue of show cause notice before confiscation of goods etc.

2.2 No order of confiscation of goods or imposition of penalty shall be passed on the owner of the goods or any other person, unless

- a) A notice is given in writing to the owner or such person;
- b) Reasonable opportunity for making a representation in writing;
- c) Reasonable opportunity of being heard.

2.3 The notice and representation can be oral at the request of the person concerned.

3.0 Time limit for issue of Show Cause Notice:

3.1 No time limit has been specified in Section 124 for issue of the notice.

3.2 But sub – section 2 of Section 110 states that the goods seized under Section 110(1) will have to be returned to the person from whom it has been seized, if no notice under Section 124(a) is issued within a period of six months from the date of seizure.

3.3 Proviso to Section 110(2) provides for extension of the aforesaid period of six months, on sufficient cause being shown, for a period not exceeding six months by the Commissioner of Customs.

There can be no doubt that the proviso the second sub-section of Sec. 110 contemplates some sorts of inquiry. The Commissioner, obviously is expected not to pass extension orders mechanically or as a matter of routine but only on being satisfied that there exist facts which

indicate that the investigation could not be completed for bona fide reasons within the time laid down in Sec. 110 (2), and that therefore, extension of that period has become necessary. He cannot, therefore extend the time unless he is satisfied on facts placed before him that there is a sufficient cause necessitating extension. The burdens of proof in such an enquiry is clearly on the Customs Officer applying for extension and not on the person from the goods are seized. An ex-parte determination by the Commissioner would expose his decision to be one sided and perhaps one based on the incorrect statement of facts. How then can it be said that his determination that a sufficient cause exists is just and fair if he has before him a one-sided picture without any means to check it unless there is an opportunity to the other side to correct or controvert it. The difference in the language used in the first sub-section and the proviso to sub-section (2) lends support to the contention that the power in one case may be subjective, and therefore, not calling for an enquiry, and the power in the other is one, the exercise of which necessitates an enquiry into the materials placed before the Commissioner for his determination.

Thus these considerations lead to the conclusion that the power under the proviso is not to be exercised without an opportunity of being heard given to the person from whom the goods are seized. (Asstt. Commissioner v/s Charandas Malhotra, 1983 ELT (S.C.) 1477.)

4.0 Principles of natural justice:

- 4.1** Issue of a show cause notice is a preliminary requirement according to the principles of natural justice, which says no one should be condemned unheard. (Buharudin Hussain Vs. State Air 1970 AP 337). The issues of show cause notice is not merely a formality but is an essential requirement either of statutory provisions or the principles of natural justice to which all quasi – judicial authorities are bound. (Prem. Bus Services Vs. R.T.A. AIR 1961 SC 344, Rajasthan Tobacco Company Vs. Assistant Commissioner of Central Excise (1977 ELT J 636)
- 4.2** What principles of natural justice requires is not the issue of a Show Cause Notice as a formality, but of informing person concerned ass the grounds on which the action is proposed to be taken.
- 4.3** The notice should be specific and unambiguous. (Charan Das Malhotra Vs. Asstt. Commissioner of Customs AIR 1968 Cal.28).
- 4.4** The Show Cause Notice should contain all the grounds and allegations since order can not go beyond the show cause notice. (YACA (India) Pvt. Ltd. Vs. Union of India – 1980 ELT 227(Bom) and Wimco Ltd. Vs. U.O.I. – 1980 ELT 235 (Bom)).
- 4.5** When confiscation of the goods is proposed, show cause notices have to be issued to the owner of the goods and also to the person from whom the goods have been seized. Similarly, show cause notices have to be issued to all persons on whom penalties are proposed to be imposed.
- 4.6** Section 122 of the Customs Act, 1962 prescribes the powers of various officers to adjudicate offences. Section 124 (b) does not specifically provide that the person who passes the adjudication order must issue the Show Cause Notice. (Taraknath Sen Vs. U.O.I. AIR 1977 Cal.).
- 4.7** The Officer issuing the Show Cause Notice need not be the same, as the Officer adjudging the confiscation, as proceedings for Show Cause Notice do not form part and parcel of the adjudication proceedings. (Manilal B. Patel V. Kaul AIR 1976 Gujarat 134 – 39).

{So far as issue of show cause notice is concerned, it has been held that so long as the officer to whom the cause is to be shown is indicated in the notice itself, there is no objection to such a notice being issued by any other officer. It has to be borne in mind however, that even then, it is always open to the officer, who has finally to take the decision, to issue a fresh show cause notice if he feels that the previous one was inadequate or defective for some reasons or on some point. Where, however, cause has been shown to one officer as indicated in the show cause notice, but the final adjudication is to be done by another officer, it may not be held to be instruct consonance with the principles if natural justice.

If the latter does not issue a notice himself. Here also, however, to avoid delay, since justice delayed often amounts to justice denied, if the party concerned indicates in writing that he does not desire to show any further cause, the case may be decided without a fresh show cause notice being issued.

It is now settled law that an order of confiscation or penalty under the Customs Act is not a mere administrative or executive act, but is a quasi-judicial act and that, therefore, an application for a writ of certiorari lies in respect of such an order. Hence, the need for issuing a proper and comprehensive show cause memo, and adjudication order cannot be overemphasized.

[C.B.R. Letter F. No. 100/- 1/62-L.C.I. dated 5.2.62]}

4.7 In the Show Cause Notice along with the grounds and allegations, the provisions of statute contravened and the provision, under which action is proposed to be taken, should also be clearly mentioned.

{ Issue of Show Cause Notice Under proviso to Section 28 of the Customs Act, 1962

A doubt has been raised whether in the cases where the department had passed an order and at a later stage it has come to the notice of Department that the Importer had not only misrepresented the facts before the Commissioner but had also filed a manipulated and fabricated documents, a fresh show cause notice can be issued in such cases under the proviso to section 28 of Customs Act, 1962 for an extended period of 5 years.

The matter was referred to Law Ministry by Board for opinion. The Ministry of law after careful consideration of the issue and based on the decision in the light of the case of Pieco Electronics & Electricals Ltd. Vs. CCE, Pune [1994 (71)] ELT 1053 of the Supreme Court in the case of BOI Vs. M/s. Maheswari Woollen Mills (AIR 1993 SC 1251) has held that the competent authority can issue fresh show cause notice if new facts come to light. The aforesaid case related to Section 11A of the Central Excise & Salt Act, 1944, which is similar to Sec. 28 of the Customs Act, 1962, had opined that in the circumstances of the case, if the department is satisfied that the requirements of proviso to section 28 of Customs Act, 1962 are satisfied, then the competent authority can issue a fresh show cause notice if new facts come to light.

[Mumbai Custom House S. Order No. 7348 dt.3.2.98] }

Opportunity of making of representation:

5.1 Natural justice requires that copies of all documents such as panchanama, statements etc. and any other documents based on which the allegations are raised, are supplied along with the Show Cause Notice.

5.2 The Show Cause Notice must be accompanied with copies of statements and it can not be withheld mechanically on grounds of public interest; (Devichand Vs. Commissioner of Central Excise AIR 1965 A.P.41517 = (1965) 2 Cr. L.J. 602; Ganga Vs. State of Maharashtra AIR 1980 SC 1744. 7.8.9 = 1980 Cr. L.J. 1263).

5.3 An adjudication order passed on the basis of an evidence without disclosing its contents to the petitioner which could give him an opportunity to make submissions against the allegations made therein, is clearly a breach of the elementary principles of natural justice and as such is liable to be quashed (Sohanlal Kaushiram Vs.U.O.I. 1980 ELT (Bom)).

5.4 The designation and address of the authority in whom the representation is to be made should be clearly indicated in the Show Cause Notice, in the absence of which it cannot be considered as a proper opportunity to make a representation.

The notice must state to whom the representation is to be made; when the notice issued by the Asstt. Commissioner does not state this, an order of adjudication by the Commissioner is liable to be set

aside, even if the person concerned does not ask for a personal hearing. It may well be that the said person may waive hearing, because the penalty that may be imposed by the Asst. Commissioner may not be very much (V Ramananda Vs. Commissioner of Central Excise AIR 1965 Kerala P.286.7).

5.5 The Show Cause Notice should contain, the allegations, the basis for the allegations, actions proposed to be taken and statutory provisions for such action. It should not contain any affirmative statements. A notice that states that the petitioner had 'failed to prove legal importation' would indicate that the authority had already made up its mind (Charandas Vs. Assistant Commissioner of Customs AIR 1968 Cal at P.34).

6.0 Reasonable opportunity of being heard:

6.1 The law requires is that the enquiry must be conducted consistently with the principles of natural justice, stating it broadly, all that the principles of natural justice required are, a fair opportunity to adduce evidence, opportunity to cross examine either side with regard to the evidence produced and relied on by the tribunal, the said evidence to be recorded in the presence of the party affected by the evidence, and the tribunal to give a chance to the party affected by the evidence to explain the allegations therein. (U.O.I. Vs. T.R. Verma AIR 1957, SC 882.5 = 1958 SC J 142).

6.2 Cross-examination is however not the technical cross-examination in a court of law, otherwise, the Commissioner will find it literally impossible to discharge his functions. (Kishanlal Vs. Commissioner of Land Customs, AIR 1967 Cal.P.87 – 8).

6.3 Where the petitioner had furnished a list of all firms from which he had made purchase of watches and the Commissioner on making enquiry's found that some of the firms were on existent firms, he should have furnished the petitions a list of the non – existent firms and copies of their statements, so that the petitioner could prove that the purchases were still genuine. (Charandas Vs. Asstt. Commissioner of Customs AIR 1968 Cal.28 – 33).

6.4 Where the Commissioner draws an inference from admitted facts without examining witness, there is no breach of the principles of natural justice (Pandurang Vs. Commissioner of Central Excise (1963) 2 Cr. L.J. 467 – 70 = Cr.L.J.460).

6.5 Where the Officer who heard the person concerned, having been transferred, the order of adjudication, passed by his successor, without fresh hearing is violative of the principles of natural justice (M/s. Ramchand jagadishchand Vs. Deputy Commissioner AIR 1963 Cal 331 – 5 – 6).

6.6 Quasi-judicial proceedings under Customs Act – Issue of Show Cause Notices and grant of personal bearing by officers other than the one issuing final orders – Instructions.

a(1) Wherever a personal hearing has been asked for, the adjudicating officer should himself hear the party before giving decision in the case. Where the outgoing officer had given a personal hearing but had been unable to issue the final order, the successor in office must offer a personal hearing again, before the formal order is actually issued. It is, however, open to the party concerned not to have a further hearing after it has been offered to him. In case the party does not avail of the offer, the fact of the offer and its not being availed of should be put in writing in the appropriate case records.

6.7 The principles of natural justice do not require that the persons who have given information should be examined in the presence of the persons concerned or should be allowed to be cross examined by him on the statement made before the Customs authorities. (Kanunge & Co. Vs. Commissioner of Customs, Calcutta AIR 1972 Sc.2136).

6.8 If opportunity to cross-examine the witnesses, who effected the seizure, is not given, it would amount to violation of principles of natural justice. (Ramkishan Agarwal Vs. Commissioner of Central Excise and Customs 1981 ELT 217(Orissa)).

6.9 The Principles of natural justice do not require that there should be a kind of formal cross-examination and formal cross-examination is procedural justice. Formal cross-examination of the

witnesses could hardly improve matters and refusal of the right to cross examine the witnesses formally in the facts and circumstances of the case did not constitute any violation of the principles of natural justice and did not deprive the petitioners of any reasonable opportunity of making their representation. (Ashtyosyh Ghosh Vs. U.O.I. 1977 Cr.L.J. (NDC) 67 (cal); AIR 1976 Cal 80 AIR 1968 Cal 174; AIR 1972 SC 2136).

7.0 Drafting of Show Cause Notice:

7.1 The show cause notice is intended to give the person concerned, a reasonable opportunity of refuting the charges leveled against him. It is not a mere legal formality but the very basis of adhering to the principles of natural justice. Hence sufficient care should be taken while drafting the show cause notice to see that it confirms to all the legal as well as factual requirements.

7.2 A show cause notice should contain:

- (i) All the allegations
- (ii) All the grounds for such allegation
- (iii) Action proposed to be taken
- (iv) Evidences that are going to be relied upon
- (v) Statutory provisions under which action is proposed to be taken
- (vi) Full address of the authority to whom explanation is to be offered
- (vii) Time limit within which the explanation is to be offered
- (viii) List of documents relied upon in the proceedings
- (ix) Copies of such documents.

7.3 Care should be taken to avoid the following;

- (i) Use of affirmative words should be avoided. Use of words like “it is clear” or “it stands proved” etc. should be avoided in show cause notice.
- (ii) Ambiguous allegation should be avoided.
- (iii) Facts and evidences extraneous to the allegations should be avoided
- (iv) Reference to information or source of information should be avoided
- (v) Comments on facts and evidences should be avoided
- (vi) Executive instructions received from superior officers should not be mentioned in the show cause notice.
- (vii) Audit objections raised by internal audit or by accountant General should not be cited in the show cause notice.

7.4 Grounds of Show Cause Notice:

The grounds given in the notice on which the action is proposed to be taken must be clear, specific and unambiguous. A notice, which is vague, is not a proper notice and all subsequent proceedings would be vitiated. The notice must mention of giving to the party a reasonable opportunity of being heard in the matter.

8.0 Service of Show Cause Notice:

8.1 The manner of service of the notice is dealt within Section 153 of the Act. Any order of decision passed or any summons or notice issued under this Act, shall be served-

- a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or
- b) if the order, decision, summons or notice can not be served in the manner provided in C1.(a), by affixing it on the notice board of the Custom House.

The section requires that notice shall be served by sending it by registered post to the person to whom it is intended. The section does not require that effective service should be effected on the

appellant receiving it. This position is made clear by reference to Sec.27 of the General Clauses Act which states that where any Central Act requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre – paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The normal presumption, unless the contrary is proved, is that the service shall be deemed to have been properly effected when a letter is properly addressed pre – paid and posted by registered post. It will be seen from Section 110 (2) and Section 124 (1) of the Customs Act that a notice in writing informing the appellant of the grounds on which it is proposed to confiscate the goods or to impose a penalty should be given within six months from the date of seizure of the goods.

8.2 Notice issued under Section 153 can be sent by registered post either to the person for whom it is intended or to his agent and if it can not be so served, offering on the notice board of the Customs Officer may effect the service. What is relevant is not effective service but issuing of the notice in any of the manners provided in the Section. (Amabali Vs. Commissioner of Customs, 1971 KER L.R. 268)

9.0 Adjudication under the Customs Act, 1962.

Chapter XIV of the Customs Act, 1962 (Sec.111) to 127) deals with confiscation of goods and conveyances and imposition of penalties. While sections 111 and 112 deal with improperly imported goods, Sections 113 and 114 deal with the confiscation of goods attempted to be improperly exported out of India. Section 115 deals with confiscation of conveyances, and Sections 117 to 121 deals with confiscation of packages and their contents, other goods used for concealing smuggled goods and the sale proceeds of smuggled goods. Section 122 deals with the powers of adjudication and Section 124 with issue of a show cause notice, while section 123 deals with burden of proof in case of certain goods.

While taking up a case for adjudication, it may be ensured that -

- (i) all the original documents like panchanamas or recovery memos, statements of the accused and witnesses etc. contraband goods and other incriminating documents, articles and things seized are lying intact and are available for adjudication.
- (ii) post – seizure esquires / investigations are complete in all respects and a resume or a fiscal report thereof is available on the file, showing evidence against each of the concerned persons and the offences alleged to have been committed by each of them.
- (iii) a Show Cause Notice has been given within time to all the ‘concerned persons’. In complicated cases, assistance of legal branch or departmental counsel may always be taken in vetting the show cause notice.
- (iv) a separate file each for adjudication and prosecution is opened containing true copies of all relevant documents etc. right from the beginning i.e. at the stage of seizure and investigation, so that both the proceedings could be started simultaneously. The original documents, required for producing in the Court may invariably be kept in safe custody to avoid tampering or loss.

10.0 Principles of Natural Justice:

It is well-settled principle of Indian Administrative Law that a quasi – judicial body should act according to the principles of Natural Justice in discharging its adjudicatory functions.

11.0 Personal Hearing:

11.1 To the extent possible, personal hearing should be granted if requested for, even if request for the same is belatedly received but before the adjudication of the case.

11.2 Adjournment may be granted if the officer feels that the grounds are genuine.

11.3 Opportunity for examination and cross – examination of witnesses pertinent to the issue may be permitted and the adjudicating officer should have an open mind in the matter.

(i) Having regard to the various recent pronouncement by the Supreme Court and by some of the High Courts that in quasi judicial proceedings where the evidence of any person is relied upon the party concerned must be given an opportunity to test such evidence either by cross-examination or otherwise. The Board considers that as adjudications of of Customs and Central Excise cases are of a quasi-judicial nature, denial of an opportunity of cross-examining the `Departments' witnesses by the party concerned may amount to violation of the principles of natural justice. The adjudicating authorities should not, therefore, reject requests for cross-examination of witnesses as a matter of course, but consider the same on their merits.

(ii) Adjudicating authorities should obviously exercise caution against permitting cross-examination indiscriminately. Where, for instance, there is a question of calling informers for cross-examination or of producing business men to substantiate the information gathered from them in the course of confidential market enquiries whereby public interest is likely to suffer, the request for cross-examination need to be conceded by adjudicating authorities. Some of the other circumstances under which the adjudicating authorities may turn down request for cross-examination of witnesses may, by way of illustration, be given as under :-

(a) when production of the witnesses would entail expense or effort not commensurate with the value of the evidence the witnesses are likely to give, having regard to the facts and circumstances of the case;

(b) when the witnesses are close relatives or dependants of the party concerned whom he can produce himself;

(c) when the witnesses had already been examined by the party concerned during the course of any enquiry under section 108 of the Customs Act, 1962 and/or it is not possible to produce those witnesses before the adjudicating authorities at the time of personal hearing, etc. In any case the Department is not bound to offer for cross-examination any witnesses whose statements have not been relied on in the show cause notice.

For purposes of administrative record, it will, however, be necessary to record briefly in writing on the file the reasons for refusal of the request to permit cross-examination of the witnesses.

(iii) It will be the responsibility of the Department to produce its witnesses whose cross-examination is permitted by the adjudicating authorities. The expenses, if any, for the production of such witnesses will have to be borne by the Department itself.

[M.F.D.R., letter NO. 4/62/61 CUS VI OF 23.12.61]

11.4 The adjudicating authority under his dated signature should record the arguments raised at the time of Personal Hearing and evidences brought out by examination of witnesses if any.

Granting of copies of depositions in cross examinations and re-examinations:

“There is, of course no legal objection to the grant of copies of depositions of witnesses in the departmental enquiries. But the principles of natural justice do not require this if the party is actually present and has been hearing the oral evidence, because it is for him to take note of the points emerging from the oral evidence and to make use of it for cross-examination etc. No doubt in proceedings before Courts parties are granted certified copies of depositions of witnesses subject to certain conditions. But the enquiry by an Administrative Tribunal is not exactly a judicial adjudication trial are not automatically applicable to a quasi judicial adjudication by an Administrative Tribunal.

2. There may, of course, be cases where it might be necessary owing to the complexity of the case or otherwise to furnish the party with copies of deposition. In this case there might be justification for grant of copies of depositions. But it cannot be a rule that copies should invariably be granted. In other words the question of granting copies should be decided with reference to the facts of each case and no hard and fast rule should be adopted.

[**Board's Letter F. No. 4/99/62-Cus.VI dated 18.4.1963**]

11.5 Adjudicating officers should have an open mind and be liberal in allowing legal practitioners to appear before them in complicated and important cases.

11.6 In personal hearings, the notice should be heard as a matter of policy by the adjudicating authority himself and not through subordinate to him.

11.7 Where an outgoing officer had given a personal hearing but was unable to issue final orders, the successor in office must offer a personal hearing again before passing order.

12.0 Adjudicating Authority should be free from bias:

If the adjudicating authority is influenced to improperly favor one party against the other, it is said to be biased. The bias disqualifies an individual from acting as an adjudicator flows from two principles:-

- (i) No one should be a judge in his own cause;
- (ii) Justice must not only be done but also seen to be done.

13.0 Passing of Adjudication Order:

13.1 The adjudicating order should be a speaking order.

(1) Speaking order- Opportunity to the party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them and adjudication by a reasoned judgement upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him : it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to the solution Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law correctly applied and the decision was just – Messers Mahabir Prasad Santhosh Kumar v. State of U. P. – 1970 (1) SCC 764 [S.N. Mukherjee v. Union of India – 1990 – (4) SCC 594].

(2) “ Statement of reasons is one of the essentials of justice”. “Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself”. – State of W. B. v. Atul Krishna Shaw – AIR 1990 SC 2205.

(3)“The Commissioner was obliged to write a speaking order. That speaking order had to show that he had applied his mind to all relevant aspects of the controversy before him. If his order did not show such application of mind, the court could not assume that he did apply his mind. The court must (then)

conclude that he did not apply the mind. If the court finds it inappropriate to consider the controversy, it must remand the matter for consideration". (Satellite Engg. Ltd. v. Union of India – 1987 (31) E.L.T. 356 (Bom.))

(4)Order passed without giving reasons for the same was liable to be set aside and the matter remanded for reconsideration. – Arunachal Plywood Industries v. Commissioner – 1989 (43) E.L.T. 695 (Tribunal).

As a result of an analysis of about one hundred adjudication orders, the Directorate of Inspection (Customs & Central Excise) have prepared a note pinpointing the principal defects in such orders. A copy of the said note is appended for the information and guidance of all the officers concerned.

List of defects noticed.

(i) The main defects from which most of the orders suffer from is that they are not "speaking orders". It is one of the important ingredients of the principles of natural justice that the authorities vested with quasijudicial powers must pass "reasoned orders", even though no such obligation may have been laid down in the statute. This is particularly so when there is provision for appeal against the order. The general pattern followed in drafting adjudication orders has been to, first set out the facts of the case as enumerated in the Show Cause Notice, then state the various arguments put forward by the Parties and then to dispose of the matter in one sentence by adding some thing on these lines viz.,

" I have carefully considered the arguments put forward. I am not convinced of the ground adduced by the party. The evidence produced is not satisfactory".

Orders of this type will not help the parties in understanding why the particular pleas put forward by them have been dismissed as unconvincing or unsatisfactory and what exactly they should do to convince the Appellate or Revisionary authorities. Even at the appeal stage, it becomes difficult for the Appellate authority to know the grounds on which the claims made by the parties were rejected. The importance of passing a self-contained order which not only sets out the facts of the case, the arguments put forward by the party as also the detailed grounds on which each point made by the party is accepted or rejected cannot be over-emphasised. Every Adjudicating officer should recount in their orders all the essential arguments put forward by the parties, deal with each of them on merits and come to a reasoned conclusion on every single point. Though no doubt, this will result in the orders being elaborate and consequently take more time of adjudication officers, it is necessary that in the interests of justice, this is invariably done.

(ii) Some adjudication orders lack proper analysis of the evidence submitted by the parties. An attempt should be made to consider carefully every piece of evidence submitted by the party and sufficient grounds should be adduced in the order for rejecting or accepting the same. The present tendency is to dismiss the evidence submitted, by a sweeping statement that "the evidence has been carefully considered but has not been found to be acceptable".

(iii) Another defect is that in many adjudication orders, it is not clearly brought out in what manner and to what extent the provisions of the law have been contravened. It is desirable that the provisions of the particular sections that are alleged to have been infringed be set out clearly and that the same be brought out unambiguously in the orders issued. The contents of the provisions, which had been violated, and the manner in which they were violated should be brought out clearly and in a reasoned manner.

(iv) In a few cases dealing with under-valuation, the adjudicating officers instead of coming to a definite conclusion as to the correct value, merely state that the value of the goods could under no circumstances be less than a particular amount and since the declared value is less than that, an offence of under-valuation is established. Such orders are vague and are likely to be questioned in Courts of

Law. It is always desirable to come to a definite conclusion regarding the value of the goods in cases of under-valuation.

(v) When imposing personal penalty under Section 112 or 114 of the Customs Act 1962, it is always desirable to bring out how the person concerned has committed an act of commission or commission or a betted such an act or how exactly Section 112 (b) of the Customs Act 1962 is attracted before a penalty is imposed.

(vi) A few cases have also come to notice where the grounds on which the goods were finally confiscated, were slightly different from those on the basis of which the show cause notices were issued. In such cases, it is always desirable to issue revised show cause notices.

(vii) Baggage adjudication orders also suffer from being gauge, on account of full details not being furnished in the order. In all baggage cases, it is necessary to state clearly in the order itself, the particular items which have been treated as coming within the scope of the allowance admissible under the Baggage Rules and their value.

The present practice is to refer to some annexures attached to the order and sometimes, this leads to doubts in the mind of the Appellate Authority. When using cyclostyed forms for issue of spot adjudication orders, in baggage cases, it should be ensured that all irrelevant portions are stricken off and all necessary additions are made. Sometimes, when part of the goods is being confiscated absolutely and part released on payment of redemption fine, the adjudication orders are so worded that it is not clear whether the redemption fine is for the entire portion of the goods confiscated or only for apart thereof. The orders should be drafted in a manner leaving no room for ambiguity.

(viii) In the adjudicating cases relating to parcels coming as gifts, the provisions of the import (control) order laying down the monetary limits upto which the parcels can come as gifts into India should be clearly indicated.

(ix) In certain adjudication orders, the findings of the Adjudicating Officers are expressed in terms such as "the goods are deemed to have been imported unauthorisedly." It would be better to express the conclusion of the Adjudicating Officer in direct terms as " I hold the goods as having been imported unauthorisedly....."

(x) When certain licenses are held as not covering the goods imported, the orders passed sometimes do not give full details of the licenses produced and as to why they are not valid for the goods under consideration. The orders should be clear in this regard.

(xi) Except in cases covered by Section 123 of the Customs Act, 1962 it has to be borne in mind that the onus of proving the offence rests with the customhouse. In a number of adjudication orders, it is seen that this onus has been shifted to the parties, particularly in the case of allegedly smuggled goods, the importation of which was prohibited in the last few years. The department's case usually rests on presumptions and doubts, and inability of the parties to prove how exactly the goods were imported. Then in some cases the scope of Section 123 is even extended to clocks even though only watches are to be covered.

[Board's letter F.No.15/21/65 Cus VI & 28/5/66]

Issue of formal Order-in-Original in every case where note order is passed in cases involving adjudication

The Central Board of Excise & Customs have taken a serious note of the wrong practice being followed by adjudicating authorities (Asst. Commissioners, deputy Commissioners and Addl. Commissioners) of not passing formals orders-in-original after note-sheet orders are passed by them. While the impugned goods in all such cases are being cleared on payment of duty, penalty and fine adjudged in the note-sheet orders, in the absence of issue of formal orders-in-original, the opportunity to

review such orders is lost to the Government. Such a practice besides being to tally against the instructions issued on the subject is also put in consonance with the statutory provisions of review and appeal.

Central Board of Excise & Customs have therefore directed that all adjudicating authorities be strictly instructed to invariably issue, without delay, formal order-in-original in every case where note-sheet order is passed so that the parties concerned (importers etc.) as well as the Department get the statutory opportunity of examining such orders for further course of action wherever necessary.

[Mumbai Custom House S.O.No.7344 DT.13.12.97]

13.2 The order should contain the allegations raised against the party and the facts and evidences put forth by the notice in his defense before the adjudicating officer.

13.3 The allegations raised and at the replies there to should be discussed one by one and decisions arrived at with reasons thereof should be furnished in the order.

13.4 Finally the Adjudicating Authority should clearly mention such of those allegations that stand proved and consequences thereof i.e. liability of the goods for confiscation and liability to penalty including the statutory provisions for the same.

13.5 In the order portion, the details of the goods confiscated with authority for the same, quantum of penalty with authority and if any duty is demanded exact amount of such duty with authority should also be furnished.

13.6 If the option to pay a fine in lieu of confiscation as contemplated in Section 125 of the Act is granted, then the amount of such fine and the period within which such option is to be exercised should be clearly indicated in the order.

Option in lieu of Confiscation – Exercise of discretion – Recording of reasons

The Government of India, Ministry of Finance, (Deptt. Of Revenue) observes that while ordering absolute confiscation/exercising their discretion the Adjudicating Officers are recording no reasons. Principles of Administrative Law require that discretion should be exercised in a judicious manner i.e. actions should be supported by reasons to enable the courts to look into the validity of these reasons. In the absence of reasons the departmental order, if challenged in courts, may not stand.

It is, therefore, impressed upon all the Adjudicating Authorities that even for exercise of discretion i.e., for not giving the option to redeem the goods on payment of fine in lieu of confiscation and for ordering absolute confiscation reasons therefore should be given in the order-in-original.

[Mumbai Custom House S.O. No. 6786 dated 08.08.83]

13.7 In the case of goods provisionally released pending adjudication, which are not produced subsequently, adjudication order should specifically mention the same while appropriating the security deposit suitably.

13.8 In adjudicating cases while the authorities are justified to adopt the reasoning containing in a superior authority's instructions, orders should not be issued by quoting the number and date of such superior authority's instruction, circular etc.

13.9 While acting in a quasi-judicial capacity, the officer takes an unbiased decision on applying his own mind to the circumstances of a case. Therefore office notes by a subordinate authority should not go to the extent of recommending the final decision or the amount of penalty etc.

13.10 In case of adjudication of cases detected by officers under the Customs Act 1962 where the said offence also attracts the penal provisions of other enactment, the objective behind adjudication should be that maximum penalty depending on the gravity of the offence is awarded to the offender and therefore recourse should only be had under that enactment which provides for exemplary punishment. An offence which attracts the provisions of both the Narcotics Drugs and Psychotropic Substances Act, 1985 and the Customs Act, 1962 is a case in illustration.

14.0 Powers of adjudication:

Powers of adjudication of various officers are dealt with in Section 122 of the Act. The Central Board of Excise and Customs in its latest instructions inter – alia indicated that Commissioner of Customs may adjudicate a case without any value limit. Consequent to the amendment of clause B of Section 122, the powers of adjudication of Assistant Commissioner of Customs under the said Section, has been revised, to empower him to adjudicate cases, where the value of the goods liable for confiscation does not exceed 'Rupees fifty thousand'. In so far as, adjudication by Deputy Commissioners and Additional Commissioners of Customs shall exercise the same powers of adjudication of cases involving the goods, whose value does not exceed Rs. 10 lakhs.

14.1 Enhancement of Adjudication powers of Deputy Commissioners of Customs:--

(i) In the Finance Bill 1984, which received assent of President on 11th May, 1984 and enacted as Finance Act, 1984 (21 of 1984) certain categories of cases under the Customs Act, 1962 as spelt out in the clause-40 of the Finance Bill, 1984 amending Section 129 A of the Customs—Act, 1962 have been taken away from the jurisdiction of the Customs, Excise & Gold Control appellate Tribunal, (GEGAT). Consequent upon the exclusion of the jurisdiction of the Appellate Tribunal, a provision has been made for revision by the Central Government of Orders-in-Appeal passed in such cases. With a view to ensuring that, in all cases pertaining to the excluded categories, the first appeal lies to the Commissioner (Appeals) and the second to the Revisionary Authority i.e. the joint secretary to the Govt. of India, Ministry of Finance (Deptt. Of Revenue), New Delhi, it has become necessary to invest tot Deputy Commissioner with full statutory powers of adjudication relation to the excluded categories of cases viz.

- a) Any goods imported or exported as baggage;
- b) Any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India; or so much of the quantity of such goods as has not been unloaded at such destination are short of the quantity required to be unloaded at their destination.
- c) Payment of Drawback as provided in Chapter X and the rules made thereunder.

(ii) Under Section 122 of the Customs Act, 1962, Deputy Commissioners are empowered to adjudicate cases without any value limit, although by issue of executive instructions their adjudication powers have been restricted to monetary ceilings.

(iii) In the context of the new provisions as contained in the finance Act, 1984, it has, therefore, been decided by the Government that, in partial modification of Board's earlier instructions on the subject, the Deputy Commissioners may exercise full statutory powers vested in them under Section 122 of the Customs Act, 1962, in adjudication cases pertaining to the excluded categories only. Powers of

adjudication of the Deputy Commissioners in respect of cases other than the aforementioned excluded categories of cases, however, would remain unchanged.

It should be ensured that the cases falling in the excluded categories which have been taken away from the jurisdiction of the Tribunal are adjudicated at the level of the Deputy Commissioners and that the preamble to the orders contain clear directions that first appeal against that order will lie with the concerned Commissioners (Appeals) and the Government of India, Ministry—of Finance (Department of Revenue), New Delhi. Additional Commissioner is also, basically a Deputy Commissioner and while adjudicating baggage cases he should adjudicate it as Deputy Commissioner.

[Mumbai Custom House S/O No.6808]

14.2 POWERS OF ADJUDICATION—COMPUTATION OF VALUE OF THE VEHICLES FOR DETERMINING THE COMPETENCY OF THE OFFICER WHERE GOODS INVOLVED ARE CONSIDERABLY LOW IN VALUE.

The competence of the adjudicating officer should be determined by the value of the goods liable to confiscation as a whole, including vehicles used in the transport of goods, not with standing the amount of fine (in lieu of confiscation of the conveyance) which may be fixed by the adjudicating authority.

[Board's Lr.F.No.40/118/63 – Cx.I – 29 /04/ 64]

14.3 Adjudication of cases involving under – valuation of imported goods – reg.

In all cases where the value of the offending goods sought to be determined after investigations is more than Rs.10 lacs, such cases should be adjudicated by the Commissioners of Customs even if the value declared by the importer is less than Rs. 10 lacs. The adjudication of such cases shall not be done by the Additional Commissioners of Customs or Deputy Commissioners Customs.

[Board's Circular No. 8/95 – CUs dated 23.01.1995]

Regarding the cases here value declared by the importer is more than R. 10 lacs but after investigation the same is sought to be reduced to below Rs. 10 lacs.

The matter was examined by Board and it has been observed that in cases where value is declared for higher amount and the value is found to be lower on the advice of experts of otherwise even in such cases, the adjudication is required to be done by the Commissioner of Customs because the lowering of value is affected when the final order is passed after satisfaction of the adjudicating authority. Hence Commissioner of Customs has to continue with the Adjudication.

[Board's Circular No.7/97 – CUs dated 31.03.1997]

14.4 Powers of adjudication of Additional Commissioners Customs – reg.

Para 3 of the Board's instruction dated 13.05.92 provides that in cases where duty has not been levied or has been short levied or erroneously refunded because of collusion, willful mis-statement or suppression of facts etc. the show cause notice by the Commissioner of Customs and the cases decided by them only.

In partial modification of above instructions it has been decided that in cases where the duty involved is upto Rs.5 lacs, show cause Additional Commissioners of Customs may issue notice in such cases and they may also decide the cases.

[Board's Circular No.47/97 dated 06.10.97]

14.5 provisional release of seized vehicles. Pending adjudication on deposit of Security and execution of Bond – Amendment of para 56 of Adjudication Manual regarding.

1. Reference is invited to the instructions for provisional release as contained in para 56 of the Adjudication Manual based on Ministry's letter F.No. 22/32/67 – Lc II dated 15.04.68, release of seized conveyance, under Section 115 of the Customs Act, 1962, to the owner pending adjudication on payment of security deposit and on execution of the bond, as contained in para 56 of the Adjudication Manual, based on Ministry's letter F.No.22/32/97- Lc II dated 15.04.68. It has been provided in the said instructions that the Bond amount in every case should be the estimated value of the vehicle and that the security deposits to be made in terms of the bond will depend on the gravity of the offence committed in relation to the vehicle liable to confiscation under Section 115 of the Customs Act. In the said para itself certain criteria for deposits to be taken have been mentioned. Which are rather conflicting and confusing in nature and give an erroneous impression as if the deposits may not exceed Rupees One Thousand i.e. the maximum penalty leviable under Section 117 of the Customs Act, 1962, normally, though higher deposits are also provided for.

2. In fact recently two instances have also come to the notice of the Board, where in taking recourse to the above mentioned instructions, some courts have even ordered the provisional release of seized conveyances carrying smuggled goods on bond and deposit of security of only Rs.1000/-, even though the involvement of the driver/owner of the vehicle in the smuggling of confiscated goods was prima facie proved.

3. The matter has been examined in the Board. It is observed that Section 112 of the Customs Act, 1962, interalia, provides for imposition of penalty on any person, who acquire possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe, are liable to confiscation under Section 111. Such penalty may extend upto five times the duty sought to be evaded on such goods or five times the difference between the declared value and the value thereof or one thousand rupees whichever is the highest, therefore, in cases where transport vehicles are intercepted carrying smuggled goods and are seized in terms of provisions of Section 115 (2) and where on the basis of investigations, the involvement of driver and / or owner of the vehicle in the transportation and or in many other way being concerned with in the smuggling of goods seized with the vehicle, is established, the driver and / or the owner will be liable to penalty under Section 112 of customs Act, 1962, which is much higher than Rs. 1000/- as provided under Section 117 of the Customs Act. The later penalty is provided only where for any offence / contravention noticed under Customs Act, 1962, even in relation to vehicles, no other penalty is impossible under any other section of the Customs Act. A security deposit of only Rs.1000/- at the time of provisional release of the vehicle, may therefore, be grossly inadequate to recover the amount of the penalty / fine that may be imposed on the driver and / or owner of the seized vehicle on adjudication where they are held liable to punishment under Section 112. It has, therefore, been decided by the Board to contest the provisional release allowed by the Courts in the above mentioned specific cases. Simultaneously, it has been decided to modify the provisions contained in Ministry's earlier / instructions F.No. 22/32/67-LC II dated 15.04.68 and substitute para 56 of the Adjudication Manual, as under, to remove any doubts and to make it clear that security deposit will be as may be decided by the proper officer competent to adjudicate or provisionally release the vehicle depending upon the gravity of the offence.

PARA 56 – provisional release of seized vehicles, pending adjudication, on deposit of security and execution of bond-

In cases, where vehicles are seized by the Customs officers for carrying contraband / smuggled goods attracting action under section 115 of the Customs Act, 1962, such vehicles may be provisionally released to its owner, pending adjudication, on payment of security deposit and on execution of a Bond in the proper form. The Adjudicating officer competent to adjudicate the case under Section 122 of the Act, may allow provisional release of the conveyances seized carrying contraband / smuggled goods in violation of the provisions of the Customs Act. The bond amount in every such case should be the estimated value of the vehicles. The security deposit to be made in terms of the bond will, however, vary in each case and will depend upon an assessment of the gravity of the offence committed in relation to the vehicle liable to confiscation under section 115 of the Customs Act, 1962, the involvement of the person in charge / Driver / Owner of the vehicle and likely minimum penalties that may be imposed on them. The object of such deposit is mainly to recover the fine in lieu of confiscation that may be adjudged and penalty, that may be imposed on the driver and / or owner of the seized vehicle involved in the transportation of contraband / smuggled goods. Before provisional release of the vehicle, it should, however, be ensured that the same will not be required as evidence at a later date in a court of Law. If it is likely to be so required, the vehicle should not be released even provisionally.

[MFDR F.No.591/40/98 – CUs (AS) dated, 01-09-99.]

14.6 Permission for reshipment within specified period of confiscated goods:-

In stances have been brought to the notice of the Board where adjudicating or appellate authorities permit reshipment of goods within a specified period. There are invariably cases where for one reason or the other reshipment is not effected during the period specified in the order in – original or order – in – appeal. In the absence of any provision for extension of the time limit for reshipment in the order itself, Customs Houses have taken a view that reshipment beyond the period specified in the order can be permitted only by the next higher authority. This creates avoidable harassment for the passengers if reshipment could not be effected in time on account of unavoidable difficulties.

Board, therefore, desires that adjudicating as well as appellate authorities while permitting reshipment of any goods should clearly state in the order that reshipment would be permitted within specified period or such extended period as may be permitted by the concerned Assistant Commissioners.

[Board's letter F.No. 495/19/87/ - CUS.VI dated 09.04.87]

14.7 Procedure to be followed in respect of re – shipment / re – export of import cargo where clearance of the same is not sought by the Importer for home consumption – Instructions – reg..

1. It has been observed that different practices have been adopted by different appraising Groups while permitting re – shipment / re – export of Import Cargo, for which importers have not sought clearance for home consumption.

Attention in this regard is invited to the decision of Conference of Commissioners of Customs held in September 1993 at Calcutta. The Conference was of the view that the adjudicating authority should decide each case of re – shipment / re – export under provisions of Customs Act, 1962 read with I.T.C provisions.

2. In order to observe uniformity of practice in this regard the following guidelines are issued for compliance in respect of the requests made by the importers for re – export / re – shipment of import cargo.

- i. If the goods are not offending in any manner and re – export / re – shipment of the said goods is sought for bonafide reasons it may be permitted without charging any fine / penalty. This is for the simple reason that no Act or Rules are contravened when import is made.
- ii. In other cases, imposition of fine / penalty etc. may be considered after adjudication by the proper officer depending upon the merits of each case.
- iii. In all the cases, re – export will be allowed only against firm L / C, advance remittance or on importers providing documentary evidence to the satisfaction of Astt. / Addl. Commissioner of Customs regarding remittance of foreign exchange etc. This would also be subject to fulfillment of conditions provided under various allied acts in force from time to time.

[S.O.No.7220 / 96 dated 29.01.96 issued by Mumbai Custom House]

14.8 Prohibition and restrictions under NDPS Act. 1985 - Possession, import into India, export from India and transshipment of Narcotic Drugs and Psychotropic Substances is completely prohibited under Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Rules made thereunder except as provided for in the said Act.

All prohibitions and restrictions imposed by or under NDPS Act 1985 on the import into India, export from India and transshipment of Narcotic Drugs and Psychotropic Substances shall be deemed to be prohibited and restrictions imposed by or under the Customs Act, 1962 and the provisions of the Customs Act shall apply accordingly as per Section 79 of NDPS Act, 1985.

No Narcotic Drug or Psychotropic Substances Specified in the NDPS Act, 1985 and rules made therein shall, be exported out of India / imported into India without export authorization / import certificate issued by the Narcotics Commissioner and in a manner specified in the said rules.

14.9 Imposition or enhancement of personal penalty in readjudication cases under Sec.122 of Customs Act. 1962:- There may be a situation where the appellate authority had quashed an order of adjudication in which a fine in lieu of confiscation was imposed with or without personal penalty with directions for making a de – nova Adjudication. The question arises whether at the time of fresh adjudication it would be legally correct for the adjudicating authority to impose a fresh personal penalty where no penalty was initially imposed or to impose a penalty higher than one that may have been imposed in the quashed order. The correct legal position is that Section 111 of the Customs Act, 1962 provides for dealing with offences enlisted therein. Neither this Section nor any of the provisions in the said Act provides any guiding principles as to when any of the penalties prescribed therein could be imposed. In the circumstances the officer making the adjudication has full discretion to inflict the penalty or penalties provided therein, which in his view may be just adequate to meet the situation existing in a particular case. The fact that the adjudicating officer did not impose any personal penalty on the previous occasion, i.e. in the initial (quashed) adjudication, would not debar him from doing so once the said proceeding is quashed by the appellate authority and proceeds ahead to make a fresh adjudication. This, however, does not mean that personal penalty could be levied against a person who may not be concerned with any of the offences described therein and this essential condition should be satisfied before the punishment of personal penalty could be inflicted. The principle contained in this paragraph may be followed in Central Excise cases as well.

14.10 Onus of proof that goods are smuggled or imported illegally, on Customs Department: -

- (i) The Customs authorities should exercise caution in deciding cases involving confiscation of goods merely suspected to have been smuggled and to which Sec.123 of the Customs Act, 1962

does not apply. While considering the question of onus of proof in such cases, the High Court at Calcutta observed as follows:

“However, the point is that throughout the order the Asstt. Commissioner assumed that the burden of proof was on the petitioner No.1 who was unable to prove that the goods in his possession were not smuggled into India or not imported illegally. According to him the petitioner No.1 was unable to prove that the goods that were seized were not smuggled goods and had not been illegally imported. In my opinion the entire approach is contrary to law and the order cannot be supported. The burden of proof in this case did not lie on the petitioner No.1 or either of the petitioners, but the burden of proof was on the customs authority to prove beyond reasonable doubt that the goods had been illegally imported and were smuggled goods. The mere fact that the goods were of foreign make was not sufficient to discharge this onus or shift the same upon the petitioner. If the respondents had discharged the initial onus of showing that the goods had been illegally imported, then they could confiscate the same. For purpose of penalty they would have to go further and show that the petitioner No.1 had been in possession of the said goods with the knowledge that they were smuggled. That, of course, has never been proved, because the initial onus had been discharged by the respondents.”

- (ii) It is now well settled, that except for commodities which attract the provisions of Section 178 A S.C.A or Sec. 123 of the Customs Act, the burden to prove that the goods seized are smuggled is on the Customs authorities and save in a very exceptional class of case, this burden never shifts. Even the provisions of the Evidence Act do not help in shifting the onus. However, in a case where the person from whose possession the goods are recovered, admits that he imported these goods, he may, by aid of the principles underlying Sec.106 of the Evidence Act, be called upon to show that he had a licence for such importation. But when the goods are recovered from a person who is not proved to be the importer of the goods and claims to be a purchaser of the imported articles, onus is always on the Customs authorities to establish that the goods were imported contrary to any import prohibition or restriction, and they have to bring home the guilt to the person alleged to have committed a particular offence by adducing satisfactory evidence.
- (iii) There are three essential ingredients of the offence under Sec.167 (8) of the S.C.A. or under Sec.111 (d) of the Customs Act;
- (1) that the importation of certain goods has been prohibited or restricted;
 - (2) that the goods in question belonging to such category, have been imported into India i.e., the goods are of foreign origin;
 - (3) that such importation has been contrary to such prohibition or restriction.

Unless all the three ingredients are proved by the Department, the offence is not established. In other words even if the import of a particular commodity has been prohibited for quite some time and it is also proved that the seized goods of that commodity are; of foreign origin, it would not be sufficient evidence to hold that the goods seized are smuggled, unless there is evidence which conclusively leads to the inference that the said goods were imported contrary to any prohibition or restriction. It has been held that the circumstances that a person makes inconsistent statements regarding the manner in which he came into possession of the articles, recovered from him, or that he did not maintain proper accounts to show the purchase of the articles, or that the purchase vouchers produced were found to be forged cannot necessarily lead to the conclusion that the articles were smuggled or were imported contrary to any prohibition or restriction. The evidence to justify an inference of smuggling should be one, which is

relevant for proving the unauthorised importation of the goods and not the unauthorised possession of the goods.

However, once there is evidence relevant for the consideration of the adjudicating authority and it reasonably leads to an inference that the goods were imported contrary to any; import prohibition or restriction, the Courts are not likely to interfere with; the order of confiscation on the ground of insufficiency of the evidence. In fact in Ambala's case the Supreme Court upheld confiscation of certain items which; based merely on a retracted admission of the owner of the goods.

It is further well settled that (a) as soon as it is shown that certain goods have been imported contrary to the statutory prohibition and restriction they are liable to confiscation and for confiscation it is not necessary to establish further that the person from whose possession the said goods have been seized is concerned with the illegal importation, as it is necessary; for awarding the penalty and (b) the question of bonafides of the person from whose possession the goods have been taken is immaterial, once it is shown that the goods by whomsoever the importation may have been made, were imported in contravention of the statutory prohibition or restriction.

If the goods are resnullius i.e. are unclaimed and they are not seized from anybody's custody or possession, it would be open to the Department to confiscate them as soon as it is found that they are goods of foreign manufacture and the importation of such goods is prohibited or restricted.

In view of the foregoing, the investigations should be primarily; directed to procuring evidence which would be relevant for holding the goods as smuggled, though we should not discard our enquiries regarding the manner in which the goods were acquired by the person from whose possession they were recovered. It must also be pointed out that the purpose of these instructions is not to slacken anti – smuggling measures or to discourage town seizures but to make our investigations more purposeful, so that they lead to adjudications which are based on sound legal footings.

[Ministry's letter F.No.4/116/62 – CUs VI and 4/149/65 – CUs.III]

14.11 Whether same goods can be confiscated twice for misdeclaration of value and contravention of import Trade Control Regulations – In order to make the position quite clear it would be better to illustrate it by quoting a specific case; the case is:-

A consignment of Toymonicas valued at Rs.1357 was imported from the United States of America without a valid import licences. As the goods originated from a dollar area and were a 'nil' item for licensing purpose, they were confiscated absolutely by a Commissioner of Customs. The importers appealed to the Central Board of Excise & Customs against Commissioners Order but it was rejected. Against the Board's order, the importers preferred a revision petition to the Government of India who, however, directed that the offending goods be released for home consumption on payment of a fine of Rs.630 in lieu of confiscation. When the case was taken up for action by the Customs in accordance with Government of India orders quoted above it was discovered that the goods had also been undervalued. This point had not considered at the time of presentation of the Bill of Entry when the question of Import Trade Control Offences only was considered. The same goods were again confiscated by the Commissioner of Customs, for the offence attracting clause 37 of Section 167, Sea Customs Act, and an option was given to clear them for home consumption on payment of an additional fine of Rs.1500. Against this new order (original) of the Commissioner the importer preferred an appeal to the Central Board of Excise & Customs who in the peculiar circumstances of the case held the view that the Government of India having an exercise of a specified sum as fine, the Commissioner was in law bound and to carry out this order and to release the goods accordingly.

Once the goods are released and are taken away, the Commissioner would cease to have jurisdiction to pass an order confiscating the same. The goods had not yet been released, and that the owner had not yet paid the amount of fine although he seemed to have offered to do so. The legal effect of the orders, including the order of the Govt. of India, is that until they are so released the goods stand confiscated to the Govt. and by section 184, they vest in the Government, subject only to the right of the owner to redeem them on payment of fine. In the eye of the law, the goods belong to the Government of India unless and until the fine is paid and the goods are released. It follows, therefore, that since at the time the commissioner made the order of confiscation the goods already stood confiscated to the Govt. and were the property of the Government and thus the Commissioners (second) order confiscating the same goods again for under – valuation is inoperative and null and void. This is the legal position in a case where the Commissioner of Customs had confiscated the goods and the fine in lieu of confiscation had not been paid by the importers. In case of this nature Commissioner has no authority to make the second order of confiscation before fine has been paid and while the goods already stood confiscated.

A question, however, arises whether the position would change if the fine in lieu of confiscation had been paid and ownership had reverted to the importer and whether in that case the Commissioner of Customs could lawfully again proceed against the same goods in respect of another offence. The correct legal position in this changed context and circumstances is that there is nothing in Customs Act to bar an action for an offence on the ground that it had not been taken earlier when action was taken in respect of another offence concerning the same goods. If therefore any goods are seized once and confiscated or any goods in customs custody are confiscated, and the fine imposed in lieu of confiscation is set aside in appeal or revision it would still be lawful thereafter to seize the same goods, under section 178 in connection with a distinct offence, for which action had not been previously taken, after the ownership has reverted to the person concerned. The principle contained in this paragraph may be applied mutatis mutandis to Central Excise cases.

[PARA 71 OF ADJUDICATION MANUAL]

14.12 Extension of summary procedure for disposal of adjudication: -- In para 5.13 of their 89th Report, the Estimates Committee have recommended that the summary procedure of adjudication presently adopted in Baggage cases should be extended to even other cases where the parties agree to dispensing with the requirement of Show Cause Notice. After careful consideration of the recommendation made by the Committee, it has been decided to extend the summary procedure, where the parties so desire in writing, to other similar simple cases besides baggage cases, if they do not involve determination of any question having a relation to the tariff classification and rate of duty or the value of goods for the purposes of assessment or frauds prosecution or preventive detention or complex points of facts or law, etc. It may, however, be emphasised that in every case of summary adjudication proceedings adopted the waiver of Show – Cause Notice should be only on the basis of a written request received in this behalf from the concerned party.

[Board's letter F.No.394/233/84 – CUs (AS) Pt. V dated 06.09.85]

14.13 Adjudication of cases under Duty Exemption Scheme where exports obligation has not been fulfilled according to prescribed procedure

In a case where export obligation under Duty Exemption Scheme was not fulfilled according to the prescribed procedure and Department had issued Show Cause Notices for initiating action against persons importing duty free raw materials under the Duty Exemption Entitlement Certificate, a doubt had arisen whether it would be necessary to first establish through separate adjudication proceedings that exports were not as per prescribed procedure. The Ministry of Law to whom the matter was referred

have, after detailed examination of the matter, advised that nullification of export by adjudication, is not pre-requisite for action on import violation and that fraudulent exports can be brought up as evidence in the adjudication by the authority having jurisdiction in the import offence.

[Board's Circular No.64/95 dated 12.06.95 F.No.605/5/93 – DBK]

14.14 Option in lieu of confiscation – Exercise of discretion – Recording of reasons:- The Government of India, Ministry of Finance, (Deptt. Of Revenue) observes that while ordering absolute; confiscation / exercising; their discretion no reasons are being; recorded by the Adjudicating Officers. Principles of Administrative Law require that; discretion should be exercised in a judicious manner i.e. actions should be supported by reasons to enable the courts to look into the validity of these reasons. In the absence of reasons the Departmental order, if challenged in courts, may not stand.

It is, therefore, impressed upon all the Adjudicating Authorities that even for exercise of discretion i.e., for not giving the option to redeem the goods on payment of fine in lieu of confiscation and for ordering absolute confiscation reasons therefore should be given in the order – in – original.

[Mumbai Customs S.O. No. 6786 dated 08.08.1983]

14.15 Imposition or enhancement of personal penalty in readjudication cases under Sec, 122 of Customs Act, 1962. There may be a situation where the appellate authority had quashed an order of adjudication in which a fine in lieu of confiscation was imposed with or without personal penalty with directions for making a de – novo Adjudication. The question arises whether at the time of fresh adjudication it would be legally correct for the adjudicating authority to impose a fresh personal penalty where no penalty was initially imposed or to impose a penalty higher than one that may have been imposed in the quashed order. The correct legal position is that Section 111 of the customs Act, 1962 provides for dealing with offences enlisted therein. Neither this section nor any of the provisions in the said Act provides any guiding principles as to when any of the penalties prescribed therein could be imposed. In the circumstances the officer making the adjudication has full discretion to inflict the penalty or penalties provided therein, which in his view may be just and adequate to meet the situation existing in a particular case. The fact that the adjudicating officer did not impose any personal penalty on the previous occasion, i.e., in the initial (quashed) adjudication, would not debar him from doing so once the said proceeding is quashed by the appellate authority and he proceeds ahead to make a fresh adjudication. This, however, does not mean that personal penalty could be levied against a person who may not be concerned with any of the offences described therein and this essential condition should be satisfied before the punishment of personal penalty could be inflicted. The principle contained in this paragraph may be followed in Central Excise cases as well.

[PARA 73 OF ADJUDICATION MANUAL]

14.16 A CASE AGAINST A DIPLOMAT

In 1998 officers attached to Directorate of Revenue Intelligence seized foreign currency valued over Rs.90 lacs from the possession of a Diplomat accredited to India. The currencies were seized while he was departing abroad from Mumbai Airport. The Diplomat admitted in writing the illicit acquisition of foreign exchange & also the attempt at smuggling the same for monetary consideration.

The sizing unit solicited advice of Ministry of External Affairs for further course of action. In addition to not to launch prosecution against the Diplomat & Show Cause Notice for imposition of penalty under the provisions of Customs Act 1962 was not issued in view of his Diplomatic Status & the immunity conferred thereby from Criminal & administrative proceedings. However, as it is mandatory to issue a notice under section 124 of the Act to the owner of the goods as such person, before initiating process of

confiscation, a Show Cause Notice was issued to prior to confiscation of the impaired currencies. In such cases, Show Cause Notice would be got served through the Ministry of External Affairs. There is no base to initiate prosecution proceedings / penal proceedings against accomplices in such cases.

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CHAPTER – NINE

SETTLEMENT COMMISSION

INTRODUCTION

The literal meaning of the term "settlement" implies an agreement composing differences and it is generally contemplated to fix or resolve conclusively and there will not be any further development or proceeding.

Delivering his 1998 Budget Speech, the Finance Minister pointed out that " litigation has been the bane of both Direct and Indirect Taxes. A lot of energy of the Revenue Department is being frittered in pursuing large number of litigation pending at different levels for long periods of time. Considerable amount of revenue also gets locked up in such disputes. Declogging the system will not only incentivise honest tax-payers, enable Government to realise its reasonable dues much earlier but coupled with administrative measures would also make the system more user-friendly."

SETTLEMENT COMMISSION

The concept of setting up a Settlement Commission was mooted by the Government following the legislative amendment through the Finance Act, 1998. Thus the Customs & Central Excise Settlement Commission under Section 32 of the Central Excises Act, 1944 vide notification no. 40/99-CX (NT) dated 9.6.1999. The Commission shall consist of a Principal Bench at Delhi and one additional Bench each at Calcutta, Chennai and Mumbai. The Principal Bench shall have a Chairman and two Members whereas each of the additional Benches will consist of a vice-Chairman and two Members. The Commission shall function under the Department of Revenue.

There will now be a post of Commissioner (Investigation) who will be an officer of Customs or a Central Excise Officer appointed as such Commissioner to conduct inquiry or investigation for the purposes of settlement.

Objects of the Settlement Commission

The object behind the setting up the Commission is to create a channel whereby tax disputes can be settled expeditiously and in a spirit of conciliation rather than prolonging them through adversarial attitude. The Commission is not designed to provide an escape route for tax evaders. It is, in fact, designed to provide a balance resolution of tax disputes with a view to avoid lengthy litigation, which neither helps, the Department nor the members of the Trade and Industry. In the proceedings before the Commission, there are no adversaries but only parties to the Settlement.

Disputes related to Customs

There were no provisions for expeditious settlement of dispute till Chapter XIV-A was introduced in the Customs Act, 1962. The Settlement Commission constituted under Section 32 of the Central Excise Act, 1944, can also settle dispute relating to Customs.

The provisions relating to settlement of disputes have been enumerated in Sections 127-A to 127-N of the Customs Act, 1962.

Definitions

Section 127-A in Chapter XIV-A of the Customs Act, 1962, outlines the following definitions-
In this Chapter, unless the context otherwise requires,-

- (a) "Bench" means a bench of the Settlement Commission;

(b) "case" means any proceeding under this Act or any other Act for the levy, assessment and collection of customs duty, or any proceeding by way of appeal or revision in connection with such levy, assessment or collection, which may be pending before a proper officer or the Central Government on the date on which an application under sub-section (1) of sec. 127-B is made:

Provided that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing of such appeal or application for revision under this Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause;

(c) "Chairman" means the Chairman of the Settlement Commission;

(d) "Commissioner (Investigation)" means an officer of the Customs or a Central Excise Officer appointed as such Commissioner to conduct inquiry or investigation for the purposes of this Chapter;

(e) "Member" Means a Member of the Settlement Commission and includes the Chairman and the Vice-Chairman;

(f) "Settlement Commission " means the Customs and Central Excise Settlement Commission constituted under Section 32 of the Central Excise Act, 1944 (1 of 1944); and

(g) "Vice-Chairman" means a Vice-Chairman of the Settlement Commission.

Eligibility of the Applicant

Section 127-B of the Customs Act, 1962, stipulates that any importer, exporter or any other person may, at any stage of a case relating to him, make an application in prescribed form containing "Full & True" disclosure of his duty liability which has not been disclosed before the proper officer having jurisdiction, the manner in which such liability has been derived, the additional amount of Customs duty accepted to be payable by him and such other particulars of such dutiable goods in respect of which he admits short levy on account of misclassification or otherwise of goods.

Admissibility of cases for Settlement

Under Section 127-B of the Customs Act, 1962, the following category of cases is excluded from the purview of the Settlement Commission.

- (1) Cases relating to Customs duty where no Bill of Entry or Shipping Bill, as the case may be, has been filed or where no Show-cause-Notice has been issued to the applicant.
- (2) Cases where the additional amount of duty accepted by the applicant in his application does not exceed Rs. 2 lakhs.
- (3) Cases which are pending with the Appellate Tribunal or with any court at the time of making the application.
- (4) Cases involving interpretation of the classification of goods under the Customs Tariff Act, 1975.
- (5) Cases involving seizure of dutiable goods or any sale proceeds of the goods, books of accounts or other documents, under the Customs Act, 1962, before the expiry of 180 days from the date of the seizure.
- (6) Cases relating to goods to which section 123 of the Customs Act, 1962, or provisions under the N D P S Act, 1985, apply.

Application once made before the Settlement Commission cannot be withdrawn by the applicant and every application shall be accompanied by such fees as may be prescribed by the Commission.

The application filed by an assessee shall be dealt with by the Commission in terms of provisions of Section 127-C of the Customs Act, 1962

CUSTOMS AND CENTRAL EXCISE SETTLEMENT COMMISSION PROCEDURE

In exercise of the powers conferred by sub-section (4) of section 321 of the Central Excise Act, 1944 and sub-section (4) of section 127-F of the Customs Act, 1962, the Customs and Central Excise Settlement Commission hereby makes the following procedure namely.

Short title and commencement

1. This procedure may be called the Customs and Central Excise Settlement Commission Procedure, 1999.
2. It shall come into force on the date of publication in the official gazette.

Definitions.

2. Unless the context otherwise requires:-

- (i) "Central Excise Act" means the Central Excise Act, 1944 (1 of 1944);
- (ii) "Customs Act" means the Customs Act 1962 (52 of 1962.)
- (iii) "applicant" means a person who makes an application to the Commission under sub-section (1) of Section 32 E of Central Excise Act or under sub-section (1) of Section 127 B of the Customs Act to have a case relating to him settled;
- (iv) "Authorized representative" means-
 - (a) In relation to an applicant, except where such applicant is required by the Commission to attend in person, a person who would be entitled to represent him before any Central Excise and Customs authority or under Section 35 Q of the Central Excise Act or Section 146 A of the Customs Act.
 - (b) in relation to a Commissioner, a person - (i) authorized in writing by the Commissioner or the Chief Commissioner; or (ii) appointed by the Central Government as authorized representative or authorized by the Central Board of Excise & Customs to appear, plead and act for the Commissioner in any proceeding before the Commission.
- (v) "Commission" means the Customs and Central Excise Settlement Commission instituted under Section 32 of Central Excise Act and includes where the context so requires, any bench exercising or discharging the powers or functions of the Commission.
- (vi) "Secretary" means the Secretary of the Commission and includes an Administrative officer.
- (vii) "Settlement application" means an application made by a person to the Commission under sub-section (1) of Section 32 E of Central Excise Act or under sub-section (1) of section 127 B of the Customs Act, as the case may be, to have a case relating to him settled;
- (viii) all other words and expressions used herein and not defined but defined in the Central Excise Act and the Customs Act, shall have the same meaning respectively assigned to them in the said Acts.

Language of the commission

- 3 (1) All pleading before the Commission may, at the option of the applicant, be in Hindi or in English.
- (2) All orders and other proceedings of the Commission may, at the option of the Commission, be in Hindi or in English.

Signing of Notices, etc.,

- 4 (1) Any requisition, direction, letter authorisation, order or written notice to be issued by the Commission shall be signed by the Chairman or a Vice-Chairman or any other member of the Commission or by the Secretary.
- (2) Nothing in sub-rule (1) shall apply to any requisition or direction which the Commission may, in the course of the hearing, issue to an applicant or a Commissioner or an authorised representative personally.

Procedure for filing settlement application

- 5 (1) A settlement application shall be presented by the applicant in person to the secretary at the

headquarters of the Commission at New Delhi or of the bench within whose jurisdiction his case falls or to any officer authorised in this behalf by the Secretary, or shall be sent by registered post addressed to the Secretary.

- (2) A settlement application sent by post under sub rule (1) shall be deemed to have been presented to the Secretary on the day on which it is received in the office of the Commission.

Preparation of Paper books, etc,

- 6 (1) If the applicant or the commissioner, as the case may be, proposes to refer or rely upon any documents or statements or other papers, he may submit six copies of a paper book containing such papers duly indexed and paged at least two weeks before the date of hearing under sub-section (1) of section 32 F of the Central Excise Act, or sub-section (1) of section 127C of the Customs Act, as the case may be.

Provided that the Commission may in an appropriate case condone the delay and admit the paper book.

- (2) If the applicant proposes to refer to or rely upon any documents or statements or other papers, during the courses of hearing under sub- section (7) of Section 32 F of the Central Excise Act or sub-section (7) of Section 127 C of Customs Act, as the case may be, he may submit six copies of a paper book containing such papers duly indexed and paged, within thirty days or within such extended period as may be allowed by the Commission, of the receipt of an order under sub-section (1) of section 32 F of the Central Excise Act or sub- section (1) of Section 127 C of the Customs Act.

- (3) If the Commissioner proposes to refer to or rely upon any documents or statements or other papers during the course of hearing under sub-section (7) of Section 32 F of the Central Excise Act, or sub-section (7) of Section 127 C of the Customs Act, as the case may be, he may submit six copies of a paper book containing such papers duly indexed and paged within thirty days or within such extended period as may be allowed by the Commission, of the receipt of an order under sub-section (1) of Section 32 F of the Central Excise or sub-section (1) of Section 127C of the Customs Act.

- (4) The Commission may, suo-motu, direct the preparation of six copies of a paper book by and at the cost of the applicant or the Commissioner, containing copies of such statements, documents and papers, as it may consider necessary for the proper disposal of the settlement applicant on or matters arising therefrom.

- (5) The papers referred to in sub-rules (1), (2), (3) and (4) must be legibly written or type- written in double space or printed. If Xerox copy of the documents is filed, then the same should be legible. Each paper should be certified as a true copy by the party filing the same and indexed in such a manner as to give a brief description of the documents, with page numbers and the authority before whom it was filed.

Filing of affidavit

- (7) Where a fact, which is not borne out by or is contrary to the record relating to the case, is alleged in the settlement application, it shall be stated clearly and concisely and supported by a duly sworn affidavit.

Date and place of Hearing of application to be notified

- (8) The Commission shall notify to the applicant and the Commissioner the date and place of hearing of the application.

Sitting of Bench

- (9) A Bench shall hold its sitting at its headquarters. The Bench may, however at the discretion of the Presiding Officer, hold its sittings at any place in its jurisdiction notified by the Commission.

Powers of a Bench

(10) A Bench shall dispose of such settlement applications or matters arising therefrom as the Chairman may by general or special order direct.

Constitution of Special Bench

(11) (1) The Chairman may, for the disposal of a particular case, constitute a special bench consisting of at least five Members drawn from all the Benches of the Commission.

(2) The special Bench shall be presided over by the Chairman or a Vice Chairman .

(3) If the Members of the Special Bench are equally divided, they shall state the point or points on which they differ and make a reference to the Chairman who shall refer the case for hearing on such point by one or more of other Members of the Settlement Commission and such point or points shall be decided according to the opinion of the Members of the Settlement Commission who have heard the case.

(4) Notwithstanding anything contained in the foregoing provisions of this rule, if one or more persons constituting the Special Bench (whether such person is the Presiding Officer or another Member of the Special Bench) are unable to function in Special Bench owing to illness or any other cause or in the event of occurrence of a vacancy either in the office of the Presiding Officer or in the office of one or other Members of the Special Bench, the remaining Members, if more than three may function as the Special Bench, and the senior most of the remaining Members shall act as the Presiding Officer of the Special Bench.

Filing of authorisation

(12) An authorised representative appearing for the applicant at the hearing of an application shall file before the commencement of the hearing a document authorising him to appear for the applicant and if he is a relative of the applicant, the document shall state the nature of his relationship with the applicant, or if he is a person regularly employed by the applicant, the capacity in which he is at the time employed.

Verification of additional facts

(13) Where in the course of any proceeding before the Commission any facts not contained in the settlement application (including the annexure and the statement and other documents accompanying such annexure) are sought to be relied upon, they shall be submitted to the Commission in writing and shall be verified in the manner as provided for the settlement application.

Proceedings not open to the public

(14) The proceeding before the Commission shall not be open to the public and no person (other than the applicant, his employee, the concerned officers of the Commission or the Customs and Central Excise Department or the authorised representatives) shall, without the permission of the Commission, remain present during such proceedings.

Publication of orders of the Special Bench

(15) The Chairman may, at his discretion, direct the publication of orders or portions containing the rulings of the Special Bench with such modifications as to names and other particulars therein, as he may deem fit.

Adjournment of hearing

(16) The Commission may, on such terms as it thinks fit and at any stage of the proceedings, adjourn the hearing of the application or any matters arising therefrom.

[Notification dated 26th October, 1999 issued by Joint Commissioner, Settlement Commission, New Delhi, vide F .No. 22/10/99-Ad IC]

CUSTOMS (SETTLEMENT OF CASES) RULES, 1999

In exercise of the powers conferred by Section 156 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely:-

1. Short title commencement:-

- (1) These rules may be called the Customs (Settlement of cases) Rules, 1999.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions : In these rules, unless the context otherwise requires:-

- (a) "Act" means the Customs Act, 1962 (52 of 1962).
- (b) "Form" SC (C)- 1 means the form appended to these rules.
- (c) "Settlement Commission" means the Customs and Central Excise Settlement Commission constituted under Section 32 of the Central Excise Act, 1944 (1 of 1944).
- (d) "Officer of Customs" means an officer of Customs as referred to in Section 3 of the Act.

3. Form and manner of application:-

- (1) An application under sub-section (1) of Section 127 B of the Act shall be made in form SC (C)-1.
- (2) The application referred to in sub-rule (1), the verification contained therein and all relevant documents accompanying such application shall be signed.
 - (a) in case of an applicant, by the applicant himself or where the applicant is absent from India, then, either by the applicant himself or by any other person duly authorised by him in this behalf and where the applicant is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
 - (b) In the case of a Hindu undivided family, by Karta of such family and, where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family.
 - (c) In the case of a company or local authority, by the principal officer thereof;
 - (d) In the case of a firm, by any partner thereof, not being a minor,
 - (e) In the case of any other association, by any member of the association or the Principal Officer thereof; and
 - (f) In the case of any other person, by that person or some person competent to act on his behalf.
- (3) Every application in Form SC (C)-1 shall be filed in quintuplicate and shall be accompanied by a fee of one thousand rupees.

4. Disclosure of information in the application for settlement of cases:-

- (1) The Settlement Commission may, while calling for a report from the Commissioner of Customs under sub-section (1) of Section 127 C of the Act, forward a copy of the application referred to in sub-rule (1) of rule 3. (other than the annexure and the statements and other documents accompanying such annexure).
- (2) Where an order under sub-section (1) of Section 127 C of the Act has been made to proceed with the application by the Settlement Commission, the information contained in the Annexure to the application in Form SC(C)-1 and the statements and other documents accompanying such annexure shall be sent to the Commissioner of Customs along with a copy of the said order.

(5):- (1) Manner of Provisional Attachment of property:-

- (1) Where the Settlement Commission, orders attachment of property under sub section (1) of Section 127 D of the Act, it shall send a copy of such order to the Commissioner of Customs or the Commissioner of Central Excise having jurisdiction over the place in which the applicant owns any movable or immovable property or resides or carries on his business or has his bank account.

(2) On receipt of the order referred to in sub-rule (1), the Commissioner may authorise any officer subordinate to him to take steps to attach such property of the applicant.

(3) The officer authorised under sub-rule (2) shall prepare an inventory of the property attached and specify in it, in the case of the immovable property the description of such property sufficient to identify it and in the case of the movable property the place where such property is lodged or kept and shall hand over a copy of the same to the applicant or to the person from whose charge the property is attached.

(4) The officer authorised under sub rule (2) shall send a copy of the inventory so prepared each to the commissioner of Customs or the Commissioner of Central Excise as the case may be and also to the Settlement Commission.

(6):- Fee for copies of reports:- Any person who, under section 127G of the Act, makes an application for obtaining copies of reports made by any Officer of Customs, shall pay a fee of rupees five per page of each report or part thereof.

Form SC (C)-1.

[See rule 3 of the Customs (Settlement of cases) Rules, 1999]

Before the Customs and Central Excise Settlement Commission Bench at.....

(Form of application for settlement of a case under section 127b of the Customs Act. 1962)

S. A (C) No /99

1. Full Name and address of the applicant:
2. Address for communication:
3. (1) Permanent account no:
(2) ITC Code no:
(3) Status (see note 2)
4. Commissioner of Customs having jurisdiction over the applicant:
5. Period / date of the cause/dispute in connection with which the application for settlement is made:-
6. Details of Bill(s) of Entry/Shipping Bill(s) filed in relation to the case for settlement:-
7. Proceedings to which application for Settlement relates, the date from which the proceedings are pending and authority before whom the proceedings are pending:
8. Where any appeal or application for revision has been preferred after the expiry of the period specified for filing such appeal or application for revision, as the case may be, whether such appeal or revision has been admitted.
9. Date of Seizure if any:
10. Brief facts of the case and particulars of the issues to be settled:
11. Total amount of duty involved in the dispute:
12. Additional amount of duty disclosed and accepted as payable. (See note 3)

Signature of applicant.

Verification

I.....son/daughter/wife ofresiding atdo solemnly declare that I am making this application in my capacity as.....and I am competent to verify it.

That the contents of this application are true to the best of my knowledge and belief and no information relevant to the facts of the case has been suppressed. Annexures of the documents accompanying the application are true copies of the originals and the tables showing financial transactions are correct and duly attested by me.

Verified today the.....day.....of.....1999. at.....

Deponent.

Note.

1. The application fee should be credited in a branch of the authorised bank or a branch of the State Bank of India or a branch of Reserve Bank of India and the triplicate copy of the challan sent to the Settlement Commission with the application. The Settlement Commission will not accept cheques drafts, hundies or other negotiable instruments.
2. Please state whether individual, Hindu undivided family, company, firm, an association of persons etc.
3. The additional amount of customs duty accepted as payable referred to in item 12 shall be given in Annexure to this application.

ANNEXURE**Statement containing particulars referred to in item 10 of the application made under Section 127B (1) of the Customs Act, 1962.**

1. Details of information which has not been correctly declared in the Bill of Entry/Shipping Bill:
2. Additional amount of duty payable on the goods covered in the Bill of Entry/Shipping Bill and the manner in which such duty has been derived.
3. Duty liability accepted out of the total duty demanded in the show cause notice, if any, issued and the manner in which such duty liability has been derived.
4. Full and true disclosure of the facts regarding the issues to be settled, including the terms of settlement sought for by the applicant.

Signature of the applicant

Place:

Date:

[Notification No. 59/99-Cus. (N.T.) dated 22.10.1999 vide F.No 275/154/99-CX 8A]

Procedure on receipt of application under Section 127 B.

Section 127 C prescribes the procedure for dealing with the application received under Section 127 B as following-

- (1) On receipt of an application under Sec. 127-B, the Settlement Commission shall call for a report from the Commissioner of Customs having jurisdiction and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the

investigation involved therein, the Settlement Commission may, by order, allow the application to be proceeded with or reject the application:

Provided that an application shall not be rejected under this sub-section, unless an opportunity has been given to the applicant of being heard :

Provided further that the Commissioner of Customs shall furnish such report within period of the one month of the receipt of the communication from the Settlement Commission, failing which it shall be presumed that the Commissioner of Customs, has no objection to such application; but he may raise objections at the time of hearing fixed by the Settlement Commission for admission of the application and the date of such hearing shall be communicated by the Settlement Commission to the applicant and the Commissioner of Customs within a period not exceeding two months from the date of receipt of such application, unless the presiding officer of the bench extends the said period of two months, after recording the reasons in writing.

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Commissioner of Customs having jurisdiction.

(3) Subject to the provisions of sub-section (4), the applicant shall, within thirty days of the receipt of a copy of the order under sub-section (1) allowing the application to be proceeded with, pay the amount of additional duty admitted by him as payable and shall furnish proof of such payment to the Settlement Commission.

(4) If the Settlement Commission is satisfied, on an application made under sub-section (1) that the applicant is unable for good and sufficient reasons to pay the amount referred to in sub-section (3), within the time specified in that sub-section, it may extend the time for payment of the amount which remains unpaid or allow payment thereof by installments, if the applicant furnishes adequate security for the payment thereof.

(5) Where the additional amount of customs duty referred to in sub-section (3) is not paid by the applicant within the time specified or extended period, as case may be, the Settlement Commission may direct that the amount which remains unpaid, together with simple interest at the rate of eighteen per cent per annum or at the rate notified by the Board from time to time on the amount remaining unpaid, be recovered as the sum due to the Central Government by the proper officer having jurisdiction over the applicant in accordance with the provisions of Sec. 142.

(6) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner of Customs having jurisdiction and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner (Investigation) to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(7) After examination of the records and the report of the Commissioner of Customs received under sub-section (1), and the report, if any, of the Commissioner (Investigation) of the Settlement Commission under sub-section (6), and after giving an opportunity to the applicant and to the Commissioner of Customs having jurisdiction to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matter covered by the application, and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner of Customs or the Commissioner (Investigation) under sub-section (1) or sub-section (6)

(8) Subject to the provisions of Sec. 32-A of the Central Excise Act, 1944 (1 of 1944), the materials brought on record before the Settlement Commission shall be considered by the Members of the

concerned Bench before passing any order under sub-section (7) and, in relation to the passing of such order, the provisions of Sec. 32-D of the Central Excise Act, 1944 (1 of 1944) shall apply.

(9) Every order passed under sub-section (7) shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(10) Where any duty payable in pursuance of an order under sub-section (7) is not paid by the applicant within thirty days of the receipt of a copy of the order by him, then, whether or not the Settlement Commission has extended the time for payment of such duty or has allowed payment thereof by instalments, the applicant shall be liable to pay simple interest at the rate of eighteen percent per annum or at such other rate as notified by the Board on the amount remaining unpaid from the date of expiry of the period of thirty days aforesaid.

(11) Where a settlement becomes void as provided under sub-section (9) the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and proper officer may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of two years from the date of the receipt of communication that the settlement became void.

Other salient features contained in Section 127 can be summarised as below-

No such application shall be rejected unless an opportunity has been given to the applicant of being heard.

Once the application is allowed by the Commission to be proceeded with, the applicant will have to pay the amount of additional duty admitted by him as payable within 30 days of the receipt of the order allowing the application to be proceeded with. The Commission, however, has powers to extend the aforesaid time for payment or to allow payment in instalments provided the applicant furnishes adequate security for the payment thereof. The decisions of the Commission shall be by majority.

The Commission has powers to order provisional attachment of any property belonging to the applicant for the purpose of protecting the interest of revenue during the pendency of any proceedings before it. The Settlement Commission also has powers to grant immunity from prosecution for any offences under the Central Excises Act, the Customs Act or under the Indian Penal Code or under any other Central Act for the time being in force in respect of the case covered by the Settlement Commission. The Commission also has powers to grant immunity either wholly or in part from the imposition of any penalty, fine and interest under the Central Excises Act or the Customs Act, as the case may be, in respect of the case covered by the Settlement Commission. No immunity, however, shall be granted by the Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under Section 32 E of the Central Excise Act or section 127-F of the Customs Act.

The Commission also has powers to re-open completed proceedings under certain circumstances with the concurrence of the applicant.

The Commission also has powers to send a case back to the proper officer in the event of the applicant not cooperating with the Commission in the proceedings before it.

The order passed by the Commission shall be conclusive. The applicant shall not be entitled to apply for settlement in relation to any other matter if the applicant has been penalised by the Commission on the ground of concealment of particulars of his liability in a case or after passing of an order of

settlement in relation to a case, the applicant is convicted of any offence in relation to that case or if the applicant's case has been sent back to the proper officer by the Commission.

The proceeding before Settlement Commission shall be judicial proceedings within the meaning of Section 193 and Section 228 of the Indian Penal Code and for the purpose of Section 196 of the said Code. Section 193 of the IPC provides for punishment for intentionally giving false evidence in any Judicial proceeding. Section 196 of the IPC provides for punishment for using evidence known to be false and section 228 of the IPC provides for punishment for intentional insult or interruption to any public servant sitting in Judicial proceedings.

SETTING UP OF ADDITIONAL BENCH AT MUMBAI

(1) In pursuance of the provisions contained in the Finance Act 1998, an Additional Bench of the Customs and Central Excise Settlement Commission has been set up by the Government at Mumbai. The Additional Bench at Mumbai would be operational with immediate effect. The office of the Additional bench at Mumbai is located at the following address:

**OFFICE OF THE SETTLEMENT COMMISSION, CUSTOMS & CENTRAL EXCISE,
6TH FLOOR, UTPAD SHULK BHAVAN, BANDRA - KURLA COMPLEX,
BANDRA (EAST), MUMBAI – 400 051.**

TEL. No EPABX : 652 3010 / 652 3011 / 652 3012

Extn Nos. 1600 to 1621

ENQUIRY COUNTER: 1661 (Extn)

FAX : 652 2425 / 652 7675

The Customs & Excise Settlement Commission is designed to provide a balanced, quick and final resolution of tax disputes with a view to avoid lengthy litigation. All those who are eligible to avail the services of the Settlement Commission may send their applications to the Customs and Central Excise Settlement Commission, Additional Bench at Mumbai in accordance with the provisions of the Rules contained in Notification No. 55 / 99 C. Ex (N.T.) dated 22nd October, 1999 in respect of Central Excise disputes and in accordance with the provisions of the Rules contained in Notification No. 59 / 99-Custom (N.T) dated 22nd October, 1999 in respect of Customs disputes. Copies of the above notifications alongwith the prescribed form of application for settlement of cases are annexed to the Public Notice at Annexure I & II.

Members of the Trade and Industry are requested to avail of services of the Customs & Central Excise Settlement Commission for settlement of long pending disputes.

**[Public Notice No. 1/SC/WZ/99 dated 28.10.1999 issued by Commissioner (Investigation),
Settlement Commission, Mumbai]**

(2) Attention of the Trade is invited to Notification Nos. 40/99 CX (N.T.) and 41/99 CX (N.T), both dated 09th June, 1999, constituting Settlement Commission for Settlement of cases under Customs Laws and Central Excise Laws as specified in Chapter XIV A of the Customs Act, 1962 (No. 52 of 1962) and Chapter V of the Central Excise Act, 1944 (Act 1 of 1944).

The Additional Bench at Mumbai is situated at the aforementioned address and has started functioning w.e.f. 1st November, 1999. This Bench has jurisdiction of Commissioners with headquarters

located in the States of Maharashtra, Gujarat, Madhya Pradesh and Goa. The list of existing Commissioners of Central Excise and Commissioners of Customs is enclosed as Annexure "A". The jurisdiction is determined not by place of business or residence of the applicant but by location of the Head quarters of Commissioner of Central Excise or Commissioner of Customs having jurisdiction over such applicant.

In this connection, attention is also invited to Notification Nos. 55/99 C.E (N.T) and 59/99 Cus.(N.T) both dated 22.10.1999, prescribing, interalia, the form of application for settlement of Excise cases under Section 32 E of Central Excise Act, 1944 {Form SC(E)-1} and Customs cases under section 127B of Customs Act, 1962 {Form SC(C)-1}, Verification, and Annexure thereto, which are to be filed in quintuplicate alongwith triplicate copy of the TR-6 Challan evidencing payment of application fee of Rs. 1000/- (Rupees One Thousand only) to be deposited/credited under Heading "038-C Excise" -Other Receipts- fees, fine penalties-etc, for Central Excise cases and Heading "037-Customs" -Other Receipts- fees, fine, penalties etc, for Customs cases, in the bank as prescribed in the subject Notification (s).

It is emphasised that the "Annexure" to be appended to the Application form SC(E) -1 /SC (C)-1, as the case may be, and the statement and other documents accompanying the said application should be submitted in a "sealed cover" to the "Designated Officer" in the Settlement Commission (Additional Bench-Mumbai), at the time of filing the application, to maintain secrecy.

All the Trade Associations are requested to bring the contents of this Public Notice to the notice of their Members, Manufacturers, Importers, Exporters, in particular; and the Trade in general.

[Public Notice No .2/SC/WZ/99 dated 5TH November, 1999, issued by Commissioner (Investigation), Settlement Commission, Mumbai]

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CHAPTER – TEN

APPEALS AND REVISIONS

PRELIMINARY

Chapter XV of the Customs Act contains the provisions regarding appeals against any order passed by any Officer of Customs under the said Act. Hence the said provisions should be studied before any appeal is preferred, to satisfy oneself that an appeal does in fact lie.

Appeal- definition of - A legal proceeding by which a case is brought from a lower to a higher court of law for reversing 2. An application or reference to corporate, vindicate or decide by a recognized authority. (Mar. Web. Dic.)

RIGHT TO FILE AN APPEAL

A right of appeal is not a natural right or an inherent right. Any person aggrieved with an order passed by any authority does not have any natural right to question that decision by way of an appeal, even if that decision may have adverse civil consequences affecting his rights. An appeal cannot be preferred unless the concerned statute has provided for a right to appeal against that decision. As the Supreme Court observed in *Ganga Bai V. Vijayakumar* (A.I.R. 1974 S.C. 1126) -

“There is a basic distinction between the right of suit and right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one’s peril, bring a suit of one’s choice. It is no answer to a suit, however frivolous the claim that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeal is quite the opposite. The right of appeal inheres in no one, and, therefore, an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.”

RIGHT OF APPEAL IS A VESTED RIGHT

The Supreme Court in *hoosein kasam dada (India) Ltd. V. State of Madhya Pradesh* [AIR 1953 SC 221 = 1983 (13) E.L.T. 1277] observed :

“.....a right of appeal is not merely a matter of procedure. It is a matter of substantive right. The right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court. In the language of Jenkins, J. in *Nana v. Sheku* (ILR 32 Bom. 337) to disturb an existing right of appeal is not a mere alteration of procedure. Such a vested right cannot be taken away except by express enactment or necessary intendment. An intention to interfere with or imperil such a vested right cannot be presumed unless such intention be clearly manifested by express words or necessary implication.”

Again in *Garikapatti Veerayya v. N. Subbia Choudhry and Others* (AIR 1957 S.C. 540) it was observed by the majority in para 23 :-

“From the decisions cited above the following principles clearly emerge :

- (i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding
- (ii) The right of appeal is not a mere matter of procedure but is a substantive right ;
- (iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit ;

- (iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists on and from the date the lis commences although it may be actually exercised when the adverse judgement is pronounced. Such right is to be governed by the law prevailing at the date of the institution of the date of its decision or at the date of filing of the appeal ;
- (v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.”

PRINCIPLES GOVERNING RIGHT OF APPEAL

The following principles are relevant with reference to a right of appeal : (1) The pursuit of a Remedy in law by way of a suit, appeal and second appeal are all steps in a series of proceedings, all connected by an intrinsic unity ; they are all to be regarded as one legal proceeding ; (2) The right of appeal is not a mere matter of procedure but a substantive right; (3) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved for the parties thereto during the rest of the career of the proceedings; (4) The right of appeal being a vested right accruing on the filing of the suit, it exists in favour of the parties as on and from the date the lis commences ; although it may be exercised only on the pronouncement of the adverse order the right is to be governed by the law as it existed on the date of the institution of the suit or proceeding and not by the law as it stood on the date of the adverse order or the date when the appeal is filed; (5) This right of appeal can be taken away by a subsequent enactment only if it is so provided either expressly or by necessary intendment and not otherwise. (AIR 1967 ALL. 214; AIR 1979 Bom. 62; AIR 1977 Cal. 43).

No provision of law in a statute can be claimed to be ultra vires merely because no right of appeal has been conferred under the statute against an order under that provision. (AIR 1975 Punj. 29).

A right of appeal is not a guaranteed or a Constitutional right. It is not a Fundamental right. Hence the legislature can within its plenary power take away a right of appeal. (AIR 1987 Pat. 33)

PROVISIONS REGARDING APPEALS

Appeals to Commissioner (Appeals). As stipulated in section 128 of the Customs Act. 1962, (1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within three months from the date of the communication to him of such decision or order.

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow in to be presented within a further period of three months.

(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

Appeals to the Appellate tribunal—Section 129 A of the Customs Act, 1962, prescribes that (1) any persons aggrieved by any of the following orders may appeal to the appellate Tribunal against such order –

- (a) a decision or order passed by the Commissioner of Customs as an adjudicating authority;
- (b) an order passed by the Commissioner (Appeals) under Sec. 128A.
- (c) an order passed by the Board or the Appellate Commissioner of Customs under Sec. 128, as it stood immediately before the appointed day;
- (d) an order passed by the Board or the Commissioner of Customs, either before or after the appointed day, under Sec. 130, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not

have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,--

(a) any goods imported or exported as baggage;

(b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;

(c) payment of drawback as provided in Chapter X, and the rules made thereunder :

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where ---

(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Sec. 125: or

(ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(iii) the amount of fine or penalty determined by such order, does not exceed fifty thousand Rupees.

(1A) Every appeal against any order of the nature referred to in the first proviso to sub -section (1), which is pending immediately before the commencement of Sec. 40 of the Finance Act, 1984 (21 of 1984) before the Appellate Tribunal and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on such commencement to the Central Government and the Central Government shall deal with such appeal or matter under Section 129-DD as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

(2) The Commissioner of Customs may, if he is of opinion that an order passed by—

(a) the Appellate Commissioner of Customs under Sec. 128, as it stood immediately before the appointed day, or

(b) the Commissioner (Appeals) under Sec. 128-A, is not legal or proper, direct the proper officer to appeal on his behalf to the Appellate Tribunal or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Sec. 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986, against such order.

(3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Customs, or as the case maybe, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that the may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the appellate tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objection(4), if it is satisfied that there was sufficient cause for not presenting it within that period .

(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, in the case of an appeal

made on or after the 1st day of June, 1993, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,--

- (a) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is one lakh rupees or less, two hundred rupees;
- (b) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than one lakh rupees, on thousand rupees :

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section(4).

APPEALABLE ORDERS

1. **“Decision or order”**.—The words “a decision or order passed by an officer of customs under this Act” used in Sec. 188 of the Sea Customs Act, 1878 (corresponding to Sec. 128 of the Customs Act 1962) must mean a real and not a purported determination. A determination, which takes into consideration factors which the officer has no right to take into account, is no determination. In such cases the provision excluding jurisdiction of civil courts cannot operate so as to exclude an enquiry by them. The expression “any decision or order” are of wide amplitude and included all orders or decisions passed under this Act. The authorities deciding the appeal, viz. the Commissioner (Appeals) and the Appellate Tribunal are functioning as quasi-judicial authorities. The expression used under Sec. 128 to designate the Commissioners (Appeals)and the appellate tribunal is “appellate authority”.

When a person is designated as an appellate authority there is a lis between the appellant who pays the duty and the revenue; and the order passed by the appellate authority is subject to revision by the Central Government. The power exercised under this section by the Commissioner (Appeals) or by the Appellate tribunal being of a quasi-judicial nature, no authority, however high placed, can control the decision of a judicial or a quasi-judicial authority. This is the essence of own judicial system.

All judicial or quasi-judicial orders would, in their nature, be appealable. Of course this would not necessarily mean that an appeal could, on that score itself, be maintained, since, as already seen, no appeal would lie against such orders unless the statute itself provides for a right of appeal.

As to what would make a decision, or act, judicial the Supreme Court observed in the Jaswant Sugar mills case (AIR 1963 S.C. 677)

“To make a decision or an act judicial the following criteria must be satisfied :

- (1) It is in substance an determination, upon investigation, of a question by the application of objective standards to facts found in the light of pre-existing legal rules ;
- (2) That the investigation is subject to certain procedural at-tributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence, if a dispute be on a question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.”

ORDER – MEANING OF

It may be noticed that in the provisions relating to appeals in both the Acts there is a slight change in the words used. In some places the words ‘decision or order’ are used while in some places the word ‘decision’ alone is used. On the question whether this variation would be of any particular significance, the decision in Hindustan Safety Glass Works Ltd. (supra) may be referred to. As earlier noted, the question in that case was whether any appeal would lie against a summons issued for

production of documents and for that reason of an available alternate remedy the writ petition should be rejected. In para 10 the High Court observed:

“That summons issued under Sec. 14 does not fall under the category of a decision is not in doubt and has not been characterised as such even by Shri Dhavan. What he however says is that it is an order passed by the Asst. Commissioner and is consequently appealable under Sec. 35. We have considered the submission with the seriousness it deserves, but we find it difficult to accept it. We find in chapter VI in which Sec. 35 occurs a set of provisions relating to adjudication of confiscations and penalty which includes provisions for appeals and revisions. When we look into Sec. 35 itself we find that the word ‘order’ appears to have been used in the sense of an order in enforcement of a decision. This is clear when we read the proviso to Sec. 35 laying down that no order passed in appeal confirming, altering or annulling the decision or order appealed against shall be such as will have the effect of subjecting any person to any greater confiscation or penalty than has been adjudged against him in the original decision or order. And sub-section (2) of Sec. 35 makes an order passed in appeal final subject to one passed in revision under Sec. 36 by the Central Board. The nature of an order which admits of an appeal or can be passed by the appellate authority is, thus, contemplated as one resulting in some confiscation or penalty. The word order in Sec. 35 would not take within its sweep a mere direction to produce some documents which, by itself, cannot involve the consequence of any confiscation or penalty.”

The High Court thus held that the word ‘Order’ would refer to an order in enforcement of a decision. It would not include a mere direction without a consequent result of confiscation or penalty. Though the High Court in the above passage referred to confiscation and penalty only, there can be no doubt that a demand for duty would also be included. In fact orders for demand of duty, as well as orders on the basis of which subsequent demands for duty could be raised, would all be orders that would be appealable. For instance, an order on a classification list or a price list is appealable though no demand for duty would arise until after an assessment later takes place following such an order.

In para 9 of the decision in *Commissioner v. Nippon Bearings (P) Ltd.* – 1990 (50) E.L.T. 276 the Tribunal has observed as follows :

“Sec. 122 of the Act should be read with Sec. 124 of the Act. Sec. 124 of the Act speaks of ‘an order’ and no reference is made to a ‘decision’. Therefore, the Commissioner while adjudicating confiscation and penalties passes an order and not a decision. An order under Sec. 122 of the Act requires communication under Sec. 129A(3) in the absence of which the question of filing an appeal does not arise. At this stage we may point out that Sec.124 speaks of only an order. We may also point out that Sec. 129A(3) does not speak of communicating a decision. In other words the parliament has consciously made a distinction between a decision and an order to be passed under the Act for purpose of filing an appeal to the tribunal.”

In *Vaz Forwarding Pvt. Ltd. V. Commissioner* [1990 (48) E.L.T. 477] the Tribunal held that an order suspending the Custom-House Agent’s licence was appealable to the Tribunal as the order had been passed by the Commissioner as an adjudicating authority. It was so held taking into consideration the fact that the Custom House Agents Licensing Regulations, 1984 had been framed in exercise of the powers granted under Sec. 146(2) of the Customs Act and so when the Commissioner acts under Regulation 21 he does so as an adjudicating authority under the Customs Act. It may also be noted that Regulation 23 provides for the procedure to be followed before suspension could be ordered and that the procedure makes it clear that in making an order under Regulation 21 the Commissioner acts as a quasi-

judicial authority, his orders likely to result in civil consequences to the agent in respect of his right to carry on a profession and forfeiture of his security amount also.

In *Anand Laminates Ltd. v. Commissioner* [1993 (64) E.L.T. 255] it was held that an order by the Commissioner refusing to extend the period of warehousing would not be a mere administrative order as the power to be exercised was a quasi judicial power and hence an appeal lay against the order refusing such extension .

PERSON ENTITLED TO FILE THE APPEAL

1. PERSON AGGRIEVED

Sec. 35 and Sec. 35B(1) of the Central Excises and Salt Act, as well as Sec. 128 and 129A(1) of the Customs Act, state that any person aggrieved by the decision or order of the concerned lower authority may prefer an appeal against the same. Thus, under these provisions no appeal can be filed unless the person filing the appeal is aggrieved by the impugned order. Sec. 35B(2) of the Central Excises and Salt Act and Sec. 129A(2) of the Customs Act designate the Commissioner as the person entitled to file an appeal, permitting him to file the appeal by authorising a suitable subordinate to do so. Sec. 35L of the Central Excises and Salt Act and Sec. 130E of the Customs Act merely read that an appeal may be filed to the Supreme Court, there being no specification as to who would be entitled to file the appeal . Hence once it has been found that an appealable order has been passed it will have to be then verified who would be entitled to file the appeal. The “person aggrieved” would normally be the person who has been saddled with a liability under the impugned order, either by way of payment of duty, or penalty, or an order for confiscation, with or without option for redemption. There have been several decisions where this ‘phrase aggrieved’ has been gone into.

Sec. 129A(2) of the Customs Act entitles the Commissioner to authorise the filing of an appeal, on behalf of the revenue, against an order of the Commissioner (Appeals). As to the process leading to the filing of the appeal under that provision, the Tribunal held, in *Commissioner v. Kirloskar Cummins Ltd.* [1987 (28) E.L.T. 65], that the order should be first examined by the Commissioner himself and that the processing should not be from junior upwards. But when a similar submission was made in a later case, *Commissioner v. Cawnpore Sugar Works* [1989 (42) E.L.T. 11], the Tribunal disagreed with that view and held that if the Superintendent had initially gone through the file and made a recommendation for filing an appeal and then the Commissioner, after having gone through that note, agreed with that view and ordered the filing of the appeal such an order is not bad in law.

2. COMMISSIONER’S APPEAL

As to the right of a Commissioner to file an appeal under the provisions referred to earlier, it was held in *Commissioner v. Narendra P. Unrao & Ors.* [1984 (15) E.L.T. 275] that the Commissioner has no right to file an appeal against the order of the Central Board of Excise and Customs. In *Commissioner v. Pondicherry Papers Ltd.* [1984 (18) E.L.T. 17] also it was so held even though in that case the Commissioner had filed the appeal after obtaining the sanction of the Board to do so. In *Commissioner v. Govind Prasad Ruia* [1987 (31) E.L.T. 723] it was held that the Commissioner was not entitled to file appeal against order of Special Secretary.

The Assistant Director, Revenue Intelligence, who investigated the case, cannot file an appeal against the order of adjudication by the Commissioner, as he is not an aggrieved person. *Asstt. Director, Revenue Intelligence v. Pooja Exports* [1991 (52) E.L.T. 625]

Failure to send to the respondent copy of the authorisation of the Commissioner would not invalidate the appeal when there was such an authorisation to file the appeal. – Collr. V. Alliance Udyog [1993 (64) E.L.T. 258]

3. JOINT APPEALS

In connection with appeals a question that often comes up is whether a common appeal can be filed by several persons or even by the same person against several orders. Such a situation may arise under several circumstances :

1. Different show cause notices issued to the same person but finally disposed of under a single order.
2. The above notices may be disposed of under separate, but identical orders.
3. Single show cause notice issued to several persons and then disposed of under a single order.
4. Show cause notices to different parties separately but finally disposed of under a single order.
5. Separate appeals filed by a single individual but all appeals disposed of under a single consolidated order.
6. Separate appeals filed by different persons but heard together and disposed of by a single order as involving a common issue.
7. Single appeal filed against several orders and disposed of under a single order without objection.

In respect of (1) above the original order being one it would be sufficient if a single appeal is filed. See *Godrej and Boyce Mfg. Co. Ltd. v. Commissioner* [1994 (71) E.L.T. 429]. In respect of (2) above the original orders being multiple in number, as many appeals will have to be filed as there are orders in original. In respect of (3) above it would be open to two or more of the persons concerned to join together and file a single appeal but it would be open to each individual to file his own separate appeal. The same would be the position in respect of (4) above. See *Kanta International and Motilal Gupta v. Commissioner* [1990 (48) E.L.T. 549] wherein it was held that in respect of an adjudication order under which penalties have been levied against two persons, both of them could jointly file a single appeal. See also *Universal Automobile & Ancillary Ltd. v. Commissioner* [1991 (56) E.L.T. 346] for the same. When under the same transaction the firm as well as the partner are said to have committed the offence and penalties are imposed on both under the same order, the firm and the partner are entitled to file a joint appeal. *Universal Automobile and Ancillary Ltd. v. Commissioner* [1990 (47) E.L.T. 79]. In respect of (7) above a single further appeal would suffice as there was only one appeal earlier and that was disposed of under one order.

In *Alliance Mills (Lessees) Ltd. v. Collr.*- 1996 (81) E.L.T. 615 the East Regional Bench had to deal with a case in which 36 show cause notices were disposed of under a single order with one order number only. An appeal against that order was also disposed of under a single order with a single number only. When a single appeal was filed in the CEGAT against that order an objection was taken that 36 appeals were to be filed and fees paid separately for each such appeal. Thus the situation was as under (1) and (7) above. The Bench was of opinion that since the order in original as also the order in appeal were given a single number only the appeal to the CEGAT would also be a single appeal only. However it took note of an earlier judgment of the South Regional Bench to the contrary and referred the matter to the President for Constitution of a Larger Bench, observing that the decision in *Ekantika Copiers*

also needed reconsideration. It is not known whether a Larger Bench was constituted and, if so, what was the decision of that Bench.

But the opinion is not uniform in respect of (5) and (6) above. In *Unique Pharmaceutical Lab. V. Commissioner* [1983 (12) E.L.T. 628] the Assistant Commissioner's order related to four bills of entry. On appeal the Commissioner (Appeals) passed a single order. A single revision petition was filed to the Govt. On transfer thereof to the Tribunal an objection was taken that four revisions should have been filed. It was held that as the order of the Commissioner (Appeals) (it must have been the Appellate Commissioner) was only one, a single revision would suffice. But it is not clear from the order whether there were four appeals before the Commissioner or only one. The above decision was followed in *Bharat Petroleum Corpn. v. Commissioner* [1988 (33) E.L.T. 563] by the same Bench. However, when this issue came up before another Bench in *P.K. Himatsingka & Co. v. Commissioner* [1987 (29) E.L.T. 714] it was held that there should be as many appeals as there are original orders to be contested. It may be noticed that the contrary view, that one appeal would suffice even in such cases, has been put forward in the Editor's note under the above report, as also earlier in the Editorial at page A 102 of 1983 (11) E.L.T. The argument is that as the appeal is under the provisions of Sec. 35-B(1) of Central Excises and Salt Act or Sec. 129A of the Customs Act, which refer to AN ORDER of the Commissioner (Appeals), a single appeal should suffice against a single order. Reference is made also to a judgment of the Andhra High Court *C.I.T. v. Venkateswara Talkies* (1985 Vol.20 Taxman 47) and of the Calcutta High Court *C.I.T. v. Rupa traders* (1979 Vol. 118 ITR 412) as supporting the above view .

This is on the theory that after an order is passed in the appeal, the order of the lower authority is merged in the order of the appellate authority and hence there being a single order only of the appellate authority, one appeal alone would suffice against that order. It may be seen that in *S. S. Rathore v. State of Madhya Pradesh* [1989 (43) E.L.T. 790] the Supreme Court has laid down that the doctrine of merger is applicable not only to proceedings in courts but also to proceedings before Tribunals. But when applying the above argument it has also to be remembered that while passing a consolidated order in multiple appeals the usual practice is to give the order multiple numbers equal to the number of appeals, thus making the order in appeal a multiple order though identical. In that event the above argument that there was only a single order in appeal may not hold good. Thus there appears to be much to be said in support of either view.

However, as far as the CEGAT is concerned, multiple appeals are insisted upon as may also be seen from CEGAT Public Notice No. 3 of 1986, dt. 30-5- in which it is mentioned in para 5 that while multiple appeals are to be filed, a single consolidated paper book may be filed. This has been finally settled by the Larger Bench decision reported in *Ekantika Copiers (P) Ltd.* (supra) it appears that in such cases also as many appeals are to be preferred as there were 13 appeals filed before the Commissioner (Appeals) and they were disposed of under 13 separate, but identical, orders since 13 separate numbers had been given to the order in appeal. This that would be a case falling under (2) above, and not under (5) or (6) above. But in para 7 of the main order (page 360) the Bench observed :

“Accordingly we hold that where the Commissioner (Appeals) disposes of a number of appeals by a common order, the appellant should file as many appeals as numbers of orders in original and the mere fact that a common order has been passed by the Commissioner (Appeals) cannot be a ground for filing a single appeal.”

The point to be noted is that the above observations cover (2), (5) and (6) above though the facts in the instant case do not appear to have covered (5) and (6). But since the observations are in a Larger

Bench decision it is felt that even in cases of (5) and (6) above multiple appeals may be necessary hereafter.

4. aggrieved person – Who is not :

- a person who has only an agreement of sale.....
- against whom no order has been passed
- a person who had made no claim over the confiscated property during adjudication.....
- whose claim had been upheld in the order on the classification list or price list.....
- a mere broker.....
- Consignor when Modvat credit is denied
- A person who has no direct legal interest in the goods
- A CHA unless authorized to file appeal on behalf of importer.....
- An Asstt. Commr. In the matter of filing appeal for enhancement of sentence in a criminal prosecution.

5. No appeal lies against

- direction only
- a trade notice.....
- order of Commr. (A) refusing to grant waiver of pre-deposit
- order of Commr. (A) refusing to grant stay
- a summons for production of documents.....
- an order, unless it is adverse to the claimant
- a direction to the Asstt. Commr. To prefer an appeal
- adjustment of previous licence against new licence

6. No appeal lies to CEGAT against

- order passed by Commr. (A) under Section 35E (4) CESA
- order for payment of interest on yarn used in fabrics later exported under Rule 13 CER.....
- Per Contra
- order rejecting claim for refund of interest collected on rebated duty of excise.....

7. Appeal lies to CEGAT against

- order relating to refund claim of cess paid on jute yarn captively consumed.....
- Demand for cess under Produce Cess Act.....
- Order under Cl. 3 of the Jute Manufactures Cess Rules.

FORMS AND PROCEDURE FOR FILING APPEAL

APPEALS TO COMMISSIONER (APPEALS)

Procedure in appeal Section 128 A of The Customs Act, 1962 provides that—(1) The Commissioner (Appeals) shall give an opportunity to he appellant to be heard if he so desires.

(2) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable .

(3) The Commissioner (Appeals) may, after making such further inquiry as may be necessary, pass such order as he thinks fit confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the adjudicating authority with such directions as he may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary :

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

(4) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Commissioner of Customs.

Form of appeal to Commissioner (Appeals) –

Rule 3 of Customs (Appeals) Rules, 1982, prescribes that. (1) An appeal under sub-section. (1) of Section 128 to the Commissioner (Appeals) shall be made in Form no. C.A.-1.

(2) The grounds of appeal and the form of verification as contained in form No.C.A.-1 shall be signed :-

- (a) in the case of an individual, by the individual himself or where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf ;
- (b) in the case of a Hindu undivided family, by the Karta and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family.
- (c) in the case of a company or local authority, by the principal officer thereof ;
- (d) in the case of a firm, by any partner thereof, not being a minor ;
- (e) in the case of any other association, by any member of the association or the principal officer thereof ; and
- (f) in the case of any other person, by that person or some person competent to act on his behalf.

(3) The form of appeal in Form No. C.A.-1 shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

Form of Appeal to the Commissioner (Appeals) under Section 128 of the Customs Act, 1962

Form No. CA -1

- (1) No.....of(year).....
- (2) Name and address of the appellant.
- (3) Designation and address of the officer passing the decision or order appealed against and the date of the decision or order.
- (4) Date of communication of the decision or order appealed against to the appellant.
- (5) Address to which notice may be sent to the appellant.
- (6) Whether duty or penalty or both is deposited. If not, whether any application for dispensing with such deposit has been made. (A copy of the Challan under which the deposit is made shall be furnished).
- (6A) Whether the appellant wishes to be heard in person.
- 7. Reliefs claimed in appeal.

Statement of facts

Grounds of appeal

(i)

(ii)

(iii)

Signature of authorised representative, if any.

Signature of the appellant.

Verification

I,, the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the day of(year).....

Place

Date

Signature of authorised representative, if any.

Signature of the appellant.

Notes : (1) The grounds of appeal and the form of verification shall be signed by the appellant in accordance with the provisions of Rule 3 of the Customs (Appeals) Rules, 1982.

(2) The form of appeal, including the statement of facts and the grounds of appeal shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

Form of application to the Commissioner (Appeals) under Section 129-D—

- (1) An application under sub-section (4) of Section 129D to the Commissioner (Appeals) shall be made in form No. C.A.-2.
- (2) The form of application in Form No. C.A. shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified appeal copy) and a copy of the order passed by the Commissioners of Customs directing such authority to apply to the Commissioners.

FORM NO. C.A.-2

[See Rule 4 of the Customs (Appeals) Rules, 1982]

Form of Application to the Commissioner (Appeals) under Sec. 129D(4) of the Customs Act, 1962

Appeal No.of(year).....

.....Applicant

Vs.

.....Respondent

- (1) Designation and address of the application (If the application is not the adjudicating authority, a copy of the authorisation from the Commissioner of Customs to make the application should be enclosed).
- (2) Name and address of the respondent.
- (3) Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.
- (4) Date on which the order under sub-section (2) of Section 129D has been passed by the Commissioner of Customs.

- (5) Date of the communication of the order referred to in (4) above to the adjudicating authority.
 (6) Relief claimed in the application.

Statement of facts

Grounds of appeal

- (i)
 (ii)
 (iii) etc.

Signature of the applicant.

Note : The form of application, including the statement of facts and the grounds of application shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) and a copy of the order of the Commissioner of Customs under sub-section (2) of Section 129D of the Act.

AUTHORISED REPRESENTATIVES

Qualifications for authorised representatives. – For the purposes of section 146 A, an authorised representative shall include a person who has acquired any of the following qualifications, being the qualifications specified under clause (d) of sub-section (2) of the said section 146a, namely:-

- (a) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or
 (b) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or
 (c) a Company Secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980), who has obtained a certificate of practice under section 6 of that Act; or
 (d) a post-graduate or an Honours degree holder in Commerce or a post-graduate degree or diploma holder in Business Administration from any recognised University; or
 (e) a person formerly employed in the Departments of Customs or Central Excise or Narcotics and has retired or resigned from such employment after having rendered service in any capacity in one or more of the said Departments for not less than ten years in the aggregate.

Explanation.—In this rule, “Recognised University” means any of the Universities specified below, namely:-

I. Indian universities

Any Indian University incorporated under any law for the time being in force in India;

II. Rangoon University

III. English and Welsh Universities

The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London
 Manchester, Oxford, Reading, Sheffield and Wales;

IV. Scottish Universities

The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews;

V. Irish Universities

The Universities of Dublin (Trinity college), the Queen’s University, Belfast and the National University of Dublin;

VI. Pakistan Universities

Any Pakistan University incorporated under any law for the time being in force;

VII. Bangladesh Universities

Any Bangladesh University incorporated under any law for the time being in force.

Authority under, section 164A(5) (b). -- The Commissioner of Customs having jurisdiction in the proceedings in which a person who is not a legal practitioner is found guilty of misconduct in connection with that proceeding under the Act shall be the authority for the purposes of clause (b) of sub-section (5) of section 146A.

APPEALS TO APPELLATE TRIBUNAL

Section 129A of the Customs Act provides that—

(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

- (a) a decision or order passed by the Commissioner of Customs as an adjudicating authority;
- (b) an order passed by the Commissioner (Appeals) under section 128A ;
- (c) an order passed by the Board or the Appellate Commissioner of Customs under section 128, as it stood immediately before the appointed day ;
- (d) an order passed by the Board or the Commissioner of Customs, either before or after the appointed day, under section 130, as it stood immediately before that day :

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,-

- (a) any goods imported or exported as baggage;
- (b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India; or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at their destination;
- (c) payment of drawback as provided in Chapter X, and the rules made thereunder :

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where-

- (i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under sec. 125; or
- (ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved ; or
- (iii) the amount of fine or penalty determined by such order, does not exceed ten thousand rupees.

(1A) Every appeal against any order of the nature referred to in the first proviso to sub-section (1), which is pending immediately before the commencement of section 40 of the Finance Act, 1984, before the Appellate Tribunal and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on such commencement to the Central Government and the Central Government shall deal with such appeal or matter under section 129DD as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

(2) The Commissioner of Customs may, if he is of opinion that an order passed by the Appellate Commissioner of Customs under sec. 128, as it stood immediately before the appointed day, or by the Commissioner (Appeals) under sec. 128A, is not legal or proper, direct the proper officer to appeal on his behalf to the Appellate Tribunal against such order.

- (3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Customs, or as the case may be, the other party preferring the appeal.
- (4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).
- (5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.
- (6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, in the case of an appeal made on or after the 1st day of June, 1993, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—
- (a) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is one lakh rupees or less, two hundred rupees ;
 - (b) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than one lakh rupees, one thousand rupees :
- Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

Procedure of Appellate Tribunal. Section 129 C of the Customs Act, 1962, prescribes that—

- (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President from amongst the members thereof.
- (2) Subject to the provisions contained in sub-section, (4), a Bench shall consist of one judicial member and one technical member.
- (3) Omitted.
- (4) The President or any other member of the Appellate Tribunal authorised in this behalf by the President may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member where –
 - (a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Sec. 125; or
 - (b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved, or the duty involved ; or
 - (c) the amount of fine or penalty involved, does not exceed ten lakh rupees.
- (5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority; but if the members are equally divided, they shall state the point or points on which they differ and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

- (6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.
- (7) The Appellate Tribunal shall; for the purposes of discharging its functions, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :
 - (a) discovery and inspection;
 - (b) enforcing the attendance of any person and examining him on oath;
 - (c) compelling the production of books of account and other documents; and
 - (d) issuing commissions.
- (8) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Secs. 193 and 228 and for the purpose of Sec. 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of Sec. 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)

Form of Appeals, etc., to the Appellate Tribunal.—

- (1) An appeal under sub-section (1) of section 129A to the Appellate Tribunal shall be made in Form No. C.A.-3.
- (2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (4) of section 129A shall be made in Form No. C.A.-4.
- (3) Where an appeal under sub-section (1) of section 129A or a memorandum of cross-objections under sub-section (4) of that section is made by any person other than the Commissioner of Customs, the grounds of appeal, the grounds of cross-objections and the forms of verification as contained in Form Nos. C.A.-3 and C.A.-4, as the case may be, respectively shall be signed by the person specified in sub-rule (2) of rule 3.
- (4) The form of appeal in Form No. C.A.-3 and the form of memorandum of cross-objections in Form No. C.A.-4 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

Form of application to the Appellate Tribunal.—

- (1) An application under sub-section (4) of section 129D to the Appellate Tribunal shall be made in Form No. C.A.-5.
- (2) The form of application in Form No. C.A.-5 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order passed by the Commissioner of Customs (one of which at least shall be a certified copy) and a copy of the order passed by

FORM NO. C.A.-3

[See Rule 6(1) of the Customs (Appeals) Rules, 1982]

Form of Appeal to the Appellate Tribunal under Section 129A(1) of the Customs Act, 1962

In the Customs, Excise and Gold (Control) Appellate Tribunal

Appeal No. of
Appellant
 Vs.
Respondent

- (1) The designation and address of the authority passing the order appealed against.
- (2) The number and date of the order appealed against.
- (3) Date of communication of the order appealed against.
- (4) State/Union territory and the Commissionerate in which the order/decision of assessment/penalty/fine was made.
- (5) Designation and address of the adjudicating authority in cases where the order appealed against is an order of the Commissioner (Appeals).
- (6) Address to which notices may be sent to the appellant.
- (7) Address to which notices may be sent to the respondent.
- (8) Whether the decision or order appealed against involves any question having a relation to the rate of duty or to the value of goods for purposes of assessment; if not, the difference in duty involved or amount of fine or penalty involved or value of goods involved, as the case may be.
- (9) Whether duty or penalty is deposited ; if not, whether any application for dispensing with such deposit has been made.
(A copy of the Challan under which the deposit is made shall be furnished).
- (9A) Whether the appellant wishes to be heard in person.
- (10) Reliefs claimed in appeal.

Statement of facts

Grounds of appeal

(i)

(ii)

(iii)

(iv)

etc.

Signature of the authorised
representative, if any.

Signature of the appellant.

Verification

I, , the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the day of19

Signature of the authorised
representative, if any,

Signature of the appellant.

Notes : 1. The grounds of appeal and the form of verification shall, if the appeal is made by any person, other than the Commissioner of Customs, be signed by the appellant in accordance with the provisions of Rule 3 of the Customs (Appeals) Rules, 1982.

2. The form of appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy)

3. The form of appeal should be in English (or Hindi) and should set forth, concisely and under district heads, the grounds of appeal without any argument or narrative and such grounds should be numbered consecutively .

4. The fee of Rs. 200/- required to be paid under the provisions of the Act shall be paid through a crossed bank draft drawn in favour of the Assistant Registrar of the Bench of the Tribunal on a branch of

any Nationalised bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

FORM NO. C.A.-4

[See Rule 6(2) of the Customs (Appeals) Rules, 1982]

Form of Memorandum of Cross-objections to the Appellate Tribunal under Section 129A(4) of the Customs Act, 1962

In the Customs, Excise and Gold (Control) Appellate Tribunal

Cross-Objection No.of19

In Appeal/Application of19.....

Vs.

.....Respondent

- (1) State/Union territory and the Commissionerate in which the order/decision of assessment/ penalty/ fine was made.
- (2) Date of receipt of notice of appeal or application filed with the Appellate Tribunal by the appellant or, as the case may be, the Commissioner of Customs.
- (3) Address to which notices may be sent to the respondent.
- (4) Address to which notices may be sent to the appellant/applicant.
- (5) Whether the decision or order appealed against involves any question having a relation to the rate of duty of Customs or to the value of goods for purpose of assessment; if not, the difference in duty involved, or amount of fine or penalty involved or the value of goods involved, as the case may be.
- (6) Reliefs claimed in the memorandum of cross-objections.

Grounds of Cross-Objections

- (1)
- (2)
- (3)
- (4) etc.

Signature of the authorised representative, if any.

Signature of the respondent.

Verification

I,....., the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified to day, theday of19.....

Signature of the authorised representative, if any.

Signature of the respondent.

Notes : 1. The grounds of cross-objections and the form of verification shall, if the memorandum is filed by any person, other than the Commissioner of Customs, be signed by the respondent in accordance with the provisions of Rule 3 of the Customs (Appeals) Rules, 1982.

2. The form of memorandum of cross-objections shall be filed in quadruplicate.
3. The form of memorandum of cross-objections should be in English (or in Hindi) and should set forth, concisely and under distinct heads, the grounds of cross-objections without any argument or narrative and such grounds should be numbered consecutively.
4. The number and year of appeal/application is allotted by the office of the Appellate Tribunal and appearing in the notice of appeal/ application received by the respondent is to be filled in by the respondent .

FORM NO. C.A.-5

[See Rule 7 of the Customs (Appeals) Rules, 1982]

Form of Application to the Appellate Tribunal under Section 129D(4) of the Customs Act, 1962

In the Customs, Excise and gold (Control) Appellate Tribunal

Appeal No. of
 Applicant
 Vs.
 Respondent

- (1) Designation and address of the applicant (if the applicant is not the adjudicating authority, a copy of the authorisation from the Commissioner of Customs to make the application should be enclosed).
- (2) Name and address of the respondent .
- (3) Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.
- (4) State/ Union territory and the Commissionerate in which the decision or order was made.
- (5) Date on which order under sub-section (1) of Section 129D has been passed by the Board.
- (6) Date of the communication of the order referred to in (3) above, to the adjudicating authority.
- (7) Whether the decision or order appealed against involves any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment; if not, the difference in duty involved, or amount of fine or penalty involved or value of goods involved.
- (8) Reliefs claimed in the application.

Statement of facts

Grounds of application

- (i)
- (ii)
- (iii) etc.

Signature of the applicant.

Note : The form of application including the statement of facts and the grounds of application shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order of the Commissioner of Customs (one at least of which shall be a certified copy) and a copy of the order of the Board under sub-section (1) of Section 129D.

Revision by Central Government.- SECTION 129DD.

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.

Explanation. – For the purposes of this sub-section, “order passed under section 128A” includes an order passed under that section before the commencement of section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :

Provided that the Central Government may, if it is satisfied that the applicant was prevented by Sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of two hundred rupees.

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section,-

- (a) in any case in which an order passed under section 128A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods of greater value; and
- (b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 2

REVISION BY CENTRAL GOVERNMENT

Form of revision application to the Central Government. –

1. (1) A revision application under sub-section (1) of section 129DD to the Central Government shall be in Form No. C.A. –8.
- (2) The grounds of revision application and the form of verification, as contained in Form C.A.-8, shall be signed by the person specified in sub-rule (2) of rule 3.
2. Where the revision application is signed by the authorised representative of the applicant, the document authorising such representative to sign and appear on behalf of the applicant shall be appended to such revision application.
3. The revision application in Form No. C.A.-8 shall be filed in duplicate and shall be accompanied by an equal number of copies of the following documents, namely :-
 - (i) order passed by the Commissioner of Customs (Appeals) under section 128A; and
 - (ii) decision or order passed by the Customs Officer which was the subject-matter of the order referred to in clause (i).

Procedure for filing revision application.- (1) The revision application in Form C.A.-8 shall be presented in person to the Under Secretary, Revision Applications, Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-1, or sent by registered post addressed to said Under Secretary.
 (2) The revision application sent by registered post under sub-rule (1), shall be deemed to have been submitted on the date on which it is received in the office of the said Under Secretary.

FORM NO. C.A.-8

[See Rules 8A and 8B of the Customs (Appeals) Rules, 1982]

Form of Revision Application to the Central Government under Section 129DD of the Customs Act, 1962

1. Revision Application No. of
2. Name and address of the applicant
3. Designation and address of the authority passing the order against which the revision application is filed
4. The number and date of the order
5. Date of communication of the order.
6. Designation and address of the authority against which the order has been passed by the Commissioner (Appeals)
7. Address to which notices/communications may be sent to the Applicant
8. Whether duty or penalty, if any, has been deposited (a copy / extract of the challan / account current, as the case may be, under which the deposit is made, shall be furnished)
- 8A. Whether the appellant wishes to be heard in person
9. Reliefs claimed in application
 - (i)
 - (ii)
 - (iii) etc.

Statement of facts

Grounds of appeal

Signature of the authorised
representative, if any.

Signature of the Applicant

Verification

I,, the applicant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the day of19.....

Signature of the authorised
representative, if any.

Signature of the Applicant.

Notes : (1) The grounds of application and the form of verification shall be signed by the applicant in accordance with the provisions of sub-rule (2) of Rule 8A.

(2) The application, including the statement of facts and the grounds of application, shall be filed in duplicate and shall be accompanied by an equal number of copies of the order against which the

application is filed and also the decision / order of the authority against which Commissioner of Customs (Appeals) passed the order.

- (3) The form of application shall be in English (or Hindi) and shall set forth, concisely and under district heads, the grounds of application without any argument or narrative and such grounds should be numbered consecutively.
- (4) The fee of rupees two hundred required to be paid under the provisions of the Act shall be paid under T. R. 6 challan and the duplicate copy of the T.R. 6 challan shall be filed along with the application for revision.
- (5) Where the application is signed by the authorised representative of the applicant, the document authorising the representative to sign and appear on behalf of the applicant shall be appended to the application.

[M.F., (D.R.) Notfn. No. 212-Cus., dtd. 10-9-82 as amended by Notfn. No. 15/85-Cus., dtd. 30-1-85]

Statement of case to High Court. – SECTION 130

(1) The Commissioner of Customs or the other party may, within sixty days of the date upon which he is served with notice of an order under section 129B (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment), by application in such form as may be specified by rules made in this behalf, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provision contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court :

Provided that the Appellate Tribunal may, if it is satisfied that the application was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

Form of application of the High Court.-

- (1) An application under sub-section (1) of section 130A requiring the High Court to direct the Appellate Tribunal to refer to the High Court any question of law shall be made in Form No. C.A.-6 and such application shall be filed in quadruplicate.
- (2) A memorandum of cross-objections under sub-section (3) of section 130A to the High Court shall be made in Form No. C.A.-7 and such memorandum shall be filed in quadruplicate.
- (3) Where an application under sub-section (1) of section 130A or a memorandum of cross-objections under sub-section (3) of that section is made by any person other than the Commissioner of Customs, the application, the memorandum or form of verification, as the case may be, contained in Form NO.-6 or form No. C.A.-7 shall be signed by the person specified in sub-rule (2) of rule 3.

For Form No.-6 and Form NO. C.A.-7 appended to the said rules the following Forms shall respectively be substituted, namely :-

FORM NO. C.A.-6

[See rule 8 (1)]

Form of an Application to the High Court under section 130A of the Custom Act, 1962

In the High Court of Judicature at

In the matter of Appeal No. (Name of the appellant)

Application No.-----of -----19-----

(To be filled in by the Office)

-----Applicant

Vs.

-----Respondent

- (1) State or Union Territory and the Commissionerate from which the application is filled :
- (2) Number of the appeal which gives rise to the application :
- (3) Address to which notices may be sent to the applicant :
- (4) Address to which notices may be sent to the respondent :
- (5) The appeal noted above was decided by the ----- Bench of the Appellate Tribunal on :
- (6) The notice of the order under Section 129B of the Customs Act, 1962 was served on the applicant on :
- (7) The facts which are admitted and/or found by the Appellate Tribunal and which are necessary for drawing up a statement of the case, are stated in the enclosure for ready reference :
- (8) The following questions of law arise out of the order of the Appellate Tribunal :
 - 1.
 - 2.
 3. etc.
- (9) The applicant, therefore, requires under sub-section (1) of Section 130A of the Customs Act, 1962 that High Court directs the Appellate Tribunal to refer to the High Court the question(s) of law referred to in paragraph 8 above :
- (10) The documents or copies thereof as specified below (the translation in English of the documents, where necessary) is annexed) with the statement of the case.

Signature of the authorised
representative, if any.

Signature of the applicant.

Verification

I, ----- the applicant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ----- day of ----- 19 -----

Signature of the authorised
representative, if any.

Signature of the applicant.

Notes :

- (1) The application and the form of verification shall, if the application is made by any person, other than the Commissioner of Customs, be signed by the applicant in accordance with the provisions of Rule 3 of the Customs (Appeal) Rules, 1982.
- (2) The application shall be filed in quadruplicate.
- (3) The fee of Rs. 200/- required to be paid under the provisions of the Act shall be through a crossed bank draft drawn in favour of the Registrar of the High Court on a branch of any nationalised bank located at the place where the High Court is situated and the demand draft shall be attached to the form of application.

FORM NO. C.A.-7

[See rule 8 (2)]

Form of Memorandum of Cross-Objections under section 130A (3) of the Customs Act, 1962 in the matter of an application before the High Court under section 130A(1) of the said Act

In the High Court of Judicature at

Memorandum of Cross Objections No.----- of ----- 19-----

(To be filled in by the Office)

In Application No. -----of-----19-----

-----Applicant

Vs.

-----Respondent

- (1) State/Union territory and the Commissionerate from which the memorandum of cross-objection is filled :
- (2) Date of receipt of notice of application filed with the High Court by the respondent :
- (3) Address to which notices may be sent to the respondent :
- (4) Address to which notices may be sent to the applicant :
- (5) The facts which are admitted and/or found by the Appellate Tribunal and which are necessary for drawing up a statement of the case, are stated in the enclosure for ready reference :
- (6) The following questions of law arise out of the order of the Appellate Tribunal :
 - 1.
 - 2.
 3. etc.
- (7) The respondent, therefore, requires under sub-section (1) of Section 130A of the Customs Act, 1962 that the Tribunal may be directed to furnish a statement of the case on the questions of law referred to in paragraph 6 above.
- (8) That the documents or copies thereof as specified below (the translation in English of the documents where necessary) is annexed with the statement of the case.

Signature of the authorised
representative, if any.

Signature of the respondent.

Verification

I, ----- the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ----- day of -----19-----

Signature of the authorised
representative, if any.

Signature of the respondent.

Note :

- (1) The memorandum of cross-objection and the form of verification shall, if the memorandum is filed by any person, other than the Commissioner of Customs, be signed in accordance with the provisions of Rule 3 of the Customs (Appeal) Rules, 1982.
- (2) The memorandum of cross-objection shall be filed in quadruplicate.

[Notification No. 62/99-Cus. (N.T.), dated 17-11-1999]

Difference between Revision and Appeal

As to the difference in scope between appellate and the revisional proceedings, the Supreme Court observed in State of Kerala Vs K M C Abdulla & Co – Air 1965 SC 1585 as follows:

“There is an essential distinction between an appeal and a revision. The distinction is based on differences implicit in the said two expressions. An appeal is a continuation of the proceedings; in effect the entire proceedings are before the appellate authority and it has power to review the evidence subject to the statutory limitations prescribed. But in the case of a revision, whatever powers the revisional authority may or may not have, it has not the power to review the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision.”

The Kerala High Court observed on this matter in Govt. of India and Others Vs A S Bava – 1980 (6) ELT 625 thus:

“No doubt, as pointed out by this court in Boraswamy Chettiar V. Nhandamandhas Kunhiraman and others – 1069 KLJ 227 the jurisdiction exercised by the Government of India under Sec.36(2) being revisional in character, it is not expected to treat the proceedings as an appeal and substitute its own conclusions on questions of fact in the place of those arrived at by the subordinate authorities. But the revisional authority must, all the same, examine the legality, propriety and correctness of the findings entered by the subordinate authorities and in case it is found that a finding of fact can legitimately be characterised as ‘improper’ in the sense of its being wholly unreasonable or perverse, it is the duty of the revisional authority to interfere with such a finding and render justice between the parties”.

Thus, the essential distinction between an appeal and a revision lies in the scope of the powers of the authority exercising the revisional powers. An appellate authority can reappraise evidence and come to its own conclusion on factual issues whereas a revisional authority has a limited power only in this regard. It cannot upset the finding of the lower authority on questions of fact, unless it is of opinion that the finding is either perverse or based on no evidence. The mere fact that the revisional authority feels that an alternative finding is also equally permissible would not enable it to upset the finding of the lower authority on a question of fact.

REVISION

There are three types of exercise of revisionary powers provided for in the Customs Act, 1962. They are:

1. Revision petitions to the Central Govt. by the aggrieved assesses;
2. Suo moto exercise of revisionary powers by the Central Govt.; and
3. Power of the Board or the Commissioner to take up for review an order passed by the appropriate lower adjudicating authority and then, on being satisfied that the said order is not legal or proper, direct a designated subordinate to make an application to the Tribunal or the Commissioner (Appeals) for determination of the points (arising out of the order under consideration) that may be specified in the order of the Board or the Commissioner.

1. Revision petitions to the Central Govt. by the aggrieved assesses

- a) (i) The relevant provision in this category of cases is Section 129DD of the Customs Act, 1962, which stipulates that the Central Govt., may, on the application of any person aggrieved any order passed under Section 128a, where the order is of the nature referred to in the first proviso to sub – station (1) of Section 129a, annul or modifies such order.
- (ii) An application under sub – section (1) shall be made within 3 months from the date of communication to the applicant of the order against which the application is being made:
Provided that the Central Govt. may, if it is satisfied that applicant was prevented by sufficient cause from presenting the application within the aforesaid period of 3 months, allow it to be presented within a further period of 3 months.
- (iii) Normally the aggrieved party would be entitled to prefer an appeal against an order of the Commissioner (Appeals). But the above provisions have carved out certain categories of such orders for a remedy by way of revision. The categories so enumerated are:
Any goods imported or exported as baggage;
Any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India; or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at such destination;
Payment of drawback as provided in Chapter X and the rules made thereunder.

Limitation & Procedure:

The Revision Petition by the aggrieved party under the Customs Act, 1962 has to be filed within 3 months from the date the impugned order was communicated to the party. There is a further provision for condonation or delay, but it must be noted that such condonation can extend to a further period of 3 months only and not beyond. The Revision Petition is to be preferred in Form CA8. A fee of Rs 200/- is to accompany the Revision Petition. The Revision Petition has to be filed in duplicate accompanied by an equal number of copies of the impugned order as well as the order of the original authority. If an authorised representative signs the petition, the authority executed in his favour is also to be enclosed. The petition may be filed in person or sent by Regd. Post. If sent by post, the date of presentation shall be deemed to the date on which the petition is received by the designated authority. The above provisions are in terms of Rule 8A & 8B of Customs (Appeals) Rule, 1982. It is worthwhile to mention that none of the provisions contains a specific provision for grant of a personal hearing to the Revision Petitioner before the petition is disposed of. Column 8 – A of CA8 required the petitioner to state whether the petitioner wishes to be heard in person. Hence, whenever a personal hearing is felt necessary, it should be ensured that a suitable request is entered under the above column. Otherwise, it is quite likely that the petition would be disposed of without the personal hearing and it may not be possible to make a complaint of this in any subsequent step such as Writ Petition, etc.

2. Suo moto exercise of revisionary powers by the Central Govt.

- a) Section 129DD(i) of the Customs Act, 1962, which stipulates that the Central Govt., may, on the application of any person aggrieved any order passed under Section 128A, Where the order is of the nature referred to in the first proviso to sub – station (1) of Section 129A, annual or modifies such order.

As per para 4 of Section 129DD, the Central Govt. may, of its own motion, annual or modify any order referred in Sub – section (i). Thus, the said section of the Customs Act, 1962, enable the Central Govt. to suo moto pass order annulling or modifying an order of the Commissioner (Appeals) referred to in sub – section (1) of the said section. Thus, this power is also to be exercised only with reference to Section 129A of the Customs Act, 1962.

b) Period of limitation for the exercise of such power

Sub – section (5) and (6) contain the provisions regarding the period of limitation for the issue of suo moto revision notices. Sub – section 5(a) of Section 129DD reads that in cases where, under the order of the Commissioner (Appeals), the penalty or fine in lieu of confiscation had been enhanced or goods of greater value than under the order of the lower authority had been ordered to be confiscated, no further enhancement of penalty or fine in lieu of confiscation can be ordered under the order in the revision proceedings nor could goods of greater value be ordered to be confiscated. Sub – section 5(b) then proceeds to lay down that in cases not covered by sub – section 5(a) no order for enhancement of penalty or fine in lieu of confiscation or for confiscation of goods of greater value can be passed, unless the person affected by the proposed order had been given notice within one year from the date of the order sought to be annulled or modified. It should be noted that the starting point of limitation is the date of the order (and not the date of its despatch) and that within the prescribed period it must be given (i.e.) served on the party in any of the prescribed methods.

Sub –section (6) of the Section 129DD stipulates for the period of limitation in respect of cases wherein the Central Govt. is of the view that under the impugned order any Customs duty has not been levied or has been short – levied. The said sub – section reads that under the proposed order no order levying or enhancing the duty shall be made unless the notice to show cause against such a proposal had been given within the time limit specified in Sec. 11A or Sec. 28 of the appropriate Act.

c) Scope of the revisional power suo moto

Sub – section (4) of the Section 129DD reads that the Central Govt. may, of its own motion, annual or modify any order referred to in sub – section (1). But it has been noted that sub – section 5(a) contains a restriction of this power. It reads that if under the order of the Commissioner (Appeals) the penalty or fine in lieu of confiscation ordered by the lower authority had been enhanced, or confiscation had been ordered of goods of greater value than under the order of the lower authority, then no order enhancing the penalty or fine in lieu of confiscation, or confiscating goods of greater value, can be made in the order to be passed in pursuance of the suo moto notice. Subject to this restriction (and also the rules of limitation noted above) the Central Govt. is free to pass an order modifying or annulling the order of the Commissioner (Appeals).

3. Power of the Board or the Commissioner to take up for review an order passed by the appropriate lower adjudicating authority

a) Section 129D of the Customs Act, 1962 stipulates that the Board may, of its own motion, call or and examine the record of any proceeding in which a Commissioner of Customs, as an adjudicating authority, has passed any decision or order under this act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner to apply to the Appellate Tribunal [or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Sec. 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986] for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Similarly, sub – section (2) of the above section provides for action on the part of Commissioner with reference to any proceeding in which adjudicating authority subordinate to the Commissioner had passed any decision or order. In such cases, the application is to be directed to be made to the Commissioner (Appeals).

b) Limitation

Sub – section (3) of Section 129D of the Customs Act, 1962 provides that no order under sub – section (1) and (2) shall be made after the expiry of one year from the date of the order or decision of the adjudicating authority. A further period of limitation is provided in sub – section (4) to the effect that the application to the Appellate Tribunal or the Commissioner (Appeals) is to be made by the adjudicating

authority within 3 months of the communication of the order under sub – section (1) or (2) to the adjudicating authority. It should be noted that there is no provision for condonation of any delay in the making of either the order under sub – section (1) or the application under sub – section (4).

Under Section 129D(1) & (2) of the Customs Act, 1962, reads that Board or the Commissioner may authorise the designated officer to apply to the Tribunal or the Commissioner (Appeals), as the case may be, for the determination of such point or points as may be specified in the order of the Board or the Commissioner. It would, therefore, be clear that in making this application under sub – section (4) thereafter the designated officer would have to confine himself to those specified points only and cannot raise other points of his own.

CONDONATION OF DELAY IN FILING THE APPEAL

The Central Excises and Salt Act as well as the Customs Act contain provisions for condonation of delay in the filing of the appeal, reference petition etc. and also, in some cases, the period for which delay could be condoned. It has been earlier seen that the provisions of the Limitation Act will not be attracted to the proceedings under these Acts before the authorities constituted under these Acts. Generally the provisions state that the delay may be condoned if the appellant is able to establish that he was prevented by sufficient cause from filing the appeal within time. As to what would constitute sufficient cause, no definite propositions could be laid down since it would be essentially a question of fact in each case. There are numerous decisions on this question, each depending on its own facts. As held by the Madras High Court in 1988 (37) E.L.T. 338 (supra) the appellate authority has no inherent power to condone delay in the presentation of the appeal.

The general rule to be followed in condonation of delay would be that the delay should be condoned if it had occurred in spite of the appellant exercising normal diligence and the delay was not due to any indifference on his part in taking the necessary steps for filing the appeal within time. The Supreme Court in the case of *Commissioner, Land Acquisition, Anantnag v. Mst. Katiji and Ors.* [1987 (28) E.L.T. 185] considered this phrase summarised its conclusions as follows:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusal to condone delay may result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational commonsense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested rights in injustice being done because of a non deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so”.

What should therefore arise for consideration in such applications for condonation of delay would be whether the applicant is shown to have been deliberately indifferent or supinely indifferent of his rights and obligations under the Act or has been guilty of some *mala fides*. If non of these is established then the rule should be to condone the delay.

PRE-DEPOSIT OF DUTY AND PENALTY AND WAIVER THERE OF

Section 35f of the Central Excises and Salt Act as also Section 129E of the Customs Act require that in connection with appeals in which the goods are not in the custody of the Central Excise Officer of the Customs Authorities, the duty demanded thereon under the impugned order, as well as the penalty imposed (in all cases), shall have to be deposited with the adjudicating officer pending the appeal. That means that without such a deposit the appeal shall not be heard by the appellate authority. The sections further contain a proviso that in proper cases where the appellate authority is satisfied that the requirement of such a deposit would cause undue hardship to the appellant, the appellate authority may dispense with such deposit subject to such conditions as may be imposed to safeguard the interests of the revenue. When it was contended before the Supreme Court that dismissal of the appeal cannot be ordered as a consequence of the failure to deposit, as required under Section 129 (of the Customs Act as it then stood), it was observed by the Supreme Court in *Navin Chhotelal v. Central Board of Excise and Customs* - 1981 (8) E.L.T. 679 :

“No doubt Section 129 does not expressly provide for the rejection of the appeal for non-compliance with the requirement of deposit of duty and penalty; but when sub-section (1) of Section 129 makes it obligatory on an appellant to deposit the duty or penalty pending the appeal and if a party does not comply either with the main sub-section, or any order that may be passed under the proviso, the appellate authority is fully competent to reject the appeal for non-compliance with the provisions of Section 129 (1). That is exactly what the first respondent has done in this case. Accepting the contention of Mr. Trivedi will mean that the appeal will have to be kept on file forever, even when the requirement of Section 129 (1) has not been complied with. Retention of such an appeal on file will serve no purpose whatsoever because unless Section 129 (1) is complied with, the appellate authority cannot proceed to hear the appeal on merits. Therefore the logical consequence of failure to comply with Section 129 (1) is the rejection of the appeal on that ground.”

Section 129E. Deposit, pending appeal, of [duty and interest] demanded or penalty levied

Where in any appeal under this Chapter, the decision or order appealed against relates to any [duty and interest] demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the [duty and interest] demanded or the penalty levied:

Provided that where in any particular case, the [Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of [duty and interest] demanded or penalty levied would cause undue hardship to such person, the [Commissioner (Appeals)] or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

Provisions for Appeal, Revisions & Reference at a Glance

Against orders by	To	Provision of law	Form to be used	Period of limitation	Fees	Copies of appeal memo	Enclosures
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
<u>APPEALS</u>							
1. Any Officer lower in rank	Commissioner	Section 128 of Customs	C.A.I.	Three months from date of	NIL	Two	Copy of order appealed

to Commissioner	(Appeals)	Act, 1962		communication for a further period of three months			against
2. Commissioner	CEGAT	Sec. 129A (1), 129C(3) Customs Act. Rule 6 of Customs (Appeal) Rules	C.A.3	Three months from date of communication of order with condonation for a further period of three months	Rs. 200 if duty demand / penalty is Rs.- 1,00,000 or less; Rs. 1000 if duty demand / penalty is more than Rs. 1,00,000	Five	1. Five copies of order appealed against of which one should be a certified copy 2. Copy of authorisation if appeal is by the Commissioner
3. Commissioner (A)	CEGAT	Sec. 129A (1), 129C(3) Customs Act Rule 6 of Customs (Appeal) Rules	C.A.3	Three months from date of communication of order with condonation for a further period of three months	Rs. 200 if duty demand/ penalty is Rs.1lakh or less ; Rs. 1000 if duty demand / penalty is more to Rs.1lakh	Five	1. Five copies of order appealed against of which one should be a certified copy 2. Copy of authorisation if appeal is by the Commissioner.
4. Cross-objections in items 2 & 3 above	Concerned Bench before which Appeal is pending	Sec. 129A (4) Customs Act, & Rule 6 of Customs (Appeal) Rules	CA 4	Forty five days from date of order or communication thereof whichever is later	NIL	Five	.....
5. Order of CEGAT relating to rate of duty or valuation	Supreme Court	Sec. 130E(b) Customs Act, 1962	NIL	Sixty days from date of order or communication thereof whichever is later	According to Or. XX-B Supreme	g to of Cou	Or. XX-A & the -rt Rules.
6. By a High	Supreme	Section 130	NIL	Sixty days from	According	-g to	Or. XX-A &

Court under Section 130 Customs Act.	e Court	E (a) of Customs Act		date of order or communication thereof	Or. XX-B Supreme	of Cou	the -rt Rules
<u>REFERENCE</u>							
1. Order of CEGAT not relating to rate of duty or valuation	CEGAT	Sec. 130 Customs Act Rule 8 of Customs (App) Rules	C.A.6	60 days of service of notice of order of CEGAT	Rs.200.	Thre e	.....
2. Cross-objections in above	CEGAT	Sec. 130(2) Customs Act Rule 8 of Cus. (Appeal) Rules	C.A.7	45 days of receipt of notice of reference application	Nil	Thre e	.....
3. Order of CEGAT dismissing reference petition	HIGH COURT	Sec. 130 (3) Customs Act	NIL	6 months of date of service of order of CEGAT	.....	.....	.....
<u>REVISION</u>							
1. Commissioner (Appeal) in cases covered by 1 st proviso to Sec.129A of Customs Act	CENTRAL GOVT.	Sec. 129DD Customs Act R. 8A of Customs (Appeal) Rules	C.A.8	Three months from date of communication of order of Commissioner (Appeals)	.....	Two	Two copies each of order passed by (a) Commissioner (App) (b) Lower authority
<u>REVIEW</u>							
a) Authority subordinate to Commissioner	Commissioner (Appeal)	Sec. 129D(2) Customs Act Rule 4 of Customs (Appeals) Rules	C.A.2	Application to Commissioner (Appeals) to be made within 3 months of date of communication of order of Commissioner	.....	Two	1. 2 copies of order of lower authority one should be a certified copy 2. Copy of order of Commissioner.
b) Commissioner as adjudicating authority	CEGAT	Section 129D (1) Customs Act. Rule 7 of Customs (Appeals) Rules	C.A.5	Application to CEGAT to be made within three months of date of communication or order of Board.	.....	Four	1. Four copies of order of Commr. of which one should be certified copy 2. Copy of order of the Board.

CHAPTER - ELEVEN

ARREST AND PROSECUTION

INTRODUCTION

Under Section 104 of the Customs Act, 1962, if an officer of Customs, empowered in this behalf by an order of Commissioner of Customs & has reason to believe that a person has been guilty of an offence punishable under Section 135 of the Act, he can arrest the said person. Also under Section 42 of the NDPS Act, 1985, officers of Customs, as is empowered in this behalf by general or special order by the Central Govt., can arrest any person whom he has reason to believe to have committed any offence punishable under Chapter IV of the NDPS Act, 1988. S.O. 822(E) dt. 14.11.85 empowering Customs officers (of and above rank of Inspector) to exercise the powers and perform the duties specified in Sec. 42 within the area of their jurisdiction is reproduced below :

S.O. 822 (E) : In exercise of the powers conferred by sub-section (1) of section 42 and section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby empowers the officers of and above the rank of Sub-Inspector in the department of Narcotics and of and above the rank of Inspector in the departments of Central Excise, Customs and Revenue Intelligence and in Central Economic Intelligence Bureau to exercise the powers and perform the duties specified in section 42 within the area of their respective jurisdiction and also authorise the said officers to exercise the powers conferred upon them under section 67.”

If the person is arrested, he should be informed about the grounds of arrest.

Next, without any delay he should be produced before a Magistrate. The person arrested should not be detained for more than 24 hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court.

Section 46 of the Code of Criminal Procedure lays down the procedure for effecting arrest which is as follows :

- (1) In making an arrest, the Police Officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.
- (2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect that arrest.
- (3) Nothing in this section gives a right to cause death of a person who is not accused of an offence punishable with death or with imprisonment for life.

In addition to Section 46 of the Cr. P. C., the officers should also study the provisions of Section 41, 49, 50, 51 and 56 of the Criminal Procedure Code.

As discussed above, the officer must have reason to believe that a person has been guilty of an offence punishable under Section 135, otherwise the person cannot be arrested.

In this context, before going in detail regarding arrest, it is necessary to know the provisions of the Act under which the offences are triable by Courts.

Chapter XVI of the Customs Act deals with offences and prosecution. Offences under Section 132 to 136 triable by Courts. By virtue of Sec. 137 of the Act, no Court can take cognizance of any offence under Section 132 to 136 except with the previous sanction of the Commissioner of Customs or of Central Govt. in the case on a complaint filed by an officer of Customs not lower in rank than Asstt. Commissioner of Customs. The Act provides inter-alia two types of action i.e.

- (1) Action-in-rem i.e. action against the goods
- (2) Proceedings in personem, a criminal prosecution.

Both the proceedings are independent of each other. The Ministry from time to time issues and reviews guidelines on launching of pro-section/arrests.

PROSECUTION CELL IN CUSTOM HOUSES

In order to have proper accountability the following procedures shall be followed in the functioning of Prosecution Cell.

1. Where a decision has been taken to prosecute certain offenders under the provisions of Customs Act, 1962 (as amended) the concerned seizing Unit, after enlisting all the relevant documents including statements, panchanamas, receipts, bills, vouchers etc. with due verification and certification of authenticity shall forward the concerned file duly indicating the number of pages on noting / correspondence sides to Prosecution Cell and obtain receipt to that effect for placing the same on the adjudication file. All such documents shall be the primary documents i.e. originals of the documents which shall be placed in a prosecution file called part II file. Where the seizing unit (particularly Zonal Office, D.R.I.) prefer to withhold the original documents till the completion of prosecution case, they shall take entire responsibility of deputing their officers to Court to follow the day to day proceedings and to assist, if necessary, the Officer deputed by the Prosecution Cell in this regard.

SUPERINTENDENT (P) /OFFICE ADMINISTRATION:

2. The Supdt., Office Administration, Prosecution Cell shall acknowledge the receipt of prosecution file after due verification of the contents of file by the concerned Supdt. He shall preserve the original documents liable to be tendered in the Court during prosecution proceedings separately in his safe custody and keep duly certified zerox copies in the Court file for day to day functioning. The court file shall be marked to the respective Supdt. (court matters) for further action.

3. Supdt. Office Admn. in consultation with Supdt. Court Co-ordination shall further allocate the work to panel counsel in such a manner that the prosecution cases are evenly distributed among all available Counsels, except in cases where they; have expressed their inability for taking up any court matter. He shall process the P.C. Bills after due verification of their authenticity. Besides assessment of work performance in the court by the panel counsels shall be taken into account while allocating the Court work to them and such assessment of performance shall be reduced in writing and be brought to the notice of A.C./Prosecution for proper appreciation and for contemplating any action in this regard.

4. Supdt., Office Administration, shall have to attend general correspondence, and parliament questions, which are based on factual information generated from Prosecution Cell or by collecting from other Section of this Preventive Commissionerate. Primarily on completion of the last working day of each month, total monthly figures shall be duly certified by the Supdt. Office Administration. Sources for compiling statements and office copies of all the statements shall be noted in the file by the concerned staff under the supervision of the Supdt./office Administration. All matters relating to registers and statements thereto shall properly be co-ordinated between Preventive/Ministerial staff concerned in this regard under the supervision of Supdt. Of Customs/Office Administration, Prosecution Cell and Deputy Office Supdt. Ministerial staff respectively. Where writs, have been filed by private parties against Union of India/Preventive Commissionerate on the issues arising out of any actions of particular Section/Department of Preventive Commissionerate, such individual Section/Department, as the case may be shall, in co-ordination with Prosecution Cell, deal/attend/assist during the progression of such Court proceedings till the proceedings reach to its logical conclusions. All the developments of such proceedings, from time to time shall be reduced in writing and be brought to the notice of Asstt. Commissioner/Prosecution.

SUPERINTENDENT (P)/COURT CO-ORDINATION:

5. The Supdt./Court Co-ordination shall keep liaison with the Counsels, Law Ministry, witnesses and all concerned departments and shall arrange meetings between them whenever needed. He shall be

looking after issue of notices, summons etc. He shall be assisted by I.Os. posted along with him from time to time and shall also look after general administration.

SUPERINTENDENT (P)/COURT MATTERS:

6. As soon as Prosecution file is received by the concerned Supdt., he shall ensure that :
- (i) a list (index) of all the documents viz. panchanama, statements, Arrest Memo and other documents has been prepared and placed in the file by the Seizing Unit;
 - (ii) that all the original documents including purity and disposal certificates required are in Prosecution file;
 - (iii) the copy of the remand application with the orders passed by the Magistrate is placed in the file;
 - (iv) if the accused remanded is already released on bail, full gist of the bail order mentioning bail amount, surety, etc. and other conditions shall be clearly mentioned in the noting side and also next date of remand. Whenever an accused is released on bail by the Court with a direction to attend the office daily or on certain days for a specified period, such accused shall directly report to the Investigating Unit. The Supdt. Of the concerned Investigating Unit shall also take necessary action and maintain an attendance register. In case the accused fails to report in terms of the order of the Court, the matter shall be immediately; reported to the Supdt. Prosecution Cell, who shall take action to get the bail of the accused cancelled for non-compliance of the court order. The Supdt./Remand Officer shall also put up a detailed note regarding the extension of remand from time to time in noting side of Prosecution file.
 - (v) Entry is made in the Remand register when the accused is remanded to judicial custody and if the Prosecution file is received in the Prosecution Cell, on the next date of remand extension, the officer concerned with the investigation, shall accompany the remand officer to brief the Panel Counsel regarding the progress of the investigation. There are instances where Magistrate also insist for the presence of the Investigation Officer to know the progress of the investigation or for any other queries. In the absence of information regarding progress of investigation, there may not be any material available to justify further custody and Magistrate may refuse to extend the custody.
7. He shall also ensure that orders that orders for allocation of the case to Penal Counsel is obtained from A.C./Prosecution, and necessary entries are made in the Complaint Register by the Officer attached to him. He shall handover the zerox copies of the documents to the concerned Penal Counsel for drafting the complaint. As soon as the draft of the sanction for prosecution and complaint is received, he shall verify whether the complaint and sanction for prosecution is factually correct as per the documents and whether the Sections of the relevant Acts are quoted correctly. Thereafter he shall submit the file to the Commissioner /Addl. Commissioner through the A.C./Prosecution for approval and sanction. After the documents are signed, he shall ensure that the vankalatnama is prepared and the complaint filed in the concerned Court.
8. Once the complaint is filed in the Court and the trial starts, it should be ensured that the Prosecution Witnesses are called as and when the Panel Counsels desires to examine them. Such witnesses shall go through Prosecution file in the Prosecution Section before tendering evidence in the Court. Wherever necessary, they will also be briefed by the Panel Counsels. The Court Supdt. Shall also collect the notes of evidence from the Court through the Panel Counsels. Such notes of evidence have to be collected on making application to the Court and on payment of the cost. One copy of such notes of evidence shall be kept in the case file and a copy of the same shall also be given to the panel Counsel so that witnesses could refer to the said notes whenever they are called for examination/cross examination later on. This will help the Panel Counsel to keep a track of the day to day proceedings and Asstt. Commr./Prosecution would be in a position to exercise a closer supervision of the day to day developments. The expenditure incurred for getting the notes of evidence will be claimed from Admn.

Section under miscellaneous expenditure by the Officer. The Supdt. Shall evaluate the quality of evidence deposed by the departmental witnesses in respect of the document tendered by them. He shall also watch the performance of the Panel Counsel with reference to the document tendered and defend the interest of the department.

9. Once the judgement is delivered the Supdt. Court Officer shall pursue the Panel Counsel:
 - (a) to submit a written application to the Magistrate to allow a reasonable time in case where the court passes orders directing the department to return the accused's documents immediately and also reasonable time from the execution of court order in case of acquittal.
 - (b) to apply for the certified copy of the judgement. While obtaining the certified copy of the judgement, the Supdt. Court Officer shall invariably in each case obtain the Panel Counsels legal opinion on the judgement. In case where the punishment awarded are inadequate or the cases which deserve to be appealed against, the uncertified copies of the judgement shall be obtained immediately. Opinion from the Law Ministry if necessary shall be obtained immediately and file shall be submitted to Commissioner at the earliest so that the department can file the appeal effectively wherever required.
10. Where a decision has been taken to file SLP /appeals to Superior Courts in any; prosecution case, Supdt. Court Co-ordination and Supdt. Of the concerned Court, in consultation with Panel Counsel and Law Ministry, as the case maybe, shall take all necessary precautions as deemed fit, to pursue the case till its logical conclusions, besides progress of such case, from time to time, shall be reduced in writing and be brought to the notice of Commissioner through A.C./prosecution.

[Based on office order dt. 16.04.98 issued by Commissioner of Customs (Preventive), Mumbai, in F. NO.- SD/ZNT/ADMN/161/98 A]

ARRESTS AND/OR PROSECUTION FOR CUSTOMS OFFENCES

Guidelines on launching Prosecution/Arrests.

Ministry's instructions F. No. 711/16/84 – CUS (AS), dated the 21st May, 1990 and 20th February, 1992, and in view of the various changes in the policy & economic liberalisation effected since 1990, the changes in the value of the rupee & need to avoid arrests / prosecutions in relatively petty offence cases under the new environment the guidelines reviewed by the Government. Having due regard to the suggestions of various Chief Commissioners and Commissioners in response to the Board's Communication on the above subject and after careful consideration, the Government has decided to prescribe the following revised guidelines for launching of prosecution for offences under the Customs Act, 1962, and arrests where warranted, in supersession of the existing guidelines contained in the aforesaid letters :

2. Prosecutions should be considered and launched after very careful consideration of the nature of offence, the role of the person concerned and evidence available to substantiate the guilty knowledge/mens rea etc. Prosecution may be considered in the following categories of cases :
 - (i)
 - (a) Cases involving unauthorised importation in baggage/ under Transfer of Residence Rules, where the CIF value of the goods involved is Rs. 5,00,000/- (Rupees Five lakhs) or more ;
 - (b) Cases relating to importation of trade goods (i.e. appraising cases) involving deliberate misdeclaration/ misclassification with a view to importing banned or highly restricted items or with a view to attempt to defraud revenue or to smuggle goods in the guise of trade consignments and where the CIF value of the offending goods is Rs. 10,00,000/- (Rupees Ten lakhs) or more ;

- (c) Other cases involving smuggling of goods and cases of attempted unauthorised exportation/smuggling of currency by outgoing passengers or town seizures, where the CIF value of the goods/currency is Rs. 5,00,000/- (Rupees Five lakhs) or more ;
- (ii) The above criteria would, however, not apply in cases of repeat offences or persons indulging professionally or habitually in such violations or where criminal intent is evident in ingenious way of concealment or otherwise, where prosecutions can be considered irrespective of the value of goods/currency involved in such repeat, professional or habitual offences, etc. However, prosecution may not be considered in petty repeat violations so long as cumulative value of the offending goods/currency is not more than rupees five lakhs.
- (iii) The above criteria would also not apply in the cases involving offences relating to very sensitive items like narcotic drugs and psychotropic substances, arms, ammunitions and explosives, antiques, art treasures, wild life items and endangered species of flora and fauna. In such cases, launching of prosecution should be considered invariably, irrespective of the value of the offending goods involved.

It may be noted that considering the liberalisation in Gold/Silver import policy since 1991, these items have been taken out of the list of sensitive items as per earlier guidelines where prosecution was considered irrespective of value limit. Prosecution for offences relating to these items will now be covered by guidelines at (i) & (ii) above.

- (iv) In respect of cases involving non-declaration of foreign currency by foreign nationals and NRIs (normally visiting India for travel/ business trips etc.) detected at the time of departure, exceeding the value limit of rupees 5 lakhs as prescribed under sub-para (i) (c) above, who claim the currency having been legally acquired and brought into India but inadvertently not declared, the arrest and prosecution need not be considered in routine. The status & business standing of the foreign nationals/ NRIs the manner and place of recovery, corroborative evidence if any to substantiate the claim of bonafide & proper acquisition but inadvertent non-declaration, and other attendant factors may be considered immediately by the Commissioner concerned and a decision taken whether the case involves criminal intent warranting arrest and launching of prosecution or not. Where the prosecution is not considered called for the case can be adjudicated on the spot by the proper officer and suitable order for confiscation / fine / penalty etc. passed.
- (v) Except in respect of cases covered by sub-para (i) (b) above, in all other cases, prosecution may be launched after due sanction by the concerned Commissioner of Customs. Prior concurrence of the Chief Commissioner will be essential for prosecutions under category covering by (i) (b) above.

3. Arrests in Customs offence cases :

- (i) Persons involved in customs related offence cases who may be liable to prosecution should not be arrested in routine unless exigencies of certain situations demand their immediate arrests. Thus, at times, prior to prosecution, arrest (s) may be necessary to ensure proper investigations and penal action against the person (s), as otherwise the person involved in the offence may hamper investigations or disappear from the scene/area – such as in cases involving outright smuggling by Sea/Air/Land route.
- (ii) Arrest should be made only when it is intended to prosecute the offenders and the monetary limits or conditions provided for prosecution would apply equally to arrests.
- (iii) Though under Sec. 104 of the Customs Act, Commissioners of Customs have been empowered to delegate to an officer of Customs by general or special order, powers of arrest of persons guilty of offence punishable under sec. 135, Government would like extreme circumspection and care in exercising these powers and ordering arrests. In all commercial fraud cases in relation to regular

- imports or exports, before arresting any persons (s) the Commissioner/ADG concerned should be approached by the Investigating Officer and the Commissioner /ADG should be personally satisfied that there are sufficient grounds warranting arrest of the persons (s). These grounds/reasons should also be recorded by the concerned Commissioner / Additional Director General in writing on file before the arrest is ordered and effected by the proper officer.
- (iv) As far as possible, in other than commercial fraud cases also warranting prosecution under Sec. 135, where arrest is considered necessary Commissioner's / ADG's prior clearance and approval for arrest may be taken. However, there could be situations, for example in outright smuggling cases in remote areas (and sometimes even in town seizure or international passenger clearance offence cases) where it may not be administratively possible to get prior permission of concerned Commissioner/ADG before effecting arrest. In such cases, the decision to arrest a person in accordance with the guidelines - taki-g due note of the offence against the person which has come to light in investigations carried out, should be taken at the minimum level of the concerned Assistant Commissioner / Assistant Director – recording the reasons in writing. Further, in such cases, the concerned Assistant Commissioner/Assistant Director or other higher officer (lower than Commissioner/ADG) who has ordered arrest, should immediately after arrest furnish a report incorporation reasons for arrest, to the jurisdictional Commissioner/ADG and his satisfaction for the arrest made should also be kept on record in writing.
4. The following aspects of earlier instructions, (as modified where necessary) may also be kept in view while considering launching of prosecution for offences under the Customs Act, 1962:-
- (i) Prosecutions should not be launched as a matter of routine and/or in cases of technical nature, where the additional claim for duty is based solely on a difference of interpretation of the law. Before launching any prosecution, it is essential that the department should have sufficient evidence to prove that the person company or individual, against whom prosecution is being considered, had guilty knowledge of the offence or had fraudulent intention of committing the offence, or in any manner possessed mens rea which would indicate his guilt. It follows, therefore, that in the case of Public Limited Companies, prosecution should not be launched indiscriminately against all the Directors of the Company, but should be restricted to only such of the Directors like the managing Director, Director in charge of marketing and / or Sales, Director (Finance) or such other Directors who are concerned with the import/export of the goods. The intention should be to take recourse to the prosecution only against those persons, who have taken active part in committing, or have connived at, the offence relating to either of smuggling or of Customs Duty evasion or of misdeclaration of value, quantity etc. For this purpose, the Commissioners should go through the relevant case file thoroughly and ascertain for themselves the definite involvement of different partners/directors/executives/officials, against whom reasonable evidence about their involvement in the offence exists and should be proceeded against, while launching the prosecution. For example, the nominee Directors of the Financial Institutions, who are not concerned with day to day matters, should not be prosecuted, unless there is a definite evidence to establish their active involvement. Prosecution should be launched only against those Directors, Partners, Officials etc., who are found to have guilty knowledge, fraudulent intention of mens rea necessary to bind them to criminal liability ;
- (ii) One of the important considerations for deciding whether prosecution should be launched, is the availability of adequate evidence. Prosecution should be launched against top management only if there is adequate evidence/material to show their involvement in the offence and after proper application of mind at the level of Commissioners/Chief Commissioners ;

- (iii) Normally, adjudication proceedings should be completed before launching prosecution. However, if the party deliberately delays the adjudication proceedings or in any case it is not possible to complete the adjudication proceedings within a reasonable time limit, prosecution may be launched even during the pendency of the adjudication proceedings, as undue delay could weaken the department's case. However, in straight cases, where persons, including foreigners, are caught red handed and protracted investigations are not to be carried out, prosecution may be launched immediately after the seizure of the goods;
- (iv) Prosecution should not be kept in abeyance merely on the ground that the party has gone in appeal/revision. However, in order to ensure that the proceedings in appeal/revision are not unduly delayed, because the case records are required for purposes of prosecution, a parallel file containing copies of the essential documents relating to adjudication should be maintained. It is necessary to reiterate that in order to avoid delays, the Commissioners should indicate, at the time of passing the adjudication order itself, as to whether they consider the case fit for prosecution, so that it could be further processed for launching prosecuting or for being sent to the Chief Commissioner for price approval, wherever necessary.

5. Procedure for launching prosecution :

- (i) In all such cases, where prior approval of Chief Commissioner is necessary for launching prosecution i.e. in cases covered by para 2 (i) (b) above, an investigation report for the purpose of launching prosecution (as per Annexure- I), should be carefully prepared and signed by the Assistant Commissioner concerned. The investigation report, after careful scrutiny (for incorporation of all relevant facts) and duly endorsed by the Commissioner, should be forwarded to the Chief Commissioner for approval, within a month of the adjudication of the case. A criminal complaint in a Court of Law in such cases, should be filed only after the approval of jurisdictional Chief Commissioner has been obtained. The Chief Commissioners should ensure that a decision about launching of prosecution or otherwise, is taken after careful analysis of evidence available on record and communicated to the Commissioners, within a month of the receipt of the proposal from the Commissioners;
- (ii) In all other cases, where prior approval of Chief Commissioner is not required, the decision about launching of prosecution or otherwise should be taken by the Commissioner after careful application of mind and analysis of evidence brought on record. This should be completed within a month of adjudication of the case (unless it is decided to go for prosecution even prior to adjudication in certain category of cases/particular case, mentioned earlier);
- (iii) It is hardly necessary to emphasise that the prosecution once launched should be vigorously followed. The Commissioners should monitor cases of prosecution at monthly intervals and take corrective action, wherever necessary, to ensure that the progress of prosecution is satisfactory;
- (iv) With a view to ensure that the prosecutions have a deterrent effect, it is necessary that convictions should be secured with utmost speed. This can only be done by regular monitoring of the progress of the prosecution;
- (v) It has been observed that the delays in the Court proceedings occur due to the non-availability of records required to be produced before the Magistrate. As a matter of practice, whenever a case is taken up for seeking the approval of the Commissioner or Chief Commissioner, as the case may be, for launching prosecution, an officer should be nominated/designated, who shall immediately take charge of all documents, statements and other exhibits, that would be required to be produced before a Court. The list of exhibits etc. should be finalised in consultation with the Public Prosecutor at the time of drafting of the complaint. Such exhibits should be kept in the safe custody;

- (vi) Once conviction is obtained in a prosecution case, the Commissioner responsible for the conduct of the prosecution, should study the judgement and where it is found that the persons have been let off with light punishment than what is envisaged in the Act, the question of filing appeal under the law should invariably be examined with reference to the evidence on record within the stipulated time. This is equally applicable in cases in which a Court orders acquittal without recording sufficient reasons in the judgement even though adequate evidence is available and was provided before the Court;
- (vii) Section 135-B of the Customs Act, 1962, grants the power to publish name/place of business etc. of persons convicted under the Act, by a Court of law. It is observed that this power is being exercised very sparingly by the Courts. The Board desires that in all cases in respect of all persons, who are convicted under the Act, the department should make a prayer to the Court to invoke this section.
- (viii) A Prosecution Register in the form enclosed as Annexure II to this letter, should be maintained in the prosecution cell of the Commissionerate headquarters/Custom House.
6. Director General (Inspection) and Chief Commissioners of Customs & Central Excise, while carrying out inspection of the Commissionerates/Custom Houses, should specially check all the above mentioned points, and make a mention about implementation of the guidelines in their Inspection Reports.
7. Where a case is considered suitable for launching prosecution and where adequate evidence is forthcoming, securing conviction largely depends on the quality of investigation. It is, therefore, necessary for senior officers to take personal interest in investigations of important cases of smuggling/duty evasion and to provide guidance and support to the investigating officers at the stage of investigation itself.

[Ministry's letter F. No. 394/71/97-CUS (AS) , dated the 22nd June, 1999]

ANNEXURE – II

PROSECUTION REGISTER

1. SERIAL NUMBER
2. DIVISION/PREVENTIVE UNIT/APPRAISING GROUP
3. FILE NUMBER
4. DATE OF DETECTION
5. NAME OF ACCUSED
6. NATURE OF OFFENCE
7. AMOUNT OF CUSTOMS DUTY EVADED/VALUE OF CONTRABAND GOODS SEIZED
8. PERIOD OF EVASION, DATE OF SEIZURE
9. CRIMINAL COMPLAINT NUMBER
10. DATE OF SANCTION OF PROSECUTION
11. DATE OF FILING OF COMPLAINT
12. DATE OF ISSUE OF PROCESS
13. NAME OF COUNSEL
14. DATE OF JUDGEMENT
15. DATE OF APPEAL AGAINST THE JUDGEMENT & COURT IN WHICH APPEAL FILED

ANNEXURE – I**INVESTIGATION REPORT FOR THE PURPOSE OF LAUNCHING PROSECUTION AGAINST _____**

COMMISSIONERATE _____

1. Name & address of the Accused :
2. Nature of offence including commodity :
3. Charges :
4. Date/Period of offence :
5. Amount of duty Evasion/value of contraband goods involved :
6. Particulars of persons proposed to be prosecuted :
 - (a) Name
 - (b) Father's name
 - (c) Age _____ Sex _____
 - (d) Address
 - (e) Occupation
 - (f) Position held in the company/firm
 - (g) Role played in the offence
 - (h) Material evidence available against the accused (Please indicate separately documentary and oral evidence)
 - (i) Action ordered against the accused in adjudication proceedings
7. Brief note as to why prosecution is recommended

NOTE

- (A) The proposal should be made in the above form in conformity with the guidelines issued by the Ministry. With regard to column 3 above, all the charging sections in the Customs Act, 1962 and other allied Acts should be mentioned. If the provision for conspiracy as under Section 120-B of IPC is sought to be invoked, this fact should be clearly mentioned. With regard to Column 6, information should be filed separately for each person sought to be prosecuted .
- (B) A copy of the show cause notice as well as the order of adjudication should be enclosed with this Report. If any appeal has been filed against the adjudication order, this fact should be specifically stated.
- (C) Where prosecution is being recommended even prior to completion of adjudication, as per guidelines, brief reasons therefor be also indicated in the brief note mentioned at Sl. No. 7 above.

REQUIREMENT TO BE FOLLOWED IN ALL CASES OF ARREST

The Honourable Supreme Court in the case of D. K. Basu v/s. State of West Bengal and others have envisaged certain requirements to be followed in all cases of arrest or detention. In line with the said requirements, following preventive measures should be followed in all cases of detention or/and arrest.

- (1) The officer carrying out the arrest shall prepare an 'Arrest Memo' at the time of arrest and the same shall be attested by atleast one witness. The witness may be either member of the family of arrestee or respectable person of the locality. The 'Arrest Memo' shall also be countersigned by the arrestee with date and time.
- (2) The person who has been detained or arrested should be allowed to inform one friend or relative or other person known to him or having interest in his welfare, as soon as practicable, unless the

- attesting witness of the 'Arrest Memo' is himself [such friend or relative of the arrestee, about his arrest and place where he is kept.
- (3) The time, place of arrest and venue of the custody of an arrestee must be notified, where his friend or relative lives outside & district or town through the Legal Aid Organisation in the District, telegraphically within a period of 8 to 12 hours after the arrest.
 - (4) The person arrested must be made aware of this right to have some one informed of his arrest or detention as soon as he is put under arrest or is detained. He should be made aware of this right in writing and acknowledgement taken.
 - (5) If requested by the arrestee, he should also be examined at the time of his arrest and major and minor injuries, if any, present on his/her body must be recorded at that time. Such 'Inspection Memo' must be signed by the arrestee and the officer effecting the arrest and its copy be provided to the arrestee.
 - (6) The arrestee should be subjected to 'Medical Examination' by a trained Doctor every 48 hours of his detention in custody by a Doctor on the panel of the approved Doctors appointed by the Director, Health Services of the concerned States.
 - (7) Copies of the all the documents including the 'Arrest Memo' referred to above should be sent to the CMM for his record.
 - (8) The arrestee may be permitted to meet his lawyer during interrogation, though not through-out the interrogation. 'Lawyers Register' may be maintained to indicate the name of lawyer, whom did he meet, starting and closing time of meeting and duration of meeting. The arrestee may be asked to give in writing if he wants to meet advocate and whether the lawyer meeting him is his lawyer Signature of the lawyer be obtained in the said Register.
 - (9) An 'Arrest Register', should be maintained having following columns;
 - (j) Name, father's name, address with telephone Nos. and age of arrestee.
 - (ii) Name of officer (s) handling interrogation, with specific time of interrogation by the officer.
 - (iii) Name of officer (s) who is causing the arrest.
 - (iv) Name of officer who informed the arrestees friend, relative etc. about arrest, time and mode of such communication as also the name of such friend, relative etc. alongwith address.
 - (v) In case the person arrested does not have friends, relative etc. in the place of arrest, the time date and mode of informing Legal Aid Organisation about the arrest.
 - (vi) If arrestee is examined by the Doctor, his name, address and telephone number and date and time of examination.
 - (vii) Report of examination.
 - (viii) Date and time of the submission of documents to CMM.
 - (ix) The officer (s) handling interrogation should bear accurate, visible and clear identification of name and designation.

[Excepts from DRI, MUMBAI, Circular No. DRI/BZU/B/22/97 of 01/12/97]

Grant of exit permission to foreigners arrested and prosecuted under various laws – procedure

The issue regarding grant of exit permission to foreigners arrested and prosecuted under various laws has recently been taken up by the Ministry of Home Affairs with all concerned administrative ministries.

The modalities and procedures have now been worked out and it is decided that in all cases of foreign nationals arrested and prosecuted in the trial court the following procedure may be followed so that there is no undue delay in taking a decision to hold back the foreigners in the country :-

- (a) All the enforcement agencies would immediately inform the foreigners division of MHA about the arrest of a foreigner and also the follow up action which is to be taken against him. Communication shall be addressed to Chief Documentation Officer, Room No. 10, Foreigners Division, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi. 110 003.
- (b) All the enforcement agencies shall within a period of 10 days of the receipt of the certified copy of the judgement/order decide the question of filing an appeal to the next higher court. The decision taken in this regard may be communicated to Ministry of Home Affairs (Foreigners Division) and to the nodal Ministry concerned.
- (c) Copy of the exit permission given by MHA shall be endorsed to the prosecuting agency/nodal agency.

[M.F.,D.R., Letter No. 394/125/96-CUS (AS) dt. 12/06/97]

Guideline for submitting proposals to file SLP in Supreme Court against the High Court's order in all Anti Smuggling related matters –

On scrutiny of the proposal submitted by the Commissionerates from time to time for filing SLP in the Supreme Court against the High Court's order in respect of anti smuggling cases booked under Customs Act, 1962 and NDPS Act, 1985 by the officers of the Customs Department or DRI etc., it is seen that often the documents relevant to filing SLP in the Supreme Court are not furnished by the field formations under the CBEC. Moreover the proposals are sometimes sent by the field formations much after the limitation period on the expiry of the last date of filing SLP and without the reasons of delay which have to be submitted to Supreme Court. Due to delay in receipt of proposal from the field formations to file SLP, there is no time to pursue the case with Ministry of Law as well as with Supreme Court, CAS to file SLP well in time. To avoid this delay in submitting the proposal you are requested to furnish the following documents alongwith proposal for filing the SLP in the Supreme Court:-

- (i) Proposal should enclose brief facts of the case giving details of seizure, adjudication, court cases etc.
- (ii) Certified copy of the High Court's order. In case certified copy of the order is not available a dasti copy alongwith date on which application for certified copy was made.
- (iii) Copy of the Lower Court's order.
- (iv) Opinion of the Deptt. Counsel or senior Govt. Advocate.
- (v) Copy of the opinion taken, from the concerned Law Sectt Branch, Ministry of Law. In case opinion of regional Ministry of Law branch not taken, reasons therefor.
- (vi) Proposal should be duly recommended by concerned Commissioner and must be send to the Ministry within 3 weeks of date of receipt of order. In case of delay, day wise explanation for delay must be given separately.

These guidelines may be followed strictly.

[M.F.,D.R., letter F.NO. 591/41/96 – CUS (AS) Dt. 05-09-97]

Procedure for Complaint cases

Chapter XIX of the Code of Criminal Procedure 1973, regulates the procedure for trial of warrant cases by Magistrates. There are two types of cases, namely (1) cases instituted on a police report (ii) cases instituted other than on a police report. All offences (except those under Section 132, 133, 134 of the Customs Act fall under category (ii) above, as they are warrant cases and the punishment provided thereunder over two years. Offences under Section 132, 133 and 134 are summons cases as the punishment provided is less than two years for which the procedure is laid down in Chapter XX (Sections 251 to 259 of the Code of Criminal Procedure). The complaints are Chapter III of the code of Criminal Procedure deals with the powers at the various courts. Generally, the Customs cases are tried in the

Courts of Chief Judicial Magistrates or Chief/Additional Chief Metropolitan Magistrates who are First Class Magistrates and are competent to award imprisonment upto 7 years.

Chapter XXI of the Code of Criminal Procedure deals with summary trials but the provisions contained therein with regard to the punishment would not apply to the offences under the Customs Act tried summarily. (Section 138 of Customs Act, 1962).

Various stages of prosecution case

A complaint case has generally four stages as under :

- (i) After the accused person appears in the court and is released on bail, the prosecution starts with the recording of their evidence mainly of eye-witnesses. Besides, the complainant is required to prove the factum of the complaint having filed by him, the sanction accorded by the Commissioner etc. In case, he has also taken part in the seizure or investigation of the case, the factum or recovery and recording of the statements etc. would also be get proved through him. The accused is given an opportunity to cross examine the witnesses and if necessary the prosecution can re-examine them. The prosecution thereafter closes its case for consideration of the charge against the accused. After arguments for charge on both sides, the court decides whether there is a prima facie case made out for framing of a charge or not against the accused. A charge is always framed by the court in writing and is explained to the accused who is asked if he would plead guilty to the charge, the Court would pronounce the judgement and convict the accused then and thereby imposing the punishment, arranged by law, if he does not plead guilty to the charge and claims to be tried he is asked, if he would like to cross-examine any of the witnesses already examined before charge, who would then accordingly be summoned by the Court, if no charge is made out, the court would straightway discharge the accused.
- (ii) **Trial stage** – After framing of the charge, the trial of the case begins. After completing the cross-examination of the witnesses already examined before the charge and summoned at the instance of the accused, the remaining prosecution evidence is recorded, of course by giving an opportunity to the accused to cross-examine and the prosecution to re-examine the remaining witnesses. Thereafter, the prosecution closes its case.
- (iii) **Defence stage** – The accused is first examined by the Court to personally explain the circumstances appearing in evidence against him and then asked to lead his defence. He is not examined on oath. However, the accused person can also be a witness in his defence at his own request in writing, when he can be cross-examined by the prosecution also.
- (iv) **Final arguments and judgement** :- After the close of the Defence evidence, the court hears the final arguments advanced by both sides who are also permitted to file written arguments in support of their case. After hearing arguments, if the Court finds the accused not guilty, it shall record the order of acquittal. If it finds the accused guilty, it shall after hearing the accused on the question of sentence, pass sentence on him according to law.
- (v) **Appeals** : (a) Chapter XXIX of Code of Criminal Procedure deals with an appeal against conviction awarded by the Chief/Additional Chief Judicial Magistrate or Chief/Additional Chief Metropolitan Magistrate which would lie in the court of sessions. Where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal except to the extent or legality of the sentence. No appeal shall also lie in petty cases i.e. if the Magistrate passes a sentence of imprisonment for a term not exceeding 3 months or a fine not exceeding Rs. 200/- or both.
- (b) The State Government may in any case of conviction on a trial held by any Court other than a

Night Court, direct the public prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

- (c) An appeal against acquittal may be filed by the State Government, which may direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than High Court.
- (d) The complainant can also file an appeal in the High Court against the acquittal after obtaining special leave to appeal from the High Court. Where the case has been investigated by Delhi Special Police Establishment or any other agency empowered to make investigation under any Central Act, the Central Government may also direct the Public Prosecutor to present an appeal in the High Court against the acquittal.
- (vi) **Revisions :-** Chapter XXX of Code of Criminal Procedure deals with Revisions. The High Court or the Sessions Court may call for and examine the record of any proceedings before any interior court situated within its or his local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any; finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court and may, when calling for such record, direct that the execution of the sentence or order be suspended and if the accused is in confinement that he be released on bail on his own bond pending the examination of the record. The powers of revision shall not be exercised in relation to inquiry, trial or other proceedings.

Procedure for filing appeals etc

Immediately after the judgement of the trial court is pronounced, a certified copy of the judgement should be obtained and get examined from the departmental counsel whether it is a fit case for filing an appeal, if there is an acquittal or for filing an appeal against the inadequate punishment awarded by the trial court. All such cases should be examined critically and decision taken promptly in the matter of filing the appeal or otherwise, as advised. In important and complicated cases, the advice of the Ministry of Law should invariably be taken. The decision to file the appeal or not, be taken by the Commissioner and the appeal should be filed within the limitation period.

Limitation for filing of the appeals against conviction / acquittals

The Limitation Act, 1963 applies for computing the period for filing of appeals against conviction /acquittal/inadequate punishment awarded by the trial courts. While computing the said period, the time taken for obtaining the certified copy of the judgement is however, excluded:

- | | | |
|-------|--|----------|
| (i) | Limitation for filing appeal against conviction : | 30 days |
| (ii) | Limitation for filing appeals against acquittal : | 30 days |
| | (a) Where appeals are filed by State or Central Government | 90 days |
| | (b) Where special leave is obtained and a regular appeal is filed by the complainant | 30 days |
| | from the date of obtaining the Special leave | 90 days. |
| (iii) | Appeal against the inadequate punishment | |

Prosecution under the Customs Act and other allied Acts

While department adjudication under the Customs Act cannot be combined with the adjudication under the Gold Control Act, there is, however, no objection to charge the party for both the offence and to have him tried in one trial by filing a single complaint, incorporating therein the facts constituting the offence both under the Customs, and other allied Acts.

Model Remand Application

IN THE COURT OF THE CHIEF METROPOLITAN MAGISTRATE,.....

Shri	Application No.
..... Customs Officer,	Applicant

APPLICATION UNDER SEC. 104 OF THE CUSTOMS ACT, 1962

MAY IT PLEASE YOUR WROSHIP

I, the abovenamed applicant, beg to state the following on solemn affirmation :

1 That on (Facts of the case)

2 (Gist of the Statement)

In the aforesaid circumstances, Shri appears to have committed an offence, punishable under the provisions of the Customs Act, 1962. Therefore, he was arrested under Section 104, of the Customs Act, 1962, onand was lodged at Police Station for safe custody. Today, I beg to produce him before Your Worship and pray that he be remanded to Judicial Custody till as further investigations are in progress.

It is further prayed that the passport of Shri may be ordered to be retained with the Customs Department, till the case against him is over.

Solemnly, affirmed at

Dated

(Signature of the Applicant)

(Office Seal)

Model Application to Court for Examination Warrant

IN THE COURT OF THE CHIEF METROPOLITAN MAGISTRATE,.....

Application No. R.A./.....

ShriPreventive Officer of Customs, Applicant

APPLICATION FOR EXAMINATION WARRANT

MAY IT PLEASE YOUR WORSHIP

I, the applicant abovenamed, beg to state the following on solemn affirmation.

That onShri..... was arrested by this Department in connection with smuggling. He was produced before your Worship and was not granted bail.

As he is required for interrogation in the Custom House, it is prayed that Examination Warrant may be issued against accused Shri.....on

For this act of Kindness I shall ever pray.

Solemnly affirmed the aforesaid at

This day of

(Signature of Applicant officer)

(Office Seal)

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CHAPTER – TWELVE

NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES

INTRODUCTION

Since the dawn of history, mankind has been pre-occupied. With the discovery, acquisition and use of substances – First natural and later man-made – believed to be capable of having a positive influence on mood, behavior and health. The most ancient of these substances are opium from the poppy plant; cocaine from the leaf of the coca bush; and cannabis from the hemp plant. Along with the growth of interest and experience in the application of these substances to cure disease and to obtain pleasurable sensations, means were found to restrict their use to avoid their sometimes negative and toxic effects, while at the same time, maintaining the desired beneficial actions.

Till the end of the 19th century, it was possible to keep the use of these mood-altering substances within acceptable limits in most geographical areas and cultural settings. With the development of chemical technology, it became possible to synthesis quantities of morphine and its derivatives as well as an increasing number of the alkaloids. The spread of drugs was made easier by the rapid expansion of communications, transport and international trade which reduced geographical distances and eliminated many natural barriers between countries. A negative result of this development was that drug abuse began to spread until it became a matter of increasing concern all over the World. The evident relationship between the drug intake on the one hand and family and social disruption; crime and personal and public health problems on the other hand, also contributed to the growing convictions that international and governmental controls were necessary. Thus, in the 21st century, society has become increasingly concerned with the question of drugs, their actions end effects and their rational use. The spectacular increase in medical materials in general and in the use of synthetic psycho-active drugs in particular has been the main contributing factor in this situation.

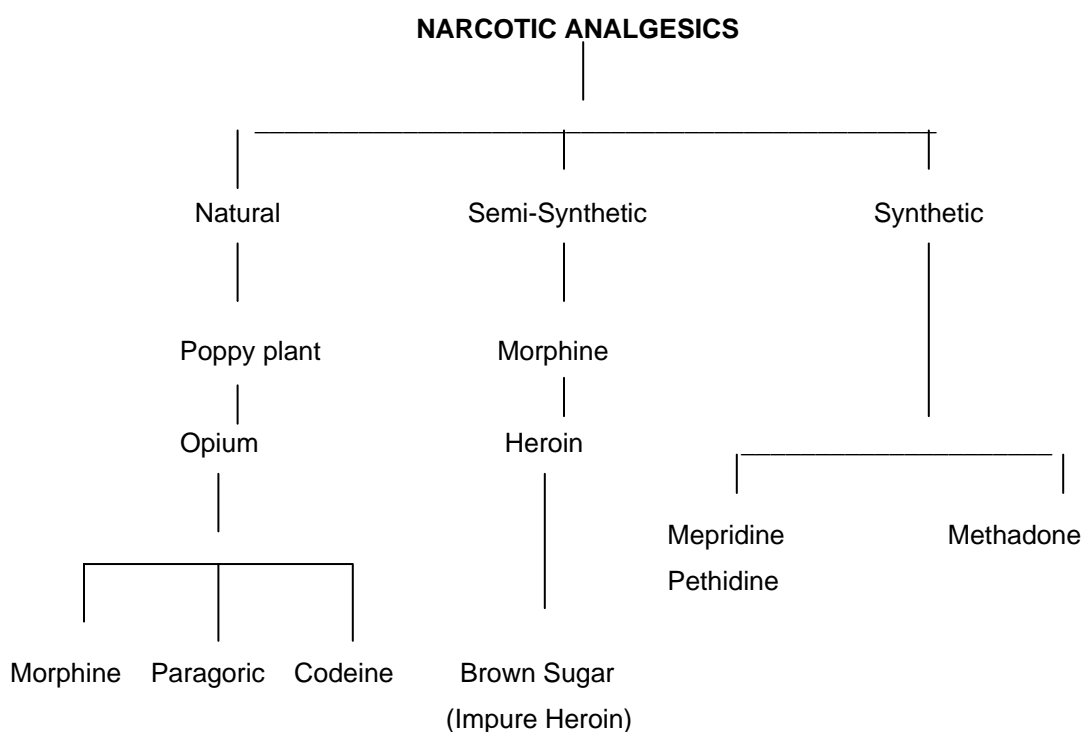
(A) NARCOTIC DRUGS

The word “NARCOTICS” is a Greek term, which means ‘to deaden’ or ‘benumb’. The main effect of narcotics is to reduce or kill pain. The intake benumbs the senses, thereby make pain or fear of it, less acute and induce sleep.

Defined medically, “Narcotics” are drugs that produce insensibility or stupor because of their depressant effects on the Central Nervous system (CNS). Included in this category are the opium and its derivatives, synthetic opiates like mepridine and methadone.

Pharmacologically, narcotics are drugs that act in the same manner as the morphine. Since morphine is the most important ingredient of opium, these drugs are known as “opioids”.

Drugs belonging to these three categories are studied under three broad categories. (1) narcotics of natural origin, (2) semi-synthetic narcotics and (3) synthetic narcotics.



Poppy Plant

Poppy plant grows to about 1 metre in height. Its leaves are oblong and its flowers are white, purple or red in colour. Several days after the poppy's petals fall, a greenish pod, a couple of inches long and about 2 inches wide, is formed. While it is still unripe, incisions are made on the pod. The milky juice which exudes from the cut, coagulates on exposure to air. The product so obtained is called opium. Opium appears as dark brown chunk of a material of flattened mass grey brown in colour, malleable in the fresh state but becomes brittle when it is old. It is bitter in taste and narcotic in physiological action. Powdered opium is light brown in colour when made from crude material.

Chemical tests for opium

The main constituents of opium are Codeine, thebaine, narcotine, papeverine, porphyroxine and meconic acid.

Morphine

Morphine is a white crystalline alkaloid, slightly soluble in water, ether and alcohol. Its source is opium and it tastes bitter. It is administered in salts of morphine sulphate, morphine hydrochloride, morphine acetate and morphine tartarate. Morphine sulphate is the most common preparation.

Codeine

It is a methyl compound of morphine and is present in opium in a small quantity varying from 0.2 to 0.8 percent. It is colourless and is in the form of white crystal or powder. It is slightly soluble in water but soluble in ether or chloroform. It is a habit forming drug.

Semi-synthetic

In this category are included morphine, heroin and brown sugar. Morphine is also included in the category of opium derivatives. Heroin (Diacetyl-morphine) is popularly known as smack, scag, brown sugar or hard stuff. It is the hydrochloride of an alkaloid base obtained by the action of acetic anhydride with morphine. It is a white, colourless crystalline powder having a bitter taste. The general physiological action of diacetyl morphine is much like that of morphine except that the potency of heroin is five times more than the morphine. It is a highly analgesic drug and is preferred by the hard addicts on account of its potency.

Brown sugar

Its street name is smack. It is prepared by combining heroin with adulterants like rat poison chalk, cleaning powder etc. Its physical appearance is in the form of powder having a high brown or dark brown in colour.

Synthetic Drugs

Synthetic drugs are those drugs which are formed by chemical reaction in a laboratory as compared to those of natural origin. The classical examples of these drugs are mepridine and methadone etc.

(B) PSYCHOTROPIC DRUGS & SUBSTANCES

The expression "psychotropic" is composed of two separate words 'psychosis' and 'tropic.' Psychosis means a mental or personality disorder sufficiently severe to disrupt the individual's personal and social life and normally demanding special treatment and hospitalization. Tropic means pertaining to or characteristics of or, occurring in the tropics, that is; the regions falling between the corresponding parallels of latitude on the terrestrial globe, one: tropic of cancer about $23\frac{1}{2}^{\circ}$ N and the other, tropic of capricorn, about $23\frac{1}{2}^{\circ}$ S of the equator being the boundary of torrid zone. These drugs usually occur in nature in the Torrid Zone.

Psychotropic substances mean drugs that have a short term effects on the nervous system, particularly that change the levels of consciousness and/or variations of mood without general stimulation or depression of the Central Nervous System (CNS).

Schedule I of the Narcotic Drugs and Psychotropic Substances Rules, 1985 contains a list of 53 drugs whose import into and export from India is prohibited (vide Rule 53) and their manufacture, possession, transport, import inter-State and export inter-State, sale, purchase, consumption or use are prohibited vide Rule 64 of the N.D.P.S. Rules (Central).

Schedule II of the Rules contains a list of 24 drugs which shall not be imported into India without an Import Certificate (in respect of the consignment) issued by the Issuing Authority, in Form No. 4 appended to these rules. Their transit through India is also not allowed unless such consignment is accompanied by a valid Export Authorisation in this behalf issued by the Government of the exporting country (Vide Rule 57). Similarly they cannot be exported out of India without an export authorisation in respect of the consignment issued by the Issuing Authority in Form No. 5 appended to these rules (Rule 58).

Schedule III of the N.D.P.S. Rules contains a list of seven drugs of psychotropic substances which may be exported out of India after the exporter files the original and duplicate copies of the declaration in Form 6 to the Narcotics Commissioner. Full details regarding the procedure is given in Rule 58(3) of the Rule.

Canabis Hemp

The hemp drugs commonly used in India, are all derived from the plant cannabis sativa or cannabis indica which grows all over the country. Bhang, Sidhi, Sabji or pahariya, all are the dried leaves and small stalks; ganja is the flowering twig, charas is the resin exudate obtained from the cannabis plant (branches and leaves) and majoon is a form of sweet meat containing a quantity of Bhang.

Constituents of Canabis

Cannabis has four main constituents. They are :

1. Cannabinol
2. Cannabidiol
3. Cannabidiolic Acid and
4. Tetra-hydro cannabinol

Out of these, tetra-hydro cannabinol is mainly responsible for the physiological properties. Tetra-hydro Cannabinol is an oily liquid from which two main isomers may be crystallised.

Marjuna

It is a drug that comes from the Indian hemp plant (*cannabis sativa*). The plant grown very wild in diverse conditions. There are both male and female plants. Marjuna is the mixture of ground leaves, stems and the seeds of the female plant. The ingredients are crushed and chopped. It can be smoked in a pipe or rolled into a cigarette. At times it is mixed with tobacco. It has a sweet odour while smoking otherwise it smells like burnt rope.

Hashish

This also comes from the hemp plant and is prepared from the flowering tops. When the cannabis plant is ripe, a sticky yellow resin covers the flowering tops and some of the leaves close to it. The resin contains the ingredients that causes the intoxicating effect. On account of presence of resin in greater concentration in Hashish, it is stronger than marjuna.

Ganja

Ganja are the dried flowering tops of the female plants matted together with resin. It is smoked along with tobacco like charas which is the crude resin extracted from the flowering heads by rubbing these in hands and scraping off the resin left adherent to the palms.

Marihuana

American hemp (*cannabis Americana*) is known as marihuana. It produces symptoms similar to the hemp plant of India. The only difference is in effect as compared to that of the Indian product. Its preparation is known as muggles and is smoked in Mexico and U.S.A.

Cocaine

Cocaine is derived; from the leaves of *Erythroxylon coca* which is a native of South America. Cocaine is the methyl benzoyl ester of ecgonine, a base similar to topine and, therefore, saponifies readily. The official preparation of cocaine is cocaine-hydrochloride which occurs in the form of colourless to white crystal or as a quantity of white powder. Although, it is soluble in water but dissolves readily in organic solvents as well. Solution to water is alkaline to litmus. It is insoluble in ether.

Cocaine hydrochloride is used therapeutically as a local anaesthesia. It is believed to be an antifatigue agent and produces hallucinations.

Controlled Substances :

Controlled substances may not necessarily be narcotic drugs or psychotropic substances but may altogether form a different category, for instance, those used in the manufacture of heroin. Acetic Anhydride is one such chemical which is used in the manufacture of heroin.

Acetic Anhydride is an important industrial Chemical which has been notified as an essential commodity under Section 3 of the Essential Commodity Act, 1955. In order to prevent this substance from being diversified to the illicit manufacture of heroin, it could be most appropriate to cover this substance as controlled substance under the N.D.P.S. Act.

INDIAN SITUATION – VULNERABILITY (BORDER-WISE)

Geographically, India is sandwiched between two major sources of illicit drugs in the world – the Golden Triangle (comprising of Myanmar, Thailand and Cambodia) and the Golden Crescent (comprising of Pakistan, Afghanistan and Iran) – and, accordingly, it conveniently became a transit country for movement of these drugs to destinations in the West. Nepal, which is situated on the Northern borders of the country, has been and continue to be the major source of cannabis herbal and, to some extent, of cannabis resin. Thus, over the years, India has become highly vulnerable to transit of drugs and this is reflected in the seizures effected in India is adversely affected consuming countries in the West. In order

of vulnerability, India is adversely affected as a victim country by the drugs coming from the Golden Crescent area, Nepal and the Golden Triangle area. India has land borders with Pakistan from where the traffickers have easy access into the States of Jammu & Kashmir, Punjab, Rajasthan and Gujarat; to the States of U.P. and Bihar on the Indo-Nepal border and to the States of Arunachal Pradesh, Nagaland, Manipur and Mizoram on the Indo-Myanmar border. To understand the situation in its totality, it would be necessary to discuss each of these borders separately in detail.

Indo-Pak border: Ever since the emergence of the Golden Crescent as a major source of illicit opiates and cannabis resin over five years ago, the entire Indo-Pak land border has become extremely vulnerable for in-smuggling of drugs from Pakistan. The State of Jammu & Kashmir, by its proximity to opiate sources in Pakistan, is as much vulnerable to trafficking in drugs as any other State bordering Pakistan. Jammu border is the nearest from the North West Frontier Province where most of the illicit opium is grown and converted into Heroin. The Kabul-Lahore highway runs fairly close to Jammu before reaching Lahore, which is opposite to Amritsar in Punjab. Though not many seizures on the Indian side in Jammu & Kashmir have been reported. Yet most of the major seizures on the Pakistani side take place in areas bordering Jammu. With security being tightened on the Punjab border, there are reports of diversified routes being used by traffickers from the areas of Sialkot to Jammu.

The Indo-Pak border in the State of Punjab was, till about some years ago, the most vulnerable areas for smuggling of drugs like opium, heroin and hashish into India. The security measures taken on the border have resulted in almost total stoppage of trafficking in opium and substantially reduced smuggling of heroin and hashish. The plain land, well connected by road and rail routes on both sides facilitated the trafficking. It was easy for the traffickers to manoeuvre their operations in the plains of Punjab than the hilly terrain of Jammu & Kashmir and the desert in Rajasthan. Also, syndicates indulging in smuggling of other goods like gold, silver, textiles etc. were already active on the Indo-Pak border in the State of Punjab and these very gangs took up trafficking in drugs too. Intelligence reports indicate that contraband gold is smuggled from Dubai to Karachi and the same is brought to Lahore, and from the Lahore sector along with the drugs like heroin and agricultural fields right upto the border on either side and it is easy to transfer drugs and contraband from one side to the other. Both drugs and gold reach Delhi while gold enters the stream of trade in Delhi, bulk of heroin and hashish is smuggled out through passenger and through cargo. Due to tightening of security on the borders, there is some diversification of routes to the adjacent State of Rajasthan. The four sectors of Sriganganagar, Bikaner, Jaisalmer and Barmer are the most vulnerable sectors for trafficking of drugs into India from Pakistan. Mostly, when the drugs are meant for northern India or Delhi, routes through Sriganganagar and Bikaner are preferred by traffickers whereas if, the drugs are meant for Western India and Bombay, they are trafficked through Jaisalmer and Barmer sectors.

Large quantities of heroin and hashish is smuggled into India through camel backs in the Jaisalmer and Barmer sectors and, after crossing the border, the same is buried and kept under sand. One of the persons crossing the border gets in touch with the person responsible on the Indian side of the border either at Jaisalmer or Barmer and they proceed in the night in Vehicles to the points where the drugs are concealed and, after loading the same, bring them on to the National highway connecting Delhi-Bombay. The drugs are concealed under trade goods in trucks and they are transported to Bombay for onward Export. Intelligence available also indicates that hashish smuggled into India through the Indo-Pak border in Rajasthan is taken by trucks to Tuticorin via Bombay where it is loaded in country crafts. Australian yatches and boats meet them off the Tuticorin coast where they are transhipped for onward movement to Australia. On the Pakistani side, the Lahore-Hyderabad highway and the railway line run parallel to the Indian border. There are well-connected road and rail facilities adjacent to the border on either side. This border came into prominence some years ago.

The entire land border between Gujarat and Pakistan is marshy, known as the Rann of Kutch. Though stray cases of trafficking of drugs through the Rann of Kutch have been reported in the past, yet the area is not very conducive for this activity. Small country boats called "Hodas" are used for transport of drugs from Karachi to the Kori-creek on the coast of Gujarat. Though stray cases of trafficking have been noticed in the past few years, yet the data available is rather erratic to suggest any trends.

Indo-Nepal border: Nepal has a wild growth of cannabis plants in the foot-hills adjacent to the Indian Terai region. Cultivation of cannabis is also undertaken by the by the poor villagers to supplement their earnings. The Indo-Nepal border touches the Indian States of U.P., Bihar, West Bengal and Sikkim. Till a few years ago, some North Indian States allowed cultivation of cannabis for production of 'bhang'. However, presently only Orissa and Madhya Pradesh are legally cultivating cannabis for medical and research purposes. The cultivation is done on very small patches of land. Consumption of cannabis herbal (Ganja) has been popular in many North Indian States, including U.P. and Bihar since times immemorial. The progressive reduction in the cultivation of cannabis in India came as a boon to the traffickers operating on both sides of the Indo-Nepal border. Ganja is smuggled into India by trucks and on head-loads from Nepal. Since ganja does not form any significant part of the drugs exported out of India the entire quantity of ganja that is smuggled into India from Nepal is meant for captive consumption. Small quantities of heroin of Thai/Myanmar origin is also trafficked from Nepal into India.

Nearly 80% of the land border with Nepal is in the State of U.P. However, trafficking of ganja is mostly done through the State of Bihar. The U.P. border accounts for only small quantities of ganja and charas. Bihar border is very adversely effected where besides trafficking of ganja on head-loads, both rail and road routes are used very extensively for transportation of the drug. There are well-stacked storage places adjacent to the border on the Nepalese side. Since there are no passport and visa restrictions on movement of persons between India and Nepal, it becomes, all the more convenient for traffickers to move drugs across the border without any hindrance. The check-posts manned by police and the Customs are far and off and cannot patrol the entire length of the border. Cris-cross of different routes is adopted to transport drugs from the border to the consuming centres. The Nepalese border with West Bengal is confined to the Darjeeling sector. The terrain being hilly and difficult, trafficking in drugs is rather insignificant. Also, there are no reports of trafficking of drugs into the State of Sikkim from Nepal so far.

Indo-Myanmar border: India's north-rest comprises of many small States which include the border States of Arunachal Pradesh, Nagaland, Manipur and Mizoram. There are frequent reports of smuggling of Myanmar refined heroin from this border into India, especially through the Indian State of Manipur from the border town of Moreh. The earlier reports indicated that heroin of Golden Triangle origin was brought into India from Tamu in Myanmar to Imphal via Moreh. However, recent reports indicate that laboratories have been set up on the Myanmar side near the Indian border for manufacture of heroin with the aid of acetic anhydride, which is smuggled out, from India. Reports also indicate that large quantities of heroin smuggled through this border also find their way into Nepal. However, seizures so far effected and reported only show insignificant quantities of heroin coming into India. A local factor which creates very congenial atmosphere for trafficking of drugs is that tribal inhabitants on either side of the international border can move around freely within a belt of 40 Kms on the Indian side and 16 Kms on Myanmar side of the border for barter trade in terms of daily necessity without any restrictions of passport and visa. Intelligence available indicates that at least 80,000 to 1,00,000 hectares is under illicit cultivation of opium in Myanmar with – potential of 800 to 1000 M.Ts of opium. 17 of these refineries being in Myanmar along the Thai-Myanmar border, with further five on the Combodia side on the Thai-Myanmar border. Apart from these major static laboratories, it is estimated that there are further 60 smaller mobile labs working and roughly half of them are controlled by the so-called Shan United Army in Myanmar. The control of

cultivation of opium in Myanmar is mostly in the hands of the Myanmar Communist Party and the refining is in the hands of the insurgent groups.

Intelligence received also indicates that acetic anhydride, a precursor, is smuggled across the Indo-Myanmar border in jerry cans of 5 gallons each and these jerry-cans are tied to floating rafts, which travel along the Chindwin River till they reach Mandalay. Further, a 100 Kms belt on the Indian side of the Indo-Myanmar border was declared as a specified area in which the movement of acetic anhydride has been banned under the Customs Act 1962 unless certain conditions are fulfilled.

A new trend, which has come to notice, is that large quantities of ganja seized in Assam have been shown to have originated from Bhutan. If Bhutan takes on the role of another Nepal for illicit export of ganja to India, we will have a serious problem of trafficking in ganja from Bhutan into the States of Assam, Sikkim and West Bengal in the near future.

STRATEGIES FOR COMBATING SUPPLY OF DRUGS

The Government of India, being quite concerned with the development relating to drug trafficking and drug abuse, took stern legal, administrative and preventive measures to contain the problem. As the first step, the Narcotic Drugs and Psychotropic Substances Act 1985, has been enacted and enforced from Nov. 14, 1985. The new enactment provides for stringent punishments for trafficking, possession and consumption offences. For trafficking, the law provides a mandatory punishment of a minimum period of 10 years imprisonment extendable to 20 year. For the first offence, combined with a minimum mandatory fine Rs.1 lakh extendible to Rs.2 lakh. In the case of repeat offence, the law provides for a minimum mandatory punishment of 15 years imprisonment, which may extend to 30 years along with a minimum mandatory fine of Rs.1.5 lakhs extendible to Rs.3 lakhs. Death penalty is imposed for certain offences committed after previous conviction under Section 15 to 25 and 27 (A) of the Act. The law makes the offence cognizable and empowers the investigating agencies to investigate the offences relating to drug trafficking with the result that almost every part of the country is covered by one or the other enforcement agency. To co-ordinate the activities of the various enforcement agencies involved in anti-drug trafficking, a Central authority called the Narcotics Control Bureau, with a wide charter of functions, has been set up. The major Functions of the Bureau are:

- (1) Co-ordination of all enforcement actions by the various Central and State authorities;
- (2) Implementation of obligations in respect of counter-measures against illicit trafficking under the international conventions, protocols and treaties to which India is a signatory;
- (3) Assistance to concerned authorities in foreign countries and international organisations with a view to facilitating co-ordination of universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances; and
- (4) Co-ordination of action taken by the Ministries of Health and Family Welfare and other concerned Ministries, Departments and Organisations in respect of matters relating to detoxification, treatment and rehabilitation of drug abusers.

The strategy of empowering a number of Central and State agencies under the Act has achieved the desired results in the form of prize catches, some of them among the world's largest seizures.

Steps Taken At The Exit Points

The two most important exit points for drugs in India are Mumbai and Delhi. The Delhi airport is frequently used by drug traffickers to carry drugs to the western consuming countries either on person or in accompanied baggage. The common modus operandi has been to conceal drugs in false sides and bottoms of suitcases, concealment in shoes concealment in wearing apparel and also concealment internally by way of swallowing and stuffing. Though not many cases of drugs concerned in cargo consignment from Delhi have been intercepted at this end, yet a few cases of such movement of drugs

have been reported from the destination countries where the interceptions were effected. At Mumbai, both the airport and the seaport are frequently use by trafficking syndicates for taking drugs out of the country. Another peculiar modus operandi which has come to notice is that consignments coming from cities in the interior like Bangalore, Jaipur etc. to Mumbai for Export are substituted with drugs prior to shipment but after Customs clearance. Passenger traffic continues to be one of the major carriers of drugs both on person and in many cases concealed internally and also concealment in accompanied baggage. The seaport at Mumbai has also come to adverse notice for trafficking of drugs mainly through container traffic. Apart from concealment of large quantities of drugs in items like chilly powder, boric powder and pickle consignment, it has been the experience that large quantities of drugs are attempted to be exported in bales of textiles. The drug that finds favour for transportation by sea is mostly hashish. Most of the big consignments of hashish are destined for Amsterdam, Rotterdam. From there these are further reported to move to Frankfurt by road. As far as passenger traffic through the airport is concerned, it has come to notice that certain ethnic groups frequently indulge in carriage of drugs. The largest ethnic group involved in this nefarious trade is Nigerian nationals, who mostly carry drugs internally. Other African nationals like those of Ghana, Kenya, Zambia etc. are also frequently coming to notice. Initially, the Nigerians were using the direct routes from Delhi and Mumbai to Lagos from where the drugs used to find way into Europe and North America. However, Of late, to avoid suspicion, these African groups have started routing their journey through East European countries. They sometimes travel to places like Zurich, Barcelona and Madrid in Europe and from there they either proceed to Lagos or take direct flights to destinations in North America.

LICIT CULTIVATION OF OPIUM

India is the only country where cultivation of opium poppy for extraction of opium directly from the plant is in existence. In other countries where opium poppy is legally grown, the extraction of morphine is done from the poppy straw. India has evolved a time-tested licensing control over the cultivators of poppy which has been appreciated by the International Narcotics Control Board in its annual reports. Right from the time of registration of a plot of land for opium cultivation, there exists a rigorous control over the various stages or cultivation till the final product of opium is extracted and surrendered to the Govt. on whose behalf the opium is licensed to be grown. While extremely small quantities of the extracted opium may find way into the illicit market, these quantities as a percentage of the opium produced and surrendered to the Govt. is almost negligible. During the past ten years, India's stock-pile of opium which is held with the two Govt. opium factories at Neemuch and Ghazipur has been increasing due to poor off-take by the importing countries.

INTERNATIONAL CO-OPERATION

India realises that the flight against drug trafficking, which recognises no barrier, has to be fought at the national and international levels. A solution to this problem can be found only with the co-operation of the concerned countries. Similarly, there also exist arrangements between India and United States through a Working Group on Narcotics for exchange of information on drug-related matters and also for extending bilateral arrangements with Sri Lanka and Nepal to discuss matters relating to smuggling which also include discussions on drug trafficking. At the regional level, India discusses drug with its neighbours through the auspices of the SAARC. Also, India is a Member of the ESCAP Regional Plan wherein 15 countries of South-East Asia regularly exchange information on monthly basis. The ESCAP Plan was organised by the Customs Co-operation Council and started operating from Jan. 1987. At the international level, India is a signatory to the U. N. Convention on Narcotic Drugs of 1961 and the 1971 Convention on Psychotropic Substances. It is also a useful and active Member of the INTERPOL.

India has also established close liaison with many of the countries by permitting them to post their Drug Liaison Officer, in India. These include officers of Drug Enforcement Administration of USA, H. M. Customs of UK, RCMP of Canada and an officer from the Federal Republic of Germany. There is fruitful exchange of intelligence to the mutual seizures have been effected by various agencies around the World in places like Amsterdam, New York, Boston, Rome, Lagos and Tokyo. India has also been providing to the international agencies like the I.N.C.B., INTERPOL, Colombo Plan Bureau, C.C.C., and U. N. Division on Narcotic Drugs, etc. with the latest development with regard to drugs in India and the effort made by the country to prevent trafficking in drugs.

LINKAGES BETWEEN NARCOTICS AND TERRORISM IN INDIA

Narco-terrorism is a recent development and refers to an unholy alliance between two of the most destructive forces afflicting modern society – namely drug trafficking and terrorist activities both generally engineered from across the Western border. India's strategic location at the cross-road of traffic from the two largest source regions of illegal production of opium and heroin namely, the Golden Crescent: and Golden Triangle makes us an inevitable target of traffickers. Also there are reliable reports which indicate the involvement of foreign-based drug traffickers in master-minding terrorist and other disruptive activities in the country. The money generated by drug trafficking is used to fund the terrorist activities. The certain seizure cases recently detected on Indo Pak border (Rajasthan, Gujarat and Punjab sectors), both illegal drugs and arms have figured. In North-Eastern states, there are reports of linkages between insurgent movement and narcotics smuggling. Links between the, traffickers and the LTTE and other insurgent movements are suspected.

The Department of Revenue, Ministry of Finance, in close consultation with the Ministry of Welfare and Ministry of Family Welfare, Development a National Master Plan (NMP) for Drug Abuse Control for the 7 year period (1994-2000) with UNDCP subject. A Inter-Ministerial Task Force for preparing the NMP was constituted by a Government order dated 27.5.1993. A team of consultants led by a former Director General, NCB with a small Secretariat funded by the UNDCP prepared the Master Plan and circulated it to all participating Ministries /State for appropriate action.

Steps to implement this National, Master Plan have been initiated and these include-the area like legal amendments, establishment of Special Courts, training of personnel and the necessary strategies on Demand Reduction.

THE NARCOTIC CONTROL BUREAU AND DRUG ENFORCEMENT

The Narcotics Control Bureau was created by a notification dated 17.3.1986 under Section 3 (4) of the Narcotic Drugs & Psychotropic Substances Act, 1985, to discharge the responsibilities of the Department of Revenue for the administration of that Act.

The responsibilities include:

- (a) Processing of policy inputs for the Government.
- (b) Formulation of rules, notifications and executive instructions.
- (c) Nodal co-ordination with other Ministries and State Governments in all matters connected with preventive and public health aspects of drug abuse control.
- (d) Detection, investigation and prosecution of drugs offences, particularly those having international and inter-State ramifications.
- (e) Nodal co-ordination with various other Central and state Government agencies, such as Customs and Central Excise, Police, Drug Control etc. similarly engaged in investigation and prosecution.

- (f) Liaison and co-ordination with U. N. and all international agencies, and also with friendly foreign countries in all matters relating to eradication of illicit traffic and drug abuse.
- (g) Discharging of obligations imposed by U. N. and regional conventions and bilateral agreements on the subject.
- (h) Utilisation of financial aid from the UNFDAC by the proper implementation of the approved programmes on drug abuse control.

The Narcotics Control Bureau was set up towards the end of 1986 with a Headquarters, five zonal Offices at Mumbai, Calcutta, Delhi, Madras and Varanasi. The 6th zonal Office at Jodhpur and two Regional Offices at Imphal & Cochin has since been created.

The policy is also determined by India's international obligations flowing from:

- (a) The U. N. Convention on Narcotic Drugs, 1961 as amended by the 1972 protocol;
- (b) The U. N. Convention on Psychotropic Substances, 1971
- (c) The U. N. Convention on illicit traffic, December, 1988.

India has ratified all the above three Conventions.

The Indian legislation on the subject consists of the following statutes, namely;

- a) The Narcotics Drugs and psychotropic substances Act, 1985, amended in 1989; and
- b) The Prevention of Illicit Trafficking in Narcotic Drugs and psychotropic Substances Act', 1988, and ,
- c) The Drugs and Cosmetics Act 1940 (as amended from time to time).

The Indian Constitution divides the legislative and executive responsibilities on different aspects of drug control and drug administration between the Union and the States. But Article 253 of the Constitution empowers the Union Legislature to make a law for the whole or part of the territory of India for implementing any treaty, agreement or convention with any other country or countries, or any decision made at any international conference, association or other bodies. The Union Government can also give executive directions to the States on the subject. Thus a centralised and uniform legal framework for drug enforcement has been possible in spite of division of responsibility and multiplicity of organisations involved in the task.

The strategy adopted for drug abuse control is six fold, and in conformity with the U. N. General Assembly resolutions on the Subject. This incorporates:

- a) Improvement of drug system to provide for medical use and prevent abuse;
- b) Achievement of balance between demand and supply of drugs for legitimate purposes;
- c) Eradication of, supplies from illicit sources;
- d) Reduction of illicit drug traffic;
- e) Reduction of demand for illicit drugs and prevention of inappropriate or illicit use of licit drugs;
- f) Treatment, rehabilitation, and social re-integration of drug abusers.

INFRASTRUCTURE FOR IMPLEMENTATION :

In India's large and diverse federal polity of 25 States and 7 Union Territories, the implementation of the above comprehensive programme has been organised through a varied and multi-dimensional infrastructure. The functions and responsibilities can be divided in three broad groups:

- a) Measures for control and regulation through licensing for medicinal and scientific uses,
- b) Measures for enforcement of all prohibitions and for bringing to book all contravention;
- c) Measures for preventive education, reduction of demand and treatment for de-addiction and rehabilitation and social re-integration of drug abusers.

The Department of Revenue in the Ministry of Finance is the nodal agency at the apex, and is responsible for responsible for co-ordination and for the overall administration of two of the main enactment. The department exercises its :

- a) Functions for co-ordination and overall administration of the laws through the Directorate General, Narcotics Control Bureau.
- b) Enforcement powers through the Director General, Narcotics Control Bureau (with field formations), the Central Board of Excise and Customs and the Commissionerates and subordinate formations thereunder covering the entire country, the Directorate of Revenue Intelligence and Zonal Offices thereof, and several other executive organisations; and
- c) Licensing powers through a Narcotics Commissioner with an extensive field organisation;

Licensing powers for preparation manufactures and wholesale and retail distribution of narcotic drugs has been conferred on the Excise Commissioners of the states and Union Territories. Drug Controllers of States and Union Territories exercise similar powers in respect of permissible categories of psychotropic substances. All these licensing organisations have monitoring functions, and also executive powers for enforcement, detection, investigation and prosecution of all contravention. Besides, drug offences having been recognised as heinous crimes, with causal connections with many other forms of crimes, a major share of responsibility for enforcement has been taken up by the police forces under the States, Union Territories as well as the Union Ministry of Home Affairs. This Ministry being in overall charge of Union-States relations and internal security, plays a very vital role in the co-ordination of enforcement efforts through out the country.

The Union Ministry of Welfare and the corresponding departments of the States and Union Territories formulate, promote, guide and control all measures for preventive education, counseling, rehabilitation, social re-integration etc. in order to reduce demand and prevent illicit consumption of drugs. The Ministry and the State Departments of Health are responsible for institutionalised treatment in hospitals.

THREATS AND DIFFICULTIES:

Instances of illicit cultivation of opium and cannabis come to notice from time to time, and make-shift laboratories for manufacture of heroin have also been detected in the country. There are also an estimated number of about one million addicts, majority of whom are dependent on raw opium and cannabis, which have been the traditional drugs of abuse in the rural areas. Addiction of Heroin, Hashish and some psychotropic substances are mainly confined in metropolitan cities and industrial areas, and the supplies to them mostly come from across the borders, from the spillover of the substantial international drug from traffic from the Golden Crescent area in particular, for which India has become the main transit route because of geographical location and its long porous land borders with that source area. In fact, the volume of indigenous illicit production and its evil potential for spreading addiction in the country are quite confinable, and they do not pose a major threat. It is the spillover of international traffic mainly from the Golden Crescent at present and to a less but with potentials to grow to a larger extent, from the Golden Triangle, that threatens India's social defence and international obligations.

INSTRUCTIONS FOR CUSTOMS & PARAMILITARY ORGANISATIONS

The Narcotics Control Bureau is handling the work relating to co-ordination of anti-smuggling/trafficking work. The Bureau is also to keep the international agencies posted with the details of seizures effected, trends of smuggling, modus operandi etc. The Zonal Units of the Bureau also require complete details of the cases detected in their jurisdictions to achieve better co-ordination and co-

operation. In view of this all the enforcement authorities are requested to send copies of Form-F (seizure report), in respect of all narcotic drugs and psychotropic substances seizures to: -

- 1) The Deputy Director,
Narcotics Control Bureau,
R. K. Puram, West Block – I,
Wing – 5, 2nd floor,
New Delhi.
- 2) The Deputy Director,
Narcotics Control Bureau, having jurisdiction over the State in which the seizure is made.

2. This procedure may be followed for all cases detected. "Form F" in respect of all cases from this date may be arranged to be sent to Narcotics Control Bureau immediately. Seizure report in "Form F" need not sent in respect of seizures involving equal quantity of drugs, as below:

<u>Name of the Drug</u>	<u>Quantity seized</u>
Opium	Below 1 kg
Ganja	Below 5 kgs
Hashish	Below 500 gms.
Morphine	Below 20 gms.
Heroin	Below 10 gms.
Psychotropic substances	Value less than Rs.1,000/-

However, these seizures may be included in the Monthly Seizure Report.

3. In addition, in major cases, a telex message may be sent, briefly indicating place of seizure, date of seizure, type of drug and quantity seized, person arrested, Passport Number, date, place of issue and address, and short summary of the circumstances. Telex messages may be sent to Deputy Director, Narcotics Control Bureau, New Delhi.
4. In respect of the foreigners arrested in India, Telexes may be invariably sent so that the Bureau can keep the respective countries/Interpol/CCC etc. informed of the fact.
5. For statistical purposes, at the end of each month, a consolidated statement be prepared and sent to the Bureau Hqrs. as also the concerned Zonal Units.

SAARC WORKSHOP ON NETWORKING ARRANGEMENT AMONG APEX NATIONAL INSTITUTIONAL LAW ENFORCEMENT AGENCIES AND NGO'S WITH REGARD TO SUPPLY CONTROL, DEMAND REDUCTION

SAARC drug Offence Monitoring Desk (SDOMD) is an apex organisation based at Colombo, Sri Lanka, and works under the Rules and Regulations framed by the member SAARC countries.

The drug trafficking cases effected in India involving any persons from another SAARC country and having international ramifications are to be reported to the SDOMD within 24 hours and not later than 72 hours. The details of the case are to be reported in two forms viz. INITIAL REPORT FORM – SAARC I. R. FORM and DETAIL REPORTING FORM – SAARC D. R. FORM. the covering letter enclosing these forms should be addressed to the SUPERINTENDENT OF POLICE, DEPUTY DIRECTOR, SAARC DRUG OFFENCES MONITORING DESK, POLICE NARCOTICS BUREAU, 3RD FLOOR, NEW SECRETARIAT, COLOMBO -01, SRI LANKA. The relevant I. R. and D. R. Forms are enclosed herewith for necessary action at your end.

[Letter F. No. NCB/BZU/POLICY-9/97/848 Dtd. 18.04.2000, from Zonal Director, NCB, Mumbai]

- iv. Sex : Male / Female
 - National identity card number :
 - Date of issue :
 - Place of issue :
- v. Travel documents :
 - Date of issue :
 - Place of issue :
- vi. Complete residential address :
 - State :
 - District :
 - Police Station :
 - Village :
 - In the case of Towns / Cities :
 - House No. :
 - Street / Colony :

Date of Departure from last port :
 Mode of Departure from last port :
 Route of Departure from last port :

The local connection or details where the drugs were obtained, with names, telephone numbers and addresses of the supplier :

Any other matters of importance which would assist the investigation :

Signature and Seal of Designation

ANNEXURE – VII

Sender :	Date :	Recipient :
Ref. No.		

DETAIL REPORTING FORM - SAARC D. R. FORM

1. Agency which effected the arrest :

2. Type of drug :	+Quantity seized :
Herbal Cannabis :	
Cannabis Resin :	
Opium :	
Morphine :	+(Weight in Kilograms)
Heroin :	
Cocaine :	
L. S. D. :	
Others (specify) :	

3. Date of seizure :

Place of seizure :

4. Marking, labeling and Trade Marks :

5. Means of transport used :

6. Mode of concealment :

7. Origin of the drug :

Route of the drug :

8. Where drug was produced :

9. Place where drug was obtained – Full particulars of the supplier of the drugs :

10. Place where drug was to be sent – Full particulars of the receiver of the drugs :

11. Articles / equipment seized :

12. Persons implicated : Accused / Suspects / Associates *

Full name of suspects with aliases if any :

Full name of suspects father with aliases if any :

Date of birth :

Country of birth :

Place of birth :

Nationality :

Travel documents held by the suspect :

Date of issue :

Place of issue :

Sex : Male / Female

National identity card number :

Date of issue :

Place of issue :

Profession :

Complete residential address :

State :

District :

Police Station :

Village :

In the case of Towns / Cities :

House No. :

Street / Colony :

* in cases implicating more than one person, please use the additional form

13. Part played :

14. Copies of photographs :

Side (Right) <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	Side (Left) <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>
Front <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/>	

15. Copies of fingerprints : To be annexed please (Standard finger printing ink to be used)

16. Whether arrested, detained or at-large :

17. Summary of the case :

Signature and seal of Designation

NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES ACT 1985

Salient Features

Three Central Enactments, the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930, prior to 1985 – The Opium Act of 1857, inter-alia, dealt with cultivation of poppy on account of Government. The Opium Act of 1878 dealt with possession, transport, inter-state movement and sale of opium. The Dangerous Drugs Act was a more comprehensive legislation whose objective was to control and suppress contraband trafficking in the abuse of opium, hemp, coca leaf and their derivatives. The two International Conventions, namely, the Single Convention on Narcotic Drugs, 1961 and the Convention, on Psychotropic Substances, 1971 placed several obligations on the signatory states.

In order to fulfil these obligations and also to bring in a very comprehensive and stringent legislation, the act known as the Narcotic Drugs and Psychotropic Substances Act, 1985 has been passed on 16th September, 1985 and made effective from 14th November, 1985. The N.D.P.S. Act, 1985 has been amended by the N.D.P.S. (Amendment) Act, 1988 which takes effect from 29th May, 1989.

Objective:

The objective of the Act is to make stringent provision for the control and regulation of operations relating to Narcotic Drugs and Psychotropic Substances.

Measures:

The following measures are sought to be taken by the Central Government in terms of Section 4:

- (1) For preventing and combating abuse of narcotic drugs and psychotropic substances and illicit traffic therein.
- (2) For co – ordination of actions by various Central Government officers, State Governments and other authorities.
- (3) For meeting the obligations under the international Conventions.
- (4) For assistance to the concerned authorities in foreign countries and concerned international organisations.
- (5) For identification, treatment, education, after care, rehabilitation; and social re-integration of addicts.
- (6) Any other measures including setting up of an authority or a hierarchy of authorities for effective implementation of the Act.
- (7) Setting up of a advisory committee.

Definitions

The Section 2 of the Act gives the definitions of various terms used in the Act. These definitions help us in understanding the coverage of the Act.

Some of the important definitions are given below in gist: -

“Narcotic Drugs” means, according to this Act, coca leaf, cannabis (hemp), opium, poppy straw and includes all manufactured drugs (Section 2 (xiv)).

“Manufactured drug” means all coca derivatives, medicinal cannabis, opium derivatives, poppy straw concentrate and any other narcotic substance which the Central Government may notify (Section 2 (xi)).

“Psychotropic Substances” means any; substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the attached Schedule (Section 2 (xxii)).

“Coca leaf” means the leaf of the coca plant from which are ecgonine, cocaine and other ecgonine alkaloids have been removed (Section 2 (vi)).

“Coca derivative” means (a) cocaine i.e. methylester of benzoylecgonine and its salts; (b) crude cocaine i.e. any extract of coca leaf which can be used, directly or indirectly for the manufacture of cocaine; (c) ecgonine and all the derivatives of ecgonine from which it can be recovered and (d) all preparations containing more than 0.1 per cent of cocaine (Section 2 (v)).

“Coca plant” means the plant of any species of the genus erythroxyton (Section 2 (vii)).

“Cannabis (hemp)’ means (a) charas i.e. the separated resin in whatever form, whether crude or purified and also includes concentrated preparation and resin known as hashish oil or liquid hashish; (b) ganja, i.e. the flowering or fruiting tops of cannabis plant excluding the seeds and leaves when not accompanied by the tops and (c) any mixture with or without any neutral material of above forms of cannabis or any drink prepared there from (Section 2 (iii)).

“Opium means” (a) the coagulated juice of the opium poppy and (b) any mixture, with or without any neutral material of the coagulated juice of the opium poppy containing more than 0.2 per cent of morphine (Section 2 (xv)).

“Opium derivative” means (a) medicinal opium i.e. adapted for medicinal use as per Indian or other Pharmacopia; (b) prepared opium i.e. opium transformed for smoking and the dross or residue remaining after opium is smoked; (c) morphine, codeine, thebaine and their salts; (d) diacetylmorphine,

i.e. dia-morphine or heroin and its salts (Section 2 (xvi)). (e) all preparations containing more than 0.2 per cent of morphine or containing any diacetyl morphine.

“Opium poppy” means the plant of the species papaver somniferum L and any plant of any other species of papaver which the Central Government may notify (Section 2 (xvii)).

“Poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered (Section 2 (xviii)).

“Poppy straw concentrate” means the material arising when poppy straw has entered into a process for the concentration of its alkaloids (Section 2 (xix)).

“Controlled Substance” means any substance which the Central Government may having regard to the avoidable information as to its possible use in the production or manufacture of narcotic drug or Psychotropic Substances or to the provisions of any International Convention by Notification in the official gazette declare to be a Controlled Substance (Section 2 (vii) a).

Important Sections:

Section 18 relates to Punishment in relation to Opium

Section 20 relates to Punishment in relation to Cannabis i.e. Charas Ganja Hashish etc.

Section 22 relates to punishment in relation to Psychotropic Substances

Section 23 relates to punishment in relation to Import/Export of drugs

Section 24 relates to punishment in relation to external dealing of drugs.

Section 42 Requires to reduce in writing the information received and to put it up to the immediate superior officer immediately. The search seizure and arrest under this section must be from sunrise to sunset in non public places.

Section 43 Pertains to search seizure and arrest in public places. Officer must have a reasonable belief to take action and mere suspicion will not do.

Section 50 The accused must be asked if he wish to be searched before a Gazetted Officer or a judicial magistrate. This is the right of the accused and cannot be denied. This choice should be given in writing. Oral saying is not sufficient. The accused must write or sign the memo where this option was given to express his choice. This fact should also be incorporated in the panchanama.

Section 52 The accused must be given the grounds of arrest in an arrest memo before arrest and acknowledgement obtained.

Section 55 The officer in charge to receive the seized articles and the goods seized must affix his seal on these items in addition to the seal of the seizing unit/officer. The samples sealed must be proper and no tampering should be done, from the time it is sealed, till it is handed over to the chemical examiner.

Section 57 The officer making a seizure or arrest under the NDPS Act must within 48 hours send a full report to his immediate superior officer. This is a mandatory requirement.

Section 67 This section empowers an officer to record the voluntary statement of any person concerned with the investigation.

The provisions given above are mandatory and will have to be complied with. Failure to do this will vitiate the case the case will fail. Hence these requirements must be complied with properly.

GIST OF SOME IMPORTANT PROVISIONS OF THE N.D.P.S. ACT

1. **AUTHORISED OFFICERS:** Section 3 deals with list of authorised officers who are to take measures for preventing and combating the misuse of narcotic drugs and substances.

2. **PROHIBITIONS: Section 8** prohibits the production, manufacture, possession, sale, use, consumption, purchase transportation, ware housing, import inter state, export inter state, of ganja.
3. **PUNISHMENTS: Section 15 to 29** deals with punishments for contravention of the NDPS Act.
 - Section 15** deals with punishment for contravention in relation to poppy straw.
 - Section 16** deals with punishment for contravention in relation to coca plant and leaves.
 - Section 17** deals with punishments for contravention in relation to prepared opium.
 - Section 18** is regarding punishment for contravention in relation to opium poppy and opium.
 - Section 19** deals with punishment for embezzlement of opium by cultivators.
 - Section 20** deals with punishment for contravention in relation to cannabis plant and cannabis.
 - Section 21** deals with contravention in relation to manufactured drugs and preparations
 - Section 22** deals with punishments for contravention in relation to psychotropic substances.
 - Section 24** deals with punishment for external dealing in narcotics drugs and psychotropic substances in contravention of section 12. (Restriction over external dealing in narcotic drugs and psychotropic substances)
 - Section 25** Deals with punishment for allowing premises etc. to be used for commission of offences.
 - Section 25 A** – deals with punishment for contravention of order made under section 9A (Power to control and regulate controlled substances)
 - Section 26** deals with punishment for certain Acts by licensee or his servant.
4. **EXPORT / IMPORT : Section 23** deals with punishment for import/export or transshipment of narcotics and psychotropic substances.
5. **POSSESSION: Section 27** deals with possession of narcotic
6. **FINANCING: Section 27A** deals with financing of illicit drugs and harbouring offenders.
7. **ABETMENT: Section 29** deals with abetment and criminal conspiracy. What is stated is irrespective of section 116 of IPC.
8. **PREPARATION :Section 30** deals with preparation to do or omit to do any act which constitutes an offence punishable under section 15 to 25 (both inclusive) of NDPS Act. It provides for punishment for preparation to commit an offence which is half the punishment for committing of the offence (both imprisonment and fine).
9. **ENHANCEMENT OF PUNISHMENT : Section 31** provides for enhancement of punishment for certain offences which is committed after earlier conviction. If under section 15 to 19, CL (ii) of section 20 and section 21 to 25, punishment upto 15 years RI extendable to 30 years and fine of 1.5 lakhs to 3 lakhs. If earlier conviction was under 10 years RI and fine of Rs.one lakh.
10. **DEATH PENALTY : Section 31A** imposes a death penalty for certain offences committed after previous conviction under section 15 to 25 or 27A. If convicted again for commission, attempt, abetment or criminal conspiracy to commit an offence relating to the table of 14 drugs, or financing directly or indirectly, the production, manufacture, possession, transportation, import/export, transshipment or narcotics drugs or substances, then the penalty would be death penalty.
11. **OFFENCE OF GENERAL NATURE :Section 32A** deals with the general nature of the offence. It says that if no penalty is imposed under any other section then for such offences penalty will be imposed under 32A, which provides for imprisonment for six months and/or fine.
12. **PERSON BELOW 18 YEARS : Section 33** states that the provisions of section 360 of Cr. P.C. and Probation of offenders Act, 1958, will not apply unless the person is less than 18 years of age, if the offence is punishable under section 26 or 27.
13. **SECURITY FOR GOOD BEHAVIOUR : Section 34** deals with the security from any person by executing a bond with or without surety for abstaining from committing any offence under chapter IV.

14. OFFENCE COGNIZABLE : Section 37 all offence under the NDPS act is cognizable and non-bailable.

15. OFFENCE BY COMPANY : Section 38 an offence under Chapter IV i.e. from section 15 to 32 by a company, then all persons in-

16. charge of or responsible for the conduct of business of the company as well as the company will be liable to be held guilty.

17. POWER OF COURT : Section 39 deals with the power of the court to release certain offenders, having regard to the age, character, antecedents, or physical or mental conditions of the offender.

18. POWER TO ISSUE WARRANT: Section 41 gives the power to issue warrant and search authorisation to Supdt. of Customs and central excise, appraisers, to search whether by day or night building conveyance or place. They may send their subordinate officers for the purpose with the authorisation. However, the Preventive, excise officers or DRI or other intelligence officers of the revenue department can record statements of the accused and make arrest.

19. OFFICERS EMPOWERED: SECTION 42 – Section 42 authorises the Preventive office, examiner, central excise or DRI officers etc. to search of premises, Seize the drugs, detain any person or arrest the person who has committed the offence. Provided he has reason to believe from personal knowledge, or information given by any person taken down in writing that any narcotics in respect of which an offence punishable under chapter IV has been committed or evidence of such commission is concealed, then he can do the above action. Further the action should be from sun rise to sun set if the search party is not accompanied by a gazetted officer. The subordinate officer can search and seize after sunset and in non-public places provided he records his reasons as to why the action could not wait till the coming of the gazetted officer. The urgency of the situation should be noted in file and put up to superior officer. In case of urgency, such subordinate offices can enter, search, seize and arrest without a warrant or authorisation, if he feels that the evidence of the case will be concealed or offender may escape.

20. ACTION IN PUBLIC PLACES: Section 43 empowers the aforesaid officers to search, seizure and arrest in public place. A bus or a train is also considered as a public place.

21. SUPRUTHNAMA: Section 45 empowers an officer to give supruthnama to the person incharge, if the goods cannot be taken over. Like the crop of ganja or hashish which cannot be gathered, a supruthnama can be given to the owner of the land etc.

Section 46 enjoins upon the land owner to inform about illegal cultivation of the narcotics substances.

21. SEARCH OF CONVEYANCE: Section 49 gives the power to stop and search a conveyance.

22. MANDATORY CONDITION FOR PERSONAL SEARCH: Section 50 is a very important. The conditions given therein is mandatory. The accused to be searched in person should be given the opportunity to be taken before a gazetted officer or a judicial magistrate and this fact has to be taken in writing with the signature of the accused. This fact is also to be incorporated in the panchanama.

23. PROVISIONS FOR WARRANT: Section 51 provides that the provisions of the Cr. P.C. will apply to warrants, arrest and seizure under the NDPS. Hence the legal requirement for these must be fulfilled.

24. GROUNDS OF ARREST: Section 52 provides that all persons arrested under section 41,42,43 or 44 should be told about the grounds of arrest and a arrest memo should be given to the arrested person and his signature to be obtained. If he does not understand the language i.e. English he should be explained in the language known and suitable endorsement taken on the memo. The arrested person shall be medically examined and deposited in the police station. The accused person should be produced before the magistrate without delay, However, not latter than 24 hours from the time of arrest. The arrest memo should show the date and time of arrest. If the next day is holiday then the accused should be

produced before a holiday magistrate. The arrested person should be allowed to contact his relative or lawyer and this fact should be endorsed on the office copy of the arrest memo.

25. OFFICERS POWERS: SECTION 53 The officer of the central excise, customs DRI etc. who are empowered under this Act will have the same power of the officer in-charge of the police station.

26. RELEVANCY OF STATEMENT: Section 53 A deals with relevancy of the statement given before the officers empowered under section 53, such statement given in the course of the inquiry or proceedings is admissible.

27. PRESUMPTION: Section 54 deals with presumption of commission of an offence, from the possession of illicit article like utensils specially made for manufacture of drugs, materials, chemicals which undergo any process to manufacture the narcotics substance.

28. TAKING OVER OF SEIZED ARTICLES : Section 55 deals with the duty of police to take charge of such articles shown in section 54 and the same should be sealed and kept in proper order.

29. ASSISTANCE OF OTHER OFFICERS : Section 56 cast obligation on all officer mentioned in section 42 to assist each other.

30. REPORT TO SR. OFFICER : Section 57 is very important. It casts a mandatory duty on the officer who arrest or seizes any narcotics, to make a report in writing about the same to the immediate superior officer.

31. VEXATIOUS ARREST : Section 58 provides for punishment for vexatious entry, search, seizure or arrest.

32. PUNISHMENT TO OFFICERS : Section 59 deals with the punishment for officers failing in their duty.

33. CONFISCATION : Section 60 deals with the confiscation of the goods, articles and conveyance used for the manufacture of the drugs.

34. CONCEALED GOODS: Section 61 deals with the confiscation of the goods used for concealing the drugs.

35. SALE PROCEEDS: Section 62 deals with the confiscation of the sale proceeds of illicit drugs and narcotic substances.

36. PROCEDURE OF CONFISCATION : Section 63 deals with the procedure for confiscation of goods etc.

37. IMMUNITY : Section 64 deals with the power of the court to tender immunity from prosecution like approvers and volunteering drug addict.

38. PRESUMPTION OF DOCUMENTS : Sec. 66 deals with presumption of documents in certain cases, if produced by prosecution against the accused then it will be presumed to be correct unless otherwise proved.

39. RECORDING STATEMENTS : Section 67 gives the power to officers mentioned under section 42 to examine any person or record statement. This is similar to the provision under section 108 of the Customs Act.

40. NON DISCLOSURE OF SOURCE : Section 68 gives the immunity to the officer from disclosing the source of information.

41. FORFEITURE OF PROPERTY : Section 69 gives a protection to officers for the action done in good faith.

42. GOOD FAITH : Section 69 gives a protection to officer for the action done in good faith.

43. RECOVERY : Section 72 deals with the recovery of amount due to the government.

44. BAR OF JURISDICTION : Section 73 no civil court shall entertain any suit or proceedings against the decision of any authority or officer under this Act.

45. POWER TO MAKE RULES : Section 76 & 78 gives the Central and State Govt. the power to make rules. All rules so made should be placed before the parliament, who alone shall pass the same, then it shall be effective.

46. APPLICATION OF CUSTOMS ACT : Section 79, the restriction imposed under the NDPS Act will be restrictions under the Customs Act.

47. APPLICATION OF DRUGS & COSMETIC ACT : Section 80, rules made under the NDPS Act will also be applicable in addition to the Drugs & Cosmetic Act. 1940.

IMPORTANT PROVISIONS OF “THE NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES RULES, 1985”.

Nrcotic drugs and substances

Rule 32 : Export of Opium – The export of opium is prohibited save when the export is on behalf of the Central Government.

Rule 35 : General prohibition – The manufacture of crude cocaine, ecgonine and its salts and of diacetyl morphine and its salts is prohibited.

Rule 36 : Manufacture of natural manufactured drugs : (1) The manufacture of cocaine and its salts is prohibited save the manufacture of cocaine hydrochloride by the chemical staff employed under the Central Board of Excise and Customs from confiscated cocaine.

(2) The manufacture of morphine, codeine, dionine, thebaine, dihydrocodeinone, dihydrocodeine acetyl dihydrocodeine, acetyl dihydrocodeinone, dihydromorphine, dihydromorphinone, dihydrohydroxycodeinone, pholcodine and their respective salts is prohibited save by the Government Opium Factory.

(3) The manufacture of medicinal hemp shall be under a licence granted by the State Government on payment of such fees and in accordance with such conditions as may be prescribed by that Government in this behalf.

Rule 37 : Manufacture of synthetic manufactured drugs – (1) The manufacture of manufactured drugs notified under sub-clause(b) of Cl.(xi) of Sec. 2 of the Act (hereafter referred to as the drug) is prohibited save under and in accordance with the conditions of a licence granted by the Narcotics Commissioner or such other officer as may be authorised by the Central Government in this behalf, in Form No.3 appended to these rules.

(2) A fee of rupees fifty shall be payable in advance to the Central Government for each licence issued under this rule or for renewal thereof.

Rule 53 : General prohibition – Subject to the other provisions of this Chapter, the import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule I is prohibited.

Rule 53A. (1) Subject to the provisions of sub-rule (2), no person shall export any of the narcotic drugs or psychotropic substances or preparation containing any of such narcotic drugs or psychotropic substances specified in Schedule IV to the countries or to the region of such country specified therein.

(2) Notwithstanding anything contained in sub-rule(1) above, the Narcotics Commissioners may authorise export of specified quantities of such narcotic drug or psychotropic substance or preparation containing such narcotic drugs or psychotropic substance on the basis of special import licence issued by the Competent Authority of the country mentioned in [Sch. II] which intends such import by way of issuance of special import licence. The shipment of the consignment so allowed shall be accompanied by a copy of such special import licence duly endorsed by the Narcotics Commissioner.]

Rule 54. Import of opium, etc. – The import of –

- (i) opium, concentrate of poppy straw, and

(ii) morphine, codeine, thebaine, and their salts is prohibited save by the Government Opium Factory.

Rule 55. Application for import certificate. – (1) Subject to rule 53, no narcotic drug, or psychotropic substance, specified in the Schedule of the Act shall be imported into India without an import certificate in respect of consignment issued by the issuing authority in Form 4 appended to these rules.

(2) The importer applying for an import certificate under sub-rule (1) in relation to narcotic drug shall submit along with his application the original or certified copy of the excise permit issued by the concerned State Government.

(3) The application for the import certificate shall state such details as may be specified by the Narcotics Commissioner.

Rule 57. Transit. – Subject to the provisions of Sec. 79 of the Act and rule 53, no consignment of any narcotic drug, or psychotropic substances specified in [Schedule of the Act], shall be allowed to be transited through India unless such consignment is accompanied by a valid export authorisation in this behalf, issued by the Government of the exporting country:

Provided that the provisions of this rule shall not apply to the carriage by any ship or aircraft, of small quantities of such narcotic drugs and psychotropic substances which are essential for treatment of, or medical aid to, any person on board the ship or aircraft.

Rule 60. Transshipment. – Subject to the provisions of Sec. 79 of the Act and rule 53, no consignment of narcotic drug, or psychotropic substance specified in [Schedule of the Act], shall be allowed to be transhipped at any port in India save with the permission of the Commissioner of Customs.

Rule 61. Procedure for transshipment.– The Commissioner of Customs while allowing any consignment of narcotic drug, or psychotropic substances, specified in [Schedule of the Act], to be transhipped shall, inter alia, satisfy himself that the consignment is accompanied by a valid export authorisation issued by the exporting country.

Rule 62. Diversion of consignment. – (1) Commissioner of Customs shall take all due measures to prevent the diversion of such consignment to a destination other than that named in the aforesaid export authorisation.

(2) (a) The Commissioner of Customs may permit diversion of such a consignment to a country other than that named in the accompanying copy of the export authorisation subject to the production of export authorisation issued by the issuing authority as provided under rule 58, as if the diversion were an export from India to the country or territory of new destination.

Rule 63. Prohibition of import and export of consignments through a post office box. etc. – The import or export of consignments of any narcotic drug or psychotropic substances through a post office box or through a bank is prohibited.

Psychotropic Substances

Rule 64. General prohibition. – No person shall manufacture, possess, transport, import inter-State, export inter-State, sell, purchase, consume or use any of the psychotropic substances specified in Sch. I.

Rule 65. Manufacture of psychotropic substances. – (1) Subject to the provisions of sub-rule (2), the manufacture of any of the psychotropic substances other than those specified in Sch. I shall be in accordance with the conditions of a licence granted under the Drugs and Cosmetics Rules, 1945 (hereinafter referred to as the 1945 Rules) framed under the Drugs and Cosmetics Act, 1940 (23 of 1940), by an authority in charge of Drugs Control in a State appointed by the State Government in this behalf.

(2) The authority in charge of Drugs Control in a State (hereinafter) referred to as the Licensing Authority) shall consult the Drugs Controller (India) in regard to the assessed annual requirements of each of the psychotropic substances in bulk form referred to in sub-rule(1) in the country and taking into account the requirement of such psychotropic substances in the State, the quantity of such substance

required for supply to other manufacturers outside the State and the quantity of such substance required for reasonable inventory to be held by a manufacturer, shall specify, by order, the limit of the quantity of such substance which may be manufactured by the manufacturer in the State.

(3) The quantity of the said psychotropic substance which may be manufactured by a licensee in a year shall be intimated by the Licensing Authority to the licensee at the time of issuing the licence.

SCHEDULE I

(See rules 53 and 64)

I. Narcotic Drugs

1. Coca Leaf
2. Cannabis (Hemp)
3. (a) Acetorphine
(b) Diacetylmorphine (Heroin)
(c) Dihydrodesoxymorphine (Desomorphine)
(d) Etophine
(d) Ketobemidone

and their salts, preparations, admixtures, extracts and other substances containing any of these drugs.

II. Psychotropic substances

Sl. No.	International Non-proprietary Names	Other non-proprietary names	Chemical name
1.	METHAQUALONE		2-Methyl-3-0-toly-4- (3H) quinazolinone.
2.	AMFEPRAMONE		2-(Diethylamino) propiophe-none
3.	BENZPHETAMINE		N-Benzyl-N-dimethyl-phenethyl amine.
4.	BRONAZEPAM		7-Bormo-1, 3-dihydro-5-(2-pyridyl)-2H-1, 4-benzodiazepin-2-one.
5.	CANAZEPAM		7-Chloro-1, 3-dihydro-3 hydroxy-1 methyl-5-phenyl-2H-1, 4-bensodiazepin-2-one dimethylcarbamate (easter).
6.	[* * *]		
7.	[* * *]		
8.	CLORAZEATE		7-Chloro-2, 3-dihydro 2-oxo-5phey, -2-1H, 4-benzodiazepine-3 carboxylic acid.
9.	CLOTIAZEPAM		5-(O-Chlorophenyl-7 ethyl-1, 3-dihydro-1 methyl-2H-theno [2, 3-e] 4-diazepin-2-one.
10.	CLOXAZOLAM		10-Chloro-11b-(o-chlorophenyl)-2,3,7, 11b-tetrahydrooxa-zolo-[3, 2-d] [1,4,] bensodiazepin-6 (5H)-one.
11.	DELORAZEPAM		7-Chloro-5-(o-chloro-phyenyl)-1,3-dihydro-2H-1, 4-benzodiazepin-2-one.
12.	ESTAZOLAM		8-Chloro-6-phenyl-4-H-s-triazo-lo[4,3,-a] [1,4] benzodiazepine.

13.	ETHINAMATE		1-Ethynylcyclo-hexanol carbamate.
14.	ETHYLLOFLAZEPATE		Ethyl 7-Chloro-5-(o-fluorophenyl)-2,3-dihydro-2-oxo-1H-1,4-benzodiazepin-3-carboxylate.
15.	FLUDIAZEPAM		7-Chloro-5-(o-fluorophenyl)-1,3-dihydro-1-methyl-2H-1,4-benzodiazepin-2-one.
16.	FLUNITRAZEPAM		5-(o-fluorophenyl)-1,3-dihydro-1-methyl-7-nitro-2H-1,4-benzodiazepin-2-one.
17.	HALOXAZOLAM		10-Bromo-11b-(o-fluorophenyl)-2,3,7,11b-tetrahydro-oxazolo [3,2-d] [1,4] benzodiazepin-6 (5H)-one.
18.	KETAZOLAM		11-Chloro-8,12-b-dihydro-2,8-dimethyl-12b-phenyl-4H-[1,3]-oxazino-[3,2-d] [1,4] benzodiazepine-4,7 (6H)-dione.
19.	LEFTAMINE	SPA	(-)-1-Dimethylamino-1,2-diphenyl ethane.
20.	LOPRAZOLAM		6-(o-Chlorophenyl)-2,4-dihydro-2-[(4-methyl-1-piperzinyloxy)methylene]-8-nitro-1H-imidazo [1,2-a] [1,4] benzodiazepin-1-one.
21.	LORMETAZEPAM		7-Chloro-5-(o-Chlorophenyl) 1,3-dihydro-3-hydroxy-1-methyl-2H-1,4-benzodiazepin-2-one.
22.	MAZINDOL		5-(p-chlorophenyl)-3,5-dihydro-3H-imidazo [2,1-o] isoindol-5-ol.
23.	MEDAZEPAM		7-Chloro-2,3-dihydro-1-methyl-5-phenyl-1H-1,4-benzodiazepine.
24.	METHYPRYLON		3,3-Diethyl-5-methyl-2,4-piperidine-dione.
25.	NIMETAZEPAM		1,3-Dihydro-1-methyl-7-nitro-5-phenyl-2H-1,4-benzodiazepin-2-one.
26.	OXAZOLAM		10-Chloro-2,3,7,7,11b-tetrahydro-2-methyl-11b-phenyloxazolo [3,2-d] [1,4] benzodiazepin-6-(5H)-one.
27.	PHENDIMETRAZINE		(+)-3,4-Dimethyl-2-phenylmorpholine.
28.	PHENTERMINE		-Dimethylphenethylamine.
29.	PINAZEPAM		7-Chloro-1,3-dihydro-5-phenyl-1-(2-propynyl) 2H-1,4-benzodiazepin-2-one.
30.	PIPRADROL		1,1-Diphenyl (2-piperidyl)-methanol.
31.	PRAZEPAM		7-Chloro-1-(cyclopropylmethyl)-1,3-dihydro-5-phenyl-2H-1,4-benzodiazepin-2-one.
32.	TEMAZEPAM		7-Chloro-1,3-dihydro-3-hydroxy-1-methyl-5-phenyl-2H-1,4-benzodiazepin-2-one.

33.	TETRAZEPAM	7-Chloro-5 (cyclohexen-1-yl) 1, 3-dihydro-1-methyl-2H-1, 4 benzodiazepin-2-one.
33-A.	ETRYPTAMINE	[3-(2-aminobutyl indole]
33-B.	METHCATHINONE	[2-(methylamino)-1-phenylpropan-1-one]
33-C.	ZIPEPROL	[a (a-methoxybenzyl)-4-(B-methoxyphenethyl)-1-piperazlineethanol]
33-D.	AMINOREX	(2-amino-5-phenyl-2-oxazoline)
33E.	BROSOCARB	[2-Bromo-4-(O-chlorophenyl)-9-methyl-6H-thieno (3,2-1)-triazolo [4, 3-a] [1, 4] Diazepine]
33-F.	MESOCARB	[3-a (1-methphenethyl)-N-(phenylcarbamoyl) Sydnoneimine].
34.	SALTS AND PREPARATIONS OF ABOVE	

SCHEDULE II

FORM No. 4

(See rule 55)

Official Seal of the Issuing Authority

S. No.

F. No.

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue)

Certificate of Official Approval of Import

(The Narcotic Drugs and Psychotropic Substances Rules, 1985)

.....(The Issuing Authority)..... being the authority empowered to issue Import Certificate under the Narcotic Drugs and Psychotropic Substances Rules, 1985 hereby approves the importation into India of the consignments containing narcotic drugs or psychotropic substances as specified in the Schedule below by:

M/s.....

From M/s,, subject to the condition that the consignment containing such drugs or substances shall be imported before by.....to.....(airport/seaport)..... in India.

In approving the importation of the consignment containing the said drugs or substances specified(Issuing Authority) is satisfied that it is required solely for medical and scientific purposes.

Address of the Issuing Authority

Designation of the Issuing Authority

Schedule specifying the narcotic drugs or psychotropic substances contained in the consignment to be imported.

1. This document is for(The authority to whom and the purpose for which it is being sent to be indicated).

2. The certificate is not valid unless it bears the Official Seal of the Issuing Authority on the top right hand corner.

Official Seal of Issuing Authority

S. No.

F. No.

FORM No. 3

(See rule 37)

Licence For Manufacture of Manufactured Drugs

Licence No.....Date of issue.....is hereby licensed to manufacture the following manufactured drugs on the premises situated at

	Name of drug	Quantity
(1)		
(2)		

2. The licence shall be in force fromto.....

3. The licence is subject to the conditions stated below and to such other conditions as may be specified in the rules for the time being in force under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).

Signature

Designation

Date

Conditions of Licence

1. This licence is not transferable.
2. This licence and any certificate of renewal in force shall be kept on the approved premises and shall be produced at the request of an officer detailed for the purpose by the Licensing Authority.
3. The licensee shall not manufacture or keep the drug or the materials used for the manufacture of the drug at any other place except his place of business.
4. The licence shall ensure manufacture of the drug to the standard and specifications laid down by or under the Drugs and Cosmetics Act, 1940 (23 of 1940).
5. The licensee, if he desires the renewal of his licence, shall apply to the Licensing Authority in the form specified for such renewal, at least thirty days before the expiry of his licence.
6. The licensee shall inform the Licensing Authority in writing in the event of any change in the constitution of the firm operating under the licence. Where any change in the constitution of the firm takes place, the current licence shall be deemed to be valid for a maximum period of the three months from the date on which the change takes place or the normal expiry of the licence whichever is earlier name of the firm with the changed constitution.

OTHER IMPORTANT ASPECTS:

1. Statement of co-accused cannot be used unless corroborated by independent evidence.
2. Stock witness should be avoided. Choice of panache witness should be proper and generally from the place around the seizure or search. Absence of independent witness will adversely affect the prosecution for non compliance of the requirement of section 52 and 55 of NDPS
3. **SAMPLES:** Refer to Standing order No. 1/88 and 1/89. (Given below)

Samples drawn from seized lot should be proved to be the same which was sent to the analyst. Further while drawing the panchanama; the details of sealing the drugs and the sample for testing, like seal Number or logo of the department on the seal, should be incorporated in the panchanama. The receipt obtained from the laboratory should link the sample drawn from the seized goods. For this the seal affixed on the sample should be shown on the receipt and an endorsement made by the receiver of the sample, that the seal was found intact. Care should be taken that the seal is not damaged. Further the receiver should say that the label was bearing the signature of the panchas with the date. A proper receipt will avoid any loop hole for rejecting the test report.

The samples to be tested should be tested chemically and not be confirmed by seeing and smelling or by experience.

The person carrying the sample to the Lab must give evidence to prove that the correct sample was tested, as taken by him and the link between the sample and the test report should be established. The sample from the test Lab should be received in properly sealed condition. Care should be taken that this seal is not broken. Hence these remnant sample should be kept safely and in protective packing with proper label.

Report of the Director, Dy. Director and Asstt. Director of recognised Lab are considered as opinion of scientific experts and they need not come to give evidence on that certificate under section 293(4) (e) of Cr. P.C. There should be no discrepancy in the weight of the sample recorded at the time of seizure panchanama and when the same is sent to the lab for testing. There should be no delay in sending the sample for test. It must be sent immediately and not later than 72 hours from the seizure, The proper and authorised laboratory report is essential for conviction

4. The seized goods should be sealed and deposited immediately within 24 hours of the seizure. Report of the seizure should be sent immediately to the superior officer.
5. Provision of section 167(2) of the Cr. P.C. of enlarging on bail will not be applicable to NDPS. Complaint to be filed in 90 days
6. The intelligence or information received must be recorded in writing and should be put up to his senior officer, as required under section 42 (2) of the NDPS Act. Generally the officer who receives intelligence should not conduct search and also do investigation. A report of Arrest and seizure should be submitted to the immediate superior officer within 48 hours as required under section 57 of this Act. Therefore the officer receiving the information must put the date and time below, the report of recording the information, similarly the superior officer receiving this report should also put the date and time below his signature.
7. Suspicion is no substitute for proof. Even if we know that the person is involved, evidence has to be collected to prove that suspicion. Vagueness is not permitted as the benefit of doubt will go to the accused.
8. If narcotics has come to the accused from out side the border then the offence of importing is complete.
9. Non compliance of section 50 would vitiate the trial and render conviction unsustainable. The accused must be asked in writing his choice should be recorded and his signature obtained on that paper,

and also the fact that he was given the choice of being taken before a gazetted Officer or Judicial Magistrate should be incorporated in the panchanama.

10. If several persons are residing in the place from where the drug is seized then the possession of the drugs from the accused should be proved and the control of the premises should be proved beyond doubt. If there is a possibility of more than person dealing with the goods the nexus must be proved between the accused and the object.

11. Under section 35 (2) and 54 the burden of proof will be on the accused from whose possession the drug was recovered. The possession factor will ensure punishment and ownership in that case need not proved. If seizure is not believed the possession will not be believed by the court. Hence the panchanama should be correct when seizure is made.

Possession of premises, and contraband was brought there and that he was dealing in it are the required ingredients.

12. Extra Judicial confession is not a voluntary statement.

13. Punishment under NDPS for contravention of psychotropic drugs is 10 years extendable upto 20 years and fine of 1 lakh extendable to 2 lakhs

14. It is required that the offence should have been committed knowingly with culpable mental state under section 36, 54 and 60 (3) and this should be proved by positive evidence or circumstantial evidence before mens rea can be established.

15. Chapter V and VI consisting of section 107 and 120 B of Cr. P.C. deals with abettment and conspiracy, while section 120A deals with criminal conspiracy. The requirements of an abettor (1) There must be a abettor (2) He must abet (3) the abettment must be an offence. Investigation is tantamount to abettment. In order to constitute a conspiracy four things are necessary (1) At least two person (2) They must engage in the commission of an act (3) the act or omission must have taken place "in order to do a thing" (4) the act or omission must take place in pursuance of that conspiracy, knowledge or common design.

16. Offence of acquiring, purchase, store, warehousing, possession punishable under section 22 r/w 8(c) and 29 of NDPS. Attempt to export punishable under section 28 r/w 8 (c) and 29. Export or attempt to export under section 8 (C) and section 11 of the Customs Act and would constitute an offence under section 135 (I) r/w 135 (I) (ii) of the Customs Act. Forgery punishable under section 465,471 of IPC.

17. Draw up a rough sketch of the place from where the drugs are seized, this should be made a part of the panchanama and take the signatures of the witness and the person from whom the drugs are seized.

OTHER USEFUL INFORMATION:

1. An information describing the suspect and his modus operandi with specific details on the date time and place of drug deals. It needs to be reduced into writing by the officer receiving the information and should be sent forthwith to the next superior officer. (s 42) It is mandatory legal provision.
2. Search of a person, premises, conveyance leading to recovery of drug concealed in a packaging or a cavity of the vehicle. A search warrant issued by the empowered officer of the rank of superintendent or above is executed in case the search is not to be conducted in a public place. All the requirements relating to the search as are provided in the code of criminal procedure have to be followed. A notice in writing under Sec. 50 needs to be served on the person searched giving him the option of his getting searched in presence of a gazetted officer or a magistrate. The recovery would be illegal if such a notice has not been given.
3. Seizure of drug recovered from the possession of a person informed against. The contraband is tested by way of a field testing kit which indicates the presence of drug in the recovered substance. It

is a prima facie proof of the substance being of the drug type as is confirmed from the field testing kit. A sample of the drug is drawn from the lot recovered and sealed with an official seal after taking the signature of the panchas and the person from whom the recovery is made on the paper slip which is affixed on the packet containing the sample before the same is sealed with an official seal. Chemical analysis report received is the final word on the recovery of drug to be of a particular type that makes the person possessing it liable for punishment.

4. A report on the seizure and arrest has to be prepared and submitted to the next higher officer by the arresting officer under Sec. 57 within 48 hours of the arrest.
5. The arrested person is produced before the court within 24 hours of his arrest. He is to be conducted strictly in conformity with the law relating to the rights of the arrested person. His relative or friend should be notified of his arrest. In case the person is needed for effecting any further recovery of drug or for any other investigation he is remanded to the custody of the agency; otherwise the arrested person is sent to jail in judicial remand pending trial against him.
6. Follow up investigation are undertaken for collecting additional evidence corroborating the confessional statement and the seizure document. These could be verification of vehicle registration details, telephone dial out information, searches at other places from where the drug transited or originated etc. Statement of the panchas is recorded on anything additional they have to say to what is recorded in panchnama.
7. The investigations must be completed with 90 days of the arrest of the person. If there is delay in filing challan or complaint within this period then the accused gets right to be enlarged on Bail. A complaint is filed under the regular punitive sections of the Act enumerating the evidence in support of the complaint. The court takes cognisance of the complaint and frames charges based on the complaint. If the accused denies the charges trial commences. Evidence is recorded by the prosecution in support of its charges
8. The court under section 313 of the Cr.P.C. records statement of the accused and he is given an opportunity to lead evidence in support of his statement. Judgement is passed by the court on hearing the two parties after completing the evidence and accordingly if the charges are proved the accused is convicted.

Guidelines for search/Raid:

1. All officers deployed for search should carry their Identity Card.
2. Leader of each team should have a search authorisation.
3. As far as possible there should be a pre-planning before carrying out the search/raid. Pre-planning will include survey of the area/place where the search/raid has to be undertaken. This pre-planning is essential for effective deployment of staff to achieve maximum results.
4. The officer-in-charge of the search should deploy his officers in such a manner that all the entrances/exits are properly guarded so as to prohibit any person coming in/going out of the premises.
5. All incoming telephone calls should be received by the searching officers only. No person within the premises should be allowed to talk on phone with any person outside.
6. Immediate on entering the premises, the occupants should be instructed not to converse about the business of search with each other.
7. The list of documents/records mentioned for recovery should be gone through carefully. The searching officers should examine every document and record and decide its worth for purposes of recovery.
8. Samples should be drawn.

9. The documents/records to be seized should be properly numbered serially and a brief description of the file/records and the period to which it belongs should be mentioned in the Panchnama.
10. The statements of the persons concerned should be recorded on the date of search itself, least they may be tutored by the party. For this purpose, a brief and immediate scrutiny of the records/documents should be done.
11. Soon after the commencement of the search the contact telephone number of the party should be given to the officers who is monitoring the search/raid. He should be appraised about the commencement of the search and its progress from time to time and the important material have come to notice so far. Before withdrawal from the search as far as possible clearance from the same officer should be taken unless the search/raiding party has already briefed in this regard.
12. Seized documents/records should be handed over to the assigned person under proper receipt.
13. Each search/raid party should invariably carry with them a drug identification/testing kit and they should also have bag containing certain essentials like screw driver, torch, flash light, mirror, walkie talkie, binocular, night vision devices, hand cuff, seal sealing materials, emergency medical kit, etc.

Points to be noted while recording panchnama :

1. Name, occupation, age and address of panchas.
2. Time, date and place of start of proceedings.
3. Reason for search.
4. Authority for search.
5. Identify yourself by showing identity card.
6. Mention names of a few other officers included in the search part.
7. Offer personal search of each member.
8. Mention presence of the occupants of the premises/person to be searched.
9. Before conducting personal search ask the person whether he would like to be taken before a gazetted officer or a magistrate.
10. Mention description of place to be searched e.g. area of flat, number of rooms, telephone no. etc.
11. Ask the person to be searched to give declaration of this baggage wherever necessary e.g. Whether he is having any contraband.
12. Give graphic description of the search operation e.g. who opened the suitcase, who had the key, from where the incriminating documents or contraband was recovered, how it was concealed etc.
13. Test drugs with field testing kit and mention results.
14. Mention where and how the weighment of contraband goods was done. Give gross & net weight.
15. Mention value of contraband to be seized.
16. Mention no. of samples drawn and their weight , what identification marks were given to contraband exhibits, samples and documents proposed to be seized/taken over.
17. Mention "Nothing else was taken over" or "Religious feelings hurt."
18. Mention time of conclusion of panchnama.
19. Offer personal search on conclusion of search before leaving the place of search.
20. Take photographs, fingerprints wherever possible.
21. Mention money and valuables given back to the person searched or seal them for handing over later in the court.
22. Seal contraband and exhibits mentioning seal no.
23. Take signature of panchas, officer writing the panchnama and the person being searched on labels pasted on contraband, exhibits and documents.

24. Mention under what provisions the seizure was done.
25. Mention any important events taking place during search e.g. Arrival of more officers/persons etc.
26. Give a copy of panchnama of the persons searched and obtain his receipt.

Details of Drugs seized :

1. Note the exact date and place of discovery. Record the weight and type of the drug.
2. Describe the wrapper : material, colour, trademark, subsequent markings, number of parcels making up the whole amount.
3. Note the means of transport used and the hiding place.
4. Seize the vehicle, and make a complete and thorough search of it.

Details in case of foreign National:

1. Check his passport carefully. Are there any signs of alteration : e.g. Erasures (transparency), insertion, missing pages, restrictions on travel ? For nationals of certain countries: do they have appropriate visas ?
2. Has he several different passport ?
3. If they bear the photograph of person concerned , but give particulars of different identities ?
4. From whom did he obtain these passports ? Where and when did he obtain them ? How much did he pay for them ? For what purposes has he used them ? Where ? When ? On what date did he enter the country ? At which border check-point ? Where has he stayed since ?
5. Note the frontiers crossed (dates and places of Immigration/Emigration stamps).

Questions to be asked while recording statement under section 53 of NDPS Act:

1. Does he know the type of drug he was carrying ? Who gave it to him ? Where ? When ? Through which towns and along which roads did he travel before reaching the place where the drug was seized ? Where did he stay on the journey ? At what hotels ?
2. To whom was he to have handed the drug ? Where ? When ? Is there a prearranged code so that the carrier and the intended recipient recognise each other (e.g. Words, signs, or an article to show) ? What was he to have been paid ? When ? Where ? Obtain details that can lead to the identification of the individuals involved (First names, family names, description, accents, origins, etc.).
3. Make full use of all the information obtained during the investigations. Send to all countries that may be concerned, because of the nationality of the individuals arrested, their place of residence, the point of departure or destination of the drug, the place of transit, or for any other reason, all information liable to be of interest, or to suggest lines of enquiry which will produce useful results for the investigators working on the case. Do not fail to send the photographs and fingerprints of all persons arrested.

The above points are few tips to the officers working in the Narcotic cell or those dealing in Narcotic cases. If the officers follow these instructions meticulously, then the conviction rate increase.

OTHER RELEVANT ACTS AND RULES:

PITNDPS ACT (THE PREVENTION OF ILLICIT TRAFFIC IN NARCOTIS AND PSYCHOTROPIC SUBSTANCES ACT 1988.

Under this Act the Government can detain any person (including a foreigner with a view to preventing him from engaging in illicit traffic in Narcotic drugs and psychotropic substances.

THERE ARE VARIOUS RULES LIKE

1. THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES RULES 1985.
2. THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES CONSULTATIVE COMMITTEE RULES 1988.
3. THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (EXECUTION OF BOND BY CONVICTS OR ADDICTS) RULES 1985.
4. THE ILLEGALLY ACQUIRED PROPERTY (RECEIPT, MANAGEMENT AND DISPOSAL) RULES 1989.
5. APPELLATE TRIBUNAL FOR FORFEITED PROPERTY (CONDITION OF SERVICE OF CHAIRMAN AND MEMBERS) RULES 1989.
6. APPELLATE TRIBUNAL FOR FORFEITED PROPERTY (FEES) RULES 1989.
7. THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (AUTHENTICATION OF DOCUMENTS) RULES 1992.
8. THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (REGULATION OF CONTROLLED SUBSTANCES) ORDER 1993.
9. IN ADDITION THERE ARE VARIOUS STATE ACTS AND RULES.

Disposal of seized/confiscated Narcotic Drugs and Psychotropic Substances after disposal of cases.

In a number of cases seized/confiscated narcotic drugs and psychotropic substances which were produced in the Courts as Muddamal articles, continue to lie in the courts even after the trial is concluded. In a number of cases, the possession of such Muddamal articles has not been taken by the appropriate authorities for disposal thereof, even though the courts have passed appropriate orders with regard to disposal of such Narcotics Drugs and Psychotropic Substances. With the increase in litigation and shortage of premises for storage of such seized articles, the courts also get exposed to the risk of pilfering, theft, substitution, abuse, misuse, etc.

It is requested that appropriate arrangements be made expeditiously for taking the possession and disposal of seized drugs in respect of which the courts have passed appropriate orders.

In other cases, where the trial is still pending, it is pre-trial disposal of seized drug as laid down in Standing Order no. 2/88 of NCB, New Delhi.

[Narcotics Control Bureau, New Delhi, Letter F. No. XXIV/19/99/I & I dt. 30.07.1999]

NARCOTICS CONTROL BUREAU**NEW DELHI****STANDING ORDER NO. 2/88****RECEIPT, CUSTODY, STORAGE AND DISPOSAL OF SEIZED CONFISCATED NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES.**

Consequent upon the enforcement of the Narcotic Drugs and Psychotropic Substances Act, 1985, with effect from 14.11.1985, the enforcement activities against drug traffickers in the country have been stepped up resulting in seizures of huge quantities of narcotic drugs and psychotropic substances (hereinafter referred to as the 'drugs'). For successful prosecution of drug offenders, it has been felt necessary to formulate a uniform procedure for drawal of samples of the seized drugs, which from the primary evidence in the course of prosecution proceedings before the courts of law keeping this in view, the Narcotics Control Bureau; the Central Authority created under section 4(3) of the Narcotic Drugs and Psychotropic Authority created 1985 (hereinafter referred to as the 'new law') which functions as the apex

coordinating and enforcement agency in the country has formulated and circulated a Standing Order No. 1/88 dated 15.3.1988 .

2. Recognising the importance of despatch transit receipt, safe custody, storage, proper accounting and disposal + destruction of the seized/confiscated drugs, and the need for evolving a uniform procedure for regulating the above mentioned operations, both by the Central and State drug law enforcement agencies in the country, the Narcotics Control Bureau has formulated the following procedure to be complied with in this behalf.

- 3.1 All drugs should be properly classified, carefully weighted and sampled on the spot of seizure.
- 3.2 All the packages/containers should be serially numbered and kept in lots of sampling. The procedure set out in Standing Order No. 1/88 referred to above should be scrupulously followed.
- 3.3 After sampling, detailed inventory of such packages/containers should be prepared for being enclosed to the panchanama, Original, wrappers must also be preserved for evidentiary purposes.
- 3.4 After completion of panchanama, the drugs should be packed, in heat sealed plastic bags. For bulk quantities of ganja, instead of plastic bags, gunny bags may also be utilised wherever those are not readily available.
- 3.5 Agencies of the Central and State Government, who have been vested with the powers of investigation under the new law must specifically designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.
- 3.6 All drugs must invariably be stored in safe and vaults provided with double-locking system.
- 3.7 Such godowns, as a matter of rule, be placed under the overall supervision and charge of a Gazetted Officer of the respective enforcement agency, who should exercise utmost care, circumspection and personal supervision, as far as possible. Such officers should not be below the rank of Superintendent in the Departments of Customs, Central Excise, Directorate of Revenue Intelligence, Central Bureau of Narcotics, Narcotics Control Bureau, C.B.I., B.S.F., etc., (Central agencies and Station House Officer/Officer-in-charge of a police station, Superintendent of State Excise, Naib/Tehsildar of Revenue, Drug Control Department, etc. in the States and U.T. enforcement agencies. They will personally be held accountable for safety and security of the drugs.
- 3.8 Each seizing officer should deposit the drugs fully packed and sealed with his seal in the godown within 48 hours of seizure of such drugs, with a forwarding memo indicating.
 - (i) NDPS Crime No. as per crime and prosecution register under the new law (i.e. NDPS Act.)
 - (ii) Name (s) of accused
 - (iii) Reference of test memo
 - (iv) Description of drugs in the sealed packages/containers and other goods, if any.
 - (v) Drug-wise quantity of each package/container and other goods, if any
 - (vi) Drug-wise number of packages/containers
 - (vii) Total number of all packages/containers

Annexure I

- 3.9 The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure - I), will hand over the same to the Investigating Officer of the case along with the case dossiers for further proceedings.
- 4.0 The officer-in-charge of the godown, before accepting deposit of drugs, will ensure that the drugs are properly packed and sealed. He will also arrange the packages/containers (case-wise and lot-wise) for quick retrieval, etc.

- 4.1 The godown in-charge is required to maintain a register wherein entries of receipt should be made (as per format at Annexure II).

Annexure II

- 4.2 It will be incumbent upon the Inspecting Officers of the various departments mentioned as Annexure II to make visits to the godowns for ensuring adequate security and safety and for taking measures for timely disposal of drugs. The Inspecting Officer should record their remarks/observations against col. 15 of the Format at Annexure II.
- 4.3 The Heads of respective enforcement agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.

Annexure III

- 4.4 While quarterly returns of disposal of drugs by the Central Government agencies concerned shall be furnished to the Director-General, Narcotics Control Bureau by the 15th of the month following the quarter (in the format at Annexure III), the state enforcement agencies are required to submit their reports to the State Police Headquarters (CID) Director General, Narcotics Bureau informed of the same as per Annexure III.

Annexure IV

- 4.5 Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies should obtain orders for **pre-trial disposal of drugs and other articles** (including conveyance, if any) by having recourse to the provisions of Section 451 of the Criminal Procedure Code, 1973 (extracts enclosed at Annexure IV) and those of the provisions of section 110 (IA) , (IB) and (IC) of the customs Act, 1962 read with Government of India's notification No. 31/86-Cus. (AS) dated the 5th February, 1986 issued in this behalf which specifies 'Dangerous drugs and psychotropic substances'.
- 4.6 While preferring the application under section 451 before the Court of Sessions immediately, emphasis may be laid on 'expediency of disposal' The grounds that may be high-lighted may pertain to,
- (i) risk of pilferage, theft and substitution
 - (ii) high potential and vulnerability of abuse
 - (iii) high temptations to traffickers
 - (iv) diminution in the value of other articles (including conveyances) due to long storage, etc.
- 4.7 Since the filing of the charge-sheet/plaint is a condition precedent for expeditious issue of orders for pre-trial disposal, complaints by the respective enforcement agencies must be filed after completion of investigation within the stipulated period of 90 days of seizure/arrest, on a priority basis. They should meticulously be adhered to.
- 4.8 While moving the application under Section 451 of the Criminal Procedure Code as above, production of all seized/articles/drugs, etc., along with the panchanama (in original) and detailed Inventory thereof is essential. The inventory should be complete in all respects and contain such particulars as may be relevant to establish nexus/identity of articles. The chemical analysis report should also be simultaneously filed.
- 4.9 After the court orders are passed for pre-trial disposal of drugs, those drugs which have no legitimate commercial value (excepting opium, morphine, codeine and thebaine, which are required to be transferred to the Government Opium and Alkaloid Works Undertaking at Ghazipur

or Neemuch, as the case may be) are required to be destroyed consistent with the guidelines issued under this order and not repugnant to the court's order.

- 5.0 As bulk of seizures of drugs relate to illicit import or export and are made at the points of entry or exit or in transit traffic, such drugs are liable to seizure under section 110 of the Customs Act, 1962 and confiscation under section 111 or 113 *ibid*. In such cases, it would be appropriate to initiate proceedings under the Customs Act also.

Annexure V

- 5.1 The relevant provisions of section 110 (IA), (IB) and (IC) are reproduced at Annexure-V.
- 5.2 A three member Committee of the respective enforcement agencies (both Central and States), known as the Narcotics Drugs and Psychotropic Substances Disposal Committee should be constituted to discharge its functions from the Head Quarters of the respective Heads of Departments. The Committee will be headed by an officer not below the rank of –
- (j) Deputy Commissioner of Customs and Central Excise with two members of the rank of Assistant Commissioner of Customs and Central Excise in the case of a Customs and Central Excise Commissionerate;
 - (ii) Deputy Narcotics Commissioner with two members of the rank of Assistant Narcotics Commissioner in the case of Narcotics Commissioner's Organisation;
 - (iii) Deputy Director of Revenue Intelligence with two members of the rank of Assistant Director in the case of the Directorate of Revenue Intelligence;
 - (iv) Deputy Director and two other officers as may be authorised by the Director General, Narcotics Control State Police Organisation;
 - (v) Deputy Inspector General of Police with two members of the rank of Superintendent of Police in respect of State Police Organisations; and
 - (vi) Deputy Commissioner of Excise with two officers of the rank of Assistant Commissioners, in respect of State Excise Organisations.

The Committee will be directly responsible to the Head of the Department concerned.

- 5.3 The functions of the Committee will be to
- (a) undertake detailed analysis of drugs pending disposal
 - (b) advise the respective investigating officers/supervisory officers on the steps to be initiated for export disposal.

The Committee will meet, as frequently as possible, as may be considered necessary for quick disposal of drugs and at least once in two months. While the Central agencies will endorse a copy of the minutes of such meetings directly to Narcotics Control Bureau, the State enforcement agencies concerned will report the same to their respective state police Head Quarters (CID), who, in turn, will keep the Narcotics Control Bureau informed of the progress made from time to time

- 5.4 The officers-in-charge of godowns will prepare a list of all such drugs that have become ripe for disposal to the Chairman of the respective drug disposal committee. After examining that they are fit for disposal and satisfying that they are no longer required for legal proceedings and the approval of the court has been obtained for the purpose, the Members of the respective drug disposal committees will endorse necessary certificates to this effect. The committee will, thereafter, physically examine and verify the drug consignments will reference to the seizure report and other documents like chemical analysis, etc., including its weighment and record its finding in each case.

Note: The drugs become ripe for disposal after they are confiscated by the competent court or the competent authority of the Customs on expiry of the period of appeal or when ordered by the

court for disposal under section 451 of the Cr. P.C. 1973 or section 110 1(C) of the Customs Act, 1962.

- 5.5 In the case of tampering with seal, etc., the composite sample will be drawn for getting the same tested by the Central Revenue Control Laboratory or the State Forensic Science Laboratory/State Drug Control Laboratory concerned. If no variation either in purity or quantity is found, the same will be ordered for destruction by the Department. Where any minor variations are noticed, a detailed report should be submitted to the Head of the Department of the enforcement agency concerned. In the case of wider variations, the matter should be immediately reported to the Narcotic Control Bureau indicating the follow-up action taken in this regard. The destruction of drugs in such cases can be done only after obtaining the orders of the Head of the Department concerned.
- 5.6 The Committee will be empowered to order destruction of the seized drugs in the following cases:

<u>Name of drug</u>	<u>Quantity (Kgs)</u>
Heroin	2
Hashish (Charas)	50
Hashish oil	10
Ganja	500
Cocaine	1
Mandrax	150
Other drugs	upto value of Rs.5 lakhs

The disposal Committee should intimate the Head of the Department concerned the programme of destruction (giving complete details) in advance (at least 15 days before the date of destruction), so that in case he deems fit, he may either himself conduct surprise checks, or depute an officer for conducting such surprise checks. The disposal Committee should inform the respective Heads of Departments in respect of every destruction made by it indicating the date of destruction, quantities destroyed, etc.

In those cases where the quantities exceed the above limits destruction could be ordered and take place only under the supervision by the Head of Department himself along with the Chairman and Members of Drug Disposal Committee.

- 5.7 All drugs excepting opium, morphine, codeine and thebaine shall be destroyed by incineration in such places where adequate facilities and security arrangements exist for the same after ensuring that this will not be a health hazard from the point of view of pollution.

Annexure VI

- 5.8 A certificate of destruction (in triplicate) (annexure-vi) containing all the relevant data like godown entry no., file no., gross and net weight of the drugs seized, etc., shall be prepared and duly endorsed by the signature of the Chairman as well as Members of the Committee. This could also serve the purpose of panchanama. The original copy will be pasted in the godown register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy will be kept by the Disposal Committee.
6. The procedure as outlined in Section II of the Opium Manual (Vol. III) will continue to apply for drugs like opium morphine, codeine and thebaine. Disposal of poppy straw shall continue to be regulated by the procedure as stipulated by the respective State Excise Department in this behalf.
7. Other goods (including conveyance) ripe for disposal may be disposed of by public auction or in such manner as is deemed convenient in the best interests of the Government.

ANNEXURE I
(Para 3.9)

GODOWN RECEIPT (No. II)

RECEIVED (No.)packages/containers said to contain
(Description of Drugs) sealed with the seal No. of (Name & Designation) seizing officer and
entered into godown register vide entry No.

Facsimile of the seal.....

Place:	Signature of the Officer-in-charge
Date:	of godown with full name and
Time:	official seal

ANNEXURE-II
(Para 4.1)

**FORMAT OF REGISTER REQUIRED TO BE
MAINTAINED BY THE GODOWN IN CHARGE
N.C.B. III**

1. Godown entry S.No.
2. N.D.P.S. Crime No.
3. Description of drugs in the scaled packages/containers and other goods, if any
4. No. of packages/containers (drug-wise)
5. Quantity of drug (package/containerwise)
6. Particulars of the test memos.
7. Name(s) and address(es) of accused
8. Name with official designation and address of seizing/depositing officer
9. Facsimile of the seal put on the packages/ containers by the seizing officer
10. Date and time of deposit
11. Particulars of exit and re-entry for exhibiting to court.
12. Date and time of removal for disposal
13. Disposal particulars including destruction or despatch to Central Govt. Opium Factory.
14. Certificate of disposal including price payment particulars, from Govt. Opium Factory, where applicable.
15. Remarks of the Inspecting Officer(s)*

*Inspecting Officers: In the case of Central Enforcement Agency: (1) D.G.,NCB (2) Dy.D.G.,NCB(3) Narcotics Commissioner of India (4) Dy. Narcotics Commissioners (5) D.G.,BSF,(7) Sr. Officers of CBI, (8) Chief Commissioner, Customs & Central Excise, (9) Commissioner, Customs & Central Excise (10) Assistant Commissioner of Customs and Central Excise.

In the case of State Enforcement Agency : (1) D.G. of Police (2) I.G. of Police (3) Dy. I.G.P. (4) Superintendent of Police (5) State Excise Commissioner (6) Dy. Excise Commissioner (7) Superintendent of Excise and Equivalent officer of State Govt. in the authorised departments.

ANNEXURE

**FORMAT OF QUARTERLY RETURN TO BE FURNISHED BY THE
CENTRAL ENFORCEMENT AGENCIES TO N.C.B.**

Name of the drug	Opening Balance as on 1st day of the quarter	Receipts during the Qr.	Qty. disposed by destruction	Qty. Despatched to opium factories	Stock in hand at the end of Qr.	Remarks
1.	2.	3.	4.	5.	6.	7.

ANNEXURE III

**PROVISIONS OF SECTION 110(1A) (1B) AND (1C)
OF THE CUSTOMS ACT, 1962.**

110(1A): The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in value of the goods with the passage of time, constraints of storage space for goods, or any other relevant considerations, by notification in the Official Gazette specify the goods or the class of goods which shall, as soon as may be, after its seizure, under sub-section(1) be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

110(1B): Where any goods, being goods specified under subsection (1A) have been seized by a proper officer under subsection (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to Magistrate for purpose of :-

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

110(1C): Where the application is made under sub-section (1B) the Magistrate shall, as soon as may be, allow the application.

ANNEXURE IV

PROVISIONS OF SECTION 451 OF THE CRIMINAL PROCEDURE CODE, 1973

451. Order for custody and disposal of property pending trial in certain cases:-

When any property is produced before any criminal court during any enquiry or trial, the court may take such order as it thinks fit for the proper custody of such property pending, the conclusion of the enquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation: For the purpose of this section "property" includes –

- (a) Property of any kind or document which is produced before the court or which is in its custody.
- (b) Any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offences."

ANNEXURE-VI (Para 5.9) (IN TRIPLICATE)

CERTIFICATE OF DESTRUCTION OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (PARA 9, 10 OF THE STANDING ORDER NO. /88 –DETAILS OF THE DRUGS AND SUBSTANCES DESTROYED.

Particulars of the drugs (1)	Seizure case file ref. No. (2)	Godown Register entry No. (3)	As recorded in the Godown register (4)		Weight ascertained on physical verification (5)	
			Gross Wt. (a)	Net. Wt. (b)	Gross Wt. (a)	Net Wt. (b)

Name and address of the witnesses (6)	Date/Place/Mode of destruction (7)
--	---------------------------------------

It is certified that a Committee consisting of S/Shri.....supervised the destruction of narcotic drugs and psychotropic, substances particulars above, in the presence of following witnesses.

(delete whatever is not applicable).

SIGNATURE
WITH DATE
(CHAIRMAN)

SIGNATURE
WITH DATE
(MEMBER)

SIGNATURE
WITH DATE
(MEMBER)

STANDING ORDER NO. 1/88

DRAWAL, STORAGE, TESTING AND DISPOSAL OF SAMPLES FROM SEIZED NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES – PROCEDURE

1.1 It has been brought to the notice of this Bureau by the Chief Chemist, Central Revenues Control Laboratory that different investigating officers of various enforcement agencies adopt different Procedures in drawing samples from seized narcotic drugs and psychotropic substances, particularly with regard to the number of samples drawn, quantity of the sample, sealing, mode of packing, despatch of samples etc., to the concerned laboratory, for test. It has also been found that handling of samples at different stages and places may also become an issue of dispute during the trial, and hence a clear and uniform procedure is necessary to avoid any doubt or confusion at any level. With a view to bring uniformity of approach in such matters, and also to provide for a secure system of handling of drug samples it is decided to standardise the procedure with regard to drawing, forwarding and testing of samples.

1.2 It may be noted that all drugs and psychotropic substances, materials, apparatus utensils, or any other articles in respect of which or by means of which any offence punishable under Chapter IV of the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed, are liable to confiscation under Section 60 of the Narcotic Drugs and Psychotropic Substances Act. In other words, an act of omission, or commission constituting an offence under Chapter IV of the Narcotic Drugs and Psychotropic Substances Act, 1985 is only in relation to such narcotic drugs or

psychotropic substances which are liable to confiscation. As such all offence under N.D.P.S. Act have to be proved only in relation to such drugs or psychotropic substances which are liable to confiscation.

- 1.3 All illicit narcotic drugs or psychotropic substances recovered from a person, place, conveyance etc. are material evidence as they are liable to confiscation. Further, they constitute primary evidence for any act, omission or commission on the part of a person rendering him liable for punishment under Chapter IV of the N.D.P.S. Act, 1985. Most of the narcotic drugs and psychotropic substances cannot be conclusively proved to be such drugs or substances merely by visual examination in the trial Court and they require to be proved by chemical analysis to be conducted by chemists authorised under section 293 of Cr.P.C. 1973. The provisions of subsection 4 of section 293 of Cr.P.C. are reproduced hereunder for ready reference:-

'293 (4) :-'

This section applies to the following government scientific experts, namely :-

- (a) any Chemical Examiner or Assistant Chemical Examiner to Government.
- (b) The Chief Inspector of Explosives;
- (c) The Director of Finger-print Bureau;
- (d) The Director Hoffkin Institute of Bombay;
- (e) The Director(Deputy Director or Assistant Director) of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;
- (f) The Serologist to the Government.

Note :- Sub – Section (4) of section 293 has been amended to include Deputy Directors and Assistant Directors of Central and State Forensic Science Laboratories in the list of Government Scientific experts.

Government of India vide notification No.74F.No. 50/53/76-Ad.II dated 17th July 1976 as amended vide notification dated 2nd February 1977 have declared chemists of different grades working in Central Revenues Control Laboratories as Chemists to Government for the purpose of section 293 of Cr. P. C.

- 1.4 If the drugs seized are found in packages / containers the same should be serially numbered for purposes of identification, In case the drugs are found in loose form the same should be arranged to be packed in unit containers of uniform size and serial numbers should be assigned to each package / container. Besides the serial number, the gross and net weight, particular of the drug and the date of seizure should invariably be indicated on the packages. In case sufficient space is not available for recording the above information on the package, a Card Board label, should be affixed with a seal of the seizing officer and on this Card Board label, the above details should be recorded.

1.5 Place and time of drawal of sample

Samples from the Narcotic Drugs and Psychotropic Substances seized, must be drawn on the spot of recovery, in duplicate, in the presence of search (Panch) witnesses and the person from

whose possession the drug is recovered, and mention to this effect should invariably be made in the panchnama drawn on the spot.

1.6 Quantity of different drugs required in the sample

The quantity to be drawn in each sample for chemical test should be 5 grams in respect of all narcotic drugs and psychotropic substances except in the cases of Opium, Ganja and Charas / Hashish where a quantity of 24 grams in each case is required for chemical test. The same quantities should be taken for the duplicate sample also. The seized drugs in the packages / containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

1.7 Number of samples to be drawn in each seizure case

(a) In the case of seizure of single package/container one sample in duplicate is to be drawn. Normally it is advisable to draw one sample in duplicate from each package/container in case of seizure of more than one package/container.

(b) However, when the package/container seized together are of identical size and weight, bearing identical markings and the contents of each package give identical results on colour test by U.N. kit, conclusively indicating that the packages are identical in all respect / the packages / container may be carefully bunched in lots of 10 packages / containers may be bunched in lots of 40 such packages such packages / containers. For each such lot of packages / containers, one sample in duplicate may be drawn.

(c) Whereafter making such lots, in the case of Hashish and Ganja, less than 20 packages / containers remains, and in case of other drugs less than 5 packages / containers remain, no bunching would be necessary and no samples need be drawn.

(d) If it is 5 or more in case of other drugs and substances and 20 or more in case of Ganja and Hashish, one more sample in duplicate may be drawn for such remainder package / containers

(e) While drawing one sample in duplicate from a particular lot, it must be ensured that representative drug in equal quantity is taken from each package / container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

Subject to the detailed procedure of identification of packages / containers, as indicated in para 1.4 each package / container should be securely sealed and an identification slip pasted / attached on each one of them at such place and in such manner as will avoid easy obliteration of marks and numbers on the slip. Where more than one sample is drawn, each sample should also be serially numbered and marked as S-1, S-2, S-3 and so on, both original and duplicate sample. It should carry the serial number of the packages and marked as P-1, 2, 3, 4 and so on.

1.9 It needs no emphasis that all samples must be drawn and sealed in the presence of the accused, Panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person from whose custody the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and the duplicate of each of the samples.

1.10 Packing and sealing of samples :

The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope may be sealed properly. Such sealed envelop may be marked as original and duplicate. Both the envelops should also bear the S. No. of the package (s) / container (s) from which the sample has been

drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope along with test memos should be kept in another envelope which should be also be sealed and marked "secret-Drug sample/Test memo" to be sent to the concerned chemical laboratory.

1.11 **Laboratories to which samples may be sent**

The seizing officers of the Central Government Departments viz. Customs, Central Excise, Central Bureau of Narcotics, Narcotics Control Bureau, D.R.I., etc. should despatch samples of the seized drugs to one of the Laboratories of the Central Revenues Control Laboratory nearest to their offices depending upon the availability of test facilities. The addresses of the Dy. Chief Chemists of the Central Revenues Control Laboratories are given below:

1. General Manager, Govt. Opium and Alkaloid Works, Ghazipur (U.P.).
2. General Manager, Govt. Opium and Alkaloid Works, Neemuch (M.P.).
3. Chief Chemist, Central Revenue Control Laboratory, Pusa Road(IARI), New Delhi.
4. Dy. Chief Chemist, Office of the Collector of Customs House, Chennai 600 001.
5. Dy. Chief Chemist, Chemical Laboratory, Customs House, Calcutta 1.
6. Dy. Chief Chemist, New Customs House, Ballard Estate, Mumbai 400 038.
7. Dy. Chief Chemist, Central Excise Laboratory, Estrella Batteries Compound, Dharavi Road, Mumbai 400 019.
8. Chemical Examiner, Office of the Commissioner of Customs, Customs House, Cochin 9.
9. Chemical Examiner, Central Excise Laboratory , Yashkamal, Building, 8th floor, Baroda 5 (Gujarat).
10. Chemical Examiner, Central Excise Laboratory, Central Excise Laboratory, CORIL Refinery, Vishakhapatnam (A.P.)
11. Chemical Examiner, Customs House, Kandla, Gujarat.
12. Chemical Examiner, Customs House, Laboratory, Sada, MARMUGOA GOA 403803.
13. Chemical Examiner, Central Excise Laboratory, Assam Oil Refinery, Dibboi (Assam).
14. Chemical Examiner, Central Excise Laboratory, Bureau Oil Refinery, Distt. Begusarai (Bihar).
15. Chemical Examiner, HPCL, Refinery, Corridor Road, Trombay, Mumbai 400 074.

The other Central Agencies like B.S.F., C.B.I. and other Central Police organisations may send such samples to the Director, Central Forensic Laboratory, New Delhi. All State Enforcement Agencies may send samples of seized drugs and psychotropic substances to the Director/Deputy Director/Assistant Director of their respective State Forensic Science Laboratory.

The Addresses of State Forensic Science Laboratories are given below:

1. Director, Forensic Science Laboratories, Govt. of Bihar Patna-800 023.
2. Director, Police Forensic Science Laboratory, Rajasthan, Nehru Nagar, Jaipur-6.
3. Director, Forensic Science Laboratory, Mini Punjab Secretarial, Plot No. 2, Sector 9-A, Chandigarh.
4. Director, State Forensic Science Laboratory, Rasulgarh, Bhubaneshwar-10 (Orissa).
5. Director, Forensic Science Laboratory, Haryana Madhuban (Karnal).
6. Director, Forensic Science Laboratory, Andhra Pradesh, Red Hills, Hyderabad-4.
7. Director, Forensic Science Laboratory, Trivendram-10.
8. Director, State Forensic Science Laboratory, Govt. of West Bengal, Balgachia Road, Calcutta-37.
9. Director, Forensic Science Laboratory, 5-Miller Road, Om Mehal Building, Bangalore-560052.
10. Director, Forensic Science Laboratory, Assam, Kahitapara, Guwahati-19.
11. Director, Forensic Science Laboratory, Forensic House, Kamaragar Slai, Mysore, Madras-4.

12. Director, Forensic Science Laboratory, Gujarat State, New Mental Corner, Ahmedabad-380016.
13. Director, Forensic Science Laboratory, Maharashtra State, Vidyanagari, Kalina, Santacruz (East), Mumbai-400 098.
14. Director, Forensic Laboratory, Civil Lines, Sagar (M.P) –470 001.
15. Director, Forensic Science Laboratory, Mahanagar, Lucknow (U. P.).
16. Director, Forensic Science Laboratory, Sector 18, Chandigarh.
17. Director, Forensic Science Laboratory, Bureau of Police Research and Development (MHA), Govt. of India, O.V. Campus, Ramnathpur, Hyderabad – 500 013.
18. Director, Central Forensic Science Laboratory, C.B.I., Block-4, C.G.O. Complex, Lodhi Road, New Delhi.
19. Assistant Director, Forensic Science Laboratory, Junagarh (Gujarat).
20. Chemical Examiner to the U.P. Govt., Agra (U.P.).
21. Govt. Examiner of questioned documents, Railway Board Building, Simla (HP)
22. Director, Forensic Science Laboratory Opposite C.D. Hospital, Sri Nagar (J.K.)

1.12 Test Memo

The Samples of seized drugs or substances should be despatched to the respective laboratories under the cover of a Test Memo which shall be prepared in triplicate in proforma NCB-I. This test memo will be serially numbered for each unit effecting the seizure. The seizing officer will carefully fill-up column 1 to 8 of the Test Memo and put his signature with official seal. The original and duplicate of the Test Memo should be sent to the Laboratory concerned alongwith the samples. The triplicate shall be retained in the case file of the seizing officer.

1.13 Mode and time limit for despatch of sample to Laboratory.

The samples should be sent either by insured post or through special messenger duly authorised for the purpose. Despatch of samples by registered post or ordinary mail should not be resorted to. Samples must be despatched to the Laboratory within 72 hours of seizure to avoid any legal objection.

- 1.14 Each Unit of every Enforcement Agency will maintain a Register of samples to monitor the progress of testing, which will have the following columns:-

Crime No.	Date of Seizure	Name & Address of offender	Description of seized drugs and yet qty.
1	2	3	4
Name of the officer drawing and despatching the sample.	S. No. of samples and S. No. of Packages/containers from which samples were drawn.		Test Memo Reference
5	6		7
Name & Designation of custodian of sample.	The authority to whom Despatched.	Date of receipt of analysis Result and Its reference.	
8	9	10	
Results in brief	Date of receipt of remnant sample.	Date of Destruction/ disposal of remnant samples.	
11	12	13	
Date of destruction/disposal of duplicate samples.	Remarks		
14	15		

The register should be received once a month by the Head of unit and once in three months by the supervising officer.

1.15 Receipt in the Laboratory.

The sealed envelope containing the samples received in the Laboratory concerned should be carefully opened so as to preserve the seals on the envelope to be sent back along with the report on the test for evidence purposes. In the laboratory every sample received for test must be given a distinct Laboratory number. A separate register for Narcotic Drugs and Psychotropic Substances shall be maintained. The Laboratory may further sub-divide the register Agency-wise. The Laboratory number should form a continuous series, beginning on the 1st January every year and ending on the 31st December. The sample clerk must enter the laboratory number and the date of registration on the Test Memo and enter the same number with date of registration on the label of the sample container. Often there may be number of samples coming under once Test Memo, each sample must be given a separate number and all the numbers must be entered on the Memo.

The samples and memos having been marked with Laboratory numbers should be entered in a Register. The headings of the columns in the register will be as indicated below: -

S. No. (Lab. No.) 1	Date of receipt 2	Name of the officer drawing & despatching the sample 3	Test Memo Ref. & Date 4
Description of the drug as per the Test Memo 5	To whom allotted 6	Date of receipt by the concerned chemist with his signature 7	
Details of Test results 8	Date of despatch of remnant samples 9	Remarks 10	

Note: Columns 5 & 6 should be filled up respectively at the time of actual forwarding of the sample to the concerned chemist.

Allotment of Samples

Samples of narcotic drugs and psychotropic substances should be taken to the chemical examiner or such officer in the Laboratory for this purpose. He will mark the sample to a chemist. While so doing the chemical examiner or such officer will keep in view the provisions of section 293 of Cr. P.C. The sample clerk will hand over the sample and test memos to the chemist named as above and obtain his initial for receipt in his register. All drug samples must reach such chemist the same day and the chemist will keep the samples in his safe custody under lock and key in his steel almirah, provided for the purpose.

Examination of sample with reference to Test Memo

On receipt of the samples such chemist will examine the same and record its weight in the Test Memo. He will compare the markings on the Test Memos with the markings on the packages/containers. It will be his responsibility to ensure that he tests the relevant sample.

Expeditious test

Expeditious analysis of narcotic drugs and psychotropic substances is of essence to all proceedings under N.D.P.S. Act, 1985. In many cases the court may refuse to extend Police/judicial remand beyond 15 days in the absence of a chemical report. Accordingly, it is essential that the analysis is completed and the report is despatched within 15 days from the date

of receipt of the sample. However, where quantitative analysis requires longer time, the results of the qualitative test should be despatched to the officer from whom the samples were received within the aforesaid time limit on the original copy of the Test Memo so that court proceedings can start immediately. In the next 15 days the results of quantitative test (purity of the drug) should also be indicated on the duplicate test memo and sent to the officer from whom the samples were received.

1.18 Test Register

All results both the qualitative and quantitative tests should be entered into the Register of samples (para 1.15). This register is intended to serve as a reference and as such should be quite durable, It should carry the results and the date of despatch with reference to the Test Memo. There should be clear and adequate reporting of the results in the Test Memo. As soon as the analysis is over the test result should be despatched by registered post in the name of the officer who forwarded the sample for test.

1.19 Remnants of samples

Remnants of all narcotic drugs and psychotropic substances samples should be returned with reference to the Test Memo to the analysis of the drug.

1.20 Custody of duplicate sample

Duplicate sample of all seized narcotic drugs and psychotropic substances must be preserved and kept safely in the custody of the Investigating officer along with the case property. Normally duplicate sample may not be used but in case of loss of original sample in transit or otherwise or on account of trial court passing an order for a second test, the duplicate sample will be utilised.

1.21 Disposal of Test Memo

As soon as the test result in original or duplicate or both test memos are received, the same will be filed in the Court, trying the case, along with charge-sheet / complaint by the Investigating officer. He will keep an attested copy of the same in his case file.

1.22 Disposal of Remnant sample/duplicate sample and the drug

At present, the remnant sample/duplicate sample and seized narcotic drugs and psychotropic substances can be disposed of after the proceedings of prosecution are over or by obtaining an order from such court under section 110 of the Customs Act, 1962 and/or 451 of Cr. P.C. While obtaining the order of the court under the aforesaid section it is necessary that specific order in respect of the remnant sample/duplicate sample is also obtained.

After such order has been obtained, the drug or substance along with the samples including remnants shall be disposed of in the manner prescribed. Please acknowledge the receipt of the standing order.

STANDING ORDER NO. 1/89 Dated 13th June, 1989.

'Whereas the Central Government considers it necessary and expedient to determine the manner in which the narcotic drugs and psychotropic substances, as specified in Notification No.4/49 dated the 29th May, 1989 (F.No. 664/23/89-Opium, published as S.O. 381 (E), which shall, as soon as may be, after their seizure, be disposed of, having regard to their hazardous nature, vulnerability to theft, substitution and constraints of proper storage space:

SECTION 1 – DRUGS MEANT FOR DISPOSAL

Drugs	1.	Narcotic Drugs :
Specified in	1)	Opium

Notification	2)	Morphine
No. 4/89	3)	Heroin
Drugs meant	4)	Ganja
For disposal	5)	Hashish (Charas)
Specified	6)	Codeine
	7)	Thebaine
	8)	Cocaine
	9)	Poppy straw; and
	10)	Any other manufactured drug as under clause (xi) Of section 2 of the Act.

Psychotropic Substances :

- 1) Methaqualone,
- 2) T.H.C.,
- 3) Amphetamine and
- 4) Any other psychotropic substance, as defined under Clause (xxiii) of section 2 of section 2 of the said Act.

**SECTION II – GENERAL PROCEDURE FOR
SAMPLING, STORAGE, Etc.**

Sampling	2.1	All drugs shall be properly classified, carefully, weighed and samples on the spot of seizure.
Classification, Etc. of drugs		
Drawal of Samples	2.2	All the packages/ containers shall be serially numbered and kept in lots for Sampling. Samples from the narcotic drugs and psychotropic substances seized, shall be drawn on the spot of recovery, in duplicate, in the presence of search witnesses (Panchas) and the person from whose possession the drug is recovered, and a mention to this effect should invariably be made in the panchnama drawn on the spot.
Quantity to Be drawn for the sampling	2.3	The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for duplicate sample also. The seized drugs in the packages / containers shall be well mixed to make it homogeneous and representative before the sample (in Duplicate) is drawn.
Method of drawal	2.4	In the case of seizure of a single package / container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package / container in case of seizure of more than one package / container.
(a) Single Container / package		
(b) Bunch of packages/ package	2.5	However, when the packages/ containers seized together are of identical size and weight, bearing identical markings and the contents of each package given identical results on colour test by the drug identification kit, conclusively indicated that the packages are identical in all respects the packages / containers except in the case of ganja and hashish (charas), where it may be bunched in lots of, 40 Such packages / containers, one sample (in duplicate) may be drawn.

Bunching for (i) Hashish and ganja	2.6	Where after making such lots, in the case of hashish and ganja, less than 20 packages/containers remain, and in the case of other drugs, less than 5 packages/containers remain, no bunching would be necessary and no samples need be drawn.
(ii) other drugs	2.7	If such remainder is 5 or more in the case of other drugs and substances and 20 or more in the case of ganja and hashish, one more sample (in duplicate) may be drawn for such remainder/container.
Drawal of representative samples:	2.8	While drawing one sample (in duplicate) from a particular lot, it must be ensured that sample are in equal quantity is taken from each quantity is taken from each package/container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.
Storage of samples - procedure	2.9	The sample in duplicate should be kept in heat sealed plastic bags as it is convenient and safe. The plastic bag container should be kept in a paper envelope which may be sealed properly. Such sealed envelope may be marked as original and duplicate. Both the envelopes should also bear the S.No. of the package (s)/container (s) from which the sample has been drawn. The duplicate envelope containing the sample will also have a reference of the test memo. The seals should be legible. This envelope along with test memos should be kept in another envelope which should also be sealed and marked 'secret-drug sample/Test memo', to be sent to the chemical laboratory concerned.
Despatch of samples for testing: To whom to be sent?	3.0	The seizing officers of the Central Government Departments, viz., Customs, Central Excise, Central Bureau of Narcotics, Narcotics Control Bureau, Directorate of Revenue Intelligence, etc. should despatch samples of the seized drugs to one of the Laboratories of the Central Revenues Control Laboratory nearest to their offices depending upon the availability of test facilities. The other Central Agencies like BSF, CBI and other Central Director, Central Forensic Laboratory, New Delhi. All State Enforcement Agencies may send samples of seized drugs to the Director/Deputy Director/Assistant Director of their respective State Forensic Science Laboratory.
Preparation of Inventory	3.1	After sampling, detailed inventory of such packages/containers shall be prepared for being enclosed to the panchnama. Original wrappers shall also be preserved for evidentiary purposes.

SECTION III – RECEIPT OF DRUGS IN GODOWN AND PROCEDURE

Custody of Drugs in Godowns – Storage Procedure	3.2	All the drugs invariably be stored in safes and vaults provided with double-locking system. Agencies of the Central and State Governments, may specifically designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.
Maintenance of godowns and procedure for deposit of Drugs	3.3.	Such godowns, as a matter of rule, shall be placed under the over-all supervision and charge of a Gazetted Officer of the respective enforcement agency, who shall exercise utmost care, circumspection and personal supervision as far as possible. Each seizing officer shall deposit the drugs fully packed and sealed in the

godowns within 48 hours of such seizure, with a forwarding memo indicating NDPE Crime No. as per Crime and Prosecution (C & P Register) under the new law, name of the accused, reference of test memo, description of the drugs, total no. of packages/containers, etc.

- Acknowledgement to be obtained** 3.4 The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure-I), shall had acknowledgement over such to the Investigating Officer of the case along with the case dossiers for further proceedings.
- Action to be taken by Godown-in-charge before Acceptance of drugs for deposit** 3.5 The Officer-in-charge of the godown, before accepting the deposit of drugs, shall ensure that the same are properly packed and sealed. He shall also arrange the packages/containers (case-wise and lot-wise) for quick retrieval, etc.
- Maintenance of godown register** 3.6 The godown-in-charge is required to maintain a register wherein entries of receipt should be made as per format at Annexure-II.
- Inspection by Inspecting Officer** 3.7 It shall be incumbent upon the Inspecting Officers of the various Departments mentioned at Annexure-Ii to make frequent visits to the godowns for ensuring adequate security and safety and for taking measures for timely disposal of drug. The Inspecting Officers should record their remarks/observations against Col.15 of the Format at Annexure-II.
- Prescription of periodical reports and returns** 3.8 The Heads of the respective enforcement agencies (both Central and State Governments) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.
- Pre-trial disposal of drugs** 3.9 Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies may obtain orders for pre-trial disposal of drugs and other articles (including conveyance, if any) by having recourse to the provisions of sub-section (2) of section 52A of the Act.

Follow-up action to be taken by Police and Empowered officers

**SECTION IV – ACTION TO BE TAKEN BY
POLICE AND OTHER EMPOWERED
OFFICERS FOR PRE – TRIAL DISPOSAL**

4.0 Where any narcotic drug of psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer, referred to in paragraph 3.3of the order shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers of such other identifying particulars of the

		narcotic drugs or psychotropic substances of the packing in which they are packed, country of origin and such other particulars as may be considered..... relevant to the identity of the aforesaid drugs in any proceedings under the Act and make an application to any Magistrate for the purpose of -
Application to Magistrate for pre-trial		(a) certifying the correctness of the inventory so prepared; or (b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or (c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.
Magistrate to allow Application	4.1	Where an application is made under sub-section (2) of the section 52A of Act, the Magistrate shall, as soon as may be, allow the application.
Courts to treat documents and list of ibid samples certified by Magistrate as ‘primary evidence’	4.2	Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs, or narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.
Grounds to be enumerate in application	4.3	While preferring an application under section 52A to any Magistrate, emphasis may be laid on ‘expediency of disposal’. The ground that may be high-lighted may pertain to - (i) risk of pilferage, theft and substitution; (ii) constraints of storage and hazardous nature; (iii) high potential and vulnerability of abuse; (iv) high temptations to traffickers; (v) diminution in the value of other articles (including conveyances) due to long storage, etc.
Filling of Charge-sheet/Plaint	4.4	Since the filing of charge-sheet/complaint is condition precedent for expeditious issue of orders for pre-trial disposal, for expeditious issue of orders for pre-trial disposal, complaints by the respective enforcement agencies must be filed after Completion of investigation within the stipulated period of 90 days of seizure/arrest , on a priority basis. This requires to be meticulously adhered to.
Documents to accompany Application	4.5	While moving the application under sub-section (2) of section 52A of the Act as above, production of all seized articles/drugs, etc. along with the panchnama (in original) and detailed inventory thereof is essential. The inventory shall Be complete in all respects and contain such particulars, as may be relevant to Establish nexus/identity of articles. The chemical analysis report should be

Mode of disposal of drugs on which court's orders obtained	4.6	Simultaneously filed. After the court orders are passed for pre-trial disposal of drugs, those drugs which have no legitimate value (excepting opium, morphine, codeine and the- ,baine, which are required to be transferred to the Government Opium and Alkaloid Works Undertaking at Ghazipur or Neemuch, as the case may be) are required to be destroyed consistent with the guidelines issued under this order and not repugnant to the court's order.
Application of Customs Act	4.7	As bulk of seizures of drugs relate to illicit import and are made at the points of entry or exit or in transit traffic, such drugs are liable to seizure under section 110 of the Customs Act, 1962 and confiscation under sections 110 or 113 ibid . In such cases, it would be appropriate to initiate proceedings under the Customs Act also.

SECTION 5 – CONSTITUTION & FUNCTIONS OF DRUG DISPOSAL COMMITTEE

Constitution of Drug Committee	5.0	A three Members Committee of the respective enforcement agencies (both Central and States), known as the "Narcotic Drugs and Psychotropic Substances Disposal Committee" should be constituted to discharged its functions from the Headquarters of the respective Heads of Departments. The Committee will be headed by an officer not below the rank of – (i) Deputy Collector of Customs and Central Excise with two Members of the rank of Customs and central Excise in the case of Customs and Central Excise Collectorate; (ii) Deputy Narcotics Commissioner with two members of the rank of Assistant Narcotics Commissioner in the case of Narcotics Commissioner's organisation; (iii) Deputy Director of Revenue Intelligence with two members of the rank of Assistant Director in the case of Directorate of Revenue Intelligence; (iv) Deputy Director and two other officers, as may be authorised by the Director General, Narcotics Control Bureau in the case of that organisation; (v) Deputy Inspector-General of Police with two members of the rank of Superintendent of Police in respect of State Police Organisations; and (vi) Deputy Commissioner of Excise with two officers of the rank of Assistant Commissioners, in respect of State Excise Organisations.
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5.1 The Committee will be directly responsible to the Head of the Department concerned.

Functions	5.2	The functions of the Committee will be to, (a) undertake detailed analysis of drugs pending disposal, and (b) advise the respective investigation officers/supervisory officers on the steps to be initiated for expeditious disposal.
Meeting by the Committee	5.3	The Committee shall meet, as frequently as possible, as may be considered necessary for quick disposal of drugs and at least once in two months. While the Central agencies shall endorse a copy of the minutes of such meetings directly to

the Narcotics Control bureau, the State enforcement agencies concerned shall report the same to their respective State Police Headquarters (CID), who, in turn, may keep the Narcotics Control Bureau informed of the progress made from time to time.

Procedure to be followed by the Committee with regard to disposal of drugs 5.4 The officers-in-charge of godowns shall prepare a list of all such drugs that have become ripe for disposal to the Chairman of the respective drug disposal committee. After examining that they are fit for disposal and satisfying that they for legal proceedings and the approval of the court has been obtained for the purpose, the Members of the respective drug disposal committee shall endorse necessary certificates to this effect. The committee shall, thereafter, physically examine and verify the drug consignments with reference to the seizure report and other documents like chemical analysis, etc., including its weightment and record its findings in each case.

Variation in chemical analysis report - Further action to be taken 5.5 The composite sample shall be drawn for getting the same tested by the Central Revenues Control Laboratory or the State Forensic Science Laboratory/State Drug Control Laboratory concerned. If no variation, either in the purity or quantity is found, the same shall be ordered for destruction by the Department. Where any minor variations are noticed, a detailed report may be submitted to the Head of the Department of the enforcement agency concerned. In the case of wider variations, the matter should be immediately reported to the Narcotics Control Bureau indicating reported the following-up action taken in this regard. The destruction of drugs in such cases can be done only after obtaining the orders of the Head of the Department concerned.

Power of Committee For Destruction of Seized drugs 5.6 The Committee shall be empowered to order destruction of the seized drugs in the following cases :

	Name of drug	Quantity (Kgs.)
1.	Heroin	2
2.	Hashish (Charas)	50
3.	Hashish oil	10
4.	Ganja	500
5.	Cocaine	1
6.	Mandrax	150
7.	Other drugs	upto value of Rs. 5 lakhs

Intimation To Head of Deptt. on destruction 5.7 The disposal Committee shall intimate the Head of the Department concerned the programme of destruction (giving complete details) in advance (at least 15 days before the date of destruction), so that, in case he deems fit, he may either himself conduct surprise checks, or depute an officer for conducting such surprise checks. The disposal Committee should inform the respective Heads of Departments in respect of every destruction made by indicating the date of destruction, quantities made by it indicating the date of destruction, quantities

destroyed, etc

- Quantities In excess of delegation- Procedure to be followed:** 5.8 In those cases where the quantities exceed the above limits, destruction shall be ordered and take place only under the supervision by the Head of the Department himself along with the Chairman and Members of the Drug Disposal Committee.
- Mode of Disposal of Drugs** 5.9 All drugs excepting opium, morphine, codeine and the baine shall be destroyed by incineration in such places where adequate facilities and security arrangements exist for the same after ensuring that this may not be a health Hazard from the point of view of pollution. Open destruction of such drugs may also be resorted to, wherever considered feasible and necessary, after due publicity to gain the confidence of public. Wide publicity, in such cases, would be consequential.

SECTION VI – MISCELLANEOUS

- Certificate of destruction** 6.0 A certificate of destruction (in triplicate) Annexure-III of containing all the relevant data like godown entry no., file no., gross and net weight of the drugs seized, etc., shall be prepared and duly endorsed by the signature of the Chairman as well as Members of the Committee. This could also serve the purpose of panchnama. The original copy shall be pasted in the godwon register after making necessary entries to this effect, the duplicate to be retained in the seizure case file and the triplicate copy will be kept by the Disposal Committee.
- 6.1 The procedure as outlined above should be followed by all Central and State endorsement agencies concerned. Other goods (including conveyance), ripe for disposal may be disposed of by public auction or in such manner as is deemed convenient in the best interests of the Government.

PROSECUTION UNDER N.D.P.S. Act, 1985- Various Facets

Drug control legislation has, as its primary aim, the prosecution of public welfare by preserving health and eliminating undesirable social and moral effects commonly associated with the indiscriminate use of narcotic drugs and psychotropic substances. Commercial traffic in deadly mind, soul and body-destroying drugs is beyond doubt one of the greatest evils of our time. It cripples intellect, dwarf bodies, paralyses the progress of a substantial segment of our society, and frequently makes hopeless and sometimes violent and murderous criminals of persons of all ages who become its victims. The links between illicit traffic and other related organized criminal activities, which undermine the legitimate economies and threaten the stability, security and sovereignty of State, have been definitely established. It also cannot be disputed that illicit traffic generates large financial profits and wealth enabling transnational criminal organization to penetrate, legitimate commercial and financial business, and society at all its levels. Such consequences call for the most vigorous laws to suppress the traffic as well as the most powerful efforts to put these vigorous laws into effect. Accordingly the Narcotic Drugs & psychotropic substances Act was enacted in the year 1985, and to make it more effective and powerful, it was amended in the year 1989.

Substantive and procedural principles generally prevailing in favour of the subjects have been restricted or excepted. Culpable mental state of the accused, wherever required, is to be presumed, and it is for the accused to prove its absence beyond reasonable doubt (s.35). The Court is empowered to raise a presumption against the accused that he has committed an offence under Chapter IV of the Act if he fails to account satisfactorily for the possession of an incrimination article under the Act.(S.54). Further, the Court is required to raise a reputable presumption as to the admissibility and proof of any document where such document is produced or furnished by any; person or is seized from him under this Act or under any other law i.e. like Custom & FERA, or which has been received from any place outside India during the investigation of an offence under the Act (S.66). Thus, the burden of proof on the prosecution has been lightened to a great extent. Further, an incriminating statement made by a person before officer authorised under S.53 of the act is admissible in evidence and is not hit by S.25 of the Evidence act. Still further, a statement made and signed by a person before such officer during the course of any enquiry or proceedings can be admitted as substantive piece of evidence at the trial. (53A), The plain object of the Legislature in making these drastic provisions was to subordinate the interest, of an ordinary citizen to the wider social and economical interest of the community and the needs of the law Enforcement Agencies.

Discretion of the Court to release an accused on bail has been curtailed to a great extent. Powers of the High Court to suspend sentence and grant bail to a convict during the pendency of his appeal against conviction and sentence have been taken away. Minimum sentence in case of conviction has been prescribed. The powers of the court to deal with a convict under S.360 of the code of Criminal Procedure or under the provisions of the probation of offenders Act have been restricted. Powers of the Executive to suspend, commute or remit sentence of a convict for an offence under the Act have been taken away (S.32A). Power to search by day or night, either premises or the person, is largely extended. Clause (b) of S.43 confers wide powers on the officers to arrest even a person who is in the company of someone who is found to be in unlawful possession of narcotic drug or psychotropic substance. Besides attempt, even preparation to commit an offence under the Act has been made punishable. All of these provisions are indicative of the will of Parliament to give the most efficient protection, to public health against the danger attending the uncontrolled use of drugs as well as against the social evils incidental thereto and to save the national economy from the menace of drug trafficking.

Simultaneously, the legislature, in order to protect the interest of an innocent person against vexatious search and unfair dealings, has provided certain safeguards in Secs. 41 to 43, 50,52,55 and 57. It is not every officer who can carry out search without warrant. Only such officer who is empowered under Secs. 41 and 42 is authorised to exercise the powers of entry, search, seizure and arrests without warrant. The applicability of the provisions of S.100 of the Code of Criminal Procedure to the search and seizure under the Act has been saved by S.51 of the Act. The search of a person if he so requires, is to be taken before a Magistrate or a Gazetted Officer of any of the departments mentioned in S.42. The law appears to avoid the allegation by the accused that the drug has been planted on him, and also to provide material to the Enforcement agency to prove the credibility of the search and seizure. Protection against arrest and detention is contained in s.52 of the act. S.55 enjoins a duty upon an officer – in – charge of a police station to receive and keep in safe custody the goods and articles seized under the Act, thus putting the seized material beyond the reach of the seizing officer and also eliminating the possibility of the samples being tampered with till the same reach the hands of the expert. The concerned officer is required to make a full report within 48 hours of every arrest of seizure made by him to his immediate superior.

Keeping in view the aim and object of the Act, the drastic provisions enacted to achieve the objects let us turn to the question of prosecution of an accused under the Act. We can safely say that the process of prosecution under the Act commences with the receipt of information or having reasons to believe regarding the contravention of the provisions of Act, and ends with the judicial pronouncement of conviction or acquittal, as the case may be. In between these two points, the Enforcement Agency is to cover a long distance.

At the outset, it may be noted that the controversy among the various High Courts regarding the scope of Secs. 37 and 53 has been finally settled by the authoritative pronouncements of the Supreme Court of India. In Kishan Lal's cases, it stands settled that the limitations contained in S.37 (1) (b) to release on bail a person accused of an offence under the Act are applicable to be exercise of the powers under S.439 of the code by the High court. In Raj Karawal's case, it is finally decided that an Officer, other than a Police Officer, authorised under S.53 is not a police officer and any incriminating statement made to him is not hit by S.25 of the Evidence Act.

There is a third decision of the Supreme court in Rajnikant Jivan Lal Patel's case that where the bail has been granted to an accused under the proviso to S.167 (2) of the Code for default of the prosecution in not completing the investigation and filing a charge – sheet within the prescribed period, after the defect is cured by filing of the charge – sheet, the prosecution may seek to have the bail cancelled on the ground that the accused has committed a non – bailable offence and that it is necessary to arrest him and commit him to custody. But this view has been dissented from in a recent decision of the Supreme Court in Aslamhai v. State of Maharashtra, III (1992) CCR 292 (S.C.). It has been held: "Once the accused has been released on bail his liberty cannot be interfered with Highly i.e. on the ground that the prosecution has subsequently submitted a charge – sheet. Such a view would introduce a sense of complacency in the investigating agency and would destroy the very purpose of instilling a sense of urgency expected by Sections 57 and 167 (2) of the code. We are, therefore, of the view that once an accused is released on bail under Section 167 (2) he cannot be taken back in custody merely on the filing of a charge – sheet but there must exist special reasons for so doing besides the fact that the charge – sheet reveals the commission of a non – bailable crime. The ratio of Rajnikant's case to the extent it is inconsistent herewith does not, with respect, state the law correctly."

In respect of the rest of the procedural provisions, there is a sharp difference of opinion among the various High Courts in the country. To begin with there is a controversy regarding the powers of the Magistrate, the Special Court and the Court of Sessions to grant remand of the accused under S.36 a, and also regarding the applicability of the proviso to S.167 (2) of the Code to an offence under the Act in the face of S.37 (1) (b) of the Act. Then the Courts differ on the scope and effect of non-compliance of Secs. 41 to 43 of the Act. Again, there is a serious divergent of opinion on the question whether the provisions contained in Secs. 50, 52,55 and 57 are mandatory or directory, and what is the effect of any irregularity or illegality in the pre – trial investigation of a case under the Act. The Courts are also not unanimous regarding their approach to a case under the Act, the principles regarding the appreciation of evidence, and the minimum standard of proof required in such cases. These controversies have resulted in unwanted acquittals and I may say so defeated the object of the enactment rather than achieving it. The blame cannot be thrown upon the shoulders of the judiciary alone in interpreting the Act and its approach to the problem, but the implementing agencies and the prosecutors are equally responsible.

As regards the powers to grant remand, a procedure different from the one in the matter of authorising detention in the Code of Criminal Procedure has been provided by Cl. (b) of S. 336a and the Magistrate can authorise detention of a person suspected of the commission of an offence, in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a

Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate. It is noteworthy that a Judicial Magistrate cannot grant remand for a period exceeding 15 days which he can do otherwise under S.167 of the Code of Criminal Procedure and is obliged even if he considers the detention of the person to be unnecessary to order such person to be forwarded to the Special Court having Jurisdiction. If further detention is necessary, that power has to be exercised under C1. (c) of S. 36A by the Special Court, in relation to the person forwarded to it under C1.(b) and it shall have the same power which a Magistrate having jurisdiction to try a case may exercise under s.167 of the Code of Criminal Procedure in relation to an accused person in such case who has been forwarded to him under that section. (*Suryakant Ramdas V. State of Maharashtra*, 199 Cr.L.J.2422). In view of s.36 – A stipulating a period of 15 days for the remand and as the Magistrate has to forward the accused to the Special Court before the period detention authorised by him and as the Special Court gets the seizing over the matter, it cannot be said that the Magistrate can extend the period of remand in a case where the accused has been brought before him for offences under the ND.P.S.Act. Thus, it is abundantly clear that a Judicial Magistrate cannot authorise the detention of an accused or suspect taken into custody for an offence under the Act, for a period exceeding 15 days. (In re: District Judge, II (1992) CCR 1913 (Kerala – D.B.). A detention exceeding 15 days under the orders of the Judicial Magistrate is unauthorised and illegal. Reference may be made to *Suryakant Ramdas V. State of Maharashtra*, 1989 Cr.L.J.2422. In re....an Accused, 1992 Drugs Cases 95. In re District Judge, II (1992) CC.R.1913 (Kerala). *Aslam Khan V. State of M.P.*, 1992 Drugs Cases 106, and *Kalam Khan V. State*, 1991 Drugs Cases 414.

As already referred to, on the expiry of the initial period of remand of 15 days the Judicial Magistrate is bound to forward the accused to the Special Court having jurisdiction, and the Special Court shall have the powers under S.167 of the Code to grant further remand of the accused. The question arises whether in the event of a Special Court having not been established or constituted, the Magistrate is required to forward the accused to the Court having not been established or constituted, the Magistrate is required to forward the accused to the Court of Session and Court of Session would have the same powers and obligations as of the Special Court by virtue of the transitional provision of S. 36D of the Act. After discussing the rule of interpretation of statutes as laid down by the Supreme Court in *Commr. Income – tax V. National Taj Traders* (AIR 1980 S.C.485)., a Single Bench of the Mumbai High Court in *Suryakant Ramdas More V. State of Maharashtra* (1989 Cr.L.J.2422), held: “Though the Narcotic Drugs and Psychotropic Substances Act, 1985, is a penal statute, the provisions which call for interpretation in the present case are regarding the procedure or the machinery provision as pointed out by the Supreme Court. Giving restricted meaning to the language of S. 36D (1) could evidently lead to an absurdity and make the entire statute unworkable. If this consequence can be saved and it appears to be that it was intended to be saved by using the expression in its widest connotation, no other construction can be placed on the language of that section. Viewed in this light having regard to the scheme of the Act and the context in which amended provision of S. 36D occurs, it seems obvious to me that the court of session shall have all the powers, duties and obligations with which the Special court has been given. There can, therefore, be no doubt that the learned Additional Sessions Judge was entitled to authorise detention and in the event of a charge – sheet being filed or a complaint being lodged, he would be entitled to take cognizance of the offence and then proceed to trial by following the procedure prescribed by the Act.” A similar view was subsequently expressed in *Daji Govind Kamble V. state of Maharashtra* (1991 Drugs Cases 98). A contrary view appears to have been taken in *R.P.Patnkar, Asstt.Commissioner of Customs V. Musa Wamila*, (III(1992) CCR 2223 (Bom)). By a Single Bench without noticing the earlier two decisions of the same Court cited above. Reference may also be made to *P.R>Muthu V. State*, 1992 Drugs Cases 130 (Mad). In the matter of *State Circle Inspector*, 1992 Cr.L.J.

570 (Kerala), and *Banka das V. State of Orissa*, II (1992) CCr 1803. However, the Orissa High Court has expressed a contrary view in *Govind Sharma V. State of Orissa*, 1992 Drugs Cases 163. Thus the majority view is that in the event of a Special Court having been not established in any area, the Court of Session has the same powers and obligations as of the Special Court including the power under S.167 of the Code.

However, in the Union Territory of Delhi, and in the States of Punjab & Haryana, Himachal Pradesh and Rajasthan, the Metropolitan Magistrates / Judicial Magistrates are granting remand under S.167 of the Code for more than 15 days, and the Sessions Courts are taking cognizance only on a committal order by such Magistrates.

Coming to the question of the applicability of the proviso to S.167 (2) of the Code to an offence under this Act, the Kerala High Court in *Appachan V. Excise Circle Inspector*, 1991 Drugs Cases 105 held: "S.167 of the Code is a general provision relating to investigation and enquiry of a case. S.51 of the N.D.P.S. Act says that the provisions of the Code of Criminal Procedure are applicable for the purpose of investigation of the crime made punishable under the N.D.P.S. Act it is stated that the restriction imposed therein is not withstanding anything contained in the Code. But this provision has no overriding effect on S.167 of the Cr.P.C. It could only be understood that the restriction imposed under S.37 of this Act, regarding granting of bail is not with standing any provisions contained in Chapter XXXIII of the Code. S.167 (2) Cr.P.C. has been introduced with a view to see that there is no unnecessary delay in the investigation and to protect the accused from unscrupulous police officers and the right of an accused to be released on bail after the stipulated period is absolute." While affirming this view in *Berlin Joseph @ Ravi V. State*, 1992 Drugs Cases 98 (Kerala), a Full Bench of the Kerala High Court observed: "If section 37 of the NDPS Act is allowed to control or restrict the application to proviso to Section 167 (2) of the Code. The latter provision would become ineffective and a dead letter. The result of the discussion is that Section 167 (2) would be operative even for offences under the NDPS Act and then Section 37 of the NDPS Act has no application. In other words, Section 37 of the NDPS Act does not override Section 167 (2) of the Code." A similar view has been adopted by the High Courts of Calcutta in *Mohd.Abdul V. State of W.B.* 1991 (2) Crimes 741, Mumbai in *Smt.Nanda V. State of Maharashtra*, 1991 (2) Crimes 678, Madhya Pradesh in *Kalika Prasad V. State of M.P.*, 1991 Drugs Cases 2 and Orissa in *Dayanidhi khilla V. State*, 1991 Drugs Cases 2 and *Sanalari Sahu V. State of Orissa*, 1992 Cr.L.O.352. Delhi High Court also adopted this view in *Imam V. C.B.I.*, Cr. Misc. (M) 11 of 92, decided on 15.07.92. A contrary view has been taken by the Delhi High Court itself in *Abdul Sattar V. State*, 1992 (2) Crimes 142, and also by the Mumbai High Court in *Prahlad V. State of Maharashtra*, 1991 Drugs Cases 233 and the Calcutta High Court in *Munja Bibi V. State of W.B.*, 1992 Drugs Cases 174. Thus, the majority view is that the benefit or privilege under the proviso to S.167 (2) of the Code is neither restricted nor barred by the provisions of S.37 of Act which are applicable only to a case on merits. Immediately after the commencement of the Act, the Punjab & Haryana, Himachal Pradesh, Rajasthan and Madhya Pradesh High Courts adopted a view that since the respective State Governments had not issued the necessary notifications authorising various officers including police under Ss.41, 42,53 and 67, the search, seizure and arrest under the Act by any police officer, how high so ever he might be, was unauthorised and illegal, and numerous prosecutions were quashed on this short ground. The transitional provisions of S.24 of the Act and the provisions contained in S.24 of the General Clauses Act were neither noted by any of these High Courts, nor the Public Prosecutors or the State Counsel drew the attention of their Lordships to these provisions. This view was first propounded by the Punjab & Haryana High Court in *Karam Singh V. State*, 1987 (2) C.L.R.2401, and was followed in several cases including *Harbhajan Singh V. State of Haryana*, 1988 (1) F.A.C. 105 and *Bhajan Singh V. State of Haryana*, 1988 (1) F.A.C.208. This view was followed by the Rajasthan High Court in *Mand Lal V. State*, 1988 (1) F.A.C.25

and *Umrao V. State*, 1989 (1) F.A.C.51 and other cases. It is important to note that the view taken by the Pb. & Har. High Court in *Karam Singh's* case was set aside by the Supreme Court in Criminal Appeal No.416 of 1988 decided on 09.08.1988 on the ground that the High Court omitted to consider the provisions of S.74 of the Act and remitted the case to the High Court for its disposal according to law. Perhaps this decision was not brought to the notice of any of the aforesaid four High Courts, and the prosecutions were quashed for want of notifications as before.

However, when reference to S.74 of the Act was made in *Hakam Singh V. Union Territory of Chandigarh* (1988 Drugs Cases 307), it was observed that the provisions of S.74 were meant only for a short period to enable the Central Government or the State Government to issue the necessary authorising notifications, and it cannot be taken advantage of for any period to the discretion of the Officer or the respective Government. A similar view appears to have been taken by a Single Bench of the Madras High Court in *Sivakumar V. State*, 1989 Drug Cases 285. With due respect it is submitted that their lordships considered the provisions of S.74 as a transitory provision is meant for a Short period, where as 'transitional' means changing over to another form or passage from one state, subject, set of circumstances to another. See *Surajmal Kanaiyalal V. State of Gujarat*, 1991 Cr.L.J.1.83 (Gujarat). The Courts cannot fix any time limit much less reasonable time within which the State Government could be directed to issue authorisation notifications under Ss.41 & 42.

The matter may be looked from another angle. In a Mumbai case (*Rekha Parameswari V. Asst. Commissioner of Customs*, 1992 Cr. L.J.901), the accused, who was scheduled to board a flight, crossed the frontiers of the Customs Check. While she was being undergoing security check, suspicion arose as to her keeping some article concealed in her person. The lady Security Officer, although not an authorised or designated Officer under Ss.41 & 42, happened to recover narcotic substance from the custody and possession of the female by search of her person. Can such search, seizure and arrest be said to be violative of Ss.41 & 42 of the Act and illegal? The answer is in the negative since the seizure and arrest in the peculiar facts and circumstances of the case cannot at all be stated to have caused any prejudice to the accused vitiating the entire prosecution.

Another controversy regarding Ss.41 & 42 is that the provisions being mandatory in nature and procedural safeguard of reducing the information into writing must be complied with, and non – compliance there with would be fatal to the prosecution. The Punjab & Haryana High Court in *Hakim Singh V. U.T. Chandigarh*, the Himachal Pradesh High Court in *State of H.P. V. Sudershan Kumar*, the Gauhati High Court in *Md.* are sharing this view. *Jaimulabdin V. State of Manipur* (1991 Drugs Cases 424), and the Madhya Pradesh High Court in *Mariappa & others V. State of M.P.*(1991 Drugs Cases 145) and *Gurcharan Singh V. State of M.P.*, 1992 (3) Crimes 412.

It may be noted that no distinction was made between the seizure and arrest under S.42 on the one hand and S.43 on the other. The provision of recording in writing the information received by such officer and forthwith sending the copy of such writing to the immediate official superior is advisedly made to prevent the empowered officer from misusing the power of entry into the building, conveyance or place, which are considered to be the protected places for an individual, who has right to exclude the outsider and the privacy of the occupants of such places may not be disturbed. A house or such protected place is considered to be a fortress of a person and he has right to prevent or exclude other persons and that right is always protected by the State. Such procedure restricting the entry and search is, therefore, made in Sec.42. Section 43 gives plenary power to the Officers to seize in a public place or in transit any narcotic drug or psychotropic substance and to detain and search any person, whom he has reason to believe has committed the offence. The only restriction is that the Office on any Department specified in Sec.42 can exercise such powers. The provisions of S.43 are applicable in case of detaining and searching any person in a public place or for any search and seizure in a conveyance, etc. Secs. 43 and

49 nowhere require that the information received be reduced into writing. Further, it should be kept in vice that if at that time secret information is reduced in writing and is recorded in the daily diary being maintained by the Duty officer, the possibility of the secret information leaking out immediately cannot be ruled out which may result in the raid being abortive, Still further, the name of the informer is always privileged, and cannot be asked or compelled to be disclosed. It has been further held that non-reducing the information in writing is merely a procedural irregularity, which does not affect or vitiate the recovery. Reference may be made to *Richhpal v. State* (1989 Drugs Cases 97), *Sunil Kumar v. State* (1991 Cr.L.J. 414-Delhi), *Sunil Kumar v. State* (1991 Cr.L.J.414-Delhi), *Lachho Devi v. State* (1991 Cr. L.J. 2793-Delhi), *Santokh Singh v. State* (Delhi), 1991 Cr.L.J. 147, *Rashid V. State of Rajasthan*, 1991 Cr.L.J.733 (Raj.), *Hardeo Gujjar v. State of Rajasthan*, (1990 Drugs Cased 231), *Surajmal Kanaiyalal Scni v. State of Gujarat*, 1991 Cr. L.J. 1483, *Ismail & others v. State of Kerala*, 1992 Drugs Cased 63, *Abdul Sattar v. State* 1989 Drugs Cases 50 (Bom) and *Abdul Karim v. State of Maharashtra* 1990 Mah. L.J. 1991).

S.50 enjoins upon an officer about to search a person under the provisions of Ss. 41 to 43, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in S. 42 or to the nearest Magistrate. The object is to ensure that the officers who are charged with the duty of conducting searches, conduct them properly and do no harm or wrong, such as planting of offending drugs by any interested parties, and prevent fabrication of any false evidence. The provision is intended to act as a safeguard against vexatious search and unfair dealings, and to protect and safeguard the interest of an innocent person. It also provides a weapon to the law enforcement agency against the common allegation that the drugs have been planted by these officers. The controversy among the High Courts is on the Question as to whether it is obligatory on the officer, about to search a person, to inform such person of his said right and choice. One view is that the words "if such person so requires" implies a right in and choice of the citizen. Unless the person has the knowledge of his said right and choice, the question of the exercise thereof couldn't arise. Therefore, it is imperative to the said officer to inform the person concerned of his right to be searched in the presence of a Gazetted Officer, or Magistrate. Noncompliance has been held to be *per se fatal* to the prosecution. This view is supported by the decisions of the Punjab & Haryana High Court in *Hakim Singh v. U.T.Chandigarh* (supra), *Jang Singh v. State of Haryana*, 1988 (1) FAC 91, *Kheta Singh v. State of Punjab*, 1991 Drugs Cases 273, *Amrit Singh v. State of Haryana* (supra), *State of Punjab v. Bikkar Singh*, 1992 Drugs Cases 166 and *State of Punjab v. Shingara Singh*, 1992 (2) Crimes 1125, Himachal Pradesh High Court in *State of H.P. v. Sudershan Kumar* (supra), Madhya Pradesh High Court in *Salamat Ali v. State*, 1992 Drugs Cases 338, Delhi High Court in *Om Prakash v. State*, 1992 Drugs Cases 23, Rajasthan High Court in *Pirthvi Raj v. State*, 1988 Cr. L.J. (Raj) 718, *Chhoteylal v. State of Rajasthan*, 1989 (2) R.L.R. 147 and *nathiya v. State of rajasthan*, 1992 Drug Cases 28, and the Gauhati High Court in *Md. Jainulabdin v. State of Manipur* (Supra).

On the other hand, it has been held that the section (S.50) does not specifically provide that such person should be informed by the authorised officer that it is his right to be taken to the Gazetted officer or to the Magistrate nor does it impose any obligation or duty on such officer to inform such person. In absence of any such provision imposing the duty on the authorised officer to inform the person who is to be searched, it cannot be said that the officer is bound to inform of such right to the person to be searched, much less it can be said that in case such person is not reminded of his right, breach of any statutory provision is committed, vitiating the investigation and proceedings. As no specific provision is made imposing the duty on the authorised officer to inform the person to be searched of his such right, it cannot be said that in case no such information is given, any breach is committed by such officer or any mandatory provision is violated. This view has been expounded by the Bombay High Court in *Abdul Sattar v. State* (supra), *Hemant Vyankatesh v. State of Maharashtra* (supra) *Abdul Karim v. State of*

Maharashtra (supra). Wilfred Joseph v. State of Maharashtra, 1991 Drugs Cases 238, Shakal Abdul Gafoor v. U.O.I., 1991 (1) Bom. L.R. 270, Suresh Kumar Khandelval v. State (Goa Beach), Miss Ulrike Appelhangen v. State of Goa, 1991 (2) Crimes 789 and Sham ramchandra Sonawane v. State of Maharashtra, 1992 Drugs Cases 55, and Gujarat High Court in Surajmal Kanaiyalal v. State of Gujarat, 1991 Cr. L.J. 1483.

Cases have arisen where there was no prior information and narcotic drug or psychotropic substance was recovered in a totally unexpected and sudden manner, e.g. during a routine security check up at the Airport, or where the accused was being personally searched under S. 51 of the Code on account of the commission of another offence. Thus, after the sudden recovery in such like manner, the question of complying with the provisions of S.50 of the Act cannot and does not arise. Reference may be made to David R. Hall v. State 1991 Cr. L.J. 143 (Delhi), Bennchard J. Framous v. State, 1992 (2) Crimes 778 (Delhi), Rekha Parameswari v. Asstt. Collector of Customs, 1992 Cr. L.J. 1412 (H.P.).

However, in Kailash Singh v. State, 1989 (1) PAC 124, a Single Bench of the Delhi High Court observed; "I have gone through the FIR of the case as well as the statements of the a fore said witnesses and find that in this case no offer was made to the appellant that he could be brought before any gazetted officer or magistrate for taking his personal search. A salutary provision has been made in this Act keeping in view the heavy punishment which is liable to be imposed in case a person is found guilty of particular offence under NDPS Act So, it is rather incumbent on the police parties to see that the salutary provisions contained in Sections 42 to 55 of the NDPS Act are complied with. These provisions have been made so as to ensure fair investigation of the cases being brought under this Act. It is true that if from the evidence on the record one can come to the conclusion without any doubt that the recovery effected from a particular accused is genuine then may be in some cases it can be said that noncompliance of one or other provisions preceding the recovery would not render such recovery invalid but where no reasons are given for not complying with the requisite provisions preceding the recovery then lingering doubt does arise regarding the genuineness of the recovery.

Then in the series come S.52 (1) and S.57 of the Act, the provisions of which are said to be mandatory in character. The reason is that the right to be informed about the grounds of arrest contained in Section 52 (1) and the requirement of Section 57 to the effect that any person making arrest or seizure shall make full report to his immediate superior officer within 48 hours, confer valuable rights on the accused. What he has to meet in the to do so would certainly prejudice his defense. Similarly, them provision requiring the person making arrest or seizure to make a full report to his immediate superior officer within 48 hours, brings into existence a document which can be used for purposes of cross-examination in defense. The making of such a report within 48 hours will also bring an end the possibility of improving the prosecution version after that time. If these provisions are not strictly complied with, the prosecution version after that time. If these provisions are not strictly complied with, the prosecution must fail. State of H.P. v. Sudershan Kumar (supra) and Zubeda Khatoon v. Asstt. Collector of Customs, 1991 Cr. L.J. 1392 (karnataka). However, in Salamat Ali v. State, Drugs Cases 78, the Madhya Pradesh High court has held that the provisions in S.52 of the Act has to be interpreted as directory. Non-compliance with this requirement would not invalidate the entire proceedings and it is only effect would be that the subsequent detention in consequence of such an arrest and not the initial arrest, would be invalied, furnishing to the accused a valid ground for bail. Similar view has been expressed by the Gujarat High Court in Surajmal Kanaiyalal Soni v. State of Gujarat, 1991 Cr.L.J.1483. Thus, where a copy of recovery memo has been supplied to the accused at the time of his arrest and a copy of First information report has been sent to the Magistrate and other higher Police Officer, there is sufficient compliance of the provisions of S.52 (1) and S. 57 of the Act. In the decision in Saginaw Singh's case AIR 1976 Sc. 2304 dealing with S.157 of Code, it has been held that the delay in dispatch ofmagistrate is

not a circumstance which can throw put the persecution case in its entirety. In the decision in Ishwar Singh's case (1976 Cri L.J. 1883) it has been held that in such a case the evidence of eye witnesses in the circumstance, cannot be accepted on its face value.

There are numerous acquittals by different High Courts for non-compliance with the provisions of S.55 of the Act. This section enjoins a duty upon an officer in-charge of the police station to receive and keep in safe custody the goods and articles seized under this Act within the local area of his police station. Further, he shall allow the officer accompanying such goods or articles to take samples therefrom, and also to affix his seal to such goods, articles and the samples. Finally, the law requires him to affix his own seal to all the samples. The clear intention of the legislature was a fair investigation by putting the seized material beyond the reach of the seizing officer, and by eliminating the possibility of the samples being tampered with till the same reach the hands of the chemical examiner.

A practice has grown up to show the arrival of the officer In charge of the Police Station on the spot and affixing his seal on the recovered and sample packets. However, more often than once, it has been held that the officer in charge of the Police Station never visited the spot, nor had he affixed the seal before the articles were deposited in the Malkhana, because

- (i) No daily diary entry is produced or indicate that the Officer In charge of the Police Station had left the said Police station at the relevant time.
- (ii) At times, it has been found that the Officer In charge of the Police station as per the daily diary entry was somewhere also.
- (iii) The Officer in charge of the Police Station has a jeep in which ordinarily he travels. The logbook maintained does not indicate his arrival at the spot.
- (iv) While the case property is shown to have been deposited bearing the seal of the investigating Officer in the Malkhana indicating that the Officer In charge; of the Police station had also sealed it. Subsequently it is found that the seal of the Officer Incharge; has also been affixed when it was deposited and entry made in register Nos. 19.
- (v) Though in evidence it is pointed out that Officer In charge of the Police station deposited the case property in the Malkhana, but in the Malkhana register, the entry made is that it is Investigating Officer or the Duty Officer who deposited the case property.

It has been held in number of decisions that CFSL form must be filled up at the spot and facsimile of the seals affixed on the CFSL from which as to be taken to the CFSL to facilitate the comparison of the seal affixed on it alongwith the sample that is sent.

The experience has shown that neither in the recovery memo, nor in register No. 19, there is any mention of the deposit of the CFSL form. Even the Constables who take the sample invariably makes no statement that they took the CFSL. Form.

Thus, the provisions of the Act just discussed are not intended as technical defenses on which the prosecution must fail for that reason alone. In view of the stringency of the punishments, the provisions are intended only as safeguards to protect the interest of the accused from unmerited prosecutions. The question to be considered is only prejudice or failure of justice. Non-compliance or delayed compliance or insufficient compliance could vitiate the prosecution only if it resulted in prejudice and failure of justice. Normally an irregularity or illegality in the collection of materials cannot affect the trial and conviction unless prejudice or failure of justice is the result. *Ismail v. State of Kerala*, 1992 Drugs Cases 63. The provisions of a statute creating public duties are generally speaking directory. The legislature while giving certain procedural instructions, With a view to require strict compliance thereof by public functionaries, excluding all discretion on their part, uses the word "shall". Nevertheless, non-compliance; of these instructions per se does not result in rendering the acts done as null and void. It has to be shown that such non-compliance has caused prejudice and failure of justice. Non-compliance has

caused prejudice and failure of justice. Non-compliance of a directory provision, apart from the question of dereliction of duties, may also adversely affect the case set-up by the prosecution, Thus a provision may be mandatory in the sense a public servant is required to observe the same but not mandatory in the strict sense of the expression in that failure to observe it will per se vitiate-the entire proceedings without the accused showing that such failure has resulted in prejudice to him. E. V. Kunhmu's case, 1989 (2) RAC 51. In H.N. Rishbud v. State of Delhi, AIR 1955 S.C. 196, it was said: "therefore where cognizance is in fact taken, on a police report vitiated by breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have been brought about miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial is well settled. Hence, where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby." Identical views have been expressed in Khandu Sonu Dhori v. State of Maharashtra, AIR 1972 S.C. 958.

As regards the approach of the Court, it may be noted that at the conclusion of the trial the prosecution can succeed only on discharging the unshifting burden of proving its case against the accused and strongest of suspicion does not constitute the proof required. At the same time it has to be remembered that witness is not a tape recorder and with lapse of time, memory may fail here and there and thereafter, minor discrepancies which do not affect the substratum of case must not be permitted to be made much (vide State of Punjab v. Wassan Singh, 1981. Cri L.J. 410). It is the duty of the Court to scrutinise the evidence with great care, and caution keeping in mind that it exists not only to ensure that no innocent person is punished but also to ensure that quality persons do not escape Scot- free. In the modern society the sense of social responsibility for variety, of reasons, is not all-pervasive and is waning and so also the regard for truth. It may be remembered that the law does not require absolute certainty and this is clear from the definition of the term "proved" as embodied in S.3 of the Evidence Act and even where the prosecution is unable to get the support of independent witnesses the Court is not absolved of its duty to record on the uncorroborated evidence of the departmental witnesses, if the same passes the test of complete reliability in the crucible of probabilities and on the anvil of the objective circumstances of the case a finding of guilty of the accused instead of treading the easy path of acquittal. In this connection the decision in State of U.P. v. Pussu 1983 Cri L.J. 1356 is pertinent.

It would not be out of context to mention the effect of non-joining public witness has been commented upon a number of occasions. In Chander Shekhar v. State, (1986) 2 Crimes 419 –1987 Cr.L.J. 1159 (Delhi), it was observed: "One of the greatest disadvantages of living in highly urbanized areas is that people are out of sympathy with their neighbours and fellow citizens. This is for a variety of reasons. None wants to get involved in such matters. Our experience is that in the recent past it is really becoming difficult to involve public witnesses in court cases particularly in cases of capital offences. It is common – place experience that in Delhi if an accident takes place, hardly any body feels concerned. Life fast that no body has time to sympathise with a fellow citizen. We blame none for it as this is the life style growing in highly urbanized areas. Even those who feel concerned keep away for fear of their own security and getting involved in tardy proceedings. There is a subdued murmur that the law and order agency has failed to provide security to the law abiding citizens and, what rules, now is the might and ingenuity of the criminals. Under these circumstances it will be dangerous not to rely on relation witness and police witnesses in such matters. Of course, provided, such witnesses are confirmed to be truthful when tested at the yardstick of the peculiar facts and circumstances of each case. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the spectrum of

the prosecution version and they search for the nugget of truth with due regard to probability if any, suggested by the accused.

The authorities enforcing the provisions of the Act would only do well to bear in mind the minimum requirement towards proof of guilt of an accused person without which however avowed and laudable the object of the law be, the society would be compelled to live with such menace. Society in general and our youth in particular can be saved and protected from the hazards of drug not by passing rigorous laws alone but also by the effective, sincere and honest implementation by taking all legal steps with due regard to the procedure established by law and placing before courts of law the requisite adequate and acceptable material to punish the guilty. For lapses in effective implementation of social legislation people in general who have no means of knowing such lapses are likely to lose faith in the very judicial system while those who are responsible to render the judicial machinery ineffective by their acts and omissions sit pretty with impurity and undeterred by serious concerns voiced by law courts. When courts of law exist to do justice, it should be justice to all involved according to law.

[“Abstract from Course Code – 3 NACEN New Delhi.”]

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CHAPTER - THIRTEEN

REWARDS

INTRODUCTION

Reward, as the expression itself implies, is an incentive given in cash or kind to somebody in token of recognition of distinguished services rendered/tasks accomplished by him.

It is undeniable fact that providing information and assistance to the custom authorities in curbing smuggling activities is the social and moral responsibility of the public at large and initiating action for detection and prevention of smuggling is the official responsibility of the concerned staff. Yet, a little incentive in the form of reward may go a long way in encouraging the public and the staff to make extra efforts in detecting and preventing smuggling activities and / or seizure of contraband goods. The government has been disbursing cash rewards to the informants and to the staff which are instrumental / associated in the seizures of contraband goods and in other cases where revenue is realised to the government and / or convictions in a court of law of the persons involved in such nefarious activities.

In the year 1985 the Govt. reviewed the existing policy on grant of rewards to informants & Govt. Staff & issued revised guidelines vide letter F No. 13011/3/85 AD II dated 30-3-1985. The guidelines alongwith Ministry's clarifications and decisions issued from time to time are given below.

REVISED GUIDELINES VIDE MINISTRY'S LETTER F NO. 13011/3/85 Ad II Dt. 30-3-85.

Grant of rewards to informers and Govt. Servants – Review of policy, procedures and orders –

The Government have reviewed the existing policy, procedures and orders in respect of grant of rewards to informers and Government Servants in case of seizures made, infringement or evasion of duty, etc. detected under the provisions of the following Acts:-

- I) The Customs Act, 1962
- II) The Central Excises & Salt Act, 1944
- III) The Gold (Control) Act, 1968
- IV) The Foreign Exchange Regulation Act, 1973.

2. As a result, the revised guidelines are laid down in the succeeding paras. All previous guidelines issued on the subject may be deemed to be modified to the extent indicated herein.

CLARIFICATIONS

A) The date from which the revised instructions will take effect.

The revised rates of reward to Government Servants will be applicable to the cases wherein seizures, etc. have been effected on or after 1st January, 1985. It is further clarified that the revised rates would not be applicable in respect of rewards to be paid to informers for information leading to seizure, etc. received prior to 3rd March, 1985, the date on which the Government took a decision on the revised rates of reward, etc.

B) Whether advance rewards should be paid to departmental officers in past cases and how rewards are to be sanctioned in respect of pending cases of seizures, detection etc. made prior to 1st January, 1985 in which final rewards have not been sanctioned and which came up for consideration now:

Under the earlier orders there was no provision for grant of advance rewards to Government employees. This restriction has been removed after the issue of the revised guidelines on 30th March,

1985 and which have been given effect to from 1st January, 1985. As regards seizures, as in force on the relevant dates, would apply their aspects, such as grant of advance reward to Government employees eligible at the relevant time, monetary ceilings upto which competent authorities could sanction reward would be governed by the revised instructions, if final rewards had not been previously sanctioned and the cases come up for consideration now. It is further emphasized that the total amount available for sanction of reward to both informers and government employees in the aforesaid cases would be regulated by the old rates in accordance with the orders in force at the relevant time of seizures detection, etc. Cases where rewards have been sanctioned before receipt of these orders need not be re-opened.

[Ministry's clarification vide letter of even number of 5-6-85]

Attention is drawn to Ministry's letter F. No. R.13011/3/85- Ad. V dated the 5th June, 1985 under which grant of advance rewards to Government employees in respect of cases detected prior to 1st Jan., 1985 has been provided. Doubts have been raised by some Collectors whether while determining the quantum of rewards in respect of cases booked prior to 1-1-85, the monetary ceilings applicable as per orders in force at the relevant time have to be taken into consideration or not. It is clarified that the Collectors are empowered to sanction rewards in accordance with the revised rewards rules but the rates and monetary ceilings applicable to relevant reward rules at the time of seizure / detection etc. are to be kept in mind.

[Ministry's further clarification vide letter of even number of 21-5-89]

C) Whether rewards at the revised rates are payable for internal seizures of dangerous drugs and psychotropic substances under the Opium Act / Dangerous Drugs Act to and after 1st January, 1985 and seizures under the Customs Act made prior to 1st Jan., 85.

As clarified in para (A) above, the revised instructions issued on 30th March, 1985 would also apply to seizures of the dangerous Drugs and psychotropic substance made under the Customs Act on or after 1.1.85. Further, having regard to the increased transit traffick in narcotic drugs through India, it has been decided to extend the revised rates and instructions to cases of internal seizures of dangerous drugs and psychotropic substances made by the personnel of the Customs, Central Excise and Narcotics Department under the Dangerous Drugs Act, 1930 and Opium Act 1857 on or after 1st January, 1985 for Government employees (including State Government employees who assist Officials working under Central Board of Excise and Customs effecting seizures).

The guidelines indicated in para (B) above would also apply to the pending cases of Opium.

[Ministry's clarification in letter of even number dt 5.6.85.]

Note -On 16th Nov. 1989, the Hon'ble Supreme Court of India stayed the sanction of rewards to informers and Govt. Servants in all type of cases, both in Customs and Central Excise in the S. L. P. filed by M/S Duncan Agro Industries Ltd. The stay was however, later made inapplicable to informers in seizure cases of gold bullion, silver bullion and in narcotic smuggling cases.

On 28th Nov, 1994, the Hon'ble Supreme Court of India dismissed as withdrawn the SLP filed by M/S Duncan Agro Industries Ltd. Hon'ble Supreme Court also repeated various interim orders passed in the said S. L. P. The Ministry vide Letter F. No.C18013/21/89 Cus (As) of 27-10-95 withdrew with immediate effect instructions to implement the interim order if the Hon'ble Supreme Court.

3.1 QUANTAM OF REWARDS:
Seizures of contrabands under the Customs Act ("Smuggling" Offence)

3.1.1 Informers and Government servants will be eligible for rewards upto 20% of the estimated market value of the contraband goods seized. In respect of gold, silver, opium and other narcotic drugs etc. the overall ceilings for rewards (based on broadly 20% of the value of these items, as

reckoned by the Government for the present) are shown in the Annex. These would be subject to periodical revision in the light of price fluctuations about which timely intimation should be sent to D. G. R. I. every quarter to enable him to recommend appropriate revision, as and when warranted, to the Ministry.

ANNEXURE

(Paras 3.1.1, 3.1.2*** and 3.4.1)

Sr. No.	Commodity	Range of illicit prices indicated now	Rate of maximum reward @ 20% of illicit prices	Prescribed purity
1.	2.	3(a)	3(b)	4.
		Rs.	Rs.	
1.	Gold	-	Rs. 500 per 10 ** Grammes	999.5 Mille or more
2.	Silver	-	Rs. 1000/-** per kg.	99% or more
3.	Opium	1,100 2,000	220/- per kg.	*Not less than 9.5% morphine as on anhydrous morphine.
4.	Morphine Base and its salts	40,000 50,000	8,000/- per kg.	90% or more anhydrous morphine
5.	Heroin and its salts	1,00,000 3,00,000	20,000/- per kg.	90% or more diacetyl morphine
6.	Cocaine and its salts	2,00,000 6,00,000	4,00,00/- per kg.	90% or more of anhydrous cocaine
7.	Hashish	2,000 3,500	400 per kg.	With The content of 4% or more
8.	Hashish oil	10,000 17,500	2,000/- per kg.	With THC content of 20% of more
9.	Ganja	400 500	Rs. 80/- per kg.	Should be commercially acceptable as Ganja.

N.B. :- Rewards shall be reduced pro rata if the purity is less than the one prescribed above.

* Substituted by vide Board's Letter F. No. R 13011/11/86 dt 13-5-86.

** Revised as per Ministry Letter F No. 13011/5/88/ Ad V dt 7-6-1988.

*** Reference to para 3.1.2 in Annexure to the Ministry's letter of even number dated 30.3.1985 may be treated as deleted.

CLARIFICATIONS

A) Normally an amount of only Rs. One lakh in all (i. e. advance reward & final reward together) would be granted as reward to an individual officer in a single case. However, rewards in excess of this limit would be sanctioned only by the Board on the recommendations of the Reward Committees (as in existing orders dated 18-2-87 and 20-10-87) in cases of an exceptional nature.

For the same reason, no Government servant will be paid rewards exceeding Rs. 10 Lakhs in his entire career. In order to implement this ceiling, all rewards paid to a Govt. servant should be entered in his service book on a separate page assigned for reward entries.

In cases of reward of less than Rs.10, 000/- the authority competent to sanction reward should be one stage higher than the Adjudicating authority. For rewards in excess of Rs.10, 000/- the reward Committee already constituted would be competent as sanctioning authority.

In order to give larger number of officers an opportunity to work on the anti-smuggling and anti-evasion posts, there should be periodic rotation of officers and no officers should normally be posted to the airports, Directorate General of Revenue Intelligence, Directorate General (Anti Evasion) and Headquarters (Preventive) of a Collectorate etc. for more than five years and after each posting there should normally be a cooling period of two years but the special attitude and flair for anti-smuggling and anti-evasion work should not be lost sight of in the interest of operational efficiency while enforcing this principle.

[Ministry's Letter F. No. R 13011/5/89 Ad V Dt:- 13-4-89]

B) As for seizures of other dangerous drugs such as heroin, morphine, etc. and psychotropic substances like, mandrax tablets, for want of firm prices, no rate of reward could be fixed. In view of the increasing incidence of drug trafficking, transit trafficking with attendant adverse effects, it has been decided that seizures of all dangerous drugs and psychotropic substances effected on or after 1st January, 1985 * would also qualify for rewards to Government employees at the rates to be indicated separately. Informers would however be eligible for rewards only in respect of information received on or after 3rd March, 1985.

* should be read as during the period from 1st January to 31st December, 1984".

[Para 2.5.3 of Ministry's clarification in letter of even no, dt 5-6-85,]

3.2 Reward for detection of other offences under the Customs Act, such as, evasion of Customs Duty, under / over – invoicing of import / exports, infringement of import / export licencing laws, etc. (other than those relating to smuggling matters)

3.2.1 Informers and Government Servants will be eligible for reward upto 20% of the duty, if any, sought to be evaded plus 20% of the fine and penalty levied / imposed and realised, provided the amount does not exceed 20% of the market value of the goods involved.

3.3 Seizures made, evasion of duty and other infringements detected under the Central Excise and Salt Act, 1944.

3.3.1 In cases of detection of evasion of Central Excise duty, concealment or suppression of production, surreptitious removal of dutiable goods, etc., informers and Government Servants will be eligible for reward upto 20% of the duty, fine and penalty levied / imposed and realised provided the amount does not exceed 20% of the market value of the goods involved.

3.4 Seizure under the Gold (Control) Act and cases of other violations detected under the Gold (Control) Act.

3.4.1 In case of seizure of gold bullion, the overall ceiling for rewards to informers and Government Servants will be as indicated in serial No. 1 of the Annex.

3.4.2 In other cases, whether of seizure of articles of gold / ornaments, or of detection of "shortages" informers and Government, Servants will be eligible for reward upto 20% of the redemption fine and / or penalty imposed and realised, provided the amount does not exceed 20% of the market price of the goods involved.

3.5 Cases of seizures / violations detected under FERA-

3.5.1 Informers and Government Servants will be eligible for reward upto 20% of the amount involved in confiscation. When in addition to confiscation or without confiscation a penalty is

imposed and realised, 20% of it may also be taken into account in computing the ceiling.

4. REWARD SHOULD NOT BE GRANTED AS A MATTER OF ROUTINE

4.1 Reward is purely an ex-gratia payment which, subject to the guidelines may be granted on the absolute discretion of the authority competent to grant rewards and cannot be claimed by anyone as a matter of right. In determining the reward which may be granted, the authority competent to grant reward will be keep in mind the specificity and accuracy of the nature of the help rendered by the informer, whether information, the risk and trouble undertaken, the extent and nature of the help rendered by the informer, whether information gives clues to persons involved in smuggling, or their associates, etc, the risk involved for the Government Servants in working out the case, the difficulty in securing the information, the extent to which the vigilance of the staff led to the seizure, special initiative, efforts and ingenuity displayed, etc. and whether, besides the seizure of contraband goods, the owners / organizers / financiers/ racketeers as well as the carriers have been apprehended or not.

4.2 To Government Servants, rewards may ordinarily be paid upto 10% of the estimated market value of the goods involved (half of the maximum rewards indicated in respect of gold, silver, opium and other narcotic drugs, etc. in the Annex). Rewards in excess of this limit, but not exceeding 20% (or, as in the Annex. In respect of gold, silver, narcotics, etc.) of the said value, may be considered in cases where the Government servant has exposed himself to a great personal hazard or displayed exemplary courage, commendable initiative, ingenuity or resourcefulness of an extraordinary character or his personal efforts have been mainly responsible for the detection of the goods.

STAGE OF PAYMENT OF REWARD

5. Payment of advance rewards

5.1 Advance reward may be paid to informers and Government servants upto 50% of the expected final reward immediately on seizure in respect of the following categories of goods, namely:-

- a) gold / silver bullion and goods which are notified; or specified under the Customs Act, 1962;
- b) arms and ammunition, explosives;
- c) opium and other narcotic drugs;
- d) goods not declared which are seized in the Customs area or Customs waters; and
- e) freely convertible foreign exchange in the form of currency notes.

5.2 In other ("Smuggling") cases of seizures of contraband goods, advance reward upto 25% of the expected final reward may be paid immediately after seizure, if the authority competent to sanction reward is satisfied that the goods seized are reasonably expected to be confiscated on adjudication and the order is likely to be sustained in appeal / revision proceedings.

5.3 In all other cases, whether of seizure or of evasion / infringement detected on the basis of documents, 25% of the expected final reward may be paid after the issue of a show cause notice provided the authority competent to sanction reward is satisfied that there is reasonable chance of confiscability / infringement / evasion, as the case may be, being established in adjudication and sustained in appeal / revisionary proceedings.

CLARIFICATIONS

It is clarified that advance reward referred to in paras 5.2 and 5.3 of the letter dated 30-3-1985 may also be paid upto 25% of the expected final reward, subject to the conditions mentioned therein, immediately after seizure of excisable goods under the Central Excise and Salt Act, 1944 and rules made there under and that of foreign exchange seized and encashed under and that of foreign exchange Act, 1973, as distinct from cases involving no actual seizure where the offence is based entirely on the basis of documentary evidence which is governed by para 5.3 that covers FERA cases too.

[Ministry's letter of even number of 9.9.1985.]

Advance reward to Informers in Central Excise & Customs Appraising cases –

Attention is drawn to Ministry's instruction contained in letter F. No. 13011/3/85. Ad. V. dated 30th March, 1985, 13011/3/89-Ad. V. dated 13.4.1989 and dated 15.5.89 and to other instruction / orders on sanction of rewards to Govt. servants and informers issued from time to time.

On 16.11.89 the Hon'ble Supreme Court of India stayed the sanction of rewards to informers and Govt. servants in all type of cases, both in customs & central excise, in the SLP filed by M/s. Duncan Agro Industries Ltd. The stay was however later made inapplicable to informers in seizure cases of gold bullion, silver bullion and in narcotic smuggling cases.

On 28.11.94 the Hon'ble Supreme Court of India dismissed as withdrawn the SLP filed by M/s. Duncan Agro Industries Ltd. The Ministry vide F. No C-18013/2189-Cus (AS) dated 27.10.95 issued instruction for repeal of the interim orders issued from time to time from Letter F. No. C.18013/21/89-Ad. V dated 16.11.89, 12.01.90, 17.4.90, 23.8.90 and 25.3.92.

In view of the above position the sanction of advance reward to informers in Central Excise evasion cases and in Customs appraising cases is now possible immediately after the issue of Show Cause notice, as per the provisions of Para 5.3 of reward instruction 13011/3/85-Ad. V dated 30.3.85, subject to the condition that the authority competent to sanction the reward is satisfied that the orders are likely to be sustained in appeal revision proceedings.

The sanction of advance reward to Govt. servants will however continue to be governed by existing provisions contained F. No. R.13011/5/89-Ad. V dated 13.4.89.

The earlier clarifications R-13011/13/91-Cus (AS) dt.8.5.91 regarding payment of advance rewards in Central Excise evasion cases and Board Letters F. No. 13011/3/96-Cus (AS) dated 10.7.97 and 10.9.97 may accordingly be treated as withdrawn with immediate effect.

[Ministry's letter F. No. R – 13011/3/96 – Cus (AS) dt 31-10-96.]

5.4 In exceptional cases, the Heads of Departments may, having regard to the value of the seizures effected and magnitude of the evasion or infringement detected and special efforts or ingenuity displayed by the officers concerned, sanction and announce the grant of suitable rewards on the spot to be adjusted against the advance reward that may be sanctioned.

6. PAYMENT OF FINAL REWARD

6.1 Final reward will be paid after adjusting the advance reward, if any, paid in the manner as indicated in succeeding paras.

6.2 In respect of the goods described in Para 5.1, the remaining 50% of the reward may be sanctioned both to informers and Government Servants on adjudication of the case resulting in confiscation of the goods. If, however, the party concerned delays adjudication proceedings by

contesting the imposition of penalty only but not confiscation of the goods, the final reward may be sanctioned even prior to the conclusion of the adjudication proceedings.

6.3 In all other cases, 25% of the expected final reward may be paid after adjudication resulting in confiscation and / or confirmation of the demand / infringement and the remaining 50% may be paid only after the conclusion of the appeal / revision proceedings by the appropriate authorities, (such as, Tribunals, FERA Board, etc.) resulting in the upholding of confiscation, demand / fines / penalties, etc. imposed under the respective Acts.

CLARIFICATIONS

Attention is drawn to this Department's instructions contained in the letter of even number dt. 13.4.89 whereby the existing reward policy dt. 30.3.85 has been modified to some extent.

2. The issue whether final reward should be given only after actual realization of Central Excise duty, penalty fine even if appeal / revision proceedings have concluded resulting in confiscation and / or confirmation of demand / infringement has also been under consideration of the Government. Keeping in view all consideration of the matter, it has been decided that final reward should be paid only after actual realization of the Central Excise duty / Customs duty, penalty, fine etc. Para 6.3 of reward rules dt. 30.3.85 stands amended accordingly.

[Ministry's letter F. No. R 13011/5/89 Ad V dt. 15.5.1989]

7. TO WHOM REWARD MAY BE PAID

7.1 Ordinarily, informers and Government Servants (upto the level of Group 'A' Superintendents / Assistant Collector of Customs and Central Excise / Assistant Directors) will be eligible for reward depending on the contribution made by them as a team as well as individually with regard to the collection of intelligence, surveillance, effecting of seizure etc. Due credit should be given to the staff employed on investigation and / or prosecution resulting in conviction of persons involved other than the carriers of contraband goods, etc.

7.2 Group 'A' Officers above the level of Assistant Collector / Assistant Director will not be eligible for reward on the basis of value of the seizure, etc. However, in appropriate cases, Government may consider, in consultation with GCA / DGRI / Director, Anti-Evasion, the grant of lump-sum payment / advance increments and / or recognition, in any other manner of the services rendered by them for which purpose the Heads of Departments should forward their recommendation to the aforementioned officers with a copy to the Ministry.

CLARIFICATIONS

Grant of rewards to informers & Govt. servants Re-designation of post of Assistant Commissioner of Customs & Central Excise –

Attention is drawn to the Ministry's Instructions issued vide F. No. 13011/3/85-AD. V DATED 30-3-1985, relating to grant of rewards to informers and Government servants, (amended subsequently from time to time) and in view of redesignation of post of Assistant Commissioner of Customs & Central Excise / Assistant Director in Senior Time Scale (STS) as Deputy Commissioner of Customs & Central Excise / Deputy Director w. e. f. 11-05-1999, as per Office Order No. 118/99 dated 2.6.1999 issued from F. No. 50/17/99-Ad. II in this regard, any reference to Assistant Commissioner of Customs & Central Excise / Assistant Director in para 7.1 and 7.2 of the above stated instructions dated 30.3.95, may be read as Assistant Commissioner of Customs & Central Excise / Assistant Director or Deputy Commissioner of Customs & Director, as the case may be.

[Ministry's letter F. No. R-13011/4/99-Cus (AS) dated 15.7.1999]

Sanction of reward to staff involved in prosecution / sponsoring detention under COFEPOSA / Processing adjudication files etc.,

The proposal for extension of the scheme for grant of reward to Government servants who make outstanding contributions in post seizure operating was under the consideration of the Government. While the present reward rules cover performed relating to collecting of intelligence and making of seizure, post-seizure operating which some times form a very important segment of preventive work is not always given its due importance. After careful consideration of the matter, the government has decided that while it may not be necessary to reward routine performance in respect of post-seizure operations such as investigation, adjudication, prosecution, detention of persons involved under COFEPOSA, disposal of goods etc. should also be duly and adequately recognized and rewarded.

2. The staff employed on investigations / adjudication and / or prosecutions will be eligible for reward if their investigations etc. lead to penalization / conviction of persons who are organizers / financiers of smuggling activities (other than mere carriers of smuggled goods). Similarly, staff deployed in COFEPOSA Unit have to work in close co-operation with officers deployed for investigation so as to ensure prompt detention of the organisers of the smuggling racket. Quite often our Departmental Officers play a very important role in tracing out COFEPOSA absconders and in effecting their detention. If the detention of financiers / organisers of smuggling racket (other than carriers) is sustained for the full term by the Advisory Board / Courts / Officers employed in COFEPOSA / work also could be rewarded. Prompt disposal of the confiscated goods without causing any loss to Government could also merit payment of reward. In all such deserving cases a reward upto a maximum of Rs. 5,000/- per head in each case, subject to the over all ceiling of 20% of value of the goods involved etc. could be sanctioned by the Head of the Department.

[Board's letter F. No. R.3014/23/85-Ad. V dated 14.6.86]

Payment of reward to staff – regarding

The Financial Adviser has observed that the instructions and guidelines on payment of rewards are not being scrupulously followed by some of the Collectorates. Monetary rewards are being sanctioned for activities such as typing work, bringing the seized goods to the Collectorates, ensuring their safe custody etc. He has also observed that rewards are being paid to the staff where seizures are being effected only on account of X-ray baggage machines and when the staff has not played an important role in the seizure. The views of the Financial Adviser are quite reasonable and it is felt that the Collectors should not grant monetary rewards in a routine manner without ensuring that the guidelines are followed. Greater cargo should, therefore, be exercised in such cases and rewards should be sanctioned only to Government servants who are eligible for the same and the amount so sanctioned should be commensurate with the role played by the Government servants.

[Ministry's letter NO. R. 13011/21/89 Ad V Dt. 4.10.89]

8. DELEGATION OF POWERS FOR PAYMENT OF REWARD

8.1.1 The Monetary limit of sanction of rewards to informers and Government Servants are :-

Designation of Officer	Monetary limit for sanction of rewards to	
	<u>Informers</u>	<u>Govt. Servants</u>
Heads of Department	Rs. 20 lakhs	Rs. 10,000/-
Additional Collector of Customs / Central Excise, Special Director, Enforcement	Rs. 10,000	Rs. 5,000/-
Deputy Collector of Customs / Central Excise, Enforcement / DRI / Directorate of Anti-Evasion	Rs. 5,000/-	Rs. 2,500/-

8.1.2 Any case for the grant of reward in excess of Rs. twenty lakhs to an informer would be examined and approved by a Committee consisting of:-

1. The head of the Department;
2. Director, Preventive Operations; and
3. Additional Collector / Deputy Director, Enforcement / Deputy Director, Anti-Evasion / DRI.

8.1.3 All cases of grant of reward to Government Servants in excess of the limits specified above should be examined and approved by a Committee consisting of the following:-

<u>Amount of reward for Government</u>	<u>Constitution of the Committee</u>
(1) Reward in excess of Rs.10,000/- but not exceeding Rs. one lakh	1) Head of the Department; 2) Additional Collector; and 3) Seniormost Deputy Collector / Deputy Director at the Hdqrs.
(2) Reward in excess of Rs. one lakh upto Rs. five lakhs.	1) Head of the Department; 2) Director, Preventive Operations; and 3) Additional Collector / Special Director incharge at the Hdqrs.
(3) Reward in excess of Rs. five lakhs.	1) Concerned Member of the C. B. E. C. or G. C. A., as the case may be, and 2) DGRI / Director, Enforcement / Director, Anti-Evasion, as the case may be, and 3) The Head of Department concerned.

“ 8.1.3.* At a situation where a committee has to be constituted in respect of cases detected on the basis of intelligence worked out entirely by the Directorate of Anti-Evasion Officers, the committee can consist of the Director of Anti-Evasion (as Head of the Department), the Additional Collector of the Collectorate is involved one of the Additional Collectors concerned) and the Zonal Director of Anti-Evasion”.

9. It has also been decided to set up three separate Funds namely, the Welfare Fund, the Performance Award Fund and the Special Fund for the acquisition of equipment, etc., 1% of the estimated market value of the goods involved will be credited to the Welfare Fund, 4% to the Performance Award Fund and 5% to the Special Fund. Detailed guidelines in this regard will be issued separately.

9.1 In view of the liberalisation of rewards, the Heads of Departments will take special care to ensure that the value of the goods fixed at the time of seizure is fully realistic and represents the correct value of the goods. For this purpose, price lists in respect of items frequently seized and disposed of should be prepared with utmost care with the assistance of the Valuation Committee and these should be regularly reviewed.

10. At the time an informer furnishes any information or documents, an undertaking should be taken from him that he is aware that the extent of the reward depends on the precision of the information furnished by him and that the provisions of Sec. 182 of the Indian Penal Code have been read by him or explained to him, that he is aware that if the information furnished by him is found to be false, he would be liable to prosecution, that he accepts that the Government is under no obligation to enter into any correspondence regarding the details of seizures, if any, made, etc., and that the payment of reward is ex-gratia in the absolute discretion of the authority competent to grant reward.

*[Inserted by letter of even number 13014/22/85 Ad. V dt.20.1.1986]

CLARIFICATIONS

Grant of reward to informers and Government servants

The Board have had occasion to review the scheme of liberalization reward rules introduced vide Ministry's letter F. No. 13011/3/85-Ad. V dated 30th March, 85. It has been decided that in cases where the reward proposed to any Officer is between Rs.50, 000/- to Rs. 1 Lakh, such proposal should be examined by a Committee headed by the Principal Collector having jurisdiction in that region.

[Ministry's letter F. No. R.13011/19/88 dated. 24.8.1988.]

Constitution of Reward Committee

In pursuance of the Ministry's instructions contained in F.No.13011/3/85 Ad. V / 30.3.85 as amended by letter F. No. 8011/19/88 Ad. V / 24.8.88, and in supersession of Standing Order S O. 6918 dated 3.10.89; a Committee consisting of officers as follows is constituted for sanction of rewards to officers.

- 1) For reward amount in excess of Rs.50,000/- but not exceeding Rs.1,00,000/-
 - a) Principal Collector – Chairman
 - b) Collector of Customs – Member
 - c) Addl. Collector (Preventive General) – Member
 - d) Addl. Collector (Appraising General) – Member

- 2) For reward amount in excess of Rs.10, 000/- but not exceeding Rs. 50, 000/-
 - a) Collector of Custom – Chairman
 - b) Addl. Collector (Preventive General) – Member
 - c) Addl. Collector (Appraising General) – Member

The Committee shall be assisted by Asstt. Collector (Preventive General) and Asstt. Collector (Appraising General), as the case may be. The cases detected by the Preventive units v SIIB, CIU, Dock Intelligence Units, shall be sent to Asstt. Collector (Preventive General) for processing and submitting to the committee. The cases detected by Appraising Groups, Audit, Docks, M.C.D. etc., shall be sent to Asstt. Collector (Appraising General) for process and submitting to the Committee. The Asstt. Collectors (Preventive General and Appraising General) may take the assistance of Asstt. Collectors incharge of the detecting units for presentation of cases before the reward Committee. The Committee may co. opt an Addl. Collector / Deputy Collector for examination of a proposal, if it deems necessary.

[S. O. issued from File No, s/15-70/90 Apprg. (M) Dated, the 13.8.90, of Mumbai Custom House]

C H E C K – L I S T

The following documents are necessary while forwarding the file to Reward Cell for reward purpose.

1. Report of Seizing Officer on noting side.
2. Panchanama of seizure of goods
3. DRI-I proforma
4. DRI-II proforma
5. Assay report in case of gold / silver
6. Test report in case of Drugs / Narcotics

7. Disposal Certificate.
8. Order-in-original.
9. Appeal verification report, if any.
10. CEGAT order if any.
11. Contemporaneous report.
12. Annexure –II: Advance / Final reward proposal form the informer.
13. Annexure -III: Final / Advance reward proposal form for Staff.
14. Names of all the staff who participated in seizure and post seizure formalities to be mentioned in the contemporaneous report.
15. Contemporaneous report should be supported by documents.
16. Available Reward amount calculation sheet.

ANNEXURE – II

PROPOSAL FOR FINAL REWARD TO THE INFORMANT

F. No.

- | | |
|--|---|
| 1. Date and place of seizure | : |
| <hr/> | |
| 2. Description of goods. | : |
| <hr/> | |
| 3. Quantity (in case of Gold
Silver / Narcotics) | : |
| <hr/> | |
| 4. Panchanama Value | : |
| <hr/> | |
| 5. Estimated Value | : |
| <hr/> | |
| 6. Sale proceeds actually realised | : |
| <hr/> | |
| 7. 10% of the estimated value / sale proceeds
in case of seizure made prior to 1.1.85 | |
| <hr/> | |
| 8. 20% of the estimated value / sale proceeds
in case of seizure made after 1.1.85 | |
| <hr/> | |
| 9. Amount available at the rate per tola / kg.
(in respect of gold / silver / narcotics) | |
| <hr/> | |
| 10. Amount already paid as advance reward
to the informant as per column No. 7 or 8
(attach copy of order) | |
| <hr/> | |
| 11. Amount available for payment
of final reward to the informant as
per column No. 7 or 8 | : |
| <hr/> | |
| 12. Result of adjudication proceedings
(attach copy of order) | : |
| <hr/> | |
| 13. Whether appeal or revision
application has been filed
& if so, results thereof. | : |
| <hr/> | |
| 14. Result of prosecution proceedings. | : |
| <hr/> | |
| 15. Recommendation for final reward, if
any, by Additional Commissioner | : |

ANNEXURE III**PROPOSAL FOR ADVANCE / FINAL REWARDS TO STAFF**

F. No.

1. Date and place of seizure :
-
2. Description of goods :
-
3. Quantity (in case of gold / silver / narcotics) :
-
4. Panchanama Value :
-
5. Estimated Value :
-
6. Sale proceeds actually realised :
-
7. 10% of the Estimated value / sale proceeds :
in case of seizure made before 1.1.85.
-
8. 20% of the estimated value / ale proceeds :
in case of seizure made after 1.1.85.
-
9. Amount available at the rate per tola / kg. :
(in respect of gold / silver / narcotics)
-
10. Advance reward already sanctioned in any :
(attach copy of order)
-
11. Amount available as advance / Final :
reward to the staff as per column no. 7 or 8.
-
12. Result of adjudication proceedings :
(attach copy of order)
-
13. Whether appeal or revision application has :
been filed & if so, result thereof
-
14. Results of prosecution proceedings. :

ANNEXURE 'A'**Reward payment Certificate**

Certified that an amount of Rs. _____ (Rupees _____ only) sanctioned as Advance / Final Reward by the Committee headed by the Chief Commissioner, Commissioner / Addl. Commissioner of Customs vide order no. _____ dated _____ in the case of seizure of _____ on _____; drawn in Contingency Bill No. _____ Dated _____ for Rs. _____ encashed from the Customs Treasury on _____ Was paid to the right informant from whom a receipt has been obtained by me in the presence of a witness.

Place
Date :

Commissioner / Addl. Commissioner / Asstt. Commissioner of Customs

ANNEXURE 'B'**RECEIPT OF REWARD**

Received a sum of Rs. _____ (Rupees _____ only) as Advance / Final Reward from the Commissioner / Addl. Commissioner / Asstt. of Customs (Commissionerate & address) , in the case of seizure of _____ on _____ vide Custom House File No. _____

Thumb impression / Signature of the informant with date of payment.

Certified that the payment has been made by me to the right informant whose thumb impression / signature appears on the above receipt, this day the _____

Signature of the
Identifying Officer

Commissioner / Addl. Commissioner / Asstt. Commissioner
of Customs, (Commissionerate)

Name & Designation

Signature of Witness Officer

Name & Designation

PROCEDURE FOR SANCTION AND DISBURSEMENT OF REWARDS TO GOVT. SERVANTS

A Govt. servant is entitled to receive a maximum reward amount of Rs.10 lakhs (Ten lakhs only) In his / he entire service career in terms of Govt. of India, Ministry of Finance, Deptt, of Revenue O. M. No. R 13011/5/89-Ad.V dated 13.4.89. In order to implement these instructions, a procedure was issued vide this office OM No. Paylt. / reward / Misc. / 94-95/730 dated 21.11.94. In view of the difficulties expressed in following the procedure prescribed vide OM dated 21.11-94, the same has been reviewed and a revised procedure, as follows, is prescribed with the approval of Central Board of Excise and Customs, New Delhi communicated vide Member CBEC d. o. F. No. 394/46/95-CUS (AS) dt.6.5.98.

(1) Issue of Sanction:

After approval of the reward by the competent authority, the commissionerate / Directorates shall issue either a consolidated sanction for three categories of employees i.e. employees working in the same Commissionerate / Directorate and employees working in the other Commissionerate / Directorate and employees working in other govt. offices, or separate sanction for each category, It shall, however, be ensured that the sanctions are issued well before the close of the financial year.

(2) Disbursement of Rewards:

For disbursement of rewards, the Drawing and Disbursing Officer of the Commissionerate / Directorate issuing the sanction shall draw separate bills for the three categories of employee i.e. employees posted in the same Commissionerate / Directorate employees working in other Commissionerate / Directorate and the employees working in other Govt. offices as under:-

(a) For employees posted within the same commissionerate / Directorate

The DDO shall submit the bill to the Pay and Accounts Office with a certificate recorded on the bill that "Entries of reward drawn in the bill have been made in the Service Books of the concerned employees and the amount of reward being drawn does not exceed the limit of Rs.10 lakhs (Ten lakhs

only) in each case". The PAO shall pass the bill of payment, subject to availability of funds, only if the prescribed certificate is recorded on the bill.

(b) For employees posted in other Commissionerate / Directorate -

The DDO (Originating –DDO) shall submit the bill to the PAO without any certificate as prescribed in sub-para (a) above. The PAO shall pass the bill subject to availability of funds and draw cheques in favour of each of the rewardee. The cheques so drawn shall be handed over to the Originating DDO with a forwarding letter (Annexure –I), for onward transmission to the DDO (Payee – DDO) under whose control the individual rewardee is working, subject to the condition that the Payee –DDO shall make entries in the Service Books of the rewardees and ensure that the amount of reward does not exceed the limit of Rs.10 lacks (Ten lacks only) in each case and that he shall issue a certificate (as per Annexure – IV) to this effect in duplicate to the Originating –DDO. The originating – DDO alongwith a forwarding letter (Annexure II) under intimating to the PAO who issued the cheque (s). The PAO shall also keep record of all such payments in his Objection Book and monitor receipt of a certificate from the Payee-DDO to the effect that the limit of Rs.10 lakhs (Ten lakhs only) did not exceed in each case. In case the Payee-DDO finds that the limit of RS.10 lakhs (Ten lakhs only) is being exceeded in case of any rewardee, he shall return the cheque of that rewardee to the Originating – DDO with appropriate remarks for cancellation.

The Payee- DDO shall be responsible to make entries in the Service Book of the employees concerned and ensure that the total amount of reward being paid to an employee does not exceed Rs.10 lakhs (Ten lakhs only) in his / her entire service career. The Payee – DDO shall deliver the cheques to the concerned employees only after making requisite entries in the Service Books. The payee- DDO shall also issue a certificate (Annexure-IV) to this effect and send the same to the Originating – DDO alongwith a forwarding letter as per Annexure III.

(c) For employees posted in other Govt. Departments:-

The procedure as prescribed in sub-para (b) above shall apply mutatis mutandis.

The issues in supersession of earlier procedure prescribed vide this office OM No. Paylt / Rewards / Misc. / 94-95 /730 dt.21.11.94 and shall take effect from 1.10.98 i.e. sanction issued on or after 1.10.98 shall be dealt with as per the above revised procedure.

[F. NO. Co ord / 14(7) Reward / 97/ 546 dt.10.9.98. from Dy. Controller of Accounts, New Delhi]

Annexure - I

Specimen of form for forwarding cheques by PAO to originating (DDO)

To,

The (originating DDO)

.....
.....

Sub: Payment against reward bill No. dt..... for Rs.

Sir,

With reference to the above mentioned bill, please find enclosed the following cheques:-

S. No.	Cheque No. & date	Amount	Name & designation of the official
1.			
2.			
3.			
4.			
5.			

2. The above cheques are in respect of officials who are working in other Commissionerates / Dtes and, therefore, entries of reward drawn have not been made in their service book. The amount of reward has been kept in the objection Book pending receipt of certificate that the entries of reward payment have been made in their Service Books. These cheques may please be sent to the concerned DDO s immediately (under intimation to this office) by Regd insures cover with the following instructions:-

- A: Before handing over cheques to the officials entries of reward payment should be made in the Service Books of each official and it should be ensured that the amount of reward including the amount of reward including the amount already received in the past does not exceed the limit of Rs.10 lakhs in entire Service.
- B: In case it is found that the limit of Rs.10 lacks is exceeded in case of any official the relevant cheque should be returned to you for cancellation.
- C: After handling over the cheques to the officials, a certificate in duplicate (as per Annexure (IV) should be sent to you.

3. It will be your personal responsibility to watch receipt of certificate (as mentioned at para 2(c) above) from, the concerned DDO(s). On receipt of certificate, one copy of certificate should be kept in your safe custody and the other copy should be sent by you to this office for clearing the items kept in the objection Book. Cheque(s), if any, returned to you by the Payee DDO on account of reward limit of Rs.10 lakhs having been exceeded, shall also be sent to this office for cancellation.

Yours faithfully

Pay and Accounts Officer

Annexure - IV

CERTIFICATE

(To be sent in duplicate to the originating DDO)

Certified that the entries or of reward payment have been made in the Service Books of the following officials. It is further certified that the amount of the reward now paid including the amount already received by them in the past does not exceed the limit of Rs.10 lakhs (Ten lakhs) in their entire Service.

S. No.	Cheque No. & date	Name & designation of the official	Amount of reward payment
1.			
2.			
3.			
4.			

The undermentioned cheque(s) is / are returned for cancellation as the amount of reward including the amount already received in the past, exceeds the limit of Rs.10 lakhs in the entire Service.

S. No.	Cheque No. & date	Amount	Name of the official
1.			
2.			
3.			
4.			

Payee Drawing and Disbursing Officer

Annexure – III

(Specimen of form for to be used by Payee DDO for furnishing certificate of reward payment entries in this Service – Book / and or returning the cheques to the originating DDO.)

To,

The (Originating DDO)

.....
.....

Sub: Payment of Rewards.

Sir,

When reference to your office letter No. dt. I am confirming that the following cheques have been delivered to the official(s) on proper acquaintance after making entries of reward payment in the Service books of the each officials under my attestation.

S. No.	Cheque No. & date	Amount	Name & designation of the official
1.			
2.			
3.			
4.			

2. The undermentioned cheques are returned herewith as the amount of reward including the amount already received in the past exceeds the limit of Rs.10 lakhs in the entire Service.

S. No.	Cheque No. & date	Amount	Name & description of the official
1.			
2.			
3.			
4.			

3. A certificate to the effect that entries of reward payment have been made in the Service Books of each official and that the amount of reward payment including the amount already received in the past does not exceed the limit of Rs.10 lakhs in the entire Service, is enclosed.

Yours faithfully

Payee Drawing and Disbursing Officer

Copy for information to : Pay and Accounts Officer, Central Excise & Customs. (i.e. the PAO who issued cheques)

Drawing and Disbursing Officer

Annexure – II

(Specimen of form for forwarding cheques by the Originating DDO to the Payee DDO(s))

To,

The Payee (DDO)

Sub: Payment of Rewards.

Sir,

Please find enclosed the following cheques in payment of rewards, the undermentioned officials who are working in your payment control.

Sr. No.	Cheque No. & date	Amount	Name and designation of the official	Sanction no. & date

2. As the Service books of the above named officials are in your custody, entries of reward drawl have not been made in their Service-books. You should, therefore, comply with the following requirements before delivering the cheques to the official(s):-

- A: Entries of reward payment should be made in the Service books of each officials and it should be ensured that the amount of reward including the amount already received in the past does not exceed the limit of Rs.10 lakhs in the entire service.
- B: In case it is found that the limit of Rs.10 lakhs is exceeded in case of any official the relevant cheque should be returned to the undersigned for cancellation.

3. After delivery of the cheques on proper acquaintance to the official(s) a certificate in duplicate in the enclosed form should be sent to the undersigned.

Please acknowledge receipt.

Yours faithfully

Drawing and Disbursing Officer

Copy for information to : Pay and Accounts Officer with reference to his letter no. dt

Drawing and Disbursing Officer

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