



Topics Covered:

Section 57	Licensing of public warehouses.
Section 58	Licensing of private warehouses.
Section 58A	Licensing of special warehouses
Section 58B	Cancellation of Licence.
Section 59	Warehousing bond
Section 60	Permission for removal of goods for deposit in warehouse.
Section 61	Period for which goods may remain warehoused
Section 62	Omitted
Section 63	Omitted
Section 64	Owner's right to deal with warehoused goods
Section 65	Manufacture and other operations in relation to goods in a warehouse
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Section 68	Clearance of warehoused goods for home consumption
Section 69	Clearance of warehoused goods for export
Section 70	Allowance in case of volatile goods
Section 71	Goods not to be taken out of warehouse except as provided by this Act
Section 72	Goods improperly removed from warehouse, etc
Section 73	Cancellation and return of warehousing bond
Section 73A	Custody and removal of warehoused goods.

NEED FOR WAREHOUSING

There are instances when **the importer does not want to clear the imported goods lying at the customs station, immediately.** This may be due to many factors, namely,

falling market price	declining saleability	lower requirement in the factory of production
lack of storage facilities in importer's premises	arrival of shipment much earlier than planned	working capital issues, etc.

Some imported **goods are also warehoused for supplies to** EQU/EHTP/STP/SEZ units. **Goods imported for sale in** Duty Free Shops (hereinafter referred to as DFS) at International Airports are also warehoused before being sold to international travellers

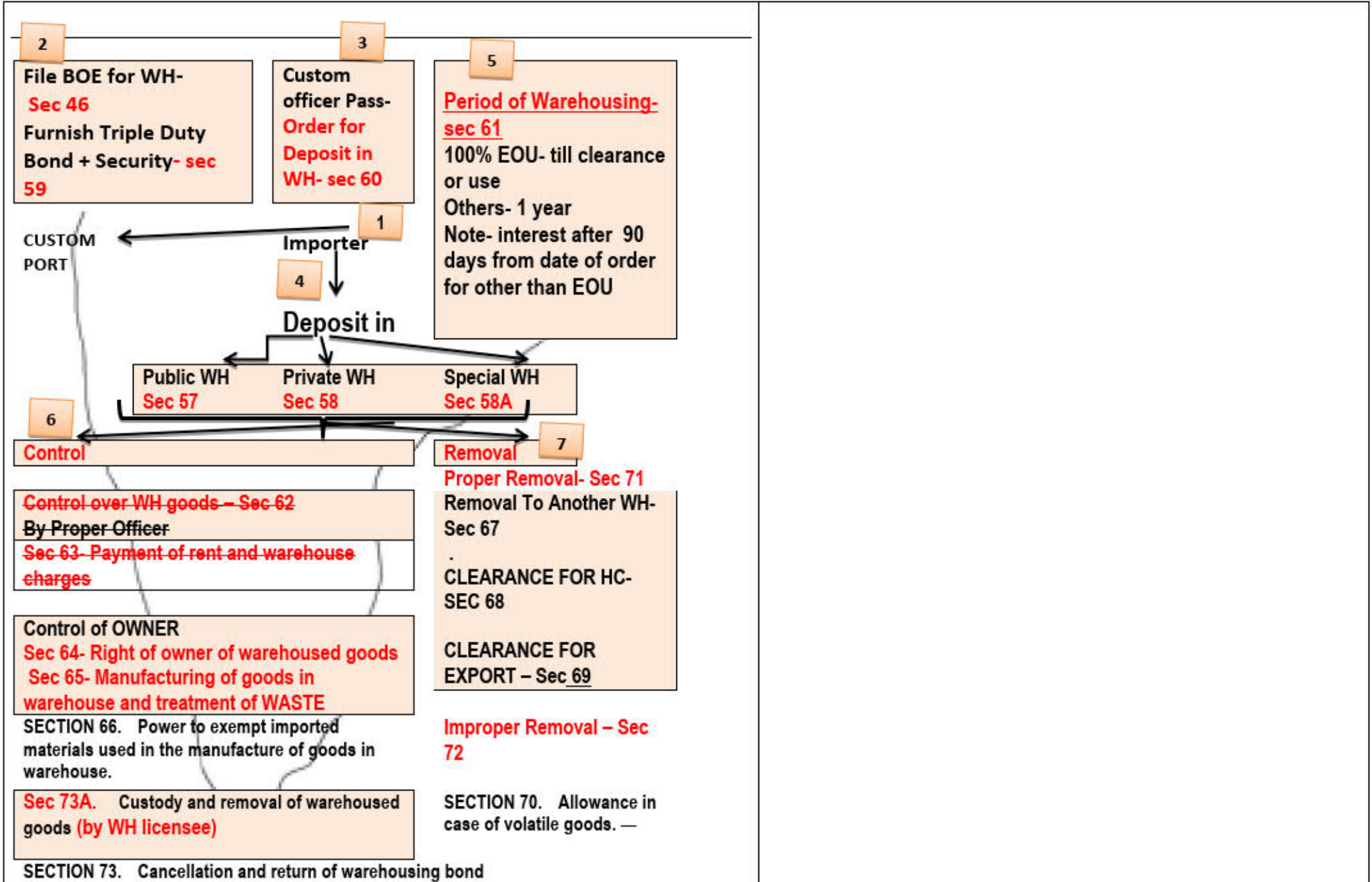


This facility is also useful in another situation. Ship stores like liquors, cigarettes, preserved food are imported into India and supplied to vessels according to their requirements. The entire consignment imported is intended to be so shipped out of the country. The same is the case of fuel for the ship like furnace oil, diesel oil etc. Evidently, there is no point in collecting import duty on the whole of the consignment and granting drawback piecemeal as and when such goods are exported. It is not also safe for the revenue point of view to allow such goods to lie in the port uncleared until they are exported/shipped as ship stores. Warehousing is the most convenient option available in such case.

<p>Warehouse – sec 2(43) “warehouse” means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A;</p>		<p>chart</p> <table border="1"> <thead> <tr> <th></th> <th>Public WH – Sec 57</th> <th>Private WH – Sec 58</th> <th>Special WH– Sec 58A</th> </tr> </thead> <tbody> <tr> <td>Site or building Licensed By</td> <td>Principle CC/CC Subject to conditions as may be prescribed</td> <td>Principle CC/CC Subject to conditions as may be prescribed</td> <td>Principle CC/CC Subject to conditions as may be prescribed</td> </tr> <tr> <td>Goods Deposited</td> <td>dutiable goods</td> <td>dutiable goods imported by or on behalf of the licensee</td> <td>dutiable goods notified by CBIC may be deposited</td> </tr> <tr> <td>locked by PO (Proper officer)</td> <td>NO [Control is record based.]</td> <td>NO [Control is record based.]</td> <td>YES [It remains under physical record of PO]</td> </tr> <tr> <td>Permission to Enter WH or remove goods with Permission of PO</td> <td>NOT Reqd.</td> <td>Not Reqd.</td> <td>No person shall enter the WH/ remove any goods without permission of PO</td> </tr> </tbody> </table>					Public WH – Sec 57	Private WH – Sec 58	Special WH– Sec 58A	Site or building Licensed By	Principle CC/CC Subject to conditions as may be prescribed	Principle CC/CC Subject to conditions as may be prescribed	Principle CC/CC Subject to conditions as may be prescribed	Goods Deposited	dutiable goods	dutiable goods imported by or on behalf of the licensee	dutiable goods notified by CBIC may be deposited	locked by PO (Proper officer)	NO [Control is record based.]	NO [Control is record based.]	YES [It remains under physical record of PO]	Permission to Enter WH or remove goods with Permission of PO	NOT Reqd.	Not Reqd.	No person shall enter the WH/ remove any goods without permission of PO
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<p>Warehoused goods – sec 2(44) Means goods deposited in a warehouse</p>		<p>Principal CC= Principal Commissioner of Customs or Commissioner of Customs</p> <p>Note: Notified goods deposited in special warehouse: gold, silver, other precious metals and articles thereof, goods warehoused for the purpose of supply to DFS in a customs area, supply as stores to vessels/aircrafts and supply to foreign privileged persons.</p> <p>[Privileged person means a person entitled to import/purchase locally from bond goods free of duty for his personal use/for the use of any member of his family/for official use in his Mission, Consular Post or Office or in Deputy High Commission/Assistant High Commission]</p> <p>Note: The license is not required to be renewed annually. Further, it is not transferable & valid till its cancellation/surrender. License would be cancelled on written request of the licensee. [Public/Private/Special Warehouse Licensing Regulations, 2016]</p>																							
<p>[SECTION 57. Licensing of public warehouses. — The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed,</p> <ul style="list-style-type: none"> ❖ licence a public warehouse ❖ wherein dutiable goods may be deposited.] 																									
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<p>SECTION 58A. Licensing of special warehouses. —</p>																									
(1)	The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed,	such warehouse shall be caused to be locked by the proper officer and	❖ no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.																						
	❖ licence a special warehouse	❖ wherein dutiable goods may be deposited and																							
(2)	The Board may, by notification in the Official Gazette,	specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).																							



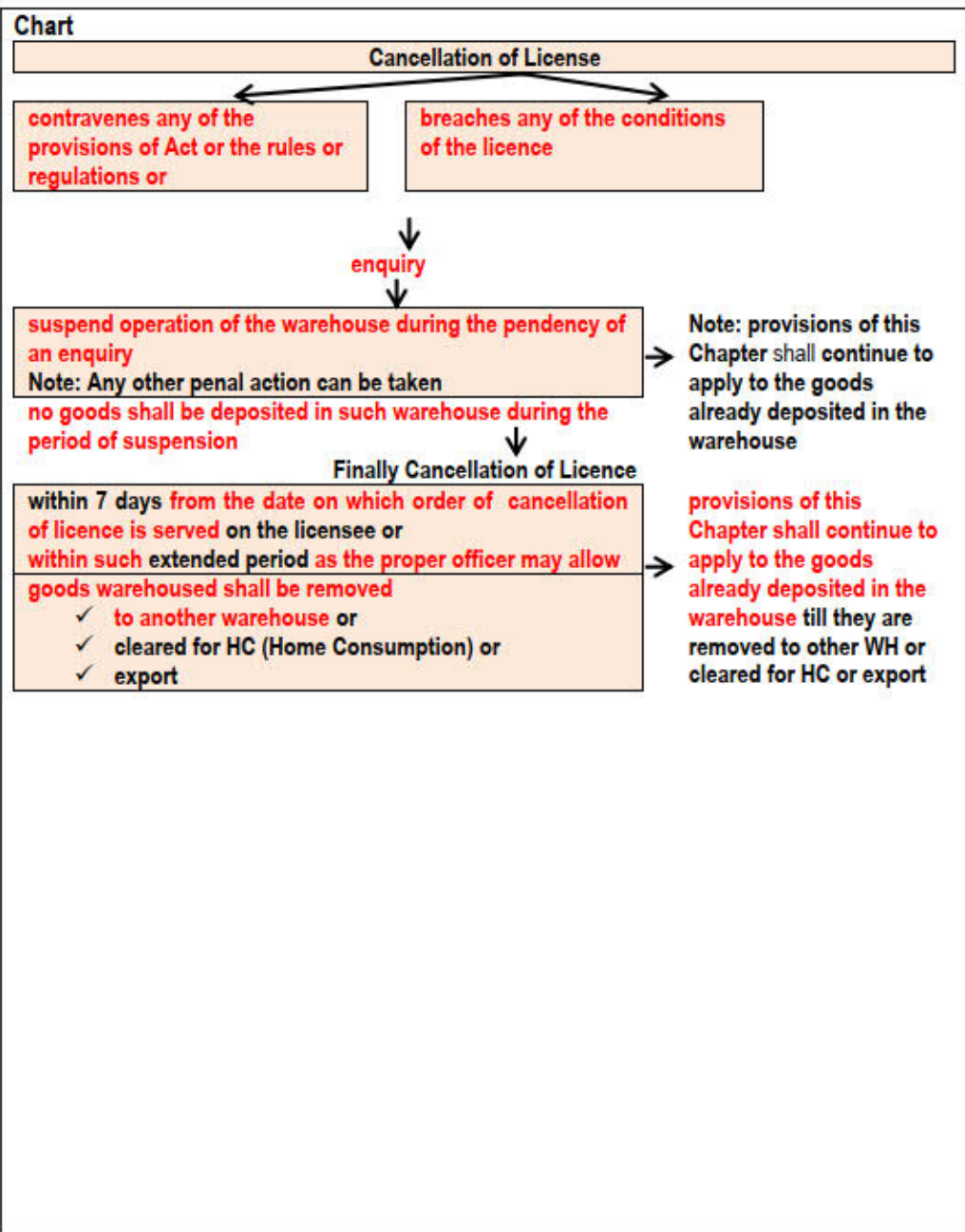
Overview: WAREHOUSING PROVISIONS





Warehousing

SECTION 58B. Cancellation of licence. —			
(1)	Where a licensee contravenes <ul style="list-style-type: none"> ❖ any of the provisions of this Act or the rules or regulations made thereunder or ❖ breaches any of the conditions of the licence, : 	the Principal Commissioner of Customs or Commissioner of Customs <ul style="list-style-type: none"> ❖ may cancel the licence granted under section 57 or section 58 or section 58A 	
Proviso	Provided that before any licence is cancelled,	the licensee shall be given a reasonable opportunity of being heard.	
(2)	The Principal Commissioner of Customs or Commissioner of Customs may, <ul style="list-style-type: none"> ❖ without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, 	suspend operation of the warehouse during the pendency of an enquiry under sub-section (1).	
(3)	Where the operation of a warehouse is suspended under sub-section (2),	<ul style="list-style-type: none"> ❖ no goods shall be deposited in such warehouse during the period of suspension : 	
Proviso	Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.		
(4)	Where the licence issued under section 57 or section 58 or section 58A is cancelled,	the goods warehoused shall, <ul style="list-style-type: none"> ❖ within 7 days from the date on which order of such cancellation is served on the licensee or ❖ within such extended period as the proper officer may allow, be removed from such warehouse	<ul style="list-style-type: none"> ❖ to another warehouse or ❖ be cleared for home consumption or ❖ export :
Proviso	Provided that the provisions of this Chapter shall continue to apply	to the goods already deposited in the warehouse till	they are removed to another warehouse or cleared for home consumption or for export, during such period.]





Warehousing

[SECTION 59. Warehousing bond. —

(1)	The importer of any goods ❖ in respect of which a bill of entry for warehousing [into-bond bill of Entry] has been presented under section 46 and assessed to duty under section 17 or section 18	shall execute a bond in a sum equal to thrice the amount of the duty assessed (i.e Consignment Bond) on such goods, binding himself—
(a)	to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;	
(b)	to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and	
(c)	to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.	
(2)	General Bond: For the purposes of sub-section (1), the Assistant Commissioner of Customs (AC) or Deputy Commissioner of Customs (DC) ❖ may permit an importer to execute a general bond in such amount as the AC or DC may approve	in respect of the warehousing of goods to be imported by him within a specified period.
(3)	The importer shall, in addition to the execution of a bond under sub-section (1) or sub-section (2),	furnish such security as may be prescribed.
(4)	Any bond executed under this section by an importer in respect of any goods shall continue to be in force	notwithstanding the transfer of the goods to another warehouse.
(5)	Where the whole of the goods or any part thereof are transferred to another person,	the transferee shall execute a bond in the manner specified in sub-section (1) or sub-section (2) and furnish security as specified under sub-section (3).]

Chart

Foreign Country Port → India Port
Import

Importer

- ✓ File BOE for WH u/s 46
- +
- ✓ Duty assessed u/s 17/18 [self/ Provisional Assessment]
- +
- ✓ Execute Bond = 3 × Import Duty (Consignment Bond)
- +
- ✓ Furnish Security
- to comply with all provisions of Act /rules /regulations
- to pay, on or before the date specified in the notice of demand, all duties and interest payable
- to pay all penalties and fines incurred for the contravention of the provisions of Act /rules /regulations

If whole or any part of goods are transferred to another person, the transferee shall execute a bond and furnish security

General Bond:
AC or DC may permit an importer to execute a general bond = amount as the AC or DC approve
OF THE WAREHOUSING OF GOODS TO BE IMPORTED BY HIM within a specified period

bond executed by an importer shall continue to be in force even if goods are transferred to another warehouse

Chandu has Furnished Bond = 20000 * 3 = 60000 and Furnished Security

1. While the Goods are still in WH Goods sold by Chandu To Kalu.
2. Kalu will be treated as importer.
3. Kalu will clear the goods for HC by filing BOE for HC u/s 68 and pay import duty

Bond Furnished earlier by Chandu will be cancelled u/s 73. fresh Bond from Transferee (i.e Kalu) will be Taken



Warehousing

SECTION 60. Permission for removal of goods for deposit in warehouse. —

(1)	When the provisions of section 59 have been complied with in respect of any goods,	the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse :
Proviso	[Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.]	
(2)	Where an order is made under sub-section (1),	the goods shall be deposited in a warehouse in such manner as may be prescribed.]

[SECTION 61. Period for which goods may remain warehoused. —

Chart: Section 61

S. No.	Class of goods	Time for which the goods may remain warehoused
1.	Goods for use in any 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permitted under section 65	
	(i) Capital goods	Till the clearance of such goods from warehouse
	(ii) Other goods	Till the consumption or clearance of such goods
2.	Goods other than 1. above	Till the expiry of 1 year from the date of order permitting removal of goods from a customs station for deposit in warehouse

Period can be Extended by Principal Commissioner of Customs or Commissioner of Customs by not more than 1 year at a time :
But if goods are likely to deteriorate, extension period reduced to such shorter period as he may deem fit.

S. No	Class of goods	Provisions relating to interest payable
1.	Capital goods and other goods for use in any 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permitted under section 65	No interest is payable as goods can remain in the warehouse till their clearance or consumption
2.	Goods other than 1. above	Interest will be payable if goods remain in the warehouse beyond 90 days from the date on which the order permitting deposit in warehouse u/s 60(1) is made.
		Rate of interest
		Rate fixed under section 47 which is 15% p.a.
		Amount on which interest is payable
		Duty payable at the time of clearance of the goods
		Period for which interest is payable
		From the expiry of the 90 days till the date of payment of duty on the warehoused goods.

❖ If no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. Interest is mere 'accessory' to principal. [Pratibha Processors v. UOI 1996 (88) E.L.T. 12 (S.C.)]

❖ Goods which are not removed from the warehouse after the expiry of the period permitted for warehousing or extended, are deemed to be improperly removed in terms of section 72. The rate of duty applicable in such case will be the rate in force on the date of deemed removal, i.e. the date on which the permitted period or its permitted extension comes to an end. When the demand notice is issued is not relevant for determining the rate of duty. [Refer Sec 72 later]

Section 15(1)(b) has no application in such cases where the goods are removed from warehouse beyond the permitted period of warehousing; it is applicable only to the cases where a bill of entry is presented for removal from warehouse under section 68. [Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)]

Board may waive the interest (whole or partial)

- ✓ in individual cases by ad-hoc orders and
- ✓ by notification in respect of any class of goods.

Further, the Board may also notify the class of goods in respect of which the interest will be chargeable from the date of order under section 60(1).



Warehousing

[SECTION 61. Period for which goods may remain warehoused. —			W
(1)	Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed, —		(2)
(a)	EOUs, EHTPs, STPs etc. : in the case of capital goods intended for use in any 100% EOU/EHTP/STP unit or any warehouse wherein manufacture or other operations have been permitted under section 65,	till their clearance from the warehouse;	Interest on warehoused goods For OTHER THAN EOUs, EHTPs, STPs, or warehouses where manufacture/ other operations are permitted under section 65: Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse ❖ beyond a period of 90 days ❖ from the date on which the proper officer has made an order permitting deposit of goods in a warehouse under section 60,
(b)	EOUs, EHTPs, STPs etc. : in the case of goods other than capital goods intended for use in any 100% EOU//EHTP/STP unit or any warehouse wherein manufacture or other operations have been permitted under section 65,	till their consumption or clearance from the warehouse; and	interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, ❖ for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods :
(c)	Other than EOU etc.: in the case of any other goods,	till the expiry of 1 year from the date on which the proper officer has made an order for deposit of goods in Warehouse.	Note: Interest on warehoused goods For EOUs, EHTPs, STPs, or warehouses where manufacture/ other operations are permitted under section 65: As seen above, in such cases, the warehousing period for capital goods is till their ex-bonding and for goods other than capital goods, it is till their exbonding/consumption. As a corollary, no interest is chargeable for the period that the goods remain warehoused
	EOU = (export oriented undertaking), EHTP = electronic hardware technology park unit, STP = software technology park unit		Proviso
Proviso	Extension of period: Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown,	extend the period for which the goods may remain in the warehouse, by not more than 1 year at a time :	Provided that if the Board considers it necessary so to do, in the public interest, it may, -
Proviso	Extension of period of 1 year may be reduced: Provided further that where such goods are likely to deteriorate,	the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.	(a) by order, and under the circumstances of an exceptional nature, to be specified in such order, (b) by notification in the Official Gazette, specify the class of goods in respect of which (c) by notification in the Official Gazette, specify the class of goods in respect of which the
			waive the whole or any part of the interest payable under this section in respect of any warehoused goods; no interest shall be charged under this section; interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.
			Explanation
			For the purposes of this section, - (i) "electronic hardware technology park unit" means a unit established under the Electronic Hardware Technology Park Scheme notified by the Government of India; (ii) "hundred per cent. export oriented undertaking" has the same meaning as in clause (ii) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944); and (iii) "software technology park unit" means a unit established under the Software Technology Park Scheme notified by the Government of India.]



Warehousing

ILLUSTRATION 1

'X', an importer, (other than 100% EOU, STP unit, EHTP unit) imported some goods and deposited them in the warehouse on 12th April. These goods were re-exported without payment of duty on 15th August. With reference to the Customs Act, 1962, discuss whether any interest under section 61 of the Customs Act, 1962 is payable by 'X'?

ANSWER

As per section 61(2) of the Customs Act, 1962, if goods (belonging to importer other than 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

In **Pratibha Processors v. UOI 1996 (88) ELT 12 (SC)**, the Apex Court has held that when goods at the time of removal from warehouse are wholly exempted from payment of duty, the liability to pay interest cannot be saddled on a non-existing duty. Liability to pay interest under section 61(2) of the Customs Act is solely dependant upon the exigibility or actual liability to pay duty. In case the liability to pay duty is nil, then, the interest will also be nil. Therefore, since in this case the goods have been re-exported without payment of duty, no interest is payable by 'X'.

ILLUSTRATION 2

Comment on the validity of the following statements:

(a) Goods, other than capital goods, intended for use in any hundred per cent export oriented undertaking, can be warehoused only till the expiry of five years.

(b) Interest free period of ninety (90) days under section 61(2) in respect of warehoused goods (not intended for being used in 100% EOU) commences from the date on which an into-bond bill of entry in respect of such goods is presented.

ANSWER

(a) **Invalid.** Goods, other than capital goods, intended to be used in a 100% EOU/ STP unit/ EHTP unit can be warehoused till the consumption or clearance of such goods from the warehouse. Further, capital goods intended to be used in a 100% EOU can also be warehoused till the clearance of such goods from the warehouse.

(b) **Invalid.** As per section 61, if goods (not intended for being used in 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in a warehouse under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods. In other words, the relevant date for determining the commencement of the period of 90 days is the date of order made under section 60 permitting removal of goods from the customs station for deposit in a warehouse, and not the date on which into-bond bill of entry in respect of such goods is presented.

SECTION 64. Owner's right to deal with warehoused goods. —

The owner of any warehoused goods may, after warehousing the same, —	
(a)	inspect the goods;
(b)	deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
(c)	sort the goods; or
(d)	show the goods for sale.]

SECTION 65. Manufacture and other operations in relation to goods in a warehouse.

(1)	[With the permission of the Principal Commissioner of Customs or Commissioner of Customs and ❖ subject to such conditions] 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)	Waste arising during manufacture: 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.

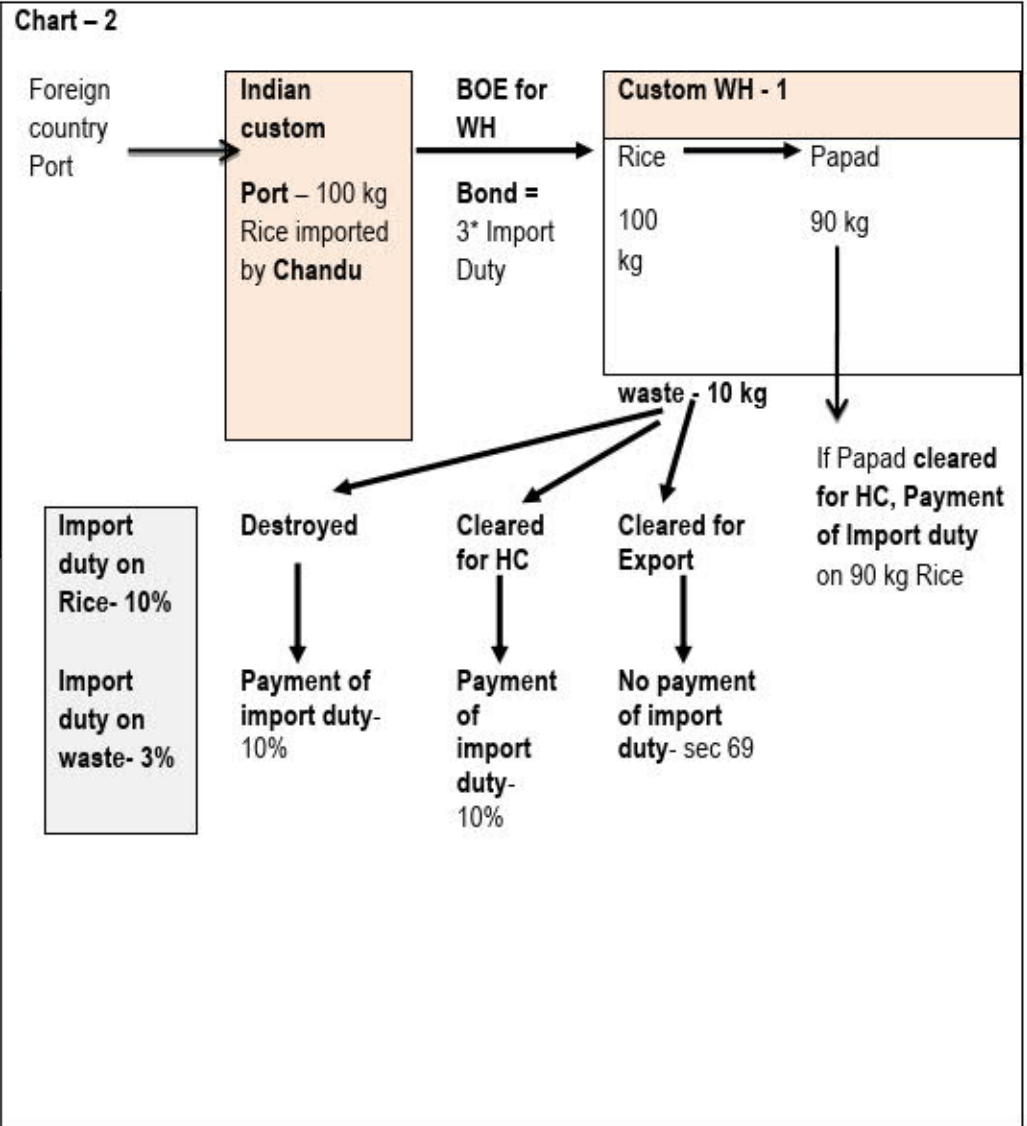
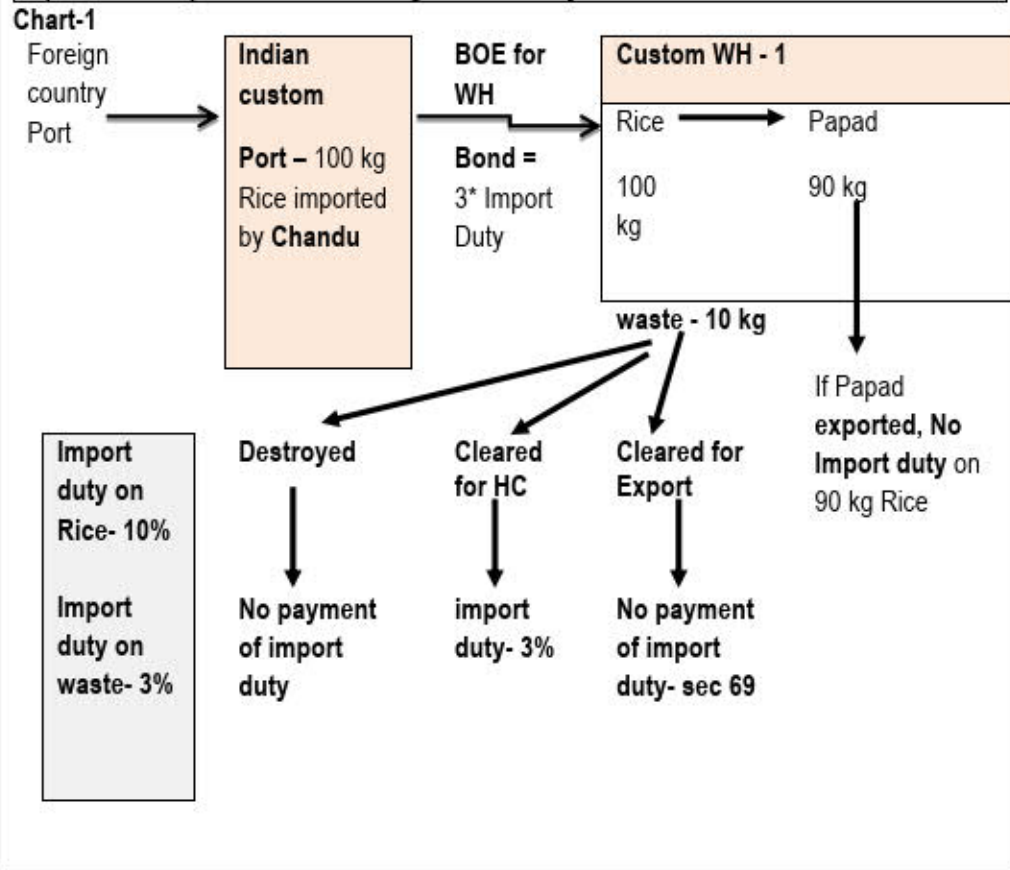
Note:

Import duty, interest, fine and penalties, if any, are payable only if the resulting goods or imported goods are cleared in the domestic market (ex-bonding).	Further, the clearance of such goods for domestic consumption squarely qualifies as supply under GST law and would be leviable to tax under section 9 of the CGST Act or section 5 of the IGST Act depending upon whether the supply from warehouse is an intra-State supply or inter-State supply.
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Warehousing

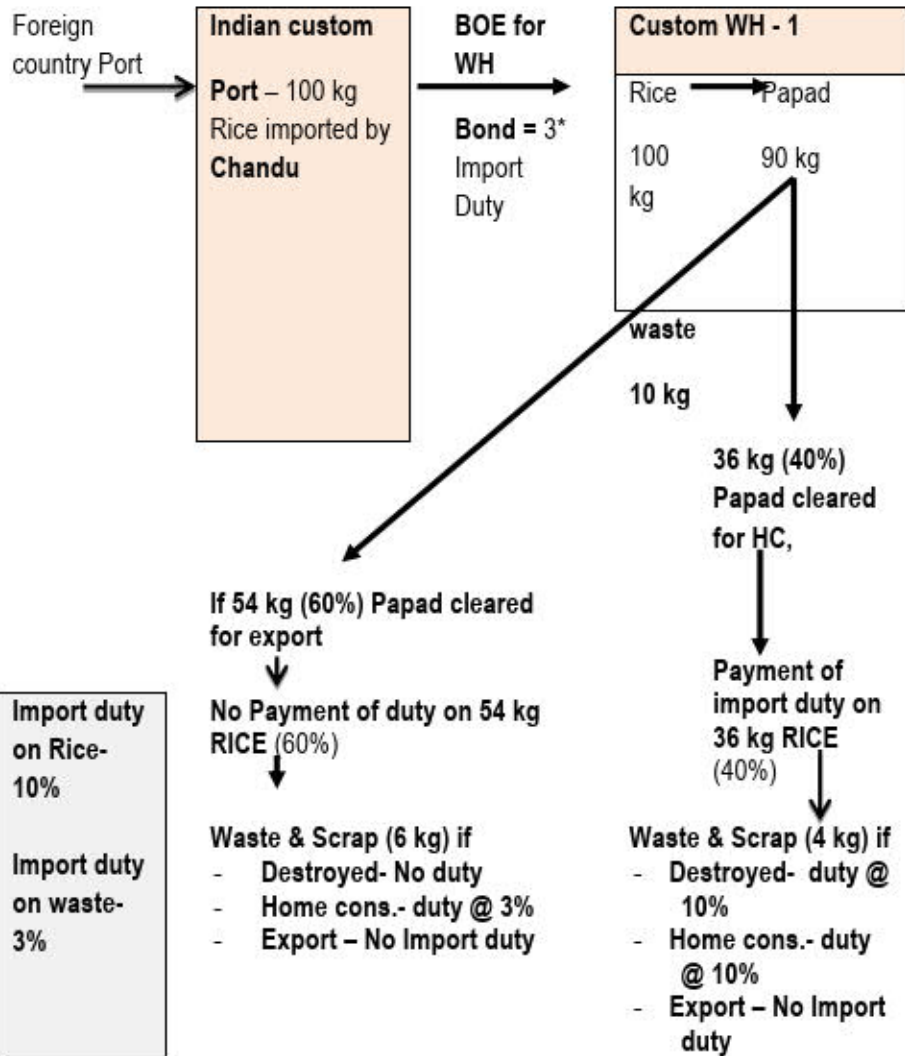
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Note:
At present, manufacture and other operations in a bonded warehouse are allowed only in a Private Bonded Warehouse and not in in Public Bonded Warehouse. [Manufacture and Other Operations in Warehouse (No. 2) Regulations, 2019]
 Further, **manufacture and other operations are also allowed in a Special Bonded Warehouse** in respect of the goods notified to be warehoused in Special Warehouse **[Manufacture and Other Operations in Special Warehouse Regulations, 2020]**





Warehousing

Chart - 3



Example

(2) Let us take the case of **cutlery manufactured out of imported highspeed cutting steel strips**. **Locally procured plastic is used for providing handles** to the cutlery i.e. knife, fork, etc. In a batch process **200 kg imported steel strips and 100 kg plastic is issued for the manufacture** of the cutlery items. **400 gross knives are manufactured** and they are **cleared for home consumption**. The **steel strip content in the above knives is 178 kg**. The **weight of the plastic handles is 85 kg**. The waste is in the form of shaving etc. The **total weight of the waste is [(200+100)-(178+85)]=37kg**. The **steel content of the waste is 22 kg**. So **import duty of customs at the rate applicable to steel strips should be collected on the waste**.

The other alternative is **where the finished goods are exported** out of the country. Take the same example. In this case the manufacturer has two options. He can **destroy the waste**. Then he will **not be required to pay duty on the steel strip content in the waste**. If he does **not choose to destroy** the waste, then he has to **pay duty on the steel strip content in the waste**. Remission of duty on the imported material content in the waste or refuse is allowed only when the final product concerned is exported out of India and the waste is destroyed.

(3) Let us now take an example where the **final products are both exported and cleared for home consumption**. The question of appropriating the waste will have to be decided first. The **imported raw material is rubber**. The **end product is motor vehicle tyre**. The **additional materials used are (1) beading wire, (2) tyre cord warp sheet (3) chemicals and (4) mineral oil**.

Total quantity of rubber issued		1500kg
Weight of beadwire used		10kg
Weight of tyre chord warp sheet used		180kg
Weight of chemical used		16kg
Weight of mineral oil used		4kg
Total weight of raw materials issued:		1710kg
Total no. of tyres manufactured:	100pcs	
Weight per tyre		16.5kg
Thus total weight 100 tyres		1650kg
Wastage		60kg
Total no. of tyres cleared for home consumption		25pcs
Total no. of tyres exported		75pcs.
Wastage relating to tyres exported out of 60kg	= 45 kg	60kg/100 tyre × 75 tyre
Imported rubber content in the waste relating to the exported tyres		= 45 × 1500/1710 = 39.5 kg(appx)

Import duty leviable on the import rubber content in the waste can be remitted if 45 kgs of the waste are destroyed.

Weight of waste relating to tyres cleared for home consumption = 15 kg

Imported rubber content in the waste = 13.2 kg

Import duty is compulsorily leviable on this quantity of import rubber.



Warehousing

ILLUSTRATION 3

"If manufacturing operations are carried out on warehoused goods and finished products are cleared for home consumption, then appropriate duty of customs should be levied on the quantity of the warehoused goods contained in the waste or refuse arising out of such manufacturing process."

Examine the validity of the said statement in the context of section 65 of the Customs Act, 1962 dealing with manufacture and other operations in relation to warehoused goods.

ANSWER

The said statement is valid.

Section 65 lays down that if the finished products arising as a result of operations carried out in the warehouse are cleared for home consumption, import duty would be charged on the quantity of the warehoused goods contained in the waste or refuse arising from such operations.

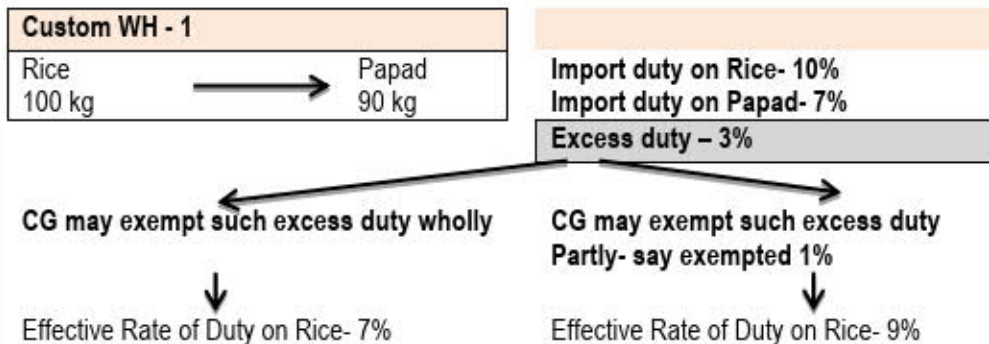
SECTION 66. Power to exempt imported materials used in the manufacture of goods in warehouse. —

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.**



[SECTION 73A. Custody and removal of warehoused goods. —

(1)	All warehoused goods shall remain in the custody of the person <ul style="list-style-type: none"> ❖ who has been granted a licence under section 57 or section 58 or section 58A 	until they are cleared for home consumption or are transferred to another warehouse or are exported or removed as otherwise provided under this Act.
(2)	The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.	
(3)	Where any warehoused goods are removed in contravention of section 71, <ul style="list-style-type: none"> ❖ the licensee shall be liable to pay duty, interest, fine and penalties 	without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.]

Note:

Section 73A makes the warehouse keeper as a custodian of the warehoused goods and prescribes the provisions for custody and removal of warehoused goods.

The licensee shall appoint a warehouse keeper for discharge of functions on his behalf. **Warehouse keeper will be in-charge of the warehouse** and shall **have a computerised system for accounting** of goods.

In case **private/public warehouses**, there is **only record based control**; **physical control of Bond Officer is not there** (**his presence is required only in case of removal of goods for export**). Consequently, the responsibilities of warehouse keepers assume greater significance.

Special warehouses remain locked and any **removal/deposit of goods from/to the warehouse is only in the presence of the Bond Officer.**

A warehouse keeper shall **maintain records of receipt, handling, storing, and removal of any goods** into/from the warehouse; **each activity/operation in relation to the warehoused goods**; and **drawal of samples** from the warehoused goods. He shall **keep copies of documents evidencing the receipt/removal** of goods into/from the warehouse and copies of the bonds executed. The **said records and accounts are required to be preserved for a minimum period of 5 years from the date of removal** of goods from the warehouse. Further, digital copies of the same also need to be preserved at any place other than warehouse



Warehousing

SECTION 71. Goods not to be taken out of warehouse except as provided by this Act. —
No warehoused goods shall be **taken out of a warehouse except** on **clearance for home consumption** or **[export]**, or for **removal to another warehouse**, or as **otherwise provided** by this Act.

SECTION 67. Removal of goods from one warehouse to another. —
 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.
Note: There's a huge emphasis on ensuring proper dispatch of goods under one-time lock from the warehouse where the goods are originally stored and proper receipt of the warehoused goods at the destination warehouse, so that there is no risk to revenue.

SECTION 68. Clearance of warehoused goods for home consumption. —
 [Any **warehoused goods** may be **cleared from the warehouse**] **for home consumption, if -**

(a)	a bill of entry for home consumption [ex-bond bill of entry] in respect of such goods has been presented in the prescribed form;	
(b)	the import duty, interest, fine and penalties payable in respect of such goods have been paid ; and]	
(c)	an order for clearance of such goods for home consumption has been made by the proper officer :	
Proviso	[Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria :	
Proviso	[Provided further that] the owner of any warehoused goods may, ❖ at any time before an order for clearance of goods for home consumption has been made in respect of such goods,	relinquish his title to the goods upon payment of [* * *] penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon :]
Proviso	[Provided also that] the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods	regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]

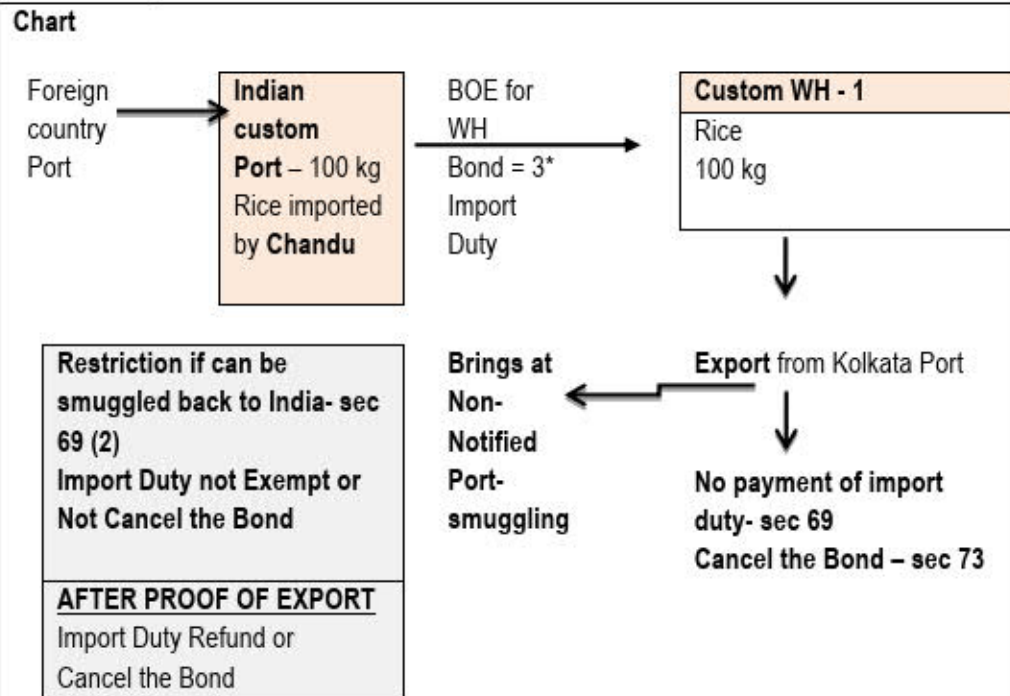
SECTION 69. Clearance of warehoused goods for [export]. —
 Warehoused goods **can be exported without payment of duty** in accordance with the provisions of section 69, **for instance, ship stores, which are meant to be exported only;** goods meant for re-export and goods supplied to duty free shops and the like.
The provisions are hereunder:

(1)	(1) Any warehoused goods may be exported to a place outside India without payment of import duty if -	
	(a)	a shipping bill or a bill of export or the form as prescribed under section 84 has been presented in respect of such goods.]
	(b)	the export duty, fine and penalties payable in respect of such goods have been paid ; and]
	(c)	an order for clearance of such goods for [export] has been made by the proper officer :
Proviso	[Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.]	
(2)	Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that warehoused goods of any specified description ❖ are likely to be smuggled back into India,	it may, by notification in the Official Gazette, direct that ❖ such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

Note: For instance, export of warehoused goods to Burma, Nepal and Bhutan, export of warehoused goods in vessels of less than 1000 tons, taking of stores on board vessels of less than 200 tons, etc. have been banned under said provision.



Warehousing



SECTION 70. Allowance in case of volatile goods. —

(1)	When any warehoused goods to which this section applies are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss,	the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may remit the duty on such deficiency.
(2)	This section applies to such warehoused goods as the Central Government, having regard to the volatility of the goods and the manner of their storage, may,	by notification in the Official Gazette, specify.

Note: In some cases, warehoused goods are subject to normal loss owing to volatility of such goods and manner of their storage. For instance, petroleum products like aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naphtha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks, subjected to atmospheric pressure have a tendency to evaporate during long period of storage. Similarly, wine, spirit and beer, are imported under over proof conditions, in wooden casks stored in bonded warehouses; they are volatile in nature and there is considerable evaporation loss during storage.

Resultantly, there is generally a difference between the bonded quantity and the quantity at the time of removal from the warehouse. This loss is due to natural causes and neither the importer nor the warehouse keeper is at fault. Thus, neither the importer nor the warehouse keeper can be asked to bear the duty burden of this loss. This position has been recognised and duty on the deficiency has been remitted under section 70.

Notified goods: Aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naphtha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks; liquid helium gas kept in containers; wine, spirit and beer, kept in casks and crude stored in caverns, have been specified as goods to which the provisions of section 70 apply vide Notification No. 3/2016 Cus. NT dated 11.01.2016

Remission under section 23 and section 70 – A Distinction: Section 23 is a general provision applicable to cases where goods are lost before clearance for home consumption is made. Whereas, section 70 provides for remission of duty in respect of loss during warehousing of only the goods notified by the Central Government under that section. Therefore, granting remission for loss during transit between two warehouses does not render section 70 redundant. [Indian Oil Corporation v. Commissioner of Customs 1985 (21) ELT 881 (Tri.- LB)]



Warehousing

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

SECTION 72. Goods improperly removed from warehouse, etc. —

(1)	In any of the following cases, that is to say, -	
	(a)	where any warehoused goods are removed from a warehouse in contravention of section 71 ;
	(b)	where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse ;
	(c)	* * *]
	(d)	where any goods in respect of which a bond has been executed under [section 59 [* * *]] and which have not been cleared for home consumption or [export] are not duly accounted for to the satisfaction of the proper officer,
	the proper officer may demand , and	the owner of such goods shall forthwith pay , the full amount of duty chargeable on account of such goods together with [interest, fine and penalties] payable in respect of such goods.
(2)	If any owner fails to pay any amount demanded under sub-section (1), the proper officer may, without prejudice to any other remedy ,	cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods , if any, in the warehouse, as the said officer may [deem fit] .

KesoRam-Rayon (SC)

ROD in case the WH goods not removed from WH within the permissible Period or Extended period, then ROD will be of the date on which permissible warehousing period or extension thereof comes to an end.

SECTION 73. Cancellation and return of warehousing bond. —

When the **whole of the goods covered by any bond executed** under [section 59 [* *]] have been

- ❖ **cleared for home consumption or**
- ❖ **exported or**
- ❖ **[transferred or]**
- ❖ **are otherwise duly accounted for**, and

when **all amounts due** on account of such goods have been **paid**, the **proper officer** shall **cancel the bond** as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

ILLUSTRATION 4

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

ANSWER

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

- (a) where any warehoused goods are removed from a warehouse in contravention of section 71 of the Customs Act;
- (b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;
- (c) where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer.



Warehousing

TEST YOUR KNOWLEDGE

1. Vipul imported certain goods in May. An 'into bond' bill of entry was presented on 14th May and goods were cleared from the port for warehousing. Assessable value on that date was US \$ 1,00,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 21st September.

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

Particulars	14th May	21 st September	14th October
Rate of exchange per US \$ (as notified by Central Board of Indirect taxes & Customs)	₹ 65.20	₹ 65.40	₹ 65.50
Basic customs duty	15%	10%	12%

Integrated Tax leviable under section 3(7) of the Customs Tariff Act is exempt. Ignore agriculture and infrastructure development cess.

Answer

Computation of import duty payable by Vipul

Particulars	Amount (US \$)
Assessable value	1,00,000
	Amount (₹)
Value in Indian currency (US \$ 1,00,000 x ₹ 65.20) [Note 1]	65,20,000
Customs duty @ 10% [Note 2]	6,52,000
Add: Social welfare surcharge @ 10% on ₹ 6,52,000	65,200
Total customs duty payable	7,17,200

Notes:

1. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange prevalent on the date on which the into bond bill of entry is presented for warehousing under section 46 of the Customs Act, 1962.

2. Goods which are **not removed within the permissible period are deemed to be improperly removed in terms of section 72** of the Customs Act, 1962 **on the day they should have been removed** [Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)]. **The applicable rate of duty in such a case is the rate of duty prevalent on the last date on which the goods should have been removed.**

As per section 61 of the Customs Act, 1962, if goods (not meant for being used in an 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in warehouse under section 60 is made, interest is payable @ 15% p.a., on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Therefore, interest payable will be computed as under:

Period of 90 days commencing from the date of order made under 60 expires on	19th August
No. of days for which interest shall be payable [12 days of August + 30 days of September + 14 days of October]	56 days
Interest payable = ₹ 7,17,200 × 15/100 × 56/365 (rounded off)	₹ 16,505

Q 2. BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per the rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed.

On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. However, the rate of duty increased when the goods were actually removed from the warehouse.

The Department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case(s), if any.

Answer

Yes, the company will succeed. The facts of the given situation are similar to the case of CCus vs. Biecco Lawrie Ltd. 2008 (223) ELT 3 (SC) wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods allowed to be retained for storage in the warehouse as permitted under section 49 of the Customs Act are not treated as warehoused goods and importer would not be required to pay anything more.

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