

Explanation.—For the purposes of this sub-section, “**absorption of anti-dumping duty**” is said to have taken place,—

- (a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or
- (b) under such other circumstances as may be provided by rules.’;

Sec 9A(2A) :- Exemption for EOU and SEZ

Notwithstanding anything contained in sub-section (1) and sub-section (2), any anti-dumping duty imposed shall not apply to articles imported by a **100%. export-oriented undertaking or a unit in a special economic zone**, unless,—

- (i) it is specifically made applicable in such notification or to such undertaking or unit; or
- (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation.—For the purposes of this section,—

- (a) the expression “**100%. export-oriented undertaking**” shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944;
- (b) the expression “**special economic zone**” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

2nd Proviso to Sec 9A(6) :-Revocation of CVD before specified period

Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time



Chapter

FOREIGN TRADE POLICY

Applicability of FTP extended till 31.03.2022 [Notification No. 33/2015-2020 dated 28.09.2021]

Foreign Trade Policy (FTP), 2015-2020, (as updated) incorporating provisions relating to export and import of goods and services will now remain in force upto 31.03.2022, unless otherwise specified.

Exemption from IGST and GST compensation cess extended upto 31.03.2022, in case of imports under Advance Authorisation, EPCG, EOU/EHTP/STP/BTP units [Notification No. 33/2015-2020 dated 28.09.2021]

Earlier	imports against Advance Authorisations for physical exports were exempted from Integrated Tax and Compensation Cess upto 30.09.2021. The exemption from Integrated Tax and Compensation Cess in case of imports against Advance Authorisations for physical exports has now been extended upto 31.03.2022.
Earlier	Earlier capital goods imported under EPCG Authorisation for physical exports were exempted from IGST and Compensation Cess upto 30.09.2021. The exemption from IGST and Compensation Cess in case of capital goods imported under EPCG Authorisation for physical exports has now been extended upto 31.03.2022.
Amendment	In case of goods imported by EOU/EHTP/STP/BTP units from DTA, IGST and GST compensation cess were exempt upto 30.09.2021. The exemption from IGST and GST Compensation Cess in case of goods imported by EOU/EHTP/STP/BTP units from DTA has now been extended upto 31.03.2022.

Principles of restrictions and prohibitions for imports/exports revised to be in line with international agreements With effect from 10.08.2021, principles of restrictions and prohibitions for imports/exports have been revised as follows [Notification No. 17/2015-2020 dated 10.08.2021]

DGFT may, through a notification, impose 'prohibition' or 'restriction':-

a.	on export of foodstuffs or other essential products for preventing or relieving critical shortages;
b.	on imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade;
c.	on imports of fisheries product, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain other purposes;
d.	on import to safeguard country's external financial position and to ensure a level of reserves.
e.	on imports to promote establishment of a particular industry;
f.	for preventing sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury;
g.	for protection of public morals or to maintain public order;
h.	for protection of human, animal or plant life or health
i.	relating to the importations or exportations of gold or silver;
j.	necessary to secure compliance with laws and regulations including those relating to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices
k.	relating to the products of prison labour
l.	for the protection of national treasures of artistic, historic or archaeological value
m.	for the conservation of exhaustible natural resources
n.	for ensuring essential quantities for the domestic processing industry
o.	essential to the acquisition or distribution of products in general or local short supply;
p.	for the protection of country's essential security interests:
i.	relating to fissionable materials or the materials from which they are derived;
ii.	relating to the traffic in arms, ammunition and implements of war;
iii.	taken in time of war or other emergency in international relations; or
q.	in pursuance of country's obligations under the United Nations Charter for the maintenance of international peace and security. The aforesaid principles of restrictions and prohibitions for imports/exports have been amended to be in line with international agreements.

Important Clarification

IGST (Place of Supply)

Clarification relating to export of services-condition of section 2(6) (v) of the IGST Act 2017:-

Issue:-

Whether the supply of service by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India which is incorporated under Indian law to the foreign company incorporated under laws of a country outside India, will hit by condition of sec 2(6) (v) of IGST Act, 2017?

Legal provisions:-

➤ As per sec 2(6) “**export of services**” means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Explanation 1 of the Section 8 of the IGST Act an establishment in India and any other establishment outside India shall be treated as establishments of distinct persons.

➤ Whereas **explanation 2 of sec 8 of the said act states** that “a person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory, which means that the branch or agency or representational office of the foreign company located in India through which it conducts business shall be treated as establishment of the said foreign company in india.

➤ On the other hand, the **definition of person as per sec 2(84) includes** 'a company and a body corporate incorporated by or under the laws of a country outside India'.

Thus, this makes a company incorporated in India and a foreign company i.e. company incorporated outside India are separate legal entities and not mere establishments of a distinct person.

Clarification:-

➤ It is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India (i.e. a foreign company under Companies Act), are **separate persons** under CGST Act, and thus are separate legal entities.

Accordingly, these two separate persons would **not be** considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8. Thus, supply between such persons qualify as export of service subject to fulfilment of other conditions as provided u/s 2(6) of IGST Act.

➤ Therefore, the supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 to the establishments of the said foreign company located outside India (incorporated outside India), **would not be treated as** supply between merely establishments of distinct persons under Explanation 1 of section 8 of IGST Act 2017 and thus, **not debarred from export of service condition (v) of sec 2(6).**

Accounts, Records and E-Way Bill

Clarification regarding rule 48(4) of CGST Rules, 2017 Circular No. 160/16/2021-GST

Issue:-

Whether carrying physical copy of invoice is compulsory during movement of goods in cases where suppliers have issued E-invoice under rule 48(4) of the CGST Rules, 2017?

Legal provisions:-

- ➔ As per **rule 138A(1) of CGST Rules, 2017**,
 - (a) the person in charge of a conveyance shall carry the invoice or bill of supply or delivery challan, as the case may be; and
 - (b) a copy of the e-way bill or the e-way bill number, either physically or electronically or mapped to a Radio Frequency Identification Device embedded on to the conveyance.
- ➔ Whereas, **rule 138A(2)** states that if E-invoice is issued under rule 48(4) having Invoice Reference Number (IRN) being embedded in Quick Reference (QR) code, then invoice can be produced electronically, for verification by the proper officer in lieu of the physical copy of such tax invoice.

Clarification:-

As per combined reading of above, it is clarified that there is **no need to carry the physical copy of tax invoice** in cases where invoice has been generated by the supplier in the manner prescribed **under rule 48(4) of the CGST Rules** (i.e. E-invoice), and production of the Quick Response (QR) Code having an embedded **Invoice Reference Number (IRN)** electronically for verification by the proper officer would be sufficient.

Refund

Clarification in respect of sec 54(3) of CGST/SGST Act Circular No. 160/16/2021-GST

Issue:- Whether the second proviso to section 54(3) of CGST / SGST Act, prohibiting refund of unutilized ITC is applicable in case of exports of goods which are having NIL rate of export duty.

Legal provision:- 1. The term '**subjected to export duty**' used in second proviso to section 54(3) of the CGST Act, 2017 means where the goods are actually leviable to export duty and suffering export duty at the time of export.

Therefore, goods in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, cannot be considered to be subjected to any export duty under Customs Tariff Act, 1975.

Clarification:- *It is clarified that only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) from availment of refund of accumulated ITC.*

Goods, which are not subject to any export duty and in respect of which either NIL rate is specified in Second Schedule to the Customs Tariff Act, 1975 or which are fully exempted from payment of export duty by virtue of any customs notification or which are not covered under Second Schedule to the Customs Tariff Act, 1975, would not be covered by the restriction imposed under the second proviso to section 54(3) of the CGST Act for the purpose of availment of refund of accumulated ITC.

**Additional Topic In Custom
Added by ICAI**

Chapter 14 WAREHOUSING

Table of Content

Sections	Descriptions
Sec 57:	Appointing of public warehouses
Sec 58:	Licensing of private warehouses.
Sec 58A	Licensing of special warehouse
Sec 58B	Cancellation or suspension of licence
Sec 59:	Warehousing bond
Sec 60:	Permission for deposit of goods in a warehouse
Sec 61:	Period for which goods may remain warehoused
Sec 64:	Owner's right to deal with warehoused goods
Sec 65:	Manufacture and other operations in relation to goods in a warehouse.
Sec 66:	Power to exempt imported materials used in the manufacture of goods in warehouse.
Sec 67:	Removal of goods from one warehouse to
Sec 68:	Clearance of warehoused goods for home consumption.
Sec 69:	Clearance of warehoused goods for exportation.
Sec 70:	Allowance in case of volatile goods.
Sec 71:	Goods not to be taken out of warehouse except as provided by this act.
Sec 72:	Goods improperly removed from warehouse, etc.
Sec 73:	Cancellation and return of warehousing bond
Sec 73A	Liability on warehouse keeper (Licensee)

Hello Friends,

*This chapter was excluded from Syllabus by ICAI till Nov 21 Exam, But, Now this chapter is again covered in New Material issued by ICAI for **May and Nov 2022 Exam.***

*So, I am covering discussion on this chapter in Amendment Lect 2. For that, you have to subscribe **Vsmart Academy Youtube Channel or Join Telegram Group of Vsmart Academy.***

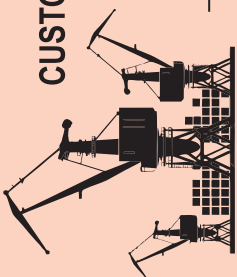
Telegram Link :- <http://t.me/cafinalvsmartacademy>

Special Note:- *Students who are doing CMA or CS course, it is already covered in syllabus & they can find this lect in extra topic link provided in there login of Vsmart Academy portal.(www.vsmartacademy.com)*

WAREHOUSING

VOLATILE GOODS (notified) - loss due to Natural Reasons - ID will be remitted - Sec 70

CUSTOMS PORT



[Goods in custody of Custodian]
30 Days
Sec. 48

B/E for W/Hing
Sec. 46
Warehousing Bond
3 Duty
Sec. 59

W/Hing Order
Sec. 60

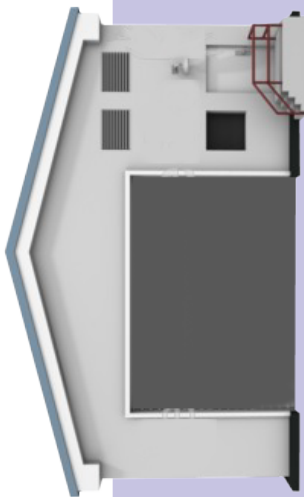
Sec. 69	Direct Export from W/H [Commercial Export] + Postal Exports allowed]	Without payment of ID [Bond Cancelled and released]
* Facility of direct export is not allowed in respect of notified goods where subsequent to export the goods are likely to be smuggled back into India.		

Sec. 68 Clearance for Home consumption
1) Filing of ex bond bill of entry
2) Payment of custom duty and other charges
3) Order of clearance for H.C.
4) Relinquishment of rights without payment of payment of import duty

CUSTOMS WAREHOUSE

PUBLIC WAREHOUSE

[Public W/H Appointed u/Sec 57]



PRIVATE WAREHOUSE

[Private W/H Licensed u/Sec 57]



Sec 63

- W/Hing Charges payable to W/H Keeper [payable as per the Schedule fixed by W/H Keeper if no schedule is fixed then as per the rate fix by comm]
- Delay in Payment - Interest @ 24% p.a. payable along with
- Payment delayed for more than 10 days - W/H Keeper has power to sell goods (sufficient portion to cover his rent)

Sec 64

Owner's Right (On payment of Fees + Sanction of AC/DC) =
i) Inspection of Goods ii) Separation of damaged/deteriorated goods iii) Otherwise dealing with goods to prevent damage/deterioration iv) Sorting of goods - Changing Containers
v) Showing them for sale
vi) Taking samples of such goods (Bill of Entry for Home Consumption need not be filed - even duty need not be paid if samples are to be brought back)

Sec 65

Even 'MANUFACTURING OPERATIONS' are allowed in warehouse
- Facility is principally given to exporters. EoU operates under this.
- EoU - Factory is given license of Pvt W.H (u/s 58)

Sec. 67

Transfer to another W/H
goods can be transfer from one W/H to another W/H
Without payment of ID [Bond Continued]

Sec 61

W/Hing period	100% EOU Till Clearance	Other 1 Yrs.	Comment : 1) If no duty at the time of removal then interest is not payable 2) Interest is payable @ 15% p.a.
Int-Free period	-	90 Days	Note: If goods like to deteriorate period can be reduce
Extension	Available	Available if goods not likely to deteriorate,	

SC72: Goods Improperly Removed From Warehouse

- 1) Clearance other than Sec.67/68/69
- 2) Completion of warehousing period
- 3) Removal of sample without permission
- 4) Non Accounting of Goods

Consequences : Owner forthwith pay duty interest penalty etc. otherwise officer will sell the goods in auction.

Important Case : Kesoram Rayon

If goods are not removal within warehousing period or extended period then goods are deemed to be removed on date of completion of warehousing period and rate prevailing on such date will be applicable.

Sec. 70 : Remission of duty on volatile goods

- 1) Goods of volatile nature notified by C.G. (Kerosine, wine, etc.)
- 2) Goods found to be deficient in quantity because of natural cause
- 3) Remission by AC/DC

INTRODUCTION



Why Importer Need Warehousing Facility ?

Following are some where importer need warehousing facility

- ◆ There are instances when the importer does not want clearance of the imported goods immediately due to factors such as market price, salability, requirement in the factory of production, paucity of funds etc.
- ◆ The concept of warehousing is a trade practice involving tradeoff between (a) the economics of importation and (b) the quantitative requirement of the importer at any given point of time.
- ◆ Some imported goods are also warehoused for supplies to EOU/EHTP/STP/SEZ units.

What are the benefits if importer opts for warehousing?

Ans: The imported goods after landing may be allowed to be removed to a warehouse without payment of duty and duty is paid at the time of clearance from the warehouse

Some important provision we had discussed earlier relating to warehousing

Warehouse [Section 2(43)]	Means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A
Warehoused goods [Section 2(44)]	means goods deposited in a warehouse
Section 46(1): Entry	The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form.
Section 15(1)(b) Relevant Date for Duty Rate	rate of duty as prevalent on date of presentation of bill of entry for home consumption for clearance from warehouse is applicable and not rate prevalent when goods were removed from customs port.

SEC 57: LICENSING OF PUBLIC WAREHOUSES

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



Tutorial Notes

1. These public bonded warehouses are generally managed by central warehousing corporations or state warehousing corporations.
2. Only dutiable goods can be deposited in the warehouse and not exempted goods allowed to be deposited in public warehouse.

SEC 58: LICENSING OF PRIVATE WAREHOUSES.

The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.

SEC 58A : LICENSING OF SPECIAL WAREHOUSE

- (1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.
- (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).

Specified goods u/s 58A (2) [N/N 66/2016]

- (1) gold, silver, other precious metals and semi-precious metals and articles thereof;
- (2) goods warehoused for the purpose of -
 - (a) supply to duty free shops in a customs area;
 - (b) supply as stores to vessels or aircrafts under Chapter XI of the Customs Act, 1962;
 - (c) supply to foreign privileged persons in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

SEC 58B : CANCELLATION OR SUSPENSION OF LICENCE

License granted for all types of warehouses namely- Public, Private and Special Warehouses, can be cancelled. Principal Commissioner/ Commissioner may cancel the warehousing licence granted under section 57/58/58A if the licensee contravenes any of the provisions of the customs law or breaches any of the conditions of the licence. Before, cancellation, the licensee shall be given a reasonable opportunity of being heard.

During the pendency of an enquiry under this section, operations of the warehouse may be suspended. During suspension period, no goods shall be deposited in such warehouse.

Where the licence is cancelled, the goods warehoused shall:

- (i) be removed from such warehouse to another warehouse or
- (ii) be cleared for home consumption/export.

The goods shall be removed **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.

Till the time the goods are deposited in the warehouse (whether in case of suspension or removal), they will continue to be governed by the warehousing provisions under Customs law.

SEC 59: WAREHOUSING BOND

An importer desirous of warehousing the goods without paying customs duties needs to execute an indemnity bond to cover the risk to Government revenue.

Importer is required to execute the bond for the goods in respect of which an into-bond bill of entry has been presented and assessed to duty.

An importer executing bond binds himself—

a) **to comply** with all the provisions of the Act 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

(c) **to pay** all penalties and fines incurred for the contravention of the provisions of this Act in respect of such goods.



Tutorial Notes

The rate of duty and valuation prevalent on the date of removal are applicable in terms of section 15(1) for piecemeal clearances. Normally the rates of customs duty have been generally increasing. Therefore there has been no risk of loss of revenue on account of warehousing. Hence allowing for increase in duty rates, it was considered sufficient to cover Thrice the duty amount by an indemnity bond with necessary surety or security. This is basically the underlying objective of the warehousing bond.

Consignment Bond:-

The bond can be executed in respect of a particular consignment [Consignment Bond] or it can be a General Bond to cover the duty on goods to be imported by the person during a specified period. In addition to the bond, importer may also be required to furnish prescribed security.

The importers are required to submit bond for an amount equal to thrice the duty amount involved. The rationale being that the importer's potential liability can extend to duty plus a mandatory penalty of 100%, as well as fine and interest.

General Bond

The Assistant/Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as he may approve in respect of the warehousing of goods to be imported by the importer within a specified period.

The bond amount is determined by Assistant/Deputy Commissioner of Customs, having regard to:

- past imports warehoused and the duty involved in such consignments;
- anticipated imports and expected revenue involved.

In practice, a running account is maintained which is debited when imported goods are warehoused and credited when warehoused goods are cleared ex-bond on payment of duty.

Above bonds will continue to be valid even if the goods are transferred to another warehouse. If the warehoused goods are transferred to another person (either wholly or partially), the transferee will have to execute the bond and furnish prescribed security.

CASE STUDY

CIRCULAR NO. 11/2010

Issue: What is the assessable value of imported goods that are warehoused under Section 58/59 of the Customs Act, 1962 and sold before being cleared for home consumption?

Legal Provision: Section 14 (1) of the Customs Act, 1962

the value of the imported goods and export goods shall be the transaction value of such goods.

Thus, in the case of sale of imported goods after they are warehoused on Indian territory, the value at which such transaction took place will not qualify as the transaction value, as per Section 14.

Circular 32/2004- valuation of goods sold on "high-seas-sales" basis actual high-seas-sale-contract price paid by the last buyer would constitute the transaction value under Rule 4 of Customs Valuation Rules.

Whether valuation in case of sale of warehouse goods before clearance and High sea sale are on same principle?

The facts and circumstances of a sale of warehoused goods are not similar to the case of "high-seas-sales" since the sale/transfer of imported goods after warehousing cannot be considered to have been made in the course of international trade.

High sea sale	Sale of warehoused goods
1. It means goods are sold by first importer before crossing the territorial water of India.	1. It means goods are sold by first importer after deposition of goods in warehouse but before clearance.
2. In case of High Sea Sale contract price paid by last buyer would constitute the T.V.	2. In case of Sale of warehoused goods value of first importer would constitute the T.V.

SEC 60: PERMISSION FOR DEPOSIT OF GOODS IN A WAREHOUSE

Once the importer has furnished the stipulated bond and security (i.e. he has complied with the provisions of section 59 in respect of any goods), the proper officer may make an order permitting the deposit of the goods in a warehouse.

Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

SEC 61: PERIOD FOR WHICH GOODS MAY REMAIN WAREHOUSED

1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed

Particulars	Period of Warehousing
In the case of Capital Goods intended for use in any 100% E.O.U./EHTP/STP/ or any warehouse wherein manufacture or other operations have been permitted under section 65	Till there clearance from warehouse
In the case of goods other than capital goods intended for use in any 100% E.O.U./EHTP/STP/ or any warehouse wherein manufacture or other operations have been permitted under section 65	Till there clearance or consumption from warehouse
In case of any other goods, (not intended for use in any 100% E.O.U.)	Goods may be left in the warehouse for period of 1 year from the date of warehousing order.

The Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time.

Where such goods are likely to deteriorate, the period referred may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

(2) Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse beyond a **period of ninety days** from the date on which the proper officer has made an order under sub-section (1) of section 60,

interest shall be payable @ **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 ninety days till the date of payment of duty on the warehoused goods.

However, 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.I.t. 12 (s.c.)].

The Board may waive the interest (whole or partial) in individual cases by ad-hoc order or 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 permitting deposit of goods in a warehouse under **section 60**.

Explanation : For the purposes of this section,

- (i) "electronic hardware technology park unit" (EHTP) 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; and
- (iii) "software technology park unit" means a unit established under the Software Technology Park (STP) Scheme notified by the Government of India.

SEC 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.

SEC 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
 - ◆ **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.

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.

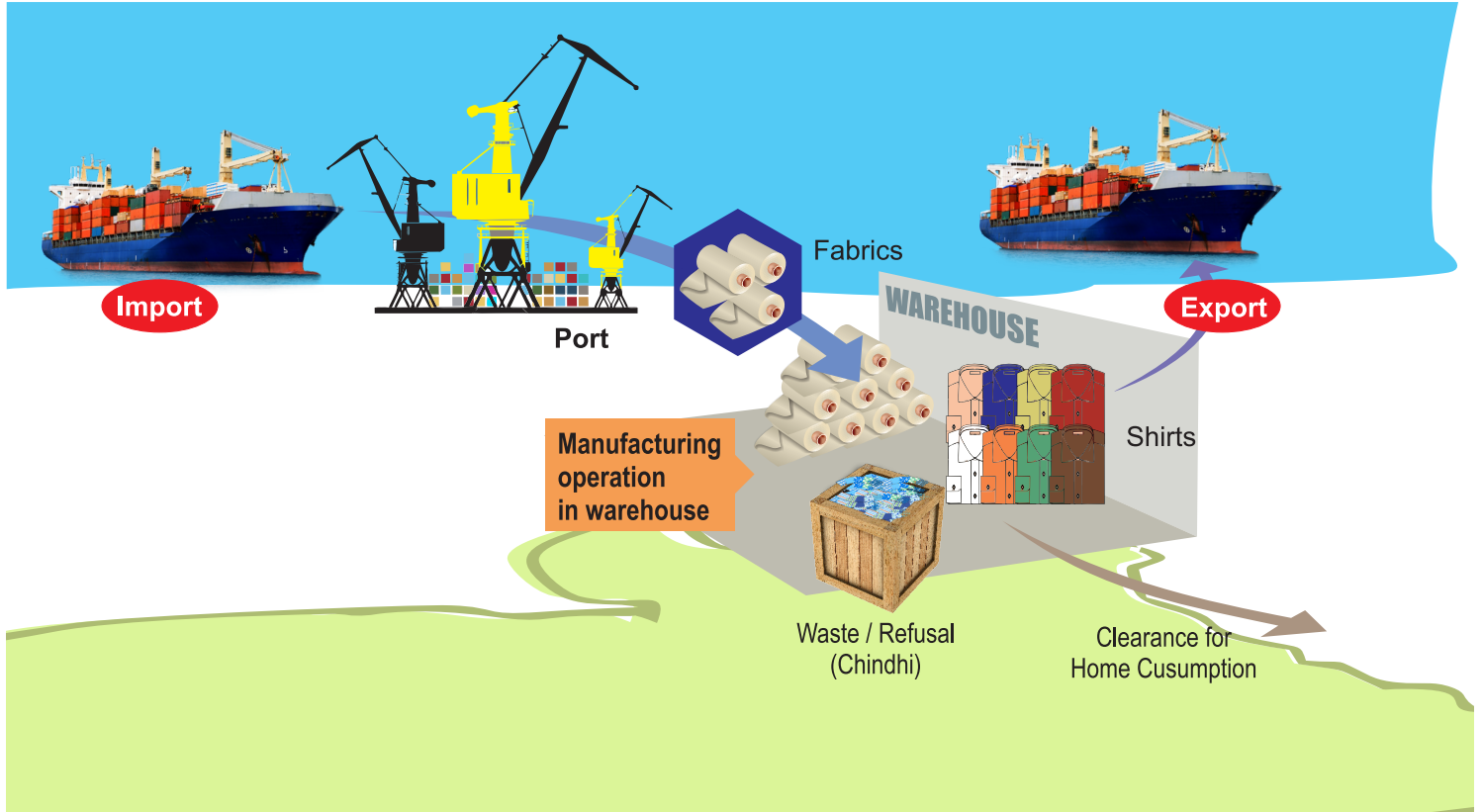
Further, manufacture and other operations are also allowed in a Special Bonded Warehouse in respect of the goods notified to be warehoused in Special Warehouse

SEC 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.

MANUFACTURE AND OTHER OPERATIONS IN CUSTOM BONDED WAREHOUSE



SEC 67: REMOVAL OF GOODS FROM ONE WAREHOUSE TO ANOTHER WAREHOUSE

Section 67 permits removal of warehoused goods 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. Permission of proper officer is required for such transfer.

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.

SEC 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 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.

Provided that the order referred to in clause (c) may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria

Provided further that the owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon.

Provided also that the owner of any such warehouse 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 law for the time being in force.

SEC 69: CLEARANCE OF WAREHOUSED GOODS FOR EXPORT.

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.

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.

SEC 70: ALLOWANCE IN CASE OF VOLATILE GOODS.

- 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/Deputy Commissioner of Custom** may remit the duty on such **deficiency**.
- 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.

Notified goods : N/n 03/2016

- Aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naphtha, vaporizing oil, kerosene, high speed diesel oil, batching oil, furnace oil and ethylene dichloride, kept in tanks.
- Wine, spirit and beer, kept in casks
- Liquid helium gas kept in containers and
- Crude stored in caverns.



Tutorial Notes

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



Examination Question

Is the owner liable to pay duty on normal loss of goods in warehouse?

An importer having received 100 casks of whisky from Scotland by a vessel, warehouses them in a bonded place. Each cask is reported to contain 1000 liters. At the time of removal of goods, it is found that 50 of the cases contained only in 980 liters each. The importer claims that there has been a loss in storage. Explain the relevant provisions of the Customs Act, 1962 regarding shortage of volatile goods and state with reasons, how you would decide the case.

Solution:-

At the time of delivery from a warehouse, if any warehoused goods are found to be deficient in quantity on account of natural loss, the AC / DC of Customs may remit the duty on such deficiency.

This benefit applies only to those goods as notified by the Central Government, having regard to the volatility of the goods and the manner of their storage, e.g. Petroleum, Liquid Helium Gas, Spirit & Beer, etc.

Conclusion: In the given case, the conditions u/s 70 are fulfilled. The loss of 2% can be justified to be on account of natural causes. Hence, the Importer will be able to claim remission of duty on such lost quantity.

SEC 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.

SEC 72: GOODS IMPROPERLY REMOVED FROM WAREHOUSE, ETC.

- In any of the following cases, that is to say,
 - where any warehoused goods are removed from a warehouse in contravention of section 71 (clearance another warehouse or for home consumption or for exportation).
 - 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;
 - where any goods in respect of which a bond has been executed under 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

SEC 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.

SEC 73 A: LIABILITY OF WAREHOUSE KEEPER (Licensee)

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 14.

Section 73A makes the warehouse keeper as a custodian of the warehoused goods and prescribes the provisions for custody and removal of warehoused goods. It stipulates that all warehoused goods will remain in the custody of the person who has been granted a licence under section 57/58/58A until they are cleared for home consumption/ transferred to another warehouse/ exported/ removed as otherwise provided under Customs Act.

Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties.

This would be in addition to any other action that may be taken against him under this Act or any other law for the time being in force.

Amendments Applicable for May-June 2022

*All This Amendments are covered in Amendment Video. For that, you have to subscribe **Vsmart Youtube Channel** or Join Telegram Group of Vsmart Academy.*



Chapter 2

IMPORTATION & EXPORTATION PROCEDURE

SECTION 46: ENTRY OF GOODS ON IMPORTATION

Old Provision :-

Time Limit:

The importer shall present the bill of entry

before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing

New Provision :-

Time Limit:

The importer shall present the bill of entry

“before the end of the day (including holidays) preceding the day” on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing



CUSTOM TARIFF ACT 1975**Special Discussion on Countervailing Duty****Sec 9(1B) :- Absorption of countervailing duty**

Where the Central Government, on such inquiry as it considers necessary, is of the opinion that

- ➔ absorption of countervailing duty has taken place
- ➔ whereby the countervailing duty so imposed is rendered ineffective,

it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation.—For the purposes of this sub-section, “**absorption of countervailing duty**” is said to have taken place,—

- (a) if there is a decrease in the export price of an article without any commensurate change in the resale price in India of such article imported from the exporting country or territory; or
- (b) under such other circumstances as may be provided by rules

Sec 9(2A) :- Exemption for EOU and SEZ

Notwithstanding anything contained in sub-sections (1) and (2), any countervailing duty imposed shall not apply to article imported by a **100% export-oriented undertaking or a unit in a special economic zone**, unless,—

- (i) it is specifically made applicable in such notification or to such undertaking or unit or
- (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, countervailing duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation.— For the purposes of this sub-section,—

- (a) the expression “**100% export-oriented undertaking**” shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944;
- (b) the expression “**special economic zone**” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

2nd Proviso to Sec 9(6) :-Revocation of CVD before specified period

Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time

Special Discussion on Anti-Dumping Duty**Sec 9A(1B) :- Absorption of Anti-Dumping duty**

Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that

- ➔ absorption of anti-dumping duty has taken place
- ➔ whereby the anti-dumping duty so imposed is rendered ineffective,

it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation.—For the purposes of this sub-section,
“**absorption of anti-dumping duty**” is said to have taken place,—

- (a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or
- (b) under such other circumstances as may be provided by rules.;

Sec 9A(2A) :- Exemption for EOU and SEZ

Notwithstanding anything contained in sub-section (1) and sub-section (2), any anti-dumping duty imposed shall not apply to articles imported by a **100%. export-oriented undertaking or a unit in a special economic zone**, unless,—

- (i) it is specifically made applicable in such notification or to such undertaking or unit; or
- (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation.—For the purposes of this section,—

- (a) the expression “**100%. export-oriented undertaking**” shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944;
- (b) the expression “**special economic zone**” shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005.

2nd Proviso to Sec 9A(6) :-Revocation of CVD before specified period

Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time