

**VOLUME-III**

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**CHAPTER – ONE**  
**IMPORT AND EXPORT BY AIR (ACC)**

**INTRODUCTION:**

(1) All the Import and Export Cargo for the purpose of their Customs clearances are brought to Air Cargo Complex which is nominated as Customs area where besides their clearance, their further movement and traffic are also facilitated. In order to regulate movements of such cargo at the stage of Import and Export respectively, various procedures have been established keeping in view the legal and administrative requirements. Further, towards the compliance of these requirements, respective agencies/authorities operating at Air Cargo Complex are required to perform and function in consonance with such procedures in their sphere of activities. As far as the function and duties of Preventive formations including the field formations are concerned, the same are required to be viewed with reference to the nature /categories of cargo vis-à-vis the respective areas of operation being followed in these cases.

Keeping in view the above position, while bringing out the aspects and procedures relating to the respective areas of operations involved at Air Cargo Complex, the nature of work and duties of the preventive formation have been accordingly incorporated and discussed in the succeeding paras.

**(2).A A brief note bringing out the Nature of Work and procedures to be followed in respect of different categories of Import Cargo at Air Cargo Complexes without EDI Facility.**

- (1) Upon arrival of the Import Cargo by Air, concerned Airlines Representative would ensure submission of the Import General Manifest in two sets duly stamped and numbered and completed in all manner to the Customs, Station Duty Officer (SDO) and thereupon in the presence of 'Import Freight Officer' (i.e. an officer of Customs, posted at the Airlines Warehouses), the concerned representative of the Airlines will sort out and arrange the breaking segregation of such import cargo in the following categories, namely;

- i. The import cargo meant for clearance through A.C.C. which include excess cargo landed, if any.
- ii. Cargo in transshipment and destined for other Customs port /Air port.
- iii. Transshipment Cargo destined for foreign port(s) / Airport.
- iv. Cargo consisting of Airlines' stores and
- v. Import cargo for clearance under Direct Delivery facility.

(II) The aforesaid break up and segregation are required to be furnished in the respective proforma as indicated in Annexure 'A' and thereupon based on such statement, challans for each of the above said type of the cargo will be prepared by the Airlines representative, containing all correlative material particulars of import (as contained in the IGM, B/Lading etc.) which would be duly countersigned by Custom's Import Freight officer, IFO.

(III)(a) All such accounted and recorded Import Cargo will be thereafter shifted to the custodian of Air Complex Cargo to facilitate necessary further actions for the purpose of clearance of cargo falling under each of the above-specified categories.

(b) The IFO, the concerned officer of Customs having control over airline's warehouse will also maintain a Register / Diary incorporating other material particulars pertaining to the transportation and transfer of such cargo to the Air Cargo Complex Warehouse.

(c) Whereas in respect of consolidated cargo, the IFO (W/H) will forward such cargo under challans to the "Break Bulk Unit" of the A.C.C. and shall obtain an acknowledgement from the Custodian and the Customs Break-Bulk Officer who would thereafter segregate and account for each type of the Cargo.

**Annexure: "A" : Annexed to this Chapter at (Internal Page 27- 28)**

**(2) B Procedure to be followed in respect of EDI based IGM at the Air Cargo Complexes:-**

At the Customs stations where Indian Customs EDI system is in operation, the Import manifest shall be filed through electronic mode.

The procedure for filing IGM through electronic mode in EDI system is given in the CBEC Circulars No. 110/2003 dt.22/12/2003 and 30/2004 dt. 16/4/2004 and Circulars & P.N. of the Commissioner of Customs (Import), Air Cargo Complex, Mumbai –Annexure AA-(i) to Annexure AA-(iv). (Reference: Internal Page Nos. 28-48).

**(3) Instructions relating to maintenance of statements and records by the Customs Warehouse Officer IFO, ACC.**

- (l) (i) Besides the above stated functions of the Airlines' Import Freight Officer, (Custom, performing as Warehouse Officer, it is mandatory and necessary that the IFO W/H ACC maintains a consolidated and comprehensive record in the form of IGM register in terms of proforma "B" appended below. Accordingly, all import related details relating to various types of cargo covered by each manifest are required to be incorporated in the IGM Register, so that each of the manifest can be finalized.

**IGM Register:**

- (ii) As far as the Airlines Stores are concerned, these upon arrival shall be taken to the respective bonded warehouse against the challans under Customs Escort i.e. the concerned Bond Officer, who shall also acknowledge the receipt of the said cargo to the IFO of warehouse of A.C.C.
- (iii) Upon observance of the above formalities relating to segregation, transfer of respective types of cargo and after enlisting such consignment in the IGM register, the Superintendent (Prev.) I/c of the warehouse shall ensure that the documents relating to transfer of the cargo to ACC, Airlines Bonds and also in respect of cases of Direct Delivery, W/House etc. are annexed to the respective manifest. The IGM Register is required to be maintained as per Proforma in **Annexure -"B"** (Internal Page Nos. 48-49)
- (iv) Besides the maintenance of the above discussed IGM Register (in terms of Annexure-B) the IFO of Warehouse, ACC is also required to check that all

entries relating to receipt of import cargo are maintained in the **Warehouse Register** to be maintained by the Representative of A.A.I. / Custodian and ensure that these receipt entries cover all the manifested goods and accordingly each consignment shall be accorded "R" Number (Register Number). The said Warehouse Register is required to be maintained as per the entries prescribed in **Annexure 'F' which is appended / Annexed** to this chapter. (Internal Page:49)

(v) It is pertinent to note that all packages entered in the Manifest Register (i.e. **Annexure-B**, proforma), should tally with the entries contained the W/House Register (as per **Annexure 'F'**) and the custodian will be able to finalize and close the manifest. However, in the event of non-receipt of any manifested goods in the main ACC Warehouse, the Superintendent (Prev.) shall make necessary verification and submit report to the Asstt. Commissioner, who upon taking note of such position will direct for suitable and necessary actions in this regard. **Similarly excess packages landed if any, the same shall be reflected in the respective register and upon bringing to the notice of Assistant Commissioner, necessary verifications with the concerned Airlines shall be made which should be followed by suitable and necessary actions.**

[ **Board's circular no. 89/98-Cus, dated 03-12-1998 from F.No.450/147/98-Cus.IV**

### **Import Freight Officer ( I.F.O.) [ Functions of the Preventive Staff]**

He is the officer who deals with all the Cargo Imported at Air Cargo Complex. The Important functions of the Import Freight Officer (I.F.O.) are –

- 1) receipt, signing and keeping records of I.G.Ms and Import Cargo Break-ups of all the flights bringing Cargo.
- 2) supervision of unloading of Import cargo , inspection of the damaged cargo.
- 3) maintaining IGM Register.

- 4) receiving the cargo to be cleared from the Air Cargo Complex, into the Custodians Warehouse.
- 5) supervision of depalletising of Break-bulk Cargo at Air Cargo Complex and forwarding the same into the Custodians Warehouse or for Transshipment.
- 6) signing the Import documents, transfer challans for the Import cargo.
- 7) assisting Superintendent (P)/ CTM in registering and scrutiny of the CTMs.
- 8) maintaining CTM Register and other records of Break-bulk cargo.
- 9) forwarding of Import cargo, which is over 14 days old, to the AAI Warehouse in double-lock vans
- 10) putting up to the Asstt/Dy. Commissioner (Air Cargo Complex), all the cases of short/excess landed cargo.
- 11) forwarding of IGMs, challans, and other documents to the Office Superintendent /Air Cargo Complex for necessary action.

**Instructions in respect of import consignment to be cleared at ACC.**

(3)(II)A. Out of the above stated various types of receipted cargo at the ACC Warehouse, the Custodian (i.e. IAAI / Air India as the case may be) will maintain separate record in terms of Annexure 'C' in respect of the consignments meant for clearance through AC Complex. Such consignments meant for clearance at ACC will be entered and accounted in terms of "Annexure 'C' which is annexed to this Chapter.

(3)(II)B. With regard to the clearance of such cargo from ACC, these are required to be covered by prescribed authentic documents namely Bill of Entry / Baggage Declaration Form or Transshipment Permit, which would be filed by the concerned importer and/or his authorized representative. The Preventive staff attending to the import clearance of baggage and/or to the import consignment if assigned in this behalf, shall ensure that the forwarding of the respective import consignments by the concerned custodian is made for the purpose of inspection

/ examination only pursuant to a specific endorsement made by the **concerned** Baggage Superintendent/Shed Appraiser attending to such import consignments. Further, in the case of import baggage, the same should be sealed upon examination before storing them in the Warehouse. Upon completion of all the formalities, the concerned Superintendent (Prev.) will accord an order for delivery / clearance of the baggage whereas in respect the other import cargo and transshipment cargo, concerned Shed Appraiser will accord Order for delivery (i.e. out of charge order) of the examined consignments.

- (3)(II)C. As the Preventive Formation exercises control over the cleared imported Consignment, from the Air Cargo Complex, the Officer posted at the gate will enter all the correlative particulars of the respective B/Entry, Baggage form and/or Transshipment Permit etc. in the register maintained at the gate. This function being very crucial in nature, the officer at the gate besides being vigilant is also required to ensure that he should inspect and ensure that the respective documents (B/Entry, Baggage form) covering the cleared consignments, are contain all the requisite endorsements and requires to be complete in all manner.

#### 4. **Import Cargo Delivery Gate Officer (Functions of the Preventive Staff)**

The above gate is for the delivery of the Import cargo of various types.

The procedure for passing the Import cargo through this Gate is given below.

- (1) When the cargo is brought to the Gate for delivery, the Gate officer shall check the duplicate Bill of Entry to see whether the Appraising Officer has given out of charge for the cargo. He shall also ensure that the relevant stamp like HC, HD, IDF, ADF (HC–home consumption cash paid, HD-home consumption – duty from deposit, IDF-Import duty free, ADF-appraised duty free etc.) alongwith the computer stamp, like compare stamp and out of charge stamp appear on the Bill of Entry.
- (2) He shall physically check the cargo as per the Bill of Entry to verify the Marks and Nos., Rotation No, Airway bill No, Total No of packages shown in 'out of charge' etc. to correlate the consignment with the Bill of Entry.
- (3) He shall then allow the cargo after making entries in the Cargo Register.

- (4) He shall verify the sealed sample with the orders passed by Appraiser on Bill of Entry while the sample is passed out to be deposited with Dy. Chief Chemist Laboratory. Entry shall be made in the Sample Register.
  - (5) In case of T.P., Bond and other such cargo, forwarding note on the documents shall be checked by the Gate Officer and it shall be ensured that the escorting officer accompanies the cargo. Entry of such cargo shall be made in the relevant Register by the Gate Officer.
  - (6) Duplicate copies of the Bill of Entry and other documents shall be collected and endorsed by the Gate Officer and kept in safe custody to be forwarded to Manifest Clearance Deptt. on the next working day.
  - (7) The Gate Officer shall ensure the opening and closing/ locking of the Gate.
- (4)(I). **Instructions and Procedures to be followed by the Preventive formation in respect of movement / transfer of imported consignments from Airport ACC to ICDS / CFS / Airports ACCs.:**

Subsequent to large no. of representation from the trade and industry, proposing / transshipment of consignments imported at ACC to ICD / CFS / other port and ACCs, the Ministry upon taking into consideration the hardships and the practical difficulties being faced by them, has consequently permitted such transshipment of the imported cargo under bonded trucking facility from ACC to above mentioned nominated places of clearance.

In relation to such facility, pursuant to request made by the airlines, in terms of Chapter under sec. 45(1) of the Customs Act, 1962, the Airlines in terms of the provisions of section 45 of the Customs Act 1962, the Commissioner of Customs will appoint the Air lines or their approved agent in the custodian of all the cargo(es) to be transshipped under bonded cargo trucking facilities from airports/ACCs to the other inland ICDs, CFS, Airport / ACCs by Road. Such permit shall be valid for one year and thereafter shall be renewed for three years.



- (i) In respect of such import cargo sought for transshipment the relevant, import manifest should indicate the final destination for which transshipment was required.
- (ii) Transshipment of such import cargo will be governed by the provisions of Chapter VIII of the Customs Act, 1962 and also the provisions of imported goods (conditions of transshipment) Regulations 1995. As the preventive section (formation) attends to all the Bond related procedures and actions to ensure safeguarding of revenue involved in respect of such bonded goods, it is very pertinent and necessary that the preventive staff attending to such clearances under bond facility ensures the following:
- (a) The Superintendent (Prev.) assigned in this behalf will ensure that the custodian/airlines executes a suitable bond with Bank Guarantee for an amount approved by the Commissioner of Customs upon removal of such bonded goods. The appropriate amount shall be debited from the running bond and upon receipt of the goods at the destination the Bond amount would be credited. All the custodian will be responsible for any shortage or pilferage of the cargo. While the custodian will insure such goods for full value as well as for the duty involved, "the preventive officers" will arrange to verify and ensure that the "Space Certificate" issued by the concerned Customs & Excise authorities having jurisdiction over the place of destination. If the practice of issue of Space Certificate is not followed in that event, it should be ensured that the bonded consignments have been received properly and all endorsements made are authentic.
- (b) With a view to safeguard the **revenue**, it would be appropriate, if such transferred bonded consignments, are entered at port / ACC / ICD of destination as "Additional Items on Import" under the cover of a Supplement Manifest and upon clearance, copies of such finalized manifest / Report shall be forwarded to the concerned AC from where the bonded goods were received. As per the earlier practice, the Bond

used to be discharged and the Bank Guarantee used to be released, upon production of proof of receipt of goods at the ICDs/CFS, Bond/ACCs etc. at the place of destination. However receipt of such goods can always be prone to misuse and as such it also sufficiently covers the aspect of revenue (duty) involved on such goods. Under the circumstances, a copy of supplementary Manifest, containing correlative particulars like relevant B/Entry No. & Amount of duty, period etc. Such supplementary manifest would also help in finalization of the relevant / Import manifest and place of import (**i.e. ACC**). Simultaneously requirements of Bond will also be complied and also the invocation of duty and other liabilities will also be substantiated in all such cases.

(c) The concerned officers from the preventive formation while facilitating the movement of such bonded goods will ensure that such cargo remains in the Warehouse which is specifically meant for transshipment goods only. Such Warehouse should have double locking system and for storing of transshipment cargo, preventive officer will be posted at the airlines/ Custodian's Warehouse on cost recovery basis. Besides in the event of transfer and transportation of such goods, preventive staff shall be posted at the Airlines / Custodians warehouse on cost recovery basis. Thus, a preventive supervision is essential to safeguard the larger interest of revenue and also for overall control over the movements of Cargo.

(d) In all the cases involving transshipment of goods under bond facility, the entire procedure being followed including shifting / transfer of goods, their containerized stuffing and sealing are required to be carried out under the supervision of the preventive staff. The concerned preventive staff at the conclusion of the above work will endorse all the copies of T.P. applications, certifying the supervision of loading and sealing of such bonded cargo. Upon completion of the above procedural requirements and subsequent to dispatch, the

relevant entries will be made in the register for closure by the transshipment officer.

- (e) Upon receipt of bonded / sealed consignment at the other Airport / ICD / ACC / CFS of destination, the Airlines representative / custodian shall make necessary arrangement to remove and store/warehouse the same with the custodian appointed under the provisions of Section 45 of the Customs Act, 1962. It is equally important that the Custodian / Airlines representative submits within 30 days, the proof of receipt of bonded goods at the place of destination.
- (f) It is also pertinent that the Custodian/ Airlines representative also submits copies of Supplementary Manifests with details of the duty paid clearance of bonded goods, which would facilitate discharge of Bank Guarantee, as the same was earlier considered and filed towards the duty liability.
- (g) The custodian / airlines representative will solicit / engage the services of preventive officers for the aforesaid work on cost recovery basis.

## 5. **Transshipment Cargo:**

- 5.A. Before proceeding with the types (categories) of transshipment cargo and the procedures relating to transshipment of these types of cargo, it may be distinguished here that the preceding sub-chapter deals with the cases of import cargo which could not be directly imported at ICDs, CFS and other Airport/ACC for their final clearance. In respect of such cases, Board pursuant to a decision made vide Circular No.50/99-Cus dated 22/03/1999 – File No.446/69/98-Cus-IV, the transfer of such goods under the cover of Bond and Bank Guarantee to ICDs, CFS and other Airport/ACC for their ultimate clearance have been allowed.

5.B. In relation to such type of cargo, the officers at Air Cargo Complex also attend to & deal with transshipment cargo, which is comprised of three types of cargo. All these types of transshipment cargo, as mentioned below are governed by the Conditions of Transshipment Regulation, 1995.

- (i) Arriving from Foreign Ports to local Customs Port.
- (ii) Arriving from Foreign Ports and also destined for another Foreign ports.
- (iii) Originating from Local Customs port and destined to Foreign ports.

5.B.I. **From Foreign to Local** :

(i) In respect of such cargo (import consignments) meant for transshipment to different domestic destinations, upon arrival and undertaking their break bulk and warehousing (under double lock system/facility), the concerned airline or its representative will file Transshipment Application i.e. Cargo Transfer Manifest (CTM) as provided under section 54 of the Customs Act, 1962. Such application shall be prepared IGM wise and destination wise, covering the cargo meant for transshipment, as specified in the Transshipment Regulations, 1995.

(ii) Upon submission of the above stated application, the Transshipment Cargo Officer (Preventive Officer) shall verify the correctness of the particulars and will also register the same in CTM and ascribe / endorse the said serial number of the register to the copies of the application. All these particulars shall be verified and checked by the Superintendent in-charge of CTM. Thereafter such T.P. Cargo will be forwarded to the warehouse of the domestic air carrier under preventive escort and an acknowledged copy of CTM shall be retained by the Transshipment Cargo Officer.

(iii) Upon receipt of goods under due acknowledgement, the staff posted in the warehouse of domestic carrier will enter the receipt of packages

inconsonance with the destination. Thereupon the warehouse officer of the domestic airline will assign EGM No., wherein such T.P. Cargo shall be distinctly manifested as international cargo, which will be brought on board under the preventive supervision and an endorsement to this effect shall also be made on the EGM by the escort officer. Further two copies of the EGM shall be forwarded to the port of destination and all correlative EGM particulars in II also be maintained in the EGM register by the domestic warehouse officer. The concerned carrier or its representative shall furnish / return copy of the said manifest duly acknowledging the receipt by the proper officer at the port of destination. If such requirement is not complied within stipulated period of 45 days, the Superintendent In charge of Transshipment Warehouse shall issue necessary demand notice to the domestic carrier within seven (7) days.

(iv) In order to safeguard the liabilities including revenue implications involved in respect of such import cargo being transhipped to local destination, the concerned domestic carrier shall execute Bond, in terms of the Goods Imported (Conditions of Transshipment) Regulation, 1995. Such Bond shall be executed for the amount of declared value and in the absence of declared value, the same shall be determined at the rate of Rs.400/- per Kg. (This aspect needs to be reviewed).

In case event of any default like non-submission of acknowledged copy of EGM or some consignments if not accounted for under such circumstances the duty shall be demanded and recovered from the carrier and in the event of non-payment, the Bond shall be enforced and no transshipment may be allowed by the carrier.

**5.B.II. Transshipment Cargo received from Foreign Port and destined to a Foreign Port/ Airport :**

With regard to the import cargo meant for and destined for certain foreign port, in such event the Inquiry Freight Officer, upon making necessary entries in the relevant register would ensure warehousing of such transshipment cargo in a

separate and safe enclosure and thereafter the said transshipment cargo shall be loaded on board the carrier for the port of destination under the escort of the preventive officer who shall make suitable endorsement on the Transshipment Bill certifying the shipment of the tranship cargo. In case, such T.P. Cargo is required to be forwarded through the other airlines / carriers, in such event IFO will forward the cargo to the warehouse of the concerned airlines, where the warehouse officer of the receiving foreign airline shall ensure its safe warehousing and consequent shipment in the above specified manner. Upon shipment, the entries in T.P. register shall be closed after proof in regard to the export of cargo is furnished by the E.F.O.

**CBEC Circular No. 06/2007 dt. 22/01/2007- Annexure AA –(v)**

**Transshipment Cargo Officer ( T.P.O.) (Functions of Preventive Staff)**

His main duties are-

1. He shall attend to all the transshipment of cargo (TP cargo) and maintain the TP Registers for Local to Foreign, Foreign to Foreign and Foreign to Local cargo and shall enter the details of TP cargo in the relevant TP Registers.
2. The Consolidated and TP cargo (Foreign to Local) shall be forwarded by the T.P.O. to Domestic Carrier Airline under CTMs, reflecting all the particulars of the cargo. Care shall be taken to indicate House Air Way Bill number in addition to other particulars in respect of Consol cargo.
3. He shall escort such cargo to the Warehouse of the Domestic Carrier.
4. Local to Foreign and Foreign to Foreign cargo shall be forwarded and received under CTMs in the W.H of the concerned onward carrier Airline by the T.P.O.
5. The entries in the T.P. Registers shall be closed by the T.P.O. on the basis of the E.G.M. of the flight, international as well as domestic, carrying the T.P cargo onwards.
6. EFOs of the Batches while receiving EGMs along with Shipping Bills, shall collect sufficient copies of EGMs from those airlines and despatch

the same to TPO in the Batch for closing the despatch column in their respective TP registers.

7. The T.P.O. shall maintain records of the receipt and despatch of all the T P cargo.

**5.B.III. Transshipment of cargo from local to foreign destination through another airport:**

- (i) In the case of export cargo being shipped through domestic carrier under transshipment facility for its onward shipment to foreign destination through a gateway airport, the same should be covered by the relevant Shipping Bill containing all material particulars including the domestic carriers' name and flight no. and also the name of the transshipment airport. Details of such cargo shall also be entered in separate export transshipment Register. In respect of such cargo, domestic carrier shall give a Bond to the Customs for safe and secure export of the goods from India. Such Bond normally covers the value of the cargo backed by / coupled with the security as decided by the Commissioner but may not exceed more than 10% of the Bond amount. Further such cargo will be carried by the domestic carrier under EGM.
- (ii) Upon arrival of the cargo at the gateway airport, it would be deposited in the transshipment warehouse of the domestic carrier on the strength of the above said EGM copies. The Warehouse Officer at the domestic carrier warehouse will enter such receipt in the IGM Register maintained by him. Upon receipt and entry in the register, the domestic carrier shall prepare Cargo Transfer Manifest and also make entries in the Transshipment Register. In respect of such export cargo under transshipment facility, upon grant of permission from the Preventive Superintendent, such cargo would be taken and shifted under the preventive supervision to the warehouse of the foreign airline. Upon shipment of the goods under EGM, the foreign going carrier will present the copy of the Export Manifest to the Officer-in-charge of the

Transshipment Warehouse of the domestic carrier, who would close the relevant entries in the above stated transshipment register maintained by the domestic carrier. On receipt of proof of export, the Customs Freight Officer at the originating airport shall make endorsement on all copies of shipping bills including E.P. Copies and AREI copies which would authenticate the export of the declared Cargo (Consignment).

- (iii) In the event of default the conditions of the Bond shall be enforced, if on demand the liabilities are not discharged. The Transshipment Officer will submit the statement to the Preventive Superintendent-in-charge of the Warehouse and the concerned Asstt. Commissioner will undertake periodical checks / verifications with reference to receipt of the proof of export of transshipped cargo.

[Based on public notice no.19 dated 19/10/1996 issued by the Commissioner of Customs, ACC, Mumbai vide File No.S/3 (P) – CTM-37/96].

**Preventive Officer/Domestic Carrier Airline Warehouse (Functions of Preventive Staff) \***

The Government has permitted some Domestic/International Airlines to carry the Import/Export in their flights on the domestic run. These Airlines have their own separate warehouse to store such Import/Export Cargo pending transportation. In these warehouses, the Preventive Officers are posted round the clock. These officers attend to the Foreign to Local and Local to Foreign TP Cargo transported by these carrier Airlines.

**6** (A) **Export Cargo** – The movement and clearance of the aforesaid (4) four categories of Export cargo which are as under –

- (i) The cargo booked for Export by the Airlines or by their GSAs locally is carted to Export Shed of the Air Cargo Complex for examination / inspection by Customs for clearance and subsequent Export. After the cargo has been cleared for



Export, the same is moved from Air Cargo Complex to the Warehouse of the concerned Airline under Challans and shipped under Customs Supervision.

- (ii) The cargo booked for Export by local freight forwarders is presented to the concerned Airline and booked as consolidated cargo. The same is carted to Air Cargo Complex and cleared for Export as (i) above.
- (iii) Export Cargo carried by the authorised Domestic Carrier Airline is first entered and stored in its Warehouse. Such cargo is then transferred to the Warehouse of the concerned International carrier airline under CTMs and Preventive Escort. Thereafter the same is shipped under Customs Supervision. The Shipping Bills/ Advices are to be suitably endorsed regarding Export of subject goods and despatched to the airport of origin of such cargo.
- (iv) The Cargo booked for export by the Airlines or by their GSAs locally is carted to the Export Shed of the Air Cargo Complex for examination / inspection by the Customs for clearance and subsequent Export from other International Airport. Upon clearance of such export cargo it is thereafter moved to warehouse of the concerned domestic Airlines under Preventive escort and transferred under bond from the domestic Airlines to the International Airport under the cover of an Export General Manifest for export. The said EGM is duly endorsed by the Customs officer regarding the export of the subject cargo to the final destination and thereupon the officer return a copy of the EGM to the Preventive officer at the domestic Airlines warehouse to facilitate the closure of the entries and cancellation of Bond.

## 6 ( B ) CATEGORIES OF EXPORT CARGO

The Export Cargo is usually categorized into General Cargo and Perishable Cargo and is examined and cleared for Export by the Customs in separate enclosures in the Cargo Complex.

### ( i ) Export Cargo ( General )

The Export Freight Officer (E.F.O.)/ACC will check that only such Export cargo as has been passed by the Appraising staff is moved into the area reserved in the Export side of the Air Cargo Complex for such Cargo. He will tally the Export cargo being removed to Airlines Warehouses for making pallets and allow loading the same into the vans with reference to the challans and the Shipping Bills/Export documents. He will indicate on the challans, the time and date of removal of the Export cargo and will also attest the challans. He will maintain a Register showing the following particulars:

Date	Time of departure of van	Registration No. of the van	Total no. of packages	Shipping Bill No.	Name of Airlines	Time of the Receipt of Challan indicating receipt of Cargo, checked by EFO
1.	2.	3.	4.	5.	6.	7

The E.F.O. (ACC) will then lock the van, one key of the lock will be available with the E.F.O. (Airlines Warehouse). The van(s) will then be taken by the representative of the Airlines to their Warehouse. The E.F.O. (W/H) will thereafter allow and supervise the unloading of the cargo after opening the lock with the key deposited with him. He will check the number of packages with the number shown in the challan and will sign

the challan in token of having checked and received the packages. This copy of the challan will be produced by the representative of the Airlines before the E.F.O. (ACC) who will file such copies serially for his record.

The E.F.O. (W/H) will ensure that all Export cargo received in the warehouse has been airlifted within 24 hours. If any cargo has not been airlifted within the specified time, he will allow this cargo to be taken back to the Air Cargo Complex for re-examination. The E.F.O. (W/H) will maintain a Register showing the following particulars.

Date	Time of arrival of van	Registration No. of the van	Total no. of packages	Shipping Bill No.	No. of packages shipped in time	No. of packages not shipped in time & taken back to the Cargo Complex.
1.	2.	3.	4.	5.	6.	7.

The Export Freight Officer (ACC) will carry out routine checks to verify that the vans carrying Export cargo move via the routes prescribed by the A.A.I.

**Export Freight Officer ( E.F.O.) - (General Cargo) (Functions of the Preventive Staff)**

He is normally posted in the Export shed and he oversees the movement of general cargo, examined and cleared by the Appraising staff, to the warehouse of the concerned airline or to the aircraft.

His main duties are-

- (1) He shall keep a general supervision in the Export Shed.

- (2) He shall check and supervise the loading/removal of Export cargo , which has been examined and passed by Appraising staff, to the concerned Airline's W/H through the freight vans under double lock system.
- (3) He shall receive the duly completed EGMs with Shipping Bills and dispatch the same to the Air Cargo Manifest Clearance Department, if not submitted by the Airline/Agents.
- (4) He shall ascertain about any shut out-cargo and take necessary steps.
- (5) He shall make endorsements of shipment on the Shipping Bills.
- (6) He shall certify AR 4 forms/EP copies of the Shipping Bills for shipments of cargo within 7 days of the shipment.
- (7) He shall attend to Re-exports of Motor vehicles imported under Carnet/Triptide.
- (8) As the time of re-Export of the vehicle under the Carnet/Triptide procedure, the E.F.O. shall verify that the vehicle is re-Exported within the prescribed period of six months or such extended period by the competent authority. The E.F.O. supervising the shipment shall check the particulars of vehicle with those shown on the Shipping Bill / Carnet and, if he is satisfied of the identity, shall give "let ship" order on the Shipping Bill, after examining the vehicle for possible places of concealment of contraband. After completing the shipment and endorsement, the papers are to be forwarded to Carnet/Triptide officer or the Port of entry of the vehicle. Entry in the Passport of the passenger is to be cancelled.
- (9) The cargo after 'Let Export" order given by the Appraiser shall be carted out by the respective airline without much delay so that there is no congestion in the Export shed and the EFO will find it convenient and easy to search out the unexamined cargo. This will help the smooth flow of cargo in to the Export shed. This is Important on the anti smuggling point also.

**(ii) Export cargo (Perishable):**

With the transportation of cargo by air, it has now been possible to transport perishable cargo to number of destinations. Air transport provides quick, convenient

and easy movement of such cargo. As the time is a crucial factor involving packaging, carting and shipping of perishable cargo, it is Important that processing of Import/Export formalities thereof have also to be completed with minimum of delay. To facilitate this, special arrangements are made in all the Air Cargo Complexes. As these formalities are to be completed at times beyond office hours, the same have been entrusted to the Preventive staff, which are posted round the clock at the Cargo Complexes.

The Exporters have to process the Shipping Bill in the Export department of the Air Cargo Complex during office hours. Thereafter the cargo is carted to the Cargo Complex and booked under an Airway Bill with the carrier Airline. Thereafter, the Exporter or his agent has to present the cargo along with the processed Shipping Bill and the Airway Bill to the E.F.O. (Perishable Cargo). The E.F.O. shall then inspect/examine the cargo in the light of the 'Examination order', endorsed by the Export Department, on the Shipping Bill. If everything is in order, the E.F.O. shall write the inspection / examination report on the reverse of the Shipping Bill. Thereafter, the E.F.O. / Superintendent (Cargo) shall allow the Cargo for Export by giving 'Let Export' order. In case of any discrepancy, the Export department shall be intimated for further action.

The Export Perishable Cargo so passed will then be handed over by the Exporter/agent to the representative of the carrier Airline, who will remove the same to their warehouse for palletisation and then loading on the Aircraft under the supervision of E.F.O. (W/H). The shipment of such Cargo shall be certified on the Shipping Bill by the E.F.O. (W/H) of the concerned Airline.

The completed Shipping Bills shall be submitted in the Export department alongwith the Export General Manifest by the Exporter/Airlines.

**Export Freight Officer (E.F.O.) (Perishable Cargo) (Functions of the Preventive Staff)**

He is the officer who deals with the examination and clearance of export cargo which is perishable in nature.

His main duties are as follows-

- (1) He shall ensure that only bonafide goods for Export are allowed in the perishable cargo shed.
- (2) He shall ensure that only bonafide Exporters or their representatives, carrying perishable cargo under Export, are allowed entry in to the perishable shed.
- (3) He shall examine/inspect the perishable Export cargo, under the supervision of Superintendent (P) Batch, as per orders given by the Export Group and write the examination report on the Shipping Bill, make the entries in the Shipping Bill register and thereafter allow the goods to be loaded.
- (4) He shall supervise the palletising /loading of the examined and passed perishable Export goods by verifying the relevant documents and make shipment endorsements.
- (5) He shall ensure the despatch of completed Shipping Bills to EGM section.
- (6) He shall ascertain from the Airlines about any shut -out cargo and take necessary steps.
- (7) Endorsement on the Shipping Bills shall be made as below:  
 Shipped.....pkgs. by flight no.....dtd.....of  
 M/s.....  
 EGM No.....dt.....under my supervision.

Name and signature of the P O

**Clearance of Export consignment of perishable goods like fruits, vegetable goods like fruits, vegetables and flowers etc. at Airport:**

Please refer to earlier Circular No. 446/42/91-Cus. IV dated 6.8.91 which provides procedure for examination of cargo at different Customs stations.

2. It is reiterated that henceforth the perishable cargo at all Airport and Air Cargo complexes may not be examined in a routine manner. Such cargoes may be examined only where there is intelligence/information. The packages should not be opened during the processing of the papers. Whenever on intelligence or information, the packages

are opened and examined, the details of such information/ intelligence may be subsequently brought to the notice of the Joint commissioner/Additional Commissioner in-charge of Airport /Air Cargo Complex.

3. The Additional Commissioner or Assistant Commissioner may however check the packages to ensure that the Exporters have made proper declaration, However, necessary Phytosanitary Certificate from plant quarantine authorities or certificate from veterinary authorities or similar certificates as required by other agencies may be checked before clearance.

**[Board's Circular No. 33/96-Cus. dated 17.6.96 in F. No. 446/42/91-CUS-IV]**

**( iii ) Export Shed Gate Officer**

This is one of the Important postings of the Preventive Officer in the Air Cargo Complex. This Gate is used to bring the cargo to be Exported into the Export examination shed. The Gate officer shall be alert all the time keeping a strict watch on the cargo and persons moving through the Gate. Some of his duties are as below:

- 1 The Gate Officer shall ensure that only bonafide cargo is passed in through the Gate.
- 2 He shall allow only bonafide Exporters/representatives inside the shed through the Gate.
- 3 He shall check the documents vis-à-vis cargo, which is brought to the export shed for the purpose of export.
- 4 Any shut-out cargo going out of the Gate shall be passed out only after verification of proper permission and check of the cargo. He shall maintain a register for the same.
- 5 The Gate officer shall maintain a Register for all the cargo allowed into the export shed, in the following proforma:

Sr. No.	/date	Name of the Exporter	No. of Packages	Shipping Bill No.	Description	CHA No.	Remarks by Gate Officer	Signature of Gate Officer
1.	2.	3.	4.	5.	6.	7.	8.	9.

**Annexure 'A'**

### ARRIVAL CARGO BREAK-UP STATEMENT

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No. of Pkgs. of Bond manifested.	No. of Pkgs. received.	No. of Pkgs. of airline cabin stores to be stored in Airlines Bonded Warehouse.	Signature of officer taking over these pkgs.
1	2	3	4

---



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No. of Pkgs. of Airlines stores short landed.	Signature of the Bond Officer taking over these pkgs.	No. of Pkgs. to be delivered Directly.	No. of pkgs. excess landed
5	6	7	8
Viz. spare parts, material to be Stored in Air Company's Bonded warehouse			
9			

---

#### Details of Packages

Short landed (A.W. Bill No. & No. of Pkgs.)	Excess landed (A.W. Bill No. and No. of Pkgs.)
--	---



..... It is certified that all the packages manifested  
including...  
..... packages (as per details alongside) excess landed  
and/  
..... or except... packages (as per details alongside) short  
..... landed (score out which is not applicable) were  
landed.  
.....

Certified that the above particulars are  
of the Airline.  
correct.

Signature of the representative

Signature of the I.F.O.

**Annexure 'AA'(i)**

**F.No.450/53/2000-CusIV**  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Excise and Customs

**Subject: Filing of Import Manifest before arrival of the vessel or aircraft - reg**

I am directed to invite your attention to Board's Circular No. 110/2003-Cus, dated 22.12.2003 as also the Circular No.15/2004-Cus.,dated 16.2.2004 wherein a detailed procedure was prescribed for filing advance Import General Manifest (IGM) under section 30 of the Customs Act, 1962.

2. In view of the representations from the stakeholders as well as field formations, following amendments have been made in the procedure for smooth implementation.

- (i) The Bond and Bank Guarantee prescribed in para ( i ) of Circular No. 110/2003-Cus, dated 22.12.2003 has been dispensed with.
- (ii) Airlines/Steamer Agents/Shipping Lines/Consol Agents ( including 'any other person' notified as per section 30 of Customs Act, 1962 ) are assigned the business category codes as **AL ,SA, SL and CN respectively**. For the purpose of registration of Airlines/Steamer Agents/Shipping Lines with respect

to para ( i ) of Circular No. 110/2003–Cus, dated 22.12.2003 , the existing Airline Code or Steamer Agents Code or Shipping Lines Code already allotted to them shall be used for filing manifest and same shall be their registration number. As regards consol agents, their registration number shall be of 12 **digits ( 10 digit income tax PAN, followed by business category code , i.e,CN )**. A sample of registration number of a consol agent ( including 'any other person ' notified as per section 30 of the Customs Act, 1962) will look like **AAACK8719PCN**.

However, Airlines/Steamer Agents/Shipping Lines/Consol Agents shall be required to submit the information as per the [Annexure "A"](#) [which is a system compliant form and contains the information prescribed as per the **"FORM V"** and **"FORM VI"** of the Import Manifest (Aircraft) Regulations ,1976 and Import Manifest (Vessels) Regulations , 1971 respectively ], to the respective Commissioners, where they are operating , for capturing the details in the EDI System.

- (iii) At the time of registration, the requirement stipulated in the para 5 of **"FORM V"** and **"FORM VI"** of the Import Manifest (Aircraft) Regulations ,1976 and Import Manifest (Vessels) Regulations , 1971 respectively, which requires applicant to submit copy of contract or MOU or agreement entered into with the foreign authorizing agent, need **not** be insisted upon at this stage till further orders.
- (iv) Access to the system for filing IGM details will be allowed after the receipt of the applications in the [Annexure "A"](#) by the jurisdictional Commissioner . Because of paucity of time the verification of details will be done subsequently & a self-declaration may be taken in each case about the correctness of the declaration. In this regard the applicant will mention in [Annexure "A"](#), " the Airport/Port/ICD of verification ", i.e , the name of the Commissionerate where their details would be verified. In the case of any discrepancies observed at the time of verification the registered unit/party would be debarred from filing IGM. The concerned Commissionerate after the verification will send the registration number along with the name of the registered entity to webmaster of [www.cbec.gov.in](http://www.cbec.gov.in) , who inturn will post the details on the website for the information of all stakeholders. Verification of the declaration will be done only by the "Port/Airport/ICD of verification " mentioned in [Annexure "A"](#). Other ports etc. will not be required to do any further verification . In case of doubt they may refer to the Commissioner of "Port/Airport/ICD of verification".
- (v). In the case of Chartered flights where the consol agents themselves are entrusted with the responsibility of filing both master as well as house level details , the consol agents will have to be registered with the Customs as airline agent and will be allotted an ad-hoc/temporary Code (accepted by system), as per existing format for each such flight.
- (vi) The list of **short haul flights** is as per the [Annexure-I](#). The IGM details have to be filed in these cases before the arrival of the aircraft. However, as a transitional measure no penalty need be imposed under section 30 of the Customs Act, 1962 for a period of three months i.e , till 31.7.2004, if the IGM details are filed upto 4 hours of landing of such short haul flights.

- (vii) In the case of flights in domestic sector which carry transshipped imported goods from one Indian airport to another airport in India, it would be treated as **short haul flight** for the purpose of filing IGM under Section 30 of the Customs Act, 1962.
  - (viii) In the case of short haul voyages ,i.e., where the voyage from the last port of call is less than 4 (four ) days, the import manifest is required to be filed 10 hours before entry inward of the vessel. However, as a transitional measure , for a period of three months, that is upto 31.7.2004, the IGMs may be allowed to be filed anytime before the entry inward of the vessel. The list of short haul voyages is as per [Annexure-II](#).
  - (ix) As a transitional measure no penalty is to be imposed under Section 116 of the Customs Act, 1962 for a period of three months ,i.e., upto 31.7.2004, in case of amendments in IGM's of short haul flights and short haul voyages. In respect of other cases matter may be decided on merits.
  - (x) In the case of import /transshipment of imported goods through vehicles , i.e , other than vessel or aircraft, the IGM shall be filed upto 12 hours after the arrival of the loaded vehicle at the Customs station.
  - (xi) The amendment of IGM after the arrival of vessel or aircraft would **not** be treated as late filing . The veracity of the amendment would be examined by the Assistant/Deputy Commissioner of Customs for the purpose of invoking penal provision under section section 116 of Customs Act, 1962, subject to clause (ix) above.
  - (xii) Where ICES system is not operational , the hard copies of IGM shall be required to be filed manually, in advance as per the Section 30 of Customs Act, 1962.
  - (xiii) Where ICES is already operational but some Bills of Entry are filed manually , hard copy of IGM will have to be filed as per present practice but late filing of hard copy will not be considered as non-filing or late filing of IGM, provided that the soft copy has been filed in time.
3. Kindly bring the above instructions to the knowledge of all concerned for strict compliance.
  - 4 Director General ( System & Data Management) to kindly effect necessary software changes to operationalize the filing of advance IGM's and prepare a detailed procedure for the benefit of stake holders. The Systems Managers/ Administrators at all ICES locations shall ensure that adequate knowledge is imparted to all stake holders prior to 23.4.2004.
  - 5 Draft revised Public Notice provided by DG( Systems) prescribing the procedure for filing the details of IGM electronically may be implemented

strictly.

6 Hindi version will follow.

D.S. Garbyal  
Under Secretary to the Government of India  
Phone No . 23094182

**Annexure 'AA'(ii)**

**Circular No.110/2003-Cus.**  
December 22 , 2003

**F.No.450/53/2000-CusIV**

**Subject : Filing of Import Manifest before arrival of the vessel or aircraft -reg**

I am directed to invite your attention to Notification No. 111/2003-Customs (N.T.), dated 19.12.2003 , which specifies "any other person" for the purpose of section 30 of the Customs Act, 1962 as any person , other than the carrier, who is authorized to issue delivery orders in favour of an importer on the basis of which goods are permitted to be delivered to such importer by the custodian of the goods. The main feature of this notification is to allow various authorities like multi-modal operators, break bulk agents, consolidators, freight forwarders , NVOCC , etc., dealing with the delivery of imported goods , to file import manifest for a vessel or an aircraft .

2. Further, vide Notification No. 112/2003-Cus (N.T) and 113/2003-Cus(N.T) dated 19.12.2003 the Import Manifest (Vessels) Regulations, 1971 and Import Manifest ( Aircrafts ) Regulations, 1976 have been amended . Thus any person who delivers the import manifest for a vessel or an aircraft to the proper officer under section 30 of the Customs Act, 1962 , will be required to register themselves with the Customs. In order to ensure that the import manifest for vessel or aircraft are filed prior to arrival of vessel or aircraft, the following procedure have been formulated for compliance.

(i) The persons responsible for filing of the import manifest, both at Master as well as House level details , shall register with the Customs in advance . The application for registration shall be made to the Jurisdictional Commissioner of Customs in FORM VI or FORM V, as the case may be, of the said regulations . The application should be accompanied by a bond of Rs.50,000/- (Rupees fifty thousand only ) supported by a Bank Guarantee of Rs.10,000/- (Rupees ten thousand only) undertaking to file the manifest details as required.

(ii) The responsibility for filing the import manifest with Master level details shall rest with the person in-charge of the vessel or aircraft or their agent. The House level details shall be filed by a person specified as "any other person" under section 30 of the Customs Act, 1962. In case the "any other person" specified under section 30 is not registered under these regulations, then, the responsibility to file house level details shall rest with the person in-charge of the vessel or aircraft or their agent. The shipping lines or airlines should therefore ensure that the person authorised to issue delivery orders in respect of goods carried by them, are duly registered with local Customs. In case of failure to file the IGM in advance, action should be taken as per provisions of section 30(1) of the Customs Act, 1962.

(iii) At Customs stations where Indian Customs EDI system is in operation, the import manifest shall be filed through electronic mode.

(iv) In the case of vessels where the voyage from the last port of call exceeds 4 (four) days, the import manifest shall be filed at least 48 (forty eight) hours before the entry inward of such vessels. In any other case the manifest should be filed at least 10 (ten) hours before the entry inward of vessels.

(v) In the case of long haul flights (i.e, flight time of at least 3 hours from the last airport), the import manifest shall be filed within 2 (two) hours before the arrival of the aircraft and for short haul flights, before the arrival of the aircraft.

(vi) As regards the delivery of vessel's stores list and list of private property in possession of the Master, officer, crew, the same should contain the quantity of store on board at the time of departure from the last port of call and estimated quantity likely to be consumed till the grant of entry inward.

3. The registration as stated in para 2(i) shall commence immediately whereas the other provisions of Circular shall come into effect from the 18<sup>th</sup> of February, 2004.

4. Show cause notices issued in the recent past for non-filing of advance IGM's as per provisions of amended section 30, may now be disposed off taking a lenient view of the matter since the detailed procedure was all along under discussion between the Ministry and all the affected authorities & agencies.

5. Kindly bring the above instructions to the knowledge of all concerned for strict compliance.

6. Director General (System & Data Management) to kindly effect necessary software changes to operationalize the registration process & filing of advance IGM's.

**Annexure 'AA'(iii)**

**Subject : Filing of Import Manifest before arrival of the aircraft –reg**

The attention of all concerned officers is invited to Notification No. 111/2003-Customs (N.T.), dated 19.12.2003, issued by Central Board of Excise and Customs, New Delhi, which specifies "any other person" for the purpose of section 30 of the Customs Act, 1962 as any person, other than the carrier, who is authorized to issue delivery orders in favour of an importer on the basis of which goods are permitted to be delivered to such importer by the custodian of the goods. The main feature of this notification is to allow various authorities like multi-modal operators, break bulk agents, consolidators, freight forwarders, NVOCC, etc., dealing with the delivery of imported goods, to file import manifest for an aircraft.

2. The Board, further, vide Notification No.113/2003-Cus(N.T) dated 19.12.2003 amended the Import Manifest (Aircrafts) Regulations, 1976. Thus any person who delivers the import manifest for an aircraft to the proper officer under section 30 of the Customs Act, 1962, will be required to register themselves with this office. In order to ensure that the import manifest for an aircraft are filed prior to arrival of aircraft, the following procedure have been formulated for compliance.

(i) The persons responsible for filing of the import manifest, both at Master as well as House level details, shall register with the Customs in advance. The application for registration shall be made to the Commissioner of Customs, Air Cargo Complex, Sahar, Mumbai in FORM V of the said regulations. The application should be accompanied by a bond of Rs.50,000/- (Rupees fifty thousand only) supported by a Bank Guarantee of Rs.10,000/- (Rupees ten thousand only) undertaking to file the manifest details as required.

(ii) The responsibility for filing the import manifest with Master level details shall rest with the person in-charge of the aircraft or their agent. The House level details shall be filed by a person specified as "any other person" under section 30 of the Customs Act, 1962. In case the "any other person" specified under section 30 is not registered under these regulations, then, the responsibility to file house level details shall rest with the person in-charge of the aircraft or their agent. The airlines should therefore ensure that the person authorised to issue delivery orders in respect of goods carried by them, are duly registered with this office. The application for registration should be submitted to Deputy/Assistant Commissioner of Customs, Import Section, Air Cargo Complex, Sahar, Mumbai. In case of failure to file the IGM in

advance, action will be taken as per provisions of section 30(1) of the Customs Act, 1962.

(iii) The import manifest shall be filed through electronic mode under Indian Customs EDI system.

(iv) In the case of long haul flights ( i.e, flight time of at least 3 hours from the last airport), the import manifest shall be filed within 2 (two) hours before the arrival of the aircraft and for short haul flights, before the arrival of the aircraft.

(v) As regards the delivery of aircraft's stores list and list of private property in possession of the Master , officer , crew , the same should contain the quantity of store on board at the time of departure from the last airport of call and estimated quantity likely to be consumed till the grant of entry inward .

3. In view the above instruction the following directions should be strictly complied with by the officers concerned.

(a) The registration as stated in para 2(i) above, shall commence immediately, whereas the other provisions of this Standing Order shall come into effect from the 18<sup>th</sup> of February, 2004.

(b) The Deputy /Assistant Commissioner of Customs, Import Section, ACC, Mumbai will accept the applications for registrations and monitor such registration in EDI System by the Import Section.

(c) If any Airlines or their agents or authorized persons fail to comply with the above said instructions, the Deputy/Assistant Commissioner of Customs, i/c EDI Section, ACC will prepare a periodical report giving all details along with the names of such Airlines or their agents or authorized persons and forward the same to Import Section, ACC, Mumbai.

(d) The Deputy/Assistant Commissioner of Customs, Import Section, ACC, Mumbai will initiate action in terms of section 30(1) of Customs Act 1962, against the Airlines or their agents or authorized persons, who failed to comply with the above said instructions, on the basis of periodical report received from EDI Section, ACC, Mumbai.

(e) The Import Section, ACC, Mumbai will maintain proper record of registrations as well as adjudications, penalties imposed, recoveries etc in respect of Airlines or their agents or authorized persons, who failed to comply with the above said instructions.

**Sd/-**

**Annexure 'AA'-(iv)****Subject: Filing of Import Manifest before arrival of Aircraft – Reg.**

Attention of Airlines, Console Agents, Importers, Customs House Agents, Custodians of imported goods, officers of Customs and all others concerned is invited to provisions of section 30 of the Customs Act, 1962 and Notification No. 111/2003-customs (NT) dated 19.12.2003 read with Notification No. 17/2004-Customs (NT) dated 16.2.2004, Notification No. 113/2003-Customs (NT) dated 19.12.2003 and Board's Circular 30/2004- Cus, dated 16.04.2004.

2. Under the aforesaid provisions the Carriers or any other person(s) responsible for filing of Import Manifest are required to register themselves with the respective jurisdictional Commissioners of Customs and are required to file Import Manifest prior to arrival of the Aircraft at the respective airport.
3. The procedure for registration in the Indian Customs, EDI System (ICES) has been notified in **Public Notice No. 14/2004 dated 20.04.2004 which shall be strictly followed**. It may be noted that no Airline, Consol Agent etc. will be able to file IGM without registering in the EDI System as per the above P.N.

**Procedure for filing of manifests:**

4. The Registration No. followed by 4 digit Port Code (like BOM4), of the port at which the manifest is intended to be filed should be used for filing of IGMs.
5. For the purposes of filing of Import General Manifest (IGMs) under Indian Customs EDI-System (ICES) following procedure shall be followed:

**Filing of IGM by Airlines**



5.1 The Airlines shall file IGM against their Master Airway bills, in the same manner as they are filing at present. Now, since IGM shall be filed before arrival of the aircraft, the IGM No. would not be available at this stage. The IGM shall, therefore, be filed on the basis of: Flt No, Flt date & Flt time. In case the IGM is filed after the arrival of aircraft, the same shall be filed indicating IGM No. as assigned to the aircraft. The Format for entry of IGM at service centre is at **Annexure-B**. Flat file Format for filing of IGM by Airlines through ICEGATE is annexed as Annexure – **D**. On submission of the IGM at service center the system will generate a Job No. which shall be used for further reference till the final IGM No. is entered against the Job. No. In the case of filing of IGM through ICEGATE, the Flt No. & Flt date shall be used for further reference.

### **Filing of Consol Manifest by Consol Agents / Any other person**

- 5.2.1 Manifest in respect of Consolidated Cargo shall be filed by a Consol Agent or Any other person as specified in Board's Circular No. 30/2004-Cus dated 16.04.2004. The Format for filing of Consolidated Cargo through service center is prescribed in **Annexure-B** and Flat file format for filing through ICEGATE is specified in **Annexure-C**.
- 5.2.2 Consolidated cargo manifest shall also be filed under ICES prior to arrival of the aircraft and is independent of Airlines' manifest. If the consol manifest is filed after arrival of the aircraft, the same shall be filed with IGM No as assigned to the aircraft.
- 5.2.3 When the consol manifest is filed through service center, the existing procedure of checklist and submission will continue. On submission, a Job No. will be assigned by the system which shall be used for further references.
- 5.2.4 The total No. of packages in respect of all the HAWBs should not be more than total No. of packages against the respective MAWBs in the Consol Manifest. However, when the total No. of packages against a MAWB is more than the sum of total No. of packages against all the related HAWBs, the Consol Manifest would be accepted by the system and addition of another HAWB or amendment of No. of packages would be allowed against one or more HAWB or reduction of No. of packages against MAWB would be allowed by the system by following amendment procedure.

### **Entry of IGM No. against a prior IGM**

- 5.3 The IGM No. shall be assigned to an aircraft as is being assigned presently. At the time of obtaining unloading permission, the representative of Airlines shall produce documents to the IFO for assigning the IGM No. At the time of giving unloading permission the IFO shall enter in the system, the IGM No. assigned to the aircraft against the prior IGM Job. No / Flt No and Flt date

### **Integration of Airlines Master IGM and Consol Manifest**

- 5.4.1 As explained above, the Airlines Master IGM and Consol Manifests would be filed independent of each other by different entities. Both the manifests would be integrated, by the system automatically, on the basis of Master Airway Bills which is common factor in both the manifests.
- 5.4.2 On submission of Master IGM and the Consol IGM :
- (a) where the details of Master IGM matches with the corresponding Master Airway bill in the Consol Manifest, such IGM lines would get integrated with each other.
  - (b) where No. of packages in the Master IGM against a Master Airway bill, are more than the total No. of packages in the Consol IGM against respective Master Airway bill, such lines would be put in the error queue requiring amendment of either the Master IGM or the Consol manifest, which ever is not correct. Upon amendment of the number of total packages the Manifest would get regularised.
  - (c) where the No. of packages in the Master IGM against a Master airway bill are less than the total No. of packages in the Consol Manifest against the respective Master Airway bill, the system will assume that remaining packages would arrive by another flight. When the remaining packages arrive and Master IGM is filed the Consol Manifest against the previous Master IGM would need to be amended and another Consol Manifest would have to be filed corresponding to the later Master IGM.
  - (d) where short landing has occurred, the system would wait for another IGM against an other flight, in respect of the short landed packages. On receipt of Master IGM in respect of short landed packages, Consol Manifest shall be filed by the respective Consol Agent, for the packages landed subsequently.
  - (e) where excess landing has taken place, the system would wait for amendment of Master as well as Consol Manifest in respect of such excess packages.
  - (f) where some of the packages have landed without any labels and remained un connected to any particular Airway bill, as and when such packages are labeled with a Master Airway bill and a House Airway bill, the same shall be co-related to the respective IGM lines of the same flight, if such Airway bills appear in the IGM of same flight. When no such Airway bills exist in the IGM of same flight, the IGM

shall be amended to incorporate such Airway bills in the IGM of the flight by which these unconnected packages landed.

- (g) where two or more Consol Manifests have been filed against the same Master airway bill No. in respect of one or more House Airway bill Nos, it would not be possible for the system to automatically, co-relate the different Master IGMs in respect of same Master airway bill. The Consol Agent/person who filed the Consol Manifest shall approach the designated officer for entry of appropriate IGM No against respective Consol Manifest.

### **Entry of Segregation Report**

5.5.1 The details of the segregation report, prepared jointly by Custodian, Airline and IFO in respect cargo landed from the aircraft, shall be entered in the system by the IFO against respective IGM No based on the parameters: Flt No., Flt date/time, IGM No/year, date & time of starting of segregation and date & time of completion of segregation report. The following detail from the segregation report shall be entered in the system:

- I. Total Number of packages manifested
- II. Total number of packages received
- III. Number of packages short landed
- IV. Number of packages excess landed
- V. Total number of packages for delivery at the port
- VI. Number of packages for transshipment
- VII. Number packages for airlines stores
- VIII. Number of packages for diplomatic mails
- IX. Number of packages for valuables
- X. Number of packages for perishables/delivery on KBE
- XI. Number of packages landed in damaged condition

#### **5.5.2 Details of short landing**

MAWB No.

HAWB No.

Number of packages Manifested

Number of packages arrived

#### **5.5.3 Details of excess landing**

MAWB No.

HAWB No.

Number of packages manifested

Number of packages landed

Number of packages without any label.

#### 5.5.4 Details of damaged cargo

MAWB No.

HAWB No.

Package No.

Marked weight

Actual weight

5.5.5 The Segregation Report would be very important information, in regularization and correction/amendment of IGM and the same should therefore be correctly entered in the system, by the IFO without delays.

#### **Amendments/corrections in the Master/Consol Manifest.**

5.6 The data entry of amendments shall be made from service centre. The amendment requests will be put to the queue of the designated officer (D.C./A.C. Import) for approving amendments in the system. The designated officer shall ensure correctness of the information before approving amendment in the system. Where the amendment is sought to be made before arrival of the flight, no approval from the designated officer would be required. However, in absence of an IGM No. against a Job No., any amendment carried out will be treated as if, it is done before the arrival of the flight. However, if it is found that the flight arrival time was prior to the amendment, such an amendment would require approval by the designated officer.

5.7 In a Consol Manifest if, a Master Airway bill No. is deleted all related House Airway bill details would get automatically deleted. When a House Airway bill No. is deleted all other details against that HAWB would be automatically deleted. Minimum one House Airway bill details should remain existing in a Consol Manifest. When all HAWBs are deleted whole Consol Manifest in respect of that MAWB would get deleted.

### 6.1.Late filing of Master/ Consol Manifests.

- (a) At the time of submission of Master or the Consol Manifest as the case may be, the system will keep a record of the time of filing of Manifest and arrival of related Aircraft. Details of such late Manifests shall be put in the queue of the designated officer, who shall enter the amount of penalty along with date of payments against each of the late IGMs. At present the penalty shall be paid against a manual Challan.
- (b) Any amendment, in the IGMs whether Master or Consol, carried after arrival of aircraft shall be approved by the designated officer.
- (c) The details of late filing and post arrival amendments shall be put in the queue of the designated officer who, may enter the penalty amount if imposed or enter '0'. The manifests when filed through ICEGATE, the time of its receipt at ICEGATE will be taken as time of filing the manifest.

### Filing of Import Manifest for Transshipment Cargo

- 7.1 The IGM in respect of the transshipped cargo shall also be filed at the place of final destination by the Airlines who transported the goods on the basis of the Master Airway bill which is used for transportation of the goods to the final destination. In case the transshipped cargo is a consolidated cargo, the consol manifest shall be filed by the Consol Agent on the basis of Master Airway bill used by the Carriers for transporting the goods to final destination and the House Airway bill against which delivery order is issued. The IGM No shall be obtained by the Airlines, at the final destination, in whose aircraft the goods have been transported to the final destination, in the same manner as allotted to international carriers.

### Date of effect of procedure

- 8.1 The aforesaid procedure of filing of Manifests shall be effective from **1<sup>st</sup> May 2004**. It is therefore, necessary that all the Airlines and the Consol Agents or such other persons who are engaged in issuing 'delivery orders' to the importers on the basis of which, the imported goods are permitted to be delivered to such importers, should register themselves as prescribed in this office Public Notice No. 14/2004 dtd. 20.04.2004, failing which the manifest can not be filed under ICES on or after 01.05.2004. **A delivery order, issued by an unregistered Consol Agent/persons and who has not filed the related Manifest, shall not be honored for clearance of goods. For**

**filing of the IGMs, the service Centre will remain open round the clock including all holidays.**

- 8.2 All the Consol Agents/persons shall indicate their Registration No. on the delivery orders.

**Commissioner of Customs (Import)**

**Annexure B**

**1. Format of Master IGM**

Airline Code

Airline Name

IGM No

IGM Year

Flight No

Flight Date

Flight Arrival Time

**Cargo Details**

<b>MAWB NO</b>	<b>Port Code of Origin</b>	<b>Port Code of Destination</b>	<b>No of Packages</b>	<b>Gross Weight</b>	<b>Description</b>

Date/Time:                      Name &Signature of the Authorised person

**2. Format of the Consol Manifest declaration for filing through Service Centre**

Agent Code                      Agent Name

IGM No                              IGM Year

Flight No                      Flight Date                      Flight Arrival Time

**Master Air Way bill details**

<b>MAWB NO</b>	<b>Port of Origin Code</b>	<b>Port of Destination Code</b>	<b>No of Packages</b>	<b>Gross Weight</b>	<b>Description</b>

**Consol House Way bill details**

<b>HAWB NO</b>	<b>Port of origin Code</b>	<b>Port of Destination Code</b>	<b>No of packages</b>	<b>Gross Weight</b>	<b>Description</b>

Date:                                      Signature &  
Name of the Consol Agent

Note: Annexure-A is format for Registration which is part of Public Notice 14/2004 dtd. 20.04.2004.



## Annexure C

**CONSOL Manifest - Message Format**

**CMCHI01** : **Consol Manifest**  
**Message Name** : **consmaster**  
**From** : **Consol Agent** to **Customs**

MAWB Details.

Field	Type	Length	Final	Amend	Delete
Message Name	Character	10	M	M	M
Message Type	Character	1	F	A	D
CARN NO	Character	16	M	M	M
IGM no.	Number	5	O	O	O
IGM year	Number	4	O	O	O
Flight No	Character	30	O	O	O
Flight date	date		O	O	O
Flt Time	Time	5	O	O	O
Master AWB No.	Character	20	M	M	M
Port of origin	Character	3	M	O	X
Port of destination	Character	3	M	O	X
Total Packages	Number	8	M	O	X
Gross Weight	Number	9,3	M	O	X
Item description	Character	30	M	O	X

**CMCHI02** : **Consol Manifest – House Details**  
**Message Name** : **conshouse**  
**From** : **Consol Agent** to **Customs**

Field	Type	Length	Final/ Suppl.	Amend	Delete
Message Name	Character	10	M	M	M

Message Type	Character	1	F/S	A	D
CARN NO	Character	16	M	M	M
IGM no.	Number	5	O	O	O
IGM year	Number	4	O	O	O
Flight No	Character	30	O	O	O
Flight date	date		O	O	O
Flt Time	Time	5	O	O	O
Master AWB No.	Character	20	M	M	M
House AWB No.	Character	20	M	M	M
Total Packages	Number	8	M	O	X
Gross Weight	Number	9,3	M	O	X
Port of origin	Character	3	M	O	X
Port of destination	Character	3	M	O	X
Item description	Character	30	M	O	X

---

Note:

- 1 CM can be filed prior to arrival of the flight or after.
- 2 The CM, if filed after arrival of the flight, the designated Customs Officer can impose penalty up to Rs 50,000 per flight.
- 3 The system will maintain record of late filing of CM.
- 4 Amendment to CM after filing of the main manifest is also treated as late filing.
- 5 Total No packages and Gross weight at the MAWB can be greater than the values in the HAWB details.
- 6 On submission of the main manifest, system would search for the CM and error free manifest lines will get integrated. IGM No and Date will be updated against the CM.
- 7 Similarly on submission of CM with IGM Number, system would match with the main manifest and error free manifest lines will get integrated.

8 Airlines while filing the manifest shall not provide the House details.

9 The airlines, if desires to file Consol manifest, has to get registered as Consol Agent and file the CM as described above.

The field delimiter is ASCII 29 (^), it is a single character and record delimiter is new line Character [ASCII 10]

Message structure:

```
<consoligm>  
  <consmaster>  
  .....  
  .....  
  .....  
  <END-consmaster>  
  <conshouse>  
  .....  
  .....  
  .....  
  .....  
  <END-conshouse>  
<END-consoligm>
```

Message identification:

CARN Number + "I" + <XXX>.cgm

Where XXX is the user defined sequence number (Range: 001-999). This number has to be initialized on reaching 999.

Example:

<consoligm>

<consmaster>

F^]AGSYE7618HCNDEL4^] ^] ^] ^] 05517785456^]  
INBOM4^]INDEL4^]800^]1380.25^]CONSOL^]

<END-consmaster>

<conshouse>

F^]AGSYE7618HCNDEL4^] ^] ^] ^] 05517785456^]HAWB1^]200^]380.25^]INBO  
M4^]INDEL4^]ITEMDESC1^]

F^]AGSYE7618HCNDEL4^] ^] ^] ^] 05517785456^]HAWB2^]200^]200.75^]INBO  
M4^]INDEL4^]ITEMDESC2^]

F^]AGSYE7618HCNDEL4^] ^] ^] ^] 05517785456^]HAWB3^]100^]500.50^]INBO  
M4^]INDEL4^]ITEMDESC3^]

F^]AGSYE7618HCNDEL4^] ^] ^] ^] 05517785456^]HAWB4^]100^]100.25^]INBO  
M4^]INDEL4^]ITEMDESC4^]

F^]AGSYE7618HCNDEL4^] ^] ^] ^] 05517785456^]HAWB5^]200^]200.25^]INBOM  
4^]INDEL4^]ITEMDESC5^]

<END-conshouse>

<END-consoligm>

**CMCHI03** : **Consol Manifest – Acknowledgement**  
**Message Name** : **consack**  
**From** : **Consol Agent** to **Customs**

Acknowledgement Message

Field	Type	Length	
Message Name	Character	10	M
Message Type	Character	1	F
CARN NO	Character	16	M
IGM no.	Number	5	O
IGM year	Number	4	O
Flight No	Character	30	O
Flight date	date		O
Flt Time	Time	5	O
Master AWB No.	Character	20	M
Accepted/Rejected	Character	1	M
Reasons for	Character	100	O

Rejection

Accepted/Rejected: A or R

Message identification:

"CARN Number+ "I"+<XXX>.cgm.ack

Message structure:

<consoligm>

<consack>

.....

.....

<END-consack>

Example:

<consoligm>

<consack>

F^]AGSYE7618HCNDEL4^]A^]05517785456^]A^]

F^]AGSYE7618HCNDEL4^]A^]05517785999^]R^]MORE NUMBER OF  
PACKAGES^]

<END-consack>

## Annexure D

### IGM Format

#### *After arrival of the flight*

The airlines have to file the manifest in the format as shown below:

IGM/99/2846

1/AF148/CDG/IDEMR/11MAR/2308

DEL

\*PMC3759AF

057-15518436JFKDEL/T1K159/CONSOL

\*PMC3805AF

057-56012390BOSDEL/T3K68/PRTINK

057-57911803CDGDEL/T1K1/CONSOL

057-58505414BCNDEL/T2K1010/CONSOL

057-58851144CDGDEL/T1K13/BAGS

057-58435705AMSDEL/T3K456.4/CONSOL

T

Explanation of above format:

**Flight Details:***Line No.: 1*

IGM/99/2846 -- IGM/Year/IGM No.

'IGM' hard coded followed by '/'

Year followed by '/'

IGM No.

*Line No. : 2*

1/AF148/CDG/IDEMR/11MAR/2308 --

Version No. followed by '/'

Flight No followed by '/'

Port of origin followed by '/'

Registration no. of aircraft followed by '/'

Flight date followed by '/'

(Format: DDMON, DD- Day, MON- three letter month's abbreviation)

Flight time

(Format HHMI, HH - 24 hr clock time, MI - Minutes (0-59) )

*Line No.: 3*

DEL -- Port of destination( 3 letter code)

*Line No.: 4*

\*PMC3759AF -- '\*' followed by Unit Loading Device(ULD) no.

*Line No.: 5 onwards*

From line 5 onwards the details of MAWB -

057-15518436JFKDEL/T1K159/CONSOL

Airline code followed by '-'

Airway bill no.

Port of origin of MAWB

Port of destination of MAWB followed by '/'

'T' followed by total no, of packages

'K' followed by total weight of Master (in KGS) followed by '/'

Item Description

In case of consolidated cargo, enter Item description as 'CONSOL'

*Last line:*

The file shall end with Character 'T' in the first column.

***Prior manifest ( Before arrival of the flight )***

The airlines have can file the manifest prior to the arrival of the flight without the IGM Number. The format shall be as shown below:

IGM//  
 1/AF148/CDG/IDEMR/11MAR/2308  
 DEL  
 \*PMC3759AF  
 057-15518436JFKDEL/T1K159/CONSOL  
  
 \*PMC3805AF  
 057-56012390BOSDEL/T3K68/PRTINK  
 057-57911803CDGDEL/T1K1/CONSOL  
 057-58505414BCNDEL/T2K1010/CONSOL  
 057-58851144CDGDEL/T1K13/BAGS  
 057-58435705AMSDEL/T3K456.4/CONSOL  
 T

**Annexure AA'(iii)**

**Circular No. 06/2007-Cus**

**F.No.450/96/2006-Cus. IV**

\*\*\*

22nd January, 2007

**Subject: Transshipment procedure between any two Customs Airports- Reg.**

\*\*\*

I am directed to inform that the Inter Ministerial Group on simplification of Customs procedures in Air Cargo and Air ports interacted with several stakeholders to redress the bottlenecks faced by them. During the deliberations, Air Cargo Agents Association of India (ACAAI) represented that there are divergent practices being followed at different international airports for



transshipment of cargo. ACAA and Airport Authority of India stated that only Mumbai has been given gateway port status and the same may be extended to other airports.

2. The issue was considered. It was felt that the scope of the term 'gateway port' needs to be clarified for the information of the trade. The term 'gateway airport' reportedly refers to an airport where the goods land in India for the first time in case of imports or from where the goods finally leave India in case of exports. However, there is no distinction under the Customs Act, 1962 between airports notified under the said Act. There is no concept of separate gateway port being notified by Customs. All International airports notified under Customs Act, 1962 may be used for transshipment of goods.

3.1 As regards transshipment, Goods Imported (Conditions of Transshipment) Regulations, 1995, provide that imported cargo can be transshipped to any customs station on permission being given by the jurisdictional Commissioner of Customs. In order to have uniformity, following procedure for transshipment of imported cargo to other airports is prescribed,-

- i. On arrival of flight, the transshipment cargo should be segregated in Custodian's premises.
- ii. For transshipment of cargo, the carrier/ console agent is required to file an application for transshipment of cargo, consigned to another airport as indicated in HAWB. Cargo Transfer Manifest (CTM) prepared by the carrier /console agent, as the case may be, may itself be treated as application for transshipment. Separate CTMs may be prepared destination wise. Such transshipment should be approved by the proper officer.
- iii. The cargo mentioned in the CTM need to be escorted by the Preventive Officer from the warehouse of the Custodian to the warehouse of receiving airlines which acknowledges the same. The concerned Airlines / Custodian warehouse should have double locking arrangement, one key of which will be with the Airlines / custodian and the other with Customs, for storage of transshipment cargo. No physical examination needs to be conducted, except on specific intelligence, for allowing transshipment and only marks and numbers of cargo need to be verified.
- iv. The receiving airlines should prepare its cargo manifest and transshipment be allowed under Customs supervision. The value of transshipped cargo should be debited from the Transshipment Bond.
- v. Customs at destination airport will acknowledge the receipt of the cargo and send back the acknowledgement manifest through the carrier. The carrier should produce such acknowledgement at the originating airport within 10 days of transshipment. On the basis of such acknowledgement the Transshipment Bond would be re-credited.
- vi. The usual procedure for Customs clearance of cargo shall be adopted at the destination airport for ultimate clearance of cargo.

**3.2** In the case of movement of imported cargo in Bonded Truck from Airport / ACCs to ICDs / CFSs / Airports / ACCs, detailed instructions have been issued vide Boards's Circular No. 69/99 –Cus dated 6/10/1999. It is clarified that the circular No.69/99 us dt.6.10.99 is applicable for movement of imported cargo both by containers and trucks.

**3.3** For international transshipped cargo (Foreign to Foreign), the following procedure should be adopted,-

- i.** On the arrival of flight, the transshipment cargo meant for destination abroad should be segregated in the Custodian's premises.
- ii.** The carrier is required to file application for transshipment of cargo. CTM prepared by the airlines itself be treated as application for transshipment. Such transshipment should be approved by the proper officer.
- iii.** Cargo mentioned in CTM need to be escorted by the Preventive Officer from the warehouse of Custodian to the Export terminal. No physical examination needs to be conducted, except on specific intelligence, and only marks and numbers of cargo need to be verified. Such cargo may be exported with other export cargo.

**4.** The export of cargo tendered at one Customs airport for export from another Customs airport may be done in following manner,-

- i.** Shipping Bill should be filed at the originating Customs station and Let Export Order should be given by the Customs at the same station. Transshipment Permit (TP) should be prepared by the airlines/ carrier and approved by the proper officer. TP should be sent alongwith the cargo. Transshipment bond should be debited for the value of cargo.
- ii.** On arrival at the gateway airport, the cargo should be taken to the warehouse of the domestic airlines/ Custodian in a clearly identified area. The concerned Airlines / Custodian warehouse should have double locking arrangement, one key of which will be with the Airlines / custodian and the other with Customs, for storage of transshipment cargo. The Customs officers in charge of warehouse should verify the details of the packages with the TP, Airway Bill, etc. The domestic airlines may prepare the CTM airlines-wise which is certified by the Export Freight Officer (EFO).
- iii.** Cargo should be shifted to the transshipment warehouse in the export terminal of Custodian and acknowledgement obtained. No examination of such cargo should normally be done at gateway airport, except on credible intelligence or information.
- iv.** When the aircraft is ready for loading, the airlines should seek permission from the EFO for loading. The load plan prepared by the airlines should be signed by the Airlines, EFO and the custodian.
- v.** Cargo should be loaded in the aircraft under Customs supervision.

- vi. **Copy of manifest signed by the EFO & AWB alongwith copy of Shipping Bill should be sent by the airlines to the originating station within 30 days of transshipment. Transshipment bond should be re-credited at originating airport.**
  - vii. **In case the transshipment is by bonded truck, the marks and numbers of the packages be verified with the details in the transshipment permission and the bonded truck be sealed with bottle seal in the presence of Preventive Officer.**
5. **If transshipment of cargo is also desired at some intermediate Customs airport, carrier/ airlines should give advance intimation to intermediary airport. Customs at intermediary airport would supervise the movement of cargo and endorse the same on Transshipment Permit. The concerned Airlines / Custodian warehouse should have double locking arrangement, one key of which will be with the Airlines / custodian and the other with Customs, for storage of transshipment cargo. The loading of such cargo again would be under the supervision of Customs officer.**
6. **If the cargo transhipped under the provisions of the Customs Act, 1962 is not unloaded at the place of destination in India, or if the quantity unloaded is short of the quantity to be unloaded at that destination, and if the failure to unload or the deficiency is not accounted for, then the person-in-charge of the conveyance shall be liable for penal action as per the provisions of Customs Act, 1962.**
7. **For the sake of clarity, it is stated that the reference to term airlines/ carrier would include 'Air taxi Operator' and 'Bonded Trucker', where ever applicable. The above instructions may be brought to the notice of the trade immediately through appropriate Public Notice.**
8. **Any Standing order issued in pursuance to Circular No. 47/96- Customs dated 16.9.96 should be modified as above.**

## Annexure 'B'

Proforma of I.G.M. REGISTER

Date	I.G.M. No. of No.	Flight No.	A/C Marks	Arrl. Time	Arrd. from	No. of pkgs. manifested	No. of pkgs. landed	Airlines	No. of pkgs. stores
1	2	3	4	5	6	7	8	9	

Pkgs. to be stored in cargo complex	No. of pkgs. to be retained in cold storage	No. of pkgs. for storage in strong room	No. of Excess landed pkgs.	No. of short landed pkgs.	No. of for Direct landed
10	11	12	13	14	15

No. of pkgs. for Transhipment signature.	Batch no.	Cargo officers name and signature.
16	17	18

**Annexure 'F'**

Date	IGM No.	Flight No.	Arrival time	No. of pkgs. landed	No. of pkgs. recd. In cargo complex	No. of pkgs. for
1	2	3	4	5	6	7
T.P.						

Date and time Signature of the Supdt.	Date on which par- ticulars transcribed in IGM from the warehouse register	Date on which master copy forwarded to office	Date on which Cargo Officer and date	Signature of the (cargo) and date
8	9	10	11	12

**Annexure 'C'**

**PROFORMA OF WAREHOUSE REGISTER  
(To be maintained by the Custodian)**

Date of	Description		Sr.	Flt.	T.G.M.	C. Note	Item.	No. of
warehouse	No.	No.	No.	No.	No.	pkgs.		
1	2	3	4	5	6	7	8	9

Party's	Baggage	No. of	No. of	date of	Customs	
W.H.	form or	pkgs.	pkgs.	delivery	duty	
signature	B/E No.	in	in	cash No.		
charges		figure	words			
when pkgs.						
forwarded						
for						
examination						
10	11	12	13	14	15	16

Signature	Signature	Remarks.
of the party	of the A.A.I.	
receiving the	representative	
goods.		
17	18	19

**Annexure 'D'**

To,

.....

Sub: Non Clearance of Imported goods-disposal of

The Consignment (s) as per details below brought into India for consumption/transshipment has not been cleared/transhipped so far. The consignment has since been shifted to the Import Warehouse of the A.A.I.

You are hereby given notice that if the said consignment (s) is/are not cleared/transhipped on production of proper documents within fifteen (15) days from the receipt of this notice, the same is liable to be disposed, in terms of the provisions of Section 48 and Section 150 of the Customs Act, 1962, without any further communications to you.

Please note that shifting of uncleared packages will be at the cost of Importer.

Yours faithfully,

.....

**Annexure 'E'**

**Weekly statement by the Custodian about packages handled in the Air Cargo**

**Complex**

Period From .....To..... packages cleared	Opening Balance	No. of pkgs. received in the Cargo complex including precious articles and perishables and transshipment packages.	No. of
1	2	3	4
			5

Total No. of pkgs.

Balance

	less than 14 days old	over 14 days old
6	7	8

## 7. **DIRECT DELIVERY OF IMPORT CARGO**

Many a times there are certain kinds of Cargo which require special handling or are to reach to the Importer without loss of time. To facilitate this, special permission is granted by the Customs to the Importer to complete the clearance formalities either beforehand or subsequently. For this purpose, a special Direct Delivery cell is created which is manned by the Preventive and Ministerial staff. The examination and delivery of such Cargo is attended to by the Preventive Staff during office hours, as well as out of office hours.

The broad procedure for the same is outlined below:

The following revised procedure in respect of Direct Delivery of Imported goods (such as Diplomatic Mail, Live Animals, Fresh Fruits, Flower/Vegetables, Frozen Foods, Radio Active Material, Current Newspaper and Magazines, Air Companies stores and Aircraft parts Imported by the Air Companies, Life Saving drugs and appliances, Any Cargo requiring special handling storage and TV films) in Air Cargo Complex, Mumbai, the following revised procedure is prescribed with immediate effect:-

- (1) Any application requesting for Direct Delivery of Imported goods shall be presented to the 'Direct Delivery Clerk', if such goods have already arrived or are likely to arrive within 24 hours (excluding the holidays) of presentation of such application.
- (2) In such application, the Importer or their authorised agent shall undertake that all papers for assessment shall be submitted along with Bill of Entry within 18 hours of clearance of such goods.
- (3) On receiving such application, the 'DD Clerk' shall mark to the concerned Group Appraiser to examine whether the goods can be allowed in Direct Delivery.

The Group Appraiser is empowered to allow the Direct Delivery of Newspapers and Magazines only. Regarding all other items other than newspapers & magazines, the



Appraiser shall, in turn, put up the application to Asstt./Dy. Commissioner, in charge of Group, for orders who would pass appropriate DD order or otherwise in the matter.

- (4) In case of direct delivery of life saving appliances, medicines and any other cargo which require special handling and storage, the application for Direct Delivery shall be put up to the Joint Commissioner/ Addl. Commissioner concerned, by the Asstt./Dy. Commissioner for orders.
- (5) The orders of the Addl. Commissioner/Asstt. Commissioner/Appraiser shall be noted by the Direct Delivery clerk in the respective Group, in the register maintained for the purpose and a running DD Number would be allotted.
- (6) After that the Appraising Officer in the concerned Group shall make necessary endorsement of the examination orders and Direct Delivery on payment of duty or IDF procedure as the case may be.
- (7) The order of Addl./Joint /Dy./Asstt. Commissioner/Appraiser shall be valid only for 48 hours after it is passed and if the delivery of goods is not effected, fresh orders shall be obtained.
- (8) Direct Delivery Clerk/Office Superintendent (Admn.) shall keep the track of the Bill of Entry after the direct delivery is effected. He shall put up the D. D. Register to Asstt./Dy. Commissioner (Admn.) once a week with a summary and No. of cases in which the Bills of Entry with all documents are not presented for proper assessment within 48 hours as undertaken by the party.

A fortnightly extract of Group-wise details of pending DDs would be put to Addl. Commissioner (Admn.) alongwith the Direct Delivery Register for suitable orders/action.

If it is noticed that any Importer/CHA has failed to honour the undertaking of filing the Bill of Entry for regular assessment, action shall be taken against them as required under law and 'Direct Delivery' of goods to such Importers/CHAs may be refused for future.

**[Based on Standing Order dated 18/09/1997 issued by Commissioner of Customs Air Cargo Complex, Sahar, Mumbai in F. No. S/3-MISC-42/97/ACC/GR-II.]**

Wherever, the EDI facility for processing of import/export documents have been introduced, the Kutchha Bill of Entry is also processed EDI system.

At the time of Direct Delivery the following points are to be taken care of:

1. The cargo delivery is taken by the Importer or the authorised person. This can be done by identifying the person by his identity card, pass etc.
2. Duplicate / Kutcha B/E shall be scrutinized to ensure that the same has been registered and stamped by the direct delivery clerk.
3. The examination order is given by the Appraising Officer, like- inspect lot, check marks & Nos., description, quantity etc.
4. Examination should be done as per the directions given and the examination report shall be endorsed on the reverse of the duplicate B/E with full name and signature. The report is to be signed by the Importer also.
5. The entry in the direct delivery register should be counter signed by the person taking delivery.
6. In emergency situations after office hours, Asstt./ Dy. Commissioner/Airport shall entertain the application/undertaking submitted by the CHA/Importer for Direct Delivery of goods and give the permission or otherwise for Direct Delivery.
7. The I.F.O. after verifying the permission will examine the cargo as per the guidelines available. The examination reports will be written by the I.F.O. on the undertaking, get the counter signature of the Importer and retain it.
8. The retained undertaking along with the report is to be forwarded by I.F.O. on the next working day to the Direct Delivery clerk/O.S. Appraising for further processing.

### **Guidelines for examination of Direct Delivery Cargo**

#### **Current News papers and periodicals**

These are normally covered by a continuity bond executed by the C.H.A/Importer. The goods shall be examined with reference to the description and the same is certified on the reverse of duplicate Bill of Entry. In case News papers and Magazines are of objectionable nature, a reference has to be made to the Appraiser/Supdt (P).

#### **Diplomatic mail**

This cargo is not subject to examination in view of the diplomatic immunity enjoyed by the Importers. The package should only be inspected for checking Diplomatic seal, Marks & numbers. These are normally covered by the continuity Bond.

**Live animals / birds**

No animal shall be released without production of health certificate, which would be checked carefully. Full particulars viz. species, quantity, colours, height, length, weight, etc., as are available or as can be ascertained shall be recorded on the duplicate Bill of Entry. The invoice and pedigree chart if produced shall be endorsed in token of having been checked.

**TV Films**

These may be released directly only after inspection of the cartons containing films and after noting on the duplicate Bill of Entry, any other particulars those are shown on the carton.

**Radio active material**

Being of hazardous nature, these goods can not be examined and hence only should be inspected. Direct Delivery shall not be effected if the Bill of Entry is not accompanied by "No Objection Certificate" from the Deptt. of Atomic Energy in case the Importer is other than Department of Atomic Energy.

**Drugs, medicine, serum, vaccine, etc.**

In case of drugs and medicines, the quantity shall be recorded along with full marking showing the name of medicine (chemical as well as trade name) manufacturer's name, quantity in grams or millilitre (as the case may be), etc. Prior permission of the Asstt. Drug Controller is necessary in the case of all drugs and medicines. In case such permission has not been obtained the same may be obtained over telephone from A.D.C. during office hours and the fact shall be so recorded on the reverse of the Duplicate copy of Bill of Entry. If the clearance is allowed after office hours, the permission of A.D.C. may be obtained on the next working day by I.F.O.

**Live plants and flowers**

Quantity of the cargo to be released and verified shall be recorded at the time of examination so as to enable the Appraiser to appraise and value the cargo subsequently. The goods are required to be fumigated on arrival and a certificate, called "Phytosanitary Certificate". to that effect from the Plant Quarantine Entomologist,

is essential before clearance of goods. This fact should be recorded on the duplicate Bill of Entry.

The Importers have to complete the formalities within 48 hours of the Direct Delivery of the Cargo. If they fail to do so for 2 deliveries, future facility of Direct Delivery to such Importer should be with-held.

#### **8. Clearance of Air Import / Export Cargo of Diamonds, Precious and semi-precious Stones at Mumbai.**

At Mumbai, the work relating to the above clearance is dealt with at the "Diamond Plaza" where the Jewellery Section of the Customs Department is located. The following procedure is what is followed at Mumbai and could be adopted Mutatis Mutandis elsewhere, where such special clearance centres are open. Procedure at Mumbai for the Transference of the Import Cargo (Diamonds, Precious and semi-precious Stones, Pearls etc) from the Airport / Air Cargo Complex to the Customs Clearance Centre and vice versa in the case of Imports / exports.

##### **(A) Imports by Air:**

The consignments shall be clearly declared in the Import Manifest as "Transshipment Cargo to the Diamond Plaza Clearance Centre" and will be on a separate sheet as required by the Import Manifest Aircraft Regulations, 1976. On arrival, the goods will be escorted by the Import Freight Officer (IFO) as in the case of other cargo to the premises of the airlines for safe storage pending transshipment. The import Freight Officer of Airport will verify details of the packages with the Import Manifest and note any short landing of packages. The responsibility for the custody of the cargo will be with the airlines only, as is the case of other cargo including transshipment cargo.

For the transshipment of the cargo to the Diamond Plaza Clearance Centre the Airlines will prepare the usual Transshipment permit and also the details of the cargo in the 'Air Cargo Transfer Manifest' will be prepared in 4 copies the original, duplicate and the triplicate will accompany the Transshipment and quadruplicate will remain in the office of airlines. The transportation of the import parcels from the airport to Diamond Plaza Clearance Centre shall be responsibility of the airlines or their agents. The airlines may appoint transport agents for this purpose with the approval of the Customs but the ultimate responsibility for accounting the cargo will be that of the carrier only. The T.P. (Transshipment Permit) will be signed only by the airlines. The custodian of the cargo at the Diamond Plaza Clearance Centre, M/s. Minerals and Metals Trading Corporation of India Ltd., will acknowledge the receipt of the cargo on the original and the duplicate Air Cargo Transfer Manifest and original and the duplicate Air Cargo Transfer Manifest and return the original to the airlines and forward the duplicate, to the customs in the centre for noting of the import bills of entry. The Airlines will submit the original copy of the Customs at the Air Cargo, Sahar, for closing the manifest. The Customs of the Air Cargo, Sahar, will close the manifest on the basis of this copy only. The triplicate will remain on the record of the custodian who will submit the same to customs for verification of the entries in their records.

**(B) Exports by Air.**

M/s. Minerals and Metals Trading Corporation of India Ltd., will prepare Air Cargo Transfer Manifest in triplicate and the "Transshipment Permit". The duplicate and Export Promotion copies of the Shipping Bills along with original and duplicate copies of the Air Cargo Transfer Manifest will accompany the export cargo. The cargo will then

be transshipped by M/s. Minerals and Metal Trading Corporation of India Ltd. to the airport for onward shipment by airlines. M/s. Minerals and Metal Trading Corporation of India Ltd., will be responsible for the transportation of export parcels from the Diamond Plaza Clearance Centre to the airport, M/s. Minerals and Metal Trading Corporation of India Ltd., may, if they desire, appoint a transport agent for this purpose but the ultimate responsibility for accounting of cargo will be that of M.M.T.C. and not the agent. The T.P. will be signed only by M.M.T.C. The cargo will be presented to the Export Freight Officer (E.F.O.) at the airport, who will check the parcels, and the seals on the same will the Air Cargo Transfer Manifest and then permit the airlines to deposit the same in their Safe Deposit Vault for shipment. The airlines will acknowledge the receipt of the cargo at the airport on the Air Cargo Transfer Manifest copies and return the original and the duplicate to M/s. Minerals and Metal Trading Corporation of India Ltd. who will submit the original to the Customs for their records. After the shipment endorsement has obtained on the duplicate and E.P. copies of Shipping Bill, M.M.T.C. will forward duplicate Shipping Bill to customs for connecting with original Shipping Bill and the A.C.T.M. and E.P. copy will be handed over to the exporter.

**9. Clearance of Unaccompanied Baggage:-**

**Arrival and clearance of Unaccompanied Baggage at Air Cargo Complex**

The following paragraphs describe the broad procedure for arrival, movement and clearance of Unaccompanied Baggage at the Air Cargo Complex-

The Unaccompanied Baggage is shifted to the Air Cargo Complex like general cargo as has been described earlier. At the Cargo Complex, the Baggage is entered into the warehouse of the custodian and given a serial no. The baggage is further segregated as - to be cleared at the Cargo Complex and to be transhipped to other Indian ports for clearance. The baggage to be transhipped is moved to the domestic carrier airline in the same manner as described earlier in the case of the general transshipment cargo. The baggage to be cleared at the Cargo Complex is then shifted to the Unaccompanied Baggage Centre of the Air Cargo Complex.

The concerned Airline/Freight Forwarders/Break-bulk Agents, in the meantime, intimate the consignee about the arrival of the baggage and issue a Delivery Order after collecting necessary charges from him. On the strength of Delivery Order/Travel Documents/Airway bill for booked baggage, and after payment of documentation charges, the passenger or authorized agent/ CHA collects annexure for Baggage Declaration from the Service Center (CMC) located in the U.B. Center.

The duly filled annexure, alongwith the relevant documents, like the photocopies of the passport, delivery order, airway bills, invoice/ purchase receipts, packing lists etc., are scrutinised by the Customs PRO and, if found in order, are entered in the EDI system by the CMC staff. A check list is then generated and given to the passenger for verification. After verification and making corrections, if any, the check list is signed and submitted by the passenger back to the (CMC) for onward submission of Baggage Declaration Form to the Customs. At this stage i.e. before the CMC operator submits the data in the EDI system for generation of the Baggage Form, the Tax .Assistant/Customs, UBC verifies respective manual copy of the U.B. /IGM and checks the details such as the name of the passenger, number of the packages, gross weight, air way bill numbers etc. The EDI system generates the Baggage Declaration Form (BDF) number automatically and the same is endorsed on the checklist by the Service centre operator. EDI system also allots the name of the Preventive officer who would examine the said Baggage.

In certain cases the EDI system is unable to generate checklist in the absence of required data. A few such cases are cited below:-

- a) Foreign nationals arriving in India for the first time. In such cases “last date of departure” particulars are not available.
- b) “Date of arrival” is not available in the case of deceased persons’ baggage.
- c) Passport or any details of the passport are available in the case Deportees.

In such cases permission to file manual BDF is granted and necessary endorsement is made on the ‘Annexure’ by the Superintendent in Charge UBC. Thereafter, the passenger fills in a manual Baggage Declaration Form alongwith the relevant documents and submits the same for scrutiny by the Customs PRO/UBC and

noting by the TA/Customs in UB/IGM manual copy. The BDF is then returned to the passenger for presenting to the Superintendent in charge UBC for further clearance.

The P.O. then endorses a "please deliver" remark for the custodian on the BDF. On the basis of this endorsement, the custodians present the baggage covered under a particular BDF to the Customs for examination and clearance.

The baggage is then examined by the P.O. in presence of consignee/authorised agent, under the supervision of Supdt. (P)/Baggage. After the Duty chargeable has been assessed, the consignee/authorised agent is given a Detailed Duty Receipt to enable him to pay the requisite Duty with the Bank /Customs cashier. Once the Duty has been paid, the Supdt.(P)/ Baggage gives 'out of charge' on the BDF. The Baggage is thereafter handed over to the consignee/authorised agent by the custodian.

The procedure relating to examination of the baggage at the Unaccompanied Baggage Centre, Air Cargo Complex has been reviewed and following procedure is prescribed for strict compliance by the staff at the U.B. Centre in Air Cargo Complex.

1) As laid down in Sec. 77 of the Customs Act, 1962, correct declaration of all the contents in the baggage shall be made to the proper officer by the person desiring to clear the Unaccompanied Baggage. This declaration shall be made in the prescribed proforma known as Baggage Declaration Form (B.D.F.). The P.R.O. in the U.B. Centre shall scrutinise the forms in detail for ascertaining the veracity of the information furnished. Only when he is satisfied, he shall accept the form and initial the same in token of scrutiny of the form. He may call for additional information if necessary.

2) The declaration shall be correct in all respects viz. the description of the goods, the Brand Name, the Model Number, the quantity and the approximate value, depreciated to the proportionate usage of the article while it was actually in the possession of the passenger. Any discrepancy noticed at the time of examination vis-à-vis the declaration on the BDF can be termed as 'misdeclaration' and can be treated according to the procedure as laid down under the relevant laws.

3) In addition to the particulars like number of packages etc., the total value declared in the BDF shall be noted in the Register maintained for the purpose and the relevant entry shall be closed only after clearance of the baggage covered by the respective BDF. Any alteration to be made shall be with the approval of Asstt./Dy. Commissioner/U.B. Centre, ACC.



4) If the total value of the goods declared under the Head 'miscellaneous' exceeds Rs. 1,000/-, the details of such goods viz. the commodity, Brand, quantity and value shall be obtained in detail for the individual items.

5) The arrival and departure particulars and particulars of stay abroad / and in India shall be verified from the Passport, Air Ticket / Boarding Cards of the passenger.

6) As far as U.B. is concerned, all the packages are subjected to X-ray examination. The examination of the Baggage shall be 100% vis-à-vis the declaration in BDF. Only in cases where Baggage Form is accompanied by the packing list, the examination of Baggage may be restricted to 10% as envisaged in the Ministry's letter No. 497/2/92 Cus- VI dated. 08.04.1993.

7) Examination of the baggage under the supervision or in presence of officers from CIU/ SIIB shall be only on reasonable suspicion and with the approval of Asstt./Dy. Commissioner/SIIB. Such examination shall be carried out under the supervision of Supdts./CIU/SIIB and Supdt./U.B.C. and the fact of such examination shall be endorsed on the BDF and signed by the Superintendents supervising the examination.

8) Several instances of misuse and exploitation of concessions under T.R. Rules have been noticed. Complaints have also been received from passengers of harassment in cases of bonafide T.R. Concessions. In order to avoid such complaints and at the same time to prevent dilution of checks against exploitation of T.R. facilities by unscrupulous elements, it is directed that in future, whenever a dispute / doubt arises in respect of bonafide nature of baggage sought to be cleared under T.R. Rules in terms of notification No. 137/90 Cus, the matter should be brought to the notice of the Addl. / Jt. Commissioner of Customs i/c. U.B. Centre, who will examine the case at his level and take appropriate decision (F. No. 520/127/94 – Cus VI dated. 18.05.95.).

9) Whenever any item Imported is found in commercial quantity attracting action under ITC Imported by TR/R8/Short Visit passenger, Asstt./Dy. Commissioner (UBC) will inspect the goods physically vis-à-vis the declaration and inventory taken by the officer and satisfy himself as to the quantity/quality and value of the items taken for duty purpose. In such cases, the duty assessment will be completed by the Asstt./Dy. Commissioner/U. B. Centre.

10) The Baggage officer shall give detailed justification in respect of each item (under Appendix. 'B' of the Baggage Rules, 1998) whenever the assessable value is less than the published book value for such items. This reduced value shall be

approved by the Supdt./UBC before payment of duty. Wherever the value assessed is less than  $2/3^{\text{rd}}$  of the book value, the item shall be inspected by the Asstt. Commissioner (UBC) before the value is approved.

**[ Based on Standing Order No. 13/95 dated 31.08.1995 , issued by Commissioner of Customs, Air Cargo Complex, Sahar, Mumbai, in F. No. S/3-108/94 ACC (B) ]**

### **Strengthening of checks in Unaccompanied Baggage Centre**

With a view to a streamline the functioning of U.B. Centre, following checks are ordered to be undertaken with immediate effect.

1. Henceforth the allocation of BDF forms amongst the officers would be done through computer on random basis. A data entry operator with necessary hardware and software is being posted to U.B. Centre for this work. In addition to this AC/EDI would develop software which will select consignments on random basis for examination by SIIB/CIU. A database of Imports through U.B. Centre including details of passenger, visits made abroad, consignments cleared through U.B. Centre in last one year, details of goods Imported, value declared and assessed, duty paid and fine and penalty imposed, should also be maintained in the software. This database would also be used to monitor the functioning of U. B. Centre by intelligence agencies and for intelligent selection of packages for examination by SIIB/CIU.
2. All packages should be X-rayed and a stamp be put on all such packages by the officer X-raying the consignment certifying that the consignments have been X-rayed. Those packages, which could not be X-rayed due to the odd size, would be stamped as 'NOT' X-RAYED' by the officer X-raying the packages. A Preventive officer would be posted at Gate from batch, who would check this stamp in addition to other routine checks at the time of delivery of goods. The delivery of cargo would be done only between 12.00 PM to 1.00 PM and between 2.00 PM to 5.30 PM. Delivery of goods prior to 12.00 PM and after 5.30 PM would be done only with the permission of AC/U.B. Centre.
3. Valuation of goods is very important because duty, fine and penalty depend upon the value of the goods. All standing instructions on valuation of U. B. Cargo should be followed scrupulously. The database of values should be updated continuously on the basis of market enquiry by SIIB and information circulated by

various agencies from time to time. In addition to above, value of non-bonafide baggage may be ascertained with the help of appraising group and valuation information available in ICES (Imports) database.

4. In case of Import of goods in commercial quantity, fines and penalty should be imposed keeping in mind the local market value of the goods. Wherever required, deterrent measures like arrest and COFEPOSA detention should also be taken.

5. Addl/Jt. Commissioner in-charge of SIIB/CIU/UBC and AC/DC in-charge of SIIB/CIU would also conduct surprise checks and random examination of cargo for effective control over U.B. Centre.

**[ Standing Order No. 10/99 dated 22/05/99 issued by Commissioner of Customs, Air Cargo Complex, Sahar, Mumbai, in F. No. SIIB/Genl./46/99 ]**

#### **10. UNCLEARED / UNCLAIMED CARGO**

If any package is not cleared within 14 days of its landing, the representative of the A.A.I./custodians will arrange to issue a notice to the Importer in the form "Annexure `D'". Such notices will be prepared in triplicate, and one copy will be sent to the Importers by Registered A.D. Such packages will be entered in a challan in quadruplicate and will be forwarded to the Import Warehouse of the A.A.I. by the I.F.O. ( ACC ). The copies of the challans along with the copies of the notices will accompany the cargo transferred to Import Warehouse in closed vans under Customs Escort/double lock.

The representative of the AAI incharge of the Import Warehouse will sign all the copies of the challan in token of having received the packages and the notices. One copy of the challan will be retained by the representative of AAI receiving "over 14 days old " cargo and one copy will be returned by him to his counterpart in the Air Cargo Complex. Upon receipt of the acknowledged copy of the challan the representative of

the AAI at the Air Cargo Complex will close the entries in the register by making the following remarks "Transferred to the Import Warehouse". The representative of the AAI will keep all the A.D. cards received back, for records.

The third copy of the challan will be taken over by the Customs Officer posted at the Import Warehouse where "over 14 days old" cargo will be shifted. The Customs Officer posted at the Import Warehouse, where the cargo will be shifted, will ensure that cargo transferred under each challan is entered by the custodians in the warehouse register (Proforma Annexure `C'). He will systematically file his copies of the challans and on each such challan certify that the entries have been made in respect of each package and the custodian's Register has been checked.

In respect of the cargo, which will be cleared by the Importers from the Import Warehouse, the procedure for accounting of the packages, their storage and examination, will be the same as laid down above for the packages that will be cleared at the Air Cargo Complex. The Customs Officer posted in this Warehouse, as well at the Exit Gate, will maintain a register for listing out the number of each clearance document, marks and numbers of the packages and the number of packages in the consignment, and will daily forward under despatch, the clearance document collected during the previous day, to the OS/ACC for action as laid down for the cargo stored at the Air Cargo Complex.

In respect of the Cargo which will be shifted from the Air Cargo Complex, the AAI will forward a weekly statement (Proforma at annexure `E'), except that the break-up will show the number of packages less than two months old as well as over two months old, through Supdt. (P)/Cargo to Asstt./Dy. Commissioner/ACC and these will be finally filed by the Office Superintendent.

In respect of all consignments removed or cleared from the Air Cargo Complex or warehouse/ /shed, the representative of the AAI will encircle the entries of such cargo with red ink to indicate closure of the entry.

Packages containing precious articles, stored in strong room at the Cargo Complex, will not be transferred to Import Warehouse but action to dispose of such packages, if not cleared within two months, will be initiated as for other goods.

The orders relating to issue of detention certificates and recommendation letters in respect of sea cargo will apply to Air Cargo as well.

The packages, which are not cleared within two months of the date of arrival, will be got listed by the AAI. Such packages will be examined by the Customs Appraiser specially posted for the purpose, and goods will be inventorised and the reserve price fixed, in each case. These goods will be auctioned by the Custodians, with the help of the Auctioneers appointed by them. All such auctions will be attended by the Customs Staff. The detailed procedure for preparation of lists of goods to be auctioned, their valuation, withdrawal of goods from auction list, the working out of ITC fines, the finalisation of lists after the auctions for allocation of sale proceeds will be as applicable to the uncleared, abandoned and unclaimed Imported goods sold at the Docks. These procedures have been dealt with in Chapters 'Imports and Exports Clearance' and 'Disposal' of this Manual.

### **Functions of the Preventive Staff in relation to Uncleared / Unclaimed**

#### **Cargo:**

(i). The Import Freight Officer, A.C.C. will arrange to forward the uncleared packages to the Import Warehouse of the Custodian under challans to AAI / Custodians Warehouse along with the Notice to be issued to the respective consignees.

(ii). The Customs Officer posted at the Import Warehouse where the Cargo is shifted will enter all the material particulars of the packages in the register as per proforma 'C' , a copy of which is annexed.

(iii). The Customs officer posted in this Warehouse, as well as at the Exit Gate shall maintain register for listing out the relevant details if cleared consignments and shall arrange to forward the respective documents (covering the import consignments) to the OS ACC.

## **CHAPTER – TWO**

### **AIRPORT**

## **2.1. PRELIMINARY**

With the fast paced and steadfast advancement in the field of aviation, the air traffic across the globe has been witnessing manifold increase. Aircrafts, which are capable of carrying large number of people, cargo, equipment etc. with faster speeds and to greater distances, have descended on the international civil aviation scene.

The modern day air-crafts carry passengers as well as cargo in sizeable quantities to many destinations in a single journey. Now a days, most of the countries in the world have their own airlines which operate their aircrafts in accordance with the requirements, trade policies, international aviation laws, international relations and other attendant provisions and regulations. There are also flights that exclusively cater to cargo movement.

## **2.2. AIRPORT CUSTOMS**

India has an important presence in the international civil aviation scenario not only as an exporter/importer of large number of commodities but also trans-border movement of people. Everyday, numerous international and domestic flights touch down and take off from several Indian Airports facilitating movement of large number of passengers and goods to and from India. The Indian Customs Administration being the border control agency has deployed a large number of its personnel at these airports to ensure scrupulous enforcement of Customs and allied statutes governing import and export of cargo, the trans-border movement of passengers and clearance of their baggage.

On arrival of the aircraft at any international airport, the cargo brought by it is shifted to the Air Cargo Complex for clearance as per law. The passengers and their baggage are diverted to the passenger terminal of the airport for clearance through Immigration and Customs.

## **2.3. ARRIVAL OF AIRCRAFTS**

Like the vessels and other vehicles carrying imported goods or export goods, the aircrafts carrying such goods have also to observe certain Customs procedures and other formalities.

As laid down in Section 29 of the Customs Act, an aircraft entering India from any place outside India must call or land only at Customs airports (appointed by the Central Government under Section 7 ( i ) of the Customs Act, 1962 ) on its first arrival in the country.

According to Section 30 of the Customs Act, the Captain of the aircraft has to deliver an Import Manifest within twelve hours of arrival at the airport. However, the Assistant Commissioner can relax the time specified only on being satisfied that there was sufficient cause for not delivering the Import Manifest in the given time frame. He can also permit amendments and supplements to the Manifest already filed.

Rule 56 of the Indian Aircraft Rules, 1920 also stipulates the filing of Import Manifest in the case of aircrafts.

In order to carry out the provisions of Chapter VI of the Customs Act, 1962, one Air Customs Officer ( normally the Station Duty Officer ) at the Airport shall be designated as proper officer to receive the IGM / General Declaration and EGM / General Declaration round-the-clock, in addition to his routine duty.

It is pertinent to point out here that the Captain of the aircraft need not obtain order for Entry Inwards and Entry Outwards as the relevant Sections 31 and 39 of the Customs Act, 1962, refer only to vessels and not to the aircrafts.

Further, the provisions regarding Import Manifest, Export Manifest and Port Clearance are not applicable to aircrafts belonging to the Government of India or Government of any foreign country or to any aircraft which lands in emergent circumstances. This exception is provided for under Section 43.

The Import Manifest (Aircrafts) Regulations, 1976 made by the Central Government under Section 157 read with Section 30 of the Customs Act, 1962, are given below:

### **2.3.1. Import Manifest ( Aircraft ) Regulations, 1976**

In exercise of the powers conferred by section 157, read with section 30 of the Customs Act, 1962, the Central Board of Excise and Customs hereby made the following regulations, namely: -



**1. Short title and commencement.** – (1) These regulations may be called the Import Manifest (Aircraft) Regulations, 1976.

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

**2. Definition.** – In these regulations, “Form” means a form appended to these regulations.

**3. Import manifest.** – Every import manifest shall –

(a) be delivered in duplicate;

(b) cover all the goods carried in the aircraft; and

(c) consist of –

(i) a general declaration, in Form I

(ii) a passenger manifest, in Form II

(iii) a cargo manifest, in Form III

(iv) a list of private property in the possession of the Captain of the Aircraft and other members of the crew, in Form IV

**4. Cargo manifest.** – (1) The cargo manifest referred to in sub-clause (iii) of clause(c) of regulation 3 shall be delivered in separate sheets in respect of the following categories of cargo, namely:-

(a) cargo to be landed;

(b) unaccompanied baggage;

(c) goods to be transhipped;

(d) same bottom or retention cargo.

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

(i) arms;

(ii) ammunitions;

(iii) narcotics;

(iv) dangerous drugs;

(v) gold; or

(vi) silver,

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

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

#### FORM I

**General Declaration**

Owner or Operator .....Marks of Nationality and Registration  
 ..... Flight No.....Date ..... Departure from  
 .....(Place and Country)..... Arrival at..... (Place and Country).....

**FLIGHT ROUTING**

*Place	Total	Number of Passengers of this stage	Cargo
Number of crew			

Departure Place:

Embarking .....Cargo Manifest attached.

Through on same flight .....

Arrival Place:

Disembarking.....

Through on same flight.....

\* (Place of origin, en-route and destination to be indicated )

Declaration of Health

For official use only

Persons on board known to be suffering from illness other than air sickness or the effects of accidents, as well as those cases of illness disembarked during the flight.....

Any other conditions on board which may lead to the spread of disease.....

Details of each disinfecting or sanitary treatment

(place, date, time, method) during the flight. If no disinfecting has been carried out during the flight, give details of most recent standing.....

Signed., if required.....

Crew member concerned

I declare that all statements and particulars contained in this General Declaration, and in any supplementary form required to be presented with this General Declaration are complete, exact and true to the best of my knowledge and that all through passengers will continue/have continued on the flight.

**SIGNATURE.....**

Authorised Agent or  
Pilot-in-Command

**FORM II**

**Passenger Manifest**

Owner or Operator .....Marks of  
Nationality and Registration .....Flight  
No..... Date.....Point of embarkation  
.....Point of disembarkation .....  
(Place and Country) (Place and Country)

Surname and initials For use by owner or operator only For official use only

Prepared ..... by  
.....page.....of.....pag  
es

**FORM No. III**

**Cargo Manifest**

Owner or Operator .....Marks of  
Nationality and Registration .....Flight  
No..... Date.....Point of Loading  
.....Point of unloading .....  
(Place and Country) (Place and Country)

Air Way Bill Number Number of Nature of For use by owner For official  
packages goods or operator only use only

Prepared .....  
by.....page.....of.....page  
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**FORM IV****List of Private Property in the Possession of the Captain and Crew**

Flight No. ....

Aircraft departed for .....

Arrived from .....

Name of the crew	Position held	Currency			Tobacco	Alcoholic liquors	Watches		Jewellery	Any other	Signature	Remark
		Indian	Foreign	Traveler's			S. No.,	Make, Brand				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	

Aircraft imprest cash :

Aircraft cash collection :

Gold, coin and bullion :

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

Signature of Captain of the Aircraft

**[G.I.,D.R. & B. Notification No. 421/76-Cus., dated 23.10.1976 as amended by Notification No. 221-Cus., dated 22.10.1977.]**

**2.4. DEPARTURE OF AIRCRAFTS**

Section 42 of the Customs Act, 1962, stipulates that no aircrafts should leave the airport without a written order from the Proper Officer of Customs. At the same time, Rule 57 of the Indian Aircrafts Rules, 1920 requires that the Customs Officer should sign the logbook and the Export Manifest. This signature is sufficient authority for the aircraft to proceed to its destination.

However, as laid down in Section 41 of the Customs Act, 1962, Captain of the aircraft is required to file an Export Manifest before departure of the aircraft. The C.B.E.C. in exercise of the powers conferred under section 157 read with section 41 of the Act have made the Export Manifest (Aircraft) Regulations, 1976 which are as under:

**2.4.1. Export Manifest (Aircraft) Regulations, 1976**

In exercise of the powers conferred by section 157, read with section 41 of the Customs Act, 1962, the Central Board of Excise and Customs hereby made the following regulations, namely: -

**1. Short title and commencement.** – (1) These regulations may be called the Export Manifest (Aircraft) Regulations, 1976.

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

**2. Definition.** – In these regulations, “Form” means a form appended to these regulations.

**3. Export manifest.** – Every export manifest shall –

(a) be delivered in duplicate;

(b) cover all the goods carried in the aircraft;

(c) consist of –

(i) a general declaration, in Form I

(ii) a passenger manifest, in Form II

(iii) a cargo manifest, in Form III

(v) a list of private property in the possession of the Captain of the Aircraft and other members of the crew, in Form IV

(2) The export manifest for all goods shipped and transhipped and endorsed by the person-in-charge of the aircraft as to the quantities shipped and transhipped shall be delivered to the proper officer of customs at the airport, before the departure of the aircraft.

**4. Cargo manifest.** – (1) The cargo manifest referred to in sub-clause (iii) of clause(c) of regulation 3, shall be delivered in separate sheets in respect of the following categories of cargo, namely:-

(a) cargo shipped;

(b) cargo transhipped;

(c) goods lying in the aircraft but not landed or transhipped (same bottom cargo);

(d) cargo in respect of which drawback has been claimed.

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

(ii) arms;

(ii) ammunitions;

(iii)explosives;

(iv) narcotics; (v) dangerous drugs; or (vi) gold; irrespective of whether for shipment, for transshipment, or for being carried as same bottom cargo, shall be furnished in separate sheets and shall be set out in the order of the ports of loading.

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

**FORM I**  
**General Declaration**

Owner or Operator .....Marks of Nationality and Registration  
..... Flight No.....Date ..... Departure from  
.....(Place and Country)..... Arrival at.....(Place and Country).....

**Flight Routing**

*Place	Total Number of crew	Number of Passengers of this stage	Cargo

Departure Place:  
Embarking .....Cargo Manifest attached.  
Through on same flight .....

Arrival Place:  
Disembarking.....  
Through on same flight.....

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\* ( Place of origin, en-route and destination to be indicated )

**Declaration of Health**

For official use only

Persons on board known to be suffering from illness other than air sickness or the effects of accidents, as well as those cases of illness disembarked during the flight.....

Any other conditions on board which may lead to the spread of disease.....

Details of each disinfecting or sanitary treatment (place, date, time, method) during the flight. If no disinfecting has been carried out during the flight, give details of most recent disinfecting.....

Signed., if required.....

Crew member concerned

I declare that all statements and particulars contained in this General Declaration, and in any supplementary form required to be presented with this General Declaration are complete, exact and true to the best of my knowledge and that all through passengers will continue/have continued on the flight.

**Signature**.....

Authorised Agent or

Pilot-in-Command

**FORM II**

**Passenger Manifest**

Owner or Operator .....Marks of  
 Nationality and Registration .....Flight  
 No..... Date.....Point of embarkation  
 .....Point of disembarkation .....  
 (Place and Country) (Place and Country)

Surname and initials For use by owner or operator only For official use only

Prepared ..... by  
 .....page.....of.....pag  
 es

**FORM No. III**

**Cargo Manifest**

Owner or Operator .....Marks of  
 Nationality and Registration .....Flight  
 No..... Date.....Point of Loading  
 .....Point of unloading .....

	(Place and Country)		(Place and Country)
Air Way Bill Number	Number of packages	Nature of goods	For use by owner or operator only
			For official use only

Prepared by.....page.....of.....pages

**FORM IV**

**List of Private Property in the Possession of the Captain and Crew**

Flight No. ....

Aircraft departed for .....

Arrived from .....

Name of the crew	Position held	Currency			Tobacco products	Alcoholic liquors	Watches		Jewellery	Any other article,	Signature	Remarks
		Indian	Foreign	Traveler's cheques			S.No.,	Make,				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	

Aircraft imprest cash :

Aircraft cash collection :

Gold, coin and bullion :

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

Signature of Captain of the Aircraft

[ G.I.,D.R. & B. Notification No. 419/76-Cus., dated 23.10.1976 ]

**2.5. INSPECTION OF NON-SCHEDULED FLIGHTS**



The Customs field security staff, in addition to taking rounds to ensure that Officers and Sepoys posted at different Airport periphery Gates are present and alert and taking rounds in the apron and surrounding areas from anti-smuggling point of view, are entrusted with the job of checking and sealing of non-scheduled aircrafts at the time of their arrival and to carry out necessary checks at the time of departure. The Ministry vide F. No. 394/10/96 Cus.(AS) of 14.10.97 has issued the following guidelines regarding the procedure for Customs Clearance of non-scheduled flights: -

1. Upon receiving information from Air Traffic Control (ATC) about the arrival of non-scheduled flights, it should be ensured by the Field Security Staff that the provisions of Section 30 of the Customs Act, 1962 regarding filling of declaration and manifest under Import Manifest (aircraft) Regulations, 1976 are observed strictly.
2. The aircraft shall be examined visually by the Customs authorities and in case of any reasonable doubt or suspicion, the aircraft may be rummaged after getting permission of Assistant/ Deputy Commissioner of Customs.
3. In case of recovery of any prohibited goods/documents during visual inspection/rummaging of aircraft, the crew and the passenger should be immediately detained and necessary action may be taken under the law and the Commissioner of Customs, local police and intelligence agencies must be informed by phone/telex/fax.
4. The aircraft shall be kept under Customs seal. Any maintenance or repairs of the aircraft shall be allowed under Customs supervision on Cost recovery basis.
5. The facility of purchase of goods from Duty Free Shops may also be extended to the transit passengers of the foreign non-scheduled flights.
6. The non-scheduled flight register will have the following columns: -
 

1. Sr. no. & date	2. I. G. M. No.
3. Type of Aircraft	4. Arrived from
5. No. of crew members	5 A. Names of passengers
5B. Addresses.	
5C. Passport details.	6. No. of passengers
6 A. Names of passengers	6B. Permanent / postal address of passenger
6C. Local address in India.	6D. Passport details.
6E. Occupation	6F. Nature and purpose of visit in India.
7. Cargo, if any	8. Expected duration of stay in India

9. Details of Guarantee, if filed      10. Boarded/Sealed/Rummaged  
 11. Signature of the A.C.S./F.S.      12. E.G.M. No. & Date  
 2. Destination.      14. Date & time of Departure  
 15. No. of Crew/passengers/Cargo.      16. Signature of A.C.S. /F.S.

Air Customs Superintendent in charge of Field Security shall fill in the columns from 1 to 10 above after completing the Field security formalities and shall make endorsement with his dated signature and name in column 11 of the register. He will also obtain the departure details along with copy of the E.G.M. from the concerned Airlines. After completing departure formalities he shall complete Sr. no. 12 to 15 of the Register and shall make endorsement by putting his dated signature and name in column 16 of the register.

7. For obtaining details at Sr. no. 5A to C & 6A to F of para 6 above, format as prescribed in Annexure A & B should be handed over to the Master of the aircraft or to the Handling Agents immediately on arrival. The details so obtained should be properly entered in the Register.
8. In addition to the above, the A.C.S. in charge of Field Security shall maintain separate file for each individual non-scheduled flight, which shall contain all the particulars regarding the flight including copies of the I.G.M. and E.G.M. File, should also contain name of the Officers who attended the non-scheduled flights on its arrival or departure. After completing all the formalities the A.C.S./ Field Security will forward the file to the Administration office, who will scrutinise all the details and keep it for record for a period of one year.

**ANNEXURE 'B' FOR DETAILS REGARDING PARTICULARS OF PASSENGERS  
 ARRIVED  
 BY NON-SCHEDULED FLIGHT NO.....**

	A	B	C	D	E	F
SR. NO	NAME OF PASSENGER	PERMANENT/POSTAL ADDRESS	LOCAL ADDRESS IN INDIA	PASSPORT DETAILS	OCCUPATION	NATURE AND PURPOSE OF

						VISIT

Master of the Aircraft.

**ANNEXURE 'A' FOR DETAILS REGARDING PARTICULARS OF  
CREW MEMBERS OF NON-SCHEDULED FLIGHT NO.....**

SR. NO.	A	B	C
	NAME OF THE CREW	ADDRESS	PASSPORT DETAILS

Master of Aircraft.

**2.6. FOREIGN TRAVEL TAX 1979 – ACCOUNTAL OF PASSENGERS.**

With the introduction of Foreign Travel Tax in 1979 with effect from midnight of 14/15.06.79, the accountal of the passengers will have to be ensured at the time of their departure, as per instructions contained in the Ministry's D. O. letter F. No. 304/1/79 FTT, dated 06.06.1979. It will be observed from these instructions that the copy furnished to the Visadex officer shall be relied upon as the master copy for determining the number of passengers, including transit passengers and the exempted categories. With a view to avoid confusion and to ensure smooth flow of passengers, the airlines shall provide certified copy of the manifest, which is based upon the flight coupons of passengers to the Visadex Officer, with a summary of the passengers as per the attached proforma (Form I – Passengers report under Rule 8). On scrutiny of the manifest and after comparison with the visadex copy, the Visadex Officers shall

certify correctness thereof. The Airlines shall furnish three copies of the passenger manifest showing at the bottom an abstract of the number of passengers travelling to:

- (i) Neighbouring countries, Viz.
  - (a) Afghanistan
  - (b) Baluchistan,
  - (c) Bhutan,
  - (d) Burma,
  - (e) Nepal,
  - (f) Pakistan,
  - (g) Srilanka,
  - (h) The Maldives.
- (ii) Countries other than neighbouring countries.
- (iii) Exempted categories.

Passengers report in Form I shall be presented to the Export P. R. O. who shall assign rotation number, airlines-wise, and handover two copies of the manifest after certification to the airlines for their use. The copy retained by the Export P. R. O. shall be collected by the F. T. T. department the next day for compilation of the return in Form 2 (with reference to Rule 9). In order to facilitate accountal of the flights/Passengers by the F. T. T. Department, the P. R. O. shall maintain the rotation register in proforma at Annexure 'C' separately for each airline. The rotation number shall be the serial number for each airlines. For this purpose, separate registers shall be allocated for each airlines. The Superintendent in-charge of Export Baggage Clearance, shall ensure that the register is maintained properly and shall initial column 8 thereof in token of the scrutiny of the manifest/register.

The S. D. O. shall continue assigning E. G. M. (rotation) number to the manifest, as hitherto. The Export P. R. O. shall have an additional column number wherein, for the purpose of correlation, he shall show the regular E. G. M. number.

There may be occasions when an aircraft is grounded for long duration owing to some snag, and airline may accommodate in-transit passengers in town. As F. T. Tax is applicable to even in-transit passengers once they cross the Customs barriers, Superintendent ( Export ) shall obtain a list (in duplicate) of such passengers from the Airlines. A copy of this list shall be kept with the Export PRO who shall keep a watch to ensure that all of them are accounted for whenever they connect any outgoing flight. The airlines shall provide separate passenger manifest for such in-transit joining passengers wherein they shall indicate 'ex-flight' rotation (by which they arrived earlier).

Occasional selective checks shall be exercised to ensure that F. T. T. is recovered wherever recoverable. This could be ascertained from stamps affixed to the passengers' tickets.

Transit passengers leaving by the next available flight have been exempted from tax provided they do not come out of the Customs barrier (I.e. they are in direct transit). Discreet watch shall be kept on the movements of transit passengers to ensure that those who go beyond the Customs barrier on arrival do not escape the tax net.

Exemption certificates collected by the carriers at the time of checking out the passengers shall be attached to one of the copies of the reports.

The exempted categories are:

Sl. No.	Category of passengers	Conditions
1	2	3
1.	Members of Diplomatic Missions in India holding Diplomatic status and their families.	Production of a Certificate from the Head of Diplomatic Mission in India or an Officer authorised by him in this behalf to the effect that the passenger enjoys diplomatic status or is a member of the family of an officer enjoying diplomatic status.
2.	Career Consular Officers of foreign Consulate in India and their families.	Production of a Certificate from the Head of the foreign consular post in India or an Officer authorised by him in this behalf to the effect that the passenger is a Career Consular Officer or is a member of the family of such Officer.
3.	Officials of the United Nations in India or any specialised agency of the United Nations in India and their families and are not nationals of, or permanently resident in, India.	Production of a Certificate from the Head of the United Nations Office in India or the Head of the specialised agency of the United Nations in India or by an officer authorised by Head of the specialised agency of the United Nations in India to the effect that the passenger is entitled to customs privileges admissible under the provisions of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), or is a

		member of the family of such official entitled to customs privileges as admissible under the provisions of the said Act of 1947.
--	--	--

All the Superintendents (Export) shall ensure that direct transit passengers are properly accounted for. For this purpose, a copy of arrival/through manifest shall be attached to the final manifest.

All the staff posted for clearance of departing passengers shall carry out spot checks to ensure recovery of Foreign Travel Tax from passengers. In respect of passengers who fall under the exempted categories, Superintendents shall ensure that the exemption certificates have been verified by the carriers and make a note to that effect against the name of the passenger in the Visadex copy of the Passenger Manifest.

**[ Mumbai Airport F. No. Air. Cus. 51/20/79 dated 19.06.1979 ]**

**FORM – I**

**(Passenger Report)**

**(See Rule 8)**

Name of the Carrier :  
 Voyage No. :  
 Identifying particulars  
 or name of Ship/Aircraft :  
 Date of Departure :  
 Point of Departure from India :  
 Route and Station of Origin and  
 destination :

S. No.	Name of the Passenger	Male/Female/Child	Customs Port or Customs Airport of boarding in India.	Remarks
1	2	3	4	5

--	--	--	--	--

- (a) Total No. of joining passengers :
- (b) Out of (a) the No. of passengers in transit  
exempted from payment of tax :
- (c) Out of the difference between (a) and (b) No.  
of passengers travelling to neighbouring  
countries :
- (d) Out of the difference between (a) and (b) No.  
of passengers going to countries other than  
neighbouring countries. :
- (e) Out of the number against (c), the No.  
exempted from payment of tax. :
- (f) Out of the number against (d), the number  
exempted from payment of tax. :

I declare that the particulars furnished in this report are true and complete to the best of my knowledge and belief.

Date: .....

Signature of the Carrier:.....

Note: - 1. In respect of passengers exempted from payment of foreign travel tax give reasons in the remarks column and indicate whether certificate wherever prescribed has been attached.

Note: - 2. In respect of transit passengers, who are exempted from payment of foreign travel tax indicate the flight number by which arrived and the date.

**FORM – 2**  
**(See Rule 9)**

Return showing the particulars of the flights operated, No. of passengers carried, amount of tax collected and paid into the treasury and amount of Refund obtained the month of .....

Name of the Carrier : .....

S. No./Running rotation No. for foreign travel tax.	Voyage No. and date.	Total No. of joining passen gers	Out of No. in Col. 3, No. of transit passengers exempted from foreign travel tax.	Out of the difference between the No. in Column 3 and 4.	
				No. of passengers going to neighbouring countries	No. of passengers going to other countries.
1	2	3	4	5(a)	5(b)

<u>No. of passengers exempted.</u>		Tax Collected.	<u>Total tax paid into treasury (indicate separately all challan Nos. Challan Amount No. (Rs.)</u>	<u>Refund obtained during the month. Refund order Amount No. and Date received.</u>
Out of the Number shown in column 5(a)	Out of the Number shown in Col. 5(b)			
6(a)	6(b)	7	8	9

I declare that the particulars furnished in this return are true and complete to the best of my knowledge and belief. In the event of any mistake being detected later



resulting in non-collection of tax, hold myself responsible for the mistake and also agree to make good the consequent loss in revenue.

Date: -

Signature of the Carrier.

\* Attach copy of each challan referred to in column 8.

### ANNEXURE 'C'

#### Proforma of the Register

S. No./Running rotation No. for F.T.T.	Flight No. and date.	Total No. of joining passengers.	Out of No. in Col. 3, No. of transit passengers exempted from F.T.T.	Out of the difference between the No. in Column 3 and 4.	
				No. of passengers going to neighbouring countries	No. of passengers going to other countries.
1	2	3	4	5(a)	5(b)

<u>No. of passengers exempted.</u>		Date of receipt of passengers manifest.	Initial of Supdt.
Out of the Number shown in column 5(a)	Out of the Number shown in Col. 5(b)		
6(a)	6(b)	7	8

#### Travel Tax leviable in case of

(1) if journey is frustrated (2) transit passengers who go out of Customs barriers

- (1) the law Ministry have advised that it is clear from clause (d) and (e) of Section 34 of the Finance Act, 1979, that as soon as, with a view to perform an International journey, a passenger boards at any Custom Port or Customs Airport, ship or an aircraft, the liability of payment of Foreign Travel Tax arises and the law, as it is framed, does not take into account the fact that the completion of the said international journey may be frustrated thereafter.
- (2) As regards in-transit passengers, who go out of Customs barriers on account of some technical fault in the Aircraft, but come back after sight-seeing or rest to board the same Aircraft when it is fit to take-off, attention is invited to the provisions of Section 34 (e) ( ii ) in terms of which, tax will not be chargeable for such in-transit passengers even if they cross the Customs barriers provided they continue their journey by the same aircraft bearing the same flight number by which they arrive.

[ Extracts from Board's letter F. No. 306/14/79 FTT dated 28.12.1979 ]

## **2.7. INLAND AIR TRAVEL TAX COLLECTION – MONTHLY REPORT STATEMENT**

It has been considered necessary by the Board to obtain the information on the collection of Inland Air Travel Tax and the collection charges paid to the Airlines for various purposes such as Budgetary exercise, replies to Parliament Questions and others. Accordingly two forms have been prescribed for collecting the requisite information. The formats of these two forms are enclosed. Form – I contains two parts viz. Part A and Part B. Part A represents statement of calculation of IATT month – wise. Part – B represents the statement of outstanding amount of IATT from the airlines. Form – II represents the statement of collection charges paid towards IATT, monthwise. The information contained in these forms – I are to be sent monthwise.

As desired by the Board, the statements in respect of IATT collection and collection charges paid to the Airlines will have to be sent every month from the 1<sup>st</sup> April of 1995 i.e. commencement of the financial year 1995-96 onwards as per the prescribed forms.

**Form – I**

Financial Year.....

**Part –A**

**Statement showing Collection of Inland Air Travel Tax for the Month of.....**

Name of the Airline s/Air carriers	Gross amount of tax deposited the month	Current arrears	Gross amount of tax deposited (2+2)	Refund allowed under Rule 4	Net Collection (2+3+5)	Progressive net collection since April, as per col.6	Remarks with period related to amount shown at item 3
1	2	3	4	5	6	7	8
A. National Air Carriers							
Total							
Grand Total							

Signature of Assistant Commissioner (Customs)

**From - I**

Financial Year.....

**Part - B**

**Statement showing amount to IATT outstanding at the end of the month of**

**.....**

Name of the Air carriers	Amount outstanding upto the end of previous month	Amount deposited towards outstanding dues during the month	Amount outstanding for the tax liability during the month	Amount outstanding at the end of this month	Remarks with action taken under Rules for recovery
1	2	3	4	5	6
A National Air carriers					
B Other Air Carriers					

Total
-------

Signature of Assistant Commissioner (Customs)

Charge.....

**From - II**

**Statement showing amount of IATT outstanding at the end of the month of.....**

Name of the Airlines / Air carriers	Amount claimed by the carrier during the month period-wise	Amount paid to the carrier	Amount outstanding for payment with remarks (2-3)	Progressive total of amount paid from April as per col.3	Remarks
1	2	3	4	5	6
A	National Air carriers				
B	Other Air Carriers				
Total Financial Year					

Signature of Assistant Commissioner (Customs)

Charge.....

**[ Board's Circular No. 40/95, dated 18-04-1995 from F. No. 306/2/95-FTT ]**

**2.8. FOREIGN TRAVEL TAX – FORMS REVISED**

At present the Board has prescribed three forms for the statement of collection of FTT, vide F.No.310/19/79-FTT, dated 20-10-1979 and F.No.310/3/81-FTT, dated 29-04-1981; Demand Notice vide F.No.310/9/73-FTT, dated 28-07-1993; and for refund claims vide F.No.31.2.73; dated 02-04-1973. On review of the existing three types of

forms it has been found that these forms are not sufficient to serve the purpose of collection of requisite data and monitoring of FTT collections. Accordingly it has been decided to replace the existing three types of forms by a new set of forms. The specimen copies of these new forms are given here under.

2. As may be seen, the new forms are two in number. Form-I contains two parts of which Part-I is the statement showing the collection of FTT outstanding against the airlines. The Form-II is prescribed for monitoring the utilisation of collection charges payable to the Airlines towards FTT collection under Demand No. 35.

3. As desired by the Board, it is requested that the information on FTT be sent henceforth on monthly basis, as per the prescribed forms. The statement will be on financial year basis starting with effect from 1<sup>st</sup> April, 1995.

### Form – I

Financial Year .....

### Part – A

#### **Statement showing Collection of Foreign Travel Tax for the Month of.....**

Name of the Airline s/Air carriers	Gross amount of tax deposited the month	Current arrears	Gross amount of tax deposited (2+3)	Refund allowed under Rule 5	Net Collection (4+5)	Progressive net collection since April, as per col.6	Remarks with period of amount shown at col. 3
1	2	3	4	5	6	7	8
A. National Air Carriers							
Total							
B. Other Air carriers							
Total							
Grand Total							

Signature of Assistant Commissioner (Customs)

Charge.....

**From - I**

Financial Year.....

**Part - B****Statement showing amount to FTT outstanding at the end of the month of****.....**

Name of the Air carriers	Amount outstanding upto the end of previous month	Amount outstanding upto the end of this month	Amount deposited towards outstanding dues during the month	Period-wise balance of outstanding amount	Remarks with action taken under Rules for recovery
1	2	3	4	5	6
Total					

Signature of Assistant Commissioner (Customs)

Charge.....

**From - II****Statement showing amount of FTT outstanding at the end of the month of.....**

Name of the Airlines	Amount claimed by the carrier during the month period-wise	Amount paid to the carrier	Amount outstanding for payment with remarks	Progressive total from April, as per col.3	Remarks
----------------------	--	----------------------------	---	--	---------

1	2	3	4	5	6
Total Financial Year					

Signature of Assistant Commissioner (Customs)

Charge.....

[ Board's Circular No. 42/95, dated 24-04-1995 from F. No. 520/18/95-Cus. VI ]

### **2.9. BAGGAGE CLEARANCE**

The main function of the Customs Staff at the International Airports is clearance of international passengers and their baggage on Arrival and Departure. The concept of Channel system for baggage clearance is required to be properly understood by the Staff. In the era of liberalisation, the rules and instructions on Baggage and other connected matters are required to be implemented with a pragmatic approach maintaining proper balance between the letter and the spirit behind the same, keeping in mind the needs of the passengers and the stipulations of law. The system of clearance of passenger's baggage is based on the trust reposed on the passengers who are expected to make a bonafide and complete declaration of the contents of their baggage as envisaged in Section 77 of the Customs Act , 1962. Passengers arriving from non-sensitive countries viz. Europe, USA, etc., who opt to pass through Green Channel are allowed unhindered to walk through. It is only in rare cases, where there is either prior intelligence or grounds for grave suspicion, that the baggage is examined. Passengers arriving from sensitive ports (like Dubai, Singapore, Hong Kong, etc.) are similarly allowed but with a greater element of scrutiny by way of higher percentage of screening or questioning is resorted to.

As regards the passengers opting for Red Channel, the Bay Superintendent shall accept oral declaration of the passenger and opening of baggage is done only with the permission of Assistant/Deputy Commissioner on duty. In the event of baggage being found within the admissible Duty-free allowance, the Superintendent shall specify accordingly on the gate pass and clear the passenger. In case, the goods are released on payment of duty or are taken up for adjudication, the Air Customs

Officer shall indicate the Duty Receipt No./Detention Receipt No. on the gate pass itself.

The term 'baggage clearance' also involves multifarious activities of the staff, e.g. detention of baggage for reshipment/valuation/payment of duty, adjudication processes, handing over of mishandled baggage to rightful owner, disposal of confiscated/uncleared goods, refund of Customs Duty, deployment of staff (general administration.) policy matters, correspondence, compilation of statistics etc.

Most of the major International Airports have full-fledged Commissionerates attending to the work relating to clearance of passenger's baggage and various other matters connected with the establishment and administration.

## **2.10. INTERNATIONAL PASSENGERS – a profile**

### **Introduction**

India is a fast developing country. Its trade, commerce and industry are gradually increasing. There is all round advancement in scientific and technological fields. All these have given rise to steady increase of passenger traffic to and from India. The need for hassle-free travel is felt more than ever before. True to Indian tradition of hospitality, the attitude of Custom officer at all international airports therefore, needs to be tuned accordingly. A visitor to India on landing from aircraft, barring for short contact with other agencies like Health, Immigration, comes in touch with Customs Officer and the behaviour and attitude of the Customs Officer, make the first impression on the traveller about the country itself. It must not be forgotten that an air passenger while on flight is treated with extreme courtesy by the members of Airlines Crew. Hence a little discourtesy or carelessness by a Customs Officer brings about a sharp contrast and eventually bitterness in a visitor's mind.

### **Historical Background Of Passenger Clearance**

Till about a decade ago, baggage of an incoming passenger was to be examined extensively. Till 1965, Customs Import Duty on baggage articles was charged according to different rates of duty applicable to different tariff items causing delay in baggage clearance of the passengers who were exceeding duty free baggage allowance. No fixed baggage allowance was provided in baggage Rules, it depended



on the period of stay of passenger abroad. Gradually the procedure was simplified – both the rate of duty on baggage, irrespective of the type of articles (except liquor etc.) and the duty-free allowance, irrespective of period of stay abroad, became uniform for all passengers, which helped quicker clearance. Extensive baggage examination was replaced by a system of selective check according to pre-fixed digits i.e. only baggage of those passengers were to be checked whose passport or ticket numbers ended with the pre-fixed digits. This system was obviously found to be not justifiable in all cases and was ultimately substituted by channel system. Initially, it had 3 channel system- `white for tourist, `green' for passengers within free allowance and `Red' channel for passengers having dutiable goods. There was no examination of baggage for white channel passengers, occasional examination for `Green' channel and 100% examination for `Red' channel passengers. The system was further liberalised by introduction of two-channel system - `Green' and `Red' with no examination for either except for special cases. Slab rate of duty for baggage items, dependant on the total value of goods exceeding free allowance, was introduced. Thereafter it has been a flat rate of duty on baggage exceeding the duty free allowance in terms of value (except a few items like liquor, cigarettes etc.)

In regard to tourist passenger there is practically no check except for import of high-valued articles.

In the Export side, the clearance of passengers and their baggage however, continues to be quite liberal. Issue of `Export Certificate' for identifiable valuable articles in order to facilitate their duty-free importation etc., also continues.

### **Type Of Passengers :**

International air passengers can be broadly categorised into the following groups :-

- (a) **TOURIST** – (i) of foreign origin,  
( ii ) of Indian origin.

**( i ) Tourist Of Foreign Origin-** Tourist of foreign origin visits India for non-immigrant purposes such as recreation, sport, games, religious purpose, visit to tourist spots, business, attending seminars, conferences etc. They come in groups and as individuals. They normally travel in groups. If in groups, their baggage are normally pooled and they desire to be cleared in groups. Hence it is desirable that at all International airports, there are arrangements to handle them as a group rather than as

individuals. While group tourists depend on their own agents who look after their comfort, accommodation, transport etc. individual tourists often enquire of Customs officers about various information like tourist spots, hotel, transport, exchange rate of foreign currency, system of exchange, etc. Though at each international airport, officers from the Government of India Tourist Department are also posted to take care of tourists, it is more often the Customs officers from whom he seeks help for first-hand knowledge about all such matters as the tourist spends quite some time with the Customs. It is, therefore, desirable that the Customs officers should not only be polite and courteous, but also be knowledgeable about tourist queries and should be able to satisfy them.

It should be an additional advantage if some of the Custom officers could also speak to tourists in their own language. For this purpose some elementary knowledge of important foreign languages may be of great help. Knowledge of how to wish the tourist in his or her own language would perhaps be a further plus point in this regard. Normally tourist baggage is not examined by Customs, but if for any special reason the baggage is to be opened, it must be ensured that the Customs Officer help him in opening, re-packing and closing the same. While a tourist leaves the Customs counter, it should not be forgotten to wish him a nice stay in India. All these small matters count very much in impressing a tourist on his first arrival.

**(ii) Tourist Of Indian Origin-** Indians who have settled abroad and are coming for short visits to see their relatives, acquaintances or for tourist purposes fall within this category. Back home after long period, they desire to be treated sympathetically and kindly by their own fellow men. Hence responsibility of the Customs officer at the airport is quite enormous. On the point of entry to their homeland, they may be a little emotional, but this should not be misconstrued, rather they have to be extended all sympathy and kindness. It is possible that due to long absence from the country they may also need various information like a tourist of foreign origin, hence a Customs officer should be abreast of all such basic information for communication to them.

**(b) NON – TOURIST: -**

- (i) Indian origin and foreign origin.
- (ii) Passengers coming to India on transfer of residence.

**( i ) Non – tourist of Indian origin and foreign origin-** Residents in India travel different countries for business, seminars, technical/scientific studies, medical

treatment, attending invitations, sports, game and other tourist purposes. The visitors include foreigners settled in India temporarily or permanently. This category of passengers are aware of Indian situation and need no first-hand knowledge about accommodation, transport etc. However, many of them are busy people and having spent about a few hours on flight will feel averse to be stuck at the airport for Customs clearance for long. With the introduction of channel system their clearance time has been considerably cut down, but even then currency declaration in some cases, payment of duty on excess/dutiable articles, is likely to take some time.

Then there are un-accompanied ladies, sick persons, children, and mothers with infants who deserve special consideration.

Planning of passenger clearance, particularly when flights are bunching and there is possibility of mix up of baggage of one flight with another, need be done well in advance. For this purpose carrier Air lines could also be consulted. Care should be taken to identify the passengers needing special care, i.e. the sick, mothers with infants, aged people etc. and to arrange for their speedy clearance.

One single irritant for a passenger is mishandling of his baggage. Liaison with airline representatives to deal with such passengers expeditiously may save embarrassment in such situations.

**( ii ) Residents coming back from abroad. on transfer of residence-** These passengers are non-tourists but they have special problem – they have well-packed crates/boxes containing house-hold goods. Scientists/technocrats, may have equipment and appliances with them – such passengers need to be handled carefully – firstly because they are likely to take longer time in baggage clearance – because of opening of crates/boxes, and secondly because re-packing of boxes which were packed abroad by professional packers, may not be possible so nicely, at the airport. This is more so when the boxes contain fragile articles or scientific instruments. This problem needs to be handled in consultation with the carrier airline and other agencies operating at the airport. It has however to be remembered that an understanding type of Customs officer may not be easily mis-understood by a passenger.

It has also been a common sentiment with respectable and responsible passengers that they grudge not so much for paying rightful Customs duty, as for discourtesy shown to them or delay caused to them.

**(c) DIPLOMATS:** these dignitaries may include the diplomats

- (i) of foreign origin accredited to India,
- (ii) of foreign origin not accredited to India,
- (iii) Indian diplomats returning home.

Diplomats accredited to India are immune from baggage examination and other formalities and they are entitled to courtesy . Trained officers usually handle diplomatic passengers. Foreign diplomats not-accredited to India, but transiting should also be extended extreme courtesy.

Indian diplomats returning to India on completion of their assignment abroad or otherwise are not entitled to diplomatic immunity in their own country. However, they also deserve to be handled with all courtesy and care.

### **Courtesy and Efficiency**

It is important to ponder over the attitude and approach that the Customs Officers should adopt while discharging their duties and responsibilities entrusted to them by the law and the administrators *vis-à-vis* the expectations and the requirements of the members of the public that they serve.

Though it is true that Customs Officers are entrusted with the onerous task of collecting revenue and safeguarding the national security, it is also true that they are vested with the necessary power and discretion. A great amount of trust and confidence is also reposed in them.

Having been appointed in a Uniformed Service and posted at the International Airports to attend to the international travellers, where they come in intimate contact with them, the Customs Officers are also expected to conduct themselves in the most disciplined and dignified manner and show at all times courtesy and helpful attitude. Needless to say, this requires maintenance of the highest degree of integrity and honesty, possession of complete knowledge of rules and procedures, just and sympathetic consideration, sound health and pleasant disposition.

While enforcing the law; implementing the rules; executing the orders and following the procedures, certain difficulties do arise in being firm and considerate; conscientious and lenient and just and sympathetic, all at the same time. It is for this very purpose that the Customs Officers should learn, imbibe and develop a fine blend of executive effectiveness with humanitarian considerations. A little inclination towards understanding the needs and difficulties of the members of public they are required to

serve, will help them greatly in adopting this kind of attitude to fulfil their obligations with the law and the procedures.

Now that the world has ushered into the New Millennium, one should also be conscious of the fact that the communication and transportation facilities have attained such proficiency that the time has become more precious and short in availability than ever before. The level of literacy and self-reliance amongst the people have increased so much that they are quite conscious of their rights and expect respectable and adequate treatment.

More often than not, the feedback available about the conduct and performance at work, reveals that wherever and whenever courtesy, politeness, patience, helpful attitude and sympathetic consideration are shown while discharging the duties, even the strict enforcement of law, firmness in the decisions and levy of Duty are taken in good spirit and appreciated; and the lack of such qualities and/or the presence of ulterior motives, creates an atmosphere of animosity, distrust, non-cooperation and litigation. Any display of hypocrisy and (false) pretension is simply abhorred and condemned.

However, over the past few years, it has been recognised both by the Administration and the Public that the tasks of revenue collection and enforcement of laws are difficult ones, and that the officers engaged in this onerous task are always hard put to get the 'understanding' of the members of the public they serve. Further, it is also recognised that they are performing such duties as are normally considered to be unpleasant. In this situation, it should not be difficult to beget the understanding and cooperation of the people by showing the sincerity of purpose in serving them.

For the Air Customs Officers posted at the International Airports, the first concern is to know the passengers. It is not enough to classify and treat them as Tourists and Non-Tourists under the Rules. They comprise foreigners visiting India for the first time and Indians coming home. One cannot expect them, in the normal course, to know the current rules and procedures and to instantaneously adjust and adapt themselves to the requirements. A bit of an effort to explain the requirements of law and procedures will help the passenger to comply with the same willingly.

No doubt, the Customs Officers have also to keep an eye on those who travel frequently and those who are suspect to be indulging in illegal transactions either as sponsors, financiers, agents or carriers. It is in the case of such that one's sixth sense

and experience should help to spot such defaulters and exercise all the powers firmly and meticulously.

The second concern should be to know the authorities and agencies working along with Customs. One should not only know their duties and working methods but also their personnel as well. This will help the Customs Officers to adopt the appropriate attitude towards them and seek desirable co-ordination and co-operation. This will also help to thwart any irregularities or malpractice that such personnel may be prone to commit. This will also necessitate upholding the prestige and dignity of the Service and of the Customs Department.

Last but not the least, it is for each one to realise one's own responsibilities as individuals. One has to keep on reminding oneself as to what he owes to himself, the family, the society and the nation. None of one's actions should ever tarnish the image of anyone. Maintenance of the highest degree of integrity and honesty, holding out a helpful attitude, keeping sound health and pleasant manners and believing in the *esprit-de-corps* are all basic ingredients of making Customs Officers amiable and useful members of the society. Whilst being engaged in public services, the best policy is to place 'Service' before 'Self' and discharge duties detachedly without awaiting for rewards or recognition.

### **Declaration and Examination of Baggage**

The basic pattern of Customs clearance procedures is that the owner declares the goods and the Customs Officer grants appropriate clearance after verifying the correctness of the declaration. Baggage is also cleared in the same way. But there is one important difference, most accompanied baggage is required to be declared only orally. While this makes the procedure simpler and takes less time, it also calls for a greater degree of skill on the part of the Customs officer who has to obtain and check the declaration. The declaration has to cover all items which require consideration but it need not and should not go into unnecessary details of minor items. In short, it has to be broad declaration of dutiable items. But as most passengers would not be familiar with Customs Rules the officer has to guide them as to the 'dutiable' items. In addition, specific questions have to be put about the more important at least of the items restricted or prohibited for import. The following broad line of questioning would generally cover most situations, but one has to be skilful, to adopt, amplify or even reduce it suitably, as required:

1. Do you have anything to declare, Sir/Madam?

2. How long after are you returning to India, Sir/Madam?
3. Any new purchases, jewellery, watches Sir/Madam?
4. Have you any expensive items, Sir/Madam, like -----.?
5. Any tobacco or alcohol or perfumed spirits, Sir/Madam?
6. Could you tell me Sir/Madam, if there are any prohibited articles in your baggage like gold, dangerous drugs, Indian Currency notes?
7. Have you declared all the foreign currency with you, Sir/Madam?
8. Here you are, Sir/Madam, you are through.

The questions given above are only intended to set one thinking and planning on the right lines. But, whatever the question may be, one should not sound discourteous, supercilious or as if pulling up the passenger. Asking these few questions and even some more that one can think upon the occasion, will take very little time and that time is better spent talking to the passenger than in burrowing into his baggage straightway; For example, while one is talking to him, one can size up the passenger and more or less fix the type of examination or clearance that is appropriate. One would be able to observe if there are any signs of nervousness or if the passenger is concealing something or giving a false declaration. And if it is a genuine case one will be able to decide to pass him without much ado, thus saving time and at the same time leaving a good impression on him. Talking to the passenger will also make the whole business of baggage clearance more humane than mechanical and this is always appreciated.

Generally it is expected that the Customs will decide to pass the majority of air passengers without examination of their baggage. There will, of course, be the hardly few who will still try to smuggle contraband by air and it is expected that by skilful observation and questioning one can spot them and it will not be necessary for, anyone to apply this method of trial and error on a large number to detect few cases. The same talents with whatever aid, prior information can provide, help to catch the more serious attempts at smuggling gold, diamonds and the like.

What should be the manner of examination? Unless, because of prior information or some suspicious circumstances, one is looking for contraband in any particular case, the ordinary examination of baggage is intended to test the truthfulness of the passenger's declaration and to ascertain that it is not off the mark and that no deliberate evasion of duty or restriction is indicated. It is difficult to lay down general

instructions describing the exact manner of dealing with particular situations; the broad approach is described above.

### **Do's and Don'ts for Customs Officers**

1. Look smart and cheerful and try to receive each passenger with a smile
2. The passenger expects courtesy. Always address the passenger as Sir/Madam
3. Be quick in your work. The passenger's chief interest is quick clearance
4. He appreciates helpfulness and resents indifference. You know the Customs regulations better than the passenger and it is Your duty to help him in completing the formalities quickly, as long as he is acting within the law.
5. Little gestures of consideration are always welcome and particularly so by a traveler at the end of a journey. Be generous with him.
6. Children, old or sick persons, unaccompanied women, foreigners, particularly those who are new to the country and unfamiliar with the language, need to be handled with special care.
7. When you take up a passenger, attend to him until you complete his clearance. Don't go away elsewhere leaving him bewildered and resentful.
8. When a passenger approaches you, attend to him even if you are otherwise busy. If you can't spare him any attendance at all, don't brush him aside but request him politely to wait, if you can take him up soon. If not, point out the proper officer for him to approach. But avoid giving the impression that you are merely "passing the buck".
9. Never approach a passenger with an air of suspicion. Even when you have found a smuggler, be strict, but not rude. He will be dealt with according to law; but discourtesy is certainly not one of the penalties he has to accept, nor is the dignity of law thus upheld.
10. Do not take everything out of a suitcase or package unless you suspect concealment Try to satisfy yourself by intelligent feeling of the contents.
11. Do not take out items of intimate personal wear and similar articles and embarrass the passenger.
12. Let not the package, after you have finished with it, look as if it had been tossed about in a storm. Try to disturb the contents to a minimum and help the passenger to repack.



13. Be always patient and courteous whatever provocation or irritant may be.
14. Be firm in enforcing the law, but try always to explain why you are taking a decision against the passenger's wishes. At the same time, if, as may happen, the passenger is inclined to argue, don't indulge in argument but try to withdraw from it politely.
15. Never make remarks, which might cause offence even if you think they are humorous.
16. Know your job. If you do not, you might bring discredit to yourself and to your Service. Keep all your equipment – books, registers, forms and stationery – close at hand, and properly arranged.
17. Always display a sense of proportion. A petty error in declaration and the deliberate smuggling of gold should not both be handled the same way.
18. Act firmly but judiciously.
19. Keep good rapport and co-ordination with your superiors, colleagues, subordinates and other staff at the Airport.
20. Rules are to be applied with understanding and discretion and not mechanically. Be always prepared to take a matter beyond your competence to your seniors, if you think it calls for such exercise of discretion by them.

### **2.11. DEPLOYMENT AND DUTIES OF CUSTOMS STAFF AT AIRPORT**

The Customs staff strength at airport depends on the infrastructure, workload, availability of staff, etc., Deployment and Duties of staff posted at airports are enumerated below, briefly :-

#### **(a) Assistant / Deputy Commissioners (Administration):**

1. General administration, service discipline, deployment of staff and vehicles, public relations and complaints.
2. All matters of policy, interpretation and procedures relating to baggage other than detained and uncleared baggage.
3. Liaison with Airlines, Airport authorities, Police, Income Tax, Central Excise, DRI , IB etc., and attend various meetings.
4. Parliament questions, C.R.A. Objections.
5. Maintenance of vehicles including signing of bills and log books, etc.
6. Audit objections, demands and recovery relating to baggage.

7. Refund of drawback.
8. Work relating to Foreign Travel Tax.
9. Appeals, Revisions and action under Section 142 of the Customs Act, 1962.
10. Periodical statements, Revenue Statements
11. Disposal and Special Visadex

**(b) Assistant/Deputy Commissioners ( in-charge of Baggage ):**

Besides supervising clearance of passengers and baggage as well as matters relating thereto they have to handle the following :

1. Procedure and control over storage, custody and disposal of mishandled baggage.
2. Field Security and Visadex.
3. Procedure and control over Duty Free Shops and other licenced shops in the Transit Lounge.
4. Procedure and control over storage, custody and disposal of the goods in the Main Warehouse, confiscated goods warehouse and Reshipment warehouse
5. Supervision over the disposal of perishable goods and destruction of obscene items.
6. All matters relating to control over storage and custody of goods detained in warehouse.

**(c) Duties of Superintendents**

The duties of Superintendent in the Air Customs Pool Scheme are very vital and their role is pivotal. Their duties are also multifarious. They are the effective link between basic workers and the administration. The current orders on clearance of baggage require the Superintendents to take oral declaration of the passengers about the contents of their baggage and decide whether the same is to be accepted or subject to examination/verification in full or in percentage. They are also expected to address themselves to such of the passengers and the counter officers who need help and guidance in the matter of clearance especially when a dispute or difficulty is confronted with. They are also required to spot out and reach the places of undue hold up and clear the same. They are expected to be up-to-date in matters of Rules and Regulations, nature and valuation of goods and procedural requirements. Above all, they are required to hold a disposition that they are amiable, helpful in their attitude,

pleasant in manners, firm in their decisions and tactful in resolving problems. They are expected not only to hold dignity and decorum of office but are required to enforce discipline amongst the colleagues and the subordinates. They are further expected to monitor the happenings on the field with regard to volume of traffic, nature of goods, modus operandi functioning of other agencies and the performance of the staff to the superior officers in order to decide and evolve methods and procedures to take suitable measures, to have effective and expeditious clearance and to maintain smooth administration.

Allocation of work amongst the field Superintendents and their duties are as under:

### **Superintendent / Baggage**

His duties will be broadly as under:

- (i) Assist assistant/deputy commissioner in over-all supervision of the clearance of passengers.
- (ii) Assist assistant/deputy commissioner in field security operations.
- (iii) Take declaration of baggage, assessment & clearance of the same.
- (iv) Keep check on suspects & if intercepted take action as per instructions.

### **Superintendents for Departure Duties**

- (i) The superintendent has to oversee overall administration and working of Departure Customs staff
- (ii) Supervise clearance of outgoing passengers by the ACOs under him.
- (iii) Issuance of Export Certificates to passengers.
- (iv) Ensure that no delay is caused to the departure of flight on account of any Customs formalities.
- (v) In addition to attending to baggage duties, the superintendent will take round in the Transit Lounge and carry out surprise check on the passengers having Re-shipment/TP items and on the Duty Free shop.

Receive departure manifest from the airlines well in advance as prescribed and scrutinise the names of all the passengers in the manifest, with the names in the visadex system. Keep watch on the Departure lounge.

In certain cases the names of suspects are temporarily kept on clip board for a specific period without opening any visadex cards. These names are also to be verified with the Departure Passenger Manifest. When any of these names appear in the

Manifest, the VO has to circle the name on all copies of the Manifest and take action as above regarding verification of passport and suitably alerting the counter staff regarding information, examination etc.

**Superintendent i/c Policy & Administration**

- (i) Supervise the work of the ACOs and ministerial staff posted to work under him.
- (ii) Attend to general administration and maintenance of discipline.
- (iii) Attend to the deployment of staff for various duties.
- (iv) Attend to the correspondence and drafting involved in Technical matters, Policy matters and Interpretations and procedures relating to baggage.
- (v) Attend to all matters connected to Records, Budget matters and correspondence with the Board, the Ministry, Customs Houses, other Government departments and all other Agencies.
- (vi) Attend to complaints received from the Public, the Custom House, the Board, the Ministry or any other Agencies.
- (vii) Attend to the matters connected with DDRs, Bonds/Guarantees, local purchases, furniture, office requirements and all miscellaneous matters arising from time to time.
- (viii) Ensure prompt replies to Parliament Questions.
- (ix) Attend to matters pertaining to various committees like F.A.L., A.O.C., Advisory Committee, Security Committee, etc.
- (x) Maintain liaison with I.A.A.I., Immigration, Health, Civil Aviation and Airlines. Attend to all matters pertaining to vehicles and maintenance thereof. Ensure upkeep and cleanliness of the office premises.

**Superintendent I/c Case Files:**

- (i) Attend to all matters connected with Adjudication case files such as issue of Show Cause Notice and Order-in-Original, Appeals, Tribunal cases, Appeals & Revisions
- (ii) Attend to all matters relating to visadexing of suspects and supervise the work of the Special Visadex Officers.
- (iii) Attend to all matters connected with Refund, Drawback and Less Charge cases, No-duty paid certificates and TR cases.

- (iv) Attend to the correspondence and drafting involved in Technical matters, Policy matters and Interpretations and procedures relating to baggage.
- (v) Ensure prompt submission of periodical statements to the Board, the Ministry and the Custom House or other Agencies.
- (vi) Attend to CRA/Audit Objections and PAC matters

**Superintendent I/c Warehouse and Disposal:**

- (i) Supervise the work of the Warehouse Officers by day.
- (ii) Supervise the work of the Disposal Officers.
- (iii) Supervise the work of the Mishandled Baggage Officers.
- (iv) Attend to all matters relating to the goods detained at the Airport Warehouses and supervise the work of officers posted at these warehouses.
- (v) Attend to all matters connected with the disposal of the detained goods as per orders in force.

**Duties of P.R.O.**

One Superintendent or one ACO is posted in each batch to act as Public Relations Officer. He is the main link between Administration Office, Assistant /Deputy Commissioner and the staff posted in the Batch. His duties are given below:

1. Maintain general discipline amongst the staff and cleanliness of the Baggage Hall.
2. Assist the Channeling staff to channelise and guide passengers to the respective counters for clearance. Ensure that old, disabled passengers and unescorted minors are given expeditious clearance.
3. Attend to the clearance of VIPs and maintenance of register for the movement of the VIPs.
4. Make arrangement for protocol duties in respect of VIPs passing through Airport either on domestic or international sectors.
5. Maintain an Attendance Register and report the names of absentees to the Assistant /Deputy Commissioner.
6. Keep liaison with the airlines and other departments operating in the Arrival Hall and attend to all the enquiries made by the passengers, public, airlines and other departments.
7. Ensure that no unauthorised persons have access to the Baggage Hall.

8. Maintain orders and various instructions issued from time to time and circulate amongst the staff.
9. Maintain a register for escort duties on international flights on domestic sectors.

### **Duties of Baggage Officers**

The Baggage Officers should bear in mind that they are among the first to receive the incoming passengers including foreigners visiting our country, Indians residing abroad and coming to India for short duration on leave or holiday and Indians returning home. It would help to make the tour or the visit or the homecoming pleasant if these passengers are met with unflinching courtesy and consideration while they are in the baggage hall.

The Baggage Officers should acquire a thorough knowledge of the Baggage Rules and familiarise themselves with the Act, the Rules, the Manuals and other Instructions.

While clearing the passenger's baggage the Baggage Officers must have a broad outlook and helping attitude within the framework of the Rules. They must be polite and courteous while dealing with the passengers. and under no circumstances the passenger should be harassed. Any violation of the regulations, should be firmly dealt with as per the rules, but the officers must not act rude or be impolite with the passengers.

All Baggage Officers should take position at their counters by the time the first passenger calls at the Immigration counter, and they shall not leave their counters till the last passenger of a flight is cleared and unless there is a gap of 15 minutes or more for the next flight to arrive. At the time of change over of the shift, if the baggage clearance is in progress they should not leave the counters unless relieved.

### **Duties of the Detention Officer**

1. Detain under Detention Receipts all the packages from passengers for payment of duty, fine, penalty, for valuation, clearance as per rules, etc.
2. Detain under Detention Receipt all packages, including precious articles, meant for reshipment and transshipment.
3. Have all the packages sealed with Customs seal.

**Duties of the Station Duty Officer**

One ACO in each of the 4 batches is detailed to perform the duties of SDO round-the-clock. His duties are as under:

1. He has to ensure that all relevant papers of incoming and outgoing flights are submitted/filed by the airline in prescribed number of copies.
2. He shall assign IGM No. and EGM No. to the flight manifests and maintain the respective registers.
3. He will attend to telephone calls and will pass on messages to the concerned officers. All intimations regarding facilities will be noted and passed on to the PROs and about suspects to the Visadex Officers. Messages regarding VIP movements will be entered in the VIP Register.
4. He will maintain up-to-date flight schedules.
5. He will be responsible for the safe custody and despatch of all important communications to be sent or received through the Pilots of the aircrafts/escort officers.
6. He will receive letters, papers and parcels from Custom House, Preventive Commissionerate, DRI, Central Excise Commissionerate, etc. for being sent through Escort Officers to other Airports for onward transmission to the respective addresses such as Board, Ministry Custom Houses, Commissionerates , DRI and other Customs and Central Excise authorities, etc.
7. All these letters parcels, documents etc. will be entered serially in a special register maintained for the purpose and will be handed over to the first available escort officer proceeding to the respective Airport after obtaining his acknowledgement in the register. In turn he has to also receive letters/papers/parcels brought by the escort officers from other airports, enter the same in the register, attach serial numbers thereto and then forward them promptly to the concerned persons/authorities to whom the same are addressed.

**Duties of Transit Lounge Officers**

The Transit Lounge Officers' main function is to prevent smuggling and leakage of revenue through the medium of Transit passengers and the representative of various agencies operating at the airport and coming in contact with transit passengers. They

will, therefore, ensure that all transit passengers have been escorted and left by the airlines in the Transit Lounge.

They will keep a general watch on the activities of passengers and persons operating in Transit Lounge and place suspicious looking passengers and persons under surveillance.

They will keep the activities of the shop keepers under observation and will see that for all payments, which are to be made in foreign currency, cash receipts are passed on to the passengers. They will also carry out surprise checks of the documents maintained by the shop-keepers.

They will be responsible for full receipt and storage of goods, control on the Duty Free Shop by way of checks on sales to Transit and outgoing passengers, check of sales vouchers, registers and other documents and also check of balance stocks.

The procedure regarding Baggage clearance, Baggage Rules & Board's various instructions and orders have been detailed & discussed in the next Chapter on 'Baggage' in this Manual.

### **Smuggling activities by Domestic Passengers travelling in Air-India flights**

On the basis of reports received from Commissioners of Customs, Delhi and Sahar Airport that there has been increasing incidence of smuggling of goods through domestic passengers travelling in Air- India flights the Board has introduced some procedural safe guards in order to check such misuse.

In this regard the Sahar Airport Commissionerate issued certain guidelines to the Customs officers which lay down that a declaration should be obtained from domestic passengers embarking on domestic flights in Air-India aircrafts in respect of goods of foreign origin carried by them in their hand baggage/cabin baggage. This declaration would be prepared by the Air Customs Officers posted at Airport Departure and would be handed over to the Customs officer escorting the domestic flight. On arrival at the port of destination, the Escort officer would handover the declaration forms to the Superintendent of Customs in-charge at the Airport so that the Customs officers on the airport of arrival can cross check the goods of foreign origin being carried by domestic passengers with the goods declared by them at the airport of departure.

The Board directed all Commissioners of Customs to follow the procedure devised by Sahar Airport Commissionerate and issue suitable instructions on these lines to their officers so as to discourage domestic passengers from taking over



dutiable goods on board the aircraft from international passengers and seeking to clear them without payment of duty under the guise of domestic baggage.

[ Ministry's letter F. No. 520/56/87-Cus. VI dt.19.05.88 ]

**Declaration of domestic passengers travelling by Air India flight**

Station.....Flight No. ....Date.....

Name of the domestic passenger: .....

Accompanied by Adults .....Minors .....

No. of hand bags .....

I/We do/do not possess the following articles for which I / We possess valid customs clearance documents:

- |     |  |                     |
|-----|--|---------------------|
| 1)  | Watches, watch movements or parts thereof    | (of foreign origin) |
| 2)  | Transistors and diodes                       | ( " )               |
| 3)  | Photographic Cameras including Video Cameras | ( " )               |
| 4)  | T. V. Sets                                   | ( " )               |
| 5)  | V. C. Rs., V. C. Ps and Video Tapes          | ( " )               |
| 6)  | Zip fasteners                                | ( " )               |
| 7)  | Any other electronic items                   | ( " )               |
| 8)  | Gold bullion and gold jewellery              | ( " )               |
| 9)  | Silver Bullion and coins                     |                     |
| 10) | Foreign currency                             |                     |
| 11) | Indian currency beyond Rs.5000/-             |                     |

Before me

Signature of the passenger

Signature of the Customs Officer  
with name in capital letters.

Signature of the Customs Escorting officer  
with name in capital letters.

**Duties of Escort Officer Air-India Flights**

Air-India is allowed to carry their stopover passengers cleared at Bombay as well as over flowing passengers of Indian Airlines flights, on trunk routes, when their

International flights run on the domestic sector. In order to have a check on such passengers while on flight an ACO is posted as Escort Officer on the flight. His duties in brief are as follows:

- 1 To ensure that the baggage bearing domestic tags are loaded into a separate hold in the aircraft.
- 2 To ensure that all the domestic passengers occupy the rear most seats on the aircraft and that they use a toilet reserved for domestic passengers.
- 3 To keep a watch on the movements of the passengers and ensure that no transactions take place between International and domestic passengers while on flight.
- 4 On reaching the destination, to escort the domestic passengers with their hand luggage from the aircraft to the Baggage Hall.
- 5 to report any untoward incident noticed, while on flight, to the Senior most officer on duty at the destination.
- 6 to clear the domestic passengers after verifying their names from the Manifest and after checking the tags on the suitcases.
- 7 To carry important letters & such other packets and ensure prompt delivery to the addressee.

### **Baggage Transit facility at Bombay airport to other domestic airports**

It has been brought to the notice of the Board that some local customs instructions were issued at Bombay airport to Air India during 1988 under which the Air India was prohibited from taking any through traffic via Bombay to any other point in India even on its own flights if the traffic is coming from Gulf points, Singapore, Hong Kong and Bangkok. This system had some adverse effect on the commercial interests of Air India, and also caused hardships to the passengers.

2. The position has since been reviewed by the Commissioner of Customs, Bombay Airport and it has been decided to allow transit facility at Bombay to the Passengers bound for other domestic airports notified as customs airports for handling passengers for having customs clearance facilities and to interline their baggage for clearance at final destination provided. Air India ensures that such passengers are manifested in the passengers Manifest as direct transit passengers and such passengers remain in transit lounge till they board connecting flight within 24 hours from their arrival at Bombay Airport. The checked baggage of such passengers must

bear a tag indicating its place of final destination. All such transit baggage will remain in Customs custody like any other interline baggage.

**[ Board's Circular No. 42/95 dated 24.04.95 from F. No. 520/18/95-Cus. VI ]**

## CHAPTER – THREE

### **B A G G A G E**

#### **3.1. PRELIMINARY**

Sections 77 to 81 of the Customs Act, 1962 deal with the special provisions regarding baggage. At the same time all the goods, irrespective of their nature,

imported through baggage mode are classified under Chapter 98 of the Customs Tariff Act, 1975 for the purpose of levy of customs duties.

The preceding Chapter on 'Airport ' of this Manual deals with the formalities to be completed by the Customs Staff on arrival of the aircraft till its departure and broad aspects regarding deployment and duties of Customs Staff, mode of passenger clearance and attendant functions.

Once the aircraft lands at Airport, the transit passengers either remain in the aircraft (if they are proceeding further in the same aircraft) or remain in the transit lounge of the Airport. The disembarking passengers first report to the Immigration authorities along with their travel documents for Immigration Clearance. Once through Immigration, they come to the Customs Arrival Baggage Hall, reclaim their baggage and report to Customs for clearance of their baggage. At the same time, disembarking Airline crewmembers report to Customs along with their baggage and crew declaration forms for Customs Clearance.

The Customs officers deployed on baggage clearance duties have to perform manifold delicate tasks. On one hand they are called upon to safeguard Government revenue and to ensure that contraband goods do not find their way into the Country through baggage, and on the other hand they are called upon to be good public relations officers to the travelling public by ensuring their hassle-free and quick clearance through customs. For the tourists and the travelers arriving in this Country for the first time, the conduct of the Customs Officer at the point of entry, his tactful handling and his professional expertise are factors, which create the first impression. Such impressions however short and subtle tend to remain with the visitors and ultimately become vital part of the image that they carry of the Country they have visited.

The present system of clearance of passengers' baggage is to great degree, based on the trust reposed in the passengers who are expected to make a bonafide and complete declaration of the contents of their baggage as envisaged in Section 77 of the Customs Act, 1962. It is only on selective basis or on grave suspicion that the detailed examination of baggage is resorted to. The Rules and instructions on baggage and other connected matters are therefore to be implemented with pragmatic approach and maintain proper balance between the letter and spirit behind the same keeping in view the needs of the passengers and stipulations of law.

Baggage clearance is one of the important functions of the Air Customs Pool Staff. Delay in clearance leads to resentment among passengers, which is not at all desired. Different modes of clearance of Baggage are used for speedy clearance.

Though there is no clear definition of the term 'baggage' in the Customs Act 1962, Section 2 (3) of the Act gives an inclusive definition i.e. "baggage includes unaccompanied baggage, but does not include Motor Vehicle". Further, the definition of the term goods in Sub Section (22) of Section 2 includes 'baggage'.

Baggage is synonymous with luggage. According to Webster, "baggage" means group of travelling bags, trunks or both especially when packed and in transit. Personal belongings of travelers either carried by hand or packed with Courier luggage. The Oxford Dictionary gives the meaning of baggage as collection of property in packages that a traveler takes with him on a journey, luggage. The word baggage therefore becomes a comprehensive term, which means the luggage of a passenger accompanied or unaccompanied and comprises trunks or packages and the personal belongings of a passenger conferred therein.

Section 79 of the Act talks of the bonafide baggage, which is exempted from Customs duty and proper officer has been empowered to pass free of duty any article which is in the baggage of a passenger and which has been in his use for a prescribed period or is for his use or is meant for making gifts or souvenir.

In the era of liberalisation, importance is given to speedy clearance of passengers. The facility of Green Channel has been made available to passengers arriving from sensitive as well as non-sensitive areas. The Green Channel passengers pass unhindered and unquestioned by the Customs Officers except when there is grave suspicion. It is seen that over 90% of the passengers avail of the Green Channel facility.

Responsibility for the declaration of the baggage contents rests entirely on the passenger. At the red channel oral declaration given by the passenger is accepted. The baggage of the passenger is normally screened before a list of dutiable articles is prepared. In case, the passenger is not able to give details of dutiable items and in case of grave suspicions that the passenger has made a mis-declaration the baggage is subjected to examination.

Duty on import of gold and silver is collected at separate counters earmarked for the same. Similarly, separate counters are earmarked for passengers who wish to declare foreign exchange.

The Air Intelligence Unit at the Airport is responsible for the surveillance at Airport area, collection of information / intelligence, carrying out routine patrolling, managing of aircraft, maintaining general intelligence on the trend of smuggling of sensitive commodities and undertaking investigations into the cases detected at the Airport. Seizures of contraband goods both at the time of import and export through Airport is the major activity of the A.I.U. Arrests and prosecutions of the persons found involved in the smuggling activities is the natural corollary to the seizures. This, however, does not preclude other officers posted at the airport from carrying out the aforementioned tasks should a need arise.

### **3.2. BAGGAGE**

The clearance of personal baggage of passengers and crew members is governed by Chapter Head 98.03 of the Customs Tariff and Baggage Rules framed under Section 79 of the Customs Act, 1962.

The Government of India in exercise of powers conferred under Section 79 of the Act notified "The Baggage Rules, 1994" vide Notification No.11/94 CUs. (N.T.) dated 01.03.1994 in the Finance Bill, 1994. The Baggage Rules superceded all the earlier Baggage Rules, viz. (1) The Baggage Rules, 1978 (2) The Tourist Baggage Rules, 1978, and (3) The Transfer of Residence Rules, 1978. The major feature of the Rules was non – requirement of issuance of Tourist Baggage Re–export form (T.B.R.E.) which was being issued to tourists for items temporarily imported into India and allowed clearance free of duty temporarily.

### **3.3. IMPORTABILITY OF GOODS THROUGH BAGGAGE MODE UNDER EXIM POLICY**

In terms of para 5.6 of the Exim Policy 1997-2002, bonafide household goods and personal effects are allowed to be imported as part of passengers' baggage. Samples of such items that are otherwise freely importable under the Policy are also

allowed to be imported as part of passengers' baggage without an Import Licence. Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, etc., required for execution of specific export orders placed on them, as part of their baggage without an Import Licence.

### **3.4. THE BAGGAGE RULES, 1998**

On 02.06.1998, the Government of India rescinded Notification No.11/97- Cus. and introduced "Baggage Rules, 1998" vide Notification No.30/98-Cus. (N.T.) of 02.06.98, text of which is given below:

In exercise of the powers conferred by section 79 of the Customs Act, 1962 (52 of 1962), and in suppression of the Baggage Rules, 1994, except as respects things done or omitted to be done before such suppression, the Central Government hereby makes the following rules, namely:-

1. Short title and commencement:-
  - (i) These rules may be called the Baggage Rules, 1998. They shall come into force on the date of their publication in the Official Gazette.
2. Definitions:- In these rules, unless the context otherwise requires;-
  - (i) "appendix" means an Appendix to these rules;
    - (ii) "resident" means a person holding a valid passport issued under the Passports Act, 1967 (15 of 19 ) and normally residing in India;
    - (ii) "tourist" means a person, not normally resident in India, who enters India for a stay of not more than six months in the course of any twelve months period for legitimate non – immigrant purposes, such as touring, recreation, sports, health, family reasons, study, religious pilgrimage or business;
    - (iii) "family" includes all persons who are residing in the same house and form part of the same domestic establishment;
    - (iv) "professional equipment" means such portable equipments, instruments, apparatus and appliances as are required in his profession, by a carpenter, a plumber, a welder, a mason, and the like and shall not include items of common use such as cameras, cassette recorders, dicta-phones, personal computers, typewriters, and other similar articles.
3. Passengers returning from countries other than Nepal, Bhutan, Myanmar or China. An Indian resident or a foreigner residing in India, returning from any country

other than Nepal, Bhutan, Myanmar or China, shall be allowed clearance free of duty articles in his bonafide baggage to the extent mentioned in column (2) Appendix A.

**Appendix A**

**(See rule 3)**

Articles allowed free of duty	
(1)	(2)
<p><b>a)</b> All passengers of and above 12 years of age and returning after stay abroad of more than three days</p>	<p><b>(I)</b> Used personal effect, excluding jewelry, required for satisfying daily necessities of life.</p> <p><b>(ii)</b> Articles upto a value of Rs 25000 if these are carried on the person or in the accompanied baggage of the passenger.</p>
<p><b>(b)</b> All passengers of and above 12 years of age and returning after stay abroad of three days or less</p> <p>the</p> <p>passenger.</p>	<p><b>(I)</b> Used personal effects, excluding jewellery, required for satisfying daily necessities of life.</p> <p><b>(ii)</b> Articles upto a value of Rs 12000 if these are carried on the person or in accompanied baggage of the</p>



**( c )** All passengers upto 12 years of age and excluding

returning after stay abroad of more than three days.

these

passenger.

**(d)** All passengers upto 12 years of age and jewellery,

returning after stay abroad of three days or necessities of life.

less.

these

passenger.

**(I)** Used personal effects,

jewellery, required for satisfying daily necessities of life.

**(ii)** Articles upto a value of Rs 6000 if

are carried on the person or in the

accompanied baggage of the

**(I)** Used personal effects, excluding

required for satisfying daily

**(ii)** Articles upto a value of Rs 3000 if

are carried on the person or in the

accompanied baggage of the

---

**Explanation:- The free allowance under this rule shall not be allowed to be pooled with the free allowance of any other passenger.**

4. Passengers returning from Nepal, Bhutan, Myanmar or China.- An Indian resident or a foreigner residing in India, returning from Nepal, Bhutan, Myanmar or China, other than by land route, shall be allowed clearance free of duty articles in his bonafide baggage to the extent mentioned in column (2) or Appendix B.

**Appendix B**

(See rule 4)

(1)	(2)
<p>(a) Passengers of and above 12 years of age and excluding returning after stay abroad of more than three days.</p>	<p>(I) Used personal effects, jewellery, required for satisfying daily necessities of life.</p>
<p>these passengers.</p>	<p>(ii) Articles upto a value of Rs 6000 if are carried on the person or in the accompanied baggage of the passenger.</p>
<p>(b) Passengers upto 12 years of age and excluding returning after stay abroad of three days or daily less.</p>	<p>(I) Used personal effects, jewellery, required for satisfying necessities of life.</p>

these (ii) Articles upto a value of Rs 1500 if  
 are carried on the person or in the  
 accompanied baggage of the  
 passenger.

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**Explanation:- The free allowance under this rule shall not be allowed to be pooled with the free allowance of any other passenger.**

5. Professionals returning India.- An Indian passenger who was engaged in his profession abroad shall on his return to India be allowed clearance free of duty, in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in his bonafide baggage to the extent mentioned in column (2) of Appendix C.

**Appendix C**

**(See rule 5)**

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Articles allowed free of duty	
(1)	(2)
(a) Indian passenger returning after at least 3 months  or	(i) Used household articles upto an aggregate value of Rs 12000.  (ii) Professional equipment upto a value  Rs 20000.
(b) Indian passenger returning after at least 6	(i) Used household articles upto an

months

aggregate value of Rs 12000.

value of

(ii) Professional equipment upto a

Rs 40000.

(c) Indian passenger returning after a stay of personal

(I) Used household articles and

minimum 365 days during the preceding 2

effects, (which have been in the

years on termination of his work, and who

possession and use abroad of the

has not availed this concession in the six preceding three years.

passenger or his family for at least months) and which are not

mentioned in

Annex I or Annex II upto an

aggregate

value of Rs 75000.

**6. Jewellery:-** A passenger returning to India shall be allowed clearance free of duty jewellery in his bonafide baggage to the extent mentioned in column (2) of Appendix D.

***Appendix D***

**(See rule 6)**

Jewellery

(1)	(2)
Indian passenger who has been residing Rs Abroad for over one year. or 20000 by	(I) Jewellery upto an aggregate value of 10000 by a gentleman passenger,  (ii) upto an aggregate value of Rs  a lady passenger.

7. Tourists:- A tourist arriving in India shall be allowed clearance free of duty articles in his bonafide baggage to the extent mentioned in column (2) of Appendix E.

**Appendix E**

**(See rule 7)**

Articles allowed free of duty	
(1)	(2)
(a) Tourists of Indian origin if-	(I) used personal effects and travel souvenirs,  (a) these goods are for personal use of the tourist, and  (b) these goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination.

under	(ii) articles as allowed to be cleared
	rule 3 or rule 4.
(b) Tourists of foreign origin other than those Nepalese origin coming from Nepal or of Bhutanese origin coming from Bhutan. use of the	(l) used personal effects and travel of souvenirs, if-  (a) these goods are for personal
	Tourist, and
	(b) these goods, other than those consumed during the stay in India, are re-exported when the tourist leaves India for a foreign destination.
making	(ii) articles upto a value of Rs 8000 for
	gifts.
(c) Tourists of Nepalese origin coming from Nepal or of Bhutanese origin coming from Bhutan.	No free allowance.
d) Tourists –	(i) used personal effects and travel
(i) of Pakistani origin coming from Pakistan other than by land routes; use of the	souvenirs, if (a) these goods are for personal
	tourist, and
(ii) of Pakistani origin or foreign tourists	b) these goods, other than those

coming by land routes as specified in Annexure IV; consumed during the stay in India, are

leaves

re-exported when the tourist

India for a foreign destination.

(iii) of Indian origin coming by land routes as specified in Annexure IV

(ii) articles upto a value of Rs.6000 for making gifts.

**8. Transfer of residence:-** (1) A person who is transferring his residence to India shall be allowed clearance free of duty, in addition to what he is allowed under rule 3 or, as the case may be, under rule 4, articles in the bonafide baggage to the extent mentioned in column (1) of Appendix F, subject to the conditions, if any, mentioned in the corresponding entry in column (2) of the said Appendix.

(2) The conditions may be relaxed to the extent mentioned in column (3) of the said Appendix.

**Appendix F**  
**(see rule 8)**

<b><u>Articles allowed free of duty</u></b>	<b><u>Conditions</u></b>	<b><u>Relaxation that may considered.</u></b>
(a) Used personal and household articles, other than those listed at Annex I or Annex II, but including jewellery upto ten thousand rupees by a gentleman passenger <u>or</u> rupees twenty thousand by a lady	(1) Minimum stay of two years abroad, immediately preceding the date of his arrival on TR,  (2) total stay in India on short visit during the 2 preceding years should not exceed 6 months, and	(a) <u>For condition (1)</u> Shortfall of upto 2 months in stay abroad can be condoned by Assistant Commissioner of Customs if the early return is on account of:  (i) terminal leave or vacation being availed of by the passenger; or

<p>passenger.</p> <p>(b) Jewellery taken out earlier by the passenger or by a member of his family from India.</p>	<p>(3) passenger has not availed this concession in the preceding three years.</p> <p>Satisfaction of the Assistant Commissioner of Customs regarding the jewellery having been taken out earlier from India.</p>	<p>(ii) any other special circumstances,</p> <p>(b) <u>For condition (2)</u> Commissioner of Customs may condone short visits in excess of 6 months in deserving cases.</p> <p>(c) <u>For condition (3)</u> No relaxation.</p>
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### ***Annex I***

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 200 or cigars exceeding 50 or tobacco exceeding 250 gms.
4. Alcoholic liquor and wines in excess of one litre each.
5. Gold or silver, in any form, other than ornaments.

### ***Annex II***

1. Colour television / Monochrome Television.
2. Video Cassette Recorder / Video Cassette Player / Video Television receiver.
3. Washing Machine.



4. Electrical / Liquefied Petroleum Gas Cooking range ( other than Electrical / Liquefied Petroleum Gas stoves with not more than two burners and without any extra attachment.
5. Dish Washer.
6. Music System.
7. Personal Computer.
8. Air Conditioner.
9. Refrigerator.
10. Deep Freezer.
11. Microwave Oven.
12. Video camera or the combination of such video camera with one or more of the following goods, namely ;-
  - (a) Television Receiver.
  - (b) Sound recording or reproducing apparatus;
  - (c) Video reproducing apparatus.
13. Word Processing Machine.
14. Fax Machine.
15. Vessels.
16. Aircraft.
17. Cinematographic films of 35 mm and above.
18. Gold or silver, in any form, other than ornaments.

## **9. Provisions regarding unaccompanied baggage**

(1) Provisions of these rules are also extended to unaccompanied baggage except where they have been specifically excluded.

The unaccompanied baggage had been in the possession abroad of the passenger and is despatched within one month of his arrival in India or within such further period as the Assistant Commissioner of Customs may allow.

The unaccompanied baggage may land in India up to 2 months before the arrival of the passenger or within such period, not exceeding one year, as the Assistant Commissioner of Customs may allow, for reasons to be recorded, if he is satisfied that the passenger was prevented from arriving in India within the period of two months due

to circumstances beyond his control, such as sudden illness of the passenger or a member of his family, or natural calamities or disturbed conditions or disruption of the transport or travel arrangements in the country of countries concerned or any other reasons, which necessitated a change in the travel schedule of the passenger.

**10. Application of these Rules to members of the crew :-**

The provisions of these Rules shall apply in respect of members of the crew engaged in a foreign going vessel for importation of their baggage at the time of final pay off on termination of their engagement.

Provided that except as specified in this sub-rule, a crew member of a vessel shall be allowed to bring items like chocolates, cheese, cosmetics and other petty gift items for their personal or family use which shall not exceed the value of rupees six hundred.

(2) Notwithstanding anything contained in these rules a crew member of an aircraft shall be allowed to bring items like chocolates, cheese, cosmetics and other petty gift items at the time of the returning of the aircraft from foreign journey for their personal or family use which shall not exceed the value of rupees six hundred

**[ Notification No.30/98 – Customs (N.T.) dated the 2<sup>nd</sup> June,1998 ]**

### **3.5. Revision of Airlines Crew Baggage Allowance**

Reference is invited to Board's instructions dated 5.2.1979. issued from F. No. 495/78-Cus.VI on the above subject, which prescribe a baggage allowance of Rs.30 to operating airlines crew members for bringing petty items like chocolates, cheese, cosmetics, etc. for their personal or family use and to say that the question of increase in the existing value limit of Rs.30 has been under the consideration of the Board on account of representations received from various quarters. It has now been decided by the Board that the existing baggage allowance of Rs.30 for operating airlines Crew members to bring petty gifts may be revised to Rs.600 (Rupees six hundred).

These instructions shall supersede all existing instructions on the subject.

**[ F. No. 496 / 38/ 93-Cus-vi dated 25.08.94 ]**

### **3.6. Import of high value items by the Airlines Crew**

It has come to the notice of the Board that at some airports, airlines crew are being allowed to bring in costly gadgets like air conditioners, refrigerators, music system etc. On payment of Baggage Duty @ 80% ad-valorem under Notification No. 136 / 90-Cus (As amended) read with heading 98.03 of the first Schedule of the CTA, 1975. It is, however, observed by the Board that there is no ITC provision permitting operating airlines crew to import such consumer goods. As consumer goods are in the negative list of Imports, the same cannot be imported without an import licence, except where such imports have been permitted specifically under the Exim Policy in force or under Public Notice / Order issued by the DGFT.

As far as the passengers are concerned, so long as the goods brought by them are bonafide baggage, the same are exempt from ITC restrictions in view of para 34 A of the current Exim Policy. But there is no such exemption for the members of the crew and members of the crew are not passengers. The Baggage Rules, 1994 also do not apply to them except Rule 10, which is applicable only to sea crew for importation of their baggage at the time of final pay off on termination of their engagement.

In view of the above position, the Board is of the view that such imports by the operating Airlines crew are unauthorised and such goods are liable to confiscation under Section 111 (d) of the Customs Act, 1962.

**[ Board's Circular No.2/3/95 dt.26.6.95 ]**

### **3.7. Estimates Committee's recommendation on Rule 7 of Baggage Rules, 1998**

In view of the report of the Estimates Committee (1994-95) of the 10<sup>th</sup> Lok Sabha, the Government had undertaken to review the Baggage Rules permitting the travellers to bring in Note Book Computers and other essential items so that harassment to the general passengers could be eliminated. The Committee had

desired an expeditious review of the matter. The matter has been examined. Under Tourist Baggage Rules, 1978, Notification No. 45/92-Cus. (NT) dated 19/6/92 was issued listing the personal effects which could be imported temporarily free of duty. This list included 14 items of day to day use of the tourist.

The Tourist Baggage Rules was replaced by the Baggage Rules, 1994 which contained a chapter on concession for tourists. In rule 11, the personal effects imported by the tourists temporarily have been allowed duty free entry and the explanation of Rule 11 defined the wording 'personal effect' such as clothing and other articles, new or used, which a tourist may personally and reasonably required taking into account of circumstances for his visit but excluding all merchandise imported for commercial purposes. The list contained in Notification 92, though the Notification has expired, continue to be guiding the customs formations at the Airport to give this benefit.

The Baggage Rules, 1998 issued vide Notification No. 30/98-CUS (NT) dated 2/6/98 was provided for import of duty free goods by tourists in Rule 7 as contained in Appendix 'E' of the said Rules. There is no definition for personal effects in the present Baggage Rules. However, for the sake of uniformity it is considered necessary to reiterate that the personal effects would include the following goods:

- (i) Personal jewellery.
- (ii) One camera with film rolls not exceeding twenty.
- (iii) One video camera/camcorder with accessories and with video cassettes not exceeding twelve.
- (iv) One pair of binoculars.
- (v) One portable colour television (not exceeding 15CMs in size)
- (vi) One music system including compact disc player.
- (vii) One portable typewriter.
- (viii) One perambulator.
- (ix) One tent / other camping equipment.
- (x) One computer (laptop/note book).
- (xi) One electronic diary.
- (xii) One portable wireless receiving set (transistor radio)
- (xiii) Professional equipment, instruments and apparatus of appliances including professional audio/video equipments.

- (xiv) Sports equipment such as one fishing outfit, one sporting firearm with fifty cartridges, one non-powdered bicycle, one canoe or ranges less than 51 metres long, one pair of skids two tennis rackets, one golf set (14 pcs. With a dozen of golf balls)
- (xv) One cell phone.

It may kindly be noted that while Notn. No. 45/92 defined personal effects as articles both new or used and Rule 11 of Baggage Rules 1994 allowed personal effects of tourists for duty free import, the Baggage Rules, 1998 allow only used personal effects of the tourists. It is not the intention of the Board to verify the newness of every product which a traveler brings so long as it is not prima-facie new goods in their original packaging which can be disposed of off hand.

**[ Board's Circular No. 72/98 dt.24.9.98-Cus. in F. No. 520/136/92 CUS VI**

### **3.8. Effective rate of Duty on Baggage.**

In exercise of the powers conferred sub-section (1) of section 25 of the Customs Act, 1962, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 58-Customs, dated the 1<sup>st</sup> march, 1983, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts articles falling under Heading No. 98.03 of the First Schedule to the Customs Tariff Act, 1975 specified in column (1) of the Table hereto annexed, when imported into India by a passenger or a member of a crew as baggage, from so much of the duty of customs leviable thereon which specified in the said First Schedule, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (2) of the said Table.

**TABLE**

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Description of articles	Rate
(1)	(2)
Any article the value of which exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 1998.	35% ad valorem
On the unaccompanied baggage.	35% ad valorem

*Explanation.-* Where the value of any one article exceeds the duty free allowance admissible to such passenger or member under the Baggage Rules, 1998, the amount of duty shall be calculated only on the value in excess of the duty free allowance so admissible to the extent not availed of by such passenger or member for clearing any other article of baggage, if any.

Nothing contained in this notification shall apply to –

- (i) Omitted;
- (ii) fire arms;
- (iii) cartridges of fire arms exceeding 50;
- (iv) cigarettes, cigars or tobacco in excess of the quantity prescribed for importation free of duty under the relevant baggage rules;
- (v) Omitted;
- (vi) Goods imported through a courier service.

This notification shall come into force on the 1<sup>st</sup> day of April, 1990.

**[ Notification No. 136/90-Cus., dated 20-3-1990 as amended by Notification 16/2005-Cus., dated 01.03.2005.]**

### **3.9. Exemption from Additional Duty to Baggage**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 194-Customs, dated the 26<sup>th</sup> the public interest so to do, hereby exempts all goods falling under **Heading No. 98.03**

of the First Schedule to the Customs Tariff Act, 1975, when imported into India by a passenger or a member of the crew as baggage, from the **whole of the additional duty** leviable thereon under section 3 of the said Customs Tariff Act.

**[ Notifn. No. 183/86-Cus., dated 1.3.1986 as amended by Notfn. No. 48/96-Cus., dated 23.7.1996 ]**

### **3.10. Effective rate of basic duty on specified goods imported as baggage**

In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (2) of the Table I and II annexed hereto, falling under Heading No. 98.03 of the First Schedule to the Customs Tariff Act, 1975, when imported by –

(a) any person holding a valid passport issued under the Passport Act, 1967, and returning to India after having stayed abroad for at least 365 days during the two years immediately preceding the date of arrival in India, or,

(b) any person on a bona fide transfer of residence to India as part of his bona fide baggage, -

from the whole of the duty of Customs leviable thereon under the said First Schedule in respect of goods specified in column 2 of Table I annexed here to and from so much of the duty of Customs leviable thereon under the said First Schedule in respect of goods specified in column 2 of Table II annexed here to as is in excess of the amount calculated at the rate of 15% *ad valorem*, subject to the following conditions, namely: -

In case of (a) above.-

- (i) such person has been working abroad for a minimum period of one year and is returning to India on termination of such work after having stayed abroad for at least 365 days during the two years immediately preceding the date of arrival in India;
- (ii) such person affirms by a declaration that the goods have been in his possession abroad or, the goods are purchased by such person at the time of his arrival, but

before clearance from Customs, from the duty free shop located in the arrival hall of the international airports;

- (iii) Omitted;
- (iv) the goods (other than those purchased from the duty free shops at the time of arrival of such passenger) not accompanying such passenger were shipped or despatched or arrived within the time limits specified in the Baggage Rules, 1998; and
- (v) in respect of such goods not more than one unit shall be permissible to such person and the total aggregate of value of such goods including other goods imported free of duty by him under Rule 5 of the Baggage Rules, 1998, shall not exceed rupees seventy-five thousand.

In case of (b) above, -

- (i) such person has been residing abroad for a minimum period of two years immediately preceding the transfer of residence and has not availed this concession in the preceding three years;
- (ii) such person affirms by a declaration that the goods have been in his possession abroad, or, the goods are purchased by such person at the time of his arrival, but before clearance from Customs, from the duty free shop located in the arrival hall of the international airports;
- (iii) Omitted;
- (iv) the goods (other than those purchased from the duty free shops at the time of arrival of such passenger) not accompanying such passenger were shipped or despatched or arrived within the time limits specified in the Baggage Rules, 1998;
- (v) not more than one unit of each item of such goods shall be permissible per family and the person claiming the benefit of this notification affirms by a declaration that no other member of the family had availed of, or would avail of, the benefit of this notification in respect of that item; and
- (vi) the total aggregate value of such goods shall not exceed rupees five lakh.

**TABLE I**



S. No.	Goods
(1)	(2)
1.	VCR/VCP/VTR/VIDEO CASSETTE DISK PLAYER.
2.	Washing machine.
3.	Electrical/L.P.G. Cooking Range
4.	Personal computer.
5.	Laptop computer
6.	Domestic refrigerators of capacity upto 300 litres or equivalent

**TABLE II**

S. No.	Goods
(1)	(2)
1.	Colour TV/Monochrome TV.
2.	Digital Video Disk Player
3.	Dish washer.
4.	Video Home Theatre System
5.	Music system.
6.	Air-conditioner.
7.	Domestic refrigerators of capacity more than 300 litres or equivalent
8.	Deep freezer.

9. Micro wave oven.
  10. Video camera or the combination of any such video camera with one or more of the following goods, namely: -
    - television receiver;
    - sound recording or reproducing apparatus;
    - video reproducing apparatus;
  11. Word processing machine.
  12. Fax Machine.
  13. Portable photocopying machine
  3. Vessel
  15. Aircraft
  16. Cinematographic film of 35 mm or above
  17. Gold or Silver, in any form, other than ornaments
- 

*Explanation* : For the purpose of this notification, -

(i) \* \* \* \*

(ii) short visits, if any, made by the person referred to in clause (b), during the aforesaid period of 2 years shall be ignored if the total duration of stay on such short visits does not exceed six months and shortfall upto a period of two months in a person's stay abroad may be condoned by the Assistant Commissioner of Customs if he is satisfied that the person's early return to India has been caused by his availing of the terminal leave or a vacation or by any other special circumstances, provided that on sufficient cause being shown by the person concerned, the Commissioner of Customs may condone the period of stay in India in excess of six months.

(iii) "family" includes all persons who are residing in the same house and form part of the same domestic establishment.

Provided that on sufficient cause being shown by the person concerned, the Commissioner of Customs may condone the period of stay in India in excess of six months.

This notification shall come into force on the 1<sup>st</sup> day of April, 1990.

[Notification No. 137/90-Cus., dated 20-3-1990 as amended by Notification No. 13/2004-Cus., dated 08-01-2004.]

### **3.11. Effective rate of duty on Gold Bars and Coins imported by passengers**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue) No. 171/94-Customs, dated the 30th September, 1994, published in the Gazette of India, vide number G.S.R. 733 (E), dated the 30th September, 1994, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods of the description specified in column (2) of the Table below and falling under Chapter 71 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India by an eligible passenger, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, as is in excess of the amount calculated at the rate as specified in the corresponding entry in column (3) of the said Table and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act.

**Table**

<b>S. No.</b>	<b>Description of goods</b>	<b>Rate</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1.	Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight	Rs. 100 per 10 gms.

	expressed in metric units, and gold coins	
2.	Gold in any form other than at S. No. 1 above, including tola bars and ornaments, but excluding ornaments studded with stones or pearls	Rs. 250 per 10 gms.

(2) The exemption is subject to the following conditions, namely :-

(i) the duty shall be paid in convertible foreign currency;

(ii) the quantity of gold imported in any form shall not exceed ten kilograms per eligible passenger; and

(iii) the gold is either carried by the eligible passenger at the time of his arrival in India or is imported by him within fifteen days of his arrival in India.

Notwithstanding anything contained above, the exemption under this notification shall also apply to gold taken delivery of by an eligible passenger from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Ltd., subject to the conditions (i) and (ii) of para 2 above, and subject to further condition that such eligible passenger files a declaration in the prescribed form before the proper officer of customs at the time of his arrival in India declaring his intention to take delivery of the gold from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

**Explanation** .- For the purposes of this notification, “eligible passenger” means a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the eligible passenger during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits.

[Notification 31/2003-Customs, Dated: March 1, 2003]

**3.12. Import of gold by passengers under the Gold Import Scheme.**

A doubt has been raised whether to be eligible to import gold as passenger's Baggage, it is necessary that the gold should be owned by the passenger or not and to say that the matter has been considered by the Board and it has been decided that it is not necessary that a passenger must own the gold to be eligible to import. Any incoming passenger can import the gold so long as he satisfies the conditions of stay abroad and those relating to payment of duty in foreign exchange and the maximum quantity of five kg (now 10 kg with effect from 01.01.1997) permitted under the Scheme.

[Ministry's letter F. No. 495/3/94-Cus.VI dated 2-3-94]

**3.13. Clarification regarding importability of gold/silver coins**

Please refer to Ministry's Letter of even number dated 31<sup>st</sup> August, 1994, on the above subject, and to say that the Department of Economic Affairs have now informed that they have re-examined the matter in consultation with the Reserve Bank of India. It has been informed by the Reserve Bank of India that there would be no restriction under FERA on import of foreign coins (whether current or non-current) made of gold or any other metal. The same holds good in respect of commemorative coins also.

In view of the present clarification given by the Reserve Bank of India, Ministry's earlier instructions vide letter of even number dated 31<sup>st</sup> August, 1994 stand modified and the eligible passengers may be allowed to import gold/silver in any form, including coins (whether current, non-current or commemorative) but excluding, jewellery studded with stones or pearls subject to fulfillment of other conditions mentioned in the Notification Nos. 171/94. Cus. or 172/94. Cus. both dated 30.9.94, as the case may be. Field formations under your jurisdiction may be suitably informed.

***[Board's Circular No. 74/95 dated 7.6.95]***

**3.14. Effective rate of duty for Silver including ornaments when imported by a passenger**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 4/93-Customs, dated the 8<sup>th</sup> February, 1993, the Central Government, being satisfied that it is necessary in the Public interest so to do, hereby exempts silver, in any form including ornaments (but excluding ornaments studded with stones or pearls), when imported into India by an eligible passenger, from so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, **as is in excess of the amount calculated at the rate of Rs.500 per kilogram and the whole of the additional duty** leviable thereon under section 3 of the Customs Tariff Act, 1975, subject to the following conditions, namely: -

- (a) the duty at the rate specified above shall be paid in convertible foreign currency;
- (b) the quantity of such silver shall not exceed one hundred kilograms per eligible passenger; and
- (c) the silver is either carried by the eligible passenger at the time of his arrival in India or is imported by him within fifteen days of his arrival in India.

Notwithstanding anything contained in paragraph 1, the exemption under this notification shall also apply to silver taken delivery of by an eligible passenger from a customs bonded warehouse of the State Bank of India or the Minerals and Metals Trading Corporation Limited, subject to the conditions (a) and (b) of paragraph 1 and subject to further condition that such eligible passenger files a declaration in the prescribed form before the proper officer of the silver from such a customs bonded warehouse and pays the duty leviable thereon before his clearance from customs.

This notification shall come into force on the 1<sup>st</sup> day of November, 1994.

**[Notification No. 172/94-CUS., dated 30-9-1994. ]**

### **3.15. Certain Clarifications regarding Import of Gold**

(i) **Action to be taken if passenger does not have enough convertible foreign currency for payment of duty.**

In the absence of payment of duty in foreign exchange, the import is unauthorised under the ITC Notification, RBI Notification and Customs Notification. The goods therefore cannot be allowed clearance at baggage rate. In case the passenger has correctly declared the gold brought by him, the re-export of the same may be permitted under section 77 of the Customs Act, 1962. In other cases, the only option left is to confiscate the goods absolutely and appropriate penalty may also be imposed. However, in case where passenger makes a request for temporary detention and produces evidence that he is maintaining dollars account in India from which he would pay duty in foreign exchange, the same may be considered for subsequent clearance on payment of duty in foreign exchange.

(ii) **Whether the passenger can bring the full quota of 10 Kg in installments within a period of six months of his first import of gold.**

The Notification permits that a passenger who has come after a period of six months stay abroad continuously can clear a maximum of 10 Kg of gold in one go. There is no concept of second or third visits in this regard. Likewise, there is no provision for condonation of either any shortfall in stay abroad or short visits made to India in six months period.

(iii) **Whether the import of gold can be availed by all members of a family.**

The Notification relating to import of gold is an independent Notification not related with Baggage Rules. Therefore, the benefit is permissible to all the passengers coming into India who fulfil the conditions mentioned in the said Notification.

(iv) **Whether glass-studded jewellery or jewellery studded with only few stones can be permitted.**

It is clarified that only non-studded jewellery is allowed under this Notification.

(v) **Verification regarding the source of passengers' earnings.**

So far as the Notification is concerned, there is no condition that the source of earnings from which the gold has been purchased has to be verified. Further, no such condition has been prescribed in the ITC Order or RBI Notification. Therefore, it would be beyond the jurisdiction of Customs Officers to go into this aspect.

(vi) **Whether a separate register should be opened for it.**

It is advised that a separate register for gold imports giving the particulars as under may be maintained: -

- i) Sl. No.
- ii) Name of the passenger
- iii) Passport No.
- iv) Place and date of issue of Passport.
- v) Flight No. and date.
- vi) Country of embarkation.
- vii) Nationality
- viii) Total weight of gold.
- ix) Description of gold (whether jewellery, coin, biscuit, etc.)
- x) Duty amount
- xi) Currency in which the duty paid.
- xii) Baggage Receipt No.
- xiii) Remarks

(vii) **Whether the free allowance for personal jewellery is affected by the Notification 117/92-Cus. & Notification No. 18/92-Cus. NT and 19/92-Cus. (NT) both dated 01.03.1992.**



Free allowance for jewellery is not affected by issue of Notifications mentioned above. The passengers are entitled to the same apart from the benefit of Notification No. 117/92-Cus. if otherwise eligible.

**[Ministry's letter F. No. 495/5/82-CUS-VI dated 22.4.92.]**

**Note:** The above instructions shall also be applicable in respect of import of silver under Notification No. 172/94.

### **3.16. EXEMPTION FROM SURCHARGE OF CUSTOMS**

Gold & Silver including ornaments (but excluding ornaments studded with stones & pearls) imported into India or taken delivery by an eligible passenger in terms of notifications of the Government of India in the Ministry of Finance (Deptt. of Revenue) Nos. 171/94. CUs. both dated 30.09.94 are exempted from the whole in the Surcharge of Customs leviable thereon.

**[Not. No. 19/2000 CUs. dated 01.03.2000 ]**

### **3.17. EXEMPTION FROM SPECIAL ADDITIONAL DUTY**

In exercise of the powers conferred by sub-section (1) of section 3 A of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), the Central Government, having regard to the maximum sales tax, local tax or any other charges for the time being leviable on the like goods on their sale or purchase in India, hereby specifies the rates of special additional duty as indicated in column (4) of the Table below in respect of goods, when imported into India, specified in corresponding entry in column (3) of the said Table and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Customs Tariff Act as are specified in the corresponding entry in column (2) of the said Table:

Provided that in respect of the goods specified against Sl. No. 24, 25, 26, 31 and 32 of the said Table, "Nil" rate shall be subject to the conditions, if any, subject to which the goods are exempt either partially or wholly from the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act.

**Table**

S. No.	Chapter or heading No. sub-heading No.	Description of goods	Standard rate
(1)	(2)	(3)	(4)
25.	71	<p>Sl. No. 1 to 24 not reproduced.</p> <p>Gold and silver including ornaments (but excluding ornaments studded with stones or pearls), imported into India or taken delivery by an eligible passenger in terms of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), Nos. 171/94-Customs, dated 30<sup>th</sup> September, 1994 and 172/94-Customs, dated the 30<sup>th</sup> September, 1994</p> <p>Sl. No. 26 to 29 not reproduced.</p> <p>All goods which in terms of the Baggage Rules,</p>	Nil

30.	98.03	<p>1998, are –</p> <p>(i) passed free duty; or</p> <p>(ii) exempt from the whole of the duty of customs leviable thereon which is specified in the First Schedule</p>	Nil
31.	Any Chapter	<p>All goods which are exempt from –</p> <p>(a) the whole of the duty of customs leviable thereon under the First Schedule; and</p> <p>(b) the whole of the additional duty of customs leviable thereon under sub-section (1) of section 3 of the Customs Tariff Act.</p>	Nil
32.	Any Chapter	<p>All goods</p> <p>(a) in the case of which “Free” rates of duty of customs are specified in column (4) or column (5), as the case may be, of the First Schedule, and</p> <p>(b) which are exempt from the whole of the additional duty of customs leviable thereon under sub-section (1) of section 3 of the Customs Tariff Act or on which no amount of said additional duty of customs is payable for any reason.</p> <p>SI No. 33 to 35 not reproduced.</p> <p>All goods, other than those specified against SI. No. 1 to 35 above</p>	Nil

36.	Any Chapter		4% <i>ad valorem</i>
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[ Notification No. 18/2000-Customs dated 1<sup>st</sup> March, 2000 ]

### 3.18. CONCESSIONAL RATE OF DUTY FOR CERTAIN GOODS IMPORTED BY A PASSENGER AS BAGGAGE

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (2) of the Table hereto annexed and falling under heading NO. 98.03 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India by a passenger as baggage, from so much of that portion of the duty of customs leviable thereon under the said First Schedule, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the said Table, but for the classification of such goods under heading No. 98.03 of the said First Schedule, subject to the conditions, if any specified in the corresponding entry in column (4) of the said Table.

#### TABLE

S.No.	Description Condition	Rate
(1)	(2)	(3)
		(4)

1. The following namely :-	Rate
Conditions,	
(I) Goods specified in the notifications of the Government if any,	specified in
of India in the Ministry of Finance(Department of Revenue specified	the said
and Banking, Department of Revenue and Insurance or in the said	notifications
Department of Revenue, as the case may be) notifications	Nos. 174/66-
September,	Customs, dated the 24 <sup>th</sup>
Dated the	1966, 80/70-Customs,
207/89-	29 <sup>th</sup> August, 1970,
July, 1989,	Customs, dated the 17 <sup>th</sup>
the 13 <sup>th</sup>	148/94-Customs, dated
6), 54/94-	July, 1994 (S.Nos. 5 and
July, 1994	Customs, dated the 13 <sup>th</sup>

the 23<sup>rd</sup> and 51/96-Customs, dated

July, 1996;

(II) The goods specified in the Table to the notification of

The Government of India in the Ministry of Finance

(Department of Revenue), No. 19/2000-Customs, dated

the 1<sup>st</sup> March 2000 against S.No. 80 [in column (3) at item

Nos. (A) and (C) 115, 129, 130 (only blank travellers

cheques), 132, 236, 311, 320, 323, 325 and 327.

(III) The goods specified against item Nos. A and B of the

Table to the notification of the Government of India in the

Ministry of Finance (Department of Revenue) NO. 37/96-

Customs, dated the 23<sup>rd</sup> July, 1996.

2. Newspapers (including periodicals) falling within heading      Rate specified

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NO. 49.02, music manuscripts falling within heading No.      in the said first

49.04, topographical plans falling within heading No.      Schedule

49.05, plans, drawings and designs falling within heading

No. 49.06, postage stamps falling within heading No. 97.04

and medals falling under heading No. 97.05, of the First

Schedule to the said Customs Tariff Act.

[Notification No. 49/96-Cus., dated 23-7-1996 as amended by Notification No. 23/97-Cus., dated 4-3-1997 and No. 28/98-Cus., dated 2-6-1998 and notification no. 37/99-Cus. dated 09.04.99 & Not.20/2000 dated. 01.03.2000 ]

The notifications referred to in the Table above are reproduced below:

### 3.19. RE-IMPORT OF PRIVATE PERSONAL PROPERTY

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 270-Customs, dated the 25<sup>th</sup> October, 1958, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in column (1) of the Table hereto annexed when imported into India from so much of the duty customs leviable thereon as is specified in column (3), subject to the limitations and conditions specified in column (2) thereof, namely: -

#### **TABLE**

Goods	Limitations and Conditions	Extent of Exemption
(1)	(2)	(3)
Goods not produced	Provided that the proper officer	(i) In the case of goods

<p>or manufactured in India, which are private personal property and which prior to their import into India have been exported there from.</p>	<p>of customs is satisfied :-</p> <ol style="list-style-type: none"> <li>(1) as to the identity of the goods;</li> <li>(2) that no drawback of duty was paid on their exports;</li> <li>(3) that the ownership of the goods has not changed between the time of export and re-import or if it has changed that it has remained in the family of the exporter;</li> <li>(4) that the goods are being imported for personal use and not for sale; and</li> <li>(5) (a) that the goods have been re-imported within three years from the date of export; or (b) that the goods were re-imported after the expiry of three years from the date of export, but were shipped or consigned to India within the time limit allowed under sub-rule (1) of rule 7 of the 'Baggage Rules, 1970, and the owner of such goods returned to India within three years from his departure from India.</li> </ol>	<p>other than those in (ii) below on which any alternations, renovations, additions or repairs have been executed subsequent to their export, so much as is in excess of the duty of customs which would be leviable if the value of the goods were equal to the cost of such alternations, renovations, additions or repairs;</p> <p>(ii) In the case of goods repaired on a "free of charge" basis in accordance with the terms of warranties given by the manufacturers or by their accredited sales agents in accordance with the established trade practice pertaining to the goods, the whole of the duty of customs;</p> <p>(iii) In other cases, the whole of the duty of customs.</p>
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[ Notification No. 174-Cus., dated 24-09-1966 as amended by notifications No. 99-Cus., dated 21-06-1969 and No. 93-Cus., dated 17-10-1970 ]

### **3.20. ARTICLES SUPPLIED FREE UNDER WARRANTY AS REPLACEMENT FOR DEFECTIVE ONES**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts articles and component parts thereof, when imported respectively for the replacement of defective articles or of component parts thereof, from the whole of the duty of customs leviable thereon under section 3 of the said Customs Tariff Act, subject to the following conditions, namely :-

- (i) the defective articles were brought in to India earlier from places outside India and are private personal properties of the importer;
- (ii) the articles or component parts thereof, as the case may be, are imported within the warranty period and are supplied free of charge by the foreign manufacturer in terms of the warranty given by the manufacturer in accordance with the established trade practice pertaining to the articles;
- (iii) the repairs including replacement of the defective parts are done free of charge by the manufacturer through his agent or branch in India; and
- (iv) the defective articles or component parts there of if not re-exported are destroyed, or surrendered to the Customs.

[ Notfn. No. 80-Cus., dated 29-08-1970 as amended by Notfn. No. 129/86-Cus., dated 17-02-1986 ]

### **3.21. FOODSTUFFS AND PROVISIONS IMPORTED BY FOREIGNERS**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 135/66-Customs, dated 20<sup>th</sup> June, 1966, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts foodstuffs and provisions (excluding fruit products, alcohol and tobacco), when imported into India by a person residing in India, not being a citizen of India, from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and from the whole of the additional duty of customs leviable thereon under section 3 of the said Customs Tariff Act :

Provided that –

- (i) the aggregate c.i.f. value of such foodstuffs and provisions so imported by any such person in a year shall not exceed Rs. 50,000; and
- (ii) the importer secures the foreign currency required for importing such foodstuffs and provisions from the funds available to him in the foreign country.

[ Notification No. 45/92-Cus., dated 1-3-1992 ]

**3.22. SPECIFIED FREE GIFTS, DONATIONS, RELIEF AND REHABILITATION MATERIAL IMPORTED BY CHARITABLE ORGANIZATIONS, RED CROSS SOCIETY, CARE AND GOVERNMENT OF INDIA**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods (hereinafter referred to as the said goods) of the description specified in column (2) of the Table hereto annexed and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from the whole of the duty of customs leviable thereon

under the said First Schedule and from the whole of the additional duty leviable thereon under section 3 of the second mentioned Act subject to the conditions specified in column (3) against each serial number in column (1) of the said table.

**TABLE**

<b>S. No.</b>	<b>Description of Goods</b>	<b>Conditions</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	Goods imported into India for the purposes of relief and rehabilitation	(i) The said goods are imported into India in accordance with the terms of any agreement in force between the Government of India and any foreign Government providing for duty-free entry of such goods into India; and (ii) The goods so imported shall not be sold or otherwise disposed of in India except with the prior approval of, and on fulfillment of such conditions as may be imposed by, the Government in this behalf.  The goods are supplied as free gifts to the Government of India, either by the agencies approved by the United Nations Organization or by the European Economic Community.
6.	Articles of food and edible material	..... ..... .....

7.	.....	.....
8.	.....	.....

[ Notification No. 148/94-Cus., dated 13-7-1994 as amended by Notification No. 173/94-Cus., dated 6-10-1994; No. 101/95-Cus., dated 26-5-1995 and No. 48/96-Cus., dated 23-7-1996 ]

**3.23. SAMPLES, PRICE LISTS, COMMERCIAL SAMPLES OR PROTOTYPES IMPORTED AS BAGGAGE OR BY POST, AIR OR COURIER SERVICE AND PROTOTYPES OF ENGINEERING GOODS IMPORTED AS SAMPLES FOR EXECUTING OR SECURING EXPORT ORDERS**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods (hereinafter referred to as the said goods) of the description specified in column (2) of the Table hereto annexed and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from the whole of the duty of customs leviable thereon which is specified in the said Schedule and from the whole of the additional duty leviable thereon under section 3 of the second mentioned Act subject to the conditions, if any, laid down in the corresponding entry in column (3) thereof.

**TABLE**

S. No.	Description of goods	Conditions
(1)	(2)	(3)
1.	Samples	The samples are exempt from import duties under and in accordance with the International Convention to facilitate the importation of Commercial Samples and Advertising material drawn up at Geneva and dated the 7 <sup>th</sup> day of November, 1952.
2.	Price lists	The price lists are supplied free of charge and are exempt from import duties under and in accordance with the Convention mentioned against S. No. 1 above.
3.	Commercial samples	<p>(i) The said goods have been imported as personal baggage by bona fide commercial travelers or businessmen or imported by post or by air;</p> <p>(ii) The importer produces his Import Export Code Number at the time of importation;</p> <p>(iii) The said goods are clearly marked as samples;</p> <p>(iv) The import of the said goods does not exceed Rs.36,000 in value or 10 units in number, within a period of twelve months; and</p> <p>(v) The importer at the time of importation –</p> <p style="padding-left: 40px;">(A) declares that –</p> <p style="padding-left: 40px;">(a) the samples have been imported into India solely for the purpose of being shown in India for the guidance of exporters or for securing or executing an export order;</p> <p style="padding-left: 40px;">(b) the total import value if samples does not exceed Rs.36, 000 or 10 units in number, within the period of the last twelve months; and</p> <p style="padding-left: 40px;">(B) produces an undertaking to the Assistant Commissioner of Customs to pay the duty leviable on the said goods but for the exemption contained herein, if</p>

		<p>the declaration under sub-clause (A) is found to be false.</p> <p>(i) The importer produces a certificate from the Export Promotion Council concerned with the particular export or the Trade Development Authority to the effect that the samples are required for executing or for use in connection with securing export orders;</p> <p>(ii) where the value of a sample does not exceed Rupees ten thousand the same shall be rendered useless as merchandise by any suitable process and where this is not possible they are re-exported within a period of nine months of import or such extended period as may be allowed by the Assistant Commissioner of Customs;</p> <p>(iii) where the value of a sample exceeds Rupees ten thousand the same shall be re-exported within a period of nine months or such extended period as may be allowed by the Assistant Commissioner of Customs; and</p> <p>(iii) the importer shall execute a bond in such form and for such sum and with such surety as may be prescribed by the Assistant Commissioner of Customs, for the purpose of enforcing conditions (ii) and (iii), as the case may be.</p>
	<p>4. Prototype of engineering goods imported as samples for executing or for use in connection with securing export orders.</p>	<p>(i) The said goods have been imported by post or in an aircraft, or by courier service;</p> <p>(ii) the value of the said samples or prototypes does not exceed rupees two thousand; and</p> <p>(iii) the said goods have been supplied free of charge.</p> <p>Explanation. – For the purpose of clause (ii), postal charges or the air-freight shall not be taken into account for determining the value limit of rupees two thousand.</p>
	<p>5. Bona fide commercial samples and prototypes</p>	

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[ Notification No. 154/94-Cus., dated 13-7-1994 as amended by Notification No. 100/95-Cus., dated 26-5-1995; No. 101/95-Cus., dated 26-5-1995 and No. 75/97-Cus., dated 14-10-1997. ]

### **3.24. RESEARCH EQUIPMENT IMPORTED BY PUBLIC FUNDED AND NON-COMMERCIAL RESEARCH INSTITUTIONS AND I.I.T. ETC**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods falling within the First Schedule to the Customs Tariff Act, 1975 and specified in column (3) of the Table hereto annexed, from the **whole of the duty of customs** leviable thereon which is specified in the said First Schedule and from the **whole of the additional duty** leviable thereon under section 3 of the said Customs Tariff Act, when imported into India, by importers specified in column (2) of the said Table, subject to the conditions specified in the corresponding entry in column (4) of the said Table.

2. This notification shall come into force with effect from the 1<sup>st</sup> day of September, 1996.

**TABLE**

<b>S. No.</b>	<b>Name of the importer</b>	<b>Description of goods</b>	<b>Conditions</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
1.	Public funded	(a) Scientific and technical instruments,	(I) The goods are imported by or for delivery to-

<p>research institution or a university or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital</p>	<p>apparatus, equipment (including computers);</p> <p>(b) accessories, parts and consumables; live animals (for experimental purposes)</p> <p>(c) Computer software, Compact Disc-Read Only Memory (CDROM), recorded magnetic tapes, microfilms, microfiches;</p> <p>(d) Proto-types, the C.I.F. value of which does not exceed rupees fifty thousand in a financial year.</p>	<p>(a) a public funded research institution under the administrative control of the Department of Space or the Department of Atomic Energy or the Department of Defence Research and Development of the Government of India, or</p> <p>(b) an institution registered with the Government of India in Department of Scientific and Industrial Research; and the importer produces a certificate to this effect from an officer not below the rank of a Deputy Secretary in the concerned Department;</p> <p>(ii) The importer produces, at the time of importation, a certificate from the head of the institution, in each cases, certifying that the said goods are required for research purposes only;</p> <p>(iii) In the case of import of live animals for experimental purposes, the importer produces, at the time of importation, a certificate from an officer not below the rank of a Deputy Secretary to the Government of India in the Department of Scientific and Industrial Research to the effect that the Committee for the Purpose</p>
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2.	Non-commercial research institutions, other than a hospital	<p>(a) Scientific and technical instruments, apparatus, equipment (including computers;</p> <p>(b) Accessories, parts and consumables;</p> <p>(c) Computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms. Microfiches;</p> <p>(d) Proto-types.</p>	<p>of Control and Supervision of Experiments on Animals has no objection to the said import and the live animals are required for research purposes; and</p> <p>(iv) When the goods are imported for delivery to the an institution, the certificates specified in items (I) and (ii), as the case may be, items (I), (ii) and (iii) above shall be produced at the time of clearance of the goods from a warehouse appointed under section 57 or 58 of the Customs Act, 1962 (52 of 1962).</p> <p>(i) The importer is registered with the Government of India in the department of Scientific and Industrial Research;</p> <p>(ii) An officer not below the rank of a Deputy Secretary to the Government of India in the said Department certifies, in each case, that the importer is not engaged in any commercial activity and that the said goods are required for research purposes only,</p> <p>(iii) the goods are covered by a Pass-Book issued by the said Department;</p> <p>the aggregate C.I.F. value of imports under this exemption does</p>
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			not exceed rupees two crores in the case of consumables, rupees fifty thousand in the case of proto-types and rupees five crores in other cases, in a financial year.
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**Explanation.** - For the purposes of this notification, the expression,-

- (a) “Public funded research institution” means a research institution in the case of which not less than fifty per cent of the recurring expenditure is met by the Central Government or the Government of any State or the administration of any Union territory;
- (b) “University” means a university established or incorporated by or under a Central, State or Provincial Act and includes –
- (i) an institution declared under section 3 of the University Grants Commission Act, 1956 (3 of 1956 to be a university for the purposes of that Act);
  - (ii) an institution declared by Parliament by law to be an institution of national importance;
  - (iii) a college maintained by, or affiliated to, a University;
- (c) “Head” means –
- (i) in relation to an institution, the Director there of, (by whatever name called);
  - (ii) in relation to a University, the Registrar thereof (by whatever name called);
  - (iii) in relation to a College, the Principal there of (by whatever name called);
- (d) “Hospital” includes any Institution, Center, Trust, Society, Association, Laboratory, Clinic or Maternity Home which renders medical, surgical or diagnostic treatment.

**[Notification No. 51/96-Cus., dated 23-7-1996 as amended by Notification Nos. 93/96-Cus., dated 11-12-1996 and No. 19/97-Cus., dated 1-3-1997 vide Corrigendum M.F. (D.R.) Notification F. No. B-40/11/96-TRU, dated 25-10-1996 as amended by Notification No. 28/98-Cus., dated 2-6-1998. & Not. No.20/2000 dated.01.03.2000 ]**

### **3.25. EXEMPTIONS AND EFFECTIVE RATES OF BASIC AND ADDITIONAL DUTY FOR SPECIFIED GOODS OF CHAPTERS 1 TO 99**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Customs Tariff Act 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;
- (b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

Subject to any of the Conditions specified in the Annexure to this notification, the Condition No. of which is mentioned in the corresponding entry in column (6) of the said Table.

Provided that nothing contained in this notification shall apply to goods specified against Serial Nos. 212,213,214,215,216,217 and 218 of the said Table on or after the 1<sup>st</sup> day of April 2001.

*Explanation :-* For the purposes of this notification, the rate specified in column (4) or column (5), is ad valorem rate, unless otherwise specified.

**TABLE**

<b>S. No.</b>	<b>Chapter or heading No. or sub-heading No.</b>	<b>Description of goods</b>	<b>Standard Rate</b>	<b>Additional duty Rate</b>	<b>Condition No.</b>

(1)	(2)	(3)	(4)	(5)	(6)
80.	28, 29, 30 or 38	The following goods- (A) The life saving drugs/ medicine including their salts and esters and diagnostic test kits specified in <b>List 2</b>  (B) ----- (C) Other life saving drugs or medicines	Nil	Nil	---
115	39, 48 or any other Chapter	Tags, labels, printed bags, stickers, belts, buttons or hangers, imported by <i>bona fide</i> exporters	Nil	Nil	---
129	49	Printed books (including covers for printed books) and printed manuals (including those in loose- leaf form with binder)	Nil	----	---
130	49.11	..... blank travellers cheques.	Nil	---	---
132	84, 85 or 90	Plans, drawings and designs	15%	---	---
236	84, 85 or 90	The goods specified in <b>List 21</b>	Nil	Nil	<b>69</b>

311	.	The following goods, imported by an accredited journalist: -			
	90 or any other Chapter	(i) Personal computers including lap top personal computers;	Nil	---	---
		(ii) Typewriters; and			
		(iii) fax machines	Nil	Nil	---
320	.	The following goods, namely: -	Nil	Nil	<b>48</b>
		(A) Medical equipment (excluding Foley Balloon Catheters) specified in <b>List 28</b> ;			
	90 or any other Chapter	(B) Accessories of the medical equipment at (A) above;			
		(C) Parts required for the manufacture of the medical equipment at (A) above and spare parts required for the maintenance of the medical equipment at (A) above.	Nil	---	---
			Nil	Nil	<b>48</b>
323	.				
	90 or any other Chapter	The following goods, namely: -	Nil	Nil	---
		(A) Medical equipment specified in <b>List 29</b> ;			
	90 or any other	(B) Parts required for the	Nil	Nil	<b>75</b>

325 .	Chapter	manufacture of medical equipment at (A) above and spare parts required for the maintenance of the medical equipment at (A) above.			
327 .		Goods for Tubal Occlusion specified in <b>List 31</b>  Goods specified in <b>List 32</b> imported by a handicapped or disabled person for his personal use			

**LIST 2 (See S. No. 80 and 339 of the Table)**

1.  $^{32}\text{P}$  Sodium Phosphate
2. Fluorocytosin
3. 5 – Fluorouracil
4. 6 – Isoguanine
5. Acclarubicin
6. Dactinomycin
7. Agglutinating Sera
8. Allopurinol
9. Ambenonium chloride
10. Amikacin
11. Amino – glutothemide
12. Amiodarone
13. Amiphenazole
14. Amphotericin – B
15. Amrinone
16. Amsacrine
17. Amylobarbitone Sodium
18. Anti – Diphtheria Normal Human  
Immunoglobulin
19. Anti – Haemophilic  
Factorconcentrate (VIII and IX)
20. Anti–Human                   lymphocyte  
immunoglobulin IV
21. Antihuman  
thymocyteimmunoglobulin IV
22. Anti – Pertussis Normal Human  
Immunoglobulin
23. Anti – Plague serum
24. Anti – Pseudomonas Normal Human  
Immunoglobulin
25. Anti – Rabies Normal Human  
Immunoglobulin
26. Aprotinin
27. Atracurium besylate
28. Baclofen
29. Beclamide
30. Bemergide
31. Bleomycin
32. Blood group sera
33. Burn therapy dressing soaked in gel
34. Bovine Thrombin for in vitro test for  
diagnosis in Haemorrhagic disorders
35. Bovine Albumin
36. Broxuridine
37. Bretyleum Tossylate
38. Busulphan
39. Calcium Disodium Edetate
40. Carbidopa with Levodopa
41. Carmustine
42. Cefoperazone
43. Ceftizoxime
44. Cesium Tubes
45. Chenodeoxycholic Acid
46. Chlorambucil
47. Chlormerdrin 197 Hg.
48. Cholestyramine
49. Christmas Factor Concentrate  
(Coagulation factor IX  
prothrombincomplex concentrate)
50. Chorionic Gonadotrophin
51. Cobalt – 60
52. Clindamycin
53. Colistin
54. Corboquone
55. Corticotrophin
56. Cyclocytidine
57. Cyclophosphamide
58. Cyanamide
59. Dacarbazine
60. Daunomycin
61. Daunorubicin
62. Desmopressin
63. Desferrioxamine

64. Diagnostic Agent for detection of Hepatitis B Antigen
65. Diagnostic kits for detection of HIV antibodies
66. Diphtheria Antitoxin sera
67. Dimercaprol
68. Diazoxide
69. Dobutamine Hydrochloride
70. Dispyramide Phosphate
71. Edrophonium
72. Dopamine
73. Enzyme linked Immunoabsorbent Assay kits [ELISA KITS]
74. Epirubicin
75. Fibrinogen
76. Floxuridine
77. Follicle Stimulating Hormone [FSH]
78. Fospestorol
79. Gallium Citrate
80. Gasgangrene Anti – Toxin Serum
81. Glucagon
82. Heptamine
83. Hepatitis B Immunoglobulin
84. Hexamethyl-melamino
85. Histoglobulin
86. Hydralazine
87. Hydroxyurea
88. Idarubicine
89. Idoxuridine
90. Ifosfamide
91. Isoprenaline
92. Immunoassay kit for blood fibrinogen degradation product for direct estimation for diagnostic testin D.I.C.
93. Inactivated rabies vaccine [Human diploid cell]
94. Inactivated rabies vaccine [Vero – cell]
95. (a) Indium (III) in bleomycin (b) Indium 113 Sterile generator and elution accessories (c) Indium 113 in brain scanning kit (d) Indium 113 in liver scanning kit
96. Interferon alpha – 2b / interferon alpha – 2a interferon alpha NL / interferon alpha NL (LNS)
97. Intravenous amino acids
98. Intravenous Fat Emulsion
99. Iopamidol (103)
100. Iohexol
101. Ketamine
102. Isoflurane
103. Selenium-75
104. Asparaginase
105. Calcium folinate
106. Lactulose
107. Levodopa with benserazine
108. Levodopa (L-Dopa)
109. Mannitol Busulphan Preparations
110. Lomustine
111. Meningococcal A and C combined vaccine with diluentsolvent
112. Melphalan
113. Mercaptopurine
114. Mesna
115. Methisazone
116. Methicillin
117. Methoxy isobutyl Isonitrile
118. Methotrexate
119. Methyl prednisolone
120. Methoxyflurane
121. Metrizamide Inj with diluant
122. Metraminol
123. Mithramycin
124. Nimustine



125. Mitotane
126. Mitomycin
127. MMR (Measles, mumps and rubella) vaccine
128. Latamoxef
129. Monocomponent insulins
130. Nalorphine
131. Mustin Hydrochloride
132. Netilmicin
133. Naloxone
134. Nitroglycerine
135. Normal Human plasma
136. Normal Human immunoglobulin
137. Nuclear magnetic resonancecontrast agent
138. Normal Human serum Albumin
139. Penicillamine
140. Pancuronium Bromide
141. Pentamidine
142. Penicillinase
143. Peplomycin
144. Pilocarpine
145. Podophyllotoxin
146. Piperacillin
147. Polimyelitis vaccine (inactivated and live)
148. Laureth 9
149. Polymyxin B
150. Polyestradiol
151. Potassium Aminobenxoate
152. Porcine insulin Zinc Suspension
153. Praziquantel
154. Pralidoxime
155. Prednimustine
156. Prazosin
157. Porcine and Bovine insulin
158. Procarbazine
159. Purified Chick Embryo Cell Rabies Vaccine
160. Protamine
161. Pyridostigmine
162. Pyridinol Carbamate
163. Radio- immunoassay kit for hormones (T3, T4 TSH Insulin, Glucogen, Growth Hormone, Cortisol, L. H. Digoxin
164. Quinidine
165. Radioisotope TI 201
166. Tribavarin
167. Septopal beads and chains
168. Sodium Arsenate
169. Sodium Cromoglycatespinacaps and cattridges
170. Sodium Huyalauronate sterile 1% and 1.4% solution
171. Solution containing Human Follicle Stimulating and Luteinsing hormones
172. Solution of Nucleotides and Nucliosides
173. Somatostatin
174. Somatropin
175. Specific Desensitizing Vaccine
176. Sterlile Absorbable Haemostatfor control of surgical vessel bleeding
177. Streptokinase and Streptodomase preparations
178. Strontium Chloride (85 Sr.)
179. Strontium SR-89 Chloride
180. Suxamethonium Chloride
181. Testolactone
182. Technitium-99M
183. Thigouanine
184. Thallium 201
185. Ticarcillin

186. Tobramycin
187. Tissue Plasminogen Activator
188. Tranexamic Acid
189. Tocainide
190. Tri-iodothyronine
191. Triethylene Tetramine
192. Triethylene Thiophosphoramidate
193. Trofosamide
194. Tubocurarine
195. Urokinase
196. Ursodeoxycholic Acid
197. Vancomycin
198. Vasopressin
199. Vecuronium Bromide
200. Vindesine Sulphate
201. X-ray diagnostic agents, the following: - (i) Propylidone (ii) Ethyl iodophenylundecylate (iii) Iodipamide methyl glucamine (iv) Lipidoll ultra fluid (v) Patent blue
202. Anti-D Immunoglobulin
203. Aurothiomalate Sodium
204. Botulinum Toxin Type 'A'
205. Triptorelin
206. D.K. line 100% purified perflurodicalin liquid
207. Filgrastim/Molgramostim (G-CSF/GM-CSF)
208. Flecainide
209. Foetal Bovine Serum (FBS)
210. Gadolinium DTPA Dimeglumine
211. HTLV – 1 Western Blot Kits
212. Tetanus Immunoglobulin
213. BCG vaccine, Iopromide, Iotrolan
214. Legionella Pneumophila IF kits
215. Muromonabg – CD 3
216. Octreotide
217. Typhoid Vaccines:
- (i) VI Antigen of Salmonella Typhi
- (ii) Ty 21a cells and attenuated non-pathogenic strains of S. Typhi
218. (a) Rabbit brain thromboplastin for PT test  
(b) Reagent for PT tests  
(c) Human Thrombin for TT tests
219. Pneumocystis carinii IF kits
220. Piroxycams
221. Rabies immunoglobulin of equine origin
222. Thrombokinase
223. Teniposide
224. Vidarabine
225. Iscador, CLIA diagnostic kits
226. Lamivudine
227. Zalcitabine
228. Saquinavir
229. Zidovudine
230. Ritonavir
231. Amifostine
232. Gemcitabine
233. Goserlin Acetate
234. Teicoplanin
235. Vecuronium Bromide
236. Abeciximab
237. Disodium Pamidronate.
238. Sevoflurane
239. Ticarcillin Disodium and Potassium Clavulanate combination
240. Trans-1-diamino cyclohexane Oxalatoplatinum
241. Letrozole
242. Irinotecan
243. Leuprolide Acetate

- 244. Fludarabine Phosphate
- 245. Lenograstim
- 246. Tretionoin
- 247. Enoxaparin
- 248. Eptifibatide
- 249. Mycophenolate Mofetil
- 250. Prostaglandin E 1 (PGE1)
- 251. Natural Micronised Progesterone
- 252. Latanoprost
- 253. Riluzole
- 254. Cefpirome

**Condition No. 7**

If, -

- (a) the goods are imported by an individual for personal use;
- (b) it is certified in the Form below, by the Director General or Deputy Director General or Assistant Director General, Health Services, New Delhi in each individual case, that the goods are a life saving drug or medicine; and,
- (c) the importer produces the said certificate to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, at the time of clearance, or gives an undertaking as acceptable to the Deputy Commissioner or the Assistant Commissioner to furnish the said certificate within such period as specified by the Deputy Commissioner or the Assistant Commissioner, failing which to pay duty leviable thereon.

**FORM**

Certified that the drug/medicine .....(name of the drug/medicine)..... being imported by ..... is a life saving drug/medicine and exemption from the payment of customs duty is recommended.

Signature with date .....

Name .....

Designation .....

Place .....

**LIST 21 (S. No. 236 of the Table)**

(1) Capacitors (excluding paper capacitors and power capacitors)	(8) Ceramic/Magnetic cartridges and stylus	(18) (i) Saw filters (ii) Ceramic filter/trap (iii) Delay lines (iv) CRT socket (v) Spark gap (vi)
(2) Ferrite parts including	(9) Air cored and Ferrite cored transformers	

memory cores and ferrite magnets	(10) Microphones/Microphone cartridges	Degaussing coil
(3) Switches with contact rating less than 5 amperes at voltage not exceeding 250 Volts AC or DC	(11) RF/IF coils, Inductance coils, Peaking coils, Tuning coils	(19) Fibre optics and other optoelectronic parts and devices namely, Couplers, Attenuators, Connectors, Splicers, Multiplexers and Demultiplexers
(4) Connectors	(12) Antennas	(20) Passive optical parts, namely, Microlens and splitters, Micropositioners, Optical filters and gratings and Phase plates
(5) Magnetic-Heads (all types)	(13) Relays of contact rating upto 7 amperes	(21) Special purpose optical fibres, namely, polarisation holding fibres, plastic fibres and large core fibres
(6) Loud speakers (cone type)	(14) EHT cables	(22) Electron guns
(7) Deflection parts, namely:-	(15) Level meters/level indicators/tuning indicators /peak level meters/ battery meter/VC meters/Tape counters	(23) Liquid crystal displays
(i) EHT/LOT/FBT transformers	(16) Tone arms	
(ii) Line driver transformers	(17) Microwave passive parts	
(iii) Deflection coil/yoke		
(iv) Linearity coil		
(v) Width coil		

### **Condition No. 69**

(i) If the importer produces a certificate from an officer not below the rank of a Deputy Principal Information Officer in the Press Information Bureau in the Ministry of Information and Broadcasting to the effect that the importer is an accredited journalist, and that the importer has not availed, on any occasion in the previous five years, exemption under this notification or the notification of the Government of India

in the Ministry of Finance (Department of Revenue) No. 83/93-Customs, dated the 28<sup>th</sup> February, 1993 or No. 36/96-Customs, dated the 23<sup>rd</sup> July, 1996 or No. 11/97-Customs, dated the 1<sup>st</sup> March, 1997 or No. 23/98- Cus. dated 02.06.1998 or 20/99-Cus. dated 28.02.1999.

(ii) the exemption under this notification shall be applicable to that portion of C.I.F. value of the specified personal computers, typewriters and fax machines, which does not exceed one lakh rupees; and,

(iii) if the importer gives an undertaking to the Deputy Commissioner or the Assistant Commissioner of Customs, as the case may be, at the time and place of importation to the effect that the said goods shall remain in his possession, control and use and shall not be sold or parted with for a period of five years from the date of importation.

**LIST 28 (See S.No. 320 of the Table)**

(1) Australia Antigen RIA kit	(23) Oxygenator	(51) Dosimetry System
(2) Cardiac catheters with guidewires	(24) Plastic disposable 3-way connectors	(52) Cell Saver Equipment
(3) Clips for aneurysms and clips applying forceps in Neuro-Surgery	(25) Portable intermittent positive, pressure breathing apparatus	(53) Cell Washer
(4) Cardio vascular sutures	(26) Pulmoflator	(54) Thawer Equipment for Blood Warming
(5) Cardiovascular special instruments, namely:-	(27) Respirators including ventimeters	(55) Mammography Unit
(i) Coronary perfusion cannulae	(28) Sengstaken tubes	(56) O <sub>2</sub> Concentrator
(ii) Electrical or gas operated sternal cutter	(29) Tracheostomy tubes	(57) Ventricular Assist Device
(iii) High	(30) Ventilator used with anesthesia apparatus	(58) Pace Maker
	(31) Vascular grafts	(59) Activated Clot Time Machine
	(32) Tracheostomy tube of plain PVC, Low pressure PVC, Red Rubber Plain, and Red Rubber cuffed.	(60) Cobalt Therapy Unit
	(33) Various types of	(61) Colour Doppler Ultrasound Scanner
		(62) SPECT Gamma Camera
		(63) Deep Therapy Unit

pressure stop cocks and connectors for pressure recording (iv)	Cardiac Catheters including ballon tipped, double Lumen and PTCA catheters, balloon dilatation catheters and Endomyocardial biopsy forceps	(64) Cardiac and Vascular Angiography System including Digital subtraction Angiography
Vascular bull-dog clamps (v)	(34) Disposable and non-disposable cannula for aorta, vena cavae and similar veins and blood vessels and cannula for intra-corporal spaces	(65) Pulse Oximeter
Vascular clamps (vi)	(35) Programmer for pacemaker	(66) Blood Gas Analyser (including cartidges, if any), Sodium Potassium Analyser, Auto Analyser for enzymes, drug levels and biochemical investigations, or a combination of two or more of the aforesaid
Vascular needle holders (vii)	(36) Ancillaries for blood component therapy required for the treatment of cancer, namely, Y type blood solution recipient set	(67) Ultrasonic Surgical Aspirator
Vascular scissors straight or angled (viii)	Transfer pack 1000ml. And 300 ml. ; disposable pherasis bowl 225 ml. And 373 ml. Hydroxy ethyl starch solution; wasting harness with bypass; and waste bags	(68) Intra Cranial Pressure Monitoring Equipment
Vascular tissue forceps	(37) AIDS (Acquired Immune Deficiency Syndrome) test kits; Enhanced luminescence analysers for AIDS, Hepatitis and other	(69) Radio Therapy Simulator
(6) Compressed air breathing apparatus complete		(70) Treatment Planning System
(7) D.C. Difibrilators or internal use and pace makers		(71) Angiography Contrast Agent
(8) Laryngeal Mask-Endotracheal Tube		(72) Mobile Image Intensifier
(9) Haemodialysors		(73) Magnetic Resonance Imaging System
(10) Heart lung machine		(74) Surgical Laser
(11) Heart valve prothesis including valve frames		(75) Electro Hydraulic Operating Table for Cardio Throacic and
(12) Nebulized humidifier		
(13) Hydrocephalus shunts		

<p>(14) Hyper-baric oxygen chamber</p> <p>(15) Fogarty and embolectomy catheters</p> <p>(16) Implantable cardiac pacemakers</p> <p>(17) Intra-arterial catheters and guidewires and material for intervention radiology</p> <p>(18) Intra-cardiac patches</p> <p>(19) Nebulizer (excluding ultrasonic nebulizers and heat nebulizers)</p> <p>(20) Omayya reservoirs for intraventricular investigation/therpy</p> <p>(21) Operating sets for Perutaneous Nephrostomy and Percutaneous removal of kidney stones with continuous irrigation and suction with ultrasonic Lithotrite, etc.</p> <p>(22) Qstomy products</p>	<p>Analyses</p> <p>(38) Iridium wire</p> <p>(39) Anti-HLA sera (AB-CDR)</p> <p>(40) T.P.H.A. Kits and AIDS diagnostic kits</p> <p>(41) Gamma knife</p> <p>(42) Bone Marrow Transplant Equipment including silastic long standing intravenous catheters for Chemotherapy</p> <p>(43) Cell Separator</p> <p>(44) Pressure Transducer and Pressure Amplifier</p> <p>(45) Cell Saver</p> <p>(46) Continuous Ambulatory Peritoneal Dialysis Solution Bag along with tubing system</p> <p>(47) Craniotome (Pneumatic and Electric Equipment) and Drills</p> <p>(48) Binocular Loupes</p> <p>(49) Intra Aortic Balloon Pump</p> <p>(50) Remote After Loading Brachy Therapy Equipment</p>	<p>Neuro Surgery</p> <p>(76) Implants for pain relief and bladder control</p> <p>(77) Artificial electronics larynx instruments</p> <p>(78) Ventilators other than those used with anaesthesia</p> <p>(79) Digital Video EEG System</p> <p>(80) Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement</p> <p>(81) Small portable pumps used for giving slow infusion of anti-cancer drugs or thalassaemic drugs</p> <p>(82) Fibre optic endoscopes including Paediatric resecto-copes / audit resectoscope , Peritoneoscopes, Arthroscope, Microlaryngoscope, Fibreoptic Flexible Nasal Pharyngo Bronchoscope, Fibreoptic Flexible Laryngo</p>
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(Appliances) for managing Colostomy, Illostomy, Ureterostomy, Ileal Conduit Urostomy Stoma cases such as bags, belts, adhesives seals or discs or rolls adhesive remover, skin barriers micropore surgical tapes, bag closing clamps karaya seals paste or powder, irrigation sets, plastic or rubber faceplates, flanges, male or female urinary incontinency sets, skin gels, in parts or sets		Brochoscope, Video Laryngo Brochoscope and Video Oeso-phago Gastroscope, Fibreoptic Flexible Oesophago Gastroscope
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**Condition No. 48**

If the importer furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that

- (a) the parts, or as the case may be, the spare parts shall be used for the manufacture or maintenance, as the case may be, of the specified medical equipment;
- (b) he shall, within three months or such extended period that the said Deputy Commissioner or the Assistant Commissioner may allow, produce –

(i) in the case of parts, a certificate from the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory manufacturing the specified medical equipment, to the effect that the parts have been used in the manufacture of the specified medical equipment; or

(ii) in the case of spare parts, necessary evidence to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that the spare parts have been used for the maintenance of the specified medical equipment; and

(c) he shall pay on demand, in the event of his failure to comply with the above conditions, an amount equal to the difference between the duty leviable on such quantity of the parts or, as the case may be, spare parts, but for the exemption under this notification and that already paid at the time of importation.

**LIST 29 ( See Sl. No. 323 of the Table )**

(1) Ophthalmoscope – Direct/Indirect	(12) Intraocular lenses / Keratoprosthesis / orbital implants	(25) Automatic refractometer or lensometer / projection lensometer or a combination of the aforesaid
(2) Ophthalmic/Xenon Arc	(13) Diathermy equipment	(26) Complete refraction unit with Phoropter / projection- chart
(3) Flurescein Angiography Equipment ncluding Fundus Camera	(14) Synoptophore	(27) Ophthalmic hydraulic chair
(4) Ultrasonic Equipment ( A scan/Pacchy meter)	(15) Silicone Sponges / rubber/ bands, for Retinal Detachment Surgery	(28) Low Visual aids and sets (telescopic glasses)
(5) Microsurgical needles, cannulas, blades trephine blades, membrane peelers, diathermy probes, vitreous cutters, atraumatic needles and	(16) Vitrectomy equipment	
	(17) Phaco- emulsification system	
	(18) Visual field	

sutures, intraocular scissors and forceps (6) Tonometer (Schiotz/ Applanation / Pneumo) (7) Retinoscope Streak / spot (8) Operating glasses (2x,x, 6x)/ Binomag (9) Gonioscope, 3 mirror lens, special lenses for laser delivery, special diagnostic lenses (14D, 20D, 90D), Endo lens (10) Sterilisers (high speed / ethylene) (11) Specular microscope with monitor and recorder	recording equipment (19) Ocular electro physiological testing equipment [Electroretinography / Electroculography / Visually evoked response equipment (ERG/EOG and VER)] (20) Keratometer / Automatic Keratometer (21) Prism bars (22) Laser Interferometer (23) Pacchymeter – optical / electronic (24) Aspiration – irrigation equipment	(29) Colour vision testing equipment (30) Photoclectric keratoscope and thermokeratoscope (31) Pseudo- isochromatic chart boom / Ishiare (32) Slit lamp biomicroscope / photo shit lamp (33) Surgical operating zoom microscope with closed circuit TV camera (34) Surgical operating microscope manual (35) Argon / krypton laser (36) Yag laser, excimer laser or diode laser
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**LIST 31 (See s. No. 325 of the Table)**

- (1) 12 (+ /- 1) mm Laparoscope (Single incision) (2) Falope Ring applicator single incision (for two rings) and procedure instruction manual, kit containing guide and loader and cleaning brush (3) 12 ( + / - 1) mm Trocar (including piston type) with spare washers for sleeve and canulae and cleaning brush (4) Fibre Optic Light Cable (5) Bulbs, fuse lamps, Adapter for Fibre Optic Light Cable / Laparoscope

(6) Carbondioxide (CO<sub>2</sub>) cylinder with pneumoperitoneum apparatus (7) Light Source (8) Machine for Gas Insufflator with Gas Tubing Spare Carbondioxide (CO<sub>2</sub>) House Pipe and a Gauge (9) Verres Needle (4" and 5-1/2") (10) Minilight source with accessories consisting of :- (a) 6 volts rechargeable battery (b) A C battery charger (c) A C power supplier 220 volts (d) Inter-connection assembly (e) Convertor (11) Falope Rings (12) 6-8 mm Laparoscope (double puncture) (13) Dual incision applicator Two rings (14) Trocal and Cannula 6-8 mm with valves gas stopcock (15) Probe 34-37 cm (16) Scissors 34-37cm (17) Suction Cannula 34-37cm :-

**Notes : -**

(A) Item Nos. 6,7 and 8 may be imported separately or in combinations as dual control assembly. (B) Item Nos. 1 and 2 may be separate or in combination. When in combination, it is called Laparocator.

**List 32 (See S. No. 327 of the Table)**

(A) (1) Braille writers and braille writing instruments	(6) Geometrical aids like combined Graph and Mathematical Demonstration Board, Braille Protractors, Scales, Compasses and Spar Wheels	(9) Specially adapted clocks and watches
(2) Hand writing equipment Braille Frames, Slates, Writing Guides, Script Writing Guides, Styli, Braille Erasers	(7) Electronic measuring equipment, like as calipers, micrometers, comparators, gauges, gauge blocks Levels, Rules, Rulers and Yardsticks	(B) (1) Orthopaedic appliances falling under heading No. 90.21 of the First Schedule
(3) Canes, Electronic aids like the sonic Guide	(8) Drafting, Drawing aids, tactile	(2) Wheel chairs falling under heading No. 87.13 of the First Schedule
(4) Optical, Environmental Sensors		(C) Artificial electronic larynx and spares thereof
(5) Arithmetic aids like the Taylor Frame (arithmetic and algebra types), Cubarythum,		(D) Artificial electronic ear (Cochlear implant)

Speaking or Braille calculator	displays	
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**Condition No. 75**

It the importer produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be at the time of importation, a certificate from the Civil Surgeon or the District Medical Officer or the Administrative Medical Officer or the Director of Health Services of the concerned State or a Specialist in the concerned speciality attached to a Government Hospital or a recognised medical college to the effect that the importer suffers from the particular handicap or disability and that the imported goods in respect of which the examination is claimed are essential to overcome the said handicap or disability.

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**EFFECTIVE RATE OF DUTY FOR INPUTS FROM NEPAL**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962, the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in column (2) of the Table below and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India from Nepal, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975, subject to the conditions, if any, specified in the corresponding entry in column (3) of the said Table.

**TABLE**

Item No.	Description of goods	Conditions
(1)	(2)	(3)
A.	The following goods, namely: -	It the goods are wholly produced in

<p>B.</p>	<p>(1) Agricultural, horticultural and forest produce and minerals which have not undergone any processing;</p> <p>(2) Rice, pulses and flour;</p> <p>(3) Timber;</p> <p>(4) Jaggery (gur and shakkar);</p> <p>(5) Animals, birds and fish;</p> <p>(6) Bees, bees-wax and honey;</p> <p>(7) Raw wool, goat hair and bones as are used in the manufacture of bone-meal;</p> <p>(8) Milk, home-made products of milk and eggs;</p> <p>(9) Ghani-produced oil and oil-cakes;</p> <p>(10) Ayurvedic and herbal medicines;</p> <p>(11) Articles produced by village artisans as are mainly used in villages;</p> <p>(12) Yak tail;</p> <p>(13) Akra.</p> <p>All manufactured goods other than the following : -</p> <p>(i) Alcoholic Liquors or beverages and their concentrates, other than beer and Industrial spirits.</p> <p>(ii) Perfumes and cosmetics with non-Nepalese or non-Indian brand names.</p>	<p>Nepal</p> <p>If, -</p> <p>(a) the said goods are manufactured in Nepal; and</p> <p>(b) the importer produces a certificate of origin in the form annexed to this notification duly certified by an agency designated by His Majesty's Government of Nepal, in respect of the consignment, to the satisfaction of the Assistant Commissioner of Customs that such goods have in fact been</p>
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	(iii) Cigarettes and Tobacco.	manufactured in Nepal.
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## ANNEXURE

### FORM

**Certificate of origin for exports free of basic and auxiliary duties under the Treaty of Trade between His Majesty's Government of Nepal and the Government of India**

Reference No.

1. Articles consigned from (Exporter's business name, address):
2. Articles consigned to (Consignee's name, address):
3. Means of transport and route:
4. Item number (HS Traffic Line):
5. Marks and number of packages:
6. Description of Articles:
7. Gross weight or other quantity:
8. Number and date of invoice together with value:
9. Declaration by the exporter:

The undersigned hereby declares that the details furnished above are correct, that the articles are produced in Nepal and that they comply with the Rules of Origin specified in the Treaty of Trade between His Majesty's Government of Nepal and Government of India.

(Place and Date) Signature of authorised signatory

10. Certification:

It is certified that the articles herein referred to are eligible for preferential treatment as per provisions of the Treaty of Trade between His Majesty's

Government of Nepal and the Government of India. It is further certified that :

1. The articles have been manufactured in Nepal at a factory situated at ..... (name of place/district) by M/s. .... (name of the company);
2. The articles involve manufacturing activity in Nepal and that the manufacturing activity consists of converting .....(major inputs) into .....(output) through a process consisting of ..... (brief description of manufacturing process);
3. The above articles do not involve only assembly of parts/repackaging operations;
4. The articles in question are not products of third country origin. \*

for His Majesty's Government of Nepal.

Place and date  
Authority.

Signature and Stamp of Certifying

\* For the purpose of the above Item No. 4 the articles which have undergone a manufacturing process in Nepal will not be treated as product of third country origin.

#### **11. For official use of Indian customs:**

The consignment has been examined and allowed to be imported into India as it complies with the Rules of Origin specified in the Treaty of Trade between His Majesty's Government of Nepal and Government of India.

Date:

Signature and Seal of the certifying authority.

Place:

**[ Notification No. 37/96-Cus., dated 23-7-1996 as amended by Notifications No. 99/96-Cus., dated 27-12-1996 and No. 5/97-Cus., dated 20-1-1997 ]**

### **3.26. GUIDELINES FOR CLEARANCE OF PASSENGERS' BAGGAGE AT AIRPORT**



A number of complaints have been received from passengers complaining about the narrow-minded attitude, behaviour and conduct of Customs officers which project a poor image of the Organisation. In the era of liberalised policies, the Rules and Instructions on Baggage and other connected matters are required to be implemented with a pragmatic approach and maintaining proper balance between the letter and spirit behind the same keeping in mind the needs of the passengers and stipulations of law. The system of clearance of passengers' baggage requires to be fully based on the trust reposed in the passengers who are expected to make a bonafide and complete declaration of the contents of their baggage as envisaged in Section 77 of the Customs Act, 1962, based on this principle, the existing procedure for clearance of passengers is reviewed.

### **GREEN CHANNEL**

1. Henceforth, the passengers arriving from non-sensitive areas viz. Europe, USA etc and opting to pass through the Green Channel should be allowed unhindered walk-through. It is only in rare cases where there is either prior intelligence or grounds for grave suspicion the baggage should be screened on X-Ray Machine or examined with the explicit permission of the Asstt. Commissioner on duty and in his presence. The said examination should be carried out on any counter at Red Channel and under no circumstances the B.S.M. counter itself. A proper record of the particulars of such passengers, time taken and outcome of the examination etc. should be kept in the custody of the AC/AP, which should be submitted to the ADC/AP on weekly basis.
2. Passengers arriving from sensitive areas and opting for green channel should be similarly allowed. However, greater element of scrutiny by way of questioning may be resorted to, at the discretion of Assistant Commissioner on duty.
3. As far as Tourists who intend to avail concession under Rule 11 (*now Rule 7*) are concerned, unless and until the proper officer feels that there are reasons of fear of abuse of the concessions, the concession sought must be granted.

**RED CHANNEL**

1. Since the passengers opting for the red channel are prepared voluntarily to declare dutiable goods and pay duty, they should be treated with greater respect and attention. Oral declaration should normally be accepted by the Bay Superintendent and it should be recorded by him on the reverse of the Gate Pass and the passengers' signature obtained thereon. In case the list of goods is too long to be incorporated on the gate pass, such declaration may be taken in a separate sheet of paper; however, the gist of such declaration including the category of goods, total quantity and value should be indicated on the reverse of the gate pass. Counter officer will indicate the counter number and the officer's name on the face of the said gate pass and also append his signature, name in full thereon. Only after completing the above declaration counter officer may take subsequent actions such as screening and preparation of DDR. Opening of Baggage will be done only with the permission of AC/AP on duty. In case the baggage is found to be within the admissible Free Allowance, Bay Superintendent shall specify accordingly on the gate pass and clear the passenger. In case where the goods are released on payment of duty or are taken up for I.T.C. action the ACO shall indicate the DDR No. / DR No. etc. on the gate pass itself.
2. In case, the passenger is in possession of foreign currency over US \$ 2500 or equivalent, (*now US \$ 10000 or equivalent*) the same should be physically counted by the Superintendent posted for F. C. counter and the Currency Declaration Form be so issued duly countersigned by the Assistant Commissioner on duty. Names of passenger who have been issued with CDF for declaring currency over US \$ 10000 or equivalent should be forwarded to Special Visadex officer on day today basis.
3. The cases where the passenger wishes to detain his baggage intended to be transhipped, the said baggage will be examined 100% and inventoried and detained as per following procedure as regarding detention for T.P./Payment of duty/ITC/Reshipment. The ACO who assesses the baggage of the passenger shall prepare the detention receipt in quadruplicate and obtain the approval of the AC/AP on the said detention receipt itself. The ACO assessing the baggage shall ensure to complete all the entries in the detention receipt carefully. The counter officer will forward the packages for detention to the DS-I/DO-II who will make necessary entries in the Warehouse Register and endorse the registration number on the

detention receipt. The counter officer will associate with the DS-I/DO-II for sealing of the detained packages, in presence of the passenger and obtain his signature on the label affixing the seal. The original copy of the Detention Receipt will be handed over to the passenger, the duplicate copy will be kept in side the package before sealing and the triplicate copy will be forwarded to the Main Warehouse (or other Warehouse as the case may be) along with the packages. When the number of packages is more than one, one package will contain the detention memo and the other packages will contain a label giving the details of the detention viz, name of the passenger, D.R. No. , A.P.S. No., reasons for detention etc. When the detention is due to an Adjudication, one copy of the Adjudication order will also be forwarded to the Warehouse along with the Detention Memo. Brief of Adjudication Order shall be recorded in the Warehouse Register. In ITC cases where the value of commercial goods exceeds Rs. 2 lakhs, a seizure panchanama shall invariably be drawn by the counter officer.

4. Henceforth, there shall not be any Re-examination counter. The AC/AP on duty shall himself earmark 100% examination cases to any of the available counter officer. The ITC register henceforth shall remain in the custody of PRO Arrival.

5. In cases, where the passengers are allowed to go out to bring money for payment of duty, fine, penalty etc., The passenger should be allowed by the Bay Supdt. on giving a note as regards duty amount required, counter no etc. The Gate Officer should verify the same and allow such passenger to go out.

6. AC/AP on duty normally be on his feet and available in the Baggage Hall. He should deploy minimum two Supdts with specific purpose of locating passengers who are found in the Baggage Hall for more than 30 minutes after arrival of flight. Such passengers should be given top priority in clearance. They should be checked by the Supdts. Without directing the pax counter officer except in cases where it is considered necessary.

7. It has been observed that sometimes, the compilation of details relating to incoming flights, number of passengers cleared through Green Channel/Red Channel and normal time taken for clearance of passengers of a particular flight maintained separately in PRO's Per Capita Register are not realistic. Maintenance and compilation of data relating to various aspect of passenger facilitation is an important area which has to be meticulously maintained as these are the data which help us come up with improvements in specific areas relating to passenger

facilitation. There is no reason why the factual data should not be incorporated or maintained in the prescribed Register. Therefore, AC/AP on duty should ensure that the factual data is reflected in the PRO's Per Capita Register.

**[Standing Order NO. 3 / 97 issued by Commissioner of Customs, International Airport, Mumbai]**

### **3.27. IMPORT OF CERTAIN SPECIAL CLASS OF GOODS AS BAGGAGE**

#### **1. Import of Fire Arms & Ammunition**

Import of Fire Arms is prohibited as per the Exim Policy. However, imports of Arms and Ammunition by renowned sports persons is allowed as per conditions laid down in Notfn.No.147/94 (see Chapter "Customs Duties, Exemptions and Prohibitions" of this Manual.)

(1) As regards import of Fire Arms under Transfer of Residence Rules, extracts from, para 5 of letter F.No.497/57/87 Cus. VI dated 05.01.1988, issued by the Ministry is reproduced below:-

"So far as imports under Transfer of Residence Rules are concerned, a condition be put in the Arms licence of the importer concerned that the firearms shall not be transferred to any person in India during the life time of the licensee for consideration or otherwise..... Having regard to the sensitive value of the item, it should be ensured that Transfer of Residence facilities in respect of import of a firearm are permitted only in those cases where proof of possession for a period of one year by way of a possession licence or an Arms licence, wherever required in the country of residence abroad, is invariably insisted upon, besides the purchase vouchers, to establish the period of ownership. If there are genuine doubts regarding the ownership & possession of the firearm for a minimum period of one year abroad, the concessions under the T.R. Rules should be denied & the firearms so imported, confiscated absolutely. It may also be ensured that the firearms imported under T.R. Rules are allowed clearance only at the level of Asst. Commissioner after due verification since personal firearms are not permitted for possession in many countries, particularly by persons who are not Nationals of that country."

In terms of the decision taken by the CCPA, we have been allowing one Firearm to persons who are transferring their residence to India and who fulfill other conditions prescribed in the Baggage Rules. Ministry's instructions dated 05.01.88 issued from F. No. 497/57/87-Cus. VI may be referred to in this connection. In view of the conditions stipulated in the Ministry's instructions dated 05.01.88 only one Firearm can be allowed to such persons and the same is not allowed to be disposed off during the life time of that person, for consideration or otherwise. As such the question of allowing one Firearm under Transfer of Residence Rules, 1978 and another Firearm under Rule 16 of the Baggage Rules 1994 will not arise, nor can a Firearm be allowed under Rules 5 or Rule 8 of the Baggage Rules, 1994.

**[ Board's Circular No. 3/95 dt.12.01.95 in F. No. 496/4/94 (CUS.VI)]**

(2) In this connection, it is pointed out that one firearm of permissible bore is allowed to be imported by persons transferring their residence to India under Chapter IV of the Baggage Rules, 1994. This is being allowed in terms of Ministry's instructions, dated 05.01.1988 issued from F. No. 497/57/87-Cus. VI. Such release is permitted subject to the condition that the firearm so cleared shall not be sold, transferred, loaned or otherwise parted with, for consideration or otherwise, to any other person in India during he life time of the person concerned. An endorsement to this effect is made in the arms licence and the passport of the passenger concerned at the time of clearance of the firearm. Such endorsement shall continue to be made by the Customs authorities at the time of clearance of the firearm in question.

**[ Extracts from Board's Circular No. 63/95-Cus., dated 07.06.1995 from F. No. 495/11/95-CUS. VI ]**

## **2. Import of Air guns & Air Pistols**

The question whether the prohibition imposed on import of firearms under ITC Public Notice No. 131/86 of 13.11.1986 would render import of Air Guns in baggage as unauthorised, has been further examined in the Ministry. The Chief Controller of Imports & Exports has clarified that Air Guns would not be covered in the ban imposed on the import of firearms, on 13.11.86.

In view of the above the Board desires that Airguns and Air Pistols need not be treated as prohibited item under the said Public Notice when imported in baggage.

**[ Board's letter F. No. 495/107/87-Cus. VI dated. 30.03.1988 ]**

However, the airguns / air pistols should be verified by police & no objection be obtained prior to clearance of the same from customs.

**3. Import of Foreign Exchange and Indian Currency**

In terms of the Notification 681/89 the Reserve Bank of India permits -

(i) any person to send into India without limit foreign exchange in any form other than currency notes, bank notes and travelers cheques.

(ii) any person to bring into India from Nepal, currency notes of the Govt. of India and Reserve Bank of India notes (other than notes of the denomination of above Rs.100).

(iii) any person resident of India and had gone out of India on a temporary visit, to bring into India at the time of his return from any place outside India (other than Nepal) currency notes of Govt. of India and RBI notes upto an amount not exceeding Rs.1000/- which he had taken out while leaving India for a temporary visit.

(iv) any person to bring into India from any place outside India without limit foreign exchange (other than unissued notes) provided that the permission contained in Clause (iv) above to bring foreign exchange into India shall be available to any such person only if he makes, on arrival in India, a declaration to the Customs Authorities in such form as may be specified by the Reserve Bank in this behalf, of the particulars of such foreign exchange brought by him.

Provided further that it shall not be necessary to make such declaration where the aggregate value of the foreign exchange brought in by such person in the form of currency notes, bank notes or travelers cheques at any one time does not exceed US \$ 10, 000 (U. S. dollars ten thousand) or its equivalent and/or the aggregate value of foreign currency notes brought in by such person at any one time does not exceed US \$ 5, 000/- or its equivalent.

**[ Notification No. FERA 81/89-RB dt.09.08.1989 as amended by Notification No. FERA 154/93-RB dt.12.07.1993, FERA 168/95-RB dt.05.06.1995 and FERA 192/99-RB dt.09.03.1999 ]**

**CURRENCY DECLARATION FORM (CDF)**

(Foreign Exchange Regulation Act, 1973)

**Instructions to passengers**

1. This form need not be completed in cases where the aggregate value of the foreign exchange brought in by the passenger in the form of currency notes, bank notes, or travelers cheques does not exceed U. S. \$ 10, 000/- or its equivalent and / or the value of foreign currency notes does not exceed U. S. \$ 5, 000 or its equivalent.
2. Passengers are advised to produce this form to a bank authorised to deal in foreign exchange or money changer at the time of conversion of foreign exchange into Indian rupees or reconversion of rupees into foreign exchange.
3. Visitors to India may please note that in case they do not wish to encash all the foreign exchange declared above they should retain this form with them for production to the Customs at the time of their departure from India to enable them to take with them the unutilised balance.
4. Details of travellers' cheques/currency notes need not be furnished.
5. Foreign tourists need not indicate their address.

**(To be completed by passenger)**

I .....hereby, declare that the following foreign exchange is in any possession at the time of my arrival in India.

**(Aggregate value only)**

	<b>Name of currency</b>	<b>Currency notes</b>	<b>Travellers Cheques</b>	<b>Total</b>
1				
2				
3				

Signature .....

Passport No. ....

Nationality .....

Address in India .....

**To be completed by Customs Officer**

This is to certify that the above named person has brought with him foreign exchange as indicated above.

Date .....

.....  
(Stamp and Signature of Customs Officer)

**(Space for endorsement)**

Date	Distinction Number of Encashment Certificate	Amount changed	Stamp and Signature of Bank or Money changer

**Currency Declaration Form – procedure**

In view of the potential for manipulation- with a view to smuggling out large amount of foreign currency-in the Currency Declaration Forms filled in by passengers at the time of arrival in India, the following procedure should be adopted for issue and collection of the Currency Declaration Forms:



- i) Currency Declaration forms should be in the handwriting of the passenger concerned to the extent possible, and should invariably give details of the currency declared both in number and words.
- ii) Duplicate carbon copy of the Currency Declaration Form should be retained flight wise at the airport of issue.
- iii) Currencies should not be indicated in abbreviations, indicating the nature of the currency (e.g. U. S. Dollars, Pound Sterling, German Marks, etc., should be spelt out in full).
- iv) The Supdt. (Prev.) countersigning the Currency Declaration Form should write his name in block capital letters.
- v) At the port of exit, any Currency Declaration form for a sizable value should be immediately brought to the notice of Superintendent or other Senior Officers on duty and in case the passenger appears to be suspicious he or she should be properly interrogated particularly when the amount declared in the Currency Declaration form is sought to be re-exported within a short time.

Further, officers are directed to ensure that the passengers importing currency/travellers cheques etc., in excess of permissible limit equivalent to U. S. Dollars 10, 000/- fill in the currency declaration forms in duplicate at the time of arrival as required in (i) & (iii) above. The officers while issuing the Currency Declaration forms must ensure that the passengers possess the currency that they have declared before the officers accept the currency declaration. The officer should certify the import of currency after verifying that the required details are properly filled in by the passengers and the officers must sign in full and also write their names in capital letters below their signature. They should mention the amount in words and score out blank space with ink across the page. In cases where the amount of foreign currency mentioned on the declaration form exceeds US \$ 10, 000/- or its equivalent in cash, the Supdt. should bring this to the notice of the supervising Asstt. Commissioner i/c Batch and Count the same in his presence and obtain his signature on the Currency Declaration Form.

At the time of departure the passenger is required to surrender the C.D.F. to the Customs Officer in Departure. The C. D. F. is not valid for subsequent trips. The officers in departure should enquire from the departing passengers if they have the CDF to surrender.

### **3.29. PAYMENT OF AMOUNT OF PENALTIES BY RESIDENTS ON BEHALF OF NRIs / FOREIGNERS**

Section 9 (1) of the FERA 1973 provides that no person resident outside India shall, without the general or special permission of Reserve Bank of India –

- (i) Make any payment to or for the credit of any person resident outside India.
- (ii) Make any payment to or for credit of any person by order or on behalf of any person resident outside India.

Due to these restrictions, resident Indians were not permitted to pay the penalties, imposed on NRIs / foreign nationals under the Customs Act, on behalf of them. The Reserve Bank of India examined this situation, put forth by the Sahar Airport Commissionerate vide letter F. No. Air Cus/49/MII/1500/96 /72 dt.07.01.1997. (F. No. Air Cus/50/53/97), and agreed to relax these restrictions and allowed payment of penalties in Indian rupees by the residents on behalf of NRIs / foreign nationals, vide their letter No. EC. CO. EPD. 1262./18.26.09/97 dated 26<sup>th</sup> May, 1997.

### **3.30. IMPORT OF COMMERCIAL GOODS AS BAGGAGE:**

Para 5.6 of the Export/Import Policy 1997-2002 allows import of *bonafide household goods and personal effects* as part of passengers' baggage. The Proper Officer should weigh the import of goods vis-à-vis passengers' status and attending circumstances in this context and decide whether the goods imported can be termed as his/her bonafide household goods and personal effects.

Board's instructions regarding permissibility of free allowance to passengers, when the whole of the goods or a part of the goods of their baggage is treated to be imported in commercial quantity, is reproduced below-

It has come to the notice of the Board that adjudicating authorities at different levels are holding different opinions whether free allowance would be permitted on import of baggage, where part of the goods are found to be in commercial quantity. The issue of import of consumer goods in commercial quantity had earlier been examined by Board and instructions were issued vide circular No. 2/92, dated 31-01-1992 and vide File No. 495 / 10 / 92-Cus. VI. Dated 07-07-1992 and recently vide F.No.495 / 6 /96-Cus. VI dated 06-05-1996. The gist of the said instructions are that

import of the consumer goods in commercial quantity is not permissible even in the present EXIM Policy and in addition they are not to be adjudicated. The present problem is where a part of the goods are in the commercial quantity and that part attracts adjudication and penalty, whether free baggage allowance can be allowed to the other part of the goods which is not in commercial quantity. The matter has been examined and it is found that the entire baggage imported by a passenger does not become non – bona fide or tainted because some articles in the baggage are held liable to confiscation being in commercial quantities. Therefore, that portion of the baggage which is not in commercial quantity would be eligible to free baggage allowance.

**[Board's Circular No.64/96-Cus.,VI dated 17.12.1996 from F.No.495/6/96-Cus-IV ]**

### **3.31. IMPORT OF PETS AS BAGGAGE**

A passenger may be allowed to import one or two pets, provided their value falls within his duty free allowance under the Baggage Rules. The pets should be released only after verification of necessary Health Certificates from the place of import.

**[ Board's letter F. No. 495/49/72- CUs VI dated 03.10.1972 ]**

#### **Note:**

Clearance of one dog or other domestic pets like cats and birds in a limited number may be allowed without Import Trade Control restrictions on furnishing the following Health Certificates to the Customs Authorities-

- ( i ) a Health Certificate from a Veterinary Officer authorised to issue a valid certificate by the Government in the country of export, to the effect that the dog is free from AUJOSKY'S disease, Distemper Rabies, LEISHNAOSIS and LEPTOSPIROSIS and in case of cats – from DISTEMPER and RABIES.
- ( ii ) In case of import of dogs or cats originating from such countries where Rabies infection is known to exist, a Health Certificate containing a record of vaccination, vaccine issued, brew of the vaccine and name of the producing laboratory, and to the effect that the dog/cat was vaccinated against Rabies- more than one month but within 12 months prior to actual disembarkation-

with nervous tissue vaccine or within 36 months with chicken embryo vaccine, both the vaccines have previously passed satisfactory potency tests.

( iii ) in the case of parrots, a Certificate to the effect that the parrots were subjected to a compliment fixation test for PSITTACOSIS with negative results within 30 days prior to actual disembarkation.

### **3.32. GOODS IMPORTED UNDER ATA CARNET**

In order to facilitate International Trade and Technology, the Govt. of India have acceded to the "Customs Convention on A. T. A. Carnet for temporary importation of goods". Presently the temporary duty free imports (including re-imports) and exports (including re-exports) of the goods intended to be displayed at exhibitions/fairs in India and abroad as approved by the Govt. of India or by the Indian Trade Promotion Organisation are only allowed. The following goods are excluded from ATA Carnet procedure: -

1. Consumables and goods meant for distribution or sale which are not likely to be re-exported.
2. Goods imported through the medium of post.
3. Transit goods.

The Govt. of India have issued Notifications No. 157/90-Cus, dated 28.03.90 (effective from 01.05.1990), under Section 25(1) of the Customs Act, 1962. In terms of notification goods described in Schedule I to the notification, when imported into India for display or use at any event specified in Schedule II to the Notification, are exempt from the whole of Customs duty and the whole of additional duty leviable thereon and the Notification no. 158/90-Cus, dated 28.03.90, exempts these goods from auxiliary duty subject to the following conditions:

1. the event specified in Schedule II is held in public interest and is sponsored or approved by the Government of Indian or the Trade Fair Authority of India.
2. the said goods are imported under an ATA carnet issued in accordance with the Customs Convention on ATA Carnet for temporary admission and the Carnet is guaranteed by the Federation of Indian Chamber of Commerce and Industry, which has been appointed as the guaranteeing association for ATA Carnet in India (hereinafter referred to as the Federation)

3. the said goods in all respects conform to the description, quantity, quality, value and other specifications given in the ATA carnet duly certified by the Customs authorities at the country of exportation.

4. the said goods shall be exported within a period of six months from the date of importation.

Provided that where the goods are exported within the said period of six months and again re-imported, the period of six months shall be computed from the date of first clearance:

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

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

Provided that the Federation shall not be liable to pay the Customs duty in cases where the said goods are sold in exhibitions or fairs or otherwise disposed of in India on payment of customs duty with the prior approval of the Government of India (Department of Revenue). Only such goods will be allowed to be sold as are otherwise permissible for import into the country under the Import Policy in force at that time and/or the buyer holds a valid import licence duly endorsed by the Licensing Authority.

It will be noted from the above that:

1. As per the convention, the ATA carnet is a sole document for temporary importation (including re-importation) and temporary exportation (including re-exportation) of goods under the Convention.
2. the Federation of Indian Chambers of Commerce and Industry (hereinafter referred to as the Federation) shall be the sole "Guaranteeing Association" for ATA Carnets in India.
3. the validity of ATA Carnet shall not in any case exceed one year from the date of issue;

The Director General of Inspection, Customs & Central Excise has been designated as the "authorised officer" by the Ministry of Finance, Deptt. of Revenue, for the purpose of Convention on ATA Carnet. The Director General of Inspection, Customs & Central Excise receives approval of Exhibitions/Fairs by different

Ministries. The centralised records of such approval are kept by the Directorate General. Such approvals are then promptly communicated by the DGICCE to the Custom Houses and Guaranteeing Associations.

It is but mandatory to restrict this facility only to Exhibitions/Fairs approved by the Govt. of India. It has been observed that in large number of cases, test equipment, instruments or other goods of high value imported as accompanied baggage by passengers have been cleared against ATA carnet for temporary importation of goods despite the clear instructions that this facility is restricted to specified goods imported for display or use at use at specified exhibitions/fairs and similar events covered under the Notification no. 157/90.

It is, therefore, to all concerned that henceforth as and when any passenger declares any goods covered by ATA Carnet papers and seeks clearance without payment of duty, the said goods should be cleared under carnet papers only if they are covered under the Notification no. 157/90. In all such cases, prior permission of the Asstt. Commissioner of Customs (AP) on duty must be obtained.

In the event any import claimed clearance under carnet but the said goods are not covered under the Notification no. 157/90-Cus, the same should be cleared under the prevalent Baggage rules, 1998, as amended, alongwith other prohibition and exemption under the law.

The govt. of India vide their letter F.No. 528/220/91-Cus (TU), ICD, dated 23.06.1994, have conveyed its decision to allow import of jewelry free of duty under the Notification no. 157/90 – Cus, dated 28.03.90, through international Airports / Air Cargo Complex at Sahar Village, Mumbai, and Air Cargo Complex, New Delhi, subject to observance of certain procedures.

### **PROCEDURE FOR IMPORTS :**

1. The ATA Carnet has four counterfoils and vouchers viz Exportation counterfoil and Voucher, Re-importation counterfoil and voucher, Importation counterfoil and voucher and Re-exportation counterfoil and voucher.
2. For monitoring and processing the imports / exports of goods cleared under Carnet, the Case File Office will maintain a register as prescribed by the Board.

3. Asstt. Commissioner (AP) / Air customs superintendent and one ACO with specific instructions for clearance of imports under Carnet in addition to their normal duties.
4. In the event of imports under carnet, the ACS i/c Carnet will first confirm that the goods are imported for display or for use at Govt. approved Exhibitions/Fairs and/or similar events which are covered under notification no. 157/90.
5. Air Customs superintendent posted for Carnet clearance will verify the general list given on the reverse of the voucher with reference to the description, marks and numbers and certify to that effect. On the face of the importation, counterfoil and voucher and re-importation counterfoil and voucher, as the case may be, will certify under his full signature with name and date and will retain voucher for departmental use. The verification report will be made in column (d) "other remarks" in the original and duplicate copy of the importation voucher, and since the imports will be under passenger's baggage mode the classification BTN 98.03 will be mentioned in column 2 on the reverse side of the voucher. The Air Customs superintendent should also obtain the details of exhibition, i. e., name and venue of Fair/Exhibition and its sponsors. The details of exhibition will be mentioned on the reverse side of the voucher so as to keep track of the imports vis-à-vis sponsors. Air Customs superintendent Carnet should ensure that all the carnet papers which are retained in the batch are forwarded to CFO through batch P.R.O. for entering in the Carnet Register and for further monitoring of its exports. In the event the goods are intended to be exported out of India from place other than the Airport of Import the ACS i/c Carnet should ascertain the place of re-export and mention the same on reverse side of the voucher.

### **PROCEDURE FOR EXPORTS**

1. The ACS i/c Departure should properly verify the description, quantity, marks and numbers and endorse the re-exportation voucher and counterfoils and the goods will be allowed to be re-exported out of India. ACS i/c Departure will indicate the flight number and date by which the goods are being re-exported. The endorsements will be given by ACS i/c Departure under his seal and full signatures with date. He will also mention details of Fair/Exhibition for which the goods were temporarily imported. Thereafter, ACS i/c Departure should ensure that all the Carnet papers are

forwarded to ACS i/c CFO on the next working day for correlating the entry regarding the exports of goods. In the event the goods were not initially imported at the Airport of departure but exported from the Airport in such cases, the re-export voucher should be sent to the concerned Commissionerated by CFO for co-relating with the importation.

For monitoring the importation/exportation through ATA Carnet, one register indicating the following details such as Carnet voucher no./date of issue, Name of the pax/Sponsor's name and address, Description of the goods in brief, flight number/date for all the batches will be maintained module wise by Arrival and Departure. PRO i/c Batch will ensure that all the Carnet papers are forwarded to CFO without any delay on the next working day.

The Directorate General of Inspection being the monitoring authority for all the clearances granted by the Custom Houses, is to be kept informed through periodical statements from the Airport regarding description and value of the goods imported under carnet and subsequent re-export and amount of customs duty recovered thereon in case of failure to re-export of the goods. The following statements will be prepared by the CFO (Carnet Cell) and sent to Directorate General of Inspection, Customs & Central Excise, New Delhi, before 10<sup>th</sup> of the month following the quarter for which the statement pertains. The proforma of statements are enclosed herewith:

1. Quarterly statement regarding imports under the convention.
2. Quarterly statement of re-exports.
3. Quarterly statement of re-exports in respect of imports made through other Custom Houses.
4. Quarterly statement of exports under the convention.
5. Quarterly statement of re-imports under the convention ; and
6. Quarterly statement of re-imports in respect of exports made through other Custom Houses.

## (I) IMPORT

<u>Sr. No.</u>	<u>I.T.P.O. No.</u>	<u>Passengers/Sponsors</u>	<u>Description of</u>	<u>B.T.N.</u>
	<u>(Indian Trade promotion</u>	<u>Name and address</u>	<u>goods</u>	<u>No.</u>
	<u>Organisation)</u>			



(1) (2) (3) (4) (5)

<u>Carnet No.</u>	<u>Value</u>	<u>Rate of duty</u>	<u>Amount of Duty</u>	<u>Thoka/Registration No. &amp; Date</u>	<u>Carnet issuing authority</u>
(6)	(7)	(8)	(9)	(10)	(11)

<u>Date by which Demand Notice to be issued</u>	<u>Name &amp; signature of A.C.O. (Examining Officer)</u>	<u>Name &amp; signature of A.C.S. (Appraising Officer)</u>	<u>Remarks (if any)</u>
(12)	(13)	(14)	(15)

### (II) EXPORT

<u>Sr. No.</u>	<u>Date of Actual issue</u>	<u>Date of Actual Cash No. &amp; Export date</u>	<u>Port from which exported</u>	<u>Export voucher No.</u>	<u>Date of Demand Notice</u>
(1)	(2)	(3)	(4)	(5)	(6)

<u>Name &amp; signature of A.C.O.</u>	<u>Name &amp; signature of A.C.S.</u>
(7)	(8)

### (III) RE EXPORT

<u>Date of Actual Export</u>	<u>Export through</u>	<u>Exportation</u>	<u>Demand Notice</u>
		<u>voucher No.</u>	<u>issued</u>
(1)	(2)	(3)	(4)

Name and sign of A.C.O. (E.O.)

(5)

<u>Name and sign</u>	<u>Remarks</u>
<u>of A.C.S. (A.O.)</u>	<u>(if any)</u>
(6)	(7)

### **3.33. MISHANDLED BAGGAGE**

Sometimes, the baggage of a passenger, though booked in the same aircraft/flight by which the passenger travels, does not arrive at the destination with the passenger due to mis-handling of the baggage by the airlines concerned. Such baggage arrives by a subsequent flight and conversely sometimes the baggage of a passenger may arrive by a flight prior to the flight by which the passenger eventually arrives. Such mishandled baggage should be sealed and kept for the period of 48 hours, in the place provided by Airport Authority in vicinity of Arrival Hall. Immediately, on arrival of such mishandled baggage, the airlines concerned will prepare Airlines Operators Committee (A.O.C.) card, mentioning thereon the description and available details of such baggage, seal the packages with airlines seals and deposit the same with the Customs after making due entries in the Register maintained for the purpose. The Register so maintained shall have the following columns.

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Sl.	Date	AOC No.	Flight No.	No. of pkgs.	Description	Wt.	Signature & name
-----	------	---------	------------	--------------	-------------	-----	------------------

No.

of Airlines  
staff ,Time & date

---

In the event of the owner/authorised person claiming the packages within 48 hours of detention, the airlines concerned shall handover the packages to him alongwith A.O.C. Card after obtaining his receipt in the Register. The passenger shall thereafter present such baggage to the Customs for examination and clearance on the strength of the A.O.C. and the Landing Certificate. In case the mishandled baggage arrives before the arrival of the passenger & if the passenger has arrived within 48 hours of its deposit in the Warehouse, he may directly receive such packages from the Airlines, acknowledge receipt of the same & clear the same through Customs, alongwith his other accompanied baggage

If the baggage remains uncleared even after 48 hours, the same should be transferred to Mishandled Baggage warehouse of Customs, by the airlines with due entries made in the Registers.

The Officer posted in Mishandled Baggage warehouse should receive the mishandled baggage in securely packed condition with A.O.C. tag thereon, seal the same with Customs seal, enter the relevant particulars in Mishandled Baggage Register. As and when claimant/passenger comes to clear such packages, he should forward the baggage in Arrival Hall to be cleared as per Baggage Rules. He should also ensure that the officers examining and clearing such baggage enter the details and clearance particulars against the respective entry in the Mishandled Baggage Register. On many occasions passengers, through airlines, request for re-export/Transshipment of the mishandled baggage. The officer should examine such packages and put up for orders to Supdt./Asstt./Dy. Commissioner, as the case may be.

Mishandled baggage which cannot be cleared within a period of 30 days from the date of deposit with Customs authorities is treated as unmanifested and excess-landed cargo as there are no passengers to claim the baggage and as such the Deptt. can proceed to confiscate the same after issuing due notice to the Airlines concerned.

### **Clearance of Mishandled Baggage by Airlines**

After due consideration of the requests made by certain Airlines to permit them to clear Mis-handled Baggage of passengers who have travelled on their Airlines, so as to enable them (Airlines) to deliver the same at the place of residence of the passenger, the department has decided, to allow the request and accordingly permit Airlines to clear Mishandled Baggage of passengers arriving at Sahar International Airport by their respective Airlines, subject to the following conditions:

1. The passenger shall hand over the Landing Certificate and / or P.I.R. issued by the Airlines (with the endorsement of the Customs in lieu of Landing Certificate), in original.
2. The passenger, in addition to above, shall also authorise the concerned Airlines, in a proper authorisation form as per Performa in Annexure 'A', to produce the said Mishandled Baggage to the proper officer of Customs Airport, for the purpose of examination and clearance as per rules.
3. In order to comply with the provisions under section 77 of the Customs Act, 1962, the passenger shall prepare a list of all articles contained in the Mishandled Baggage under his signature and hand over the same to the Airlines alongwith the above authorisation. The passenger shall, in this list, indicate all major and valuable articles and other articles which could be specifically listed and also indicate their quantity and value. Wherever the quantity cannot be indicated, the total value of that particular item should be indicated against that item. Wherever, it is not possible to indicate the item specifically, for example, various items under dry fruits, etc., the same could be indicated in the list under a general category for example, Foodstuff, Small (children) games, toys, stationery items, etc. Only the value, in such cases, may be indicated. In case, however, if the item in the general category as above, is beyond reasonable quantity, the total weight of the same should be indicated, as in the case of dry fruits, etc.
4. The passenger shall further give an undertaking that he shall not hold the Customs, in any way, responsible for non-delivery or late delivery of his baggage, damage or pilferage, if any, provided the same, if caused during the time of examination by Customs in which case, the Airline representative shall immediately

and before final clearance from Customs, bring the fact to the notice of the Asstt. Commissioner of Customs on duty and all responsibility before and after the Customs clearance shall lie with the concerned Airlines. The passenger shall also undertake to pay the duty, if any, payable on his mishandled baggage through the concerned Airlines. The duty thus paid shall be final, and no complaints or requests for refund of duty, in part or full, shall be entertained.

5. The passenger shall, in addition to the above, also produce through the concerned Airlines, attested copies of relevant pages of his passport showing his (i) Nationality, (ii) Name and Address, (iii) Passport No., Date and place of issue, (iv) Visa and (v) Last Departure (Emigration) Stamp from India, if any, and (vi) Last Arrival (Immigration) Stamp.

6. The representative of the concerned Airlines who would be approaching the Customs for clearance of any mishandled baggage of such eligible passengers, shall also produce a letter to the Customs, undertaking payment of duty, if any, on behalf of the passenger and an authorisation, as per proforma in Annexure B, issued by the Manager or the Duty Officer of the concerned Airlines. This authorisation shall also bear the Airlines stamp.

7. The facility, as provided above, for clearance of the mis-handled baggage shall be applicable only in case of bonafide baggage of a passenger and all restrictions/prohibitions/licence requirements, Bond/Bank Guarantee, etc., as provided in the Customs Act, 1962, and the rules made thereunder, shall continue to apply on the mishandled baggage clearance also and no exemptions/relaxation would be provided for them. The passenger would be answerable for any mis-declaration regarding the contents of the mishandled baggage and/or recovery of restricted/prohibited goods from the same. In case of such an eventuality, the entire or part of his baggage would be detained/seized, and necessary proceedings under the Customs Act, 1962, initiated, and in such circumstances, the authorisation, given this shall not be acceptable, and the passenger would be required to present himself in person, or authorise a specific person under a power of attorney, to appear before the adjudicating authority. In case the passenger fails to appear within the specified time limit, or till such time as granted by the Asstt. Commissioner on request of the passenger, disposal action shall be initiated as per rules or orders made thereunder.

8. As mentioned earlier, the concerned Airline alone, would bear full responsibility regarding the Mishandled Baggage, before and after its clearance from

Customs, and the passengers or the Airlines, shall not hold the Customs responsible for any dispute arising between them, for any reason what-so-ever, and the examination of the mis-handled baggage and the documentation thereof, shall be only for Customs purpose and will bear no evidential value for the settlement of any disputes, between the passengers and the Airlines.

9. The facility of clearance of mishandled baggage by the Airlines as indicated above, shall not be applicable in cases wherein, the passenger has such items in his Mishandled Baggage on which he desires to avail benefits under the Transfer of Residence Rules.

## ANNEXURE – A

### FORM OF AUTHORITY

I, \_\_\_\_\_ (name of passenger), holder of \_\_\_\_\_ (Nationality) Passport NO. \_\_\_\_\_ issued at \_\_\_\_\_ on \_\_\_\_\_ arrived from \_\_\_\_\_ (name of place and country) on \_\_\_\_\_ (date) by flight No \_\_\_\_\_ My (\_\_\_\_\_) pieces of baggage has been mishandled for which I have been issued a P.I.R. No. \_\_\_\_\_ by the Airline and a landing certificate No. \_\_\_\_\_ dated \_\_\_\_\_ by the Customs.

As I am unable to come to the Airport personally to clear my abovesaid mis – handled baggage, I hereby authorise the Airline by which I have travelled viz. \_\_\_\_\_, to clear the said mishandled baggage through Customs for onward delivery at \_\_\_\_\_ which is the place where I shall be residing while in India.

I have handed over a list of all the items containing in my aforementioned mis – handled baggage along with their values, to the said Airline and I undertake to pay the Customs duty, if any, through the said Airline, immediately after the said baggage is examined by the Customs and their contents assessed.

I am aware, that this facility is being given entirely for my convenience and therefore, I accept the same at my risk and shall not hold Customs responsible, for any damage or pilferage of my baggage, or raise any dispute on the duty charged on the items.

Signature (of passenger)

Date:

I accept on behalf of the Airline

Signature of Airline representative / Date

Name Designation\_\_\_\_\_

Airline \_\_\_\_\_

Before me

Signature Date of Supdt. (Customs)

Name

**ANNEXURE – B**

**AUTHORISATION BY AIRLINE**

I \_\_\_\_\_ Manager / Duty Officer of \_\_\_\_\_ (Name of Airline), hereby, authorise Shri \_\_\_\_\_(Name of pax) for Customs clearance and to collect the same after clearance from Customs for onward delivery to the said pax. The \_\_\_\_\_ (Name of Airline) hereby, undertakes to pay the Customs duty if any, immediately after examination and assessment of the said baggage otherwise provided in S.O. No. 3/99 dated 30.03.99. All necessary documents for clearance of the mishandled baggage, as required under the said S.O., are being produced along with this authority letter.

Signature / Date

Name

Designation

Air line Stamp

**[Based on Circular No. 5/99 dated. 31.03.99 issued by Sahar Airport Commissionerate, Mumbai]**

### **3.34. DETENTION AND WAREHOUSING OF THE BAGGAGE**

Dutiable/prohibited goods imported by passengers and in respect of which a true declaration has been made may be held in safe custody or detained as provided for under section 80 of the Customs Act, 1962 for purpose of being returned to him on his leaving India for Reshipment (re-export).

Similarly, good dutiable under various Baggage Rules which passengers desire to clear subsequent may also be detained temporarily for clearance on payment of duty and/or fine other dues under approval orders.

All confiscated goods are required to be detained/held in safe custody unit appellate procedure is complete and disposal takes place by release to the owners as per Appellate orders or by sale under requisite orders. Unclaimed packages are also to be detained pending any (future) claims from the owners or final disposal.

The procedure for detention and warehousing for re-shipment/transshipment packages under instructions issued from time to time is as under:

#### **(I) Reshipment / transshipment goods**

The Detention Officer will receive all the reshipment/transshipment packages under issuance of Detention Receipts//Advices. He will enter all the particulars of such items and the name and address of the importer/owner in the Register maintained for the purpose, and have them sealed in the presence of the owner/passenger. The D.O. will then prepare forwarding-challans, serially numbered in the approved Performa, in triplicate, for all such packages and enter the challan numbers against the entry in the warehouse register. Valuable articles will be kept in the cupboard in charge of D.O. The location of all the detained packages should be indicated in the respective register as well as the challans. Such packages along with the challans will be handed over to relieving D.O.s if the D.O.s work in shift.

These packages will be handed over to the reshipment warehouse-Officer who will tally the items with the respective challans and make entries in the warehouse register and take custody of all packages. Thereafter the reshipment-



warehouse-officer will enter the particulars, such as, description of the packages, name and address of the passenger and challan number, in the register maintained by him As and when the passenger/owner approaches the reshignment. Warehouse Officer for taking delivery of these packages during day, for transshipment/reshipment he will ensure before delivery of such packages, that warehouse charges if any are recovered on such items. The reshipment warehouse officer should hand over the packages meant for transshipment/reshipment during night or outside office house to the D.O. if attached to each batch.

**(i) Dutiable items imported by passengers (pending payment of duty)**

Where the passengers are unable to clear dutiable items imported as baggage on the day of arrival and desire to clear the same subsequently, the same will be forwarded by the Baggage Officer under issue of a detention receipt duly signed by him, his bay Supdt and A.C. on duty to the D.O. The D.O. will receive all such packages or items under issue of proper Detention receipt, seal the same in the presence of the passenger and enter the description of the goods, the name and address of the importer and the reasons for detention in the Register maintained by him for this purpose. Preparation of challans and handing over the packages and the challans to the relieving D.O. are similar to the procedure laid down for T.P./R.S. The valuable items will be kept safely in the cupboard. The main Warehouse/Officer will receive all such packages after tallying the particulars on the challan with the goods. He will then have them properly stacked in the warehouse and enter particulars of detention (including the original entry number) in his register maintained for this purpose and indicate location in the said register.

**(a) Confiscated goods—Procedure regarding**

The Baggage Officer will ensure correct inventory and secure packing the confiscated goods before the same are forwarded for detention. If there are any perishable items he should necessarily separate these items and have them packed separately. Thereafter all the confiscated goods will be forwarded to the D.O. under escort of a sepoy for the purpose of detention along with the case papers. The D.O. will check the packing and have them sealed in the presence of the passenger and then receive for safe custody. He will record the required particulars in the 'Confiscated' Register maintained by him. No detention receipt is required to be issued in such cases. However, he will enter the Warehouse (Register) Entry number/date in both the copies of the adjudication papers and hand over the

duplicate there of to the passenger which will serve the purpose of a Detention Receipt. The Original copy of the adjudication order should later on, be sent back to the Baggage Officer for further disposal. The valuable items will be kept safely in the separate cupboard provided to him for the purpose.

The D.O.s will maintain a Charge Register for the purpose of handing over/taking of the confiscated items.

At 9 a.m. on all working days, the D.O. will hand over the packages detained during the preceding 24 hours ending 7 a.m. to the Main Warehouse/Strong Room Officer along with two copies of the challans who will verify the particulars of goods with the challans as also the entries made in the relevant Registers before accepting such goods. The Main Warehouse/Strong Room officer will ensure proper stacking/custody of such goods after making necessary entries in the registers maintained by him (also showing the original entry number made by D.O.) The main warehouse/strong room officer will retain one copy of the challan with him and return, the other copy after entering therein his Register-entry number and location back to D. O.

**(i) Record of Challans**

The main warehouse Officer 'CON' Officer and Transshipment/Reshipment Officer will sign all the three copies of challans in taken of the receipt of the packages. One copy of the challan will remain on the records of Detention Officer which will be kept in guard files arranged serially. The remaining two copies of the challans will be taken over by the receiving officers. After making relevant entries in their registers, one copy of the challan should be sent to the Disposal Unit indicating therein relevant entry numbers and location.

**(j) Unclaimed Packages:**

Unclaimed packages found in the Baggage Hall and handed over by Airlines will similarly be received by the D.O. along with the Officers' report for safe custody. The handing over and forwarding procedure for such unclaimed goods will be on the same line as in the case of other goods received by him.

**Proforma of Detention Receipt**

**OFFICE OF THE COMMISSIONER OF CUSTOMS,**

.....AIRPORT.

**DETENTION RECEIPT**

Batch

No.

Goods detained for payment of duty shall be disposed of after 15 days from the date of issue of this receipt without any further notice

- |   |                         |
|---|-------------------------|
| 1. Name of Passenger:                     | Flt. No. & Date:        |
| 2. Full Address:                          | 3. Nationality:         |
|   | P. P. No.               |
| 4. Accompanied by (Adults / Minor)        | 5. F. A. Availed        |
| 6. Total No. of Pkgs.                     | 7. Total value of goods |
| 8. Reasons for Detention of Goods:        |                         |
| a) Appraisalment / Valuation              | d) Re-export out of     |
| India                                     |                         |
| b) Payment of Duty                        | e) Transhipment out of  |
| India                                     |                         |
| c) Payment of Duty / Fine / P. P.         | f) Production of        |
| document                                  |                         |
| (Air Cus 49 / / )                         | g) Any other reasons    |
| 9. Detailed Description of items detailed |                         |

DescriptionQty.C.I.F. Value

Signature of A.C.O.  
with Name & Date

Signature of A.C.S.  
with Name & Date

Signature of AC/AP

I have noted the condition regarding disposal. The goods have been detained at my request and sealed in my presence over my signature.

(Please see Instruction on the Reverse)  
Passenger

Signature of the  
with date.

Received the above mentioned goods contained in \_\_\_\_\_Pkgs. and  
warehoused under APs No. \_\_\_\_\_ dt. \_\_\_\_\_ Seal No.

Signature of the Detention Officer

Name in Block Letters

Date

### **LOSS OF DETENTION RECEIPT**

In the event of loss of Detention Receipt the passenger should execute Indemnity Bond in the following Proforma.

#### **PROFORMA OF INDEMNITY BOND FOR LOSS OF DETENTION RECEIPT**

(On a non-judicial Court Fee Stamp Paper of Rs.100/-)

In consideration of the Commissioner of Customs, Mumbai having agreed to release to me goods which were detained by Airport Customs for payment of duty / Reshipment / T.P. out of India / Valuation and clearance as per rules against Detention Receipt No.....dated..... APS No./R.S. No. .... now misplaced by me, I undertake to hold the Commissioner of Customs, harmless and to indemnify him from all the consequences that may arise by his release of the said goods, and I further undertake to return to him to original Detention Receipt No. ....dated..... APS No. / R. S. No. ....should this be subsequently found / recovered of otherwise restored my possession.

Signature of the Passenger

Name in full:

Passport No. and Date of

issue

Address:

Witness Signature

Name and Address

**Eighth report of Estimates Committee (11<sup>th</sup> Lok Sabha) on passengers' goods detained at Airports**

In Para No.1.25 the Committee had observed that goods are detained at the international Airports temporarily at the request of the passengers either for payment of duty or for the purpose of re-export or subsequent production of documents. If the passenger does not come up for clearance of goods within the time limit given in the detention receipt, action is initiated by the Customs authorities for disposal of goods after confiscation. The Committee had recommended in their report that the Government after deducting Customs duty etc., from revenue obtained on disposal of the confiscated goods, should refund the balance amount to the owner / passenger. The Ministry has accepted the above recommendation of the Committee.

To give effect to the above decision it may be ensured that the full address of passengers in India is retained at the time of issue of the Detention Receipt. In case the passengers are not resident in India, they should be requested to give the name of an authorised representative who would be accepting the amount due to the passenger from the Department. From the sale proceeds the Customs Duty etc. be deducted and the balance may be sent to the passenger.

**[ Circular No. 53/98-Cus., dated 29-07-1998 From F .No. 520/136/92-Cus. VI ]**

### **3.35 OUTGOING PASSENGERS**

One of the important aspects of passenger clearance at the Airport is the clearance of outgoing passengers. Like the incoming passengers, the outgoing passengers can also be categorised into – a) Indians visiting abroad b) foreigners returning to their country c) members of the Airlines Crew.

The rules governing the export of articles as baggage are more or less applicable to all these class of passengers/crew.

Foreign Trade (Exemption from Application of Rules in certain cases) Order 1993 provides that nothing contained in Foreign Trade (Regulation) Rules, 1993 shall apply to any goods constituting the *bona fide* personal baggage of any person including a passenger or member of a crew in any vessel or conveyance going out of India, provided that the Wild Life (dead, alive or part thereof or produce therefrom) shall not be treated as part of such personal baggage.

## **Departure Clearance**

### **A. Submission of advance pre-flight manifests for departure flights by Airlines and starting of Customs check 3 hours before the scheduled time of departure - Instructions regarding –**

During the FAL committee meeting held on 19.02.1980, the Chairman A.O.C. mentioned that the pre-flight manifests were not being returned by the Customs after checking well in advance. The Chairman was informed that as per earlier instructions, the pre-flight manifests are required to be submitted to Customs 6 hours in advance, so that these could be checked by the Customs Officers and returned to the Airline in time.

Following the discussion, it has been decided that the pre-flight manifests shall be submitted by the Airline concerned 6 hours in advance to the P.R.O. (Export) who shall note down the time of receipt thereon in the presence of the Airline representative. The manifest, duly checked, shall be returned to the Airline concerned 3 hours in advance of the schedule departure of the flight. At the time of return of the duly checked manifest acknowledgement of the Airline representative shall be obtained on the Customs' copy alongwith the endorsement of time at which the manifest was returned to the Airline. The Superintendents in charge shall keep a register indicating datewise the names of the Air-lines alongwith the relevant flights for which the manifests were not submitted in time by the airline. The register shall be put to A. C. on every Monday for suitable action, if necessary.

It was also brought to the notice that even though the Airlines start checking, their passengers say about 3 hours in advance of the scheduled flight, the Customs Officer do not permit the passengers to start Customs clearance immediately. Since the Customs staff is on duty 24 hours, there is no apparent reason why they should refuse to clear the passengers after they have been cleared by the Airlines. The Superintendent (Export) will therefore, ensure that the passengers are taken up for Customs clearance as soon as they report for that purpose.

### **B. Stamping of General Declaration and Boarding Cards on Departure:**

Extract of letter No. 4/15/69-IR, dated 16.08.1975, forwarded by the Ministry of Finance vide Ministry's letter F. No. 481/34/75-Cus. VII, dated 20.10.1975, are reproduced below for necessary action by the staff concerned.

It has been decided that with effect from 18<sup>th</sup> September, 1975, the General Declaration in respect of out-bound flights would be stamped by the Immigration in

addition to Customs Authorities at all the four international Airports, immediately after the last Passenger is cleared for Embarkation by Customs and Immigration Authorities.

It has now been decided to introduce the following procedure with regard to departing and transit passengers with effect from 1<sup>st</sup> October, 1975:

**Departing Passengers:**

- (a) Check-in-at Airline Counter: The Airline staff at the time of checking in of the Passenger, handover to the Passenger a Boarding card, showing on it's stub his Sr. No. on the manifest, the date of departure and flight number. If the Airline concerned is unable to give the seat number at the time of checking-in, it will be given by the Airline at any time, before the anti-hijacking security check of the Passenger.
- (b) Immigration Check: On completion of the Immigration Check the Immigration Officer will stamp the detachable stub of the Boarding Card of the Passenger.
- (c) Customs Check: On completion of the Customs check, the Customs Officer will stamp the stub of the Boarding Card of the Passenger.
- (d) Anti-Hijacking Security Check: On completion of the Security check, the security staff will also stamp the stub of the Boarding Card of the Passenger.

Before permitting the Passenger to board the air-craft, the Airline staff will verify at the ladder of the aircraft that the Customs, Immigration and Security Officials have all stamped the stub of the Boarding Card. Thereafter the stub will be detached from the Boarding Card for out-bound Passenger at the Airport and given to Immigration.

In terms of para 11.6 of the new Import Export Policy 1997-2002 bona fide personal baggage may be exported either alongwith the passenger or if unaccompanied within one year before or after the passenger's departure from India. However, items mentioned as restricted in the ITC (HS) Classifications of Export and Import items ' will require a licence except in the case of edible items.

**3.36. EXPORT OF FOREIGN EXCHANGE AND INDIAN CURRENCY**

In terms of the Notification, the Reserve Bank of India permits -

- (i) any person resident in India to take outside India (other than to Nepal) currency notes of Govt. of India and RBI Notes upto an amount not exceeding Rs.1000/- per person at any one time.

- (ii) any person to take or send out of India to Nepal, Currency notes of Govt. of India and RBI notes (other than notes of the denominations of above Rs.100/- in either case) and Indian coins or other notes which are the currency of Nepal.
- (iii) currency in the safes of vessels or aircraft which has been brought to India or which has been taken on board a vessel or aircraft with the permission of the Reserve Bank to be taken out of India.
- (iv) any person in India but not resident therein to take out of India an amount of Foreign Exchange; not exceeding the amount brought in by him in foreign exchange provided that he had made, on arrival in India, a declaration to the Customs authorities, in such form as may be specified by the Reserve Bank of India in this behalf, of the amount of foreign Exchange brought in by him.
- (v) any person in, or resident in India, to take out of India foreign currency or currencies equivalent to US \$ 500 held by such person in terms of item (9) to the proviso to the Central Government Notification No. GSR 679 (E) (F. 10/22/90-NRI Cell) dt.17<sup>th</sup> July, 1992.

**[ Notification No. FERA 80/89-RB dt.09.08.1989 as amended by Notification No. FERA 153/93-RB dt.12.07.1993 & Notification No. FERA 157/94-RB dt.24.02.1994 ]**

### **Clarifications**

- (1) With the issue of RBI's notification No. FERA 157/94 RB dt.24.02.1994, the earlier notification No. FERA 80/89 RB dt.09.08.1989 stands amended with immediate effect i.e. with effect from 24.02.1994 whereby RBI has granted general permission to any person in, or resident in India, to take out of India, foreign currency or currencies to US \$ 500.
- (2) As per Section 67 of Foreign Exchange Regulation Act, 1993, the restrictions under above Notifications are deemed to have been imposed under Section 11 of the Customs Act, 1962.

### **ISSUANCE OF ADVANCE EXPORT CERTIFICATE**

With increasing trade interaction, many Business Executives are travelling abroad quite frequently. They carry expensive equipments like Camera, Camcorder, Cellular Phone, Note-Book Computers etc. with them. At the time of departure, they



have to take a Export Certificates with them to enable them to bring back the said goods without payment of duty on return. Normally, some of those goods are packed in the baggage of the passengers. It is, therefore, inconvenient for them to take out these articles packed in the baggage for presenting before the customs officer to obtain export permit. The number of such passengers is increasing and the frequency of their travel is also increasing and hence instances of such inconvenience is on increase.

2. Board have examined the issue and it is felt that there is a genuine need for issuing the Export Certificate before the departure of the passenger as a facilitation measure. It is decided that such certificates may now be issued in advance in the Custom Houses, International Airports and Sea Ports. The certificate shall remain valid for a period of one year. The certificate should be serially numbered; stamped with the official seal of the issuing authority and should contain the details of:

- (a) Name of the product,
- (b) Manufactures name,
- (c) Marks/number/Mode, and
- (d) Year of Manufacture.

**[ Board's Circular No. 66/96 CUS. VI in F. No. 495/13/96 CUS. VI  
dt.26.12.1996 ]**

### **Issue of Advance Export Certificate to frequently travelling International Passengers**

It is to bring to the notice of the public that as a facilitation measure, it has been decided to issue special export certificate to those who travel overseas quite frequently on business trips and carry along with them expensive articles such as Camera, Camcorder, Cellular phone, Notebook computer etc. This will obviate the necessity of obtaining an export certificate for every trip and of presenting such items for examination by the customs officer at the time of every departure.

This certificate, named as 'Advance Export Certificate' can be obtained any time prior to the actual departure of the passenger and will be valid for one year from the date of issue.

Those, who are desirous of availing of this facility, may approach the following officers, personally, alongwith their passports and the articles for which the Advance Export Certificate is to be obtained: -

1. Air Customs Superintendent, Departure Module – I, Sahar Airport, Mumbai. (Round the Clock).
2. Air Customs Superintendent, Departure Module – II, Sahar Airport, Mumbai. (Round the clock).
3. Asstt. Commissioner of Customs, (Admn.), Sahar Airport Mumbai. (From 11 A. M. to 5 P. M. except second Saturdays and Sundays).

**[ Public Notice dt.13.5.97 issued in F. No. Air Cus/50-99/97 by Sahar  
Airport, Mumbai]**

#### **Export of personal jewellery through the mode of baggage**

In view of the amendment in Section 13 of Foreign Exchange Regulation Act, 1973 and consequent withdrawal of Notification No. 107/92-RB dated 03.02.92 issued by the Reserve Bank of India permitting export of personal jewellery upto a value limit of Rs.1 lakh, some Commissionerates had sought clarification from the Board on the question of value limits, if any, on the export of personal jewellery through the mode of baggage.

2. The matter has been examined by the Board in consultation with the Department of Economic Affairs and the Export Commissioner in Ministry of Commerce. The position is thus (As far the Export-Import Policy is concerned, there is no restriction on the export of any goods (including gold jewellery ) as baggage so long as they constitute the bona fide baggage of the passenger. It is also observed that incentives for export of jewellery through legal commercial channels are more attractive.

3. It has, therefore, been decided that so long as the personal gold jewellery being exported through the mode of baggage constitutes bona fide baggage of the passenger, there should be no value restrictions on its export.

**[ Ministry's letter F. No. 495/19/93-Cus dt.06.10.94. ]**

#### **Export of Commercial goods as baggage**

In terms of para 129 of the Exim Policy (1992-97), bonafide personal baggage of a passenger is permitted to be exported as accompanied or unaccompanied baggage. Instances have, however, been brought to the notice of the Board where passengers, especially passengers leaving for CIS countries, Pakistan, Thailand etc. were exporting in their baggage commercial goods like leather goods, hosiery goods, betel leaves etc. in large quantities in gunny bags through chartered flights or by train from Delhi, Amritsar etc.

2. The matter has been examined by the Board in consultation with the Department of Economic Affairs and the Ministry of Commerce. If we go strictly by the Exim policy, the quantities being taken by such passengers cannot be said to be their bonafide baggage and hence their export could be objected. However, it has been reported that in most of these cases, the passengers are able to give some evidence or the other for exchange of the foreign currency to buy these goods in India. The Department of Economic Affairs has opined that there is nothing wrong in allowing export of such goods as passenger's baggage so long as the source of funds for buying these goods is established to be the foreign exchange brought by the passengers on their arrival in India.

3. In view of the facts stated above, the Board is of the view that in the interest of the expeditious passenger clearance and the current liberalisation scenario, such exports through passengers baggage may be allowed so long as proper proof of the goods having been procured against payment in foreign exchange is provided by the passengers. In case any large scale abuse is suspected, it may be brought to Board's notice immediately giving the details of such cases/instances.

**[ Board's Circular No. 17/95-Cus. dated 01.03.95 in F. No. 520/118/93-Cus. VI ]**

### **3.37. DEPARTMENTAL PRICE LISTS**

In order to help the airport customs staff to ascertaining the fair prices of the various articles commonly imported by the passengers and in apply the same uniformly The Commissionerate should prepare a price list of such baggage articles. while preparing these lists care should be taken to see & ascertain the various types of concession & prevalent discounts , consulting & studying various catalogues,

magazines mail order price list of leading international brands various journals & such other media should be resorted to in order to determining fair prices of the items & updating. Revision of such price lists should also be done periodically in order to keep pace with the constant introduction of new items view & improved models of existing ones and consequent revision of prices of order models. These prices are essentially intended to serve as reference & guide lines to the staff while assessing the valuers of baggage items. The staff are therefore exhorted to invariably consult these price lists before making the assessment in order to avoid discrimination and / or disparity between the assessment arrived at by different officers.

### **3.38. IMPORT OF HIGH- VALUE ARTICLES**

On many occasions, import of high valued articles for temporary import through tourist is noticed. Such goods may not fit under rule 5 of the Baggage rules 1998. However, tourist on business tour may require such articles for display, exhibition, & demonstration etc. (not covered under notification No.1587/90) & detaining his goods for reexport may not be in the interest of the tourist. The Asst. Commissioner on duty ,at his discretion may allow such goods on execution of Bank Guaranty / undertaking as the case may be for temporary duty free import for a period not exceeding six months. Section 143 of the Customs Act 1962, empowers the Asstt. Commissioner to affect such clearances. In the event of failure to reexport such goods, the same shall be deemed to be goods of which import has been prohibited under the Customs Act 1962. This provision has been spelt out in para 3(h) of the Foreign Trade (Exemption From Application Of Rules In Certain Cases) Order, 1993.

### **3.39. DRAWBACK OF DUTY ON BAGGAGE ARTICLES**

Section No. 74 of the Customs Act, 1962, amended by the Customs (Amendment) Act, 1985 covers the grant of drawback on goods exported by post or as baggage. It would be noticed that in terms of Section 74 (1) (ii), of the said Act, if baggage is to be exported under claim for drawback, a formal declaration under Section 77 of the Customs Act has to be taken from the passenger, (which will be deemed to be an entry for export) and an order permitting clearance of the goods for export should be made by the proper officer.

The format of the declaration cum drawback claim is reproduced for information.

**PASSENGER'S DECLARATION CUM DRAWBACK CLAIM FORM**

(to be filled in by the passenger)

Exporting Aircraft: .....Destination:  
.....

Passenger's Name: .....

Date of arrival in India:.....Port:  
.....

Import Duty Receipt No. ....Duty paid on  
.....

D.D,R, attached No.: .....

Description of articles: Particulars of identification:  
.....  
.....

I hereby authorise Shri / Smt.  
.....

Address.  
.....  
.....

Whose full signature is given on the pre / receipt foil and which is attested by me to receive payment of the drawback amount on my behalf.

Passengers signature & full

Address:

Before me.

Air Customs Superintendent  
.....  
.....

N.B.: The above particulars are to be filled in by the passenger and handed over to the Air Customs Officer on duty, along with the "Duty Receipt in original". If payment is to be made to a person other than the passenger, the particulars on the reverse of the acknowledgement below will have to be filled and surrendered to Accounts Dept., at the time of receiving payment. A receipt stamp should be affixed if the amount involved exceeds Rs.500/-

.....  
.....

Cut here

**ACKNOWLEDGEMENT**

No.Air Cus/

Received from Shri / Smt. ....

One                      drawback                      Bill                      in                      respect  
of.....

.....  
.....

Air Customs Officer

I, A.C.O. Shri. ....have examined the articles (declared on the reverse) brought for export by passenger Shri/Smt. ....going by.....  
to. ....and have satisfied myself as to its / their identify with the article (s) on which duty was paid and it has / they have been taken on board by the passenger for re-export and has / have not been relanded. Drawback of Rs..... is admissible and the D.D.R. is attached.

Signature of Air Customs Officer.

Export permitted. I have personally satisfied myself that the above report is correct in all respects an that drawback is admissible.

Signature of Air Customs Superintendent

A note of drawback has been made in the relative D.D.R. Check Register.

Enquiry Officer.

Sanctioned                      drawback                      of                      Rs.  
.....(Rupees.....  
.....)

Asstt. Commissioner of Customs,

Audited

Audit Clerk

Pay  
Chief Accounts Officer

The                      drawback                      of                      duty  
Rs.....Rupees.....

.....only) sanctioned above is paid to the authorised representative of passenger. The passenger's receipt for the full amount obtained and passed below:

Cashier

(Paste the pre/receipt foil

here)

Received                      the                      amount                      of  
Rs.....(Rupees.....  
.....only)

Signature of the passenger.

Name ..... of ..... authorised  
person.....

Address.....

.....

Full ..... signature ..... of ..... the ..... authorised  
person.....

(Passenger's full sign.)

Attested

by.....

Note: A memo intimating that the amount of drawback involved has been sanctioned will be issued to you shortly. The memo and this receipt should be presented at the counter of the Accounts Deptt., before 12 noon on any working day. The receipt should be fixed with a revenue stamp of Rs.2 if the amount involved exceeds Rs.500/-.

**[Authority Ministry of Finance letter F.No. 492/6/85/Cus.VI dated.  
01.01.86]**

**Drawback rates in respect of goods taken into use after importation**

In exercise of the powers conferred by sub-section (2) of section 74 of the Customs Act, 1962 (52 of 1962), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 48-Customs, dated the 1<sup>st</sup> February, 1963, the Central Government hereby fixes the rates mentioned in column (2) of the Table below as the rates at which drawback of import duty shall be allowed in respect of goods used after their importation, which have been out of Customs control for the period specified in the corresponding entry in column (1) of the said Table:

**TABLE**

Length of period between the date of clearance for	Percentage of import duty to be
--	---------------------------------



home consumption and the date when the goods are placed under customs control for export.	paid as drawback
(1)	(2)
Not more than 6 months	85%
More than 6 months but not more than 12 months	70%
More than 12 months but not more than 18 months	60%
More than 18 months but not more than 24 months	50%
More than 24 months but not more than 30 months	40%
More than 30 months but not more than 36 months	30%
More than 36 months	Nil:

Provided that where the period referred to in column (1) is more than 24 months, drawback shall be allowed, only, if the [Commissioner of Customs] concerned on sufficient cause being shown, has in that particular case extended the period beyond 24 months:

Provided further that when any of the goods specified below have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India.

- (i) Wearing apparel.
- (ii) Tea-chests.
- (iii) Exposed cinematograph films passed by the Board of Film Censors in India.
- (iv) Unexposed photographic films, paper and plates, and X-ray films.

(2) Notwithstanding anything contained in paragraph 1, in respect of a motor car or goods (other than the goods specified in the second proviso to that

paragraph), imported by a person for his personal and private use, drawback of duty shall be calculated by reducing the import duty paid in respect o such motor car or goods by 4%, 3%, 2 1/2% and 2% for use for each quarter or part thereof during the period of first year, second year, third year and fourth year respectively:

Provided that where the period aforesaid is more than 2 years, drawback shall be allowed, only if the Board, on sufficient cause being shown, has in that particular case extended that period beyond 2 years:

Provided further that no drawback shall be allowed if such motor car or goods has or have been used for more than 4 years.

**[ M. F. D. R. Notification No. 19-Cus., dated 6<sup>th</sup> February, 1965 as amended by Notification No. 154-Cus., dated 8<sup>th</sup> November, 1969 and No. 45-Cus., dated 2<sup>nd</sup> May, 1970. ]**

**PROFORMA OF REFUND ORDER**

(Below Rupees.....)

THIS ORDER MUST BE PRESENTED FOR PAYMENT WITHIN 30 DAYS OF ISSUE

File No.....  
Pool,

Air      Customs

Add:-

Date:-

**REFUND ORDER**

To,

Date of Order:

Sir / Madam,

Date of issue:

Ref: Baggage Receipt No. ....dated.....

With reference to your application/Appeal/Revision Application dated.....Baggage Receipt No.....dated.....regarding the payment of duty / Personal Penalty / Redemption Fine / Excess Recovery; I have the honour to inform you that the Assistant commissioner of Customs / Appellate Commissioner of Customs / Govt. of India / Central Board of Excise and Customs, after due consideration, is pleased to grant refund of sum of Rs. .... (Rupees.....) Vide his / their order No..... dated .....being the duty / Personal Penalty / Redemption fine / Excess Recovery.

On presentation of this order duly receipted below (with 0.20 Ps Revenue Stamp) the above sum will be paid at the Cash Department, ..... Customs House, Add:.....

Noted in the Fair Duty Register and certified that no previous order for refund of the same has been issued.

Asstt. Commissioner of  
 Customs,  
 Air Customs Pool,  
 .....

---

	Received the above sum.	Rs.2.00 Revenue
Stamp		for sum exceeding
Date:	Signature of Payee	Rs.500/-

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## **CHAPTER – FOUR**

### **IMPORTS AND EXPORTS BY POST**

#### **PRELIMINARY**

**4.1** India is one of the signatories to the Universal Postal Union, an inter-governmental institution established in 1874 having 191 member countries, thereby facilitating free exchange of mail between India and other countries all over the world. Before the advent of couriers on the international scenario, overseas mail/post services were the prime media for the exchange of goods and information across the world. This included the receipt and despatch of mail, postal parcels and packets containing gifts, samples, etc. to and from India. Though, the movement of a sizeable quantity of letters, parcels, etc. is now being handled by the International Courier Companies, the receipt and despatch of letters, packets, parcels, etc. through foreign mail is still popular among the people across the world.

**4.2** In India the movement of letters, packets, parcels, etc. via foreign mail is handled by the India Post and Indian Customs authorities through designated Foreign Post Offices and Sub-Foreign Post Offices. The postal authorities acting as custodians collect all the articles of post which are imported or are being exported by post at designated Foreign Post Offices or Sub-Foreign Post Offices. Customs facilities for examination, assessment, clearance, etc., are available at these post offices. Limited facilities for export clearances are also available at Export Extension Counters. Letter Mail Articles are generally cleared at the time of their arrival and sorting unless they appear to contain contraband or dutiable articles.

#### **JURISDICTION OF FOREIGN POST OFFICES**

**4.3** Locations of Foreign Post Offices, Sub-Post Offices and their territorial jurisdiction is as shown below:

Mumbai Foreign Post Office: Maharashtra, Madhya Pradesh, Goa, Hyderabad City, Secunderabad City and Dharwad, Karwar, Bhatkal and Belgaum Districts.

Chennai Foreign Post Office: Tamil Nadu, Pondicherry, Andhra Pradesh except twin cities of Hyderabad and

	Secunderabad.
Kolkata Foreign Post Office:	West Bengal, Orissa, Assam, Bihar, Arunachal Pradesh, Mizoram, Nagaland, Sikkim, Meghalaya, Tripura and Manipur.
Delhi Foreign Post Office:	Delhi, Punjab, Haryana, Himachal Pradesh and Uttar Pradesh.
Ahmedabad Sub-Foreign Post:	Gujarat State.
Bangalore Sub-Foreign Post:	Karnataka State except North Kanara.
Jaipur Sub-Foreign Post:	Rajasthan State.
Cochin Sub-Foreign Post:	Kerala State.
Srinagar Foreign Post:	Jammu & Kashmir State.

*Notes: 1. In addition to the Postal Appraising Section at Videsh Dak Bhavan, Ballard Estate, Mumbai, a Customs Examination Centre at Air Port Sorting Office (APSO), has also been functioning which looks after the clearance of speed post parcels. [Mumbai ACC S.O. No. 18/2005 dated 14<sup>th</sup> July, 2005.]*

*2. A proposal to convert Mumbai Foreign Post Office as a National Hub which will be servicing the whole country is in the process of implementation.*

## **LEGAL PROVISIONS**

**4.4** Legal provisions regarding goods imported or exported by post are contained in sections 82, 83 and 84 of the Customs Act, 1962.

(i) Any label or declaration accompanying the goods, which contains the description, quantity and value thereof, shall be deemed to be an entry for import or export under section 82.

(ii) Section 83 stipulates that the rate of duty and tariff value, if any, for the goods imported or exported by post shall be the rate and valuation in force on the date of presentation to the proper officer, the list of such imported goods by the postal authorities. However, in case of goods imported by a vessel, if such list has been presented before the arrival of the vessel, the same shall be deemed to have been presented on the date of such arrival. In the case of goods exported by post, the rate of duty and tariff value, if any, shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities for exportation.

(iii) Section 84 empowers the Board to make regulations for examination, assessment, clearance, etc. of imports and exports by post. Even though, no regulations have been framed under this section; the 'rules regarding mails' notified in 1950 under the Sea Customs Act, 1878 are still in force. These rules contain the procedures to be followed by the Postal Authorities and the Customs Department for receipt, clearance and despatch of goods imported or exported by post.

## **RULES REGARDING MAILS**

**4.5** In exercise of the powers conferred by section 75 of the Sea Customs Act, 1878 (*now section 84 of the Customs Act, 1962*), and in supersession of all previous notifications on the subject, the Central Board of Revenue is pleased to make the following rules for the landing and clearing, at the ports of Bombay (*now Mumbai*), Calcutta (*now Kolkata*), Madras (*now Chennai*), Dhanushkodi and all the Land Customs Stations and Airports, of parcels and packets forwarded by the foreign mails or by passenger vessels or airliners, namely: -

### **I. Postal Parcels and Letter Packets from Foreign Ports out of India**

#### **(i) Landing:**

(1) The boxes or bags containing the parcels shall be appropriately labeled e.g., "Postal Parcels" ("Colist Postaux"), "Parcel Post", "Parcel Mail", "Letter Mail", and as such will be allowed to land pass, either with or separately from the regular mails, at the Foreign Parcel Department of the Government Post Offices in the case of port of Calcutta (*now Kolkata*) and Madras (*now Chennai*), at the Foreign Parcel Department of the Foreign Post in the case of the port of Bombay (*now Mumbai*) and the Foreign Parcel Department of Office at Madurai\* in the case of the port of Dhanushkodi, at the Sorting Air Mail Office at Delhi and the Office of Foreign Post at New Delhi in the case of airports of Delhi and at the Foreign Parcel Department of Golakganj in the case of the Land Customs Station at Golakganj in Assam.

\* *There is no foreign parcel department of Post Office at Madurai at present, all the parcels received from Cylon (now Sri Lanka), Mauritius, etc., via Dhanushkodi are sent direct to Madras (now Chennai) Office of exchange.*

#### **(ii) Clearing:**

(2) (a) The Postmaster shall, on receipt of the parcel mail, hand over to the Principal Postal Appraiser (*now Assistant Commissioner of Customs*) (a) a memo showing the total number of parcels received by that mail from each country of origin, (b) parcel bills (in triplicate) in the form approved by the Chief Customs Officer (*now Commissioner of Customs*), or the senders' declarations and any other relevant documents that may be required for the preparation of the parcel bills by the Customs Department, (c) the relative customs declarations and despatch notes (if any), and (d) any other information required in connection with the preparation of the parcel bills which the Post Office is able to furnish.

(b) The Postmaster shall, on receipt of letter mail bags and in consultation with the Principal Postal Appraiser (*now Assistant Commissioner of Customs*) get the bags opened and scrutinized under the supervision of the Customs

Appraiser with a view to detain all packets suspected to contain dutiable articles. The packets thus detained will be presented in due course to the Customs Appraiser with letter mail bill and assessment memos for assessment as per rule (6) (b).

(3) On receipt of those documents, the Customs Appraisers shall scrutinize the particulars given therein and shall mark on the relative declarations on parcel bills, as may from time to time be directed, all parcels required to be detained for examination either for want of necessary particulars or defective description or suspected mis-declaration or undervaluation of contents. They shall assess the remaining parcels by showing the rates of duty on the declarations or parcel bills, as the case may be. For this purpose, they will generally be guided by the particulars given in the parcel bills or customs declarations and despatch notes (if any). When any invoice, document or information is required whereby the real value, quantity or description of the contents of a parcel can be ascertained, the addressee may be called upon to produce or furnish such invoice, document and information.

(4) The Customs Clerks shall then transcribe on the parcel bill whenever necessary the value from the declarations and after converting them into Indian currency at the ruling rates of exchange shall calculate and enter the amount of duty. The parcel bills with the declarations so completed shall then be audited by the Audit Clerks and the original and duplicate copies shall be returned to the Postmaster with as little delay as possible, the triplicate being retained in the Customs Department.

(5) The Postmaster shall then detain all parcels marked for detention in the manner indicated above, and shall allow the rest to go forward for delivery to addressee on payment of the duty marked on each parcel.

(6) (a) As soon as the detained parcels are ready for examination, they shall be submitted together with the parcel bill to the Customs Appraisers, who, after examining them and filling in details of contents of value in the parcel bills, will note the rate and amount of duty against each item. The remarks "Examined" shall be entered by the Appraiser against the entry in the parcel bill relating to each parcel examined by him. The parcel bill shall then be audited and the original and triplicate copies returned to the Postmaster, the duplicate being retained in the Customs Department.

(b) As soon as packets detained as per rule (2) (b) are ready for examination and assessment, they shall be submitted together with the relative letter mail bill and assessment memos to the Customs Appraiser, who, after examining them and filling the details of contents of value in the bill, will note the rate and amount of duty against each item. He will likewise fill in these details on the assessment memo, to be forwarded along with each packet. The bill and the assessment memo shall then be audited.

(7) All parcels or packets required to be opened for customs examination shall be opened, and after examination re-closed by the Post Office officials and shall then be sealed by them with a distinctive seal. The parcels or packets will remain throughout in the custody of the Post Office officials, but if it comes to the knowledge of the Appraiser at the time of examining any parcel or packet that its

contents are damaged or short, a note thereof shall be made on the parcel or packet bill.

(8) If on examination the contents of any parcel or packet are found to be misdescribed or the value understated or to consist of prohibited goods, such parcels or packets shall be detained and reported to the Customs Collector (*now Proper Officer*), and the Postmaster shall not allow such parcels or packets to go forward without the Customs Collector's (*now Proper Officer*) orders.

(9) The duties as assessed by the Customs Appraiser and noted in the parcel bill or letter mail bill shall be recovered by the Post Office from the addressees at the time of delivery to them. The credit for the total amount of duty certified by the Customs Appraisers at the end of each bill shall be given by the Post Office to the Customs Department in accordance with the procedure settled between the two departments from time to time.

(10) The duties imposed by these rules upon Customs Appraisers shall be performed at Madurai by such officer as the Chief Customs Officer (*now Commissioner of Customs*) may determine.

(11) The parcel bills or letter mail bills and other document on which assessment is made shall remain in the custody of the Post Office, but the duplicates, where these are prepared, shall be kept in the Customs Department for dealing with claims for refunds, etc., and shall be preserved for three years.

The parcel bill or letter mail bill shall show the following particulars: -

- (a) Number assigned by office of posting.
- (b) Name of office of posting.
- (c) Name of office of destination.
- (d) Weight of insured parcel.
- (e) Local number.
- (f) Contents as ascertained by the Customs
- (g) Declared value in foreign currency.
- (h) Rupee value.
- (i) Rate of duty.
- (j) Amount of duty, and
- (k) Remarks.

## **II. Postal Parcels or Packets from Foreign Ports in India**

(12) Postal parcels or packets from foreign ports in India may be forwarded as ordinary mails to the Foreign Parcel Department of the General Post Office.

(13) For assessment and other customs purposes such parcels will be treated in the same manner as postal parcels from foreign ports out of India and the procedure prescribed in rules (2) to (10) above shall be followed.

[C.B.R. Notification No. 53-Cus. dated 17.06.1950, as amended by No. 111-Cus. dated 08.07.1955]



### **EXEMPTION TO BONAFIDE GIFTS**

**4.6** .*Bonafide* gifts as are exempted from any prohibition in respect of the import thereof under the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) and falling under heading 98.04 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) are exempted from the whole of the duty of customs leviable thereon under the said First Schedule and the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, provided that the value of such *bonafide* gifts imported by post does not exceed rupees ten thousand.

*[Notification No. 171/93-Cus., dated 16.09.1993, last amended by 28/2008-Cus., dated 01.03.2008.]*

### **EXEMPTION TO SAMPLES, PRICE LISTS, ETC.**

**4.7.** *Bonafide* commercial samples and prototypes falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, are exempted from the whole of the duty of customs leviable thereon which is specified in the said Schedule and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act subject to the conditions laid down in the corresponding entry in column (3) thereof.

*[M.F.(D.R.) Notification No. 154/94-Cus., dated 13.07.1994 last amended by No. 62/2008-Cus., dated 06.05.2008.]*

### **POSTAL ARTICLES UNCLAIMED, REFUSED, ETC.**

**4.8.** The contents of postal articles, which having originally been posted in India or the State of Pondicherry and not having left the custody of the post office at any time since their original posting, are imported into India or the State of Pondicherry on return to the post offices in India or the State of Pondicherry as unclaimed, refused or redirected, are exempt from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975, and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, provided that no drawback of duty was obtained when the article was exported from India or the State of Pondicherry.

*[Notification No.273-Cus., dated 25.10.1958, as amended by No.128/86-Cus. dated 17.02.1986]*

### **EXEMPTIONS TO DIPLOMATIC BAGS IMPORTED BY POST**

**4.9.(a)** The parcel bags containing diplomatic mail are exempted from duty and examination subject to the declaration made on the bags.

(b) Parcels and packets containing goods (other than mail, letters) addressed to consulates or consular officers are not required to be examined without their prior concurrence.

### **EXEMPTIONS TO MEDICINES AND LIFE SAVING DRUGS**

**4.10.** Life saving drugs or medicines (including diagnostic test kits) specified in List 4 of the notification No. 21/2002 dated 01-03-2002 (as amended) imported by an individual for personal use, are exempted from the duty of customs subject to the conditions specified therein.

*[M.F.(D.R.) Notification No. 21/2002 dated 01-03-2002 (as amended)]*

### **PROHIBITIONS ON IMPORTS/EXPORTS BY POST**

**4.11** The import of dutiable goods by post is prohibited as per notification F.D. (C.R.) No. 78 dated 02-04-1938 as amended by No. 151-Cus. dated 24-12-1938 and No. 44-Cus. dated 26-07-1941, otherwise than complying with the following conditions:

- (a) Such letter or packet shall-
  - (i) bear on the front a declaration stating the nature, weight and value of the contents of the letter or packet, or
  - (ii) is accompanied by a declaration as aforesaid either enclosed therein or fastened to the outside by a string tied crosswise and shall in the former case bear on the front a label indicating that the letter or packet may be opened for customs examinations.
- (b) Such parcel shall comply with clause (i) of condition (a) except when the declaration referred therein is sent separately attached to the parcel bills, and
- (c) The Customs Collector (*now Proper Officer*) is satisfied that the nature, weight, and the value of the contents of such letter, package or parcel are correctly stated in the declaration.

To give effect to the above orders, all letter mail packets or parcels containing dutiable goods which do not bear a green label or other declaration showing correctly the nature, weight and value shall be detained and reported for orders as regards confiscation, with a note as to when last warning was issued and whether there are any obvious signs of attempted evasion. For the purpose of the notification, a declaration of value on the label need not be insisted upon if the label indicates that invoice is enclosed in the packet.

The following goods are also prohibited from import by post: -

- (1) Arms, ammunition and military stores including toy, dummy or imitation revolvers or pistols.
- (2) Explosives, inflammable or dangerous substances such as magnesium wader tapers, sparklers, amorces, Chinese crackers, fireworks, pyrotechnic matches, rockets, spirits.
- (3) Coin or bullion exceeding (Rs.65/-) in value except coins clearly intended for the purpose of ornament.

- (4) Anything which, by its nature is likely to injure postal articles or officials.
- (5) All plants including bulbs, American cotton and seeds of cotton, bersin and flax.
- (6) Prohibition/restriction also exists for the import or export of various articles, such as intoxicants, obscene literature, crude drugs, antiquities, etc.

### **GUIDELINES FOR CLEARANCE OF CERTAIN ARTICLES IMPORTED BY POST**

**4.12. (1) Explosives, etc.:** - As per the provisions of Art, 60 of Universal Postal Convention, explosives, inflammable or dangerous substances are prohibited from transmission by post.

(2) **Weapons (rifles and pistols):** - Import of fire arms and ammunition is restricted under the Import Policy in force and import of ammunition by post is prohibited under Article 60(3) of the Universal Postal Convention also.

(3) **Sulphur:** Sulphur is not allowed to be imported by post parcel, whether in pure or crude form.

(4) **Plants:** No relaxation shall be made in enforcement of rules issued by Government of India prohibiting importation of plants other than sugar cane for planting intended to be grown under conditions specified under the rules, by means of letter or sample post. Accordingly, the plant so imported should not be released even on payments of penalties and even if accompanied by health certificates.

(5) **Coins, as articles of curio or hobby:** Import of coins received as articles of curio or hobby is allowed provided the bonafide is proved.

(6) **Magnesium wire and ribbon:** Importation of magnesium wire and ribbon by post parcel is prohibited.

(7) **Fictitious stamps:** If any postal article received in India is found to contain such stamps it should not be delivered to the addressee and should be confiscated.

(8) **Opium, morphine, cocaine and other narcotics:** The bringing into India through the medium of the post is prohibited of any narcotic drugs other than:

(i) Those which are dangerous drugs within the meaning of the Dangerous Drugs Act, 1930 (*now Narcotic Drugs and Psychotropic Substances Act, 1985*); and

(ii) The Medicinal preparations which have been declared by notification for the time being in force under clause (g) of section 2 of the Dangerous Drugs Act, 1930 (*now the Narcotic Drugs and Psychotropic Substances Act, 1985*) not to be manufactured drugs. This prohibition is in addition to the prohibitions and restrictions imposed by the Dangerous Drugs (Import, Export and Transhipment

Rules), 1957 (*now the Narcotic Drugs and Psychotropic Substances Rules, 1985*).

The postal authorities have been empowered under section 25 of the Indian Post Offices Act to search for those goods in the postal articles in transit. Such postal articles whether received for delivery in India or for transmission to foreign territory should not be confiscated but should be returned by the post offices to the country of origin.

(9) **Prohibited publications:** An up-to-date copy of the list of prohibited or objectionable publications shall be maintained in the Postal Appraising Section and this list should be referred to when parcels and packets are examined for prohibited publications. Such prohibited literature and books shall be confiscated after issuing show cause notice to the addressee.

(10) **Cinema films/video films etc.:** The cinema and video films are to be released on the basis of certificate granted by the central film censor board. Also the video cassettes are released only after screening in the Postal Appraising Section. The parcels containing such films will be got sealed with customs seal and will be allowed to be removed to the Film Censor Board (*now the Central Board of Film Certification*) office under Preventive escort. After screening, the parcels will be returned to the Postal department.

(11) **Chemicals:** Parcels and packets containing chemicals in liquid or powder form, imported either as samples or otherwise, which are not branded and/or not despatched by well known manufacturers to well known importers should invariably be, before release, got tested in the Custom House laboratory for ascertaining the composition.

(12) **Currency:** The parcels/packets containing Indian Currency are to be confiscated by the Postal Authorities under Indian Postal Act. Instructions issued by the CBEC in this regard are reproduced below:

1. Under section 13(i) of Foreign Exchange Regulation Act, 1973, no person could bring or send into India any foreign exchange or Indian currency except with special or general permission of Reserve Bank of India. Parcels/packets suspected to contain foreign/Indian currency, etc., were to be detained and adjudicated on merits.

2. Import of Indian currency notes and coins by post is not permitted. However, whenever such notes, received by post, are detected by the Customs, the impounded currency is released on the basis of "No Objection Certificate" (NOC) which is issued on merits of each case by the RBI.

3. Packets/parcels containing foreign currency upto Rs. 500/- could earlier be released by the Assistant Commissioner of Customs on caution subject to his satisfaction of genuineness. The particulars of such release were also to be forwarded to RBI and the Enforcement Directorate for information.

4. To reduce pendency and to avoid delay in clearance of mail articles, in November, 1997, the RBI had decided to permit the Customs to allow import of both Indian and foreign currencies received by residents by post, provided the value does not exceed Rs. 1,000/-, subject to the following conditions:

(a) the power to grant approval is exercised at a fairly senior level in the Customs;

(b) a detailed record should be maintained of the exemptions granted;

(c) record of the name and addresses of the remitter and addressee in India should be maintained; and

(d) where a spurt is noticed in the number of covers received over a time, the matter may be reported to the concerned Regional Office of RBI.

5. In view of the liberalisation of foreign exchange regulations under the Foreign Exchange Management Act (FEMA), 1999, the matter has been reviewed by the RBI. It has now been decided to enhance the existing limit as in Para 4 above of Rs. 1,000/- to Rs. 5,000/-. Accordingly, Customs can allow import of both Indian and foreign currencies received by residents through post without insisting on a NOC from RBI, provided the value does not exceed Rs. 5,000/-. Such clearance by Customs shall be subject to the conditions cited at Para 4(a) to (d) above. In the context of condition at Para 4(a) above, Board has decided that imports of Indian and foreign currencies upto a value limit of Rs. 5,000/- should be permitted under the approval of the Deputy/Assistant Commissioner of Customs.

*[CBEC Circular No. 16/2002-Cus., dated 05-03-2002]*

(13) **Precious stones, diamonds and Jewellery:** The assessment of such parcels should be done by the Expert Appraisers. In case of dispute about the valuation, etc. the case may be referred to the panel of Appraisers to ascertain the correct valuation.

(14) **Live plants, seeds etc.:** As soon as the parcels containing plants, seeds, or raw cotton, etc, received which require fumigation, a call notice will be issued to the addressee asking him to arrange for necessary fumigation. When such arrangement is made, the parcel/packet will be allowed to be taken away for fumigation under Preventive escort. After the contents have been fumigated, the parcel/packet will be assessed in the usual manner and returned to the postal authorities.

## **FREE IMPORTABILITY OF CERTAIN CATEGORY OF GOODS**

**4.13** Subject to compliance with the provisions of any other law for the time being in force, imports may also be made without a licence by the categories of importers specified below provided the imports do not involve foreign exchange remittances: -

- (1) Import of goods by officials of U.N.O. and its specialised agencies who are exempted from payment of customs duty;
- (2) Paintings and other display articles required for competitions or exhibitions;
- (3) Food-stuffs, medicines, clothing and blankets received by any charitable organization or any individual as a gift from any philanthropic organization or individuals abroad, for free distribution either by themselves or other charitable organization or individuals to the poor and needy without any distinction of caste, creed or colour;
- (4) Goods received as free gift by the Indian Red Cross Society from abroad provided such goods are exempted from customs duty;
- (5) Relief supplies and packages received as gift through a government agency or any other approved agency covered by an agreement entered into by the Government of India with a foreign Government, provided they are exempted from customs duty; and articles donated to National Defence Fund or to the Government of India for use of the defence personnel;
- (6) Equipment and raw materials imported by foreign TV companies coming to India on visits sponsored by the Ministry of External Affairs/Ministry of Information and Broadcasting or Department of Tourism, on re-export basis;
- (7) Imports of exhibits, including constructions and decorative materials required for the temporary stands of the foreign exhibitors at the exhibitions/fairs for period of six months on re-export basis.

#### **PROCEDURE FOR CLEARANCE OF GOODS IMPORTED BY POST**

**4.14.** Imports by post may be by sea or land as “surface mail” or by air as “air mail”. The Postal Department divides goods imported or exported by post into two categories – (i) parcels, and (ii) packets or Letter Mail Articles (LMA), which is generally based on the weight and dimensions of the package.

A Post Parcel or L.M.A. is accompanied by a customs declaration or a label (green label) indicating the description of the contents, value, quantity, etc. The import of parcel or packet without such a declaration or with a declaration which is incorrect is prohibited under F.D. (C.R.) Notification No. 78 dated 02-04-1938. Even though no Bill of Entry is required to be filled by an importer of goods by post, this declaration or label furnished by the sender of the parcel or packet is deemed to be an entry for import, under section 82 of the Customs Act, 1962.

The Postal Department prepares waybills in triplicate for all parcels or packets imported from abroad. This way bill has been referred to as 'list' in section 83 (1) of the Customs Act. It contains the following particulars: -

- (a) Number assigned by office of posting,
- (b) Name of Post Office of posting,
- (c) Name of Post Office of destination,
- (d) Weight of insured parcels,
- (e) Local number (assigned by the Postal authorities in India),
- (f) Contents as ascertained by the customs,
- (g) Declared value in foreign currency,
- (h) Rupee value,
- (i) Rate of duty,
- (j) Amount of duty, and
- (k) Remarks.

The particulars regarding (a) to (e) above are filled in the waybill by the Postal authorities. The waybills are then presented (along with the customs declarations wherever available) to the Postal Appraising Section. The receiving Clerk of the Postal Appraising Section affixes on them the date of receipt.

Section 83 (1) specifies the relevant date for determining the rate of duty (or Tariff Value) applicable to goods imported by post. It may be noted that the provisions of section 15 are not applicable for this purpose as there is no Bill of Entry for postal imports. The correct rate of duty applicable is the one, which prevails on the date on which the waybill for the parcels or packets is presented by the Postal authorities to the Postal Appraising Section. If the waybill is presented by the Postal Department before the arrival of the vessel bringing the parcels or packets, the rate of duty prevailing on the date of arrival of such vessel is the rate applicable to the imported goods.

There is no legal provisions in the Act (similar to section 14 (1) (a) proviso in respect of Bills of Entry) specifying the relevant date for applying exchange rates. In practice the exchange rate prevailing on the date of presentation of waybill in the Postal Appraising Section is adopted for assessment.

## **ASSESSMENT OF PARCELS**

**4.15.** When bags containing foreign parcels arrive by sea or air, the Foreign Parcel Section of the concerned jurisdictional Post Office receives the mail bags and transports them to the Foreign Post Office. The Postal Appraising Section of the Custom House functions as a unit attached to the Foreign Post Office. The assessing officers in the Postal Appraising Section are Appraisers and Examiners. A contingent of Preventive staff consisting of Preventive Superintendent and Preventive Officers is also posted in the Postal Appraising Section, who looks after the storage, disposal, etc., of the confiscated articles.

## **SHEET ASSESSMENT**

**4.16.** The waybills along with customs declarations are presented to the assessing officers of the Postal Appraising Section. The assessing officer scrutinises the declaration and if he feels that the declaration is acceptable in respect of description of goods, value, etc. he indicates the rate of duty chargeable on the declaration itself. Where he feels that documents are required for assessment, he indicates the nature of documents (such as invoice, import licence, passport, landing certificate) on the declaration itself. The customs Clerk assisting the assessing officer transcribes on the waybill the particulars of assessment such as value, rate of duty, wherever assessments have been made. He also calculates the amount of duty and indicates it in the relevant column of the waybill against the respective parcel numbers. The waybills are then passed on to the postal staff who make arrangements for the amount of duty to be collected on the respective parcels and for onward transmission of the parcels (not the waybills) to the respective destination post offices. If he considers that a parcel has to be examined before assessment he marks the letter 'D' (indicating 'detain') on the declaration.

In cases where the assessing officer has indicated that certain documents are required, the customs Clerk sends a call-memo to the addressee, which also serves as a show cause notice in cases where the addressee is unable to produce the necessary documents such as import licence for clearance. The call-memo also contains a clause that if the documents are not produced within 28 days, the parcel is likely to be returned to the sender. This time limit has been agreed under an International Postal Convention. However, it does not imply that the parcel must be returned to the senders especially in a case where there is a contravention of the provisions in the Customs Act and the party chooses not to respond.

### **DETAINED PARCELS**

**4.17.** In the case of parcels not assessed during sheet assessment either for want of documents or for examination of the parcels, the customs Clerk gives a requisition to the postal staff to produce the parcels. When the parcels are produced by the postal staff and the required documents have also been furnished by the addressee, the assessing officer scrutinises documents, decides whether assessments can be made on the basis of the particulars available in the documents without opening the parcels. Wherever he considers it necessary to examine a parcel, he asks the postal staff to open it, and examines the same. The assessing officer writes down on the waybill the description of the goods, value, and the rate of duty applicable. Wherever an import licence is required and has been produced he debits the licence and indicates the licence number in the remarks column on the way bill. If any shortage or damage is noticed in the contents of the parcel, the assessing officer asks the postal staff to prepare an "Error Slip", signs it and puts it in the parcel. He then passes on the waybill to the Clerk who calculates the amount of duty and notes it in the relevant column on the waybill. The waybill is thereafter pre-audited and handed over to the postal staff for marking the amount of duty on the parcels and for making arrangements for onward transmission of the parcels to the post office of destination.

### **ASSESSMENT OF LETTER MAIL ARTICLES**



**4.18.** When bags containing Foreign Letter Mail Articles are received at the Foreign Post Office, the assessing officer witnesses the opening of the bags and decides quickly on the spot which of the packets do not attract any duty or prohibitions and restrictions and segregates them for allowing onward transmission by the Postal authorities to the Post Offices of destination. The remaining packets are detained by him. The Postal authorities prepare an assessment memo for each such detained article. The postal staff also prepares waybills for the detained packets. The waybills, assessment memos and the detained packets are thereafter presented to the customs assessing officer.

Assessment is carried out by examining the packets and calling for documents wherever necessary as in the case of detained parcels. The assessing officer writes down the description of goods, value and rate of duty on each assessment memo. The customs Clerk transcribes the assessment particulars on the waybill and also works out and indicates the amount of duty in the appropriate column, both in the assessment memo and in the waybill. After pre-audit, the postal staff marks the rate of duty on the packets and despatch them to the Post Offices of destination.

### **COLLECTION AND REALISATION OF CUSTOMS DUTY**

**4.19.** The amounts of duty entered in the waybills are credited by the Postal department to the Customs department without waiting for the parcels or packets to be actually delivered to the addressees on payment of the amounts. When the parcel or packet reaches the Post Office of destination, the concerned Postmaster/Postman delivers it to the addressee after collecting the customs duty indicated on the parcel or packet.

### **WRITEBACKS**

**4.20.** Sometimes the parcels or packets on which customs duty has been assessed by the Postal Appraising Section are not taken delivery of by the addressee who may not be available or who may refuse to pay the duty imposed. In such cases the Post Office returns the parcels/packets to the senders in the foreign country. The Postal authorities submit a statement of the parcels/packets which have been returned to senders and claim writeback of the respective amount of duty, if any.

Sometimes the addressee of a parcel/packet feels that the customs duty assessed by the Postal Appraising Section is too high and requests the Post Office of destination to return the parcel/packet to the Postal Appraising Section for assessment (without paying the duty and taking delivery). Such parcels/packets are re-examined to consider whether the addressee's request for re-assessment is justified.

If on re-examination the original duty is revised to a lower amount or a higher amount, a separate memo called write-back memo is sent by the Postal Appraising Section to the Foreign Post Office authorising them to collect the revised duty instead of the original duty and claim the difference as write-back, or credit the same to Postal Appraising Section.

### **MODE OF ASSESSMENT**

**4.21.** Bulk of the parcels/packets received from abroad are addressed to individual persons and are not intended for trade. In order to simplify the process of classification and assessment of such parcels/packets, a separate heading No. 98.04 carrying a flat rate of duty has been provided in the Customs Tariff. This heading covers all dutiable articles imported by Post or air, even if such articles are also covered under chapters 1 to 97 of the Customs Tariff. The conditions for classification of goods imported by post under this heading are: (1) the goods shall be for personal use, and (2) they shall not come under any Import Trade Control restrictions. Goods which do not fall under 98.04 (for example, imports for commercial or professional purposes, trade parcels, etc.) are assessable at the appropriate rate of duty under the relevant heading in chapters 1 to 97 of the Customs Tariff together with the corresponding additional and countervailing duties.

### **IMPORT TRADE CONTROL REGULATIONS**

**4.22.** All imported goods, even if they are imported by post, attract the provisions of the Foreign Trade (Development and Regulation) Act, 1992, rules made and order issued thereunder. In other words, even goods imported by post require an import licence for customs clearance, unless they are freely importable. However according to section 3 (i) of the Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993 issued under Foreign Trade (Development & Regulation) Act, 1992, nothing contained in the Foreign Trade (Regulation) Rules, 1993 shall apply to the import of any goods by any person through the post or otherwise for his personal use, or by any institution or hospital for its use except-

- (a) vegetable seeds exceeding one lb in weight;
- (b) bees;
- (c) tea;
- (d) books, magazines, journals and literature which are not allowed to be imported under the policy for the time being in force;
- (e) goods, the import of which is canalised under the policy;
- (f) alcoholic beverages;
- (g) fire arms and ammunition;
- (h) consumer electronic items (except hearing aids and life saving equipments, apparatus and appliances and parts thereof);

Provided that the C.I.F. value of goods imported as aforesaid at any one time shall not exceed rupees two thousand;

- (i) by or on behalf of diplomatic personnel, consular officers and Trade Commissioners in India who are exempted from payment of customs duty under Notification No. 3 dated the 8<sup>th</sup> January, 1957 of the Government of India in the Ministry of Finance (Department of Revenue);

### **PROCEDURE FOR CLEARANCE OF GOODS EXPORTED BY POST**

**4.23.** Goods intended for export by post may be booked from any of the Post Offices in the country. However, the Postal Department must route all such export parcels

through any of its Foreign Post Offices where the Postal Appraising Section subjects them to customs scrutiny.

Export parcels must be accompanied by a customs declaration or despatch note which is deemed to be an entry for export under section 82 of the Customs Act, 1962. It is filed by the exporter at the time of booking the parcel and contains information like description, quantity and the value of the contents besides names and address of the consignee/addressee and the exporter. In the absence of a shipping bill this declaration is the entry for export.

PP form which is similar to the GR form is filed for Exchange Control purposes as per the requirement under FERA (*now FEMA*); in case the exports involve any foreign exchange transaction. The exporter declares the full export value in this form which he expects to realise from the export. This full export value is verified by the Appraisers. For this purpose the invoice and copy of contract/agreement entered between the buyer and seller are submitted by the exporter. After verification, the PP form is endorsed by the Appraiser under his seal. Thereafter the PP form is sent to the Reserve Bank of India to ensure that foreign exchange earned out of these exports is repatriated through the Reserve Bank of India. Outstation parties will attach self addressed envelope along with the PP form for return of duplicate PP Form.

However in the case of gifts, samples or unaccompanied baggage this PP Form is not required as there is no foreign exchange involved in such cases. A gift parcel or a commercial sample parcel should be accompanied by a self declaration stating that it does not involve any transaction of foreign exchange. For parcels of high value a certificate from an authorised dealer (a bank) in foreign exchange or a Reserve Bank of India waiver will be needed to justify the claim that it does not involve any transaction of foreign exchange. All such self-declarations, certificates or waivers have to be pasted on the face of the parcel so that they may be checked at the time of customs clearance by Postal Appraising Section.

In the case of unaccompanied baggage, no such document is required. Their only requirement, besides the customs declaration is that the Passport number of the passenger should be clearly mentioned on this declaration form.

Whenever needed, exporters are also required to furnish a pre-shipment inspection or Quality Control Certificate from the Export Inspection Agency or any other agency authorised for such purpose, viz., ISI, Silk Board, Agmark etc. In such cases the certificate indicates the validity and details of the seal used to seal the packages. If the seals are intact, the packages need not be opened and examined. In case of doubt a percentage check shall be carried out.

Where necessary, export of goods by post requires an Export Licence if the goods are restricted in the Export Policy or if they do not satisfy the conditions mentioned in the Postal Notice No. 13 of 1973.

Postal Notice No. 13 dated 03.12.1973 fixes certain monetary limits beyond which any post parcel would have to be accompanied with a valid Export Licence. In addition, arms and ammunition, explosives, inflammable material, obscene

literature, dangerous drugs, narcotic drugs, snake skins, antiquities, etc. are also prohibited from being exported by post.

In the absence of a Shipping Bill, the licences are not in the form of endorsements but are issued as a separate document by the Export Trade Control authorities. In case of canalised items an export permit has to be produced from the canalising agency.

It is the responsibility of the exporter to ensure that the parcel is covered by a proper Export Licence where such a licence is necessary, failing which the parcel is liable to be returned. The fact that a parcel is accepted by a Post Office in the first instance does not in itself constitute a guarantee that the requirements of Export Control have been fulfilled.

After verifying all the documents, the Appraiser in the Postal Appraising Section asks the Postal staff to open the parcels selected by him. Parcels are opened by the Postal staff and also closed by them. At no point of time the parcels are in the custody of Customs department. If the contents are in conformity with the entries made in the declaration and all other documents are in order, a 'Customs Passed' stamp is put on the face of the parcel.

The rate of duty and tariff value, if any, applicable to any goods exported by post shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities for exportation. Legal authority for this date is section 83 (2) of the Customs Act, 1962.

#### **GENERAL DUTY FREE ALLOWANCE ON IMPORT BY POST**

**4.24.** In case the amount of customs duty payable on the goods imported by post is not more than Rs. 100/-, the same is exempted.

*[M.F.(D.R.) Notification No. 21/2002-Customs dated 01.03.2002 (as amended)]*

#### **DRAWBACK ON GOODS EXPORTED BY POST**

**4.25.** Drawback under section 74 and 75 the Customs Act is allowed in the case of export by post. However, the goods which are being exported under claim for drawback cannot be despatched directly from any Post Office. They must be produced at the Postal Appraising Section first alongwith all the required documents, as mentioned above. In addition it must be accompanied by the 'D' Form (in Quadruplicate) also. The parcels must be examined with reference to their weight or any other criterion relevant for duty drawback. After their examination the parcels are sealed. Thereafter, a stamp "Passed Under Drawback Claim" is put on the face of it. Claims made in the 'D' form regarding their quantity and value are also verified on the basis of examination report.

The exporter takes this sealed parcel along with the copies of 'D' form and presents it for exportation to the Foreign Post Office, or any other Post Office for that matter. The Post Office retains 2 copies of 'D' form and returns one to the exporter after endorsing the parcel No. and date of booking on it. This copy of the 'D' form, which is also known as pre-shipment copy, is then submitted to the Postal

Appraising Section for processing of drawback claim. After the shipment of the parcel, the Postal department endorses the date of shipment and the parcel number (which was earlier assigned to the parcel) on one of the copies of 'D' form which was retained by them at the time of booking. This is known as Post shipment copy of the 'D' form. It is sent to Postal Appraising Section by registered post. On receiving this copy, the Postal Appraising Section takes both the pre-shipment and post-shipment copies of the D-form and completes their processing and grants drawback. (In the absence of post-shipment copy of the 'D' form, a certificate from the bank shall be obtained to the effect that amount has been realised, which in turn will be proof that the parcels were shipped out).

### **REFUND OF CUSTOMS DUTY ON POST PARCEL**

**4.26.** Regulations framed under the Customs Refund Application (Form) Regulations, 1995 are applicable in the case of postal articles also.

*[M.F.(D.R.) Notification No. 34/95-Cus. (N.T.), dated 26-05-1995]*

### **MODVAT CREDIT ON GOODS IMPORTED THROUGH POST PARCEL**

**4.27.** Bill of Entry is the prescribed document for obtaining Modvat credit on imported inputs under Rule 57G. Since no Bill of Entry is required to be filed in cases of importation by post parcels Modvat credit of the countervailing duty paid on the inputs imported by post parcel is granted on the basis of a certificate issued as per the procedure below:

#### **PROCEDURE**

1. On receipt of the arrival notice issued by the Foreign Post Office, the importer while replying to the notice shall submit an application in proforma 'A' to the Assistant Collector (*now Assistant Commissioner*), FPO, expressing his intention of claiming Modvat credit of the CVD paid on the imported goods.

2. He shall also indicate in his reply that he will not dispute the assessment and shall not claim refund thereof.

3. The Appraiser in-charge shall prepare certificates in format proforma 'B' in triplicate after duty on parcel has been paid and issue original copy to the party and send the duplicate copy to the concerned Range Superintendent having jurisdiction over the importer's factory. The third copy shall be retained in the FPO for record.

4. The assessee should take credit on the basis of the certificate on receipt of the foreign post parcel.

5. Range Superintendent shall check the correctness of certificate submitted by assessee at the end of month with duplicate copies received in the Board Office.

*[Board's Circular No. 16/89- CX.8 dated 01-06-1989]*

### **STRENGTHENING OF SUPERVISORY CONTROLS AND SCRUTINY**

**4.28.** The Central Board of Excise and Customs while inviting attention to a case of seizure effected on 09-06-2001 by the Central Bureau of Investigation (CBI) of foreign currency from post parcels entered for export at Speed Post Centre, Gol Dak Khana, New Delhi meant for export to Hongkong had directed as under:

2. Abuse of postal facilities to smuggle contraband and restricted items is a matter of concern. It appears that Foreign Post Offices are increasingly being used for smuggling of items such as integrated circuits, watch movements, cordless phones, narcotic drugs, other consumer/electronic items etc. The case cited above of seizure of foreign currency from export postal parcels indicate a new modus operandi. These developments indicate a need to exercise great care in clearance of postal parcels by making a thorough examination of suspected packages.

3. In view of the foregoing, you are requested to alert all subordinate customs formations handling clearance of post parcels against the possibility of such attempts for smuggling. Supervisory controls need to be strengthened and intelligent scrutiny has to be ensured while selecting packages for examination. Documents such as Customs Declaration, Parcel Bills, etc., should be scrutinised very closely. The bona fides of persons importing or exporting the parcel; the origin and destination of the parcels, its physical dimensions, etc., should be taken note of before allowing clearance of a package. Without detailed physical examination of contents, X-ray machines should also be installed and used for screening of post parcels where a large number of such parcels are being handled. In any case, 100% opening of such parcels is not practically advisable. For this purpose, the concerned Commissioners may send suitable proposals to the Commissioner, Directorate of Preventive Operations for purchase and installation of X-ray machines, if these are not already under consideration.

*[Board's Circular No. 63/2001-Cus., dated 12-11-2001]*

Note: The Postal Department has already acquired x-ray machines for the purpose of screening of the postal articles.

**APPENDIX I**

**CERTIFICATE FOR DUTY FREE CLEARANCE OF LIFE SAVING DRUGS**

FORM

Certificate No.....of ..... (year)

Certified that the drug/medicine ..... (name of the drug/medicine)  
being imported by ..... is a life saving drug/medicine  
and exemption from the payment of customs duty is recommended.

Signature with date of Director General/  
Deputy Director General/  
Assistant Director General,  
Health Services, New Delhi or  
Director of Health Services or  
District Medical Officer/Civil Surgeon.

Note: List 4 Not Printed.

*[M.F.(D.R.) Notification No. 21/2002 dated 01-03-2002 (as amended)]*

**APPENDIX II**

**REFUND OF CUSTOMS DUTY ON POST PARCEL**

FORM

(See regulation 2)

APPLICATION FOR REFUND OF DUTY/INTEREST

PART-A

To

The Assistant Commissioner of Customs,

.....

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

1. Import/Export document (Bill of Entry, Shipping Bill etc.)/Purchase Invoice - Number and Date :
2. Duty deposit reference (Cash No./Deposit No.) and date :
3. Description of goods :
4. Name and address of (a) Importer (b) Customs House Agent (c) Applicant :
5. Refund Claim under: Section 27(1)(a)/Section 27(1)(b) of the Act.
6. Ground of claim\*: [\*specify with details whether the claim is on account of reassessment of rates of duty/valuation, Shortage/Short-landing, Pilferage, appellate order, arithmetical/clerical error, any other ground (specify).] :



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

(\*Please put a tick mark ( ) against the document being enclosed)

- (a) Letter of authorisation from the importer/buyer in case the applicant is an agent.
- (b) Triplicate copy of Bill of Entry/Post parcel wrapper/Shipping Bill/Baggage Receipt or the Purchase Invoice
- (c) Duty Challan/Other document as evidence of duty payment
- (d) Signed working sheet for the amount of refund claimed
- (e) Customs attested invoice
- (f) Customs attested packing List
- (g) Documents for establishing the applicant's eligibility to receive the refund amount in terms of the proviso to sub-section (2) of Section 27 of the Act, including documents for the purposes of Section 28C and 28D of the Act.
- (h) Contract and Purchase order
- (i) Modvat credit certificate from Central Excise authorities
- (j) Order in original/in revision/in Appeal/any other order
- (k) Short delivery certificate from custodian
- (l) Short shipment certificate from supplier
- (m) Survey report
- (n) Insurance claim settlement certificate
- (o) Catalogue/Technical Write-up/Literature
- (p) Bills for Freight/Insurance/Other charges
- (q) Certificate of origin
- (r) Any other document considered necessary in support of the claim (specify)

(s) Total Number of documents enclosed:

- 10. Any further details deemed necessary and relevant :  
to the refund claim
- 11. Whether any other refund claim filed/pending : Yes/No  
against the same Import/Export document (Bill of  
Entry, Shipping Bill etc.). If yes, give details.
- 12. Whether personal hearing required or not before : Yes/No  
the case is decided
- 13. (a) Whether duty has been paid under protest : Yes/No  
(b) If yes, Custom House protest registration No. :

DECLARATION

I/We.....here declare that -

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

Signature of the applicant

Date.....

PART B

[See regulation 2(2)]

ACKNOWLEDGEMENT

FOR CUSTOM HOUSE USE

FILE No.....

Refund claim of Mr/M/s.....for Rs.....against Bill of Entry/Post Parcel/Baggage Form/Shipping Bill No.....dated.....received in complete manner

on.....admitted for examination vide Customs Refund Registration No.....dated.....

for Assistant Commissioner of Customs

Date.....

ACKNOWLEDGEMENT  
TO BE ISSUED TO THE APPLICANT

FILE No.....

Refund claim of Mr./M/s.....for Rs.....against Bill of Entry/Post Parcel/Baggage Form/Shipping Bill No.....dated.....received in complete manner on.....admitted for examination vide Customs Refund Registration No.....dated.....

for Assistant Commissioner of Customs

Date.....

PART C  
[See regulation 2(3)]  
CLAIM SCRUTINY  
FOR CUSTOM HOUSE USE

FILE No.....

Refund claim of Mr./M/s.....for Rs.....against Bill of Entry/Post Parcel/Baggage Form/Shipping Bill No.....Dated.....has been scrutinised and found deficient in the following manner for purpose of examination under Section 27 of the Customs Act, 1962. Importer/Customs House Agent/Applicant is requested to make good the deficiency and resubmit the claim at the earliest.

- 1.
- 2.

Proper Officer of Customs

Date.....

TO BE ISSUED TO THE APPLICANT

FILE No.....

Refund claim of Mr./M/s.....for Rs.....against Bill of Entry/Post Parcel/Baggage Form/Shipping Bill No.....dated.....has been scrutinised and found deficient in the following manner for purpose of examination under Section 27 of the Customs Act, 1962. Importer/Custom House Agent/Applicant is requested to make good the deficiency and resubmit the claim at the earliest.

1.

2.

..

Proper Officer of Customs

Date.....

*[M.F.(D.R.) Notification No. 34/95-Cus. (N.T.), dated 26-05-1995]*

**APPENDIX III****MODVAT CREDIT ON GOODS IMPORTED THROUGH POST PARCEL****PROFORMA 'A'**

Application for issue of certificate for payment of C.V.D. on goods imported by parcel post for availing Modvat credit.

1. Name and address of Importer.
2. Description of goods imported by parcel post.
3. Tariff heading & sub-heading of goods imported.
4. Post parcel No.
5. Name and address of Range Superintendent/Assistant Collector in whose jurisdiction the goods are to be used as inputs.
6. Names and addresses of factories where goods will be used as inputs.
7. Name of the final product in which the imported goods will be used.
8. Quantity of goods imported.
9. Remarks.

The particulars furnished above are true and correct.

Date : .....

Name of importer

Address : .....

Place : .....

**PROFORMA 'B'****CERTIFICATE**

F.P.O.

Collectorate

Certificate for purposes of claiming Modvat credit in case of import of goods through parcel post.

Post parcel No. .... containing goods of description ..... has been imported by ..... (Name of importer) from ..... (Name of country of origin).

The said parcel has been delivered to importer on ..... after collecting the additional duty of customs (C.V.D) as under:-

1. Description of goods imported.
2. Quantity
3. Tariff heading & sub-heading under Central Excise Tariff Act, 1985.
4. Rate of Additional duty of customs (C.V.D.) and Notification No. .... (if any).
5. Amount of duty paid.

Signature of Appraiser

F.P.O.

*[Board's Circular No. 16/89- CX.8 dated 01-06-1989 issued from file F. No. 267/141/88-CX.8]*

Passed  
Accountant  
Customs  
Below Rs. ....

Pay  
  
Treasury Officer  
.....Customs House,

**Note:**

1. This order should be presented to the Accounts Dept. .... Customs House,  
.....

With a stamped receipt discharged by the party to whom this order is payable before 3-00 P.M. on all working day. It may be endorsed to the bearer or transferred to credit of deposit account. Separate signature when the order endorsed for payment of bearer is indispensable.

2. Payee's signature should be verified by their respective bankers, if the signature of the person authorised to discharge such receipts is not already been registered in the Accounts.

3. This order is issued without prejudice to the limitation and provided by section 27 of the Customs Act, 1962.

@ @ @ @ @ @ @ @ @ @ @ @ @ @ @

## CHAPTER –FIVE

**IMPORTS AND EXPORTS THROUGH COURIER****1. PRELIMINARY**

Around 1986, the facility of clearance of goods brought through couriers was first introduced. The facility of courier service was initially restricted to clearance of documents. But Notification No. 33/86 dated 07.02.1986 permitted importers to import samples or prototypes (with certain conditions) through courier mode. Although the courier service appeared to be combination of cargo and postal service, with a view to facilitate expeditious clearance of documents and samples of urgent nature, the same were permitted to be cleared as baggage. Though the articles imported through courier were considered and cleared as courier baggage under Customs Tariff Heading 98.03, the articles did not belong to the courier. As such, the importer / consignee hesitated to pay duty at the rates prescribed for courier baggage which was higher than the effective rate of duty on normal passengers' baggage or cargo. This created resentment among the consignees, which led to disputes and detention of articles for long. Most of the consignees, who were 100% Export Oriented Units, Govt. of India Undertakings, Foreign Embassies, Charitable Institutions, etc., insisted on clearance without payment of duty under various schemes, an Exemption Notification could not be accepted as the same was considered as Courier Baggage under CTH 98.03.

1(i) The entire issue was examined in-depth by the Ministry from the point of view of withdrawing imports through courier from CTH 98.03 and assessing the same as regular cargo. Accordingly, for implementing the new system of assessment and clearance of goods imported by couriers, the Board framed the Courier Imports(Clearance) Regulations, 1995 vide Notification No. 35/95- Customs (NT) dated 26.5.1995 and explained & clarified issues relating to assessment and clearance of goods Imported by Courier mode vide Circular No.56/95–Cus. dated 30.5.1995. The most important feature of new regulations was that after the Finance Bill, 1995 received the assent of the President of India on 26.5.1995 and with the coming into force of the Finance Act, 1995, Chapter 98 of the Customs Tariff Act, 1975 stood amended in such a manner that vide NOTE 4 “goods imported through courier service” were excluded from the said Chapter. Accordingly, imports by courier shall **NOT** henceforth be classified as baggage under heading 98.03 of Tariff for the purpose of assessment to duty and clearance thereof. The practice of charging a uniform duty of 80% *ad valorem* on articles imported through couriers in terms of exemption notification No. 86/94-Cus dated 1.3.1994 was



**DISCONTINUED WITH IMMEDIATE EFFECT.** The said Notification No. 86/94 dated 1.3.1994 was accordingly rescinded.

Thereafter, imports by courier were subjected to “merit classification” as per the respective Customs Tariff Headings and at duty rates specified therein and not at a uniform rate as baggage. The salient features of the 1995 regulations were that the new scheme of assessment of imports by couriers applied only to imports by authorised couriers at the Customs airports of Bombay, Delhi, Calcutta and Madras. Initially the new scheme was applicable only to imports by couriers when carried by the courier’s representative on incoming scheduled passenger flights and was not applicable to imports either as cargo (including unaccompanied baggage) or by charter / freighter flights.

For the purpose of the scheme, the goods imported by courier have been divided into three categories namely (a) documents; (b) samples and free gifts; and (c) dutiable goods and forms of filing of Courier Bills of Entry were accordingly prescribed. The 1995 notification and circular issued by the Board provided a detailed procedure for clearance of goods imported through courier mode and assessment thereof. *For full text and procedures laid down for the first time, please refer to Notification No. 35/95- Customs (NT) dated 26.5.199 and Circular No.56/95– Customs dated 30.5.1995.*

## **2 (A). SALIENT FEATURES OF ISSUANCE OF NOTIFICATIONS ON THE COURIER IMPORTS AND EXPORTS (CLEARANCE) REGULATIONS AND GUIDELINES ISSUED VIDE BOARD’S CIRCULARS**

2A (1) With the growing volume of import / export of goods through Courier mode, it was felt necessary by the Government to include hitherto untouched aspects of the process of clearance as well the important issue of export of goods through Couriers. Keeping in view these requirements, the Government issued the new **Courier Imports and Exports (Clearance) Regulations, 1998**, vide Notification No. 87/98-Cus (N.T.) dated 9.11.1998 in F.No.450/120/97-Cus.IV and modified Circular No. 56/95–Customs dated 30.5.1995 to incorporate changes in guidelines on assessment and clearance of goods imported and exported through courier mode vide Board’s Circular No. 85/98-Customs dated 13.11.1998. With the changing situations, expanding volume of trade, EXIM policy changes and for various issues relating to trade and Customs field formations, this **principal notification** has been amended from time to time, the last being Notification No. 09/2007- Custom (N.T) dated 7.2.2007. Also, the Board’s Circular No. 85/98-Customs dated 13.11.1998 was further modified to the extent to include amendments in the principal notification and

emerging changes on issues concerning assessment and clearance of goods imported and exported through courier mode vide Circulars No. 63/99-Cus dated 24.9.1999 and 78/99-Cus dated 19.1.1999.

The salient features of these Regulations (as amended till Notification No. 09/2007- Custom (N.T) dated 7.2.2007) are as under:-

2A(2) **Application of these regulations (Regulation 2):** These Regulations apply for assessment and clearance of goods carried by the Authorised Couriers on incoming or outgoing flights or by any other mode of transport on behalf of a consignee or consignor for a commercial consideration and are applicable to the goods imported or export goods from the airports other than the customs airports at Mumbai, Delhi, Chennai, Calcutta, Bangalore, Hyderabad, Ahmedabad, Jaipur, Trivandrum, Cochin, Coimbatore and **land custom stations** other than at Gojadanga and Petrapole in West Bengal. The regulation applies to goods where the weight of he individual package does not exceed 70 kgs.

2A (3) **Important definitions under these regulations (Regulation 3):**

(a) " **Authorised Courier**" in relation to import or export goods means a person engaged in the international transportation of the goods on express door to door delivery basis and is registered in this behalf by a Commissioner of Customs; (b) "**documents**" include any message, information or data recorded on paper, cards or photographs and of no commercial value which is for the time being not liable to any customs duty or subject to any prohibition or restriction on their export out of or import into India; (c) "**samples**" means any bonafide commercial samples end prototypes of goods supplied free of charge of a value not exceeding fifty thousand rupees for exports or ten thousand rupees for imports which are for the time being not subject to any prohibition or restriction on their export out of or import into India and for which no transfer of foreign exchange is involved; (d) "**free gifts**" means any bona fide gifts of articles for personal use of a value not exceeding rupees twenty five thousand for a consignment in case of export goods and rupees ten thousand for each consignment in case of import goods which are not subject to any prohibition or restriction on their export out of or import into India and for which no transfer of foreign exchange is involved; "(da) "**Form**" means Form appended to these regulations"; (e) the words used and not defined in these regulations but defined in the Customs Act, 1962 (52 of 1962) shall have the meanings respectively assigned to them in that Act.

#### 2A (4) **Types of goods allowed for import and export (Regulation2):**

**Imports:** All goods, excluding certain categories are allowed to be imported through courier mode. The goods which are not allowed to be imported are those goods which require testing of samples thereof or reference to the relevant statutory authorities or experts before their clearance, namely:- (i) animals and parts thereof, plants and parts thereof; (ii) perishables; (iii) publications containing maps depicting incorrect boundaries of India; (iv) precious and semi-precious stones, gold or silver in any form; and (v) OMITTED (**Old (v)**- goods falling within Chapters 28,29 and 30 of the First Schedule to the Customs Tariff Act,1975 [51 of 1975] ) and goods which require specific conditions to be fulfilled under any other Ac for the time being in force or any rule or regulation made there under.

**Exports:** All goods except certain excluded categories are allowed for exports. The excluded categories are (i) the goods which are subject to levy of any duty on their exports; (ii) the goods proposed to be exported under export promotion schemes such as Drawback; DEPB, DEEC,EPCG or any other similar export promotion schemes;(iii) goods in respect of which the proper officer directs the filing of **shipping bill or bill of export** in prescribed form;(iv) goods where the value of the consignment is above rupees twenty five thousand and transaction in foreign exchange is involved. But this limit of rupees twenty five thousand as provided in this sub-clause shall not apply to such export consignments where the G.R. Waiver or specific permission has been obtained from the RBI.

#### 2A (5) **Import and Export of Gems and Jewellery [(Regulation 2 (3)):**

These regulations are also applicable to import of gems and jewellery including samples thereof by EOU's or units in EPZ's and export of cut and polished diamond, gems and jewellery under any scheme of export and import policy 1st April 1997-31st March 2002 published by the government of India under Ministry of Commerce notification No. 1/1997-2002, dated the 31st March, 1997 as amended from time to time from EOU's, units in EPZ or units in the Domestic Tariff Area if the value of each export consignment under such export does not exceed rupees twenty lacs.

#### 2A (6) **Classification of goods, packaging requirements and procedural formalities for clearance of goods on import (Regulations 4,5):**

(A) Courier clearance is on fast track basis with simplified customs formalities. For this purpose the imported goods are classified into three categories, namely (a) documents; (b) samples and free gifts and (c) dutiable or commercial goods, which have been so defined (as state above) in these regulations. Since the

prescribed scheme of assessment and clearance of goods is distinct for these categories of goods, the Regulations mandatorily requires three categories of goods to be packed in distinctively identifiable courier bags bearing appropriate labels. Documents and samples or prototypes are exempted from customs duty by virtue of Exemption Notification Nos. 154/94-Cus dated 13.7.1994 (as amended from time to time). Bonafide commercial samples and prototypes not exceeding a value of ten thousand rupees on import are allowed duty free. Similarly, bonafide free gifts of articles for personal use not exceeding a value of ten thousand rupees on import are allowed duty free by virtue of Exemption Notification no. 171/93 dated 16.9.1993 (as amended from time to time).

A simplified Form Courier Bill of Entry-III (CBE-III) for documents and Form Courier Bill of Entry-IV (CBE-IV) for samples and free gifts have been specified for their clearance. For clearance of dutiable and commercial goods on import, Form Courier Bill of Entry-V (CBE-V) has been specified. One single Courier Bill of Entry of these three types is sufficient for clearance of any number of such goods imported by any Authorised Courier on a particular flight. These goods are assessed to duty on merits like any other imported goods and exemption where applicable and claimed is allowed. A detailed procedure, beginning from IGM noting to giving 'out of charge' for clearance of import goods covered under these three CBE's has been enumerated and discussed in preceding paras.

For certain category of goods, the regulations stipulate filing of regular Bill of Entry as prescribed in Bill of Entry (Forms) Regulations, 1976 and the simplified courier bills of entry shall not be applicable to such imports. Such cases of imports are (a) goods imported under duty exemption scheme applicable to EOU's and units in EPZ's; (b) goods imported under DEPB, DEEC and EPCG schemes; (c) goods imported against any other license issued under the Foreign Trade (Development and Regulation) Act, 1992; (d) goods imported by or on behalf of a person who is related to the consignor within the meaning of the Customs Valuation (Determination of price of Imported Goods) Rules, 1988 and (e) goods in respect of which the proper officer directs filing of a bill of entry, in such form.

#### **2A (7).Procedural formalities for clearance of goods on export (Reg. 6):**

(B) In case of export goods also, different Form Courier Shipping Bills have been specified. While Courier Shipping Bill-I (CSB-I) is purely for documents, Courier Shipping Bill-II (CSB-II) is for other goods namely- bonafide commercial samples, prototypes not exceeding fifty thousand rupees and bonafide gifts of articles of personal use not exceeding twenty five thousand rupees for a consignment. These Courier Shipping Bills are required to be filed by the Authorised Courier with the proper officer of Customs at the airport or

Land Customs Station before the departure of the flight or other mode of transport. A detailed procedure, beginning from EGM noting to giving 'out of charge' for clearance of export goods covered under these three CSB's has been enumerated and discussed in preceding paras.

In case of exports too, filing of simplified Courier Shipping Bills is not allowed in certain cases but a regular Shipping Bill prescribed in the Shipping Bill and Bill of Export is required to be filed. Such regular shipping bills are processed in Air Cargo Complex or EOU or EPZ or FTZ or STP or EHTP. After the permission of Customs and subject to conditions and limitation as may be imposed, such goods are handed over to the courier for onward dispatch. The above procedure applies to (a) goods originating from 100% EOU's, or unit in FTZ or STP or EHTP; (b) goods proposed to be exported under Export Promotion Schemes such as Drawback, DEEP, DEEC and EPCG; (c) goods which require a license to be issued under the Foreign Trade (Development and Regulation) Act, 1992; (e) goods in respect of which the proper officer directs filing of a shipping bill or bill of export, in such form.

#### **2A (8) Application and Registration of Authorised Courier (Reg. 7 to 12)**

A person desirous of operating as an authorized courier has to apply in Form A (appended to these regulations) for registration to the Commissioner of Customs having jurisdiction over the area from where the goods are to be imported or exported. Such person is required to produce proof of his financial viability by producing a certificate from a scheduled bank or such other proof evidencing possession of assets of not less than five la rupees. Further, the applicant will have to execute a bond with a security of two lac rupees in case of registration at major international airports at Mumbai, Kolkatta, Delhi and Chennai and one lac rupees in case at other airports and land customs station, in cash or bank guarantee or National Saving Certificates. The condition of the bond is that the applicant shall agree to pay the duty, if any, not levied or short levied, with interest if applicable on any goods taken clearance by the authorized courier if in the opinion of Assistant/Deputy Commissioner of Customs the same cannot be recovered from he importer or exporter.

#### **2A (9) Obligation of the Authorised Courier (Regulation 13) :**

A number of obligations have been cast on the authorized courier under these regulations. These are – obtaining authorization from the consignees for clearance of import and export goods, advising the clients to comply with the provisions of Customs Act, 1962 and Rules and Regulations framed there under and in case of non-compliance bring it to the notice of Assistant/Deputy Commissioner of Customs, exercising due diligence in furnishing correct and complete information to Customs in relation to clearance of import an export

goods, not with holding any information communicated to him by the Customs relating to assessment and clearance of goods from the client, not with holding of any information relating to assessment and clearance of goods from the assessing officer and not in any way attempt to influence the conduct of any officer of the Customs in any manner by the use threat, false accusation, duress or offer of any inducement etc. Further the authorized courier is required to maintain records and accounts prescribed by the department.

#### **2A (10) Deregistration (Regulation 14):**

Revocation of the registration of the authorized courier and forfeiture of security thereof, can be ordered by the Commissioner of Customs on any of these grounds- (a) failure to comply with the condition of bond so executed in terms of regulation 11, (b) failure of the authorized courier to comply with any of the provisions of these regulations, (c) misconduct on the part of the authorized courier within the jurisdiction or anywhere else. However, such revocation shall be done by following principals of natural justice i.e. issuing a notice to him informing of the grounds of proposed revocation, giving an opportunity to make a written representation and a chance to be heard in person. Suspension of the registration, pending an inquiry, can also be resorted by the Commissioner of Customs in cases where an inquiry needs to be conducted to establish prima facie grounds against the authorized courier. The authorized courier, if aggrieved by the order passed by Commissioner of Customs, can represent to the Chief Commissioner of Customs within sixty days of the communication of the impugned order.

#### **2A (11) Disposal of uncleared goods:**

Sub-regulation (5) of regulation 5 prescribe that in case of imported goods, the uncleared goods can be disposed of after giving a notice to the authorized courier after the expiry of thirty days of the arrival of the said goods. The charges payable for its storage and holding are to be borne/paid by the authorized courier. In case of export goods, a similar is procedure in sub-regulation (5) of regulation 6. Any export goods brought in Customs area for export purpose and they have not been exported within seven days of its arrival or within such extended period as permitted by the proper officer in case of delay for reasons beyond the control of concerned courier, can be disposed of after giving a notice to the concerned courier. The charges payable for its storage and holding are to be borne/paid by the authorized courier.

2A(12) The goods which are not covered under courier regulation and if they are brought by the same courier, then such goods can be assessed and cleared as

normal aircargo by filing a regular Bill of Entry in the form prescribed under Bill of Entry (Forms) Regulations, 1976. As the clearance of goods imported under courier regulations is allowed on selective scrutiny of documents and goods and examination is done on random selection basis, any mis- declaration in description, quantity or valuation when noticed may be dealt with severely and in suitable cases prosecution in addition to fine and penalty may be considered. (Reference para No. 4 and 5 of Board's Circular 85/98-Cus dated 13.11.1998).

*For full text and procedures laid down in the Courier Imports and Exports (Clearance) Regulations, 1998, please refer to the **principal notification No. 87/98-Customs dated 9.11.1998** and its subsequent amendments. Also, please refer to the Board's Circular No. 85/98-Customs dated 13.11.1998 which was further modified vide Circulars No. 63/99-Cus dated 24.9.1999 and 78/99-Cus dated 19.1.1999 for detailed procedures on assessment and clearance of goods imported and exported through courier mode.*

3. Apart from these Non-Tariff Notifications, the Government has issued the following two Tariff notifications to extend exemption of customs duties (i.e. whole of duty of customs and whole of additional duty) on 'gifts' and 'samples' imported by a courier as defined in the Courier Imports and Exports (Clearance) Regulations, 1998 (as amended from time to time).

3.1. **Gifts-imported by post or air freight-** In terms of Notification No. 171/93 dated 16.9.1993 (as amended from time to time), bona fide gifts when imported by a courier as defined in the Courier Imports (Clearance) Regulations, 1995 as are exempted from any prohibition in respect of the import thereof, are exempted from the whole of the duty of customs leviable thereon and from whole of the additional duty leviable thereon provided that the value of such bona fide gifts imported does not exceed rupees ten thousand. For the purpose of this notification, postal charges or the air-freight shall not be taken into account for determining the value limit of rupees ten thousand”

**(For full text please refer Notification No. 171/93 dated 16.9.1993- (as amended from time to time)**

- 3.2 **Exemption to samples, price lists, commercial samples or prototypes imported as baggage or by post, air or courier service and prototypes of**

**engineering goods imported as samples for executing or securing export orders-**

In terms of Notification No. 154/94-Cus dated 13.7.1994, bonafide commercial samples and prototypes, when imported by courier service are exempted from the whole of the duty of customs leviable thereon which is specified in the said Schedule under the said First Schedule and from the whole of the additional duty leviable thereon under section 3 of the second mentioned Act subject to the conditions, that the value of the said samples or prototypes does not exceed rupees ten thousand; and the said goods have been supplied free of charge.

*Explanation,-* For the purpose of condition(ii), postal charges or the air-freight shall not be taken into account for determining the value limit of rupees ten thousand”

**(For full text please refer Notification No. 154/94-Cus dated 13.7.1994- (as amended from time to time)**

By virtue of these two notifications “Gifts” and “samples” not exceeding value of ‘ten thousand rupees’ for imports as defined in these Regulations are assessable free of duty under Form IV Courier Bill of Entry (CBE-IV), appended to these Regulations

**4. Other important issues related to assessment and clearance of goods imported and exported through courier mode decided by Circular’s issued by Board**

**4.1 Maintenance of records and accounts of samples**

(i) All the Customs formations responsible for courier clearance will maintain a record of import of *bona fide* samples imported through courier mode in order to have a proper check on import of such samples.

(ii) The Commissioners will take decision on an application for registration as an authorized courier within 30 days of receipt of such application along with all the relevant documents.

(iii) All the Commissionerates should prescribe records and accounts to be maintained by registered authorized courier and they should ensure that these records/accounts are checked by the Customs at regular intervals.



**(Board's Circular No. 78/99-Cus dated 19.11.99 ( F.No.450/120/97-Cus IV )**

**4.2 Manual examination norms for import and export of Courier goods**

**The Board has prescribed the following manual examination norms for import and export of Courier consignments, till such time the automated project system for clearance of courier consignment is system is installed :**

- (a)** 100% screening of import/ export consignments (documents and all types of cargo) required to be done through X-ray or other NII techniques. Wherever possible the facility of X-ray machines available with Customs could be used; otherwise the airlines or AAI's screening facility may be resorted to for such screening. Further wherever feasible such screening by multi-agencies could be combined to reduce the time taken and avoid duplicity.
- (b)** Physical examination of export documents (covered by customs declarations CBE-I and CSB-I), gifts, samples and export goods (covered by customs declarations CBE-II, CSB-II,) limited upto a maximum of 10%of the total courier consignments or specific intelligence. The consignments so selected to be examined 100%.
- (c)** Physical examination of import documents (covered under customs declarations CBE-III, CBE-VIII), gifts, samples (covered under customs declarations CBE-IV, CBE-IX) and dutiable goods (covered under customs declarations CBE-V, CBE-X) limited upto a maximum of 10% of the total courier consignments. The consignments so selected to be examined 100%.
- (d)** Selection of consignments for (b) & (c) above would be based on the various parameters such as nature of goods, value, weight, status of importer etc.
- (e)** However the Commissioner of Customs in respective port can exercise the discretion of random examination of goods, on specific parameter such as country of import/export, nature of goods as presently provided in the present EDI System.

**3. Notwithstanding anything contained above, any consignment can be examined by the Customs (even up to 100% examination), if there is any specific intelligence or there is doubt during X-ray in respect of the said consignment.**

**Board's Circular No. 23/2006-Cus dated 25.8.2006 ( F.No.450/96/2006-Cus IV )**

4.3 The has Board allowed movement of domestic courier bags on domestic segment of international flights of all airlines subject to following conditions:-

- (i) The courier company must be registered with Customs
- (ii) The packages/bags of domestic courier should be clearly and identifiably differentiated from the International courier bags/packets by printing in bold "DOMESTIC COURIER".
- (iii) The domestic courier bags should be kept in separate pallets and should be stored in the separately marked domestic bins/containers on the aircraft.
- (iv) At the place of embarkation the domestic courier company will submit "goods declaration", indicating the number of bags, number of packages in bags, content of packages, to the on board courier or person-in-charge of the aircraft with a copy to the Escort Officer of Customs.
- (v) At the place of disembarkation/arrival, the cargo manifest will be filed by person-in-charge of the aircraft or on board courier, as the case may be, with proper officer of Customs. In case, on board courier is not accompanying the courier consignment, the responsibility to file the cargo manifest with the proper officer of Customs will vest with he person in charge of the aircraft.
- (vi) The copy of the declaration submitted to escort officer of Customs will be handed over by the Escort Officer to the Customs Officer at the disembarking airport, for carrying out the checks and verifications, if so required.
- (vii) If the courier consignment is accompanied by "on board courier", they will not be allowed to carry any courier bags on board the aircraft as hand baggage.

**(Board's Circular No. 87/2003-Cus dated 06.10.2003 F.No.450/59/2003-Cus IV )**

4.4 On the following issues, Express Industry Council of India (EICI) brought to the notice of the Board difficulties faced by them in clearance of import and export courier consignments.

- (i) Availment of CENVAT Credit on Courier Bill of Entry;
- (ii) Filing of regular Bill of Entry by Express Companies; and
- (iii) Single registration with Customs so as to enable Authorised Courier to operate at all Customs locations.

As per this circular, the Board after careful examination gave the following clarifications/directions vis-à-vis these issues.

(i) that whenever consignee intends to take CENVAT credit on imported goods, normal Bill of Entry may be filed. This Bill of Entry may be used by the importer for taking CENVAT credit on any imported goods, as per clause (c) of rule (9) of CENVAT Credit Rules, 2004.

(ii) that Authorised Courier may be permitted to file regular Bill of Entry or Shipping Bill.

(iii) that field formations may permit the operation of Authorised Courier based on the intimation as per Regulation 12 of the Courier Imports and Exports (Clearance) Regulations, 1998 and subject to execution of specified Bond and Security. No separate registration is required.

**(For full reasoning and clarifications please refer Board's circular No.31/2007- Cus dated 29.8.2007 ( F.No.450/59/2003-Cus IV )**

## **5. PROCEDURE FOR CLEARANCE OF COURIER PARCELS & OTHER MATTERS PERTAINING TO IMPORTS / EXPORTS THROUGH COURIER MODE**

### **5.1 Registration of Courier Company:-**

The registration of courier Company, as laid down in Regulation 10 to 12, would take place through an application made by a person intending to operate as an authorised courier. Such application shall be made in Form **A** to the Commissioner of Customs having jurisdiction over the area from where the goods are to be imported and exported, for registration in this behalf. Such application should also invariably be accompanied with a certificate issued by a scheduled bank or such other proof acceptable to the Commissioner evidencing possession of assets of a value not less than five lakhs rupees. After scrutiny of such application and enquiry which may be conducted for verification of the particulars set out in the application and also such other enquires as the Commissioner may deem necessary for such registration including enquiries about identity, bona fides and reputation of the applicant. On being satisfied that the applicant fulfills the requirements of registration, the said applicant may be so registered as an authorised courier. The registration shall be valid for a period of ten years and may be renewed from time to time in accordance with the procedure provided in sub-regulation (3) of Regulation 10. The applicant is also required to enter into a bond with a security of two lakh rupees in case of major international airports of Mumbai, Delhi, Kolkatta and Chennai and one lakh rupees in case of other airports and land customs stations, in cash or in the form of postal security or bank guarantee or national savings certificates pledged in the name of Commissioner of Customs complying with the provisions of Customs Act 1962 and the Rules and Regulations made there under. The condition of the bond would also provide for recovery of duty, if any, not levied or short levied, with interest if applicable on any goods cleared by the authorised

courier which in the opinion of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, are not recoverable from the importer or the exporter.

## **IMPORTS**

### **5.2 IGM and noting:-**

The On Board Courier (OBC) or the person in charge of the Aircraft or the authorized agent of Courier Service carrying goods by any other mode shall file copies of Courier Bill of Entry I (CBE-I) in the prescribed format to the designated officer in the arrival hall of the Airport. He will in turn assign IGM No, already assigned to the particular flight and shall detain second and third copy of CBE-I. The original, fourth and fifth copy shall be returned to the OBC or the person in charge of the Aircraft or the representative of the airline (if the CBE I is filed by the person in charge of the aircraft). No person shall, except with the permission of the proper officer shall open any packages of imported goods brought by an on-board courier or the person in-charge of aircraft or the authorized agent of the courier service carrying goods by any other mode of transport. (In case of clearance at land customs station Courier Bill of Entry VI (CBE-VI) is prescribed, which is corresponding to CBE-I for clearance at airports)

5.3 While returning the copies the Officer shall put his dated signature along with the customs stamp and also shall indicate the date, time of arrival. After handing over the copies of the CBE-I, he shall attach third copy of CBE-I retained by him to the flight manifest filed by the Airlines and forward second copy to the Courier Baggage Cell (CBC) officer or Courier Cell (CC) officer.

5.4 The OBC will submit the original CBE-I duly attested by the officer to the Noter posted in Courier Cell who will be on duty round the clock. On receipt of this CBE-I, the noter shall affix the stamp "Received CBE-I" on the original as well as the duplicate copy of CBE-I and put his dated signature with time and open a file indicating the IGM number and file number. Noter shall also put his dated signature on the fifth copy of CBE-I and return the same to the OBC or Airline representative.

5.5 The individual courier company will file CBE-II with the noter in duplicate and on receipt of the same, the Noter shall affix the stamp "Received CBE-II" on both the

copies and put his dated signature with time and return the duplicate copy of the representative of the authorised courier. The original CBE-II shall be kept in the respective IGM file by the Noter. (In case of clearance at land customs station Courier Bill of Entry VII (CBE-VII) is prescribed, which is corresponding to CBE-II for clearance at airport.)

5.6 On arrival of the courier parcels, the representative of the authorised courier shall file CBE-III with the Noter in quadruplicate. On receipt, the noter shall assign separate Thoka numbers for these forms and enter all the particulars in the noting registers and hand over all the copies back to the representative of the authorised courier company. While assigning the Thoka numbers, the Noter shall tally shipment details i.e., the number of shipments and number of packages with the CBE-II. Any discrepancy noticed shall be brought to the notice of Superintendent, (Administration) CBC immediately or on the next working day. (In case of noting/clearance at land customs station Courier Bill of Entry VIII (CBE-VIII) is prescribed, which is corresponding to CBE-III for clearance at airport.)

#### 5.7 **Clearance of CBE-III:-**

After noting of CBE-III, bags containing goods covered under CBE-III, i.e., documents shall be screened and examined by the CBC/CC officer under the supervision of CBC /Courier Cell (CC) Superintendent in terms of Board's Circular No. 23/2006 dated 25.8.2006 (regarding examination norms for import and export of goods through courier mode). The CBC/CC officer shall carry out 100% screening of bags containing goods i.e. documents covered under CBE-III. He shall physically examine import documents covered under CBE-III maximum up to 10% of the total courier consignments. The consignments so selected will be examined 100%. Selection for physical examination of consignments mentioned above would be based on parameters such as nature of goods, value, weight, status of importer etc. As provided for in the said circular of the Board, notwithstanding anything contained therein, if there is a specific intelligence or there is doubt during X-ray in respect of the said consignment, any consignment can be examined by the Customs (even upto 100% examination). The officer should check whether the Authorised Courier has specified the nature of document declared i.e. whether letters, brochures, catalogues, manuals, etc. so that while examining it can be ensured that the declared item of import (documents) are indeed the same and are entitled for duty free clearance and fall under the category of CBE-III of the regulations. If satisfied regarding the contents, the same shall be allowed clearance after assessment, audit and Import Duty Free (IDF) number assigned by the Noter. The "out of charge" for these bags shall be given by the CBC/CC Superintendent after the IDF number has been assigned. If any goods other than the documents are found in these bags, the

same shall be transferred to be cleared under CBE-IV or CBE-V as the case may be. However, if prohibited goods or such other sensitive goods are found, then the same shall be detained by the CBC/CC officer for further necessary action by the appropriate authority for which normal detention receipt shall be issued by the CBC/CC Superintendent/Appraiser. However, no parcels shall be detained without the approval of the Assistant Commissioner/ Deputy Commissioner of Customs on duty. The Assistant Commissioner/Deputy Commissioner of Customs on duty shall also periodically supervise screening and clearance of the CBE-III. The officer posted at the gate in baggage hall or officer posted in the Courier Cell which are operating round the clock, shall permit removal of the bags after verifying the "out of charge" endorsement given on the CBE-III. (for noting/clearance at land customs station Courier Bill of Entry-VIII (CBE-VIII) is prescribed which is corresponding to CBE-III for clearance at airports)

#### **5.8 Transferring of packages from Arrival to Courier Baggage Hall/Courier Terminal:-**

After clearance of CBE-III, the remaining bags shall be transferred from the arrival hall to the courier baggage clearance/courier clearance hall under the supervision of CBC/CC officer. The CBC/CC officer shall ensure that all the bags landed are transferred to the courier baggage/ courier clearance hall, as the case may be and certify to this effect on the third copy of the CBE-I received from designated officer. This certified copy of CBE-I shall be handed over to the Noter which will be placed in the IGM file by the Noter.

#### **5.9 Sorting:**

The authorised courier companies are expected to bring the courier bags duly sorted out as per the CBE-III, CBE-IV and CBE-V. However, if the courier company desires sorting of CBE-IV and CBE-V bags, the same can be permitted by the CBC/Courier Cell officer under the supervision of CBC/CC Superintendent. It is clarified that during the sorting the authorised courier company is permitted only to transfer the parcels, from CBE-IV to CBE-V of vice-versa. The officer supervising the sorting shall ensure that none of the parcels are opened by the representative of the courier company during this sorting operation or by any other person. After sorting, the authorised courier company shall file CBE-IV or CBE-V in the prescribed format to the Noter indicating the number of shipments and packages duly certified by the CBC/CC officer. Any short landing or excess landing found during sorting shall be reported by the CBC/CC officer. Each courier company will maintain a register showing the number of bags, number of consignments and number of parcels imported flight wise. After sorting, they will furnish the particulars to the CBC/CC officer supervising the sorting. The CBC officer shall check the particulars with CBE-

IV and CBE-V including short landing / excess landing report and after tallying the particulars shall counter sign the register. The said register will be in the custody of the courier company and will be produced to customs authorities whenever called for. The short landing / excess landing report shall be made in duplicate and the original copy shall be given to the Noter. The duplicate copy shall be handed over to the authorised courier company and the original shall be retained in the IGM file after noting. The sorted out bags containing goods under CBE-IV shall be retained at the Courier Hall. The bags containing goods covered under CBE-V shall be transferred under Preventive escort to the courier terminal.

5.10 After the receipt of CBE-IV, CBE-V and the CBC/CC officer's report, the Noter shall allot the **Thoka** number to each document after reconciling the same with CBE-II. If any discrepancy is found while reconciling, the same shall be reported to the Superintendent, (Administration) of the Courier Cell immediately or on the next working day.

#### 5.11 **Clearance of CBE-IV:-**

After noting of CBE-IV, the representative of authorised Courier Company will present the CBE-IV to the proper officer (Superintendent or Appraiser as the case may be) attached to courier cell on the same day or the immediate next working day. The Superintendent/Appraiser shall scrutinise the CBE-IV thoroughly, especially in relation to the description of the goods vis-à-vis its weight, value, proper exemption of duty if sought and status of the importer, etc. After scrutiny, he shall follow examination norms for import and export of goods through courier modes, issued by the Board vide Circular No. 23/2006-Cus dated 25.8.2006. He shall carry out 100% screening of import consignments covered under CBE-IV required to be done through X-ray or other NII techniques. He shall physically examine import consignments maximum upto 10% of the total courier consignments. The consignments so selected shall be examined 100%. Selection of consignments for import consignments should be made on the basis of parameters such as nature of goods value weight, status of the importer etc. However, as provided in the said circular of the Board, if there is any specific intelligence or a doubt during X-ray any consignment can be examined (even upto 100% examination) The authorised representative of the courier will make-available the selected consignments for examination. After examination, if found as declared, the CBE-IV shall be assessed as per rules. Assessment and examination of goods covered under CBE-IV should be carried out by the proper officer in such a vigilant manner that any attempt made to clear high value and sophisticated engineering/mechanical/electronic/audio-video equipment and chemicals falling under Chapter 28, 29 & 30 in the guise of goods declared as "samples and prototypes" and "gifts" of value limit of ten thousand

rupees, is prevented. Due care also needs to be taken by the proper officer while assessing and examining goods declared as DVD's/CD's/Tapes, either under the category of "samples" or "gifts", because the possibility of these goods actually being software DVD's/CD's or DVD master screeners/stampers or beta tapes containing foreign films/tele serials cannot be ruled out. Import and clearance of DVD master screeners/stampers or beta tapes containing films is subject to a No Objection Certificate from Central Film Censor Board. Detection of such cases especially "software" is important because its proper valuation would lead in enhanced revenue collections. Similarly, due care needs to be taken while assessing/examining goods falling under Chapters 28, 29 and 38 of the First Schedule to Customs Tariff Act, 1975 (51 of 1975) which are declared as "samples" for the fact that, wherever applicable under these Chapters, such goods require testing of samples or reference to the relevant statutory authorities or experts before its clearance. In case of any discrepancy found at the time of examination or assessment, the parcel may be detained after taking permission from the Assistant Commissioner/Deputy Commissioner of Customs, Courier Cell. The parcels so detained shall be transferred to the courier terminal under Preventive escort on the strength of transfer challan. After depositing the detained packages, the registration number given by the custodian at the Courier Terminal shall be mentioned against the particular serial number of the CBE-IV. The duplicate copy of the transfer challan showing the receipt of the Courier Terminal shall be handed over to the Noter who in turn shall keep it in the IGM file. The CBE-IV assessed by the officer shall then be audited by the officer assigned for audit. After auditing, all the CBE-IV shall be put up to Assistant Commissioner/Deputy Commissioner of Customs, Courier Cell for random check. The Assistant Commissioner, Courier Cell during the random check may call for or inspect any parcel, if deemed necessary. Assistant Commissioner/Deputy Commissioner, Courier Cell will counter sign the CBE-IV in respect of parcels inspected by him. Thereafter DDR's shall be prepared in case of goods assessed to duty and after payment of duty by the Courier Company, the CBE-IV will be submitted by the authorised representative of the Courier Company to the noter. The noter shall retain the original of the CBE-IV and keep the same in the IGM file after giving IDF number for goods assessed duty free. He shall give an endorsement on the duplicate copy of the effect "Original Bill of Entry retained" and put his dated signature. The authorised representative of the courier company will then present the duplicate copy to the concerned officer for issuing "out of charge" order. The officer shall then check the details of duty payment and after being satisfied that all the above said formalities have been completed shall give the endorsement "out of charge" and allow the physical removal of the goods by the authorised courier representative under his supervision. The duplicate copy shall be taken over by the concerned officer and handed over to the Noter. On receipt of the same, the Noter shall place it in the IGM file after connecting with the original already retained. (For noting/clearance at land customs station Courier Bill of Entry-IX (CBE-IX) is prescribed which is corresponding to CBE-IV for noting/clearance at airports)



### 5.12 **Clearance of CBE-V:-**

All the clearance of parcels of CBE V shall be effected only from the Courier Terminal located at approved place. However, in exceptional cases, like in the case of Life Saving Drugs, which call for immediate delivery, the goods can be cleared without depositing the same at Courier Terminal after taking permission from Assistant Commissioner, Courier Cell. If clearance of such medicines is required during night shift or on a holiday, the same can be done by the CBC officer and Superintendent with the permission of Assistant Commissioner/Deputy Commissioner of Customs, in charge of the Airport Batch. Such clearances shall be affected on part Bill of Entry. The procedure for clearance of parcels of CBE-V shall be the same as CBE-IV. The same norms of screening and examination, as envisaged in Board's Circular No. 23/2006 dated 25.8.2006, shall also apply in case of clearing dutiable or commercial goods covered under CBE-V. All the CBE-V's shall be countersigned by the Assistant Commissioner or Deputy Commissioner of Customs, Courier Cell. The goods covered by CBE-V predominantly being dutiable goods are assessed to duty on merits like any imported goods, and utmost care shall be exercised for its assessment etc laying emphasis on tariff classification, valuation and exemption of duty, wherever availed. The Assistant Commissioner/Deputy Commissioner of Customs shall also closely monitor these assessments. In case of goods imported by Government bodies, Public Sector Undertaking Services, the parcels need not be examined as a routine if all the documents are in order. In case any goods are to be detained for want of information such as value, catalogue, write-up, etc. or for clearances under regular Bill of Entry in terms of para 3 (i) to (v) of the Regulation, the goods shall be detained with the concurrence of Assistant Commissioner/Deputy Commissioner, Courier Cell. The packets so detained shall be handed over to the custodian under a detention memo. The procedure for audit, payment of duty, retaining original, duplicate, out of charge shall be the same as of CBE-IV. However, since the clearance is affected at the Courier Terminal the duplicate will be taken over by the delivery officer at the Courier Terminal delivery gate who will in turn forward the same to the Noter on the same day. (For noting/clearance at land customs station Courier Bill of Entry-X (CBE-X) is prescribed which is corresponding to CBE-IV for noting/clearance at airports)

*5.13 (In addition to the above procedures for clearance of Form CBE-IV and CBE-V, as stated above, the Mumbai Airport and Delhi Airport Customs Commissionerates handling Courier clearance, have allowed filing Advance/Prior Bill of Entry and pre-clearance (under Public Notice No. 9/2001 and 1/2001 dated 01.01.2001 respectively) on the same lines as emanating from the Board Circular No. 22/97 dated 4.7.1997. As per the said Board's Circular an importer can file a Bill of Entry 30 days in advance or receipt of IGM to facilitate faster clearance of import*

cargo. Accordingly, this facility of filing prior Bills of Entry has been extended to courier companies to facilitate faster clearance of import cargo.

*The following procedure shall be adopted for filling prior Bills of Entry*

1. *Prior Bills of Entry shall be allowed only in case of Bills of Entry filed in Form IV (for sample and gifts) and in Form V (for dutiable goods).*
2. *The Bills of Entry shall be filed with the Appraiser/Superintendent and shall be noted only when accompanied by photocopies of Airway Bill and invoice. The prior Bills of Entry shall be noted serially as in case of regular Bills of Entry.*
3. *After noting the Bills of Entry shall be presented to the Appraising officer for scrutiny with respect of classification, valuation, ITC restriction and rate of exchange. The Appraising Officer/Superintendent shall mark the consignment for First Check examination or assess the same for second check examination. The Appraising Officer/Superintendent shall mark the packages to be examined which should not be less than 10 % of the total consignment in a particular CBE. However, all Consignments shall be X-rayed.*
4. *The First Check cases shall be detained at night and cleared on the following day after regular scrutiny*
5. *On arrival of the flight the person incharge of the Aircraft or on Board Courier shall file 5 copies of Courier Bill of Entry in Form I and present to the Duty Officer/Courier Cell officer who shall assign IGM number already assigned to a particular flight. The Duty Officer/Courier Cell officer shall detain the 2<sup>nd</sup> and 3<sup>rd</sup> copy of CBE I and return to the original fourth and fifth copy of CBE I to the on Board Courier or the person incharge of the Aircraft. The On Board Courier or the representatives of the Airlines shall submit the original copy of the CBE I to the noting clerk in the courier cell.*
6. *the representative of the authorized courier shall file a statement in courier Bill of Entry in Form II as prescribed in the regulations with the noting clerk in duplicate.*
7. *The representative of the individual courier shall transfer their respective bags containing parcel to be cleared under CBE IV and CBE V from the arrival hall to the courier examination area in the arrival hall under preventive escort.*
8. *the Bills of Entry which are assessed and marked for First check examination shall be detained and deposited in the warehouse under a detention memo duly signed by a Superintendent/Appraiser incharge of examination of courier goods.*
9. *the Bills of Entry which are assessed and marked for Second check examination shall be presented to the Superintendent/Appraiser incharge of examination. The Appraiser/Superintendent shall order for examination of 10 % of the consignment. The consignment shall be opened in the presence of the inspector and examined with respect to the examination order. The Examination report shall be written on the duplicate (second) copy of Bills of Entry and out of charge from Customs shall be given if otherwise the documents are in order. However if the Superintendent has any doubt from the value, classification, ITC angle or the description of the goods does not tally with the description made in the Bills of Entry, such goods shall be detained and presented to the appraising officer for assessment on merit and clearance as per the rules. The Superintendent shall also inspect the entire lot of consignment and in case of any discrepancy shall*

*open and examine the consignment which have not be marked for examination by the Appraiser.*

10. *Examination norms prescribed for screening and physical examination for courier clearance by the Board vide Circular No 23/2006-Cus dated 28.5.2006 shall also be applicable in this case.*  
(To be included only after approval)

#### 5.14 **Re-shipment:-**

Goods consigned to a person or firm in India shall be dealt on merit. The permission for re-shipment shall be given by the Assistant Commissioner /Deputy Commissioner or Additional Commissioner or Commissioner depending upon the value. After the order for reshipment is passed by the appropriate authority, the details of the parcel shall be entered in a separate reshipment register maintained at the courier cell and each reshipment order will be assigned a number. The packages ordered to be reshipped will be collected from Courier Terminal warehouse situated at the approved place by the courier company under escort of Customs Officer posted at the Courier Cell. The reshipment number assigned to the respective parcel shall be given to the custodian at the time of withdrawing the parcel for reshipment and closing the entries at the EICI register. Thereafter, the parcels shall be escorted by the Customs Officer, and the same will be deposited at the reshipment –Warehouse. The escorting officer shall obtain the endorsement of (reshipment) warehouse officer in the reshipment register and also note down the corresponding warehouse register number in the reshipment register. On the next day of depositing the package with warehouse officer, from courier cell will again obtain the reshipment details from warehouse officer and close entry in the reshipment register. Before taking the parcel from EICI warehouse, the escorting officer shall obtain confirmation in writing from the Courier Company that the parcel shall be exported within 24 hrs from the time of depositing of the package in reshipment warehouse. However, the delivery of the package by warehouse officer shall be done only after the registered courier completes the Courier Shipping Bill (CSB) procedure. The assessing officer of CSB II shall ensure safe handing over of the courier bag containing re-shipment parcel to the Airlines.

#### 5.15 **.Re-shipments of misrouted shipments:-**

The procedure for reshipment of misrouted shipments shall be as per para above. However the permission for reshipment shall be granted by Asst. Commissioner/Deputy Commissioner, Courier Cell if he is satisfied that the re-shipment is on account of mis-route only.

**5.16 Clearance of detained goods on part Bill of Entry:-**

Goods which have been detained for want of necessary information other than those covered under the category of the goods covered by para 3 of the Regulations shall be allowed to be cleared on part Bill of entry. In such cases, the authorised courier shall file part Bill of entry IV or V as the case may be with the Noter. On receipt of the part Bill of entry, the noter shall make an endorsement against the respective Serial No on the relevant original parent Bill of entry. In this regard the noter will affix a stamp "Part Bill of Entry filed on . . . . . " and assign the same Thoka number by hand and put his dated signature. When detained packages are to be examined, the assessing officer shall ask the custodian to forward the same by giving endorsement 'Please Forward' on the copy of the respective Bill of Entry. Thereafter the assessment & delivery shall be completed as per the usual procedure. The original & the duplicate also shall be retained by the Noter and kept in the respective IGM file.

**5.17 Procedure for dealing with goods not covered by Regulations:-**

As per instructions issued by Board vide Circular No. 85/98-Cus dated 13.11.98 (F.No. 150/120/97-Cus.IV) if the same courier brings goods which are not covered under the courier regulations then in such case a regular bill of entry may be filed in the form prescribed vide Bill of Entry (Forms) Regulations, 1976 and such goods may be assessed/examined and cleared as normal cargo. The said Circular of the Board also provides that as the clearance of goods under courier is allowed on selective scrutiny of documents and goods and that examination is done random selection basis, any mis-declaration noticed in description, quantity or valuation, then it may be dealt with severely and in suitable cases prosecution in addition to fine and penalty may be considered.

**5.18 Refund:-**

The claims of refunds arising out of assessments made at the Courier cell shall be attended by the Courier Cell. In order to ensure speedy disposal of refund claims an officer will be specially assigned for this task. As soon as the claim is received, the officer shall enter the particulars of the claim in the refund register and assign file number. In many cases it has been noticed that the refund claims are not as per the proforma in Form 'A' (as prescribed under Section 27 of Customs Act,1962). The officer upon receipt of the claim shall scrutinize to see whether the claim is in order and whether all the required documents are enclosed. If found in

order, the same shall be processed immediately and finalized within 15 days. If the documents furnished are insufficient a letter calling for the required documents shall be sent to the claimant within 1 week of the claim with specific instructions to furnish the documents within 7 days failing which the claim will be liable to be rejected. After the expiry of the time limit, the file shall be put up for rejecting the claim as unsubstantiated. Many cases of claims by individuals are noticed in Courier Cell wherein the claim is made by way of a simple request letter. In such cases the officer shall verify whether prima-facie the claim can be allowed or rejected. If the claim merits rejection then the person shall be intimated by way of a letter from the Assistant Commissioner/Deputy Commissioner of Customs giving the reasons thereof and in other cases, Proforma of Form 'A' shall be sent to the claimant for resubmission of the claim in the said Proforma. The refund claim, if admissible shall be sanctioned by Assistant Commissioner/Deputy Commissioner, Courier Cell and the file forwarded to Assistant Commissioner, Administration for further action. In case of rejection of the refund claim, an appealable order shall be issued to the claimant by the Assistant Commissioner/Deputy Commissioner of Customs, Courier Cell.

#### 5.19 **Adjudication:-**

In order to facilitate speedy clearance of courier parcels for violation of ITC Regulations of minor value, on request from courier company adjudications thereof can be done by the Assistant Commissioner/Deputy Commissioner (in their adjudication competence) on the Bill of entry itself. In such cases, the courier company, being authorised agent of the importer may give the following endorsement on the Courier Bill of Entry "As authorised agents we accept the value determined and also agree with the adjudication proposal in this form. In this regard we waive 'Show Cause Notice' and 'Personal Hearing' ". However it may be noted that these adjudications shall be restricted only to minor offences and shall not be extended to Regular Bills of Entry or to cases of major/serious violations, and adjudications above the level of Assistant Commissioner/Deputy Commissioner shall be done in accordance with law and procedure.

#### 5.20 **Transfer of packages from Courier baggage hall to Courier Terminal:-**

Each courier company shall present two copies of transfer challan along with 2 copies of list of packages (that is extra two copies of CBE-V) to the escorting officer supervising the escorting. The escorting officer shall check the number of packages with reference to the entries mentioned in the challan and Courier B/E file of respective-couriers. A register shall be maintained in Courier Cell where transfer challans shall be entered and running serial numbers will be assigned to each transfer challan. Packages shall be put in the bags (Courier wise) and loaded in the vehicle with door and lock facility. When all the bags are loaded in the vehicle, the

escort officers from Courier Cell posted for escorting the goods shall lock/seal the vehicle and escort the vehicle to the Courier Terminal. There, the escort officer shall present the challan showing the permission for transfer and hand over two copies of challan and details of packages (CBE V) to the custodian. All packages shall be unloaded in warehouse of Courier Terminal. After satisfying himself the custodian shall retain one copy of the challan and one copy of the details of packages (CBE V) and return the other copies of detailed list of packages (CBE V) and transfer challan to the escort officer after duly acknowledging the receipt of the packages mentioned therein. The escort officer shall return the acknowledged copy of challan to courier cell for record. The same procedure shall be followed in respect of packages detailed in CBE IV.

#### **5.21 De-registration:-**

Regulation 14 provides for actions against the Authorised Courier. The Commissioner of Customs may revoke the registration of the Authorised Courier and order forfeiture of security but not unless a notice has been issued to the Authorised Courier informing him about the grounds of proposed revocation and giving him a opportunity to make written submissions and grant of a personal hearing. Such a revocation may be proposed on the grounds of- (a) failure of the Authorised Courier to comply with any of the conditions of the bond executed by him under regulation 11 ;(b) failure of the Authorised Courier to comply with any of the provisions of these regulations;(c) misconduct on the part of Authorised Courier whether within the jurisdiction of the said Commissioner or anywhere else, which in the opinion of the Commissioner renders him unfit to transact any business in the Customs Station. In case the Commissioner of Customs considers that any of such grounds against an Authorised courier shall not be established prima facie without an inquiry in the matter, he may conduct the inquiry to determine the ground and in the meanwhile pending the completion of such inquiry, may suspend the registration of the Authorised Courier. If no ground is established against the Authorised Courier, the registration so suspended shall be restored.

Sub clause (2) of Regulation 14 provides for the Authorised Courier to make a representation to the Chief Commissioner of Customs, if aggrieved by the impugned order of revocation of registration passed by the Commissioner of Customs.

#### **5.22 Disposal of uncleared goods:-**

Regulation 5, sub-regulation (5) of these Regulations provides that any imported goods which are not taken clearance, shall be detained the Customs and shall be disposed off by Customs after issuing a notice to the Authorised Courier, after the expiry of thirty days of the arrival of the said goods. The disposal of

uncleared/unclaimed goods is covered under Section 48 of the Customs Act, 1962. Besides, the procedure for disposal of such goods has been laid in Board's Circulars No 50/97-Cus dated 17.10.1997; 5/2000-Cus dated 13.1.2000; 50/2005-Cus dated 1.12.2005 and 52/2005-Cus dated 9.12.2005 and 11/2006-Cus dated 16.2.2006. The responsibility for the disposal of uncleared/unclaimed goods pertaining to the Courier Cell shall exclusively be with the Custodian, who shall dispose of such goods in the manner prescribed in aforesaid Board's circulars.

**5.23 The maintenance of Detailed Duty Receipts ( DDR's ) shall be attended by courier cell:-**

The DDR's will be in the custody of Superintendent Administration, Courier Cell or officer specially assigned by him in this regard. On each working day DDR's will be distributed to the officers attending the assessments. At the end of the day the DDR books shall be returned to the Superintendent Admin or officer assigned with the duty collection statement in respect of each DDR. The Courier Cell shall also maintain a register showing all the particulars of collection of duty, redemption fine and penalty. The customs copy of DDR book (triplicate) shall be forwarded to Administration for audit and record.

***EXPORTS***

5.24 Hitherto exports of parcels carried by On Board Courier were having the status of baggage. As per the new regulation, the courier parcels can be exported through On Board Courier or directly through Airlines. Regulation 6 of the Courier Imports and Exports (Clearance) Regulations, 1998 (last amended vide Notification No.9/2007-Cus (N.T) dated 07.02.2007) stipulates filing of 2 types of shipping bills by the Authorised Courier i.e., Courier Shipping Bill-I (CSB-I) and Courier Shipping Bill – II (CSB-II). While CSB I is purely for documents, CSB II is for goods namely: (1) Bona fide commercial samples and Prototypes of goods supplied free of charge of a value not exceeding fifty thousand, and (2) Bonafide gifts of articles for personal use of a value not exceeding twenty five thousand for a consignment and which are for the time being not subject to any prohibition or restriction on their export from India and no transfer of foreign exchange is involved. Provided that this limit of rupees twenty five thousand shall not apply to such export consignments where the G.R. Waiver or specific permission has been obtained from the RBI.

All Authorized Couriers shall give the declaration that the consignments covered under CSB-I and CSB-II do not contain any Narcotic drugs and Psychotropic substances and the Supdt posted in the ECC shall ensure that this declaration is so given in the CSB-I and CSB-II by the authorised courier. No person shall, except with the permission of proper officer, open any package of export goods to be taken on

board a flight or across the international border by any other mode of transport. (In case of noting/clearance at land customs station Courier Bill of Export-I (CBEx-I) and Courier Bill of Export-II (CBEx-II) is prescribed, which is corresponding to CSB-I and CSB-II for noting /clearance at airports)

#### 5.25 **Registration of CSB-I and CSB-II:-**

(a) The Export Courier Cell shall maintain two separate registers for registering CSB I and CSB II respectively. On presentation of the Shipping Bill in triplicate, the officer posted in Export Courier Cell (ECC) shall enter the particulars in the registers and assign a running serial number on all three copies by a numbering machine. The number shall be changed on every first of January.

(b) The custodian or their handling agents shall provide various handling services such as (i) acceptance and weighing of Courier shipments/bags on clearance of the same by the Customs; (ii) Sorting of bags as per airline requirements and Palletization/Containerisation; (iii) certifying (ULD) Unit Load Device (a pallet or a container) weight; (iv) landside security shall be provided by the custodian and only the authorized pass holders shall be allowed to enter in the Customs area. Where as Airside security is provided for by Central Industrial Security Force (CISF); (v) the application forms containing outbound courier bags shall be submitted by the Authorised Courier companies to custodian or their handling agents; (vi) a gate pass shall be issued by custodian or their handling agents based on the application forms submitted by the Courier company which shall give permission. Gate pass will be checked at the main entry gate by the custodian's staff based on which courier company trucks will be allowed inside the Terminal area for offloading of courier bags, which will then be brought to Bag's sorting area. The airline tags/labels provided to Courier Company shall be attached to the bags by them. Thereafter, the Courier Company shall hand over CSB-I and CSB-II to proper officer (Superintendent) for assessment.

#### 5.26 **Clearance of CSB-I:-**

Goods covered by CSB-I i.e. documents shall be screened/examined in terms of examination norms (concerning imports and exports of goods through courier mode) issued by the Board vide Circular No 23/2006 dated 25.8.2006. All CSB-I consignments should be screened by the proper officer posted in the ECC through X-ray or other NII techniques. Where possible the facility available with the Customs should be used, otherwise the airlines or AAI's screening facility may be resorted to for such screening. Further, wherever feasible such screening by multiple agencies could be combined to reduce the time taken and avoid duplicity. The physical examination of export documents covered under CSB-I shall be limited upto a maximum of 10% of the total courier consignments or specific intelligence. The consignment so selected shall be examined 100% by the proper officer posted in the



ECC. Selection of the consignments for physical examination should be based on various parameters such as nature of goods, value, and weight, country of export and status of the exporter. However, any consignment can be examined by the Customs (even upto 100% examination) if there is a specific intelligence or there is doubt during X-ray in respect of the said consignment. The representative of the authorised courier company shall intimate the officers posted in ECC the time of screening of bags carried out by the Airlines Security. All bags of CSB-I shall be 100% screened by Airline security and by the officer posted in the ECC. The endorsement of physical examination of documents covered under CSB-I shall be given by the shed officer (ACO) of ECC. If found in order, CSB-I shall be endorsed "passed for shipment ----- bags" which will be countersigned by Superintendent In-charge of ECC. Thereafter, the authorised courier shall handover the consignment cleared by Customs to the custodian or his handling agent, who shall accept these consignments on behalf of the airlines. An endorsement "goods are received for shipping" shall be given on duplicate copy of CSB-I by the Custodian or his handling agent, who shall also ensure that CSB-I bears the endorsement that the CSB-I consignments do not contain any narcotic and psychotropic substances. The Custodian or his handling agent shall complete other formalities weighing each bag and record the weight against its tag, get 100% of screening of all accepted bags by security and Customs prior to palletization and containerization' putting security screening stickers on all X-ray screened bags. etc.

#### **5.27 Clearance of goods covered under Courier Shipping Bill II (CSB-II):-**

On receipt of the CSB-II, the proper officer (Superintendent) posted in ECC shall scrutinise the CSB-II with respect to description, value and other relevant details. During the scrutiny, the officer shall select parcels for examination. After selection, the officer shall direct the authorised representative of the courier company to produce the parcel for examination. Before starting the examination, the officer (ACS/Superintendent, ECC) shall inspect the complete lot of bags and ensure that all the bags have been security checked by the airline and bear the airline security checked stickers. During the inspection of the lot, if the officer feels it necessary to open any other bags which is not selected for examination. However this shall be done judiciously and in adherence to the examination norms prescribed in Board's Circular no. 23/2006-Cus. dated 25.8.2006. In case of clearance of goods covered under CSB-II also, the same screening and examination norms as applicable to clearance of goods covered under CSB-I (as envisaged in Board's Circular 23/2006-Cus. dated 25.8.2006 and discussed above) shall be applicable. All goods covered under CSB-II shall be 100% screened After the bags are opened for examination for selected consignments, the bags will be taken back to airline security check under the supervision of the examining officer and have the bags security checked. If, on examination, the goods are found to be as declared and in order, the ACS/Superintendent, ECC shall endorse the examination report on the

CSB-II, against the particular consignment so examined as “examined”. If any discrepancy is noticed, the parcel shall be detained and a report regarding the discrepancy be submitted to the Assistant Commissioner/Deputy Commissioner, Courier Cell or Assistant /Deputy Commissioner on duty for further orders. The officer shall also make an endorsement “detained” in CSB-II against the particular consignment. Thereafter, the CSB-II shall be endorsed “Passed for Shipment (number of) bags” and the original copy of CSB- II shall be retained. Thereafter, the assessing officer shall also ensure that only the bags covered by the particular shipping and cleared by Customs are handed over to the custodian or his handling agent, who shall accept these consignments on behalf of the airlines. An endorsement “goods are received for shipping” shall be given on duplicate copy of CSB-II by the Custodian or his handling agent, who shall also ensure that CSB-II bears the endorsement that the CSB-II consignments do not contain any narcotic and psychotropic substances. The Custodian or his handling agent shall complete other formalities weighing each bag and record the weight against its tag, get 100% of screening of all accepted bags by security and Customs prior to palletization and containerization’ putting security screening stickers on all X-ray screened bags.etc. The duplicate and the triplicate copy of the CSB-II shall be handed over to the authorised representative of the courier who will obtain the shipment endorsement on the duplicate copy and return the same to the officer attending the assessment. The officer in turn shall attach original and duplicate and forward it to the Noter on the next working day for record. The noter shall maintain the day wise record of all the CSB’s.

#### 5.28 Amendment of shipment Flight details :-

In the event of airlines not accepting all the bags, endorsement to this effect shall be taken from the airline. If the remaining bags can be exported by some other flight on the same day, the authorised representative of the courier after oral confirmation from the airline shall approach the Superintendent, in charge of ECC and request him in writing to allow the export by the concerned flight. On receipt of such request, the Superintendent shall permit the export by making an endorsement “Shipment of . . . . . bags allowed by flight number . . . . . “ Thereafter, the bags shall be handed over to the concerned airline under the supervision of the officer. The authorised representative of the courier company shall obtain an endorsement from the airline confirming the acceptance of the parcels. After the receipt of the duplicate copy with the endorsement from the airline, the officer assessing the CSB shall attach it with the original and forward it to the Noter in the Courier Cell.

#### 5.29 **Shut out parcels:-**

In the event of bags which have not been shipped due to non acceptance of any airline, the authorised representative shall report the matter in writing in the CSB itself and hand over the duplicate and triplicate to the Superintendent of ECC who will permit back to town on both the copies and hand over the triplicate to the authorised representative of the courier.

### 5.30 **Detained packages:-**

(a) In the event of any detained packages for which a report has been submitted to the Assistant Commissioner/Deputy Commissioner and if they find it necessary that the same needs to be detained for further action, the parcel shall be deposited at the Warehouse under Preventive escort under orders of Assistant Commissioner/Deputy Commissioner on duty.

#### (b) **Disposal of packages not exported.**

Any export goods brought into customs area for export purpose and have not been exported within seven days of arrival of such goods into such area or within such extended period as permitted by the proper officer in case of delay due to such reasons which the proper officer considers to be beyond the control of the concerned courier may be detained by the proper officer and disposed of after issuing notice to the concerned courier and the charges payable, for storage and handling of such goods shall be payable by such courier.

### 5.31 **Goods covered by regular Shipping Bill:-**

Para 6(3) of the Regulations permit export of goods through courier which are assessed on regular Shipping Bills which are processed at Air Cargo Clearance or the EOU's or EPZ's, or STP or EHTP, subject to condition and limitations that may be imposed by the jurisdictional Assistant Commissioner/Deputy Commissioner of Customs. This procedure applies to goods such as (a) originating from EOU's, units in FTZ's/STP's/EHTP, (b) goods proposed to be exported under EPCH/DEPB/DEEC and drawback scheme, (c) goods which require a license for export under the Foreign Trade (Development & Regulation) Act, 1992 ; (d) goods in respect of which the proper officer directs filing of shipping bill or bill of export, and ;(e) goods where the value of the consignment is above rupees twenty five thousand and transaction in foreign exchange is involved. The limit of twenty five thousand rupees shall not be applicable to such export consignments where guaranteed Remittances (G. R.) waiver or specific permission to that effect has been obtained from RBI.

These packages shall be permitted for shipment by the officer in ECC after entering the details in a register maintained for the purpose. However, before

permitting the shipment, the officer at ECC shall ensure that the authorized courier has fulfilled the conditions and limitations imposed by the jurisdictional Assistant Commissioner/Deputy Commissioner of Customs and if the parcels have been dispatched under Customs Seal, the officer shall ensure that the Customs Seal is intact. After ensuring that the parcels have been handed over to the airlines, the officer shall make the necessary endorsements on the Shipping Bill or the letter, as the case may be and hand it over to the courier for submission to the jurisdictional Assistant Commissioner/Deputy Commissioner. In case of non compliance of any of the conditions and limitations imposed by the jurisdictional Assistant Commissioner/Deputy Commissioner, the officer shall report the matter to the Superintendent, ECC, who in turn, if required, shall submit the matter to the Assistant Commissioner/Deputy Commissioner on duty, for directions. It is however clarified that the permission for export shall not be denied without the orders of the Assistant Commissioner/Deputy Commissioner on duty.

### 5.32 **Over time Payment:-**

The authorised courier or EICI may apply to, for the services of Customs official beyond working hours or on holidays, or to attend work of Individual Courier Company outside the area of operations at the Airport, i.e., Terminal Building and Courier Terminal application will be made to the Assistant Commissioner, Courier Cell and with his permission, Superintendent, Administration shall make the necessary posting.

### **“Forms” appended to these Regulations**

#### **Customs Series Form No. 103**

#### **FORM COURIER BILL OF ENTRY-I (CBE-I)**

(see regulation 5)

#### **COURIER IMPORT MANIFEST**

Name and address Of the on board	Airlines and flight Number	Name and address Of the on OBC or	Airport and arrival
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courier Company		person in charge of aircraft	
Flight No. and Date	Date of Arrival	Airport of Shipment	Customs Department Serial No. & date

S. No.	Airway Bill No.	Name & Address of Authorised Courier	No. of Bags	Weight
1.				
2.				
3.				
		Total		

Signature of On Board Courier /

Person incharge of aircraft.

**Customs Series Form No. 104****FORM COURIER BILL OF ENTRY – II (CBE-II)**

(See regulation 5)

**AUTHORISED COURIER MANIFEST**

Name & Address Of Authorised Courier	Airport Of Arrival	Flight No	Airport of Shipment	Customs Department Serial No. & date (Courier Import Manifest- CBE-I)	Customs Department Serial No. & date

S. No.	Airway Bill No.	No.of Packages	Weight	Description of goods	Shippers Name	Consignees Name & Address	Value
1.							
2.							
		Total					

Signature of Authorised Courier/Person in charge of Aircraft

**Customs Series Form No. 105****FORM COURIER BILL OF ENTRY – III (CBE-III)**

(see regulation 5)

***COURIER BILL OF ENTRY FOR DOCUMENTS***

Name & Address Of Authorised Courier	Airport Of Arrival	Flight No	Date of Arrival	Airport of Shipment	Customs Department Serial No. & date

Number of bags	Number of consignments

***Declaration***

- i) I / We hereby declare that I / We have obtained the authorisation from each of the consignees mentioned above to act as an agent for the clearance of the goods described above.
- ii) I / We hereby declare that the goods imported as per this Bill of Entry include only documents of no commercial value and do not includes goods which are

liable to duty or are prohibited or restricted for import into India under any Law for the time being in force.

Signature and Stamp of

Authorised Courier

Signature of Assessing Officer

Signature of Audit Officer

(Passed out of customs charge)

Signature of the Proper officer

**Customs Series Form No. 106**

**FORM COURIER BILL OF ENTRY – IV (CBE-IV)**

(see regulation 5)

***COURIER BILL OF ENTRY FOR SAMPLE AND FREE GIFTS***

Name & Address Of Authorised Courier	Airport Of Arrival	Flight No	Date of Arrival	Airport of Shipment	Customs Department Serial No. & date



S. No.	AW B No.	No. of packages	Consignees Name and Address	Description of goods	Qty.	Invoice Value	Rate of Exchange	Assess-able value (Sec.14)	CTH / Notification No.	Duty
1										
2										
3										

**Declaration**

- i) I / We hereby declare that I / We have obtained the authorisation from each of the consignees mentioned above to act as an agent for the clearance of the goods described above.
- ii) I / We hereby declare that the goods imported as per this Bill of Entry include only bonafide commercial samples, prototypes of goods and bonafide gifts of articles for personal use of a value not exceeding Rs.10,000/- (Rs. Ten thousand only) and which are for the time being not subject to any prohibition or restriction on their import into India.
- iii) I / We enclose herewith . . . . (number)..... of airway bills and . . . . (number).... of invoices for the aforesaid consignments with this Bill of Entry.
- iv) I / We hereby declare that the contents of this Bill of Entry are true and correct in every respect and are in accordance with the Airway Bills, the invoices and other documents attached herewith.

Signature and stamp of

Authorised Courier

Signature of Assessing Officer

Signature of Audit Officer

(Passed out of Customs charge)

Signature of the Proper Officer

**Customs Series Form No. 107****FORM COURIER BILL OF ENTRY – V (CBE-V)**

(see regulation 5)

***COURIER BILL OF ENTRY FOR DUTIABLE GOODS***

Name & Address Of Authorised Courier	Airport Of Arrival	Flight No	Date of Arrival	Airport of Shipment	Customs Department Serial No. & date
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SL No.	AW B No.	No. of Package s	Consigne es Name & Address	Descrip tion of goods	Qty. No. / Wt.	Invoic e Value	Rate of Exchang e	Freig ht	Ins .
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10 )
1.									

Oth er	Landin g Charg es	Assessab le Value (Rs) (Sec. 14)	CTH Notfn n.No.	Duty Rate / Amount	ETH / Notifn . No.	Value for Addl. Duty	Addl. Duty Rate / Amount	Total Duty
(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)
1.								

(Please indicate all other charges such as commissions, includible in the assessable value as per Section 14 of the Customs Act, 1962)

**Declaration**

(i) I / We hereby declare that I / We have obtained the authorisation from each of the consignees mentioned above to act as an agent for the clearance of the goods described above.

(ii) I / We declare that I / We have not received any other documents or information showing a different price, value, quantity or description of the said goods and that if at any time hereafter I / We receive any documents from the importer showing a different state of facts I / We will immediately make the same known to the Commissioner of Customs.

(iii) I / We hereby declare that the contents of this Bill of Entry are true and correct in every respect and are in accordance with the Airway Bills and the invoices and other documents attached herewith.

(iv) I / We enclose herewith . . . . .(number).... of airway bills and . . . . . (number)..... of invoices for the aforesaid consignments with this Bill of Entry.

Signature and Stamp of

Authorised Courier

Signature of Assessing Officer  
Audit Officer

Signature of

(Passed out of Customs charge)

Signature of the Proper Officer

**Customs Series Form No. 107A**

**FORM COURIER SHIPPING BILL – I (CSB-I)**

(see regulation 6)

***COURIER SHIPPING BILL FOR DOCUMENTS***

Name & Address of the Courier	Airlines & flight No	Airport Departure	Flight No. & Date	Airport of shipment	Expected date Of landing at Destination- 1	Customs Department Serial No. & date

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S. No.	Airway Bill No.	Name and Address of Authorised Courier	No. of Bags	Weight
1.				
2.				
			Total	

Signature/stamp of Courier Co.

**Declaration**

- i) I / We hereby declare that I / We have obtained the authorisation from each of the consignors mentioned above to act as an agent for the clearance of the goods described above.
- ii) I / We hereby declare that the goods as per this shipping Bill include only documents of no commercial value and do not include goods which are liable to duty or are prohibited or restricted for export from India under any law for the time being in force.
- \*iii)** I / We hereby declare that the goods as per this shipping Bill do not contain narcotics and psychotropic substances

Signature and stamp of

Authorised Courier

Signature of Proper Officer of Customs.

**\*To be included only after approval from Board/DG DRI**

**Customs Series Form No. 107B****COURIER SHIPPING BILL – II (CSB-II)**

(see regulation 6)

**COURIER SHIPPING BILL**

Name & address of Authorised Courier	Airport of Departure	Flight No. & Date	Airport of shipment	Customs Department Serial No. & date

S. No.	Airway Bill No.	No. of Packages	Weight	Description of goods	Consignor's Name & Address	Value	Port of Shipment	Consignee's Name and Address
1.								
2.								

**Declaration**

- i) I / We hereby declare that I / We have obtained the authorization from each of the consignors mentioned above to act as an agent for the clearance of the goods described above.
- ii) I / We hereby declare that the goods for export as per this shipping bill include only bonafide commercial samples, prototypes of goods of a value not exceeding Rs 50,000/-and bonafide gifts of articles for personal use of a value not exceeding Rs.25,000/- for a consignment and which are for the time being not subject to any prohibition or restriction on their export from India and no transfer of foreign exchange is involved.( Provided that this limit of rupees

- twenty five thousand shall not apply to such export consignments where the G.R. Waiver or specific permission has been obtained from the RBI).
- iii) I / We enclose herewith . . . . . (number)... of airway bills and . . . (number)..... of invoices for the aforesaid consignments with this shipping bills.
  - iv) I / We hereby declare that the contents of this shipping bill are true and correct in every respect and are in accordance with the Airway Bills, the invoices and other documents attached herewith.
  - v) \*I / We hereby declare that the goods as per this shipping Bill do not contain narcotics and psychotropic substances

Signature and stamp of

Authorised Courier  
Customs

Signature of Proper Officer of

**\*\*To be included only after approval from Board/DG DRI**

**Customs Series Form No. 107C**

**COURIER BILL OF ENTRY – VI (CBE-VI)**

(see regulation 5)

***COURIER IMPORT MANIFEST***

Name & address of OBC company	Name & address of Courier or authorized representative or Driver/owner of the vehicle	Name of the Land Customs Station	Vehicle No	Registration	Date Of arrival	Place of Origin /place of loading	Customs Serial No. & date



	& Date	s		Of goods	name	& address	
1.							
		Total					

Signature of Authorised Courier

**Customs Series Form No. 107E**

**COURIER BILL OF ENTRY – VIII (CBE-VIII)**

(see regulation 5)

***COURIER BILL OF ENTRY FOR DOCUMENTS***

Name & address of Authorised Courier	Name of the Land Customs Station	Vehicle registration No	Place of Origin/place of loading	Customs Serial No. & date	No. of Bags	Number of Consignment

**Declaration**

- iii) I / We hereby declare that I / We have obtained the authorization from each of the consignees mentioned above to act as an agent for the clearance of the goods described above.
- iv) I / We hereby declare that the goods imported as per this Bill of Entry include only documents of no commercial value and do not includes goods which are





		es	address				h- ang e	)	No	
1										
2										

***Declaration***

- v) I / We hereby declare that I / We have obtained the authorisation from each of the consignees mentioned above to act as an agent for the clearance of the goods described above.
- vi) I / We hereby declare that the goods imported as per this Bill of Entry include only bonafide commercial samples, prototypes of goods and bonafide gifts of articles for personal use of a value not exceeding Rs.10,000/- (Rs. Ten thousand only) and which are for the time being not subject to any prohibition or restriction on their import into India.
- vii) I / We enclose herewith . . . . (number)..... of airway bills and . . . . (number).... of invoices for the aforesaid consignments with this Bill of Entry.
- viii) I / We hereby declare that the contents of this Bill of Entry are true and correct in every respect and are in accordance with the Airway Bills, the invoices and other documents attached herewith.

Signature and stamp of

Authorised Courier

Signature of Assessing Officer

Signature of Audit Officer

(Passed out of Customs charge)

Signature of the Proper Officer



11	12	13	14	15	16	17	18	19

(Please indicate all other charges such as commissions, includible in the assessable value as per Section 14 of the Customs Act, 1962)

**Declaration**

**(i) I / We hereby declare that I / We have obtained the authorisation from each of the consignees mentioned above to act as an agent for the clearance of the goods described above.**

(v) I / We declare that I / We have not received any other documents or information showing a different price, value, quantity or description of the said goods and that if at any time hereafter I / We receive any documents from the importer showing a different state of facts I / We will immediately make the same known to the Commissioner of Customs.

(vi) I / We hereby declare that the contents of this Bill of Entry are true and correct in every respect and are in accordance with the Airway Bills and the invoices and other documents attached herewith.

(vii) I / We enclose herewith . . . . .(number).... of airway bills and . . . . . (number)..... of invoices for the aforesaid consignments with this Bill of Entry.

Signature and Stamp of

Authorised Courier

Signature of Assessing Officer

Signature of Audit Officer

(Passed out of Customs charge)

Signature of the Proper Officer

**Customs Series Form No. 107H**

**COURIER BILL OF EXPORT – 1 (CBEx-1)**

(see regulation 6)

**COURIER BILL OF ENTRY FOR DUTIABLE GOODS****Courier Shipping Bill for Document**

Name & Address of Courier Company	Name of the land customs station	Vehicle Registration No.	Place of Origin / Place of Loading	Customs Department Serial No./ date

Sl. No.	Invoice No. and Date	Name and Address of the authorized courier	No. of Bags	Weight
1.				
2.				
3.				

Total \_\_\_\_\_

Signature of the Courier Company

**Declaration**

- iii) I / We hereby declare that I / We have obtained the authorisation from each of the consignors mentioned above to act as an agent for the clearance of the goods described above.
- iv) I / We hereby declare that the goods as per this shipping Bill include only documents of no commercial value and do not include goods which are liable



1.								
2.								
3.								

**Declaration**

- vi) I / We hereby declare that I / We have obtained the authorization from each of the consignors mentioned above to act as an agent for the clearance of the goods described above.
- vii) I / We hereby declare that the goods for export as per this shipping bill include only bonafide commercial samples, prototypes of goods **of a value not exceeding Rs 50,000/-** and bonafide gifts of articles for personal use of a value not exceeding Rs.25,000/- **for a consignment** and which are for the time being not subject to any prohibition or restriction on their export from India and no transfer of foreign exchange is involved.( **Provided that this limit of rupees twenty five thousand shall not apply to such export consignments where the G.R. Waiver or specific permission has been obtained from the RBI).**
- viii) I / We enclose herewith . . . . . (number)... of airway bills and . . . (number)..... of invoices for the aforesaid consignments with this shipping bills.
- ix) I / We hereby declare that the contents of this shipping bill are true and correct in every respect and are in accordance with the Airway Bills, the invoices and other documents attached herewith.
- x) **\*I / We hereby declare that the goods as per this shipping Bill do not contain narcotics and psychotropic substances**

Signature and stamp of

Authorised Courier  
Customs

Signature of Proper Officer of

**\*\*To be included only after approval from Board/DG DRI**

**FORM – A**

(see regulation 7)

**Application Form of Registration to operate as authorized courier at the customs station****Intimation to operate as authorized courier at the Customs Station other than the place of registration**

6. Name of the applicant (In case the applicant is a firm or a company, the name of each of the partners of the firm or the directors of the company as the case may be)
  6. PAN number of the applicant (as assigned for the purpose of Income Tax)
  7. Whether the applicant is registered as authorized courier (Yes /No)
    - (i) If Yes, Details of registration issued under sub – regulation (1) of regulation 10
    - (ii) Particulars of the quantity or value of cargo cleared as authorized courier during the period of operation as authorized courier
    - (iii) Whether the registration as authorized courier held under these regulations was cancelled or suspended
  8. Full Address of the applicant (In case the applicant is a firm or a company the full address of each of the partners of the firm or the directors of the company as the case may be)
  9. In case the applicant is a firm or a company, the name(s) of its partner or the partners or director/directors or duly authorized employee who will actually be engaged in the work of the authorized courier
  10. In case it is desired to appoint clerk or clerks, the name and address of the clerk or Clerks as the case may be.
  11. Educational Qualifications of each of the persons, who will actually be engaged in the work as authorized courier
  12. Particulars regarding knowledge of Custom law and procedure. (These particulars are Required in respect of each person who will be actually engaged in the work of authorized courier)
  14. Whether the applicant or any of the persons proposed to be employed by him have been penalized, convicted or prosecuted under any of the provisions of the Customs Act, 1962 (52 of 1962), or any other law for the time being in force.
- I / We hereby affirm that I / We have read the Courier Imports and Exports (Clearance) Regulation, 1998.



Signature of the applicant(s)

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Date .....

[Form – A inserted vide Notification No. 09/2007 – Cus (N.T), dated 07-02-2007]

## **CHAPTER - SIX**

### **ADJUDICATION**

#### **1.0 Introduction:**

**1.1** Customs Act is a complete code with its own procedure and its own forms. As far as the adjudicating proceedings in respects of seized goods are concerned, clear cut procedures are prescribed under the Act. The Customs Department is functioning as a quasi-judicial tribunal.

**1.2** When there is a power to decide and determine to the prejudice of a person, the duty to act judicially is implicit in the exercise of such power. The duty to act judicially arises from the very nature of the function. It need not be shown to be super added.

**1.3** When acted in a quasi-judicial capacity, the rigid court room proceedings are not called for. What is required is only to follow the principles of natural justice.

**1.4** The doctrine of natural justice principally consists of two rules. “Nomo debet esse iudex in propria causa”, no one shall be a judge in his own cause and “Audi alteram partem”, no decision shall be given against a party without giving him a reasonable hearing. (Menaka Gandhi vs. Union of India, AIR 1978 SC 597 per Bhagavati of P 626).

The audi alteram partem rule, in its complete amplitude means that a person against whom an order to his prejudice may be passed, should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral and documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence in his defence.

**1.5** Section 124 of the Customs Act, which provides for issue of a Show Cause Notice, is in conformity with the principles of natural justice enumerated above.

#### **2.0 Statutory provisions:**

**2.1** Section 124 of the Customs Act, 1962, stipulates the provisions for issue of show cause notice before confiscation of goods etc.

**2.2** No order of confiscation of goods or imposition of penalty shall be passed on the owner of the goods or any other person, unless

- a) A notice is given in writing to the owner or such person;
- b) Reasonable opportunity for making a representation in writing;
- c) Reasonable opportunity of being heard.

**2.3** The notice and representation can be oral at the request of the person concerned.

**3.0 Time limit for issue of Show Cause Notice:**

**3.1** No time limit has been specified in Section 124 for issue of the notice.

**3.2** But sub-section 2 of Section 110 states that the goods seized under Section 110(1) will have to be returned to the person from whom it has been seized, if no notice under Section 124(a) is issued within a period of six months from the date of seizure.

**3.3** Proviso to Section 110(2) provides for extension of the aforesaid period of six months, on sufficient cause being shown, for a period not exceeding six months by the Commissioner of Customs.

There can be no doubt that the proviso the second sub-section of Sec. 110 contemplates some sort of inquiry. The Commissioner obviously is expected not to pass extension orders mechanically or as a matter of routine but only on being satisfied that there exist facts which indicate that the investigation could not be completed for bonafide reasons within the time laid down in Sec. 110 (2), and that therefore, extension of that period has become necessary. He cannot, therefore extend the time unless he is satisfied on facts placed before him that there is a sufficient cause necessitating extension. The burden of proof in such an enquiry is clearly on the Customs Officer applying for extension and not on the person from whom the goods are seized. An ex-parte determination by the Commissioner would expose his decision to be one sided and perhaps one based on the incorrect statement of facts. How then can it be said that his determination that a sufficient cause exists is just and fair if he has before him a one-sided

picture without any means to check it unless there is an opportunity to the other side to correct or controvert it. The difference in the language used in the first sub-section and the proviso to sub-section (2) lends support to the contention that the power in one case may be subjective, and therefore, not calling for an enquiry, and the power in the other is one, the exercise of which necessitates an enquiry into the materials placed before the Commissioner for his determination.

Thus these considerations lead to the conclusion that the power under the proviso is not to be exercised without an opportunity of being heard given to the person from whom the goods are seized. ( Asstt. Commissioner v/s Charandas Malhotra, 1983 ELT (S.C.) 1477. )

#### **4.0 Principles of natural justice:**

**4.1** Issue of a show cause notice is a preliminary requirement according to the principles of natural justice, which says no one should be condemned unheard. (Buharudin Hussain Vs. State Air 1970 AP 337). The issue of show cause notice is not merely a formality but is an essential requirement either of statutory provisions or the principles of natural justice to which all quasi – judicial authorities are bound. (Prem. Bus Services Vs. R.T.A. AIR 1961 SC 344, Rajasthan Tobacco Company Vs. Assistant Commissioner of Central Excise (1977 ELT J 636)

**4.2** What principles of natural justice requires is not the issue of a Show Cause Notice as a formality, but of informing the person concerned as to the grounds on which the action is proposed to be taken.

**4.3** The notice should be specific and unambiguous. (Charan Das Malhotra Vs. Asstt. Commissioner of Customs AIR 1968 Cal.28).

**4.4** The Show Cause Notice should contain all the grounds and allegations since order cannot go beyond the show cause notice. (YACA (India) Pvt. Ltd. Vs. Union of India – 1980 ELT 227(Bom) and Wimco Ltd. Vs. U.O.I. – 1980 ELT 235 (Bom)).

**4.5** When confiscation of the goods is proposed, show cause notices have to be issued to the owner of the goods and also to the person from whom the goods have been seized. Similarly, show cause notices have to be issued to all persons on whom penalties are proposed to be imposed.

**4.6** Section 122 of the Customs Act, 1962 prescribes the powers of various officers to adjudicate offences. Section 124 (b) does not specifically provide that the person who passes the adjudication order must issue the Show Cause Notice. (Taraknath Sen Vs. U.O.I. AIR 1977 Cal.).

**4.7** The Officer issuing the Show Cause Notice need not be the same, as the Officer adjudging the confiscation, as proceedings for Show Cause Notice do not form part and parcel of the adjudication proceedings. (Manilal B. Patel V. Kaul AIR 1976 Gujarat 134 – 39).

{So far as issue of show cause notice is concerned, it has been held that so long as the officer to whom the cause is to be shown is indicated in the notice itself, there is no objection to such a notice being issued by any other officer. It has to be borne in mind however, that even then, it is always open to the officer, who has finally to take the decision, to issue a fresh show cause notice if he feels that the previous one was inadequate or defective for some reasons or on some point. Where, however, cause has been shown to one officer as indicated in the show cause notice, but the final adjudication is to be done by another officer, it may not be held to be in consonance with the principles of natural justice If the latter does not issue a notice himself. Here also, however, to avoid delay, since justice delayed often amounts to justice denied, if the party concerned indicates in writing that he does not desire to show any further cause, the case may be decided without a fresh show cause notice being issued.

It is now settled law that an order of confiscation or penalty under the Customs Act is not a mere administrative or executive act, but is a quasi-judicial act and that, therefore, an application for a writ of certiorari lies in respect of such an order. Hence, the need for issuing a proper and comprehensive show cause memo, and adjudication order cannot be overemphasized.

**[ C.B.R. Letter F. No. 100/- 1/62-L.C.I. dated 5.2.62 ]}**

**4.8.** In the Show Cause Notice along with the grounds and allegations, the provisions of statute contravened and the provision, under which action is proposed to be taken, should also be clearly mentioned.

**{ Issue of Show Cause Notice Under proviso to Section 28 of the Customs Act, 1962-**

A doubt has been raised whether in the cases where the department had passed an order and at a later stage it has come to the notice of Department that the Importer had not only misrepresented the facts before the Commissioner but had also filed a manipulated and fabricated documents, a fresh show cause notice can be issued in such cases under the proviso to section 28 of Customs Act, 1962 for an extended period of 5 years.. The Ministry of law after careful consideration of the issue and based on the decision in the light of the case of Pieco Electronics & Electricals Ltd. Vs. CCE, Pune [1994 (71)] ELT 1053 of the Supreme Court in the case of BOI Vs. M/s. Maheswari Woollen Mills (AIR 1993 SC 1251) has held that the competent authority can issue fresh show cause notice if new facts come to light. The aforesaid case related to Section 11A of the Central Excise & Salt Act, 1944, which is similar to Sec. 28 of the Customs Act, 1962, had opined that in the circumstances of the case, if the department is satisfied that the requirements of proviso to section 28 of Customs Act, 1962 are satisfied, then the competent authority can issue a fresh show cause notice if new facts come to light.

**[Mumbai Custom House S. Order No. 7348  
dt.3.2.98] }**

**5.0. Opportunity of making of representation:**

**5.1** Natural justice requires that copies of all documents such as panchanama, statements etc. and any other documents based on which the allegations are raised, are supplied along with the Show Cause Notice.

**5.2** The Show Cause Notice must be accompanied with copies of statements and it can not be withheld mechanically on grounds of public interest; (Devichand Vs. Commissioner of Central Excise AIR 1965 A.P.41517 = (1965) 2 Cr. L.J. 602; Ganga Vs. State of Maharashtra AIR 1980 SC 1744. 7.8.9 = 1980 Cr. L.J. 1263).

**5.3** An adjudication order passed on the basis of an evidence without disclosing its contents to the petitioner which could give him an opportunity to make submissions against the allegations made therein, is clearly a breach of the

elementary principles of natural justice and as such is liable to be quashed (Sohanlal Kaushiram Vs.U.O.I. 1980 ELT (Bom)).

**5.4** The designation and address of the authority in whom the representation is to be made should be clearly indicated in the Show Cause Notice, in the absence of which it cannot be considered as a proper opportunity to make a representation.

The notice must state to whom the representation is to be made; when the notice issued by the Asstt. Commissioner does not state this, an order of adjudication by the Commissioner is liable to be set aside, even if the person concerned does not ask for a personal hearing. It may well be that the said person may opt for waiver of hearing, because the penalty that may be imposed by the Asst. Commissioner may not be very much (V Ramananda Vs. Commissioner of Central Excise AIR 1965 Kerala P.286.7).

**5.5** The Show Cause Notice should contain, the allegations, the basis for the allegations, actions proposed to be taken and statutory provisions for such action. It should not contain any affirmative statements. A notice that states that the petitioner had 'failed to prove legal importation' would indicate that the authority had already made up its mind (Charandas Vs. Assistant Commissioner of Customs AIR 1968 Cal at P.34).

**6.0 Reasonable opportunity of being heard:**

**6.1** The law requires that the enquiry must be conducted consistent with the principles of natural justice. Stating it broadly, all that the principles of natural justice required are, a fair opportunity to adduce evidence, opportunity to cross examine either side with regard to the evidence produced and relied on by the tribunal, the said evidence to be recorded in the presence of the party affected by the evidence, and the tribunal to give a chance to the party affected by the evidence to explain the allegations therein.

(U.O.I. Vs. T.R. Verma AIR 1957, SC 882.5 = 1958 SC J 142).

**6.2** Cross-examination is however not the technical cross-examination in a court of law, otherwise, the Commissioner will find it literally impossible to discharge his functions. (Kishanlal Vs. Commissioner of Land Customs, AIR 1967 Cal.P.87 – 88).

**6.3** Where the petitioner had furnished a list of all firms from which he had made purchase of watches and the Commissioner on making enquiry's found that some of the firms were non-existent firms, he should have furnished the petitioner a list of the non-existent firms and copies of their statements, so that the petitioner could prove that the purchases were still genuine. (Charandas Vs. Asstt. Commissioner of Customs AIR 1968 Cal.28 – 33).

**6.4** Where the Commissioner draws an inference from admitted facts without examining witness, there is no breach of the principles of natural justice (Pandurang Vs. Commissioner of Central Excise (1963) 2 Cr. L.J. 467 – 70 = Cr.L.J.460).

**6.5** Where the Officer who heard the person concerned, having been transferred, the order of adjudication, passed by his successor, without fresh hearing is violative of the principles of natural justice (M/s. Ramchand jagadishchand Vs. Deputy Commissioner AIR 1963 Cal 331 – 5 – 6).

**6.6 Quasi-judicial proceedings under Customs Act – Issue of Show Cause Notices and grant of personal hearing by officers other than the one issuing final orders.**

(1) Wherever a personal hearing has been asked for, the adjudicating officer should himself hear the party before giving decision in the case. Where the outgoing officer had given a personal hearing but had been unable to issue the final order, the successor in office must offer a personal hearing again, before the formal order is actually issued. It is, however, open to the party concerned not to have a further hearing after it has been offered to him. In case the party does not avail of the offer, the fact of the offer and its not being availed of should be put in writing in the appropriate case records.

**6.7** The principles of natural justice do not require that the persons who have given information should be examined in the presence of the persons concerned or should be allowed to be cross examined by him on the statement made before the Customs authorities. (Kanunge & Co. Vs. Commissioner of Customs, Calcutta AIR 1972 Sc.2136).



**6.8** If opportunity to cross-examine the witnesses, who effected the seizure, is not given, it would amount to violation of principles of natural justice. (Ramkishan Agarwal Vs. Commissioner of Central Excise and Customs 1981 ELT 217(Orissa)).

**6.9** The Principles of natural justice do not require that there should be a kind of formal cross-examination and formal cross-examination is procedural justice. Formal cross-examination of the witnesses could hardly improve matters and refusal of the right to cross examine the witnesses formally in the facts and circumstances of the case did not constitute any violation of the principles of natural justice and did not deprive the petitioners of any reasonable opportunity of making their representation. (Ashtyosyh Ghosh Vs. U.O.I. 1977 Cr.L.J. (NDC) 67 (cal); AIR 1976 Cal 80 AIR 1968 Cal 174; AIR 1972 SC 2136).

### **7.0 Drafting of Show Cause Notice:**

**7.1** The show cause notice is intended to give the person concerned, a reasonable opportunity of refuting the charges leveled against him. It is not a mere legal formality but the very basis of adhering to the principles of natural justice. Hence sufficient care should be taken while drafting the show cause notice to see that it conforms to all the legal as well as factual requirements.

**7.2** A show cause notice should contain:

- (i) All the allegations
- (ii) All the grounds for such allegation
- (iii) Action proposed to be taken
- (iv) Evidences that are going to be relied upon
- (v) Statutory provisions under which action is proposed to be taken
- (vi) Full address of the authority to whom explanation is to be offered
- (vii) Time limit within which the explanation is to be offered
- (viii) List of documents relied upon in the proceedings
- (ix) Copies of such documents.

**7.3** Care should be taken to avoid the following;

- (i) Use of affirmative words should be avoided. Use of words like “it is clear” or “it stands proved” etc. should be avoided in show cause notice.
- (ii) Ambiguous allegation should be avoided.
- (iii) Facts and evidences extraneous to the allegations should be avoided
- (iv) Reference to information or source of information should be avoided
- (v) Comments on facts and evidences should be avoided
- (vi) Executive instructions received from superior officers should not be mentioned in the show cause notice.
- (vii) Audit objections raised by internal audit or by accountant General should not be cited in the show cause notice.

#### **7.4 Grounds of Show Cause Notice:**

The grounds given in the notice on which the action is proposed to be taken must be **clear, specific and unambiguous**. A notice, which is vague, is not a proper notice and all subsequent proceedings would be vitiated. The notice must mention of giving to the party a reasonable opportunity of being heard in the matter.

#### **8.0 Service of Show Cause Notice:**

**8.1** The manner of service of the notice is dealt within Section 153 of the Act. Any order of decision passed or any summons or notice issued under this Act, shall be served-

- a) by tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or
- b) if the order, decision, summons or notice can not be served in the manner provided in C1.(a), by affixing it on the notice board of the Custom House.

The section requires that notice shall be served by sending it by registered post to the person to whom it is intended. The section does not require that effective service should be effected on the appellant receiving it. This position is made clear by reference to Sec.27 of the General Clauses Act which states that where any Central Act requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre – paying and posting by registered post, a letter containing the document, and unless the contrary is

proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The normal presumption, unless the contrary is proved, is that the service shall be deemed to have been properly effected when a letter is properly addressed pre – paid and posted by registered post. It will be seen from Section 110 (2) and Section 124 (1) of the Customs Act that a notice in writing informing the appellant of the grounds on which it is proposed to confiscate the goods or to impose a penalty should be given within six months from the date of seizure of the goods.

**8.2** Notice issued under Section 153 can be sent by registered post either to the person for whom it is intended or to his agent and if it can not be so served, offering on the notice board of the Customs Officer may effect the service. What is relevant is not effective service but issuing of the notice in any of the manners provided in the Section. (Amabali Vs. Commissioner of Customs, 1971 KER L.R. 268)

### **9.0 Adjudication under the Customs Act, 1962.**

Chapter XIV of the Customs Act, 1962 (Sec.111) to 127) deals with confiscation of goods and conveyances and imposition of penalties. While sections 111 and 112 deal with improperly imported goods, Sections 113 and 114 deal with the confiscation of goods attempted to be improperly exported out of India. Section 115 deals with confiscation of conveyances, and Sections 117 to 121 deals with confiscation of packages and their contents, other goods used for concealing smuggled goods and the sale proceeds of smuggled goods. Section 122 deals with the powers of adjudication and Section 124 with issue of a show cause notice, while section 123 deals with burden of proof in case of certain goods.

While taking up a case for adjudication, it may be ensured that -

- (i) all the original documents like panchanamas or recovery memos, statements of the accused and witnesses etc. contraband goods and other incriminating documents, articles and things seized are lying intact and are available for adjudication.
- (ii) post – seizure esquires / investigations are complete in all respects and a resume or a fiscal report thereof is available on the file, showing evidence against each of the concerned persons and the offences alleged to have been committed by each of them.

- (iii) a Show Cause Notice has been given within time to all the 'concerned persons'. In complicated cases, assistance of legal branch or departmental counsel may always be taken in vetting the show cause notice.
- (iv) a separate file each for adjudication and prosecution is opened containing true copies of all relevant documents etc. right from the beginning i.e. at the stage of seizure and investigation, so that both the proceedings could be started simultaneously. The original documents, required for producing in the Court may invariably be kept in safe custody to avoid tampering or loss.

#### **10.0 Principles of Natural Justice:**

It is well-settled principle of Indian Administrative Law that a quasi – judicial body should act according to the principles of Natural Justice in discharging its adjudicatory functions.

#### **11.0 Personal Hearing:**

**11.1** Too the extent possible, personal hearing should be granted if requested for, even if request for the same is belatedly received but before the adjudication of the case.

**11.2** Adjournment may be granted if the officer feels that the grounds are genuine.

**11.3** Opportunity for examination and cross – examination of witnesses pertinent to the issue may be permitted and the adjudicating officer should have an open mind in the matter.

(i) Having regard to the various recent pronouncement by the Supreme Court and by some of the High Courts that in quasi judicial proceedings where the evidence of any person is relied upon the party concerned must be given an opportunity to test such evidence either by cross-examination or otherwise. The Board considers that as adjudications of of Customs and Central Excise cases are

of a quasi-judicial nature, denial of an opportunity of cross-examining the 'Departments' witnesses by the party concerned may amount to violation of the principles of natural justice. The adjudicating authorities should not, therefore, reject requests for cross-examination of witnesses as a matter of course, but consider the same on their merits.

(ii) Adjudicating authorities should obviously exercise caution against permitting cross-examination indiscriminately. Where, for instance, there is a question of calling informers for cross-examination or of producing business men to substantiate the information gathered from them in the course of confidential market enquiries whereby public interest is likely to suffer, the request for cross-examination need to be conceded by adjudicating authorities. Some of the other circumstances under which the adjudicating authorities may turn down request for cross-examination of witnesses may, by way of illustration, be given as under :-

- (a) when production of the witnesses would entail expense or effort not commensurate with the value of the evidence the witnesses are likely to give, having regard to the facts and circumstances of the case;
- (b) when the witnesses are close relatives or dependants of the party concerned whom he can produce himself;
- (c) when the witnesses had already been examined by the party concerned during the course of any enquiry under section 108 of the Customs Act, 1962 and/or it is not possible to produce those witnesses before the adjudicating authorities at the time of personal hearing, etc. In any case the Department is not bound to offer for cross-examination any witnesses whose statements have not been relied on in the show cause notice.

For purposes of administrative record, it will, however, be necessary to record briefly in writing on the file the reasons for refusal of the request to permit cross-examination of the witnesses.

(iii) It will be the responsibility of the Department to produce its witnesses whose cross-examination is permitted by the adjudicating authorities. The expenses, if any, for the production of such witnesses will have to be borne by the Department itself.

**[ M.F.D.R., letter NO. 4/62/61 CUS VI OF 23.12.61 ]**

**11.4** The adjudicating authority under his dated signature should record the arguments raised at the time of Personal Hearing and evidences brought out by examination of witnesses if any.

**Granting of copies of depositions in cross examinations and re-examinations:**

“There is, of course no legal objection to the grant of copies of depositions of witnesses in the departmental enquiries. But the principles of natural justice do not require this if the party is actually present and has been hearing the oral evidence, because it is for him to take note of the points emerging from the oral evidence and to make use of it for cross-examination etc. No doubt in proceedings before Courts parties are granted certified copies of depositions of witnesses subject to certain conditions. But the enquiry by an Administrative Tribunal is not exactly a judicial adjudication trial are not automatically applicable to a quasi judicial adjudication by an Administrative Tribunal.

2. There may, of course, be cases where it might be necessary owing to the complexity of the case or otherwise to furnish the party with copies of deposition. In this case there might be justification for grant of copies of depositions. But it cannot be a rule that copies should invariably be granted. In other words the question of granting copies should be decided with reference to the facts of each case and no hard and fast rule should be adopted.

**[ Board’s Letter F. No. 4/99/62-Cus.VI dated 18.4.1963 ]**

**11.5** Adjudicating officers should have an open mind and be liberal in allowing legal practitioners to appear before them in complicated and important cases.

**11.6** In personal hearings, the notice should be heard as a matter of policy by the adjudicating authority himself and not through subordinate to him.

**11.7** Where an outgoing officer had given a personal hearing but was unable to issue final orders, the successor in office must offer a personal hearing again before passing order.

## **12.0 Adjudicating Authority should be free from bias:**

If the adjudicating authority is influenced to improperly favor one party against the other, it is said to be biased. The bias disqualifies an individual from acting as an adjudicator flows from two principles:-

- (i) No one should be a judge in his own cause;
- (ii) Justice must not only be done but also seen to be done.

## **13.0 Passing of Adjudication Order:**

**13.1** The adjudicating order should be a speaking order.

**(1) Speaking order-** Opportunity to the party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him : it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to the solution ..... Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law correctly applied and the decision was just – Messers Mahabir Prasad Santhosh Kumar v. State of U. P. – 1970 (1) SCC 764 [S.N. Mukherjee v. Union of India – 1990 – (4) SCC 594].

**(2)** “ Statement of reasons is one of the essentials of justice”. “Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the Tribunal itself”. – State of W. B. v. Atul Krishna Shaw – AIR 1990 SC 2205.

**(3)**“The Commissioner was obliged to write a speaking order. That speaking order had to show that he had applied his mind to all relevant aspects of the controversy before him. If his order did not show such application of mind, the court could not assume that he did apply his mind. The court must (then) conclude that he did not apply the mind. If the court finds it inappropriate to consider the controversy, it must remand the matter for consideration”. (Satellite Engg. Ltd. v. Union of India – 1987 (31) E.L.T. 356 (Bom.) )

**(4)**Order passed without giving reasons for the same was liable to be set aside and the matter remanded for reconsideration. – Arunachal Plywood Industries v. Commissioner – 1989 (43) E.L.T. 695 (Tribubnal).

As a result of an analysis of about one hundred adjudication orders, the Directorate of Inspection (Customs & Central Excise) have prepared a note pinpointing the principal defects in such orders. A copy of the said note is appended for the information and guidance of all the officers concerned.

### **List of defects noticed.**

(i) The main defects from which most of the orders suffer from is that they are not “speaking orders”. It is one of the important ingredients of the principles of natural justice that the authorities vested with quasijudicial powers must pass “reasoned orders”, even though no such obligation may have been laid down in the statute. This is particularly so when there is provision for appeal against the order. The general pattern followed in drafting adjudication orders has been to, first set out the facts of the case as enumerated in the Show Cause Notice, then state the various arguments put forward by the Parties and then to dispose of the matter in one sentence by adding some thing on these lines viz.,

“ I have carefully considered the arguments put forward. I am not convinced of the ground adduced by the party. The evidence produced is not satisfactory”.

Orders of this type will not help the parties in understanding why the particular pleas put forward by them have been dismissed as unconvincing or



unsatisfactory and what exactly they should do to convince the Appellate or Revisionary authorities. Even at the appeal stage, it becomes difficult for the Appellate authority to know the grounds on which the claims made by the parties were rejected. The importance of passing a self-contained order which not only sets out the facts of the case, the arguments put forward by the party as also the detailed grounds on which each point made by the party is accepted or rejected cannot be over-emphasised. Every Adjudicating officer should recount in their orders all the essential arguments put forward by the parties, deal with each of them on merits and come to a reasoned conclusion on every single point. Though no doubt, this will result in the orders being elaborate and consequently take more time of adjudication officers, it is necessary that in the interests of justice, this is invariably done.

(ii) Some adjudication orders lack proper analysis of the evidence submitted by the parties. An attempt should be made to consider carefully every piece of evidence submitted by the party and sufficient grounds should be adduced in the order for rejecting or accepting the same. The present tendency is to dismisses the evidence submitted, by a sweeping statement that “the evidence has been carefully considered but has not been found to be acceptable”.

(iii) Another defect is that in many adjudication orders, it is not clearly brought out in what manner and to what extent the provisions of the law have been contravened. It is desirable that the provisions of the particular sections that are alleged to have been infringed be set out clearly and that the same be brought out unambiguously in the orders issued. The contents of the provisions, which had been violated, and the manner in which they were violated should be brought out clearly and in a reasoned manner.

(iv) In a few cases dealing with under-valuation, the adjudicating officers instead of coming to a definite conclusion as to the correct value, merely state that the value of the goods could under no circumstances be less than a particular amount and since the declared value is less than that, an offence of under-valuation is established. Such orders are vague and are likely to be questioned in Courts of Law. It is always desirable to come to a definite conclusion regarding the value of the goods in cases of under-valuation.

(v) When imposing personal penalty under Section 112 or 114 of the Customs Act 1962, it is always desirable to bring out how the person concerned has

committed an act of commission or commission or a betted such an act or how exactly Section 112 (b) of the Customs Act 1962 is attracted before a penalty is imposed.

(vi) A few cases have also come to notice where the grounds on which the goods were finally confiscated, were slightly different from those on the basis of which the show cause notices were issued. In such cases, it is always desirable to issue revised show cause notices.

(vii) Baggage adjudication orders also suffer from being gauge, on account of full details not being furnished in the order. In all baggage cases, it is necessary to state clearly in the order itself, the particular items which have been treated as coming within the scope of the allowance admissible under the Baggage Rules and their value.

The present practice is to refer to some annexures attached to the order and sometimes, this leads to doubts in the mind of the Appellate Authority. When using cyclostyled forms for issue of spot adjudication orders, in baggage cases, it should be ensured that all irrelevant portions are stricken off and all necessary additions are made. Sometimes, when part of the goods is being confiscated absolutely and part released on payment of redemption fine, the adjudication orders are so worded that it is not clear whether the redemption fine is for the entire portion of the goods confiscated or only for apart thereof. The orders should be drafted in a manner leaving no room for ambiguity.

(viii) In the adjudicating cases relating to parcels coming as gifts, the provisions of the import (control) order laying down the monetary limits upto which the parcels can come as gifts into India should be clearly indicated.

(ix) In certain adjudication orders, the findings of the Adjudicating Officers are expressed in terms such as "the goods are deemed to have been imported unauthorisedly." It would be better to express the conclusion of the Adjudicating Officer in direct terms as " I hold the goods as having been imported unauthorisedly....."

(x) When certain licenses are held as not covering the goods imported, the orders passed sometimes do not give full details of the licenses produced and as to why they are not valid for the goods under consideration. The orders should be clear in this regard.

(xi) Except in cases covered by Section 123 of the Customs Act, 1962 it has to be borne in mind that the onus of proving the offence rests with the customhouse. In a number of adjudication orders, it is seen that this onus has been shifted to the parties, particularly in the case of allegedly smuggled goods, the importation of which was prohibited in the last few years. The department's case usually rests on presumptions and doubts, and inability of the parties to prove how exactly the goods were imported. Then in some cases the scope of Section 123 is even extended to clocks even though only watches are to be covered.

[ **Board's letter F.No.15/21/65 Cus VI & 28/5/66** ]

**Issue of formal Order-in-Original in every case where note-sheet order is passed**

The Central Board of Excise & Customs have taken a serious note of the wrong practice being followed by adjudicating authorities (Asst./Dy. Commissioners, Joint Commissioners and Addl. Commissioners) of not passing formal orders-in-original after note-sheet orders are passed by them. While the impugned goods in all such cases are being cleared on payment of duty, penalty and fine adjudged in the note-sheet orders, in the absence of issue of formal orders-in-original, the opportunity to review such orders is lost to the Government. Such a practice besides being to tally against the instructions issued on the subject is also put in consonance with the statutory provisions of review and appeal.

Central Board of Excise & Customs have therefore directed that all adjudicating authorities be strictly instructed to invariably issue, without delay, formal order-in-original in every case where note-sheet order is passed so that the parties concerned (importers etc.) as well as the Department get the statutory opportunity of examining such orders for further course of action wherever necessary.

[ **Mumbai Custom House S.O.No.7344 DT.13.12.97** ]

**13.2** The order should contain the allegations raised against the party and the facts and evidences put forth by the notice in his defense before the adjudicating officer.

**13.3** The allegations raised and at the replies there to should be discussed one by one and decisions arrived at with reasons thereof should be furnished in the order.

**13.4** Finally the Adjudicating Authority should clearly mention such of those allegations that stand proved and consequences thereof i.e. liability of the goods for confiscation and liability to penalty including the statutory provisions for the same.

**13.5** In the order portion, the details of the goods confiscated with authority for the same, quantum of penalty with authority and if any duty is demanded exact amount of such duty with authority should also be furnished.

**13.6** If the option to pay a fine in lieu of confiscation as contemplated in Section 125 of the Act is granted, then the amount of such fine and the period within which such option is to be exercised should be clearly indicated in the order.

**13.7** In the case of goods provisionally released pending adjudication, which are not produced subsequently, adjudication order should specifically mention the same while appropriating the security deposit suitably.

**13.8** In adjudicating cases while the authorities are justified to adopt the reasoning containing in a superior authority's instructions, orders should not be issued by quoting the number and date of such superior authority's instruction, circular etc.

**13.9** While acting in a quasi-judicial capacity, the officer takes an unbiased decision on applying his own mind to the circumstances of a case. Therefore office notes by a subordinate authority should not go to the extent of recommending the final decision or the amount of penalty etc.

**13.10** In case of adjudication of cases detected by officers under the Customs Act 1962 where the said offence also attracts the penal provisions of other enactment, the objective behind adjudication should be that maximum penalty depending on the gravity of the offence is awarded to the offender and therefore recourse should only be had under that enactment which provides for exemplary punishment. An offence which attracts the provisions of both the Narcotics Drugs and Psychotropic Substances Act, 1985 and the Customs Act, 1962 is a case in illustration.

#### **14.0 Powers of adjudication**

Powers of adjudication of various officers are dealt with in Section 122 of the Act. The Central Board of Excise and Customs in its latest instructions inter – alia indicated that Commissioner of Customs may adjudicate a case without any value limit. Consequent to the amendment of clause B of Section 122, the powers of adjudication of Assistant/ Deputy Commissioner of Customs under the said Section, has been revised, to empower him to adjudicate cases, where the value of the goods liable for confiscation does not exceed 'Rupees two lakhs'. In so far as, adjudication by Joint Commissioners and Additional Commissioners of Customs shall exercise the same powers of adjudication of cases involving the goods, whose value does not exceed Rs. 50 lakhs.

#### **14.1 Enhancement of Adjudication powers of Deputy ( now Joint ) Commissioners of Customs**

(i) In the Finance Bill 1984, which received assent of President on 11<sup>th</sup> May, 1984 and enacted as Finance Act, 1984 (21 of 1984) certain categories of cases under the Customs Act, 1962 as spelt out in the clause-40 of the Finance Bill, 1984 amending Section 129 A of the Customs—Act, 1962 have been taken away from the jurisdiction of the Customs, Excise & Gold Control appellate Tribunal, (CEGAT). Consequent upon the exclusion of the jurisdiction of the Appellate Tribunal, a provision has been made for revision by the Central Government of Orders-in-Appeal passed in such cases. With a view to ensuring that, in all cases pertaining to the excluded categories, the first appeal lies to the Commissioner (Appeals) and the second to the Revisionary Authority i.e. the joint secretary to the Govt. of India, Ministry of Finance (Deptt. Of Revenue), New Delhi, it has become necessary to invest to Deputy ( now Joint/Additional ) Commissioner with full statutory powers of adjudication relation to the excluded categories of cases viz.

- a) Any goods imported or exported as baggage;
- b) Any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India; or so much of the quantity of such goods as has not been unloaded at such destination are short of the quantity required to be unloaded at their destination.
- c) Payment of Drawback as provided in Chapter X and the rules made thereunder.

(ii) Under Section 122 of the Customs Act, 1962, Deputy (*now Joint*) Commissioners are empowered to adjudicate cases without any value limit, although by issue of executive instructions their adjudication powers have been restricted to monetary ceilings.

(iii) In the context of the new provisions as contained in the finance Act, 1984, it has, therefore, been decided by the Government that, in partial modification of Board's earlier instructions on the subject, the Deputy (*now Joint*) Commissioners may exercise full statutory powers vested in them under Section 122 of the Customs Act, 1962, in adjudication cases pertaining to the excluded categories only. Powers of adjudication of the Deputy (*now Joint*) Commissioners in respect of cases other than the aforementioned excluded categories of cases, however, would remain unchanged.

It should be ensured that the cases falling in the excluded categories which have been taken away from the jurisdiction of the Tribunal are adjudicated at the level of the Deputy (*now Joint*)\_Commissioners and that the-preamble to the orders contain clear directions that first appeal against that order will lie with the concerned Commissioners (Appeals) and the Government of India, Ministry of Finance (Department of Revenue), New Delhi. Additional Commissioner is also, basically a Deputy (*now Joint*) Commissioner and while adjudicating baggage cases he should adjudicate it as Deputy Commissioner.

[ **Mumbai Custom House S/O No.6808** ]

#### **14.2 Powers of adjudication—computation of value of the vehicles for determining the competency of the officer where goods involved are considerably low in value.**

The competence of the adjudicating officer should be determined by the value of the goods liable to confiscation as a whole, including vehicles used in the transport of goods, not with standing the amount of fine (in lieu of confiscation of the conveyance) which may be fixed by the adjudicating authority.

[ **Board's Lr.F.No.40/118/63 – Cx.I – 29 /04/ 64** ]

### **14.3 Adjudication of cases involving under – valuation of imported goods**

In all cases where the value of the offending goods sought to be determined after investigations is more than Rs.20 lakhs, such cases should be adjudicated by the Commissioners of Customs even if the value declared by the importer is less than Rs. 20 lakhs. The adjudication of such cases shall not be done by the Additional Commissioners of Customs or Deputy Commissioners Customs.

**[ Board's Circular No. 8/95 – CUs dated 23.01.1995) ]**

Regarding the cases Where value declared by the importer is more than R. 10 lakhs but after investigation the same is sought to be reduced to below Rs. 10 lakhs.

The matter was examined by Board and it has been observed that in cases where value is declared for higher amount and the value is found to be lower on the advice of experts or otherwise even in such cases, the adjudication is required to be done by the Commissioner of Customs because the lowering of value is affected when the final order is passed after satisfaction of the adjudicating authority. Hence Commissioner of Customs has to continue with the Adjudication.

**[ Board's Circular No.7/97 – CUs dated 31.03.1997 ]**

### **14.4 Powers of adjudication of Additional Commissioners Customs**

It has been decided that in cases where the duty has not been levied or has been short levied or erroneously refunded because of collusion, wilful mis-statement or suppression of facts, etc. and where the duty involved is upto Rs.20 lakhs, the show cause notices may be decided by the Additional Commissioners of Customs. Similarly, the Joint Commissioners of Customs may decide the show cause notices involving duty upto Rs.10 lakhs.

2.As for other cases i.e. the show cause notices where the extended period is not invoked, as per the existing instructions the Additional Commissioners of Customs and Joint Commissioners of Customs are authorized to adjudicate the cases upto a value limit (value of goods) of Rs.10 lakhs. The value limit has been raised to Rs.20 lakhs. In other words, the Additional Commissioners of Customs and Joint Commissioners of Customs can now adjudicate cases upto a value limit (value of goods) of Rs.20 lakhs.

F.NO.437/8/91-CUS.IV Circular No. 87 / 2002-Cus.17<sup>th</sup> December,  
2002

**Customs-Time Limit for adjudication of customs cases related to search / seizures.**

1. The Comptroller and Auditor General of India (C&AG) has undertaken a draft review on "Adjudication and Appeal Cases (Customs)" for inclusion in the report of the C&AG for the year 2005-06 (Performance Audit). It has been recommended by C&AG that the Government may consider prescribing an appropriate time limit for adjudication of cases under the Customs Act relating to search/seizures.

2. The Board has accepted this recommendation of the C&AG. Keeping in view the powers of adjudication prescribed under Section 122 of the Customs Act 1962, the Board prescribes the following time frames, within which the officers would complete adjudication. This time frame would apply to such cases which relate to seizure alone and not to those cases, which involve seizure as well as demand of duty under Section 28, as such cases would be governed as per indicative time frame indicated under Section 28 (2A) of the Customs Act. The time period would be as follows:

(i) for cases to be adjudicated within the competence of Commissioner of Customs or an Addl./ Joint Commissioner of Customs, one year from the date of service of the show cause notice;



- (ii) for cases to be adjudicated within the competence of Assistant Commissioner of Customs or Deputy Commissioner of Customs, six months from the date of service of the show cause notice;
- (iii) for cases to be adjudicated within the competence of a Gazetted Officer of Customs lower in rank than an Assistant Commissioner of Customs, three months from the date of serving of the show cause notice.

3. In case the above time period cannot be observed in a particular case, the adjudicating officer shall keep his supervisory officer informed regarding the circumstances which prevented the observance of the above time frame, and the supervisory officer would fix an appropriate time frame for disposal of such cases and monitor their disposal accordingly.

2007

Circular No.3./2007-Cus. January 10,

F.No.401/243/2006-Cus.III

#### **14.5 Provisional release of seized vehicles pending adjudication on deposit of Security and execution of Bond – Amendment of para 56 of Adjudication Manual regarding.**

1. Reference is invited to the instructions for provisional release as contained in para 56 of the Adjudication Manual based on Ministry's letter F.No. 22/32/67 – Lc II dated 15.04.68, release of seized conveyance, under Section 115 of the Customs Act, 1962, to the owner pending adjudication on payment of security deposit and on execution of the bond, as contained in para 56 of the Adjudication Manual, based on Ministry's letter F.No.22/32/97- Lc II dated 15.04.68. It has been provided in the said instructions that the Bond amount in every case should be the estimated value of the vehicle and that the security deposits to be made in terms of the bond will depend on the gravity of the offence committed in relation to the vehicle liable to confiscation under Section 115 of the Customs Act. In the said para itself certain criteria for deposits to be taken have been mentioned. Which are rather conflicting and confusing in nature and give an erroneous impression as if the deposits may not exceed Rupees One Thousand i.e. the maximum penalty leviable under Section 117 of the Customs Act, 1962, normally, though higher deposits are also provided for.

2. In fact recently two instances have also come to the notice of the Board, where in taking recourse to the above mentioned instructions, some courts have even ordered the provisional release of seized conveyances carrying smuggled goods on bond and deposit of security of only Rs.1000/-, even though the involvement of the driver/owner of the vehicle in the smuggling of confiscated goods was prima facie proved.

3. The matter has been examined in the Board. It is observed that Section 112 of the Customs Act, 1962, inter-alia, provides for imposition of penalty on any person, who acquire possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe, are liable to confiscation under Section 111. Such penalty may extend upto five times the duty sought to be evaded on such goods or five times the difference between the declared value and the value thereof or one thousand rupees whichever is the highest, therefore, in cases where transport vehicles are intercepted carrying smuggled goods and are seized in terms of provisions of Section 115 (2) and where on the basis of investigations, the involvement of driver and / or owner of the vehicle in the transportation and or in many other way being concerned with in the smuggling of goods seized with the vehicle, is established, the driver and / or the owner will be liable to penalty under Section 112 of customs Act, 1962, which is much higher than Rs. 1000/- as provided under Section 117 of the Customs Act. The later penalty is provided only where for any offence / contravention noticed under Customs Act, 1962, even in relation to vehicles, no other penalty is impossible under any other section of the Customs Act. A security deposit of only Rs.1000/- at the time of provisional release of the vehicle, may therefore, be grossly inadequate to recover the amount of the penalty / fine that may be imposed on the driver and / or owner of the seized vehicle on adjudication where they are held liable to punishment under Section 112. It has, therefore, been decided by the Board to contest the provisional release allowed by the Courts in the above mentioned specific cases. Simultaneously, it has been decided to modify the provisions contained in Ministry's earlier / instructions F.No. 22/32/67-LC II dated 15.04.68 and substitute para 56 of the Adjudication Manual, as under, to remove any doubts and to make it clear that security deposit will be as may be decided by the proper officer competent to

adjudicate or provisionally release the vehicle depending upon the gravity of the offence.

In cases, where vehicles are seized by the Customs officers for carrying contraband / smuggled goods attracting action under section 115 of the Customs Act, 1962, such vehicles may be provisionally released to its owner, pending adjudication, on payment of security deposit and on execution of a Bond in the proper form. The Adjudicating officer competent to adjudicate the case under Section 122 of the Act, may allow provisional release of the conveyances seized carrying contraband / smuggled goods in violation of the provisions of the Customs Act. The bond amount in every such case should be the estimated value of the vehicles. The security deposit to be made in terms of the bond will, however, vary in each case and will depend upon an assessment of the gravity of the offence committed in relation to the vehicle liable to confiscation under section 115 of the Customs Act, 1962, the involvement of the person incharge / Driver / Owner of the vehicle and likely minimum penalties that may be imposed on them. The object of such deposit is mainly to recover the fine in lieu of confiscation that may be adjudged and penalty, that may be imposed on the driver and / or owner of the seized vehicle involved in the transportation of contraband / smuggled goods. Before provisional release of the vehicle, it should, however, be ensured that the same will not be required as evidence at a later date in a court of Law. If it is likely to be so required, the vehicle should not be released even provisionally.

**[ MFDR F.No.591/40/98 – CUs (AS) dated, 01-09-99.]**

#### **14.6 Permission for reshipment, within specified period, of confiscated goods:-**

In stances have been brought to the notice of the Board where adjudicating or appellate authorities permit reshipment of goods within a specified period. There are invariably cases where for one reason or the other reshipment is not effected during the period specified in the order in – original or order – in – appeal. In the absence of any provision for extension of the time limit for reshipment in the order itself, Customs Houses have taken a view that reshipment beyond the period specified in

the order can be permitted only by the next higher authority. This creates avoidable harassment for the passengers if reshipment could not be effected in time on account of unavoidable difficulties.

Board, therefore, desires that adjudicating as well as appellate authorities while permitting reshipment of any goods should clearly state in the order that reshipment would be permitted within specified period or such extended period as may be permitted by the concerned Assistant Commissioners.

**[Board's letter F.No. 495/19/87/ - CUS.VI dated 09.04.87]**

**14.7 Procedure to be followed in respect of re – shipment / re – export of import cargo where clearance of the same is not sought by the Importer for home consumption – Instructions – reg..**

1. It has been observed that different practices have been adopted by different appraising Groups while permitting re – shipment / re – export of Import Cargo, for which importers have not sought clearance for home consumption.

Attention in this regard is invited to the decision of Conference of Commissioners of Customs held in September 1993 at Calcutta. The Conference was of the view that the adjudicating authority should decide each case of re – shipment / re – export under provisions of Customs Act, 1962 read with I.T.C provisions.

2. In order to observe uniformity of practice in this regard the following guidelines are issued for compliance in respect of the requests made by the importers for re – export / re – shipment of import cargo.

- i. If the goods are not offending in any manner and re – export / re – shipment of the said goods is sought for bonafide reasons it may be permitted without charging any fine / penalty. This is for the simple reason that no Act or Rules are contravened when import is made.
- ii. In other cases, imposition of fine / penalty etc. may be considered after adjudication by the proper officer depending upon the merits of each case.
- iii. In all the cases, re – export will be allowed only against firm L / C, advance remittance or on importers providing documentary evidence to the satisfaction of Astd. / Addl. Commissioner of Customs regarding remittance of foreign exchange etc. This would also be subject to fulfillment of conditions provided under various allied acts in force from time to time.

**[S.O.No.7220 / 96 dated 29.01.96 issued by Mumbai Custom House]**

**14.8 Prohibition and restrictions under NDPS Act. 1985** - Possession, import into India, export from India and transshipment of Narcotic Drugs and Psychotropic Substances is completely prohibited under Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Rules made thereunder except as provided for in the said Act.

All prohibitions and restrictions imposed by or under NDPS Act 1985 on the import into India, export from India and transshipment of Narcotic Drugs and Psychotropic Substances shall be deemed to be prohibited and restrictions imposed by or under the Customs Act, 1962 and the provisions of the Customs Act shall apply accordingly as per Section 79 of NDPS Act, 1985.

No Narcotic Drug or Psychotropic Substances Specified in the NDPS Act, 1985 and rules made therein shall, be exported out of India / imported into India without export authorization / import certificate issued by the Narcotics Commissioner and in a manner specified in the said rules.

**14.9 Imposition or enhancement of personal penalty in re-adjudication cases under Sec.122 of Customs Act. 1962:-** There may be a situation where the appellate authority had quashed an order of adjudication in which a fine in lieu of confiscation was imposed with or without personal penalty with directions for making a de – nova Adjudication. The question arises whether at the time of fresh adjudication it would be legally correct for the adjudicating authority to impose a fresh personal penalty where no penalty was initially imposed or to impose a penalty higher than one that may have been imposed in the quashed order. The correct legal position is that Section 111 of the Customs Act, 1962 provides for dealing with offences enlisted therein. Neither this Section nor any of the provisions in the said Act provides any guiding principles as to when any of the penalties prescribed therein could be imposed. In the circumstances the officer making the adjudication has full discretion to inflict the penalty or penalties provided therein, which in his view may be just adequate to meet the situation existing in a particular case. The fact that

the adjudicating officer did not impose any personal penalty on the previous occasion, i.e. in the initial (quashed) adjudication, would not debar him from doing so once the said proceeding is quashed by the appellate authority and proceeds ahead to make a fresh adjudication. This, however, does not mean that personal penalty could be levied against a person who may not be concerned with any of the offences described therein and this essential condition should be satisfied before the punishment of personal penalty could be inflicted. The principle contained in this paragraph may be followed in Central Excise cases as well.

[ Para 73 of the Adjudication Manual ]

**14.10 Onus of proof that goods are smuggled or imported illegally, on Customs Department**

- (i) The Customs authorities should exercise caution in deciding cases involving confiscation of goods merely suspected to have been smuggled and to which Sec.123 of the Customs Act, 1962 does not apply. While considering the question of onus of proof in such cases, the High Court at Calcutta observed as follows:

“However, the point is that throughout the order the Asstt. Commissioner assumed that the burden of proof was on the petitioner No.1 who was unable to prove that the goods in his possession were not smuggled into India or not imported illegally. According to him the petitioner No.1 was unable to prove that the goods that were seized were not smuggled goods and had not been illegally imported. In my opinion the entire approach is contrary to law and the order cannot be supported. The burden of proof in this case did not lie on the petitioner No.1 or either of the petitioners, but the burden of proof was on the customs authority to prove beyond reasonable doubt that the goods had been illegally imported and were smuggled goods. The mere fact that the goods were of foreign make was not sufficient to discharge this onus or shift the same upon the petitioner. If the respondents had discharged the initial onus of showing that the goods had been illegally imported, then they could confiscate the same. For purpose of penalty they would have to go further and show that the petitioner No.1 had been in possession of the said goods with the knowledge that they were smuggled. That, of course, has never been proved, because the initial onus had been discharged by the respondents.”

- (ii) It is now well settled, that except for commodities which attract the provisions of Section 178 A S.C.A or Sec. 123 of the Customs Act, the burden to prove that the

goods seized are smuggled is on the Customs authorities and save in a very exceptional class of case, this burden never shifts. Even the provisions of the Evidence Act do not help in shifting the onus. However, in a case where the person from whose possession the goods are recovered, admits that he imported these goods, he may, by aid of the principles underlying Sec.106 of the Evidence Act, be called upon to show that he had a licence for such importation. But when the goods are recovered from a person who is not proved to be the importer of the goods and claims to be a purchaser of the imported articles, onus is always on the Customs authorities to establish that the goods were imported contrary to any import prohibition or restriction, and they have to bring home the guilt to the person alleged to have committed a particular offence by adducing satisfactory evidence.

**(iii)** There are three essential ingredients of the offence under Sec.167 (8) of the S.C.A. or under Sec.111 (d) of the Customs Act;

- (1)** that the importation of certain goods has been prohibited or restricted;
- (2)** that the goods in question belonging to such category, have been imported into India i.e., the goods are of foreign origin;
- (3)** that such importation has been contrary to such prohibition or restriction.

Unless all the three ingredients are proved by the Department, the offence is not established. In other words even if the import of a particular commodity has been prohibited for quite some time and it is also proved that the seized goods of that commodity are; of foreign origin, it would not be sufficient evidence to hold that the goods seized are smuggled, unless there is evidence which conclusively leads to the inference that the said goods were imported contrary to any prohibition or restriction. It has been held that the circumstances that a person makes inconsistent statements regarding the manner in which he came into possession of the articles, recovered from him, or that he did not maintain proper accounts to show the purchase of the articles, or that the purchase vouchers produced were found to be forged cannot necessarily lead to the conclusion that the articles were smuggled or were imported contrary to any prohibition or restriction. The evidence to justify an inference of smuggling should be one, which is relevant for proving the unauthorised importation of the goods and not the unauthorised possession of the goods.

However, once there is evidence relevant for the consideration of the adjudicating authority and it reasonably leads to an inference that the goods were imported contrary to any; import prohibition or restriction, the Courts are not likely to interfere with; the order of confiscation on the ground of insufficiency of the evidence. In fact in Ambala's case the Supreme Court upheld confiscation of certain items which; based merely on a retracted admission of the owner of the goods.

It is further well settled that (a) as soon as it is shown that certain goods have been imported contrary to the statutory prohibition and restriction they are liable to confiscation and for confiscation it is not necessary to establish further that the person from whose possession the said goods have been seized is concerned with the illegal importation, as it is necessary; for awarding the penalty and (b) the question of bonafides of the person from whose possession the goods have been taken is immaterial, once it is shown that the goods by whomsoever the importation may have been made, were imported in contravention of the statutory prohibition or restriction.

If the goods are resnullius i.e. are unclaimed and they are not seized from anybody's custody or possession, it would be open to the Department to confiscate them as soon as it is found that they are goods of foreign manufacture and the importation of such goods is prohibited or restricted.

In view of the foregoing, the investigations should be primarily; directed to procuring evidence which would be relevant for holding the goods as smuggled, though we should not discard our enquiries regarding the manner in which the goods were acquired by the person from whose possession they were recovered. It must also be pointed out that the purpose of these instructions is not to slacken anti – smuggling measures or to discourage town seizures but to make our investigations more purposeful, so that they lead to adjudications which are based on sound legal footings.

**[Ministry's letter F.No.4/116/62 – CUs VI and 4/149/65 – CUs.III]**

**14.11 Whether same goods can be confiscated twice for misdeclaration of value and contravention of import Trade Control Regulations – In order to**



make the position quite clear it would be better to illustrate it by quoting a specific case; the case is:-

A consignment of Toymonicas valued at Rs.1357 was imported from the United States of America without a valid import licence. As the goods originated from a dollar area and were a 'nil' item for licensing purpose, they were confiscated absolutely by a Commissioner of Customs. The importers appealed to the Central Board of Excise & Customs against Commissioner's Order but it was rejected. Against the Board's order, the importers preferred a revision petition to the Government of India who, however, directed that the offending goods be released for home consumption on payment of a fine of Rs.630 in lieu of confiscation. When the case was taken up for action by the Customs in accordance with Government of India orders quoted above it was discovered that the goods had also been undervalued. This point had not been considered at the time of presentation of the Bill of Entry when the question of Import Trade Control Offences only was considered. The same goods were again confiscated by the Commissioner of Customs, for the offence attracting clause 37 of Section 167, Sea Customs Act, and an option was given to clear them for home consumption on payment of an additional fine of Rs.1500. Against this new order (original) of the Commissioner the importer preferred an appeal to the Central Board of Excise & Customs who in the peculiar circumstances of the case held the view that the Government of India having an exercise of a specified sum as fine, the Commissioner was in law bound and to carry out this order and to release the goods accordingly.

Once the goods are released and are taken away, the Commissioner would cease to have jurisdiction to pass an order confiscating the same. The goods had not yet been released, and that the owner had not yet paid the amount of fine although he seemed to have offered to do so. The legal effect of the orders, including the order of the Govt. of India, is that until they are so released the goods stand confiscated to the Govt. and by section 184, they vest in the Government, subject only to the right of the owner to redeem them on payment of fine. In the eye of the law, the goods belong to the Government of India unless and until the fine is paid and the goods are released. It follows, therefore, that since at the time the commissioner made the order of confiscation the goods already stood confiscated to the Govt. and were the property of the Government and thus the Commissioners

(second) order confiscating the same goods again for under – valuation is inoperative and null and void. This is the legal position in a case where the Commissioner of Customs had confiscated the goods and the fine in lieu of confiscation had not been paid by the importers. In case of this nature Commissioner has no authority to make the second order of confiscation before fine has been paid and while the goods already stood confiscated.

A question, however, arises whether the position would change if the fine in lieu of confiscation had been paid and ownership had reverted to the importer and whether in that case the Commissioner of Customs could lawfully again proceed against the same goods in respect of another offence. The correct legal position in this changed context and circumstances is that there is nothing in Customs Act to bar an action for an offence on the ground that it had not been taken earlier when action was taken in respect of another offence concerning the same goods. If therefore any goods are seized once and confiscated or any goods in customs custody are confiscated, and the fine imposed in lieu of confiscation is set aside in appeal or revision it would still be lawful thereafter to seize the same goods, under section 178 in connection with a distinct offence, for which action had not been previously taken, after the ownership has reverted to the person concerned. The principle contained in this paragraph may be applied mutatis mutandis to Central Excise cases.

**[PARA 71 OF ADJUDICATION MANUAL]**

**14.12 Extension of summary procedure for disposal of adjudication:** -- In para 5.13 of their 89<sup>th</sup> Report, the Estimates Committee have recommended that the summary procedure of adjudication presently adopted in Baggage cases should be extended to even other cases where the parties agree to dispensing with the requirement of Show Cause Notice. After careful consideration of the recommendation made by the Committee, it has been decided to extend the summary procedure, where the parties so desire in writing, to other similar simple cases besides baggage cases, if they do not involve determination of any question having a relation to the tariff classification and rate of duty or the value of goods for the purposes of assessment or frauds prosecution or preventive detention or

complex points of facts or law, etc. It may, however, be emphasised that in every case of summary adjudication proceedings adopted the waiver of Show – Cause Notice should be only on the basis of a written request received in this behalf from the concerned party.

**[Board's letter F.No.394/233/84 – CUs (AS) Pt. V dated 06.09.85]**

#### **14.13 Adjudication of cases under Duty Exemption Scheme where exports obligation has not been fulfilled according to prescribed procedure**

In a case where export obligation under Duty Exemption Scheme was not fulfilled according to the prescribed procedure and Department had issued Show Cause Notices for initiating action against persons importing duty free raw materials under the Duty Exemption Entitlement Certificate, a doubt had arisen whether it would be necessary to first establish through separate adjudication proceedings that exports were not as per prescribed procedure. The Ministry of Law to whom the matter was referred have, after detailed examination of the matter, advised that nullification of export by adjudication, is not pre – requisite for action on import violation and that fraudulent exports can be brought up as evidence in the adjudication by the authority having jurisdiction in the import offence.

**[Board's Circular No.64/95 dated 12.06.95 F.No.605/5/93 – DBK]**

#### **14.14 Option in lieu of confiscation – Exercise of discretion – Recording of**

**reasons:-** The Government of India, Ministry of Finance, (Deptt. Of Revenue) observes that while ordering absolute; confiscation / exercising; their discretion no reasons are being; recorded by the Adjudicating Officers. Principles of Administrative Law require that; discretion should be exercised in a judicious manner i.e. actions should be supported by reasons to enable the courts to look into the validity of these reasons. In the absence of reasons the Departmental order, if challenged in courts, may not stand.

It is, therefore, impressed upon all the Adjudicating Authorities that even for exercise of discretion i.e., for not giving the option to redeem the goods on payment of fine in lieu of confiscation and for ordering absolute confiscation reasons therefore should be given in the order – in – original.

**[Mumbai Customs S.O.No. 6786 dated 08.08.1983]**

## Chapter -VII

### APPEALS, REVIEW AND REVISION

#### 7.1. PRELIMINARY

Provisions of Chapter XV of the Customs Act, 1962 represent a complete scheme or code for challenging the order passed by any Officer of Customs in exercise of statutory powers.

**7.2. Appeal- definition of** :- A legal proceeding by which a case is brought from a lower to a higher court of law for reversing; An application or reference to corporate, vindicate or decide by a recognized authority. (Mar. Web. Dic.)

#### 7.3. APPEALABLE ORDERS

**7.3.1. “Decision or order”**.—The words “a decision or order passed by an officer of customs under this Act” used in Sec. 188 of the Sea Customs Act, 1878 (corresponding to Sec. 128 of the Customs Act 1962) must mean a real and not a purported determination. A determination, which takes into consideration factors which the officer has no right to take into account, is no determination. In such cases the provision excluding jurisdiction of civil courts cannot operate so as to exclude an enquiry by them. The expression “any decision or order” are of wide amplitude and included all orders or decisions passed under this Act. The authorities deciding the appeal, viz. the Commissioner (Appeals) and the Appellate Tribunal are functioning as quasi-judicial authorities. The expression used under Sec. 128 to designate the Commissioners (Appeals) and the appellate tribunal is “appellate authority”.

When a person is designated as an appellate authority there is a lis between the appellant who pays the duty and the revenue; and the order passed by the appellate authority is subject to revision by the Central Government. The power exercised under this section by the Commissioner (Appeals) or by the Appellate tribunal being of a quasi-judicial nature, no authority, however high placed, can control the decision of a judicial or a quasi-judicial authority. This is the essence of own judicial system.

All judicial or quasi-judicial orders would, in their nature, be appealable. Of course this would not necessarily mean that an appeal could, on that score itself, be maintained, since, as already seen, no appeal would lie against such orders unless the statute itself provides for a right of appeal.

### **7.3.2. ORDER – MEANING OF**

It may be noticed that in the provisions relating to appeals in both the Acts there is a slight change in the words used. In some places the words ‘decision or order’ are used while in some places the word ‘decision’ alone is used. On the question whether this variation would be of any particular significance, the decision in *Hindustan Safety Glass Works Ltd.* (supra) may be referred to. As earlier noted, the question in that case was whether any appeal would lie against a summons issued for production of documents and for that reason of an available alternate remedy the writ petition should be rejected. In para 10 the High Court observed:

“That summons issued under Sec. 14 does not fall under the category of a decision is not in doubt and has not been characterised as such even by Shri Dhavan. What he however says is that it is an order passed by the Asst. Commissioner and is consequently appealable under Sec. 35. We have considered the submission with the seriousness it deserves, but we find it difficult to accept it. We find in chapter VI in which Sec. 35 occurs a set of provisions relating to adjudication of confiscations and penalty which includes provisions for appeals and revisions. When we look into Sec. 35 itself we find that the word ‘order’ appears to have been used in the sense of an order in enforcement of a decision. This is clear when we read the proviso to Sec. 35 laying down that no order passed in appeal confirming, altering or annulling the decision or order appealed against shall be such as will have the effect of subjecting any person to any greater confiscation or penalty than has been adjudged against him in the original decision or order. And sub-section (2) of Sec. 35 makes an order passed in appeal final subject to one passed in revision under Sec. 36 by the Central Board. The nature of an order which admits of an appeal or can be passed by the appellate authority is, thus, contemplated as one resulting in some confiscation or penalty. The word order in Sec. 35 would not take within its sweep a mere direction to produce some documents which, by itself, cannot involve the consequence of any confiscation or penalty.”

The High Court thus held that the word ‘Order’ would refer to an order in enforcement of a decision. It would not include a mere direction without a consequent result of confiscation or penalty. Though the High Court in the above passage referred to confiscation and penalty only, there can be no doubt that a demand for duty would also be included. In fact orders for demand of duty, as well as orders on the basis of which subsequent demands for duty could be raised, would all be orders that would be appealable. For instance, an order on a classification list or a price list is appealable though no demand for duty would arise until after an assessment later takes place following such an order.

In para 9 of the decision in Commissioner v. Nippon Bearings (P) Ltd. – 1990 (50) E.L.T. 276 the Tribunal has observed as follows :

“Sec. 122 of the Act should be read with Sec. 124 of the Act. Sec. 124 of the Act speaks of ‘an order’ and no reference is made to a ‘decision’. Therefore, the Commissioner while adjudicating confiscation and penalties passes an order and not a decision. An order under Sec. 122 of the Act requires communication under Sec. 129A(3) in the absence of which the question of filing an appeal does not arise. At this stage we may point out that Sec.124 speaks of only an order. We may also point out that Sec. 129A(3) does not speak of communicating a decision. In other words the parliament has consciously made a distinction between a decision and an order to be passed under the Act for purpose of filing an appeal to the tribunal.”

#### **7.4. PROVISIONS REGARDING APPEALS**

##### **7.4.1. Appeals to Commissioner (Appeals).**

**7.4.1.1.** Section 128 of the Customs Act. 1962, (1) stipulates that Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Commissioner of Customs may appeal to the Commissioner (Appeals) within sixty days from the date of the communication to him of such decision or order.

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow in to be presented within a further period of thirty days.

(1A) The Commissioner (Appeals) may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing ;

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(2) Every appeal under this section, shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf.

Customs (Appeals) Rules, 1982.

*[Notification No. 212-Cus., dated 10-9-1982 as amended by Notifications No. 248-Cus., dated 10-11-1982; No. 15/85-Cus., dated 30-1-1985 and No. 252/86-Cus., dated 16-4-1986.]*

**7.4.1.2.** In exercise of the powers conferred by sub-section (1) of section 156 of the **Customs Act, 1962** (52 of 1962), the Central Government hereby makes the following rules, namely :

## CHAPTER I

### PRELIMINARY

**Rule 1. Short title and commencement.** — (1) These rules may be called the Customs (Appeals) Rules, 1982.

(2) They shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**Rule 2. Definitions.** — In these rules, unless the context otherwise requires, —

(a) “Act” means the **Customs Act, 1962** (52 of 1962);

(b) “Form” means a form appended to these rules;

(c) “Section” means a section of the Act.

## CHAPTER II

### APPEALS TO [COMMISSIONER] (APPEALS)

**Rule 3. Form of appeal to [Commissioner] (Appeals).** — (1) An appeal under sub-section (1) of section 128 to the [Commissioner (Appeals)] shall be made in Form No. C.A.-1.

(2) The grounds of appeal and the form of verification as contained in Form No. C.A.-1 shall be signed :-

(a) in the case of an individual, by the individual himself or where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf and where the individual is a minor or is mentally incapacitated



from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) in the case of a Hindu undivided family, by the *Karta* and, where the *Karta* is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c) in the case of a company or local authority, by the principal officer thereof;

(d) in the case of a firm, by any partner thereof, not being a minor;

(e) in the case of any other association, by any member of the association or the principal officer thereof; and

(f) in the case of any other person, by that person or some person competent to act on his behalf.

(3) The form of appeal in Form No. C.A.-1 shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

**Rule 4. Form of application to the [Commissioner] (Appeals).** — (1) An application under sub-section (4) of Section 129D to the [Commissioner] (Appeals) shall be made in Form No. C.A.-2.

(2) The form of application in Form No. C.A.-2 shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified appeal copy) and a copy of the order passed by the [Commissioner] of Customs directing such authority to apply to the [Commissioner] (Appeals).

**Rule 5. Production of additional evidence before the [Commissioner] (Appeals).** — (1) The appellant shall not be entitled to produce before the [Commissioner] (Appeals) any evidence, whether oral or documentary, other than

the evidence produced by him during the course of proceedings before the adjudicating authority, except in the following circumstances, namely :-

(a) where the adjudicating authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by that authority; or

(c) where the appellant was prevented by sufficient cause from producing before the authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the [Commissioner] (Appeals) records in writing the reasons for its admission.

(3) The [Commissioner] (Appeals) shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

(a) to examine the evidence or documents or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the powers of the [Commissioner] (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal.

### **CHAPTER III**

#### **APPEALS TO APPELLATE TRIBUNAL**

**Rule 6. Form of Appeals, etc., to the Appellate Tribunal.** — (1) An appeal under sub-section (1) of section 129A to the Appellate Tribunal shall be made in Form No. C.A.-3.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (4) of section 129A shall be made in Form No. C.A.-4.

(3) Where an appeal under sub-section (1) of section 129A or a memorandum of cross-objections under sub-section (4) of that section is made by any person other than the [Commissioner] of Customs, the grounds of appeal, the grounds of cross-objections and the forms of verification as contained in Form Nos. C.A.-3 and C.A.-4, as the case may be, respectively shall be signed by the person specified in sub-rule (2) of rule 3.

(4) The form of appeal in Form No. C.A.-3 and the form of memorandum of cross-objections in Form No. C.A.-4 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

**Rule 7. Form of application to the Appellate Tribunal.** — (1) An application under sub-section (4) of section 129D to the Appellate Tribunal shall be made in Form No. C.A.-5.

(2) The form of application in Form No. C.A.-5 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order passed by the [Commissioner] of Customs (one of which at least shall be a certified copy) and a copy of the order passed by the Board directing such [Commissioner] to apply to the Appellate Tribunal.

**Rule 8. Form of application to the High Court.** — (1) An application under sub-section (1) of section 130A requiring the High Court to direct the Appellate Tribunal to refer to the High Court any question of law shall be made in Form No. C.A.-6 and such application shall be filed in quadruplicate.

(2) A memorandum of cross-objections under sub-section (3) of section 130A to the High Court shall be made in Form No. C.A.-7 and such memorandum shall be filed in quadruplicate.

(3) Where an application under sub-section (1) of section 130A or a memorandum of cross-objections under sub-section (3) of that section is made by any person other than the Commissioner of Customs, the application, the memorandum or form of verification, as the case may be, contained in Form No. C.A.-6 or Form No. C.A.-7 shall be signed by the person specified in sub-rule (2) of rule 3.]

### [CHAPTER IIIA]

#### REVISION BY CENTRAL GOVERNMENT

**Rule 8A. Form of revision application to the Central Government.** - 1. (1) A revision application under sub-section (1) of section 129DD to the Central Government shall be in Form No. C.A.-8.

(2) The grounds of revision application and the form of verification, as contained in Form C.A.-8, shall be signed by the person specified in sub-rule (2) of rule 3.

2. Where the revision application is signed by the authorised representative of the applicant, the document authorising such representative to sign and appear on behalf of the applicant shall be appended to such revision application.

3. The revision application in Form No. C.A.-8 shall be filed in duplicate and shall be accompanied by an equal number of copies of the following documents, namely :-

(i) order passed by the [Commissioner] of Customs (Appeals) under section 128A;  
and

(ii) decision or order passed by the Customs Officer which was the subject-matter of the order referred to in clause (i).

**Rule 8B. Procedure for filing revision application.** — (1) The revision application in Form No. C.A.-8 shall be presented in person to the Under Secretary, Revision

Applications, Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-1, or sent by registered post addressed to said Under Secretary.

(2) The revision application sent by registered post under sub-rule (1), shall be deemed to have been submitted on the date on which it is received in the office of the said Under Secretary.]

## CHAPTER IV

### AUTHORISED REPRESENTATIVES

**Rule 9. Qualifications for authorised representatives.** — For the purposes of section 146A, an authorised representative shall include a person who has acquired any of the following qualifications, being the qualifications specified under clause (d) of sub-section (2) of the said section 146A, namely :-

(a) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or

(b) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or

(c) a Company Secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980), who has obtained a certificate of practice under section 6 of that Act; or

(d) a post-graduate or an Honours degree holder in Commerce or a post-graduate degree or diploma holder in Business Administration from any recognised University; or

(e) a person formerly employed in the Departments of Customs or Central Excise or Narcotics and has retired or resigned from such employment after having rendered service in any capacity in one or more of the said Departments for not less than ten years in the aggregate.

*Explanation.* — In this rule, “Recognised University” means any of the Universities specified below, namely :-

*I. Indian Universities*

Any Indian University incorporated under any law for the time being in force in India;

*II. Rangoon University*

*III. English and Welsh Universities*

The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales;

*IV. Scottish Universities*

The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews;

*V. Irish Universities*

The Universities of Dublin (Trinity College), the Queen’s University, Belfast and the National University of Dublin;

*VI. Pakistan Universities*

Any Pakistan University incorporated under any law for the time being in force;

*VII. Bangladesh Universities*

Any Bangladesh University incorporated under any law for the time being in force.

**Rule 10. Authority under section 146A(5)(b).** — The [Commissioner] of Customs having jurisdiction in the proceedings in which a person who is not a legal practitioner is found guilty of misconduct in connection with that proceeding under the Act shall be the authority for the purposes of clause (b) of sub-section (5) of section 146A.

**7.4.2. Appeals to the Appellate tribunal:**

**7.4.2.1.** Section 129 A of the Customs Act, 1962, prescribes that (1) any persons aggrieved by any of the following orders may appeal to the appellate Tribunal against such order –

- (a) a decision or order passed by the Commissioner of Customs as an adjudicating authority;
- (b) an order passed by the Commissioner (Appeals) under Sec. 128A.
- (c) an order passed by the Board or the Appellate Commissioner of Customs under Sec. 128, as it stood immediately before the appointed day;
- (d) an order passed by the Board or the Commissioner of Customs, either before or after the appointed day, under Sec. 130, as it stood immediately before that day:

Provided that no appeal shall lie to the Appellate Tribunal and the Appellate Tribunal shall not have jurisdiction to decide any appeal in respect of any order referred to in clause (b) if such order relates to,--

- (a) any goods imported or exported as baggage;
- (b) any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India, or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination;
- (c) payment of drawback as provided in Chapter X, and the rules made thereunder :

Provided further that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in clause (b) or clause (c) or clause (d) where ---

- (i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Sec. 125: or
- (ii) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

- (iii) the amount of fine or penalty determined by such order, does not exceed fifty thousand Rupees.

(1A) Every appeal against any order of the nature referred to in the first proviso to sub –section (1), which is pending immediately before the commencement of Sec. 40 of the Finance Act, 1984 (21 of 1984) before the Appellate Tribunal and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on such commencement to the Central Government and the Central Government shall deal with such appeal or matter under Section 129-DD as if such appeal or matter were an application or a matter arising out of an application made to it under that section.

(1B) (i) The Board may, by notification in the Official Gazette, constitute such Committees as may be necessary for the purpose of this Act.

(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Customs or two Commissioners of Customs, as the case may be.

- (2) The Committee of Commissioner of Customs may, if it is of opinion that an order passed by the Appellate Commissioner of Customs under section 128, as it stood immediately before the appointed day, or by the Commissioner (Appeals) under section 128A, is not legal or proper, direct the proper officer to appeal on its behalf to the Appellate Tribunal against such order.
- (3) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of Customs, or as the case maybe, the other party preferring the appeal.
- (4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that the may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the



appellate tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objection(4), if it is satisfied that there was sufficient cause for not presenting it within that period .

(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, in the case of an appeal made on or after the 1<sup>st</sup> day of June, 1993, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,--

where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakhs, five thousand rupees :

where the amount of duty and interest demanded and penalty levied by an officer of customs in the case of which the appeal relates is more than fifty lakh rupees, ten thousand rupees :

**Provided** that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) Every application made before the Appellate Tribunal, —

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees :

**Provided** that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Customs under this sub-section.

#### **7.4.2.2. PROCEDURE OF APPELLATE TRIBUNAL –**

In terms of Section 129C(6) of Customs Act, 1962. The appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings. Further in terms of sub-section 8 of the said rules any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974). As such the rules formed under 129C(6) of the Customs Act, 1962 were notified vide *CEGAT Notification No. 1/CEGAT/82, dated 25-10-1982 as amended.*

### **7.5. PERSON ENTITLED TO FILE THE APPEAL:**

#### **7.5.1. PERSON AGGRIEVED**

**7.5.1.1.** Sec. 35 and Sec. 35B(1) of the Central Excises and Salt Act, as well as Sec. 128 and 129A(1) of the Customs Act, state that any person aggrieved by the decision or order of the concerned lower authority may prefer an appeal against the same. Thus, under these provisions no appeal can be filed unless the person filing the appeal is aggrieved by the impugned order. Sec. 35B(2) of the Central Excises and Salt Act and Sec. 129A(2) of the Customs Act designate the Commissioner as the person entitled to file an appeal, permitting him to file the appeal by authorising a suitable subordinate to do so. Sec. 35L of the Central Excises and Salt Act and Sec. 130E of the Customs Act merely read that an appeal may be filed to the Supreme Court, there being no specification as to who would be entitled to file the appeal. Hence once it has been found that an appealable order has been passed it will have to be then verified who would be entitled to file the appeal. The “person aggrieved” would normally be the person who has been saddled with a liability

under the impugned order, either by way of payment of duty, or penalty, or an order for confiscation, with or without option for redemption. There have been several decisions where this 'phrase aggrieved' has been gone into.

**7.5.1.2.** Sec. 129A(2) of the Customs Act entitles the Commissioner to authorise the filing of an appeal, on behalf of the revenue, against an order of the Commissioner (Appeals). As to the process leading to the filing of the appeal under that provision, the Tribunal held, in *Commissioner v. Kirloskar Cummins Ltd.* [ 1987 (28) E.L.T. 65], that the order should be first examined by the Commissioner himself and that the processing should not be from junior upwards. But when a similar submission was made in a later case, *Commissioner v. Cawnpore Sugar Works* [ 1989 (42) E.L.T. 11], the Tribunal disagreed with that view and held that if the Superintendent had initially gone through the file and made a recommendation for filing an appeal and then the Commissioner, after having gone through that note, agreed with that view and ordered the filing of the appeal such an order is not bad in law.

**7.5.2. aggrieved person – Who is not :**

- a person who has only an agreement of sale.....
- against whom no order has been passed .....
- a person who had made no claim over the confiscated property during adjudication.....
- whose claim had been upheld in the order on the classification list or price list.....
- a mere broker.....
- Consignor when Modvat credit is denied .....
- A person who has no direct legal interest in the goods
- A CHA unless authorized to file appeal on behalf of importer.....
- An Asstt. Commr. In the matter of filing appeal for enhancement of sentence in a

criminal prosecution.

### **7.5.3. No appeal lies against**

- direction only .....
- a trade notice.....
- order of Commr. (A) refusing to grant waiver of pre-deposit .....
- order of Commr. (A) refusing to grant stay .....
- a summons for production of documents.....
- an order, unless it is adverse to the claimant .....
- a direction to the Asstt. Commr. To prefer an appeal .....
- adjustment of previous licence against new licence .....

### **7.5.4. No appeal lies to CEGAT against**

- order passed by Commr. (A) under Section 35E (4) CESA
- order for payment of interest on yarn used in fabrics later exported  
under Rule 13 CER.....
- Per Contra .....
- order rejecting claim for refund of interest collected on rebated duty of  
excise.....

### **7.5.5. Appeal lies to CEGAT against**

- order relating to refund claim of cess paid on jute yarn captively  
consumed.....
- Demand for cess under Produce Cess Act.....
- Order under Cl. 3 of the Jute Manufactures Cess Rules.

## **7.6. JOINT APPEALS:**

**7.6.1.** In connection with appeals a question that often comes up is whether a common appeal can be filed by several persons or even by the same person against several orders. Such a situation may arise under several circumstances :

1. Different show cause notices issued to the same person but finally disposed of under a single order.
2. The above notices may be disposed of under separate, but identical orders.
3. Single show cause notice issued to several persons and then disposed of under a single order.
4. Show cause notices to different parties separately but finally disposed of under a single order.
5. Separate appeals filed by a single individual but all appeals disposed of under a single consolidated order.
6. Separate appeals filed by different persons but heard together and disposed of by a single order as involving a common issue.
7. Single appeal filed against several orders and disposed of under a single order without objection.

**7.6.2.** In respect of (1) above the original order being one it would be sufficient if a single appeal is filed. See *Godrej and Boyce Mfg. Co. Ltd. v. Commissioner* [1994 (71) E.L.T. 429]. In respect of (2) above the original orders being multiple in number, as many appeals will have to be filed as there are orders in original. In respect of (3) above it would be open to two or more of the persons concerned to join together and file a single appeal but it would be open to each individual to file his own separate appeal. The same would be the position in respect of (4) above. See *Kanta International and Motilal Gupta v. Commissioner* [1990 (48) E.L.T. 549] wherein it was held that in respect of an adjudication order under which penalties have been levied against two persons, both of them could jointly file a single appeal. See also *Universal Automobile & Ancillary Ltd. v. Commissioner* [1991 (56) E.L.T. 346] for the same. When under the same transaction the firm as well as the partner are said to have committed the offence and penalties are

imposed on both under the same order, the firm and the partner are entitled to file a joint appeal. *Universal Automobile and Ancillary Ltd. v. Commissioner* [1990 (47) E.L.T. 79]. In respect of (7) above a single further appeal would suffice as there was only one appeal earlier and that was disposed of under one order.

**7.6.3.** In *Alliance Mills (Lessees ) Ltd. v. Collr.*- 1996 (81) E.L.T. 615 the East Regional Bench had to deal with a case in which 36 show cause notices were disposed of under a single order with one order number only. An appeal against that order was also disposed of under a single order with a single number only. When a single appeal was filed in the CEGAT against that order an objection was taken that 36 appeals were to be filed and fees paid separately for each such appeal. Thus the situation was as under (1) and (7) above. The Bench was of opinion that since the order in original as also the order in appeal were given a single number only the appeal to the CEGAT would also be a single appeal only. However it took note of an earlier judgment of the South Regional Bench to the contrary and referred the matter to the President for Constitution of a Larger Bench, observing that the decision in *Ekantika Copiers* also needed reconsideration. It is not known whether a Larger Bench was constituted and, if so, what was the decision of that Bench.

**7.6.4.** But the opinion is not uniform in respect of (5) and (6) above. In *Unique Pharmaceutical Lab. V. Commissioner* [1983 (12) E.L.T. 628] the Assistant Commissioner's order related to four bills of entry. On appeal the Commissioner (Appeals ) passed a single order. A single revision petition was filed to the Govt. On transfer thereof to the Tribunal an objection was taken that four revisions should have been filed. It was held that as the order of the Commissioner (Appeals) (it must have been the Appellate Commissioner) was only one, a single revision would suffice. But it is not clear from the order whether there were four appeals before the Commissioner or only one. The above decision was followed in *Bharat Petroleum Corpn. v. Commissioner* [ 1988 (33) E.L.T. 563] by the same Bench. However, when this issue came up before another Bench in *P.K. Himatsingka & Co. v. Commissioner* [1987 (29) E.L.T. 714] it was held that there should be as many appeals as there are original orders to be contested. It may be noticed that the

contrary view, that one appeal would suffice even in such cases, has been put forward in the Editor's note under the above report, as also earlier in the Editorial at page A 102 of 1983 (11) E.L.T. The argument is that as the appeal is under the provisions of Sec. 35-B(1) of Central Excises and Salt Act or Sec. 129A of the Customs Act, which refer to AN ORDER of the Commissioner (Appeals), a single appeal should suffice against a single order. Reference is made also to a judgment of the Andhra High Court C.I.T. v. Venkateswara Talkies (1985 Vol.20 Taxman 47) and of the Calcutta High Court C.I.T. v. Rupa traders (1979 Vol. 118 ITR 412) as supporting the above view .

**7.6.5.** This is on the theory that after an order is passed in the appeal, the order of the lower authority is merged in the order of the appellate authority and hence there being a single order only of the appellate authority, one appeal alone would suffice against that order. It may be seen that in S. S. Rathore v. State of Madhya Pradesh [1989 (43) E.L.T. 790] the Supreme Court has laid down that the doctrine of merger is applicable not only to proceedings in courts but also to proceedings before Tribunals. But when applying the above argument it is has also to be remembered that while passing a consolidated order in multiple appeals the usual practice is to give the order multiple numbers equal to the number of appeals, thus making the order in appeal a multiple order though identical. In that event the above argument that there was only a single order in appeal may not hold good. Thus there appears to be much to be said in support of either view.

**7.6.6.** However, as far as the CEGAT is concerned, multiple appeals are insisted upon as may also be seen from CEGAT Public Notice No. 3 of 1986, dt. 30-5-86 in which it is mentioned in para 5 that while multiple appeals are to be filed, a single consolidated paper book may be filed. This has been finally settled by the Larger Bench decision reported in Ekantika Copiers (P) Ltd. (supra) it appears that in such cases also as many appeals are to be preferred as there were 13 appeals filed before the Commissioner (Appeals) and they were disposed of under 13 separate, but identical, orders since 13 separate numbers had been given to the order in

appeal. This that would be a case falling under (2) above, and not under (5) or (6) above. But in para 7 of the main order (page 360) the Bench observed :

“Accordingly we hold that where the Commissioner (Appeals) disposes of a number of appeals by a common order, the appellant should file as many appeals as numbers of orders in original and the mere fact that a common order has been passed by the Commissioner (Appeals) cannot be a ground for filing a single appeal.”

**The point to be noted is that the above observations cover (2), (5) and (6) above though the facts in the instant case do not appear to have covered (5) and (6). But since the observations are in a Larger Bench decision it is felt that even in cases of (5) and (6) above multiple appeals may be necessary hereafter.**

## **7.7. FORMS AND PROCEDURE FOR FILING APPEAL**

### **7.7.1 APPEALS TO COMMISSIONER (APPEALS):**

Section 128 A of The Customs Act, 1962 provides that—

(1) The Commissioner (Appeals) shall give an opportunity to the appellant to be heard if he so desires.

(2) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

The Commissioner (Appeals) may, after making such further inquiry as may be necessary, pass such order as he thinks fit confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the adjudicating authority with such directions as he may think fit for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary :

Provided that an order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund shall not be



passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Commissioner of Customs.

### **Form of appeal to Commissioner (Appeals) –**

Rule 3 of Customs (Appeals) Rules, 1982, prescribes that. (1) An appeal under sub-section.

(1) of Section 128 to the Commissioner (Appeals) shall be made in Form no. C.A.-1.

(2) The grounds of appeal and the form of verification as contained in form No.C.A.-1 shall be signed :-

- (a) in the case of an individual, by the individual himself or where the individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf and where the individual is a minor or is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf ;
- (b) in the case of a Hindu undivided family, by the Karta and, where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family.
- (c) in the case of a company or local authority, by the principal officer thereof ;
- (d) in the case of a firm, by any partner thereof, not being a minor ;
- (e) in the case of any other association, by any member of the association or the principal officer thereof ; and
- (f) in the case of any other person, by that person or some person competent to act on his behalf.

(3) The form of appeal in Form No. C.A.-1 shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

**Form of Appeal to the Commissioner (Appeals) under Section 128 of the Customs Act, 1962**

**Form No. CA -1**

- (1) No.....of .....(year).....
  - (2) Name and address of the appellant.
  - (3) Designation and address of the officer passing the decision or order appealed against and the date of the decision or order.
  - (4) Date of communication of the decision or order appealed against to the appellant.
  - (5) Address to which notice may be sent to the appellant.
  - (6) Whether duty or penalty or both is deposited. If not, whether any application for dispensing with such deposit has been made. (A copy of the Challan under which the deposit is made shall be furnished).
  - (6A) Whether the appellant wishes to be heard in person.
7. Reliefs claimed in appeal.

Statement of facts

Grounds of appeal

(i)

(ii)

(iii)

Signature of authorised  
the appellant.

representative, if any.

Signature of

Verification

I, ....., the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ..... day of .....(year).....

Place .....

Date .....

Signature of authorised  
the appellant.

Signature of

representative, if any.

Notes : (1) The grounds of appeal and the form of verification shall be signed by the appellant in accordance with the provisions of Rule 3 of the Customs (Appeals) Rules, 1982.

(2) The form of appeal, including the statement of facts and the grounds of appeal shall be filed in duplicate and shall be accompanied by a copy of the decision or order appealed against.

**Form of application to the Commissioner (Appeals) under Section 129-D—**

- (1) An application under sub-section (4) of Section 129D to the Commissioner (Appeals) shall be made in form No. C.A.-2.
- (2) The form of application in Form No. C.A. shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified appeal copy) and a copy of the order passed by the Commissioners of Customs directing such authority to apply to the Commissioners.

**FORM NO. C.A.-2**

[See Rule 4 of the Customs (Appeals) Rules, 1982]

Form of Application to the Commissioner (Appeals) under Sec. 129D(4) of the Customs Act, 1962

Appeal No. ....of .....(year).....

.....Applicant

Vs.

.....Respondent

- (1) Designation and address of the application (If the application is not the adjudicating authority, a copy of the authorisation from the Commissioner of Customs to make the application should be enclosed).
- (2) Name and address of the respondent.
- (3) Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.
- (4) Date on which the order under sub-section (2) of Section 129D has been passed by the Commissioner of Customs.
- (5) Date of the communication of the order referred to in (4) above to the adjudicating authority.
- (6) Relief claimed in the application.

Statement of facts

Grounds of appeal

(i)

(ii)

(iii)

etc.

Signature of the  
applicant.

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**Note :** The form of application, including the statement of facts and the grounds of application shall be filed in duplicate and shall be accompanied by two copies of the decision or order passed by the adjudicating authority (one of which at least shall be a certified copy) and a copy of the order of the Commissioner of Customs under sub-section (2) of Section 129D of the Act.

**7.7.2. Form of Appeals, etc., to the Appellate Tribunal.—**

- (1) An appeal under sub-section (1) of section 129A to the Appellate Tribunal shall be made in Form No. C.A.-3.
- (2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (4) of section 129A shall be made in Form No. C.A.-4.
- (3) Where an appeal under sub-section (1) of section 129A or a memorandum of cross-objections under sub-section (4) of that section is made by any person other than the Commissioner of Customs, the grounds of appeal, the grounds of cross-objections and the forms of verification as contained in Form Nos. C.A.-3 and C.A.-4, as the case may be, respectively shall be signed by the person specified in sub-rule (2) of rule 3.
- (4) The form of appeal in Form No. C.A.-3 and the form of memorandum of cross-objections in Form No. C.A.-4 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

**Form of application to the Appellate Tribunal.—**

- (1) An application under sub-section (4) of section 129D to the Appellate Tribunal shall be made in Form No. C.A.-5.
- (2) The form of application in Form No. C.A.-5 shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order passed by the Commissioner of Customs (one of which at least shall be a certified copy) and a copy of the order passed by

**FORM NO. C.A.-3**

[See Rule 6(1) of the Customs (Appeals) Rules, 1982]

Form of Appeal to the Appellate Tribunal under Section 129A(1) of the Customs Act, 1962

**In the Customs, Excise and Gold (Control) Appellate Tribunal**

Appeal No. .... of .....

.....Appellant

Vs.

.....Respondent

- (1) The designation and address of the authority passing the order appealed against.
- (2) The number and date of the order appealed against.
- (3) Date of communication of the order appealed against.
- (4) State/Union territory and the Commissionerate in which the order/decision of assessment/penalty/fine was made.
- (5) Designation and address of the adjudicating authority in cases where the order appealed against is an order of the Commissioner (Appeals).
- (6) Address to which notices may be sent to the appellant.
- (7) Address to which notices may be sent to the respondent.
- (8) Whether the decision or order appealed against involves any question having a relation to the rate of duty or to the value of goods for purposes of assessment; if not, the difference in duty involved or amount of fine or penalty involved or value of goods involved, as the case may be.
- (9) Whether duty or penalty is deposited ; if not, whether any application for dispensing with such deposit has been made.  
(A copy of the Challan under which the deposit is made shall be furnished).
- (9A) Whether the appellant wishes to be heard in person.
- (10) Reliefs claimed in appeal.

Statement of facts

Grounds of appeal

(i)

(ii)

(iii)

(iv)

etc.

Signature of the authorised  
appellant.

Signature of the

representative, if any.

Verification

I, ..... , the appellant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ..... day of .....19 .....

Signature of the authorised  
appellant.

Signature of the

representative, if any,

Notes : 1. The grounds of appeal and the form of verification shall, if the appeal is made by any person, other than the Commissioner of Customs, be signed by the appellant in accordance with the provisions of Rule 3 of the Customs (Appeals) Rules, 1982.

2. The form of appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy)

3. The form of appeal should be in English (or Hindi) and should set forth, concisely and under district heads, the grounds of appeal without any argument or narrative and such grounds should be numbered consecutively.

4. The fee of Rs. 200/- required to be paid under the provisions of the Act shall be paid through a crossed bank draft drawn in favour of the Assistant Registrar of the Bench of the Tribunal on a branch of any Nationalized bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

**FORM NO. C.A.-4**

[See Rule 6(2) of the Customs (Appeals) Rules, 1982]

Form of Memorandum of Cross-objections to the Appellate Tribunal under Section 129A(4) of the

Customs Act, 1962

**In the Customs, Excise and Gold (Control) Appellate Tribunal**

Cross-Objection No. ....of .....19 .....

In Appeal/Application ..... of .....19.....

Vs.

.....Respondent

- (1) State/Union territory and the Commissionerate in which the order/decision of assessment/ penalty/ fine was made.
- (2) Date of receipt of notice of appeal or application filed with the Appellate Tribunal by the appellant or, as the case may be, the Commissioner of Customs.
- (3) Address to which notices may be sent to the respondent.
- (4) Address to which notices may be sent to the appellant/applicant.
- (5) Whether the decision or order appealed against involves any question having a relation to the rate of duty of Customs or to the value of goods for purpose of assessment; if not, the difference in duty involved, or amount of fine or penalty involved or the value of goods involved, as the case may be.
- (6) Reliefs claimed in the memorandum of cross-objections.

**Grounds of Cross-Objections**

(1)

(2)

(3)

(4) etc.



Signature of the authorised  
respondent.

Signature of the

representative, if any.

Verification

I,....., the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified to day, the .....day of .....19.....

Signature of the authorised  
respondent.

Signature of the

representative, if any.

Notes : 1. The grounds of cross-objections and the form of verification shall, if the memorandum is filed by any person, other than the Commissioner of Customs, be signed by the respondent in accordance with the provisions of Rule 3 of the Customs (Appeals) Rules, 1982.

2. The form of memorandum of cross-objections shall be filed in quadruplicate.
3. The form of memorandum of cross-objections should be in English (or in Hindi) and should set forth, concisely and under distinct heads, the grounds of cross-objections without any argument or narrative and such grounds should be numbered consecutively.
4. The number and year of appeal/application is allotted by the office of the Appellate Tribunal and appearing in the notice of appeal/ application received by the respondent is to be filled in by the respondent .

**FORM NO. C.A.-5**

[See Rule 7 of the Customs (Appeals) Rules, 1982]

Form of Application to the Appellate Tribunal under Section 129D(4) of the Customs Act,  
1962

**In the Customs, Excise and gold (Control) Appellate Tribunal**

Appeal No. .... of .....

..... Applicant

Vs.

..... Respondent

- (1) Designation and address of the applicant (if the applicant is not the adjudicating authority, a copy of the authorisation from the Commissioner of Customs to make the application should be enclosed).
- (2) Name and address of the respondent .
- (3) Designation and address of the officer passing the decision or order in respect of which this application is being made and the date of the decision or order.
- (4) State/ Union territory and the Commissionerate in which the decision or order was made.
- (5) Date on which order under sub-section (1) of Section 129D has been passed by the Board.
- (6) Date of the communication of the order referred to in (3) above, to the adjudicating authority.
- (7) Whether the decision or order appealed against involves any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment; if not, the difference in duty involved, or amount of fine or penalty involved or value of goods involved.
- (8) Reliefs claimed in the application.

Statement of facts

Grounds of application

(i)

- (ii)
- (iii) etc.

Signature of the applicant.

Note : The form of application including the statement of facts and the grounds of application shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the decision or order of the Commissioner of Customs (one at least of which shall be a certified copy) and a copy of the order of the Board under sub-section (1) of Section 129D.

## **7.8. REVISION BY CENTRAL GOVERNMENT:**

### **7.8.1. Revision by Central Government.- SECTION 129DD**

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order.

Explanation. – For the purposes of this sub-section, “order passed under section 128A” includes an order passed under that section before the commencement of section 40 of the Finance Act, 1984, against which an appeal has not been preferred before such commencement and could have been, if the said section had not come into force, preferred after such commencement, to the Appellate Tribunal.

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :

Provided that the Central Government may, if it is satisfied that the applicant was prevented by

Sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

(3) An application under sub-section (1) shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall be accompanied by a fee of two hundred rupees.

(4) The Central Government may, of its own motion, annul or modify any order referred to in sub-section (1).

(5) No order enhancing any penalty or fine in lieu of confiscation or confiscating goods of greater value shall be passed under this section,-

(a) in any case in which an order passed under section 128A has enhanced any penalty or fine in lieu of confiscation or has confiscated goods or greater value; and

(b) in any other case, unless the person affected by the proposed order has been given notice to show cause against it within one year from the date of the order sought to be annulled or modified.

(6) Where the Central Government is of opinion that any duty of customs has not been levied or has been short-levied, no order levying or enhancing the duty shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in section 2

### **7.8.2 Form of revision application to the Central Government. –**

1. (1) A revision application under sub-section (1) of section 129DD to the Central Government shall be in Form No. C.A. –8.

(2) The grounds of revision application and the form of verification, as contained in Form C.A.-8, shall be signed by the person specified in sub-rule (2) of rule 3.

2. Where the revision application is signed by the authorised representative of the applicant, the document authorising such representative to sign and appear on behalf of the applicant shall be appended to such revision application.

3. The revision application in Form No. C.A.-8 shall be filed in duplicate and shall be accompanied by an equal number of copies of the following documents, namely :-

- (i) order passed by the Commissioner of Customs (Appeals) under section 128A; and
- (ii) decision or order passed by the Customs Officer which was the subject-matter of the order referred to in clause (i).

**7.8.3. Procedure for filing revision application.-**

- (1) The revision application in Form C.A.-8 shall be presented in person to the Under Secretary, Revision Applications, Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-1, or sent by registered post addressed to said Under Secretary.
- (2) The revision application sent by registered post under sub-rule (1), shall be deemed to have been submitted on the date on which it is received in the office of the said Under Secretary.

**FORM NO. C.A.-8**

[See Rules 8A and 8B of the Customs (Appeals) Rules, 1982]

Form of Revision Application to the Central Government under Section 129DD of the Customs Act, 1962

- 1. Revision Application No. .... of .....
- 2. Name and address of the applicant
- 3. Designation and address of the authority passing the order against which the revision application is filed
- 4. The number and date of the order
- 5. Date of communication of the order.
- 6. Designation and address of the authority against which the order has been passed by the Commissioner (Appeals)
- 7. Address to which notices/communications may be sent to the Applicant
- 8. Whether duty or penalty, if any, has been deposited (a copy / extract of the challan / account current, as the case may be, under which the deposit is made, shall be furnished)

8A. Whether the appellant wishes to be heard in person

9. Reliefs claimed in application

(i)

(ii)

(iii) etc.

Statement of facts

Grounds of appeal

Signature of the authorised  
Applicant

Signature of the

representative, if any.

Verification

I, ....., the applicant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ..... day of .....19.....

Signature of the authorised

Signature of the Applicant.

representative, if any.

Notes : (1) The grounds of application and the form of verification shall be signed by the applicant in accordance with the provisions of sub-rule (2) of Rule 8A.

(2) The application, including the statement of facts and the grounds of application, shall be filed in duplicate and shall be accompanied by an equal number of copies of the order against which the application is filed and also the decision / order of the authority against which Commissioner of Customs (Appeals) passed the order.

- (3) The form of application shall be in English (or Hindi) and shall set forth, concisely and under district heads, the grounds of application without any argument or narrative and such grounds should be numbered consecutively.
- (4) The fee of rupees two hundred required to be paid under the provisions of the Act shall be paid under T. R. 6 challan and the duplicate copy of the T.R. 6 challan shall be filed along with the application for revision.
- (5) Where the application is signed by the authorised representative of the applicant, the document authorising the representative to sign and appear on behalf of the applicant shall be appended to the application.

**[ M.F., (D.R.) Notfn. No. 212-Cus., dtd. 10-9-82 as amended by Notfn. No. 15/85-Cus., dtd. 30-1-85 ]**

#### **7.9. Statement of case to High Court. – SECTION 130**

**7.9.1. (1) The Commissioner of Customs or the other party may, within sixty days of the date upon which he is served with notice of an order under section 129B (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment), by application in such form as may be specified by rules made in this behalf, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provision contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court :**

Provided that the Appellate Tribunal may, if it is satisfied that the application was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

#### **7.9.2. Form of application of the High Court.-**

(1) An application under sub-section (1) of section 130A requiring the High Court to direct the Appellate Tribunal to refer to the High Court any question of law shall be made in Form No. C.A.-6 and such application shall be filed in quadruplicate.

(2) A memorandum of cross-objections under sub-section (3) of section 130A to the High Court shall be made in Form No. C.A.-7 and such memorandum shall be filed in quadruplicate.

(3) Where an application under sub-section (1) of section 130A or a memorandum of cross-objections under sub-section (3) of that section is made by any person other than the Commissioner of Customs, the application, the memorandum or form of verification, as the case may be, contained in Form NO.-6 or form No. C.A.-7 shall be signed by the person specified in sub-rule (2) of rule 3.

For Form No.-6 and Form NO. C.A.-7 appended to the said rules the following Forms shall respectively be substituted, namely :-

**FORM NO. C.A.-6**

[See rule 8 (1)]

Form of an Application to the High Court under section 130A of the Custom Act, 1962

In the High Court of Judicature at

In the matter of Appeal No. (Name of the appellant)

Application No.-----of -----19-----

(To be filled in by the Office)

-----Applicant





I, ----- the applicant, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ----- day of ----- 19-----

Signature of the authorised applicant.

Signature of the

representative, if any.

Notes :

- (1) The application and the form of verification shall, if the application is made by any person, other than the Commissioner of Customs, be signed by the applicant in accordance with the provisions of Rule 3 of the Customs (Appeal) Rules, 1982.
- (2) The application shall be filed in quadruplicate.
- (3) The fee of Rs. 200/- required to be paid under the provisions of the Act shall be through a crossed bank draft drawn in favour of the Registrar of the High Court on a branch of any nationalised bank located at the place where the High Court is situated and the demand draft shall be attached to the form of application.

**FORM NO. C.A.-7**

[See rule 8 (2)]

Form of Memorandum of Cross-Objections under section 130A (3) of the Customs Act, 1962 in the matter of an application before the High Court under section 130A(1) of the said Act

**In the High Court of Judicature at**

Memorandum of Cross Objections No.----- of ----- 19-----  
-----

(To be filled in by the Office)

In Application No. -----of-----19-----

--

-----Applicant

Vs.

-----Respondent

(1) State/Union territory and the Commissionerate from which the memorandum of cross-objection is filled :

(2) Date of receipt of notice of application filed with the High Court by the respondent :

(3) Address to which notices may be sent to the respondent :

(4) Address to which notices may be sent to the applicant :

(5) The facts which are admitted and/or found by the Appellate Tribunal and which are necessary

for drawing up a statement of the case, are stated in the enclosure for ready reference :

(6) The following questions of law arise out of the order of the Appellate Tribunal :

1.

2.

3. etc.

(7) The respondent, therefore, requires under sub-section (1) of Section 130A of the Customs Act, 1962 that the Tribunal may be directed to furnish a statement of the case on the questions of law referred to in paragraph 6 above.

(8) That the documents or copies thereof as specified below (the translation in English of the documents where necessary) is annexed with the statement of the case.

Signature of the authorised  
respondent.

Signature of the

representative, if any.

Verification

I, ----- the respondent, do hereby declare that what is stated above is true to the best of my information and belief.

Verified today, the ----- day of -----19-----

Signature of the authorised  
respondent.

Signature of the

representative, if any.

Note :

- (1) The memorandum of cross-objection and the form of verification shall, if the memorandum is filed by any person, other than the Commissioner of Customs, be signed in accordance with the provisions of Rule 3 of the Customs (Appeal) Rules, 1982.
- (2) The memorandum of cross-objection shall be filed in quadruplicate.

**[Notification No. 62/99-Cus. (N.T.), dated 17-11-1999]**

## **7.10. Difference between Revision and Appeal**

**7.10.1.** As to the difference in scope between appellate and the revisional proceedings, the Supreme Court observed in State of Kerala Vs K M C Abdulla & Co – Air 1965 SC 1585 as follows:

“There is an essential distinction between an appeal and a revision. The distinction is based on differences implicit in the said two expressions. An appeal is a continuation of the proceedings; in effect the entire proceedings are before the appellate authority and it has power to review the evidence subject to the statutory limitations prescribed. But in the case of a revision, whatever powers the revisional authority may or may not have, it has not the power to review the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision.”

The Kerala High Court observed on this matter in Govt. of India and Others Vs A S Bava – 1980 (6) ELT 625 thus:

“No doubt, as pointed out by this court in *Boraswamy Chettiar V. Nhandamandhas Kunhircaman and others* – 1069 KLJ 227 the jurisdiction exercised by the Government of India under Sec.36(2) being revisional in character, it is not expected to treat the proceedings as an appeal and substitute its own conclusions on questions of fact in the place of those arrived at by the subordinate authorities. But the revisional authority must, all the same, examine the legality, propriety and correctness of the findings entered by the subordinate authorities and in case it is found that a finding of fact can legitimately be characterised as ‘improper’ in the sense of its being wholly unreasonable or perverse, it is the duty of the revisional authority to interfere with such a finding and render justice between the parties”.

**7.10.2. Thus, the essential distinction between an appeal and a revision lies in the scope of the powers of the authority exercising the revisional powers. An appellate authority can reappraise evidence and come to its own conclusion on factual issues whereas a revisional authority has a limited power only in this regard. It cannot upset the finding of the lower authority on questions of fact, unless it is of opinion that the finding is either perverse or based on no evidence. The mere fact that the revisional authority feels that an alternative finding is also equally permissible would not enable it to upset the finding of the lower authority on a question of fact.**

### **7.11. REVISION**

There are three types of exercise of revisionary powers provided for in the Customs Act, 1962. They are:

1. Revision petitions to the Central Govt. by the aggrieved assesses;
2. Suo moto exercise of revisionary powers by the Central Govt.; and
3. Power of the Board or the Commissioner to take up for review an order passed by the appropriate lower adjudicating authority and then, on being satisfied that the said order is not legal or proper, direct a designated subordinate to make an application to the Tribunal or the Commissioner (Appeals) for determination of the points (arising out of the order under consideration) that may be specified in the order of the Board or the Commissioner.

#### **7.11.1. Revision petitions to the Central Govt. by the aggrieved assesses**

- a) (i) The relevant provision in this category of cases is Section 129DD of the Customs Act, 1962, which stipulates that the Central Govt., may, on the application of any person aggrieved any order passed under Section 128a, where the order is of the nature referred to in the first proviso to sub – section (1) of Section 129a, annul or modifies such order.
- (ii) An application under sub – section (1) shall be made within 3 months from the date of communication to the applicant of the order against which the application is being made:

Provided that the Central Govt. may, if it is satisfied that applicant was prevented by sufficient cause from presenting the application within the aforesaid period of 3 months, allow it to be presented within a further period of 3 months.

- (iii) Normally the aggrieved party would be entitled to prefer an appeal against an order of the Commissioner (Appeals). But the above provisions have carved out certain categories of such orders for a remedy by way of revision. The categories so enumerated are:

Any goods imported or exported as baggage;

Any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India; or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at such destination;

Payment of drawback as provided in Chapter X and the rules made thereunder.

### **Limitation & Procedure:**

The Revision Petition by the aggrieved party under the Customs Act, 1962 has to be filed within 3 months from the date the impugned order was communicated to the party. There is a further provision for condonation or delay, but it must be noted that such condonation can extend to a further period of 3 months only and not beyond. The Revision Petition is to be preferred in Form CA8. A fee of Rs 200/- is to accompany the Revision Petition. The Revision Petition has to be filed in duplicate accompanied by an equal number of copies of the impugned order as well as the order of the original authority. If an authorised representative signs the

petition, the authority executed in his favour is also to be enclosed. The petition may be filed in person or sent by Regd. Post. If sent by post, the date of presentation shall be deemed to the date on which the petition is received by the designated authority. The above provisions are in terms of Rule 8A & 8B of Customs (Appeals) Rule, 1982. It is worthwhile to mention that none of the provisions contains a specific provision for grant of a personal hearing to the Revision Petitioner before the petition is disposed of. Column 8 – A of CA8 required the petitioner to state whether the petitioner wishes to be heard in person. Hence, whenever a personal hearing is felt necessary, it should be ensured that a suitable request is entered under the above column. Otherwise, it is quite likely that the petition would be disposed of without the personal hearing and it may not be possible to make a complaint of this in any subsequent step such as Writ Petition, etc.

#### **7.11.2. Suo moto exercise of revisionary powers by the Central Govt.**

a) Section 129DD(i) of the Customs Act, 1962, which stipulates that the Central Govt., may, on the application of any person aggrieved any order passed under Section 128A, Where the order is of the nature referred to in the first proviso to sub – section (1) of Section 129A, annul or modifies such order.

As per para 4 of Section 129DD, the Central Govt. may, of its own motion, annul or modify any order referred in Sub – section (i). Thus, the said section of the Customs Act, 1962, enable the Central Govt. to suo moto pass order annulling or modifying an order of the Commissioner (Appeals) referred to in sub – section (1) of the said section. Thus, this power is also to be exercised only with reference to Section 129A of the Customs Act, 1962.

#### **b) Period of limitation for the exercise of such power**

Sub – section (5) and (6) contain the provisions regarding the period of limitation for the issue of suo moto revision notices. Sub – section 5(a) of Section 129DD reads that in cases where, under the order of the Commissioner (Appeals), the penalty or fine in lieu of confiscation had been enhanced or goods of greater value than under the order of the lower authority had been ordered to be confiscated, no further enhancement of penalty or fine in lieu of confiscation can be ordered

under the order in the revision proceedings nor could goods of greater value be ordered to be confiscated. Sub – section 5(b) then proceeds to lay down that in cases not covered by sub – section 5(a) no order for enhancement of penalty or fine in lieu of confiscation or for confiscation of goods of greater value can be passed, unless the person affected by the proposed order had been given notice within one year from the date of the order sought to be annulled or modified. It should be noted that the starting point of limitation is the date of the order (and not the date of its despatch) and that within the prescribed period it must be given (i.e.) served on the party in any of the prescribed methods.

Sub –section (6) of the Section 129DD stipulates for the period of limitation in respect of cases wherein the Central Govt. is of the view that under the impugned order any Customs duty has not been levied or has been short – levied. The said sub – section reads that under the proposed order no order levying or enhancing the duty shall be made unless the notice to show cause against such a proposal had been given within the time limit specified in Sec. 11A or Sec. 28 of the appropriate Act.

**c) Scope of the revisional power suo moto**

Sub – section (4) of the Section 129DD reads that the Central Govt. may, of its own motion, annul or modify any order referred to in sub – section (1). But it has been noted that sub – section 5(a) contains a restriction of this power. It reads that if under the order of the Commissioner (Appeals) the penalty or fine in lieu of confiscation ordered by the lower authority had been enhanced, or confiscation had been ordered of goods of greater value than under the order of the lower authority, then no order enhancing the penalty or fine in lieu of confiscation, or confiscating goods of greater value, can be made in the order to be passed in pursuance of the suo moto notice. Subject to this restriction (and also the rules of limitation noted above) the Central Govt. is free to pass an order modifying or annulling the order of the Commissioner (Appeals).

**7.11.3. Powers of Committee of Chief Commissioners of Customs or Commissioner of Customs to take up for review an order passed by the appropriate lower adjudicating authority**



a) Section 129D of the Customs Act, 1962 stipulates that the Committee of Chief Commissioners of Customs may, of its own motion, call or and examine the record of any proceeding in which a Commissioner of Customs, as an adjudicating authority, has passed any decision or order under this act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner to apply to the Appellate Tribunal [or, as the case may be, the Customs and Excise Revenues Appellate Tribunal established under Sec. 3 of the Customs and Excise Revenues Appellate Tribunal Act, 1986] for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Similarly, sub – section (2) of the above section provides for action on the part of Commissioner with reference to any proceeding in which adjudicating authority subordinate to the Commissioner had passed any decision or order. In such cases, the application is to be directed to be made to the Commissioner (Appeals).

**b) Limitation**

Sub – section (3) of Section 129D of the Customs Act, 1962 provides that no order under sub – section (1) and (2) shall be made after the expiry of three months from the date of communication of the order or decision of the adjudicating authority. A further period of limitation is provided in sub – section (4) to the effect that the application to the Appellate Tribunal or the Commissioner (Appeals) is to be made by the adjudicating authority within 1 months of the communication of the order under sub – section (1) or (2) to the adjudicating authority. It should be noted that there is no provision for condonation of any delay in the making of either the order under sub – section (1) or the application under sub – section (4).

Under Section 129D(1) & (2) of the Customs Act, 1962, reads that Committee of Chief Commissioners of Customs or the Commissioner may authorize the designated officer to apply to the Tribunal or the Commissioner (Appeals), as the case may be, for the determination of such point or points as may be specified in the order of the Committee of Chief Commissioners of Customs or the Commissioner. It would, therefore, be clear that in making this application under sub – section (4) thereafter the designated officer would have to confine himself to those specified points only and cannot raise other points of his own.

## **7.12. CONDONATION OF DELAY IN FILING THE APPEAL**

**7.12.1.** The Central Excises and Salt Act as well as the Customs Act contain provisions for condonation of delay in the filing of the appeal, reference petition etc. and also, in some cases, the period for which delay could be condoned. It has been earlier seen that the provisions of the Limitation Act will not be attracted to the proceedings under these Acts before the authorities constituted under these Acts. Generally the provisions state that the delay may be condoned if the appellant is able to establish that he was prevented by sufficient cause from filing the appeal within time. As to what would constitute sufficient cause, no definite propositions could be laid down since it would be essentially a question of fact in each case. There are numerous decisions on this question, each depending on its own facts. As held by the Madras High Court in 1988 (37) E.L.T. 338 (supra) the appellate authority has no inherent power to condone delay in the presentation of the appeal.

**7.12.2.** The general rule to be followed in condonation of delay would be that the delay should be condoned if it had occurred in spite of the appellant exercising normal diligence and the delay was not due to any indifference on his part in taking the necessary steps for filing the appeal within time. The Supreme Court in the case of *Commissioner, Land Acquisition, Anantnag v. Mst. Katiji and Ors.* [ 1987 (28) E.L.T. 185 ] considered this phrase summarized its conclusions as follows:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusal to condone delay may result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational commonsense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested rights in injustice being done because of a non deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of *mala fides*. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so”.

**7.12.3.** What should therefore arise for consideration in such applications for condonation of delay would be whether the applicant is shown to have been deliberately indifferent or supinely indifferent of his rights and obligations under the Act or has been guilty of some *mala fides*. If none of these is established then the rule should be to condone the delay.

### **7.13. PRE-DEPOSIT OF DUTY AND PENALTY AND WAIVER THERE OF**

Section 35f of the Central Excises and Salt Act as also Section 129E of the Customs Act require that in connection with appeals in which the goods are not in the custody of the Central Excise Officer of the Customs Authorities, the duty demanded thereon under the impugned order, as well as the penalty imposed (in all cases), shall have to be deposited with the adjudicating officer pending the appeal. That means that without such a deposit the appeal shall not be heard by the appellate authority. The sections further contain a proviso that in proper cases where the appellate authority is satisfied that the requirement of such a deposit would cause undue hardship to the appellant, the appellate authority may dispense with such deposit subject to such conditions as may be imposed to safeguard the interests of the revenue. When it was contended before the Supreme Court that dismissal of the appeal cannot be ordered as a consequence of the failure to deposit, as required under Section 129 (of the Customs Act as it then stood), it was observed by the Supreme Court in *Navin Chhotelal v. Central Board of Excise and Customs - 1981 (8) E.L.T. 679* :

“No doubt Section 129 does not expressly provide for the rejection of the appeal for non-compliance with the requirement of deposit of duty and penalty; but when sub-section (1) of Section 129 makes it obligatory on an appellant to deposit the duty or penalty pending the appeal and if a party does not comply either with the main sub-section, or any order that may be passed under the proviso, the appellate authority is fully competent to reject the appeal for non-compliance with the provisions of Section 129 (1). That is exactly what the first respondent has done in this case. Accepting the contention of Mr. Trivedi will mean that the appeal will have to be kept on file forever, even when the requirement of Section 129 (1) has not been complied with. Retention of such an appeal on file will serve no purpose

whatsoever because unless Section 129 (1) is complied with, the appellate authority cannot proceed to hear the appeal on merits. Therefore the logical consequence of failure to comply with Section 129 (1) is the rejection of the appeal on that ground.”

**7.14. Section 129E. Deposit, pending appeal, of [duty and interest] demanded or penalty levied**

Where in any appeal under this Chapter, the decision or order appealed against relates to any [duty and interest] demanded in respect of goods which are not under the control of the customs authorities or any penalty levied under this Act, the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the [duty and interest] demanded or the penalty levied:

Provided that where in any particular case, the [Commissioner (Appeals) or the Appellate Tribunal is of opinion that the deposit of [duty and interest] demanded or penalty levied would cause undue hardship to such person, the [Commissioner (Appeals)] or, as the case may be, the Appellate Tribunal may dispense with such deposit subject to such conditions as he or it may deem fit to impose so as to safeguard the interests of revenue.

Provisions for Appeal, Revisions & Reference at a Glance

Against orders by	To	Provision of law	Form to be used	Period of limitation	Fees	Copies of appeal	Enclosures
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
<b><u>APPEALS</u></b>							
1. Any Officer lower in rank to Commissioner	Commissioner (Appeals)	Section 128 of Customs Act, 1962	C.A.I	Three months from date of communication for a further period of three months	NIL	Two	Copy of order appealed against

2. Commissioner	CEGAT	Sec. 129A (1), 129C(3) Customs Act.  Rule 6 of Customs (Appeal) Rules	C.A. 3	Three months from date of communication of order with condonation for a further period of three months	Rs. 200 if duty demand / penalty is Rs.- 1,00,000 or less;  Rs. 1000 if duty demand / penalty is more than Rs. 1,00,000	Five	1. Five copies of order appealed against of which one should be a certified copy  2. Copy of authorisation if appeal is by the Commissioner
3. Commissioner (A)	CEGAT	Sec. 129A (1), 129C(3) Customs Act Rule 6 of Customs (Appeal) Rules	C.A. 3	Three months from date of communication of order with condonation for a further period of three months  Forty five	Rs. 200 if duty demand/ penalty is Rs. 1lakh or less ;  Rs. 1000 if duty demand / penalty is more to Rs. 1lakh	Five	1. Five copies of order appeal-ed against of which one should be a certified copy  2. Copy of authorisation if appeal is by the Commissioner.

4. Cross-objections in items 2 & 3 above	Concer ned Bench before which Appeal is pendin g	Sec. 129A (4) Customs Act, & Rule 6 of Customs (Appeal) Rules	CA 4	days from date of order or communicatio n thereof whichever is later	NIL		.....
5. Order of CEGAT relating to rate of duty or valuation	Suprem e Court	Sec. 130E(b) Customs Act, 1962	CA 4	Sixty days from date of order or communicatio n thereof whichever is later	Accordin -Or. XX-B Suprem e	Fiv e	Or. XX-A & the -rt Rules.
6. By a High Court under Section 130 Customs Act.	Suprem e Court	Section 130 E (a) of Customs Act	NIL	Sixty days from date of order or communicatio n thereof	Accordin Or. XX-B Suprem e	g to of Cou	Or. XX-A & the -rt Rules
<u>REFEREN CE</u> 1. Order of CEGAT not relating to rate of duty or valuation	CEGAT	Sec. 130 Customs Act Rule 8 of Customs (App) Rules Sec. 130(2)	NIL	60 days of service of notice of order of CEGAT  45 days of rec-eipt of notice of reference application	Rs.200.	-g to	.....

2. Cross-objections in above	CEGAT	Customs Act Rule 8 of Cus. (Appeal) Rules	C.A. 6.	6 months of date of service of order of CEGAT	Nil	of Cou	.....
3. Order of CEGAT dismissing reference petition	HIGH COURT	Sec. 130 (3) Customs Act	C.A. 7.	Three months from date of communication of order of Commissioner (Appeals)	.....	Thre e	.....
<p><b><u>REVISION</u></b></p> <p>1. Commissioner (Appeal) in cases covered by 1<sup>st</sup> proviso to Sec. 129A of Customs Act</p>	CENTRAL GOVT.	Sec. 129DD Customs Act R. 8A of Customs (Appeal) Rules	NIL	Application to Commissioner	.....	Thre e	Two copies each of order passed by (a) Commissioner (App) (b) Lower authority
<p><b><u>REVIEW</u></b></p> <p>a) Authority subordinate to Commissioner</p>	Commissioner (Appeal)	<p><b>Sec .129D(2) Customs Act Rule 4 of Customs (Appeals) Rules</b></p> <p><b>Section 129D (1) Customs Act. Rule 7 of</b></p>	C.A. 8	(Appeals) to be made within 1 months of date of communication of order of Commissioner Application	.....	Tw o	1. 2 copies of order of lower authority one should be a certified copy





valuation/classification/ Modvat type of cases by taken to have been increased to 70 cases from the present 50-55 cases.

Norms of disposal in mixed types of cases be taken to have been (b) increased to 100 from the present 70 cases.

Normally, the percentage of remand cases should not exceed (c) 10% and if does, special reports to the Chief Commissioners should be sent explaining the reasons.

In respect of such adjudicating officers whose orders are (d) found by Commissioners(A) to suffer generally from non-application of mind or suffer from non-speaking nature or suffer from patently wrong interpretation of law or tariff or where adjudication orders are contrary to Board's instructions squarely dealing with the issue or where their orders often suffer non-observance of principles of natural justice, Commissioners(A) should sent a separate note/report to the Chief Commissioner, with a copy to the concerned commissioner pointing out the deficiencies citing the specific defective orders so that appropriate remedial measures can be taken in time. This would prevent clogging of appellate system through increase in appeals. What is needed is a thorough cleansing up of the system of the adjudication and appeals at the first stage itself so that infructuous litigation and appellate work can be avoided.

Circular No. 291/7/97-CX., dated 20-1-1997 [From F. No. 390/3/96-JC(BMB)]

#### **7.16. Appeal against order passed by Commissioner (Appeals) — Proper authorisation by Commissioner**

**7.16.1.** The Board has issued instructions in the past reiterating the importance of language used in the authorisation. Circular No. ` -CX, dated 6-8-1998 (F. No. 390/120/98-JC) [1998 (102) E.L.T. T31] & Circular No. 560/56/2000-CX, dated 30-11-2000 (F. No. 387/269/2000-JC) [ 2000 (122) E.L.T. T28] in this regard are relevant. There may be cases, as happened in the instant case, where even though the Commissioner was inclined to accept the order of Commissioner (Appeals), the Chief Commissioner feels otherwise and on his advice appeal is filed and authorisation for that purpose is issued by the Commissioner. In such circumstances, it would be prudent if Chief Commissioner himself passes an authorisation indicating therein that

he had applied his mind and he found the order to be not legal and proper. In case the Commissioner decides to himself issue authorisation on the advice of the Chief Commissioner the file and the order of authorisation have to indicate that the Commissioner had indeed applied his mind and found the order of the Commissioner (Appeals) not to be legal and proper.

**7.16.2.** Commissioners are also advised to keep in mind the provision of law and the previous instructions in this regard which very clearly stipulate that the authorisation should show Commissioner's opinion that the order passed by Commissioner (Appeals) is not legal or proper.

Circular No. 612/3/2002-CX, dated 17-1-2002 F. No. 390/121/2001-JC

**7.17. Appeals in CEGAT — Proper authorization :**

**7.17.1.** It has recently come to Board's notice that in a number of cases ,CEGAT has dismissed the Department's appeals on the Technical ground that these did not have proper authorisation by the concerned Commissioners, even though the merits of the cases were *prima facie* in favour of the Department. But for the aforesaid deficiency in authorisation required to be issued by the concerned Commissioners, the chances of success of Revenue appeals were quite high.

**7.17.2.** The Board, therefore, directs that *all Commissioners should carefully examine themselves the authorisation letters* issued by them and it should be ensured by them that in all such cases, the authorisation issued is correct and proper in all respects. In future there should be no occasion where a Revenue appeal may get dismissed for want of proper authorisation by the Commissioner.

**7.17.3.** In this connection your attention is also drawn to Hon'ble Supreme Court decision in C.A. No. 4255 of 1997 - in the matter of *CCE, Vadodara v. Rohit Pulp Paper Mills* reported in 1998 (101) [E.L.T.](#) 5 (S.C.) = 1998 (27) RLT 201 (S.C.) wherein it has been held that formation of opinion that order is not proper or legal is a pre-requisite for issue of authorisation/direction and without authorisation/direction it is neither legal nor proper.

{Circular No. 413/46/98-CX., dated 6-8-1998 [From F. No. 390/120/98-JC]}

### **7.18. Appeal — Handling of appeals by Department — Instructions:**

**7.18.1.** Your attention is invited in this regard to various circulars issued by the Board pertaining to proper filing and monitoring of appeals, procedure regarding the same, and following judicial discipline above all in matters pertaining to law. Particular attention is invited to the following circulars/instructions issued by the Board for strict compliance by the field formations :

- (i) Circular No. 187/21/96-CX, dated 22-3-96 [1996 (83) E.L.T. T30]
- (ii) Circular No. 337/53/97-CX, dated 3-10-97 [1997 (95) E.L.T. T49]
- (iii) Circular No. 401/34/98-CX, dated 9-6-98 [1998 (101) E.L.T. T8]
- (iv) Circular No. 413/46/98-CX, dated 6-8-98 [1998 (102) E.L.T. T31]
- (v) Circular No. 453/19/99-CX, dated 9-4-99 [1999 (107) E.L.T. T41]
- (vi) Circular No. 560/56/2000-CX, dated 30-11-2000 [2000 (122) E.L.T. T28]
- (vii) Circular No. 596/33/2001-CX, dated 5-11-2001 [2001 (134) E.L.T. T26]
- (viii) Circular No. 612/3/2002-CX, dated 17-1-2002 [2002 (139) E.L.T. T34]
- (ix) Instructions dated 22-1-2003 issued vide F.No. 390/R/14/2003-JC
- (x) Instructions dated 28-2-2003 issued vide F.No. 390/18/2003-JC

**7.18.2.** You are also aware that very recently the CAG vide its report “Review on handing of appeal cases in the Central Excise Department” has observed many lacunae on the part of the Department at various stages. The Audit vide para 3.1 has pointed out that the number of cases pending at the Supreme Court level has increased 20% during 2000-01 as compared to the previous year. Vide para 3.2, it has been mentioned that from 1998 to 2001, 71% cases in the Supreme Court, 67% cases in CEGAT and 60% cases in CCE(Appeals) were decided against the Department. The Department’s appeals were dismissed by various Appellate Authorities due to :

- (i) delay in filing appeal;
- (ii) application of wrong rules;
- (iii) non-observance of principle of natural justice;
- (iv) condonation of delay not prayed for;

- (v) non-observance of legal requirements;
- (vi) non-prosecution;
- (vii) non-submission of certificate of clearance from the COD;
- (viii) non-presentation or inadequate presentation;
- (ix) filing of frivolous appeals;
- (x) delayed proposals to file appeals leading to forfeiture of right to appeal;
- (xi) delay in sending proposals to the Board.

**7.18.3.** The CDR, CEGAT has repeatedly pointed out several deficiencies/shortcomings in respect of appeals filed by Revenue which strike at the very root of maintainability of the appeals. He has informed that appeals are filed by the Commissioners in the Tribunal in routine manner without proper scrutiny and many times even apparently strong cases in favour of Revenue on merits are lost on technical grounds Such as non-filing of requisite number of appeals; or even on preliminary consideration as such appeals are not being properly authorized or worded as required in law. Appeals in such cases are dismissed *in limine* on the grounds of non-application of mind.

**7.18.4.** Apart from this, many times the appeals filed by the department are not complete in themselves with all enclosures as may be required to dwell into the matter. The CDR has intimated that more often than not the departmental appeal only encloses a copy of the order under challenge apart from the authorization issued by the Commissioner/Board, in utter disregard of appeal procedures. The procedure for filing appeals has been prescribed in CEGAT (Procedure) Rules, 1982. The same is to be strictly adhered to, especially w.r.t. filing of paper book under Rule 16 of the said Rules, and CEGAT Public Notice No. 8/99, dated 2-7-99. It has also to be ensured that copy of all relied upon documents and essentially the following documents are invariably appended to the appeal:-

- (a) Show Cause Notice(s);
- (b) Statement(s) recorded;
- (c) Panchanama drawn;

- (d) Copy of invoice/Bill of Entry or any other Central Excise/Customs clearance Document;
- (e) Other relied upon documents, if any, such as, Test Reports, Lorry Receipts;
- (f) Internal Correspondence, relevant extracts of seized documents in support of duty evasion/concealment of production evidence, etc.

**7.18.5.** Commissioners are also not applying their mind to the number of appeals to be filed in a case involving more than one noticee, or the number of appeals to be filed where order-in-appeal is in respect of more than one order in original, as is clearly brought out in Rule 6A of the CEGAT (Procedure) Rules, 1982.

**7.18.6.** Cross objections are not being filed to derive the benefit of Section 35B(4), under which parallel appeal can be filed by the Department in the form of a Memorandum of Cross Objection, which is to be disposed off by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3) of the said Section. On receipt of appeal memo filed by the party, simply para wise comments are being filed thereby nullifying the opportunity given to the Department to seek favourable orders on issues conceded (wrongly) by the lower authority.

**7.18.7.** Further, in respect of cases where directions are issued by the Chief Commissioners to Commissioners to file appeals, the appeal authorization as well as the relevant review filed in such cases normally does not indicate the application of mind by the competent statutory authority i.e. Commissioner, Central Excise and Customs as it is stated by the Commissioner in the grounds of appeal that the appeal is filed on Chief Commissioner's directions. This is to be avoided.

**7.18.8.** It has further come to the notice of the Board that orders remanded by the Tribunal to the field formations/Commissioner (Appeals) with specific directions remain to be adjudicated *de novo* for inordinate long period of time. As a result, not only does the revenue remained locked up in such cases but also the issue remains unsettled for inordinate length of time. CAG has also adversely commented on this in

his report. Chief Commissioners and Commissioners are advised to devise a control mechanism to monitor the disposal of remanded matters by the adjudicating authority. The CDR's office is circulating a monthly list of all orders passed by the CEGAT in favour/against of revenue as well as matters sent back on remand. This should be used as a check for monitoring pendencies in this regard.

**7.18.9.** Board has also noticed the following defects/inadequacies in proposals received from Commissioners for filing of Civil Appeals /SLPs before Hon'ble Supreme Court.

- (i) Absence of bifurcation of revenue involved in matters which are tagged together in the civil appeal/petition.
- (ii) Annexures are incomplete or missing (even though mentioned in the body of the petition);
- (iii) Supporting documents (photocopies) are not legible.
- (iv) Copies of judgments/procedures cited in the appeal are not attached.
- (v) Non-availability of correct address of the respondent, leading to non-delivery of notices.

**7.18.10.** In view of the above, it appears that the field formations are not handling their appeal cases adequately and properly. Accordingly, it is desired that a close watch should be maintained in respect of appeals pending before the Appellate Authorities. The appeals filed by the Department should be proper and complete in all respect adhering to the legal provisions in toto. Control Registers in respect of orders-in-original passed by various Adjudicating Authorities viz. AC/DC, Joint/Additional Commissioner and Commissioners and appeals filed before all Appellate Authorities should invariably be maintained by the Commissioners for proper monitoring of the review of all orders. Further, Commissioners may ensure that a senior officer is deputed to monitor the cases of their respective Commissionerates by checking of the Supreme Court/High Court site ([www.courtncic.nic.in](http://www.courtncic.nic.in)). Close monitoring of judgments and daily orders (proceedings and instructions of the Hon'ble Judges) on the website will help in preventing delays

in implementing the directions of the Hon'ble Supreme Court. It would also help if the daily cause lists are checked up on the internet both with regard to CEGAT ([www.taxindiaonline.com](http://www.taxindiaonline.com)) and Supreme Court ([www.court.nic.in](http://www.court.nic.in)) so as to monitor the cases of the Commissionerate which are in appeal.

**7.18.11.** The Chief Commissioners are also advised to critically examine the Commissionerates' performance in this area and the monitoring mechanism developed by the field formations in this regard.

{Circular No. 710/26/2003-CX., dated 23-4-2003; F. No. 390/198(M-2)/2002-JC}

**7.19. Effective handling of Central Excise & Customs Appeals, Recommendations of the Expert Group - Instructions Regarding:**

Attention is invited to Board's Circular No. 710/26/2003-CX., dated 23rd April, 2002 issued from F. No. 390/198(M-2)/2002-JC [2003 (154) E.L.T. T9], wherein field formations were sensitized on the need to remove deficiencies and inadequacies in the manner of filing departmental Appeals. As you are aware, an Expert Group under the Chairmanship of Shri R.K. Tiwari Chief Commissioner, Customs and Central Excise (Pune Zone) was constituted to carry out an in depth study of departmental procedure in appeal matter and to find out lacunae in dealing with appeal cases at all levels. The Expert Group while submitting its report has made some valuable suggestions based on which the following guidelines are being issued for strict compliance by the field formations :-

1. In order to have a systemic check, the Chief Commissioner should scrutinize 10% of the orders of the Commissioner (Appeals). The Chief Commissioner should undertake periodical inspection in this regard, and devise his own method of such scrutiny.
2. The adjudicating authority should take adequate care in passing judicious, well reasoned orders, correct in law, irrespective of whether in favour of or against Revenue.

3. For out-of-turn early hearing of the cases with high revenue stakes, the Commissionerates should make Miscellaneous Applications indicating clearly the grounds for such prayer. Such Miscellaneous Applications are to be filed in terms of Rule 28C read with Rule 28A of the CEGAT (Procedure) Rules, 1982.
4. Similarly in order to get the interim Stay Orders vacated, the Commissionerates must take pro-active measures by filing Miscellaneous Petition before Supreme Court/High Court/CESTAT for early hearing, specifying the grounds clearly. The Commissionerates must follow-up these matters at appropriate levels after filing of the Miscellaneous-Petition.
5. There should be prompt follow-up or appeal matters, particularly in respect of Civil Appeals/SLPs before the Supreme Court, through effective liaisoning between the Directorate of Legal Affairs and the Commissionerates on one hand and between the Directorate and the CAS of the Ministry of Law on the other hand Commissioners should ensure that a mechanism is in place for constant interaction with Directorate of Legal Affairs w.r.t. appeals of their jurisdiction. Similarly the Directorate should ensure facilitation of departmental appeal matters with CAS and Ministry of Law.
6. The Directorate should also play an important role in getting the old cases listed for hearing in Supreme Court, in co-ordination with the concerned Commissionerates. In order to get interim stay orders vacated from the Supreme Court, the DLA should tie-up with the Commissionerates for filing of Misc. Application for early hearing. Necessary co-ordination in this respect may be ensured.
7. The Commissionerates should tie-up with the Directorate of Legal Affairs so that during the long vacation of Supreme Court and Delhi High Court, conversant officers of the Commissionerates are sent to the Directorate for reconciling the pending matters.
8. As regards cases before the Supreme Court and the Delhi High Court, the Commissioners must ensure that conversant officer from the Legal Section is deputed during the long vacation period, in co-ordination with the DLA,



for reconciling the pending cases before Supreme Court and Delhi High Court. The DLA can thereafter pursue the Miscellaneous Petition filed for out of turn early hearing of the pending matters.

9. The Directorate should obtain information in respect of the Supreme Court orders/decisions in favour of the Revenue, and pursue with the Commissionerates for the implementation of the Supreme Court orders and recovery of Revenue.
10. A mechanism should be put in place by all Commissioners to track the fate of the Reference Applications filed in the cases, prior to July, 2003.
11. A Special Watch Register may also be maintained which should contain *inter alia* the details of para-wise comments and cross-objections, if any, filed by the Commissionerate.
12. The standard control register with standard columns relating to adjudication, appeal at different levels etc. as already prescribed, should be regularly maintained and abstracts drawn on a monthly basis, which should invariably be inspected by the incharge D.C./A.C. and other senior officers on monthly basis.
13. A list of orders favourable to the Revenue relating to a particular Commissionerate must be prepared by the Addl./Jt. Commissioners in charge of Legal and Tribunal Section of the Headquarters, and circulated to all the Divisions for getting the Revenue recovered.

{Circular No. 746/62/2003-CX., dated 22-9-2003: F.No. 390/85/2003-JC.}

**7.20. Appeal against CEGAT orders involving rate of duty and valuation: Filing of Civil Appeals against CEGAT orders: Review/Scrutiny in CBEC - Instructions regarding.**

**7.20.1.** An appeal lies to the Supreme Court under Section 130E of the C.A. 1962/ Section 35L of the Central Excise Act against the CEGAT order relating to rate of duty and valuation for the purpose of assessment. The appeal is required to be filed by the Jurisdictional Commissioner within 60-days from the date of receipt of CEGAT order in the Commissionerate. Prior to 1995, cases relating to rate of duty and valuation were centralised in the Special Benches of CEGAT at Delhi. After the amendment in the Acts in 1995 such cases are to be disposed of by the Regional Benches also.

**7.20.2.** After carefully considering all aspects as well as Board's earlier instructions issued vide D.O.F. No. 390/185/91-JC, dated 29-10-1991, the Board has decided as follows : -

(a) The Board will not henceforth *suo moto* scrutinise the CEGAT orders. The Jurisdictional Commissioner would be primarily responsible for examining each and every order for filing civil appeal or Reference Application, as the case may be. If the Commissioner feels that a Civil Appeal under Section 35L/130E is to be filed against a particular CEGAT order relating to rate of duty and valuation (for the purpose of assessment) he should submit a detailed proposal giving grounds for appeal and other necessary details to the Board, (by name to Commissioner (R) /Director (JC) **within 10 days from the date of receipt of the certified copy of the CEGAT order in his office.** The proposal should be sent in the prescribed proforma along with (i) Copy of CEGAT order indicating date of receipt by the Commissioner; (ii) Copy of order in original/order in appeal passed by the Commissioner; (iii) Copies of SCNs; (iv) Board's instructions, if any; (v) Copies of relied upon decisions in the CEGAT order; (vi) any other relevant document.

(b) It must be ensured in the Commissionerate that every CEGAT order whether in favour or against the revenue is examined and reviewed upto the level of Commissioner; within the given time, for acceptance or otherwise.

(c) As soon as the proposal is received in the Board Office the CDR would be asked to send the RMS/Paper Book. The Board will examine only such proposals for taking decisions to file appeal in the Supreme Court.

(d) If the CDR feels that a particular CEGAT order is not correct and acceptable he should immediately send his report to jurisdictional Commissioner detailing out the grounds and his views. A copy of this communication along with Paper Book should be sent by CDR to Commissioner (R) in CBEC. CDR should take this action within 10 days of the passing of the CEGAT order in question.

(e) The Chief Commissioner would at random examine the correctness or otherwise of at least 10% of the CEGAT orders which are against the Department

and which have been accepted by the Commissioner. He would send quarterly report in this regard to Member (L&J) in CBEC.

(f) The CDR would collect all the copies of CEGAT orders relating to rate of duty and valuation meant for CBEC and would send them on weekly basis to the judicial Cell by name to Director (JC) in CBEC.

{Circular No. 313/29/97-CX, dated 6-5-1997 [From F.No. 390/107/97-JC]}

## **7.21. Stream-lining departmental response to Supreme Court matters – Instructions - Reg.**

**7.21.1.** You are aware that Board has issued instructions from time to time regarding the response of the department concerning litigation before the Supreme Court. Your attention in this regard is invited to Board's circulars below:-

- (i) Circular No. 313/29/97-CX, dated 6-5-1997 issued vide F. No. 390/107/97-JC.
- (ii) Circular No. 402/35/98-CX, dated 9-6-1998 issued vide F. No. 390/107/97-JC [1998 (101) E.L.T. T10].
- (iii) Circular No. 710/26/2003-CX, dated 23-4-2003 issued vide F. No. 390/198(M-2)/2002-JC [2003 (154) E.L.T. T9].
- (iv) Circular No. 746/62/2003-CX, dated 22-9-2003 issued vide F. No. 390/85/2003-JC [2003 (157) E.L.T. T3].

**7.21.2.** It is reiterated that the Commissioner should examine every CESTAT order passed for his jurisdiction and on arriving at a view that the order should be appealed before the Supreme Court non law point involving rate of duty or valuation, the Commissioner shall submit a detailed proposal giving grounds for appeal and all related documents, namely the following :-

- (i) Copies of SCNs along with relied upon documents;
- (ii) Copy of Order-in-Original/Order-in-Appeal;
- (iii) Certified copy of CESTAT order indicating date of receipt by the Commissioner along with appeal Paper-book;
- (iv) Board's instructions, if any;
- (v) Copies of relied upon decisions in the CESTAT order along with their status; and

(vi) Any other relevant document.

The said proposal should be sent to the Board, by name to the Joint Secretary (Review), Central Board of Excise & Customs, 4th Floor, 'B' Wing, HUDCO -Vishala Building, Bhikaji Cama Place, R.K. Puram, New Delhi - 110 066 in the proforma prescribed (copy enclosed at Annexure-I) **within 10 days from the date of receipt of the certified copy of the CESTAT order in Commissioner's office.**

**7.21.3.** As regards filing of Special Leave petitions, Civil Appeals against the orders of High Courts passed in writ petitions filed by the parties or appeals filed by the Department or by the assesseees, Legal Cell has issued the following circulars from time to time :-

- (i) D.O. Letter F. No. 275/45/91-CX. 8A, dated 26th June, 1991
- (ii) Letter F. No. 275/14/97-CX. 81-A, dated 13th February, 1997
- (iii) Letter F. No. 275/51/2004-CX. 8A, dated 13th August, 2004.

In addition to the documents prescribed in paragraph 2 above, all documents filed during the proceedings before the High Court, namely writ petition, copy of the appeal under Section 35G or 130A, reply/re-joinder filed, if any, interim order(s) passed, miscellaneous application filed during the course of the hearing etc., should be sent along with the proposal. In Criminal matters, documents seized, statements recorded, if any and other relevant documents prepared during the course of the investigation in vernacular should be accompanied by proper English translation duly authenticated by a gazetted officer not below the rank of an Assistant Commissioner certifying the correctness of the translation correctness of the translation. It has been the grievance of the officers of the Board that the documents received from the field formations are often illegible and, therefore, care should be taken to send legible copies of the documents.

**7.21.4.** It has also been brought to the notice of the Board, that the proposals for appeal before the Supreme Court against the High Court's orders are initiated on the strength of the copy of the order circulated by the Court on its own motion without applying for the certified copy. **The limitation prescribed under the Supreme Court Rules in such matters are calculated from the date of the order** and is 90 days for filing SLP against an order passed in a writ or a writ appeal and 60 days for filing a civil appeal against an order of the High Court in an application filed

under Section 35G of the Central Excise Act, 1944 or Section 130A of the Customs Act, 1962 as the case may be. Therefore, all proposals should be initiated within 10 days from the date of the order on the strength of an ordinary copy of the order without waiting for the certified copy from the High Court. The procedure for obtaining the certified copy should be initiated immediately on pronouncement of the judgment, preferably the date of pronouncement of the order or the day after, and the **original certified copy may be sent thereafter**. All proposals for filing SLP/Appeal against the orders of the High Court should be addressed by name to the Director (Legal), Central Board of Excise and Customs, 5th Floor, 'C' Wing, HUDCO - Vishala Building, Bhikaji Cama Place, R.K. Puram, New Delhi -110066.

**7.21.5.** You are also aware that the limitation prescribed for filing a Civil Appeal before the Supreme Court is 60 days and the same for SLP is 90 days from the receipt of the order. In this context, the need for expeditious and the same time judicious examination of the order that is proposed to be appealed against, is emphasized. A flowchart along with time allocations is enclosed. This flowchart will be initiated at the level of the Commissioner's Office, and shall constitute an essential part of the file throughout its movement. In the event of any delay beyond allocated time, the concerned person delaying the matter will give an explanation for the said delay at the time of onward movement, with dated signature on the flowchart. This may be strictly adhered to by all concerned. Necessary instructions on this should be issued and copy endorsed to this office.

***Annexure-I***

PROFORMA

COMMISSIONER'S COMMENTS/REPORT ON TRIBUNAL ORDER

1.	Number and date of the Tribunal order	
2.	Date of receipt in the Commissionerate	
3.	Issue involved before the Bench.	
4.	Facts of the case.	
5.	Tribunal's decision on the issues involved before the Bench	
6.	Are there any Ministry's/Board's instructions involved (please give the Ref. No. CBEC Digest Ref. No. etc.)	

7.	Is there any earlier order of the Tribunal and action taken	
8.	Is there any Supreme Court's judgment on the issues involved	
9.	Whether the decision has a recurring effect with respect to the current tariff	
10.	Grounds for preferring appeal	
11.	Revenue involved in the matter (demand/refund)	
12.	Whether revenue implication has recurring effect or not	
13.	Whether any refund accrues at a result of the CESTAT order	

### ***Annexure-II***

#### FLOW CHART SHOWING PROCESS UNDERTAKEN FOR FILING APPEAL/SLP IN CASES RELATING TO EXCISE & CUSTOMS RECOMMENDED TIME FRAME

Impugned Order issued by CESTAT

Receipt of impugned order through post - Day 0

Impugned Order - High Court

Preparation of proposal for challenging order in form of comments by concerned Commissionerate - 10 days

All case papers including proposal sent to CBEC in cases relating to rate of duty & valuation papers, who takes decision to challenge order - 10 days

Case papers sent to Central Agency Section for drafting Appeal/SLP

CAS marks file to panel counsel for drafting Appeal/SLP - 1 day

Drafting Counsel returns draft appeal to CAS drafting Appeal/SLP - 7 days

CAS forwards draft Appeal/SLP to CBEC/Legal Cell, M/o Finance for vetting - 1 day

Vetted drafts are returned to CAS for filing with marked annexures - 2 days

Preparation of paper book

(typing/copying) by CAS - 5 days

Appeal filed in SC - day 36

SLP filed in SC from CESTAT - day 46

SLP filed in SC from HC - day 35

Date of Communication of decision

Date of listing & hearing

Papers examined by Law Ministry - opinion forwarded to CAS which forwards the same to Law Officer for further opinion as to feasibility of challenging order - 7 days

Examination of SLP proposals against High Court orders by legal cell - 10 days

Application for Certified copy - same day

Receipt of Certified copy

Result of hearing

{Circular No. 819/16/2005-CX., dated 13-10-2005 F. No. 390/101/2005-JC}

**7.22. Appeals by department — Fixing of responsibility in case of cases lost on limitation: Stream-lining departmental response to Supreme Court matters Instructions - Regarding.**

**7.22.1.** Recently, both Secretary Law and Secretary Revenue have taken serious note of the fact that the Department has been losing a number of cases in the Supreme Court involving high revenue, solely on the ground of limitation. In this regard, your attention is invited to the following instructions issued by the Board on the above subject:

- (i) Circular No. 313/29/97-CX., dated 6-5-97 issued vide F. No. 390/107/97-JC
- (ii) Circular No. 402/35/98-CX., dated 9-6-98 issued vide F. No. 390/107/97-JC [1998 (101) E.L.T. T10]
- (iii) Circular No. 710/26/2003-CX., dated 23-4-2003 issued vide F. No. 390/198(M-2)/2002-JC [2003 (154) E.L.T. T9]
- (iv) Circular No. 746/62/2003-CX., dated 22-9-2003 issued vide F. No. 390/85/2003-JC [2003 (157) E.L.T. T3]
- (v) Circular No. 819/16/2005-CX., dated 5/13-10-2005 issued vide F. No. 390/101/2005-JC [2005 (188) E.L.T. T29].

**7.22.2.** Notwithstanding above repetitive instructions, it is noticed that in a large number of cases there is delay in the forwarding of the proposal by the Commissionerates. This has led to dismissal of several cases by the Supreme Court on limitation alone. It is reiterated that action should be initiated immediately on receipt of uncertified copy of the CESTAT'S orders (now available on [www.cestat.gov.in](http://www.cestat.gov.in)).

**7.22.3.** Kind attention is invited to the format of the time flow chart contained in instructions dated 13-10-05. This chart is still not being submitted with the proposals received. It is desirable that the Chief Commissioners devise a monitoring mechanism for the Commissionerates to ensure timely submission of proposals. The present status of relied upon cases referred in the orders of CESTAT/High Court should also be incorporated in the appeal proposal.

**7.22.4.** In this context steps have been initiated by DG (Systems) to dematerialize documents and records right from the Show Cause Notice stage. Once appeal papers are dematerialized their on line transmission will save considerable time and will also take care of missing documents at subsequent appeal stages.

**7.22.5.** I would also like to reemphasize on the need to file timely appeals to obviate dismissal on limitation which leads to significant revenue losses.

**7.22.6.** Henceforth, in all cases where the Department has lost on account of limitation, responsibility shall have to be fixed by the Chief Commissioner for the purpose of disciplinary action.

**7.22.7.** The receipt of this letter may be acknowledged and action taken report may be furnished by the 10th of every month for the previous month, in the format enclosed herewith.

**Enclosure**

**PROFORMA FOR MONTHLY REPORT**

Delay in forwarding Appeal Proposal		Action taken against responsible officer/staff	Reasons for not taking disciplinary action
<i>Title of the Case</i>	<i>No. of days in excess of 10 days as prescribed in</i>		



	<i>time flow chart annexed to Circular No. 819/16/2005- CX. dated 13- 10-2005</i>		
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{Circular No. 835/12/2006-CX., dated 5/6-10-2006 ; F.No. 390(Misc.)/101/2005-JC(Pt.)}

**7.23. Appeals — Delay in furnishing documents from Commissionerates in party's appeal cases**

**7.23.1.** It has been brought to the notice of the Board that the copies of Civil Appeals along with parawise comments and brief facts of the case in respect of appeals filed by the parties in the Hon'ble Supreme Court are received very late in the Board from the Commissionerates. As a result filing of counter affidavit is delayed and in a number of cases parties are able to get *ex parte* stay from Hon'ble Supreme Court.

**7.23.2.** It is, therefore, desired that a report may be furnished to the Board in the enclosed proforma along with all relevant documents including brief facts of the case, parawise comments along with copy of appeal in duplicate within two weeks of the receipt of copy of Civil Appeal from the Supreme Court Registry/Central Agency Section. If there is any delay in sending the papers within prescribed time limit, day to day reasons of delay may also be enclosed.

Proforma for Commissioner's Comments/Report in Appeal Cases filed by the parties against Tribunal's Order

1. No. & date of Tribunal's order :
2. Civil Appeal or S.L.P. No./year :
3. Date of receipt of CA/SLP in the Commissionerate :
4. Issue involved before the Bench :
5. Brief facts of the case :
6. Are there any Ministry's/Board's instructions on the issue involved :
7. Is there any earlier order of the Tribunal and action taken thereon :
8. Is there any Supreme Court's Judgment on the issue involved :
9. Parawise comments in detail on the grounds of Appeal :

10. Revenue involved :
11. Whether the order would have recurring effect :

{Circular No. 519/15/2000-CX, dated 3-3-2000 [From F. No. 390/31/2000-JC]}

**7.24. Appeal/SLP to Supreme Court — Filing of SLP in Supreme Court — Relevant Section of CBEC**

**7.24.1.** I am directed to invite attention to your letter F. No. VIII/17-43/SLP/SC/CUS/98, dated 29-3-2000 (Copy enclosed), regarding filing of SLP in Supreme Court in a criminal matter. This case does not relate to either Director (Legal) or to Deputy Secretary (Customs), but to DS(AS). In the process, there has been a delay in examination of the papers.

**7.24.2.** All offence cases booked under the Customs Act, including interpretation of provisions relating to search, seizure arrest and prosecution are handled by Anti Smuggling Unit and may be sent directly to DS (AS) to avoid delay. Similarly, all Customs cases arising out of CEGAT decisions are handled by Dir (Jud)/ US(Jud). All other Customs cases are handled by DS(CUS)/US(CUS - VI).

{F. No. VIII/17-43/SLP/SC/CUS/98 [From F.No. 384/13/98-JC]}

**7.25. Recovery of arrears during pendency of appeal / stay application  
Clarifications ; - Regarding ;**

I am directed to refer to Board's Circular No. 396/29/1998-CX, dated 2nd June, 1998 [1998 (100) E.L.T. T15] on the subject of taking recourse to coercive measures to recover duty demanded as a result of adjudication till such time as the stay applications have been disposed of by Commissioner (Appeals). Consequently, references have been received regarding the course of action to be taken when the stay application against the Order-in-Original passed by Commissioner is pending with the Tribunal.

The matter has been examined. The Board has taken the following decisions :

- (a) For cases where the appeals lie with the Commissioner (Appeals) and no stay application is filed along with the appeal, recovery proceedings may be initiated after 60 days from the date of communication of the order. In respect of Orders-in-Original of Commissioners where the first appeal lies

with the Tribunal and no stay application is filed along with the appeal, the aforesaid time period would be 90 days.

(b) Where conditional stay orders are issued specifying the time limit for fulfilment of the conditions but conditions are not fulfilled as per the directions of the Tribunal or Commissioner (Appeals), as the case may be, recovery proceedings should be initiated immediately after the lapse of the time period prescribed in the appellate stay order for fulfilment of the conditions.

(c) In respect of stay applications pending against the Orders-in-Original of the Commissioners before the CESTAT a view similar to Board's Circular No. 396/29/98-CX, dated 2-6-1998 should be taken. The two provisos to Section 35C(2A) of the Central Excise Act, 1944 read as follows :

“Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order :

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.”.

In view of the above stated legal position, the field officers should refrain from taking coercive action till the period of six months of filing a stay petition before the CESTAT, or till the disposal of the stay petition, whichever is earlier.

The instructions in this clause relate to only stay application filed with first stage appeals not to those with further appeals i.e. only in respect of stay applications filed with appeals filed against the Orders-in-Original of the Commissioners.

{Circular No. 788/21/2004-CX., dated 25-5-2004 :F.No. 208/41/2003-CX.6}

## **7.26. Appeals — Filing of appeals in the Supreme Court — Instructions regarding forwarding of information on connected matters for proper**

**defence of cases**

**7.26.1.** Please refer to the instructions issued by the Board from time to time on scrutiny of CEGAT's/High Court's Orders by Commissioners and forwarding of proposals to the Board for filing of civil appeals/SLPs. It has been observed that one long standing problem faced by the Department is with regard to furnishing of up to date information on the status of connected matters relied upon in the impugned order/Deptt's appeal, to the Court at the time of final hearing. Recently the Learned A.G. and S.G. drew Finance Minister's attention to the fact that they had to face embarrassment in one matter, as information relating to the connected matter mentioned in the impugned order in our appeal could not be made available to the court at the time of hearing. In this case CEGAT had relied on a case without mentioning the citation and Commissioner had not forwarded copy of the relied upon order, which omission remained undetected till hearing, as such the advocate could not furnish either copy or status of the relied upon order to the Court. The Supreme Court has also directed the Court Registry to henceforth not admit our civil appeals/ SLPs unless full information in respect of connected matters is provided by the Department.

**7.26.2.** Member (L & J) had occasion to examine the whole procedure relating to filing of appeals in the Supreme Court, in this context, recently and it has been decided, that, in addition to the various other steps being taken at the level of the Board, a separate report on connected matters should be obtained with the appeal proposals. Commissioners should ensure that henceforth whenever they recommend filing of an appeal or SLP in the Supreme Court a separate report on connected matters is also sent in the enclosed proforma along with the appeal proposal.

Information on connected matters would mean details and status of the case/cases referred to and relied upon by the Tribunal or Court in the impugned order, as well as the judgments of Tribunal/High Courts or the Apex Court which are sought to be relied upon by the Department in support of their appeal. All Officers should first verify the correctness of the citations incorporated in the impugned orders, as well as applicability of these relied upon decisions to the case i.e., to pay, whether CEGAT

has correctly applied that ratio of a particular decision to the case under examination. After ascertaining the correctness of the citation and applicability thereof it shall be the responsibility of the Commissioner sending the appeal proposal to ascertain full information about the status of the relied upon cases, i.e. to say whether any appeal was filed against the said order/orders, what was the outcome of such appeal/appeals etc. Commissioners should ascertain this information from the Commissioners concerned and furnish the same to the Board.

**7.26.3.** It has been decided that henceforth Board would also be sending a copy of the list of customs and central excise cases reflected in the Terminal List, issued by the Supreme Court Registry in July each year, to all Chief Commissioners this list reflects the position of cases that have already been admitted and are likely to be listed for hearing in the Supreme Court during the year. Chief Commissioners will coordinate with Commissioners in their jurisdiction to ensure that the concerned officers locate the case files pertaining to cases in their charge, go through them and ascertain the latest information in respect of relied upon/connected matters as well as any other development connected with the case, so that the Departmental counsels can be adequately briefed before the final hearing. A copy of the list has been forwarded to all Chief Commissioners vide Board's F. No. 390/194/2000-JC dated 30-8-2000. Chief Commissioners who have not received the list should immediately get in touch with Joint Secretary (Review) or Director (Review).

**7.26.4.** In addition to the Terminal List forwarded to the Chief Commissioners, Board has also forwarded a copy of list of matters pending in the Supreme Court as ascertained from the Supreme Court Registry, vide Board's F. No. 390/195/2000-JC dated 30-8-2000 to all Chief Commissioners. All Chief Commissioners should correlate the position reflected in this list with their own lists of pending cases, and in case there are certain cases which appear to be pending as per their own list and do not figure in this list of cases obtained from the Supreme Court Registry, particulars of such cases (including Board's File No. if any) should be furnished at the earliest to the Joint Secretary (Legal) - in respect of appeals against High Court's orders, and to Joint Secretary (Review) regarding appeals against CEGAT's orders. In fact it has been noticed that the figures of pendency as per Supreme Courts records and the

figures as reported in the MTR or to Legal Cell of the Board do not tally. They therefore have to be reconciled by December 2000, latest.

**7.26.5.** Board would henceforth be sending such lists twice a year to the Chief Commissioners and Commissioners concerned should ensure that their data is updated in accordance with pendency reflected in the Board's Office/S.C. Registry and discrepancies, if any, are reconciled as early as possible, if necessary by deputing officers to Delhi. They may also suggest case, which can be bunched together, or cases, which need to be, heard on priority basis in view of the importance of the matter or the revenue implications.

#### **REPORT ON CONNECTED MATTERS**

1. Name of Commissionerate :
2. Cause title, Order No. and date of impugned order :
3. Give the details of cases relied upon by the CEGAT including cause title, citation, order No. & date ; Whether department filed appeal against that order and if so the CA or CAD No., Board's reference No. and the present status of our Civil Appeal.
  - (A) First relied upon case
    - (i) Cause title, citation, order No. and date etc.
    - (ii) Commissionerate's name
    - (iii) CA/CAD No., Board's reference No. etc.
    - (iv) Present status of our CA
  - (B) Second relied upon case
    - (i) Cause title, citation, order No. and date etc.
    - (ii) Commissionerate's name
    - (iii) CA/CAD No., Board's reference No. etc.
    - (iv) Present status of our CA
  - (C) Third relied upon case
    - (i) Cause title, citation, order No. and date etc.
    - (ii) Commissionerate's name
    - (iii) CA/CAD No., Board's reference No. etc.
    - (iv) Present status of our CA

(Please attach extra sheets in case the CEGAT has relied upon more than three orders)

(In case reference application had been filed against the relied upon orders, the details thereof may be indicated and copy of reference order if any may please be annexed)

4. In case the matters as mentioned :  
at Sl. No. 3 above; have been decided,  
whether the same has been accepted by  
the Department.
5. The details/citation of cases relied upon :  
by the Department while recommending  
filing of appeal in the present case.
  - (i)
  - (ii)
  - (iii)
6. Whether the matter relied upon in favour :  
of the Department as mentioned at Sl No. 5  
above has attained finality; and if not, whether  
the same has been appealed against CA/CAD  
No. assigned.
  - (i)
  - (ii)
  - (iii)
7. The present position/status of the CA/CAD No. in :  
respect of the matter mentioned at Sl. No. 5 above.
  - (i)
  - (ii)
  - (iii)

Commissioner of Customs & Central Excise

{Circular No. 544/40/ 2000-CX, dated 6-9-2000 F. No. 390/186/2000-JC}

**7.27. *Filing of appeals in the Supreme Court - Instructions regarding forwarding of information on connected matters for incorporation in the synopsis annexed to the Special Leave Petition/CA and for proper appreciation of law by the Hon'ble Supreme Court; Information on connected/ relied upon cases to be annexed:***

Attention of the field formations is invited to the instructions issued by the Board from time to time regarding the modalities to be observed while forwarding the

proposal for filing a Civil Appeal/Special Leave Petition in the Hon'ble Supreme Court. Vide Circular number 544/40/2000-CX, dated 6-9-2000 (copy enclosed) [Not printed - See 2000 (121) E.L.T. T3] issued from F.No. 390/186/2000-JC, it was emphasized that a separate report on connected matters should be obtained & enclosed with the appeal proposals, in the proforma annexed thereto. Reference is also invited to Member (L & J)'s communication F.No. 275/41/2004-CX.8A, dated 14-9-2006 reiterating the said instructions.

**7.27.2.** The Ld. Solicitor General in a communication dated 8th December 2007 has brought to the notice of the Board that the Civil Appeals/Special Leave Petitions filed by the Revenue are bereft of a statement about the status of relied upon matters, connected matters and other judgments referred to by the Tribunal or High Courts. It has been further stated by the Ld. Solicitor General that on 7th December 2007 in a revenue matter placed before their Lordship Mr. Justice Kapadia and Mr. Justice Reddy, the status of two earlier orders of the Tribunal relied upon by the Tribunal in a subsequent matter were not stated in the petition filed by the department. This situation had caused considerable inconvenience for proper appreciation of law and delivery of justice by their Lordships. As a result Hon'ble Justice Kapadia had passed a judicial order stating that *unless the status of connected/relied upon cases/judgments referred to by the Tribunal and the High Courts is made clear in the forefront of the synopsis of the cases annexed with the Civil Appeal/Special Leave Petition the Registrar of the Hon'ble Apex Court should not number the revenue cases.*

**7.27.3.** In view of the above judicial order, it has become of utmost necessity to ascertain and indicate the status of all matters as mentioned in para 2 above as in the absence of the same the CA/SLP is not likely to be numbered. It is, therefore, impressed upon the field formations that while forwarding their proposal for a Civil Appeal/SLP the Commissioner should ensure that the Board's instructions in the matter and orders of the Hon'ble Apex Court are scrupulously complied with. Any proposal forwarded without containing the status of the connected matter relied upon/referred to by the Tribunal and the High Courts would not be accepted in the Board and viewed strictly as it tantamounts to non-compliance of the order of the



Hon'ble Apex Court. This would inturn entail consideration as a failure and dereliction of duty.

{Circular No. 863/1/2008-CX., dated 2-1-2008}

## **7.28. Appeal to S.C. against adverse CEGAT orders; Processing of- Instructions:**

**7.28.1.** Of late, it has come to the notice of the Board that where an adverse CEGAT order pertains to more than one assessee, the concerned Commissioner sends proposals for C.A. only in respect of one party without checking up as to whether C.A. proposals are being made in respect of other parties covered by the order or not. This discrepancy has been seen even in case of parties belonging to the same Commissionerate or the same zone. This problem has also arisen on account of the fact that erstwhile Commissionerates had been reorganised into more than one Commissionerates in 1997. The Board is, thus, required to enter into correspondence with the other Commissionerates and call for proposals from them regarding filing of C.A. in case of other assessees covered by the order. The net result is that the C.A. gets badly delayed and is liable to be dismissed by the Supreme Court.

**7.28.2.** The Board, therefore, desires that whenever C.A. proposals are sent in case of adverse CEGAT orders, Commissioners must ensure that these C.A. proposals are sent in respect of all the parties covered by the order in their Commissionerates. They must also ensure that if parties belong to other Commissionerates/Zone, the other concerned Commissioners are promptly informed of the C.A. proposal being made by them, so that other Commissioners can promptly take a view about the necessity for filing C.A. in case of the other parties falling in their jurisdiction. To avoid delay, the Commissioners are requested to ensure that a system is put in place for enabling prompt examination of the concerned CEGAT's order in the event of reference being received from fellow Commissioners.

{Circular No. 520/16/2000-CX, dated 7-3-2000 [From F. No. 390/34/2000-JC]}

**7.29. Review of adverse CEGAT Orders - Need for filing of the CAs expeditiously, wherever necessary:**

**7.29.1.** The Board has been concerned about the delay in filing of CAs against the adverse CEGAT Orders and with the fact that the Supreme Court has not been condoning such delays and has been dismissing the Revenue appeals without going into the merits of the case. The Board has been emphasizing the need for expeditious submission of CRALL proposals and recently it has issued instructions vide Cir. No. 402/35/98-CX (F. No. 390/107/97-JC), dated 9th June, 1998 emphasizing against the need for submission of CA proposals, complete in all respects, within 10 days of the receipt of the CEGAT Orders.

**7.29.2.** In the above matter, recently Attorney General for India has also expressed his concern over delay in a case and had written to the Hon'ble F.M. who observed that this was quite serious. The Deputy Govt. Advocate has also written to the CBEC. Copies of their communications are enclosed herewith. Secretary (Revenue) has also desired, considering the A.G's letter, an immediate compilation of lists of all such cases for the last two years where such defaults have occurred. Whereas the list is under preparation, it has been desired that the Commissioners may note again the imperative need for processing and submission of all CA proposals, complete in all respects, expeditiously within 10 days of the receipt of the CEGAT Orders. In case of any delay, day-to-day chart for the delay, which could not be avoided, as well as the detailed explanation for the delay and necessary action taken in the matter, must be submitted to the Board without fail.

**7.29.3.** I am directed to say that the Commissioners should personally ensure careful monitoring and timely submission of CA proposals whenever CEGAT Order is found to be not acceptable for justifiable reasons.

**7.29.4.** The Board desires that they must closely monitor the position in this regard and ensure timely review of all CEGAT Orders and submission of Civil Appeal proposals, wherever required, in all cases within 10 days to the Board. Any delay must be viewed seriously for fixing responsibility and taking appropriate action against the concerned officers.

**7.30. Appeal to Supreme Court — Filing of civil appeal against CEGAT orders — Delay on account of filing reference application:**

**7.30.1.** Your attention is invited to the provisions contained in Sections 35G and 35L (b) of the Central Excise Act, which Sections clearly stipulate the types of cases where statutory appeal against the Tribunal's order lies before the Supreme Court. A question of law could be referred to the High Court in respect of issues other than those relating to the rate of duty or to the valuation of goods as these are covered under Section 35L(b) of the Act. Analogous provisions exist under Chapter XV of the Customs Act, 1962.

**7.30.2.** The Board has issued various instructions from time to time on the need for careful scrutiny of CEGAT orders and sending timely proposals for filing of Civil Appeal in the Supreme Court where warranted. However, it has come to the notice of the Board that the above provisions of the Act are either lost sight of or at times not properly understood and we are getting in the Board proposals against CEGAT orders for filing Civil Appeals when even remotely it is not attracting Section 35L of Central Excise Act, and at best it could be a case of warranting a Reference Application before jurisdictional High Court. Board is also sometimes coming across cases where because of improper appreciation of the facts and legal provisions, Reference Applications are being inadvertently filed, where Civil Appeal should have been proposed. Obviously by the time CEGAT/High Court decide that Reference Application is not entertainable, the civil appeal time limit is over by the huge margins and we lost the chance of contesting in Supreme Court. Recently one of the Commissionerates had sent one such case where they had application against CEGAT order on the issue of whether cutting/drilling/punching etc. of Aluminium Sections amounts to manufacture. The Tribunal rejected the said Reference Application on the ground that the matter pertained to bringing into existence of new goods and hence related to classification and valuation, for which separate provision existed under Section 35L(b) of the Act. The Commissioner thereafter had forwarded a proposal recommending filing of Civil Appeal in this matter, but the C.A. proposal involved a delay of 472 days, which could not be explained to the Supreme Court, as

pursuing of appeal before a wrong forum is not considered to be a sufficient reason for consideration of delay, no appeal could, therefore, be filed before the Supreme Court in the said case.

**7.30.3.** Board is not happy with such cases of delays and wrong filing of Reference Application or wrong recommendation for Civil Appeals. All Commissioners are requested to carefully go through the facts of each case and legal issues on which we have difference of opinion *vis-à-vis* order taken by CEGAT so that errors of the type mentioned above are avoided in future.

{Circular No. 529/25/2000-CX., dated 19-5-2000 [From F. No.390/34/2000-JC]}

**7.31. Appeal to the Supreme Court by the assessee : Need for timely filing of counter affidavits and briefing of panel advocates — Instructions**

**7.31.1.** Please refer to Board's circular No. 519/15/2000-CX., dated 3-3-2000, [2000 (117) E.L.T. T3] issued from F. No. 390/31/2000-JC vide which Commissioners were directed to forward comments on appeals filed by assessees in a prescribed proforma. Despite issue of aforesaid circular, there is no appreciable improvement in forwarding of relevant papers to the Board after receipt of the same in commissionerate. The Commissioners should be aware that the Central Board of Excise & Customs or the Central Agency Section of the Ministry of Law are not the respondent in the appeals filed by the assessees and it is the Commissioners alone to whom the notice of lodgement of appeal is sent. Hence in the absence of requisite papers it is impossible to cause appearance in the Court, because no advocate can represent the Commissioner without being aware of the facts of the case and the grounds/stand taken by the Department and the assessees thus stand a good chance of getting stay or a favourable order from the court. To avoid this, Commissioners should ensure that the Notice regarding filing or lodgement of appeal received from the Supreme Court Registry and copy of appeal received by them are sent to Board in duplicate within two weeks of receipt in the Commissionerate office as stipulated in Board circular cited *supra*.

**7.31.2.** The following instructions should also be scrupulously followed with regard to responding to party's appeals in the Supreme Court :-

- (i) Now that Supreme Court Cause-List is available on INTERNET on the site "**Supremecourtofindia.nic.in**" or "**http://causelists.nic.in**" the respective Commissioners may personally monitor the cases which are likely to be listed in the Court for hearing and keep abreast with cases pertaining to their Commissionerates coming up before the Court
- (ii) In case they have received the notice but have not taken action to forward copy of the appeal paper book and parawise comments in duplicate to the Board or if they have not received the notice of Lodgement of petition of appeal and civil appeal copy from the Supreme Court registry, they should depute a well conversant officer with all relevant records to report to the Under Secretary, Judicial Cell of CBEC, who can be contacted at Telephone No. 3014182 in Room No. 227-B of North Block, New Delhi. Under Secretary (JC) will help the officer in contacting the official/advocate concerned. From CBEC, that officer can go to the Central Agency Section of the Law Ministry so that counter affidavit can be prepared/filed and the Panel Advocate suitably briefed, or it can be brought to the Court's notice that notice has not been received.
- (iii) In those cases where Notice of Lodgement of Appeal has been received well in time (say within ten days of despatch from registry), all the papers (together and not in bits and pieces) be sent within ten days of receipt of the same to Ministry by name to Joint Secretary (Review) or Under Secretary (Judicial Cell) so that necessary steps could be taken for filing counter affidavits in time.

**7.31.3.** All Chief Commissioners/Commissioners may note that we now have a Special Monitoring Cell headed by an Additional Director of the rank of Addl. Commissioner for appropriate liaison and follow up of C.B.E.C. cases in the Supreme Court. The said Cell is housed in a flat on the **ground floor** of **V.K. Krishna Menon Bhawan, 9, Bhagwan Das Marg, New Delhi-110001** and that building is opposite Supreme Court Complex. In case the officers coming to Delhi have any problem in contacting the Panel Advocates at the Central Agency Section

they may take the help of the officers in the Monitoring Cell who can be contacted on Telephone No. **3381630, 3381825, FAX 3389524.**

{Circular No. 550/46/2000-CX., dated 20-9-2000 F. No. 386/66/2000-JC}

### 7.32. **Revision applications** — Guidelines for filing:

7.32.1. Central Government notice that there are deficiencies in the **Revision Application** filed by Petitioners/Counsels/Consultants and consequently avoidable correspondence is being entered into, which causes delay in deciding the **Revision Applications**. The following guidelines are issued for the benefit of the Petitioners/Counsels/Customs & Excise Consultants :

#### General I.

- (i) The **Revision Application** should be filed in proper format and duly signed by the petitioner and his Counsels/Consultants (wherever applicable). The grounds of appeal and statement of facts should be enclosed; documents, if any, relied upon, should be marked as Exhibits and properly annexed to the application.
- (ii) Verification as required under statute should be duly signed by the petitioner.
- (iii) Where the applicant is to be represented by a Counsel, Vakalatnama in favour of the Counsel should be filed along with the **Revision Application**. In the case of Consultants, the letter of authority of power or attorney should be filed on proper stamp paper as required under the law. Where the applicant is to be represented by his own kin or close relations, a simple authorisation would be sufficient.
- (iv) One copy of the Treasury Challan should be enclosed with the **Revision Application**.
- (v) The paper book containing the following documents should be filed :-
  - (a) a clear copy of the Order-in-Original;
  - (b) a copy of his appeal petition to the Appellate Authority;
  - (c) a clear copy of Order-in-Appeal;

(d) any other documents which had been submitted to the Original or Appellate Authority should be filed.

(vi) It should be clearly indicated in the application, whether personal hearing is required or not.

II. Certain additional documents required to be filed in respect of drawback and short-landing cases as indicated below :

(a) Customs Drawback Cases :

(i) photo-copies or attested copies of Shipping Bill(s), Invoice(s), product specifications, the L.C. and enclosures (if any) submitted with drawback claim;

(ii) copies of documents like Brand Rate Letters and other correspondences;

(iii) copies of test reports and any other documents of the type if relied upon should be enclosed;

(iv) in respect of Section 74 claims, copies of Bill of Entry of original Import, correspondence exchanged with Suppliers, Reserve Bank of India and/or other agencies, copies of Bill of Entry of free replacements with invoices etc.

(b) Customs Short-landing Cases :

(i) copy of the Section 116 show cause notice received from the (i) Original Authority;

(ii) copy of the explanation offered by the steamer agents to the Original Authority;

(iii) copy of the extracts of the relevant portions of the landing remarks of the Port Trust ;

(iv) copies of any other documents filed before Original or the Appellate Authorities.

(c) Customs Short-landing Refunds :

(i) photo-copies or attested copies of Shipping Bill(s) and landing certificate;

(ii) copy of 'B' form;

(iii) copies of survey/insurance report(s).

III. For loss cases and export cases in Central Excise

(a) Transit losses :

- (i) photo-copies or attested copies of AR 3/AR 3A certificate(s) duly certified by the proper officer;
- (ii) copy of show cause notice of Original Authority;
- (iii) copy of the explanation offered by the petitioners before the Original Authority.

(b) Export under bond/under claim for rebate :

- (i) photo-copies or attested copies of AR 4/AR 4A duly certified (i) by the proper officer;
- (ii) photo-copies or attested copies of shipping bill(s);
- (iii) copy of show cause notice (if any) received from the Original Authority;
- (iv) copy of explanation submitted to the Original Authority.

**7.32.2.** Though photo-copies of the documents could be submitted, where photo-copies are not clear or legible, the petitioners should file a neatly typed copy duly attested by him or as Counsel/Consultant. The paper book should be submitted in duplicate. However, only one copy of the Treasury Challan need be submitted.

[M.F. (D.R.) (R.A. Unit) Public Notice, dated 21-1-1987]

**7.33. Steps for reducing litigation and review orders passed by Commissioner (Appeals) and CEGAT - instructions regarding.**

**7.33.1.** The Government has been concerned about the mounting litigations specially in CEGAT and Apex Court on various issues concerning levy and collection of Customs and Central Excise duties and has been seriously examining steps to reduce such litigation. Thus, changes in the basic provisions of the law including rules, notifications and the tariff entries etc. are being effected whenever difference



of opinion between the Department and trade and industry comes to the notice of the Government to make its intentions clear and to reduce litigation in future.

**7.33.2.** It is considered very essential that a regular monitoring be undertaken and a feed back given to the Board by the Commissioners/Director Generals/Chief Commissioners about such issues which are becoming subject matter of frequent disputes in the field formations. This will enable quick corrective steps to be taken where necessary by amending the laws/notifications etc. or by way of issue of suitable further guidelines from Board about the Department's view on the issue which can be applied uniformly in all Commissionerates/Customs Houses to avoid different practices which itself becomes a major point of grievance/litigation by the trade and industry. Chief Commissioners are specially requested to keep watch and report such issues by frequent interaction with their Commissioners [including Commissioner (Appeals)] as also with trade and industry. They must, while sending their reports, *inter alia*, highlight any differential classification or valuation practices which have come to their notice being followed in different Zones/Commissionerates, conflicting views being taken by different Benches of CEGAT or High Courts etc. on important questions of law affecting revenues. Copies of such references could be addressed to the concerned Member in the Board with a copy to Member (L&J) for further examination and taking a quick view and for issue of appropriate guidelines from the Board.

**7.33.3.** It has also been observed by the Board that often, appeals are being filed in routine against orders passed by Commissioner (Appeals) even when stakes involved are very small and not of recurring nature and issues are not of basic/general importance. It has also come to Board's notice that though as compared to the past, the number of cases where CEGAT's orders adverse to the Department being recommended for review and filing a Civil Appeal before Supreme Court have come down, still there are many cases where civil appeals to apex courts are being recommended not consistent with the guidelines issued earlier.

**7.33.4.** Board would like to emphasise that an adjudicating/appellate authority must examine very carefully the issues before him, the stand projected by the

assessee and the views of the Department, take note of the legal provisions and case law and the rulings of the Board if any on the issues etc. and pass a reasoned order. The adjudicating appellate authority must also ensure that principles of natural justice are properly followed. Once this is done, there will be fewer challenges to the orders issued and it would also lead to substantial reduction in the cases being recommended for appeal.

**7.33.5.** A number of instructions have been issued in the past for exercising careful scrutiny and some restraint before filing/recommending appeals against orders of Commissioners. Board would like to reiterate that **review of the orders of Commissioner (Appeals) - for filing of appeal against them before CEGAT and the adjudication orders passed by the Commissioner of Customs/Central Excise - for filing appeal before CEGAT should normally be undertaken/recommended on sufficiently strong grounds after full application of mind and satisfying that the Department has reasonable chances of success if the appeal is filed. The appeal should not be filed in routine especially against the orders of Commissioner (Appeals) merely on ground of technicalities.** (Board's instructions under Circular No. 337/53/97-CX, dated 3rd October, 1997 are also relevant and these should be followed).

{Circular No. 401/34/98-CX, dated 9-6-1998 From F. No. 390/160/98-JC}

#### **7.34. Steps for reducing number of civil appeals being filed in Review/Scrutiny of the orders passed by all the Benches of the Appellate Tribunal — Instructions**

**7.34.1.** Please refer to the Board's instruction contained in its circular No. 313/29/97-CX (F. No. 390/107/97-JC) dated 6-5-1997 wherein it had been stated that the jurisdictional Commissioner would be primarily responsible for examining each and every order for filing Civil Appeal or Reference Application, as the case may be and if the Commissioner feels that a Civil Appeal under Section 35L/130E is to be filed against a particular CEGAT Order relating to rate of duty, classification and valuation (for the purpose of assessment) he should submit a detailed proposal giving grounds for appeal and other necessary details to the Board within 10 days from the date of receipt of the certified copy of the CEGAT Order in his office. In the

aforesaid circular it has also been emphasised that it must be ensured in the Commissionerate that every CEGAT Order whether in favour or against the revenue is examined and reviewed up to the level of the Commissioner within the given time, for acceptance or otherwise. The Board's circular aforesaid further stipulated that the Chief Commissioners would at random examine the correctness or otherwise of at least 10% of the CEGAT Orders which are against the department and which has been accepted by the Commissioner and send quarterly report in this regard to Member (L & J) in CBEC.

**7.34.2.** However, at present no mechanism exists to ascertain whether all the final orders passed by CEGAT Benches have been reviewed by the Chief Commissioner or the jurisdictional Commissioner. It is particularly necessary in respect of the final orders passed by CEGAT Benches either remanding the matters or passing orders adverse to the revenue. Board would like to have a fool proof system in which all the orders passed by the Tribunal are necessarily examined so that no order calling for review escapes review.

**7.34.3.** In view of the above the Board has desired that henceforth the office of CDR would circulate a monthwise list containing the details (Final Order No. & date, cause title, bench name, CEGAT appeal No., Order No. & date appealed against and officer passing the said order) of all the final orders passed by the CEGAT Benches remanding the matters as also the orders adverse to the revenue, to all the Chief Commissioners of Customs & Central Excise, with a copy to the Board. The Chief Commissioner of Customs & Central Excise would ensure review of all such orders relating to his zone by the concerned Commissioner. He (the C.C.) would send a monthly report to Board listing the adverse or *de novo* CEGAT Orders which were examined by the Commissioners within his zone. He would further ensure that no order escape examination and the fact of such examination having taken place reaches the Board within two months of receipt of the order of CEGAT.

**7.34.4.** The Chief Commissioner will devise similar mechanism to ensure that all orders-in-original (including note sheet order) and orders-in-appeal are examined by the Commissioners within his zone, so that cases calling for review are selected on the basis of such complete examination.

**7.35. Board would like to reiterate its instructions under F. No. 390/170/92-JC, dated 13th January, 1993.**

Chief Commissioners and Commissioners must strictly keep them in view while sending recommendations to the Board wherever they are not in agreement with CEGAT's view point. In particular, it should be ensured that appeals are recommended only when significant amounts (over Rs. 5 lakhs) and substantial question of law are involved and where there is no direct ruling or case law of the Supreme Court on the subject as laid down in the said instructions. We should not be involved in avoidable and infructuous litigation.

{Circular No. 538/34/2000-CX., dated 24-7-2000 F. No. 390/127/2000-JC}

**7.36. Review of Supreme Court Decisions — Instructions**

**7.36.1.** It has come to the notice of the Board that Commissioners forward in certain cases proposals for review of the Supreme Court decisions which are adverse to revenue. These proposals in most cases do not give any detailed reasons with facts and earlier case laws on the issues which may justify the Hon'ble Court being approached for a review/reconsideration of their order. Copies of the relevant documents on records, various judgments, copies of authoritative opinion of experts/trade organisations/bodies or extracts from authentic technical books etc. which supports the Department's view point but whose cognisance has not been taken are also often not forwarded. It has also been observed that the review proposals are, very often, received very late, that is, much after the expiry of period of 30 days from the date of the issue of the S.C. decision - the time-limit within which a review petition can be filed.

**7.36.2.** The board observes that proposals for review of Supreme Court decisions/orders should be made after very careful consideration and not in a routine way. These should be made only in exceptional cases where the Chief Commissioner/Commissioner feels that a request for re view/re-consideration is fully justified as the Hon'ble Court's decision is likely to upset the set practices of

classification/valuation or interpretation of particular statutory provisions established due to earlier decisions of judicial bodies including the Apex Court apart from having very adverse impact on Government revenues. A very critical study of the decisions *vis-a-vis* individual assessee's records and established practices, should also be undertaken to check if the Court has not taken into consideration any crucial facts on record or the Court has *prima facie*, been misled by presentation of particular fact by the assessee leading to a judgment adverse to the Department involving heavy revenue. The recurring effect on other cases which may get decided by Tribunal/Courts etc. on the basis of the impugned judgment should also be analysed.

**7.36.3.** Commissioners while seeking a review in such cases and sending proposals must ensure that these are self-contained and complete in all respects with all necessary enclosures, and fully legible documents and a note specifying the grounds for review in detail.

**7.36.4.** An appeal for review where considered warranted by the Government has to be filed in the Supreme Court within 30 days of the issuance of the Supreme Court order against which review appeal is being filed. The Supreme Court is not normally condoning the delay unless very strong reasons exist and unless day-to-day explanation for the entire period of delay is submitted. The Board itself would need minimum 3 weeks to examine any proposals for taking ultimate decision for review and filing the review appeal. It has to approach the Law Ministry and after Law Ministry's clearance to consult Law Officer for his written opinion and thereafter refer the case to the Law Ministry for making out the review appeal and then filing the same through the Central Agency Section in the Supreme Court. The Chief Commissioner/Commissioner's review proposal, complete in all respects must, therefore, be received in the Board's office within 10 days of the issuance of the Supreme Court order against which the review proposals are being made.

**7.36.5.** In case there is any delay in any particular case in the submission of the proposal, as aforesaid, a day-to-day chart explaining the delay must accompany the proposal.

**7.37. Review of orders by Committee of Chief Commissioners — Procedure in case of difference of opinion between members of Committee-Functioning of the Committee of Chief Commissioners for Review of Orders passed by Executive Commissioners and Appellate Commissioners.**

**7.37.1.** I am directed to invite your attention to the provision of sub-section (2) of Section 35B of the Central Excise Act, 1944 or Section 129A of the Customs Act, 1962, which *inter alia* provides that the Committee of Commissioners of Central Excise or the Committee of Commissioner of Customs, as the case may be, may, if it is of the opinion that an order passed by the Appellate Commissioner of Central Excise under Section 35 or the order passed by the Appellate Commissioner of Customs under Section 128, as the case may be, as it stood immediately before the appointed day, or the Commissioner (Appeals) under Section 35A or under Section 128A, is not legal or proper, direct any Central Excise Officer or the proper Officer authorized by him in this behalf (hereafter in this Chapter referred to as the authorized officer) to appeal on its behalf to the Appellate Tribunal against such order. Similarly, sub-section (1) of Section 35E of Central Excise Act, 1944 or Section 129D of Customs Act, 1962, provide that the Committee of Chief Commissioner of Central Excise or the Committee of Chief Commissioner of Customs, as the case may be, may of its own motion, call for and examine the record of any proceedings in which a Commissioner of Central Excise or a Commissioner of Customs, as the case may be, as an adjudicating authority has passed any decision or order under this Act for the purpose of satisfying itself as to the legality or propriety of any such decision or order and may, by order, direct such Commissioner or any other Commissioner to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Committee of Chief Commissioners of Central Excise or Committee of Chief Commissioner of Customs, as the case may be, in its order.

**7.37.2.** The Board has received a number of references from the field formations concerning the procedure to be followed while implementing the

provisions of sub-section 1(B) of Sections 35B and 35E of Central Excise Act, 1944 and sub-section 1(B) of Section 129A and 129D of the Customs Act, 1962, in case of difference of opinion between the members of the Committee.

**7.37.3.** The suggestions of the Chief Commissioners on the matter have been examined and considering the above legal position, Board has decided that when two members take a common view to file an appeal or not to file an appeal, in a particular case there would be no difference of opinion and the same would be followed. However, in a rare case when the two members could take different views i.e., one member takes a view to file an appeal, and the other member opposes it, the decision should be to file an appeal.

{Circular No. 825/2/2006-CX., dated 6-2-2006 F.No. 390/12/2005-JC (BMB)}

[Circular No. 824/1/2006-CX., dated 6-2-2006 re-numbered as 825/2/2006-CX. vide Circular No. 826/3/2006-CX., dated 22-2-2006]

**CHAPTER – VIII****DISPOSAL**

Numerous legislations impose prohibition/restriction on import or export of specified goods, which are then required to be detained/seized. Till the importation/exportation/ acquisition is adjudged, the goods in question remain in the custody of the Department or the Custodian (like Port Trust, CWC, AAI, etc.). If the goods are confiscated, these become property of the Government and are disposed as per instructions laid down. Certain goods, as notified by the Government, after completion of action under Section 110 (b) of the Customs Act, 1962 and perishables are disposed even without awaiting decision of the adjudicating authority.

At the same time, cargo lying unclaimed/uncleared in the Ports, Airports, Air Cargo Complexes, ICDs etc. beyond the time limit specified under Section 48 of the said Act, are taken over and sold by the Custodians as per provisions laid down under Section 150 of the Act and various circulars issued in this regard.

### **8.01 Receipt / Custody and Storage of Seized / Detained / Confiscated Goods**

8.01.01 Receipt, Custody and Storage of seized / detained / confiscated goods is entrusted to the Preventive staff posted in Warehouses. For this purpose the following instructions are relevant:

- (a) A complete **inventory** of the seized/detained goods together with identification marks, serial numbers etc. should be made in triplicate in Form I (below) immediately after seizure. Separate inventories should be made in respect of (a) valuables and (b) other than valuables. For this purpose the term 'valuables' will include:



- 1) Precious and semi-precious stones;
- 2) Gold and articles made of gold;
- 3) Jewellery;
- 4) Silver and articles made of silver;
- 5) Watches; and
- 6) Such other articles as may by special or general order be classified as valuables by the Commissioner.

**FORM I**      ORIGINAL (FOR CUSTODIAN)

(para 1)      DUPLICATE (FOR CASE FILE)

TRIPLICATE (OFFICE COPY OF SEIZING UNIT)

**Inventory of Goods Seized / Detained**

1. Name and address of owner/from whom seized .....
2. By whom seized (or detained) .....
3. Place and Date of seizure/detention .....
4. Custom House case file No. ....

Seized  
goods  
Register  
No.

S.	No.& details	Detailed	Quantity	Value as per	Remarks
	No. of Packages	Description of Goods  (Package-wise)		Panchnama	
1.	2.	3.	4.	5.	6.

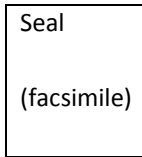
Signature of Superintendent (Prev.)

Signature of the seizing officer

Date:

Date:

Received..... Packages with seals intact.



Signature of the Custodian

Note: -

1. Packages should be sealed with the seal of the seizing /detaining officer and the seal of the owner or his authorised representative or that of a gazetted officer.
  2. Packages should be forwarded to Custodian within 24 hours of seizure/detention.
- (b) Form I shall be signed by the Seizing/Detaining Officer and the Superintendent (Preventive) after due verification. The goods sealed with the seal of the Seizing or Detaining Officer are to be presented to the Custodian.
- (c) Form I shall mention the details of the packing materials such as Cardboard Box/Suitcase/Rexine/ Handbag etc. This is to facilitate disposal of these packing materials separately after the disposal of confiscated goods.
- (d) Form I in triplicate duly filled in along with the seal (facsimile) and the sealed packages of the detained/seized goods shall be presented to the Custodian (no goods shall be received by the Custodian without a complete Form I) who shall after due verification of the number of packages and the seal, assign Seized Goods Register Serial No. and sign on all the three copies (this is a continuous running serial number for all future references by the Preventive Unit). The Custodian will retain the original and return the other two copies of the Form I. Duplicate copy of the Form I will go along with the case file for adjudication and triplicate will be retained for their office copy along with the case records.
- (e) It is not necessary for Custodian to examine the contents of the packages provided the seals are intact and the Form I is proper.
- (f) At the time of deposit, perishables, currency, petroleum products, narcotic items and the valuables have to be segregated and sealed. Petroleum products being highly inflammable and explosive shall be stored separately and safely and disposed off immediately without loss of time. Extreme care shall be taken that no damage is caused by petroleum products to the main infrastructure or other goods under custody. Likewise perishables such as fruits, vegetables etc shall be stored separately and disposed off immediately. In case of any discrepancy, the Custodian shall get the same reconciled before acknowledging receipt

8.01.02. The Custodian shall enter the details as per Form I in the **Register of Seized / Detained Goods** as per Form II (below). Separate register should be maintained for (a) valuables and (b) other than valuables. Details of Order-in-Original /Order-in-Appeal, alert etc., are to be entered in the Register. All events pertaining to handling of the goods such as Date of Stock Challenge, Date

of stocktaking, examination of the goods for valuation etc., shall also be recorded in the register (adequate space needs to be earmarked in the register so as to record all these entries). Each package should then be securely tied, pinned or stuck with a stock card in Form III (below).

**FORM II**

Register of seized / detained goods

S. No.	Date of Receipt	By whom deposited	Nature of sealing	Custom House case file No.	Name of owner/ from whom seized	No. & description of packages	Description of goods	Quantity
1.	2.	3.	4.	5.	6.	7	8	9

Value as per Form - I	Where stored	PARTICULARS OF REOPENING				
		Reason & authority	Date of reopening	Name of officers present at time of re-opening	How re-sealed	Where re-stored
10	11	12	13	14	15	16

Auction lot No. & other particulars of the lot in which included	Price fetched at auction	Date of delivery to the bidder/ owner of the goods	Signature of recipient	Amount paid as godown rent (receipt No. & date)	Signature (with date) of Custodian	Remarks
17	18	19	20	21	22	23

FORM III

STOCK – CARD

1. S.No. in the seized/detained goods register
2. Date of receipt
3. Name of owner of the goods, if known
4. No. of packages
5. Description of goods, quantity and value

8.01.03. **Valuables** should invariably be kept in a special safe in the Custom House Treasury or in a locker in the Reserve Bank of India or State Bank of India, obtained exclusively for the purpose. Wherever they may be deposited, such packages shall be stored systematically, serial-wise and year-wise to facilitate easy check and location. Relevant particulars of the storage arrangements should also be recorded in the register of Valuables. Further, the key of the safe or the locker shall be kept securely in the personal custody of the Custodian.

8.01.04 Goods other than valuables shall, as far as possible, be kept on almirahs and racks that are serially numbered commencing from '1' and the partitions in the almirah and racks should be lettered commencing from 'A'. The almirahs and racks should be so arranged and the packages so systematically stored that there should be no difficulty at any time to check and locate the packages. Special care shall be taken to prevent damage to the goods by rodents/ insects or any other source. The key of the Godown shall be in the personal custody of the Custodian and proper record is to be maintained for the handing over of the keys to any authorized officer when the Custodian proceeds on long leave/transfer.

8.01.05 **Detained / seized vehicles** and other types of machinery should be properly looked after during storage. Particular care should be taken of the spare parts and tools. The vehicles are to be properly garaged and the machinery kept at a proper place. The engines of the vehicles (not the vehicles themselves) should, if possible, be run twice a week for a few minutes to keep the parts under lubrication. Wherever necessary, due to possible delay in the disposal, the vehicle should be jacked up. If suitable garage facilities are not available, temporary sheds may be erected or the vehicles handed over to an Automobile Association for proper storage and maintenance, at place mutually agreed upon and found to be reasonable and comparable to those asked for by private garages. Similarly, detained or seized watercrafts should be properly looked after during storage and particular care taken of the spare parts and tools. Water crafts should be maintained in a proper state of river/sea worthiness, and kept, as far as possible in proper running order. In such of these places where suitable mooring facilities are not available, the watercraft may wherever possible be handed over to the Port authorities for custody and Superintendent (Launches) or the Officer in-charge/ (Launches) will look after this; otherwise the same be attached to by the Custodian.

8.01.06 Opening and re-sealing of the packages for further investigation should be avoided, but when unavoidable, such opening should be done only with specific authorization of the Asst. Commissioner (Preventive) When such authorization is obtained, the Custodian shall produce the packages and after due verification of the seals in the presence of the Preventive officers, Asst. Commissioner (Disposal)/ Jewellery Appraiser these shall be opened. After verification, the packages shall be immediately re-sealed with the seals of the Officer from the Preventive Unit/Jewellery Appraiser in the presence of the owner or his authorised representative (if available) and the seizing or detaining officer or the Gazetted Officer besides the officers witnessing the opening. The stock card should be suitably endorsed and the packages re-deposited in the original place of storage. Discrepancy, if any, noticed should immediately be brought to the notice of the higher officer after being recorded in the Seized Goods Register.

8.01.07 Whenever seized or detained goods are ordered to be returned to the owner, the Custodian should after satisfying himself that all the monies due to the Government have been paid by the owner and after proper identification of the owner of the goods by the Officer from the Preventive Unit, give delivery of the goods against the owner's endorsement in the Register that the packages have been received with seals intact and the signature of the Preventive Officer present during the release shall be obtained in the Register. In case the owner wishes to have open delivery, the Custodian should comply with the request but in the presence of the Seizing or Detaining Officer and if the same is not possible in the presence of a Gazetted Officer.

## **8.02 Responsibility of the Custodian**

8.02.01 The Custodian will be responsible for the physical custody of the packages with seals intact. He will not be responsible for the inner contents of the packages if they have been sealed.

8.02.02 He should insist before accepting the sealed packages that the inventory of the goods is complete in all respects.

8.02.03 He should ensure the packages are carefully stored and protected against the ravages of weather, rodents and insects. He should also take adequate precautions against theft and pilferage and keep watch on the condition of the goods. Insurance Policy for the goods in custody shall be kept alive.

8.02.04 If the goods show signs of deterioration or damage by way of leakage or emanating odour, he should immediately bring it to the notice of the Assistant Commissioner, Preventive, for appropriate action. Fragile goods should be handled with care and if any goods are damaged in handling, he should immediately report the matter to the Asst. Commissioner, (Preventive).

8.02.05 The Custodian will be responsible for maintaining the Register in the proper manner and submitting the monthly return of goods ripe for disposal.

8.02.06 Copies of all orders of confiscation/appeal etc. shall be endorsed to the Custodian who will maintain them properly and make suitable entries in the Register.

[F. No. 11/6/61-CusIV, dated 2.12.1961]

8.02.07 When the Custodian is transferred, the succeeding Officer while taking charge of the Custodianship shall verify all the packages with seals of goods in the godown and tally with the seized goods register and both officers shall sign in the Register about the handing over/taking over of the charges. Particular reference shall be made about the nature/number of the seal. Only after complete handing over of all goods, the officer will be relieved.

### **8.03 Operation of Strong Room**

8.03.01 Strong rooms for valuables such as Gold, Silver, Diamonds, Gems & Jewellery and Precious / Semi-precious Stones, should invariably have a double lock system;

8.03.02 The two keys for operating the strong room should be entrusted to two separate officers; one to the in charge of the strong room or godown and the other to superior/supervising officer – higher in rank to the officer-in- charge of the strong room/godown. The superior officer should be an officer of gazetted rank;

8.03.03 Wherever the custodian or his superior officer proceeds on leave or transfer, a regular substitute should be posted who shall take proper charge of the strong room and keys in writing. Under no circumstances, both keys for operating the strong room should be given in the custody of the same person.

8.03.04 Only experienced officers (who have put in minimum 10 years of service), and whose integrity is absolutely beyond doubt, should be posted in charge of the strong room/godown (similar check for the superior officer given the over all supervision of the strong room and custody of the second key, from vigilance & integrity angle, should also be ensured);

8.03.05 The stock-taking and stock challenges of the goods stored in strong room/godown, shall be conducted every six months by the Assistant Commissioner of Customs, designated by the Commissioner. The Assistant Commissioner, so designated, shall prepare a detailed report on the functioning of the strong room/godown, highlighting shortcomings/deficiencies and irregularities, if any, noticed. The report shall be submitted to the Commissioner along with recommendations, if any, required. The Commissioner shall scrutinize the report and order immediate remedial action, wherever required.

8.03.06 No officer, including custodian-in-charge of the strong room/godown, should be allowed to open the strong room/godown on any holiday (including Saturday/Sunday) without prior specific written permission from the Addl. Commissioner/Commissioner of Customs concerned. A log book shall be maintained for recording these details.



8.03.07 Any incident of theft/loss/substitution of the Government property or property under control of Department, which comes to light should not only be immediately examined personally by concerned Commissioner, but should also be, with exception of petty cases, immediately reported to the Principal Accounts Officer and the Statutory Audit Officer etc. as laid down under Rule 16 of General Financial Rules. Board should also be kept informed of all such cases, on immediate basis, with a report of action initiated. Action should also be initiated immediately in terms of provisions of Rule 19 of G.F. R.

[F. No. 393/91/98-Cus (AS), dated 12.11.1998]

8.03.08 The goods under custody may be insured against fire, flood etc,

#### **8.04 Disposal of Seized / Confiscated Goods and Valuables**

8.04.01 Assistant Commissioner of Customs in charge of warehouse/godown storing seized/confiscated goods, including valuables, shall ensure receipt, inventory, safe custody/storage, accounting and disposal are scrupulously complied with regard to the instructions issued.

8.04.02 Extreme care should be taken by the custodian/officer in charge of the seized/confiscated goods godown/Warehouse while releasing any lot to the rightful owners or disposing it off otherwise, to avoid any lapses.

8.04.03 A critical scrutiny of the orders passed by the proper officer, or courts/other agencies claiming jurisdiction on the seized/confiscated goods should be undertaken before releasing the goods to the owners or disposing them off otherwise, so that no wrong release/disposal is effected – specially where there may be a stay or embargo on disposal (on the whole or part of the originally seized goods). Any stay or embargo on disposal – on part or whole of any seized / confiscated goods must be carefully noted in the Godown Registers and on the inventory or identification Card normally kept tagged with the lot and its disposal/ release should await final orders. Proper physical inventory/ stock of any goods being taken out for disposal (preferably in red ink) or for release to the

owners (in part or whole) must be taken and proper records kept, at the time of removal from the godown by the custodian with clear signatures (with date).

8.04.04 Special care should be taken in regard to the inventory, receipt, custody and disposal of Gold & Gold ornaments / jewellery (especially studded jewellery) as well as other precious & semi – precious stones.

[F. No. 591/34/96 – Cus. (AS), dated 11.11.1999]

### **8.05 Disposal Unit**

8.05.01 There shall be a separate unit called the Disposal Unit, assigned the task of taking all goods ripe for disposal and ensure disposal through auction or by any other means as per instructions/Board Circulars issued.

8.05.02 Before the 5<sup>th</sup> of each month, the Custodian should prepare a list in duplicate in the prescribed Form-IV (below) of all cases ripe for disposal and send it to the Supervisory Head In charge (By name) of the dealing department or section concerned for obtaining a 'No Objection Certificate'.

8.05.03 On receipt of the list the Supervisory Head In charge of the dealing department / section shall after all necessary verification certify that there is no objection to dispose of the goods. If there are any goods, which should not be disposed of, remarks DELETE shall be put before such entry. The list should then be returned within one week of receipt to the Custodian.

8.05.04 The Custodian shall keep the original list with him and forward the duplicate to the Disposal Unit for further action.



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Officer-in-charge,

Disposal Unit

Date: .....

1. No objection to the disposal of the above mentioned

DEPARTMENT

DATE.....

**FORM V**  
**AUCTION LIST**

Auction held on .....at.....

1. Sl. No. in the seized /detained goods register.
2. Custom House case File No.
3. No. of packages.
4. Description of goods/quantity/weight.
5. Ex-duty value.
6. Reserve price.
7. Name(s) of bidder(s)
8. Knocked down price.

Signature .....

AUCTION OFFICER

**8.06 Time Period for Disposal**

8.06.01 Normally, goods seized/confiscated should not be disposed until the normal processes of adjudication, appeal and revision petition have been completed. However, in the following cases the confiscated goods may be disposed after observing the prescribed formalities and after due intimation to the party of the date, time and manner of sale:

- (a) Where goods are likely to deteriorate or perish.
- (b) Where the recurring cost of upkeep is disproportionately high e.g. in the case of animals.
- (c) Where arrangements for storage cannot be provided except at disproportionately high cost e.g. dangerous goods.

8.06.02 Where the goods have been disposed after confiscation but before the case is decided in appeal or revision petition owing to any mistake on the part of any officer or to avoid deterioration of the goods or disproportionately high expenditure and the confiscation order is subsequently set aside, the party would be entitled to the value of the goods. It is expected that if reasonable precautions are taken for storage of the goods and prevention of deterioration and the sale is conducted in a manner so as to realise the maximum price, the party should be satisfied with the return of the sale price.

[F. No. 30/43/64 LCI, dated 15.4.1968]

## 8.07 Disposal of Seized Goods

8.07.01 Ordinarily seized goods should be kept intact up to the final adjudication, but where perishable goods are seized and it is not advisable for any reason to release them against a bond or cash deposit, they should be sold in auction before they deteriorate. The sale proceeds will be held in deposit to be returned to the owner if it is eventually held that penal action is not justified. Where, however, it is ultimately held that an offence has been committed and the goods would have been confiscated, the adjudication order should state that the goods are liable to be confiscated but as they were perishable they were auctioned / sold pending adjudication, and the sale proceeds held in deposit on behalf of the owner are confiscated and the owner given an option, (if deemed fit by the adjudicating authority) to redeem the sale proceeds on payment of a specified fine. Utmost care should be taken to ensure that the goods are as far as possible sold for fair price.

8.07.02 For the purpose of early disposal of perishable and other items seized/confiscated goods are grouped under four heads and for each a maximum period of retention in departmental custody is prescribed, as follows:

(a) Category– I: Goods to be disposed immediately after seizure .

These goods are prone to rapid decay and may also require special arrangements for their preservation and storage. These goods may, therefore, be disposed of immediately after seizure by the custodian after issue of notice to the owners and obtaining orders from the competent authority.

- (i) Fresh fruits and vegetables, meat, fish, poultry, eggs and other fresh uncanned/unprocessed food materials;
- (ii) Salt and hygroscopic substances (other than in sealed containers);
- (iii) Raw (wet and salted) hides and skins;
- (iv) Livestock;
- (v) Medicinal herbs;
- (vi) Molasses;
- (vii) Newspapers and periodicals;
- (viii) Confectionery;
- (ix) Cigarettes, biris, biri-leaves and tobacco, which are liable to deterioration due to dryage or humidity;
- (x) Menthol, Camphor, Saffron;
- (xi) Cells; batteries and re-chargeable batteries;
- (xii) Cereals, sugar and other grocery items;
- (xiii) Tea and Coffee;
- (xiv) Re-fills for ball-point pens;
- (xv) Lighter fuel, including lighters with gas, not having re-filling arrangement;
- (xvi) Beer; and
- (xvii) Petroleum Products.

(b) Category– II: Goods to be disposed within six months from the date of seizure or where the date of expiry is indicated well before that date.

These goods have a short life span and deterioration in quality starts after a few days of storage and the risk/expenses for storage/maintenance of these goods are expected to be heavy.

- (i) Medicines and drugs which remain officious only for a limited period;
- (ii) Photographic goods such as films, photographic chemicals and papers;
- (iii) Spices;
- (iv) Resin;
- (v) Catechu;
- (vi) Hides, Skins, features and products thereof;
- (vii) Rubber goods and erasers;
- (viii) Paper and articles made of paper;
- (ix) Perfume, toilet preparations and essential oils;
- (x) Raw – jute;
- (xi) Tinned and preserved provisions, condensed milk and milk powder;
- (xii) Liqueur other than Beer;
- (xiii) V.N.E. oils;
- (xiv) Pre-recorded cassettes (Audio/Video);
- (xv) Boats and Launches (other than those meant for departmental appropriation); and
- (xvi) Electronic watches, timepieces and clocks and parts thereof.

(c) Category– III: Goods to be disposed immediately after adjudication, if unclaimed / abandoned.

Goods which are liable to rapid depreciation in value on account of the fast change in technology or designs or introduction of new models, etc. may, if unclaimed/abandoned be disposed immediately after adjudication.

- (i) Electronic goods - TV Sets, VCRs, VCPs, Tape Recorders and their combinations, music systems, Calculators, etc.
- (ii) Electronic components - Diodes, transistors, Integrated circuits light emitting diodes etc.
- (iii) Wrist watches, Timepieces and clocks – movements and parts thereof (other than electronic).
- (iv) Hypodermic needles and syringes;
- (v) Costume jewellery; and

(vi) Textiles and ready-made garments.

(d) Category– IV: All other goods

All other goods may be disposed after completion of all due formalities.

[F. No. 711/31/83-LC (AS), dated 22.5.1984]

(e) Petroleum products being highly inflammable and explosive in nature shall be stored separately and disposed off immediately without giving any scope for damage to the infrastructure or other goods or loss of such petroleum products by evaporation.

(f) In the case of goods such as Waste Oil etc., clearance from Pollution Control Board authorities need to be obtained as to the manner and place of disposal and disposed off accordingly. Waste Oil may be disposed off to units authorized by the Pollution Control Board for reprocessing.

(g) Goods such as food, edible items may be destroyed by composting in Clay Lined Pits after mixing with Cow Dung, Urea and Soil.

(h) Plastic containers used for packing such food material can be shredded and sold as recyclable scrap material

(i) Cost of destruction has to be normally recovered from the importer.

### **8.08 Procedure under Section 110(1A) of the Customs Act, 1962**

8.08.01 Section 110(1A) stipulates that the Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the



passage of time, constraints of storage space for the goods etc. by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after seizure, be disposed in such manner as the Central Government may determine. These goods are specified vide Notification No. 31/86 Cus., dated 5.2.1986, as follows:

1. Liquors.
2. Photographic Films.
3. Patent or Proprietary medicine; i.e., any drug or medicinal preparation, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in, human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monograph, in a Pharmacopoeia or Formulary.
4. Primary cells and primary batteries including re-chargeable batteries.
5. Wrist watches including electronic wrist watches, watch movements, parts or components thereof.
6. Zip fasteners
7. All electronic goods including television sets, Video Cassette Recorders, Tape recorders, calculators, components, and spares thereof including diodes, transistors, integrated circuits, etc.
8. Gold in all forms including bullion, ingot, coin, ornament, crude jewellery.
9. Silver in all forms including bullion, ingot, coin, ornament, crude jewellery.
10. Dangerous drugs and psychotropic substances.
11. Conveyance.
12. Man-made yarn and fabric,
13. Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act, 1975.
14. Currency, Indian and Foreign.
15. Diamonds, precious and semi-precious stones.
16. Ball Bearings.

17. Cellular Phones.

18. Software.

19 Any goods seized by the Proper Officer under Section 110 of the Customs Act, 1962 for which order for provisional release is passed but release not taken within one month from the date of communication of order.

20. Petroleum products falling under chapter 27 of the Customs Tariff Act, 1975.

8. Red Sander.

22. Sandalwood.

**8.08.02 Before action under Section 110(1A) is initiated, a written notice to the concerned party shall be given with a clear 15 days notice.**

8.08.03 All cases under Section 110(1A) shall be processed for disposal on completion of a period of two months from the date of their seizure. The process of seeking sanction of the Magistrate whenever needed shall be completed within a month thereafter. This shall not apply in cases where the party claims legal ownership of the goods and requests for their release. In such cases, since the issue relating to title of the goods has not yet been adjudicated upon by the competent adjudicating authority, attempt should be made to expedite the investigation and adjudication proceedings. A decision regarding disposal of the goods should be taken in such cases immediately on completion of the adjudication proceedings.

8.08.04 If seized goods are highly perishable and may not have remaining shelf life of even three months time the file may be processed and put up for seeking approval to dispose of the goods under Section 110(1A) immediately after seizure is affected and preliminary investigation are over.

8.08.05 The disposal of the goods should be clearly reflected in the Show Cause Notice so that the adjudicating authority as well as the appellate authority pass appropriate orders. When action under Section 110(1A) is initiated after issue of Show Cause Notice, an addendum shall be issued immediately after the disposal of goods to indicate the fact of disposal.

8.08.06 After the disposal order is passed in terms of Section 110(1A) and the goods disposed, appropriate entries should be made in adjudication file as well so that at the time of adjudication, the adjudicating authority does not give an option of redemption to the party since no goods exists for exercising such an option.

[Standing Order No. I /99, dated 16.7.99  
of Mumbai (Prev.) Commissionerate]

8.08.07 Where any goods, not being confiscated goods, are to be sold under any provision of the Customs Act, they shall be sold by public auction or by tender or in any other manner after notice to the owner of the goods.

[F.No. 711/4/2006-Cus (AS), dated 14.2.2006]

#### 8.09 Destruction of Goods

8.09.01 The Commissioner of Customs/Central Excise has full powers to order destruction of goods seized under intimation to the Board while Asst. Commissioner can order destruction of goods up to value of Rs.250/-. In addition, goods like obscenities, substandard drugs, plants, seeds or bulbs, Chinese Provisions which must normally be destroyed as well as goods unfit for human consumption, or those which might enable spurious use etc, could be authorised to be destroyed under orders of the Asst. Commissioners. The destruction shall be supervised, as follows:

Value of Goods	Officer Supervising Destruction
Upto Rs.500/-	Preventive Inspector
Rs.501/- to Rs.1000/-	Superintendent
Over Rs.1000/-	Assistant Commissioner

[F.No. 100/102/55-LC, dated 6.12.1955, F. No. 30/3/58-LCI, dated 23.9.1959 and  
F. No.11/4/59-Cus. IX, dated 27.11.1959]

### **8.10 Disposal of Drugs & Medicines**

8.10.01 Seized/confiscated drug formulations are labeled in accordance with the provisions of the Drugs and Cosmetic Act and Rules framed thereunder. If samples of such formulations are found to be of standard quality then the goods may be released for use in hospitals only.

8.10.02 Seized/confiscated formulations, which are not labeled in accordance with the provisions of the Drugs and Cosmetics Act and Rules made there under. Such formulations would be deemed to be "mis-branded" drugs and it would ordinarily not be possible to re-label such products as the information to be given on the label would have to be provided by the manufacturer. Hence, such seized/confiscated drug formulations should be destroyed.

8.10.03 The Assistant Drug Controllers should be consulted without fail at different stages from the time of seizure till disposal particularly in regard to identification of the medicine/drug, its physical condition, quality and valuation. A certificate should also be obtained from the Competent Authority for ascertaining whether the medicine/drug in question was damaged or deteriorated and also whether it was fit for human consumption. The State Drug Controllers/Zonal and Port Officers of the Drug Controller (India) should invariably be consulted in the case of seized/confiscated drug formulations and action to release them to hospitals or to destroy them, as the case may be.

[F. No. 545/1/78-LCI, dated 8.12.1978 and

F.No. 549/8/80-LCI dated 18.12.1981]

**8.10.04 *Pollution Control Board has clarified that Edibles/Food stuff such as confectionary, soft drinks etc., may be destroyed by composting in clay-lined pits after mixing with cow dung, urea and soil.***

**8.11 Disposal of Red Sanders /Sandalwood**

8.11.01 Red Sanders and Sandal Wood are to be disposed by auction / tender through the State Forest Department. For this purpose the Custodian, after getting disposal orders from the seizing unit, has to coordinate with the District Forest Officer for examination and preparation of the Red Sanders and Sandal Wood by the State Forest Department authorities and then transport them to the designated godown of the Forest Department under escort by the Preventive Officers. Proper acknowledgement shall be obtained for the receipt of the Red Sanders/Sandalwood by the State Forest Department authorities. All these need to be entered in the Seized Goods Register. Further disposal by the Forest Authorities shall be closely monitored.

***[F.No.10807/3/DLA, dated 15.11.2004)***

**8.12 Disposal of Currency and other Monetary Instruments**

8.12.01 As soon as traveler's' cheques and/or bank drafts and/or other instruments of exchange are seized, an intimation in the proforma No. 1 (below) should be sent to the bank/office of issue informing it of the seizure so that the person from whom these are seized may not obtain duplicates and claim cash against the cheques and drafts on the pretext of the originals having been lost some

where. A copy of the intimation should also be sent to the office of the Reserve Bank of India through which the collection is eventually proposed to be made.

8.12.02 Adjudication of the seized bank drafts and/or traveler's' cheques and/or other instruments of exchange should as far as possible be completed sufficiently ahead of the expiry of the period of validity of these documents which normally extends from 3 to 6 months from the date of issue.

8.12.03 The confiscated foreign currency, traveler's' cheques, bank drafts and other instruments of exchange should be sent to the Reserve Bank of India immediately after the adjudication is completed for affording credit of the proceeds to the Govt. account. The confiscated currency and documents should be sent to the Reserve Bank of India alongwith necessary details as in the proforma No. II (below).

8.12.04 Normally there is no difficulty in getting early credit so far as foreign currency is concerned. In regard to the travellers' cheques and foreign bank drafts also the credit can be had immediately provided that (i) the documents are fully discharged i.e. duly signed by the person in whose favour these were issued and (ii) these are presented within the period of their validity. When the confiscated bank drafts and/or travellers' cheques do not contain discharge of the payees/beneficiaries and, as such cannot be encashed or credited in the Govt. account in the normal way the Reserve Bank of India sends an intimation of credit within a period of 4 months from the date of receipt of the documents by them. If the intimation is not received within this period, the Commissionerate should remind the Reserve Bank of India. Wherever possible it would be worthwhile to obtain discharge of the payee/beneficiary on the confiscated documents since this will reduce the work of the Reserve Bank of India to a considerable extent.

8.12.05 When the Department acquires title to cheques, hundis and such other negotiable instruments by operation of Law, the Department is not entitled to the rights of a holder in due course thereof as defined in the said Act and therefore, the proceeds of such confiscated instruments could be realised as a matter of course from the foreign banks only if orders passed under Indian laws were binding on them. Since the Negotiable Instruments Act is not binding on banks situated in foreign countries, before realising the proceeds of these confiscated instruments

from the foreign banks the Reserve Bank has to furnish an indemnity to the bank concerned guaranteeing the refund of the amount on the propriety of the payment being subsequently challenged by the drawer for one reason or other. The Reserve Bank in turn obtains an undertaking in Proforma No. II (Below) from the Commissioner of Customs concerned to refund the amount to the Reserve Bank on demand.

[Section 50 of the Negotiable Instruments Act]

8.12.06      Legal position regarding realisation of proceeds of confiscated cheques drawn on foreign banks is very weak and proceeds in these cases are realised only because the Reserve Bank acts as the agents of the Govt and also given a proper indemnity to the paying bank. Therefore when the Reserve Bank approaches the Customs authorities for refund of the amount, there should be no question of challenging the propriety of the refund – claim and the amount should be refunded to the Reserve Bank forthwith.

PROFORMA NO. I

**INTIMATION OF THE SEIZURE OF CREDIT INSTRUMENT CURRENCY**

1. Description of the credit Instrument / currency.
2. Full name and address of the person / bank drawing instrument
3. Name and address of the drawee.
4. Name and address of the payee.
5. Authority under which seized.
6. Action contemplated.

**NB:** The bank of issue of the credit instrument may please take note of the above seizure and any request for issue of duplicates and claims for cash against the above noted instrument should not be acceded to without prior reference to this Custom House. Undertaking of further commitments in respect of the above instrument with the drawer/payee may please be deferred until the confiscation proceedings contemplated are completed.

(Seal)

Customs Officer.

Address of the issue/drawing bank.

2. Copy to Manager, Reserve Bank of India, Public Accounts Deptt, .....

**PROFORMA NO II**

From

The Commissioner of Customs / Central Excise

To

The Reserve Bank of India

Subject: Confiscation of credit instruments/currencies under the Customs Act, 1962 and the Foreign

Exchange Regulation Act, 1973.

.....



Dear Sir,

We have caused to be handed over to you for collection and credit to Government account Travellers' cheques/Bank drafts/Currencies as per details given in the attached statement.

2. These cheques/drafts currencies are being hereinafter referred to as "the cheques".

3. We hereby represent and warrant that we are duly entitled to arrange for the collection (for and on behalf of the President of India) of each of the cheques by virtue of the cheques having been duly confiscated by us in exercise of the powers conferred under the Customs Act and Foreign Exchange Regulation Act. We hereby request that the aggregate of the face amounts of the cheques be collected and credited to Govt. account.

4. In order to induce you to comply with our above request we hereby agree to indemnify and hold THE RESERVE BANK OF INDIA harmless and indemnified from any and all claims, demands and/or actions which may be asserted or instituted against it by any third party(ies) with respect to all or any of the cheques, and at any time upon its request, to appear and defend against each and every such claim, demand and/or action. In any event, we will pay any judgement(s) which may be obtained against said Bank and will reimburse it for any and all expenses which may be incurred by it in connection therewith.

Yours faithfully,

( )

For and on behalf of the President of India.

**[F. No. 22/22/62 LC II, dated 8.5.1964]**

8.12.07 Indian currency deposited with the Custodian need to be deposited with the State Bank of India as term deposit in the name of Commissioner of Customs. In the event of release of the Indian Currency after the finality of the case, at the time of release of the currency, the person claiming the amount has to be duly identified by the Officer from the Preventive Unit. Whether to release sale

proceeds alone or along with interest will depend on the specific order given by the Original/Appellate Authority/Court.

8.12.08 In the case of sale proceeds to be returned to the foreign supplier as ordered by the Original/Appellate Authority/Court, due caution has to be exercised to identify the person who is eligible for the claim, receipt of claim with signature attested by the appropriate authority and duly verified by the officers of the seizing unit.

8.12.09 Reserve Bank of India has conveyed their approval to State Bank of India receiving the foreign currency from Customs and crediting the sale proceeds to Customs account subject to the following conditions:

- (a) In case State Bank find that some of the confiscated currencies are not encashable and Customs authorities desire to have those currency destroyed, necessary permission from Reserve Bank of India, Exchange Control Deptt., should be obtained.
- (b) If an occasion for refunding in foreign exchange part or full value of confiscated foreign currency, already credited to Govt. account arises, Customs will arrange to obtain, through State Bank of India, prior approval of Reserve Bank for the release of foreign exchange.

[RBI letter ECS 39/122 A – 88/89 dated: 20.7.88]

**8.13 Guidelines for Valuation and Disposal by Auction-cum-Tender of Seized, Confiscated and Time-expired goods**

8.13.01 The instructions applicable to seized, confiscated and time-expired warehoused goods that are ripe for disposal and in respect of which notice has been given to the owner of the goods as required under Section 150 and Section 72(2) of the Customs Act, 1962 are as follows:

- (a) The disposal by sale of seized, confiscated and time–expired warehoused goods shall take place simultaneously through public auction and sealed tender right from the first time the goods are offered for sale.
- (b) The auction–cum–tender shall be held every month.

- (c) A Joint Pricing Committee (JPC) shall be constituted in each Customs Commissionerate charged with the responsibility of disposal of seized and confiscated goods.
- (d) The Joint Pricing Committee shall have the following composition:
- i. Additional/Joint Commissioner in charge of Disposal
  - ii. Deputy/Assistant Commissioner in charge of Disposal
  - iii. Superintendent in charge of Disposal
  - iv. Deputy/ Assistant Commissioner holding any other charge
  - v. Superintendent holding any other charge
- (e) The JPC shall determine the Fair Price of the goods to be disposed of through auction-cum- tender. The Fair Price is the best price at which the goods can be sold under normal conditions. It can be expected to be somewhat lower than the price at which goods of the same kind and in the same condition could be sold by the buyer in the wholesale market, the difference representing the profit which the buyer at the auction expects to make.
- (f) The Fair Price should be fixed by ascertaining the probable price of such goods in the wholesale market, and subtracting from it a discount representing the profit of the buyer at the auction-cum-tender. This discount (varying according to the nature of the goods) may be 5% to 10% more than the estimated profit which the buyer at the auction-cum-tender can reasonably expect to make on resale, the increase being the incentive to the prospective buyer at the auction. Therefore, if an item can fetch Rs 100 in the wholesale market, and the margin of profit is Rs 20, then the discount may be fixed at 25% to 30%, and the fair price would be Rs 75 or Rs 70. While fixing the quantum of discount representing the margin of profit for the buyer at the auction, due importance should be given to the condition of the goods, the type of packing, the fact that no warranty and after-sale service is attached to the goods, the size of the consignment etc.
- (g) The book value of the goods shall have no bearing on the Fair Price. The CIF value and applicable rate of duty should find a place in the valuation file only to serve as a comparison with the Fair Price arrived at with reference solely to the wholesale market

price. Further, such a comparison shall be valid only in respect of goods, which have landed up to one year before the date on which they are valued for purposes of disposal. In respect of goods, which have landed before one year from the date on which they are being valued for purposes of disposal, the book value shall not be used even as a tool for comparison with the Fair Price determined with reference to the wholesale market price.

- (h) There shall be no Reserve Price as distinct from Fair Price.
- (i) The wholesale market price of the goods offered for sale and the margin of profit shall be ascertained by Government Approved Valuers alone and not by Customs staff.
- (j) The highest bid in the auction-cum-tender shall be accepted by the JPC if the bid is more than, or equal to or close (not less than the Fair Price by 5% to 10%) to the Fair Price. Otherwise, the goods shall be put up for auction- cum-tender the second time. In the event of the goods not being sold in the first two auction-cum-tenders, the goods shall be sold at the highest bid obtained in the third auction-cum-tender. If any lots still remain unsold after the third offer for sale, the Commissioner should ascertain whether the JPC has good reason for the goods remaining unsold.
- (k) The goods should not be withdrawn from auction-cum-tender on flimsy grounds, such as the possibility that the goods may fetch a slightly higher price in a subsequent auction.
- (l) All post-auction/tender offers, even if these are for amounts higher than the successful bid, shall be strictly disregarded and not taken cognizance of in any manner.
- (m) In respect of complaints regarding determination of Fair Price and acceptance of bids in auction-cum-tender, the Commissioner shall immediately ascertain whether the prescribed procedure has been adhered to. The matter should not be referred for Vigilance scrutiny in a routine manner if the prescribed procedure has been followed.
- (n) All Custom Houses shall immediately introduce e-auction, and physical auction shall be discontinued.
- (o) The procedure as set out above shall not be applicable to goods that are required, as per existing instructions, to be disposed of by sale to NCCF or through SBI or in any manner other than public auction-cum-tender.

**8.14 Disposal of Valuables**

8.14.01 The following procedure is devised for the disposal of confiscated cut & polished diamonds, rough & uncut diamonds, precious & semi-precious stones which are ripe for disposal: -

- (a) Sale of confiscated diamonds, precious and semi precious stones is centralized in Mumbai under CC(P) Mumbai.
- (b) Utmost care should be exercised to get the best possible price after proper sales promotion giving wide spread publicity, both in India and abroad.
- (c) Venue and date of auction should be decided well in advance to allow maximum participation.
- (d) Services of a reputed auctioneering firm may be taken to conduct the auction. The auctioneer should be selected after ascertaining his past performance in conducting auctions, expertise in auctioning diamonds, precious stone, jewellery etc. The contract between auctioneer and the department should also include responsibility of the auctioneer to advertise the goods/auction in at least 4 national news papers, including wide spread publicity in a vernacular language paper. The department should however be free to use other form of media, if it so desires to give wider publicity, in India and abroad. The terms and conditions for the auctioneer would be decided by Chief Commissioner of Customs, Mumbai.
- (e) Entire stock of such items can be segregated into identifiable 'lots' by the office of CC(P) Mumbai either on the basis of seizure case or any other practical and discernible categorization. Each 'lots' must be properly photographed, the photographs being used in the Catalogue prepared for the giving wide publicity and conducting the auctions.
- (f) Entry fee or Participation fee of Rs. One lakh, by D.D. may be prescribed/charged from each prospective bidder. Only on payment of the entry fee the bidders would be eligible to examine and to bid in auction.
- (g) The 'lots' can be allowed for examination by prospective bidders by following a strict procedure to ensure there is no substitution. Procedure shall consist of application fee giving details of the bidder (address, name, Telephone No., Income tax PAN number, details of entry fee payments etc.), examination by only one bidder at one time who can bring one

additional person for construction & expert examination. Examination shall be in presence of AC (Disposal). Jewellery appraiser of deptt. and the warehouse Supdt.

- (h) Reserve Price shall be fixed by a Pricing Committee consisting of Addl. Commissioner of Customs, Asstt. Commissioner of Customs, Jewellery Appraiser, an eminent person in Commerce/trade in such items and a Govt. approved Valuer in respect of these items. The selection of persons for pricing committee shall be by Chief Commissioner of Customs, Mumbai on the recommendation of Commissioner of Customs, Mumbai. To ensure Secrecy the reserve price list should be kept sealed with CC(P) to be handed over to the Asstt. Commissioner (Disposal) supervising the auction only on the day of the auction.
- (i) The reserve price may be fixed taking into consideration the value of seizure, escalation in value of these goods over the years, present market demand and existing restriction in free import of these goods.
- (j) Supervision of auction should be by the Asstt. Commissioner (Disposal) or any other AC nominated by CC(P) for this purpose. In addition the auction should be attended by Commissioner of Customs (Prev.), Addl. Commissioner (Prev.) and Senior Officers of Customs to ensure maximum fairness. The supervising officer shall have the discretion to withdraw from the sale 'lots' for which no satisfactory bids are received. The reserve price would however be known only to the Asstt. Commissioner supervising the auction or to the auctioneers, to enable initiation of bids.
- (k) Considering high value of goods a record of all the highest bids for each lot at every auction should be maintained. The record of bid list should mention name of bidder & value/amount bid for the lot in question.
- (l) The highest bidder shall on fall of the hammer deposit 25% of the value of the bid as earnest money on the spot. The bidder will be informed about the acceptance or rejection of bid within 48 hours of completion of the auction proceedings by way of listing of successful bids on the Notice Board of the Customs House at Mumbai.
- (m) In case of rejection of bid the rejection letter will be issued and entry fees and earnest money collected from the bidder will be refunded to the party within two weeks time. The successful bidder will be required to pay the balance amount and take delivery of the goods within 3 days of the receipt of the communication regarding acceptance of their bids. On sufficient cause being shown, this period can be extended by the Commissioner of Customs (Prev.), Mumbai by not more than 10 days. If a party fails to pay the balance amount and take delivery of the goods within the stipulated period as above, the Earnest Money shall be forfeited.

- (n) Revision of prices: Since the disposal of diamonds etc., may be spread over a period of time, prices fixed at a time may not hold good subsequently and this may call for periodic revision. The reserve prices so fixed shall be liable for revision once in three months or such time as is considered reasonable by the Chief Commissioner of Customs, Mumbai.
- (o) Available stocks of cut & polished diamonds, rough & uncut diamonds, precious & semi-precious stones which have been confiscated and can be disposed off may be transferred to Commissioner of Customs (Preventive) Mumbai.

[F. No. 711/56/90 CUS (AS), dated 16.7.1997]

### **8.15 Disposal of Gold**

8.15.01 The procedure for disposal by sale of seized/confiscated gold (other than gold ornaments/jewellery) shall be as follows:

- (a) The sale of seized/confiscated gold found ripe for disposal shall be routed through State Bank of India who will act essentially as consignee agents. Gold considered ripe for disposal shall be delivered by the concerned Customs House to the Bank at the major centres viz., Mumbai, New Delhi, Calcutta, Chennai, Ahmedabad, Jaipur, Cochin, Bangalore and Shillong for sale in the open market.
- (b) Such gold shall, as far as possible, be in an easily marketable form such as TT bars, 1 Kg bars, 500/100 gms bars etc. Crude gold/jewellery will be converted by the Customs Department to 999/.995 purity before delivery to the Bank for sale.
- (c) The sale price of gold irrespective of the form of gold (whether TT bars 0.999 or Kg.bars 0.995 purity) will be based on the closing market price of the previous day, as reported in the local editions of the national Economic daily news papers. Sales tax/Octroi etc., will be extra and chargeable to the buyer.
- (d) The pricing of gold will be worked out by the Bank taking due note of the methodology as per enclosed Annexure – I. The Customs Department will accept the price worked out by the Bank on this basis.

- (e) No Commission will be levied by the Bank on the Customs Department. However, all out of pocket expenses incurred by the Bank would be deductible (@ 1% of the market price).
- (f) The Bank will arrange for payment of taxes such as Sales Tax, Octroi etc., out of the sale proceeds of the gold and would submit copies thereof to the Commissioner of Customs along with the advice/challan for remittance of sale proceeds. The sale proceeds will be deposited immediately after sale of gold into the designated account to be advised by the Commissioner of Customs.
- (g) Along with the physical delivery of gold the Commissioner of Customs will provide copies of the Assaying Certificate and assume responsibility for the fineness of gold certified therein. In the event of any gold being found counterfeit, the same will be returned to the Commissioner of Customs. The Department will also ensure the gold is suitably packaged as per practice in the market. The Bank would render necessary assistance to Customs Department.
- (h) The Bank will take physical delivery of the gold from the Customs warehouse/Office against a suitable acknowledgement. The control system / mechanism for this purpose will be worked out by the Bank and advised to the department.
- (i) The Bank will decide at which centre the gold is to be sold based on various cost/other factors and will also exercise its discretion/ judgment as to (a) when to sell (b) at what price to sell. Although it has to be borne in mind that gold prices can fluctuate significantly even during the course of a single day, the Bank will use its discretion/market knowledge to get the "best" possible price. The Commissioner concerned shall, post-sale, make an evaluation as to whether, in view of the range of prices prevailing at the time of sale, the "best" possible sale has been made. The above arrangement will be reviewed as and when necessary through mutual discussion.
- (j) The bank will explore the scope for marketability of coins and price of such coins will be based on its actual gold content only.

#### Annexure – I

- |                                    |          |
|------------------------------------|----------|
| 1. Quantity of gold sold           | -----Gms |
| 2. Average market price for 10 Gms | Rs.      |

(Based on the closing market price reported in



three national economic dailies).

3. Price of the gold at the average market price Rs.

(i.e. 1 x 2)

4. Sales tax Rs.

5. Octroi, if applicable Rs.

6. Total price of gold Rs.l

7. Out of pocket expenses Rs.

(@ 1% of (3) above)

8. Net price payable to Customs Rs.

(i.e. (3) – (7) )

[F.No.711/164/93 –Cus (AS), dated 8.8.2005]

**8.15.02 Disposal of confiscated fine jewellery, gold ornaments & silver ornaments** ripe for disposal is permitted. Also, the stock of gold in biscuit or similar form but which do not bear any marks indicating foreign origin and indication of purity on the gold piece may be disposed subject to further conditions as follows:

- (a) Fine jewellery/gold & silver ornaments may be disposed by way of open auctions at Delhi, Mumbai, Calcutta and Chennai.
- (b) For sale to public of confiscated gold jewellery/ornaments utmost care should be exercised to get the best price after giving widespread publicity. The venue and date of auction should also be decided well in advance to allow maximum participation of public.
- (c) Services of a reputed auctioneering firm may be taken to conduct the auctions. Auctioneering firm should be selected after ascertaining its past performance in conducting auction in jewellery.

- (d) The goods under auction should be advertised in at least 4 national news papers including widespread publicity in a vernacular language paper. Other forms of media may also be used for wide publicity both in India and abroad. The terms for the auction should be decided by the Chief Commissioner of Customs & Central Excise at each centre.
- (e) Entire stock of items should be segregated into identifiable 'lots' either on the basis of the seizure case or in any other practical and discernible categorisation. Each 'lot' must be properly photographed. The photograph would serve as a record in addition to it being used in the catalogue which should be prepared for the purpose of giving wide publicity and also for conducting auctions.
- (f) The entry fee or participation fee of Rs.10,000/- (Rs Ten thousand only) by demand draft may be prescribed/charged from each prospective bidder. Only on payment of entry fee the bidder would be eligible to examine and bid in auction. The 'lots' can be allowed for examination by prospective bidders by following a strict procedure to ensure there is no substitution. Procedure shall consist of application fee in prescribed forms giving details of bidder (name, address, telephone, I.T. PAN number, details of entry fee payments etc.). Examination by only one bidder at a time who can bring one additional person for consultation & expert examination may be allowed. Examination shall be in presence of AC (Disposal), Jewellery Appraiser of department and the warehouse Supdt.
- (g) Reserve price shall be fixed by a Pricing Committee consisting of Addl. Commissioner (Customs), AC (Customs), Jewellery Appraiser, an eminent person in commerce/trade in such items and a Govt. approved valuer in respect of these items. The selection of persons for Pricing Committee shall be by the Chief Commissioner of Customs & Central Excise on the recommendation of Commissioner of Customs. To ensure secrecy the reserve price should be kept sealed with Commissioner of Customs and handed over to the Officer supervising the auction only on the date of auction. The reserve price may be fixed taking into consideration the value of seizure, escalation in value of these goods over the years, present market demand and existing restriction in free import of these goods.
- (h) Supervision of auction should be by Asstt. Commissioner (Disposal) or any other A.C. nominated by Commissioner of Customs. In addition, the auction should be attended by Commissioner of Customs, Addl. Commissioner (P) and other senior officers of customs to ensure maximum fairness. The supervising officer shall have the discretion to withdraw from the sale 'lots' for which no satisfactory bids are received. The reserve price would however

be known only to the officer supervising the auction i.e., Asstt. Commissioner to enable initiation of bids.

- (i) Considering high value of goods a record of all the highest bids of each 'lot' at every auction should be maintained. The record of bids should mention the name of highest bidder and the value/amount bid for the lot in question.
- (j) The highest bidder shall on the fall of the hammer deposit 25% of the value of the bid as earnest money on the spot. The bidder will be informed about the acceptance or rejection of the bids within 48 hours of completion of auction by way of listing of successful bids on the notice board of the Custom House.
- (k) In case of rejection of bid the rejection letter will be issued and entry fees and earnest money collected from the bidder will be refunded to the party within two weeks time.
- (l) The successful bidder will be required to pay the balance amount and take delivery of the goods within three days of the receipt of the communication regarding acceptance of the bids. On sufficient cause being shown this period can be extended by the Commissioner of Customs by not more than ten days. If a party fails to pay the balance amount and take delivery of the goods within the stipulated period as above, the earnest money shall be forfeited.
- (m) Since the disposal of jewellery/ornaments may be spread over a period of time the prices fixed may not hold good subsequently and may call for periodic revision. Thus, the reserve price shall be liable for revision once in 3 month or till such time as thought reasonable by the Commissioner of Customs.

8.15.03 **Studded jewellery / ornaments** include fine gold and silver jewellery ornaments studded with diamonds and precious and semi precious stones. The procedure for sale of jewellery would also apply for ornaments/jewellery which are studded with diamonds, precious and semi precious stones. However all such gold and silver ornaments/jewellery may be transferred to Commissioner of Customs (Preventive), Mumbai and sold as per the prescribed procedure in open auction at Mumbai along with diamond, precious & semi precious stones. The reserve price fixed should take into account the value of gold & silver content; the value of the stones & diamonds in addition to value for workmanship.

8.15.04 **Crude jewellery, gold & silver pieces** and unmarked gold & silver in bullion form etc., which do not have standard weight and purity specification may be considered for conversion into standard gold bars and silver bars by Government of India Mint. Accordingly all such crude jewellery, unmarked gold and silver bullions and other forms of gold and silver which are not categorised as fine jewellery may be immediately transferred to Commissioner of Customs (Preventive), Mumbai. CCP Mumbai would get the conversion of these goods into Standard gold bars and silver bars through Govt. of India Mint, Mumbai on payment of the prescribed fee. Thereafter the standard bars would be sold in retail sale at the Customs retail outlet of Mumbai itself.

[F. No. 711/21/97, dated 15.10.1997]

#### **8.16 Disposal of Confiscated Silver**

8.16.01 Sale of confiscated silver may be made at the average price reported in three economic dailies, namely, Economic Times, Business Standard and Financial Express of Mumbai and Delhi editions on the date of sale. The entire Silver blocks may be first offered to M/s. MMTC, at discount of 2% of the average price fixed. If they fail to lift the stock within three days, it may be sold in retail to Public on first come first serve basis subject to the procedures laid down below. The discount of 3% should be allowed on this average price.

8.16.02 Silver blocks should be disposed off as-is-where -is conditions.

8.16.03 The stock will be sold as per the weight of each brick as confiscated and it will be cut or otherwise varied in size and shape.

8.16.04 The sale price of silver sold should be fixed at every day based on the closing bullion price on the silver of 999 purity of the previous day published in Economic Times, Business Standard and Financial Express published from the Metropolitan cities at Mumbai and Delhi.

8.16.05 All stocks of confiscated Silver shall be disposed off by way of sale through Customs retail shops at Mumbai, Delhi, Kolkata, Chennai, Jaipur, Cochin and Bangalore only to MMTC/Public. Silver stocks from other mofussil centers be shifted to the nearest metro/mini-metro and sold.

8.16.06 Silver should be sold only to MMTC and /or such individuals, firms, etc., who are registered with the Income Tax authorities as assesseees and their PAN number shall be quoted in the sale voucher.

8.16.07 All sales of silver shall ordinarily be against a banker's cheque. However, if there is some difference between the value of silver bought and face value of banker's cheque tendered by the purchaser, the balance amount may be accepted by cash and remitted into Custom House treasury or Scheduled bank counter in the Custom House.

8.16.08 The weight of each silver ingot/brick should be entered in all records up to the third decimal in Kgs. e.g. 31.134, 30.869.

8.16.09 Quantity restriction at 210 Kg. per person may be retained except in respect of M/s.MMTC.

[F.No.711/100/93-Cus(AS), dated 12.3.2003]

## **8.17 Disposal of Arms & Ammunition**

8.17.01 Confiscated arms and ammunition should be made available for sale to MPs and MLAs and the arms/ammunition be sold at fair price fixed by the Department.

8.17.02 Confiscated weapons of non-prohibited bore may, in suitable cases, be loaned to executive officers of the Customs and Central Excise department who require them for self-protection in the course of performance of their duties on condition that the weapons are returned by the officers to the Department when no longer required and in any case on their retirement/superannuation or their leaving the Department for any reason whatsoever. In order to ensure that a proper account is maintained in respect of the weapons given on loan, the following procedure is prescribed: -

- (a) A remark should be made in the Service Book of the officer concerned to the effect that a non-prohibited bore weapon bearing number .....has been loaned to the officer. This remark should be attested by the Head of the department.
- (b) The officer should give an undertaking in the proforma (below), which should be kept in the custody of the controlling head of the department of the officer concerned.
- (c) A copy of the undertaking should be forwarded to the Directorate of Preventive Operations for record.
- (d) The Directorate of Preventive Operations should maintain a register which should clearly indicate the names of the officer to whom the weapon has been loaned, the date of superannuation of the officer and the number of the weapon. The 6 Monthly review of this register should be made by the Directorate of Preventive Operations and the result submitted to the Member (Anti-smuggling) stating that in all cases where the officers have retired and left the department, during the period of the review the weapons have been resumed and taken back into stock.
- (e) As and when weapons are returned, the undertaking should be cancelled by the Commissioner concerned under intimation to the Directorate of Preventive Operations. Suitable entry should be made in the service book of the officer concerned regarding the resumption of the weapons and the undertaking given by the officer cancelled. The Directorate of Preventive Operations should, on receipt of this intimation, enter the fact of resuming the weapon in the register maintained by it and cancel the copy of the undertaking.
- (f) During his tours, the Director of Preventive Operations should inspect the Commissionerate record of the weapons loaned out and satisfy himself that in all cases where the loanee officer

has retired/left the Department the loaned weapon has been resumed.

- (g) Where a loanee officer has been transferred out of the Commissionerate the undertaking given by him should be transferred to his new Commissionerate along with the service records.
- (h) The sale of non-prohibited bore weapons to the Departmental officers should be discontinued.

UNDERTAKING FOR LOANING OF NON-PROHIBITED BORE ARMS WEAPONS TO OFFICERS OF  
CUSTOMS & CENTRAL EXCISE

I.....son of .....resident of .....hereby undertake to abide by the following stipulations made by the Govt. of India which may be changed or amended from time to time.

1. The loaned arms/weapons/ammunitions will be returned on my attending superannuation or voluntary retirement or resignation or dismissal from service or any other natural calamity whichever occurs earlier.
2. The Govt. of India is, and shall, continue to be the owner of the arms/weapons/ammunitions and that this is given purely on loan basis by the Govt. to me and that there cannot and shall not be any legal heir or successor or claimant for the loaned gun/weapon/arm/ammunition to me.
3. In case of loss or damage or theft or accident or any other natural calamity or act of nature, I undertake to pay full price/cost of the loaned/arm/gun/weapon/ammunition to the Govt. of India as determined by the Govt. of India.
4. I acknowledge that for purpose of recovery of the cost, the same shall be calculated on the basis of the price (CIF value) plus the rate of customs duty as fixed by the Govt. from time to time and at any particular given situation.

**THE SCHEDULE**

Description of weapon

Maker's Name

Description

Sl. Number

CIF Price RS.

IN WITNESS WHEREOF the Mortgage or / Borrower has hereunto set his hand and  
Shri..... for and on behalf of the president of India has hereunto set his hand

\* Signed by the said .....in the presence of

1 .....

2 .....

.....

(Signature of Witness)

(Signature &  
of the Borrower)

Designation

Signed by (name and designation)

.....

for and on behalf of the President of India in the presence of

1 .....

2 .....

(Signature of Witness)

.....

(Signature & Designation of  
the Office)

\* Name & Designation of Borrower.



8.17.03 Sale of confiscated ammunition for non-prohibitive fire-arms to the executive officers of Customs//Central Excise/Narcotics Department who possess necessary arms licences and fire-arms for their self protection is allowed at a price equivalent to c.i.f. value. Sales Tax and other local taxes, if any, will have to be paid extra. The officers will be allowed to purchase 25 rounds of ammunition at a time subject to the number of rounds permitted in the arms licence. The ammunition may be sold only after the production of valid arms licence and fire-arms they possess.

[F.No. 711/27/85-LC (AS), dated 11.07.1985]

8.17.04 The Director General/Inspector General, National Security Guard (NSG), Ministry of Home Affairs, East Block-5, R.K. Ruram, Delhi-110 066 should directly be informed immediately after the following weapons or any unusual arms are seized, under intimation to the Ministry. The NSG authorities would thereafter inspect and select the weapons for their use, which would be earmarked and given to them after adjudication proceedings, etc. are over. The rest of the weapons and ammunition should be disposed of in accordance with the approved manner of disposal of fire-arms and ammunition. The value of the weapons selected by the NSG will be determined by the Pricing Committee on the basis of the prices fixed by the Ordnance Factories for similar type of weapons manufacture in India.

1. 9MM SMG
2. 9MM Pistols.
3. 12 Bore (Automatic)
4. AK 47 Rifles.
5. Senior Rifles (Bolt Action) (7.62/5.56) Calibre
6. Self Loading Rifle (7.62/5.56) Calibre.
7. G.III NATO Rifle (7.62/5.56) Calibre.
8. Hand Fired portable Rocket Launches (Any Calibre)

[F.No. 394/36/85-Cus(AS), dated 30.8.1985]

**8.18 Disposal of Watches and Watch Movements**

8.18.01 Bulk sales of seized/confiscated consumer goods, including watches, will be made to all Co-operative Societies approved by the Central and State Governments and duly registered under the Co-operative Societies Act. Such goods will also be sold to State Civil Supplies Corporations/State Co-operative Federations.

8.18.02 Sale to Co-operative Societies, State Co-operative Federations and State Civil Corporations will be made subject to the following conditions:

- (a) The goods purchased are in turn organized for sale directly to bonafide consumers at retail prices fixed by the Department. The sales to consumers will be restricted to one piece/set/consumer quantities as the case may be;
- (b) No 'pick and choose' (other than in the case of damaged/deteriorated/ unsaleable items) will be allowed;
- (c) The Co-operative Societies, State Co-operative Federations, State Civil Supplies Corporations will keep full accounts for scrutiny by the Department as and when necessary;
- (d) Discount of 10% on sale prices fixed in the Customs/Central Excise Commissionerates will be allowed to Co-operative Societies/State Co-operative Federations/State Civil Supplies Corporations.

8.18.03 Watches, both mechanical and electronic, may also be disposed of by retail sales from retail counters in the Customs and Central Excise Commissionerates, subject to the condition that not more than one watch will be sold per person.

8.18.04 Serviceable watch movements and parts received from dismantling of damaged watches may be sold in auction. Old and used watches may be sold to NCCF, Military and Para-Military Organisations and Police Canteens.

F.No. 711/20/83-LC (AS), dated 10.8.1983]

### **8.19 Sale of Alcoholic Liquor**

8.19.01 Liquor may be sold to all hotels, restaurants and clubs having the necessary liquor licences directly, without any reference to ITDC but subject to compliance with State Excise requirements.

[F.No. 711/20/83 LC (AS), dated 10.8.1983]

### **8.20 Disposal of confiscated consumer/luxury goods through NCCF**

8.20.01 All confiscated consumer goods should be offered for sale to the National Cooperative Consumers' Federation (NCCF), an apex organisation of all the Consumer Cooperative Societies in the country at the prices fixed for retail sales less a reduction of 25%. The sale to NCCF will be subject to the following conditions:

- (a) NCCF would lift all consumer goods [except the goods to be lifted by Canteen Stores Deptt (India) and the Cooperative Stores run by the Ministry of Home Affairs on the basis of 10% discount as hitherto within a period of about 3 months and thereafter at quarterly intervals as soon as sizeable quantity of confiscated goods become ripe for disposal at a particular place and intimation to this effect is sent to NCCF and in no case the value of such goods ripe for disposal should be allowed to exceed Rs.25,000/-.
- (b) Goods will be sold to NCCF only on cash basis / or payment by Bank Draft in the name of Commissioner of Customs on a scheduled bank situated at the head quarters of the station from which the goods are lifted and there shall be no pick and choose except the damaged and unsaleable goods may be rejected by the Federation. Such rejected goods will be sold by public auction.
- (c) Where statutory possession of prescribed licences is a precondition for obtaining supplies as a dealer NCCF or its constituents should hold such a licence

8.20.02 If in any particular case the NCCF feels the price fixed is unduly high, the same may be reconsidered after making fresh market enquiries if necessary.

8.20.03 The representative of NCCF may be afforded the facility of inspecting goods before lifting them. A broad indication of description of goods together with quantity available for disposal may be given to NCCF if and when required.

8.20.04 Once the NCCF Ltd. have made arrangements to lift all consumer articles (other than damaged and unsaleable at the stations, retail sale by the Deptt will cease; but in the initial stages retail sale at a centre by the Dept may continue until all goods at that centre available for sale to the NCCF Ltd are lifted by the Federation.

8.20.05 Confiscated goods may continue to be offered for sale to Military Canteens and Central Govt. Employees Consumers Cooperative Stores Ltd run by Ministry of Home Affairs at retail price less 10% on the basis of 'first come first served'.

[F. No. 30/33/67-LCI, dated 19.1.1968 and  
F. No. 30/71/68-LCI, dated 8.11.1968]

## **8.21 Sale of Confiscated Consumer and Luxury Goods to Customs Officers**

8.21.01 Departmental officers would be permitted to purchase only first quality goods at prices fixed by the Joint Pricing Committee and would not be permitted to purchase damaged goods or partially empty containers at prices other than those fixed by the Joint Pricing Committee.

8.21.02 Departmental officers would not be permitted to resell the items of confiscated goods purchased from the departmental retail shops for a period of 5 years. For this purpose, every

departmental officer making the purchase(s) will be required to sign an undertaking to this effect on each occasion.

8.21.03 This will not exempt the departmental officers from the declaration as required under the CCS (Conduct) Rules, 1964, relating to acquisition of movable property and financial transactions.

8.21.04 As regards items, the prices of which have not been fixed by the Joint Pricing Committee, the prices will be fixed by the Pricing Committee of the Commissionerate/ Custom House. The Pricing Committee will include an officer of the rank of Assistant Commissioner of Income-Tax to be nominated by the Commissioner (Income-Tax) of jurisdiction.

8.21.05 To ensure the departmental officers do not appropriate to themselves the favoured items and leave only unattractive items for sale to the general public, the retail shops shall display daily on a notice board a list of items which carry a premium such as electronic gadgets like VCRs, VCPs, TVs etc. available for purchase by the general public including departmental officers.

[F.No. 11412/89-Cus (AS), dated 11.7.1990]

## **8.22 Fixation of Price in Retail Shop**

8.22.01 The retail price of articles may be fixed by conducting market enquiries to ascertain the price at which goods of like kind, quality, shape, design, etc. are available in the retail market and deducting therefrom a 'discount' representing the compensation for the buyer in the retail shop for (i) absence of guarantee regarding quality, workmanship and the like, (ii) lack of provision for after-sale-service facilities, and (iii) the fact the goods may not always be in their original packing and condition. The quantum of such discount may be varied depending upon whether they are fast selling popular brands or otherwise.

[F.No. 30/51/66. LCI, dated 7.1.1967]

### 8.23 *Handling and Disposal of Hazardous waste*

8.23.01 Hazardous wastes, which may be generated by ships arriving at ports for breaking. Such operations are to be carried out in strict adherence to all precautionary principles, CPCB guidelines, and after taking requisite safeguards as dealt with in detail by the HPC in its report, which has been accepted by the Supreme Court of India. The Member of the Monitoring Committee on Hazardous Waste Management in the area/zone may be consulted in this regard for compliance.

8.23.02 Supreme Court has divided such wastes into two categories –

- (a) Those that are banned – These should be either re-exported, if permissible, or destroyed at the risk, cost and the consequence of the importer.
- (b) Those that are regulated – These are permitted for recycling and reprocessing within the permissible parameters by specified authorized persons having the requisite facilities under the rules as amended and may be released/disposed of or auctioned as per rules to the registered recyclers/reprocessors. However, before allowing clearance for recycling and domestic use, clearances should be obtained from the Monitoring Committee on Hazardous Waste Management (vide judgment in WP No.657 of 1995 of the Hon'ble Supreme Court).

8.23.03 Hazardous Waste Rules and the relevant Schedules can be accessed at [http://envfor.nic.in/under the sub-heading "Divisions" under which the Hazardous Waste Substances Management \(HSM\) Division is listed.](http://envfor.nic.in/under the sub-heading \)

[Circular No.31/2004-Cus, dated 26.4.2004]

**8.24. Acceptance of Bids Lower than Fair Price**

8.24.01 If wholesale price appears to be Rs.1000/- or less the Examining Officer (or Appraiser) attached to the Sale Unit will determine the wholesale price of the goods.

8.24.02 Goods estimated to be of wholesale price above Rs. 1000/- shall be valued by the respective Appraising Group. The main file should not be released but a part file should be started and sent to the Group for this purpose. The condition of the goods should be clearly indicated in the part file. If the goods have deteriorated, have been damaged or are old, representative samples should be sent. The Appraiser concerned will make enquiries from reputed firms regarding wholesale price of the goods. The Appraiser will record in the part file the names of the dealers from whom he has made the enquiries and any other relevant details. The file then be put up to the group Asstt./Dy.Commissioner. He will check up that the dealers from whom the enquiries have been made are reputed ones and that the price fixed appears to be reasonable. In case of doubt and in all cases where the wholesale price is over Rs. 5000/- the Asstt. /Dy. Commissioner should himself make enquiry from at least one more reputed dealer, whose name he will record. After recording his observations and reasons he will indicate what should be the wholesale price. In cases where the wholesale price is above Rs. 5000/- he will resubmit the papers to the Assistant Commissioner for his countersignature. Where the wholesale price is above Rs. 20,000/- Joint Commissioner's countersignature will be required and where it is over Rs. 50,000/- the Commissioner's countersignature should be contained. The duty of the Assistant Commissioner and the higher officers is to ensure that considering the circumstances of the case the Appraiser and Asstt. / Dy. Commissioner have made proper enquiries from enough number of reputed dealers and that any special aspects concerning the particular case have been properly dealt with. They are not technical officers conversant with the price of the goods.

8.24.03 The next step is to fix the bidder's margin, which should be done by an Auction Committee consisting of the Assistant Commissioner in-charge of the Sale, the Inspector (or Appraiser) in-charge of the Sale, and the Asstt. Commissioner (or the Examining Officer attached to the Sales unit) who has approved the wholesale price. The bidder's margin should be fixed at 10% to 25% of the

wholesale price depending upon whether the goods are fast selling or slow moving and taking other relevant factors into account.

8.24.04 The wholesale price less the bidder's discount will be 'fair price' of the goods.

8.24.05 The Assistant Commissioner in-charge of the Sales should keep a watch whether the competition amongst the bidders is responsible considering the nature of the goods. If in his opinion there has been reasonable competition he may accept the highest bid in the following cases even if the highest bid is lower than the fair price: -

- (a) In case of small lots of which the fair price is less than Rs.1000/-
- (b) Where the highest bid is within 10% of the fair price.
- (c) Where the highest bid falls short of the fair price by more than 10%, he will be competent to accept the highest bid if it is within 20% of the fair price provided the difference between the two does not exceed Rs.1000/-.

[F. No. 4/63/57-Cus. III/Cus. IV, dated 7.9.1961 and

Extract from Central Manual of Appraising Department – Volume IV]

**8.25 Central Portal for Customs E-Auction for Disposal of Seized / Confiscated / Time Expired Bonded Goods**

8.25.01 A centralized e-auction portal having unique features to suit the requirements of Customs e-auctions has been created and the services of M/s.MSTC Limited, a Government of India undertaking engaged for running the said portal.

8.25.02 1.75% of the actual sale proceeds of the auction would be payable to MSTC by Customs. A formal single contract would be signed in this regard on behalf of the CBEC by Commissioner of Customs, (General), Mumbai with MSTC and the same would be applicable across all the formations.



8.25.03 Some unique features of MSTC e-auction central portal are:

- (a) The bidders can register with MSTC by paying a nominal non-refundable fees of Rs.5,000/- for participating in Customs auctions only. For those who plan to participate in other auctions of MSTC as well, an additional Rs.5,000/- would be payable as registration fees.
- (b) In addition to the e-bidding process, the software allows for e-tendering and auto bidding facility.
- (c) The software has the facility of auto generation of sale letters in respect of bids higher than or equal to the fair price.
- (d) MSTC has prepared a buyer's manual and sellers manual which is placed on the sites.
- (e) For accessing the portal a link has been provided on the Customs e-commerce portal i.e. [www.icegate.gov.in](http://www.icegate.gov.in). The website can also be directly accessed at [www.mstcecommerce.com](http://www.mstcecommerce.com).

[DG Systems Letter F.No.IV (26) 32/2008, dated 15.4.2008]

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**CHAPTER – NINE****RECOVERY OF ARREARS OF CUSTOMS REVENUE****1. PRELIMINARY**

As discussed in Chapter 3 of this Manual, there exists a provisions under Section 28 of the Customs Act, 1962 to recover any duty which has been not levied, short levied or erroneously refunded and interest, if any thereon, through a demand notice. Many a times, there are also other dues payable under the various Sections of the Customs Act, 1962.

If the aforesaid duty or dues payable to the Government have not been paid, Section 142 of the Customs Act, 1962 provides for recovery of the same. The Section prescribes that such amount may be deducted from any money owing to such person or by detaining and selling any goods belonging to such person which are under the control of proper officer. The Section further stipulates that if the sum cannot be recovered from such person in this manner, the Collector of the District- in which such person owns any property or resides or carries on his business –may be requested to recover such amount from such person. Alternatively, the Section also empowers the Commissioner of Customs to distrain any movable or immovable property belonging to or under the control of such person and detain the same until the amount payable is paid. Further, in case any

part of the said amount payable remains unpaid, the said property may be sold and the amount payable may be satisfied with the sale proceeds.

The Rule and clarifications issued by the Ministry of Finance in this regard are reproduced below.

## **Customs (Attachment of Property of Defaulters for recovery of Government Dues ) Rules, 1995**

**M.F. (D.R.) Notification No. 31/95-Cus. (N.T.) dated 26.05.1995**

**amended by:**

**Notification No. 29/99-Cus. (N.T.) dated 11.05.2009**

**Notification No. 67/97-Cus. (N.T.) dated 11.12.1997**

2. In exercise of the powers conferred by section 156 read with section 142 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely :-

### **2.a. PRELIMINARY**

#### **CHAPTER I**

1. **Short Title and Commencement** - These rules may be called the Customs (Attachment of Property of Defaulters (1) for Recovery of Government Dues) Rules, 1995.

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

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

- (i) 'Act' means the Customs Act, 1962 (52 of 1962);
- (ii) 'Government dues' means any duty or drawback to be recovered from any person or any interest or penalty payable by any person under the Act and has not been paid.
- (iii) 'Certificate' means the certificate required to be issued by an Assistant Commissioner of Customs or Deputy Commissioner of Customs under clause (c) of sub-section (1) of section 142 of the Act.
- (iv) 'Commissioner' means any person appointed as Commissioner of Customs or Commissioner of Central Excise under the Act.
- (v) 'Proper Officer' means an officer subordinate to the Commissioner and not below the rank of Assistant Commissioner of Customs or Assistant Commissioner of Customs and Central Excise, who is authorised by the Commissioner for the purpose of attachment and sale of defaulter's property and for realising the amount mentioned in the certificate.
- (vi) 'Defaulter' means any person from whom government dues are recoverable under the Act.

- (vii) Other words or terms used in these rules shall have the same meaning assigned to them under the Act.

**2.b. CHAPTER II  
PROCEDURE FOR ATTACHMENT OF PROPERTY**

3. **Issue of Certificates** - Where any Government dues are not paid by any defaulter, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs may prepare a Certificate signed by him specifying the amount due from such person and send the same to the Commissioner having jurisdiction over the place in which the defaulter owns any movable or immovable property or resides or carries on his business or has his bank accounts.

4. **Issue of Notice** - On receipt of the Certificate mentioned in rule 3 above, the Commissioner may authorise any officer subordinate to him to cause notice to be served upon the defaulter requiring the defaulter to pay the amount specified in the Certificate within seven days from the date of the service of the notice and intimate that in default, such subordinate officer is authorised to take steps to realise the amount mentioned in the Certificate in terms of these rules.

5. **Attachment of Property** - If the amount mentioned in the notice issued in terms of the preceding rule is not paid within seven days from the date of service of this notice, the Proper Officer may proceed to realise the amount by attachment and sale of defaulter's property. For this purpose, the proper officer may detain the defaulter's property until the amount mentioned in the Certificate together with the cost of detention is paid by the defaulter.

6. **Attachment not to be excessive** - Attachment by arrest or distraint of the property shall not be excessive, that is to say, the property attached shall be as nearer as possible proportionate to the amount specified in the Certificate.

7. **Attachment between Sunrise and Sunset** - The attachment of the property of the defaulter by arrest or distraint shall be made after sunrise and before sunset and not otherwise.

8. **Inventory** - After attachment of the property of the defaulter, the Proper Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is distrained.

9. **Private alienation to be void in certain cases** – (i) Where a notice has been served on a defaulter under rule 4, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Proper Officer.

(ii) Where an attachment has been made under these rules, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

10. **Share in property** - Where the property to be attached consists of the share or interest of the defaulter in property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

11. **Attachment of property in custody of court or public officer** - Where the property to be attached is in the custody of any court or Public Officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Proper Officer by whom the notice is issued.

Provided that, where such property is in the custody of a court, any question of title or priority arising between the Proper Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

12. **Service of notice of attachment** - A copy of the order of attachment shall be served on the defaulter in the same manner as prescribed for the service of order or decision in section 153 of the Act.

13. **Attachment of property in custody of court or public order** - The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Proper Officer.

14. **Property exempt from attachment** – (i) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from attachment and sale under these rules.

(ii) The decision of the Proper Officer as to what property is so entitled to exemption shall be final.

**2.c. CHAPTER III  
PART A  
PROCEDURE FOR SALE OF PROPERTY**

15. **Sale of property** - If the amount mentioned in the Certificate together with the cost of detention of the property is not paid within a period of thirty days from the date of attachment of the property, the Commissioner may authorise the Proper Officer to proceed to realise the amount by sale of the defaulter's property in public auction :

Provided that the Commissioner shall be competent to fix the reserve price in respect of any property of the defaulter to be sold in public auction and order that any bid shall be accepted only on the condition that it is not less than such reserve price.

16. **Negotiable instruments and shares in a corporation** - Notwithstanding anything contained in these rules, where the property to be sold is a negotiable instrument or a share in a corporation, the Proper Officer may, instead of directing the sale to be made by public auction, authorise the sale of such instrument or share through a broker.

**PART B  
SPECIAL PROVISIONS IN RESPECT OF SALE OF IMMOVABLE PROPERTY**

17. **Proclamation of sale** - Where any immovable property is ordered to be sold, the Proper Officer shall cause a proclamation of the intended sale to be made in the language of the district.

18. **Contents of proclamation** - A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible -

- (a) the property to be sold;
- (b) the revenue, if any, assessed upon the property or any part thereof;
- (c) the amount for the recovery of which sale is ordered;
- (d) the reserve price, if any, below which the property may not be sold; and
- (e) any other thing which the Proper Officer considers it material for a purchaser to know in order to judge the nature and value of the property.

19. **Mode of making proclamation** - (i) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Proper Officer.

(ii) Where the Proper Officer so directs, such proclamation shall also be published in a local newspaper and the cost of such publication shall be deemed to be costs of the sale.

(iii) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Proper Officer, otherwise be given.

20. **Setting aside of sale where defaulter has not saleable interest** - At any time within thirty days of the sale, the purchaser may apply to the Proper Officer to set

21. **Confirmation of sale** - (i) Where no application is made for setting aside the sale under the foregoing rule or where such an application is made and disallowed by the Proper Officer, the Proper Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and, thereupon, the sale shall become absolute.

(ii) Where such application is made and allowed and where, in the case of any application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Proper Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to the person affected thereby.

22. **Sale Certificate** - (i) Where sale of any immovable property has become absolute under these rules, the Proper Officer shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.

(ii) Such certificate shall state the date on which the sale became absolute.

23. **Purchaser's title** - (i) Where any property is sold in terms of these rules, there shall vest in purchaser's the right, title and interest of the defaulter at the time of the sale even though the property itself be specified.

(ii) Where immovable property is sold in terms of these rules and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

24. **Irregularity not to vitiate sale, but any person injured may sue** - No irregularity in the conduction of sale of any property shall vitiate the sale but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a Civil Court against him for compensation, or if (such other person is the purchaser), for the recovery of specific property and for compensation in default of such recovery.

25. **Prohibition against bidding or purchase by officer** - No officer or other person having any duty to perform in connection with any sale under these rules, either directly or indirectly, shall bid for, acquire or attempt to acquire any interest in the property sold.

26. **Prohibition against sale on holidays** - No sale under these rules shall take place on a Sunday or other general holiday recognized by the State Government or on any day which has been notified by the State Government a local holiday for the area in which the sale is to take place.

**2.d. CHAPTER IV  
MISCELLANEOUS**

27. **Disposal of sale proceeds** - The sale proceeds of the property of the defaulter shall be utilised in the following manner, namely :-

- (a) the sale proceeds shall first be utilised for meeting the cost of sale;
- (b) the balance shall be utilised for satisfaction of the amount mentioned in the Certificate issued under rule 3 together with the cost of detention of the property;
- (c) the balance, if any, shall be utilised for recovery of any other Government dues payable by the defaulter; and
- (d) the balance, if any, shall be paid to the defaulter.

28. **Procedure on death of defaulter** - If at any time after the Certificate has been issued by the [Assistant Commissioner of Customs or Deputy Commissioner of Customs, the defaulter dies, the proceedings under these rules may be continued against the legal representatives of the defaulter, and the provisions of these rules shall apply as if the legal representatives were the defaulter.

**CLARIFICATIONS**

- (i) **Circular No. 54/95-Cus. dated 30/5/95 F.No. 495/15/94 - CUS VI**



**Subject :** Finance Act, 1995 - Delegation of powers to customs officers under Section 142 of the Customs Act, 1962 - Instructions reg.

In terms of the amended section 142 of the customs Act, 1962, in addition to the existing modes of recovery of govt. dues mentioned therein, a provision has been made to empower custom officers to attach and sell the moveable and / or immovable property of a defaulter as per the rules to be framed in this behalf by the Central Government. These rules have since been notified vide Notification No. 31/95-Cus (NT) dated 26.05.95.

2. In this connection, it may be noted the provision of recovery through district authorities has been retained under section 142 (1)(c)(i), while empowering the proper officer to take recourse to recovery through custom officers. However, simultaneous action through district authorities and through custom officers for recovery of govt. dues should not be taken. The proper officer should take recourse to action under clause (c) of section 142(1) only when the amount in question cannot be recovered under clauses (a) or (b) of section 142 (1).

3. For action under clause (c) or section 142(1) or the Custom Act, 1962, the following guidelines may be followed:-

a) Where the amount recoverable does not exceed rupees one lakh, certificate action should first be taken through the district authorities under sub - clause (i).

b) In case the amount is not recovered by the district authority within three months, the district authority should be informed by registered A/ D letter to discontinue recovery and action should be taken to initiate recovery under sub-clause (ii) through the Commissioner of customs/ C.Excise having jurisdiction over the place where the defaulter is having jurisdiction over the place where the defaulter is having property, or is residing, or is carrying out his business, or has his bank accounts.

c) In case the amount recoverable exceeds rupees one lakh, the proper officer should initiate recovery action directly through the concerned commissioner of Customs/ C.Excise under sub-clause (ii).

4. A proper record should be maintained of cases in which recovery action is initiated under sub-clause (ii) of clause (c) of section 142(1) of the Customs Act, 1962.

**(ii) Circular No. 56/96-Cus. dated 14/11/96 (F.No. 450/72/96- CUS- IV)**

**Subject:** Recovery of arrears of Revenue under amended Section 142(1) of the Customs Act 1962 read with Customs (Attachment of Property of Defaulters for Recovery of Government of Dues) Rules, 1995.

Please refer to amended section 142(1) of the Customs Act, 1962 read with Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules 1995, which

enable the Department to create a legal framework to realise dues of the Government by attaching, distraining movable and immovable property of the person and then disposing the said property to recover the dues. These provisions are in addition to the existing other modes of recovery. The scope of these instructions is to prescribe a procedure for implementing the amended provisions. Board's existing instructions regarding implementation of certificate action etc. remain unchanged.

2. It would be noted that recovery through District Collector has been retained under sub-clause 9i) of Section 142(1) of the Act while empowering the Proper Officer to recover dues through Customs officers. However, the Board has already issued appropriate directions vide its letter F.No. 495/15/94-CUS.VI dated 30/5/95 to the effect that simultaneous action for recovery of Government dues should not be taken through district authorities and through Customs Officers. It has further been laid down in the aforesaid communication that even action under clause (c) of Section 142(1) of the Act should be taken only when Government dues have not been recovered under Clause (a) or (b) of the aforesaid Section 142(1) of the Act.

3. You are further aware that the Board has already laid down guidelines to initiate recovery action directly through the concerned Commissioners of Customs/ Central Excise under Sub-clause (ii) of Clause (C) of Section 142(1) of the Act only in cases where the recoverable amount exceeds Rs. one lakh or where the District collector to whom a Certificate stipulated under sub-clause (i) of Clause (C) of Section 142(1) of the act had been sent, has not been able to effect the recovery within 3 months. In such cases the District Collector should be informed by a letter through Regd. Post to discontinue recovery and action should be initiated for recovery under sub-clause (ii) clause (C) of Section 142(1) of the Act.

4. Where the Government dues have not been paid by the defaulters, the Asstt. Commissioner of Customs should under Rule 3 of the Rules prepare a certificate in the endorsed form i.e. as Appendix-I<sup>2</sup> specifying therein the amount due from such person and should send the same to the Commissioner having jurisdiction over the place in which the defaulter owns any movable or immovable property or resides or carries on his own business or has his bank accounts.

5. To have ready access to the information about the defaulter's movable or immovable property, his residence and details about his business or bank accounts, it would be necessary to build a date base from the information available in appropriate quarter such as the DGFT's office, (where applications for grant of an importer exporter code number are filed.) The Customs House should also develop such date base from other sources such as Income Tax, Sales Tax etc.

6. The Commissioners of Customs or Commissioner of Central Excise would direct the concerned Authorised Officer not below Asstt. Commissioner to cause a Notice (Appendix - II)<sup>1</sup> to be served upon the defaulter requiring to pay the amount specified in the Certificate within 7 days of the Notice. The Authorised Officer should thereafter take steps to realise the amount mentioned in the Certificate in terms of the rules after expiry of stipulated period of seven days.

7. If the amount mentioned in the certificate (Appendix-I) / notice (Appendix-II) is not paid within seven days from the date of the service of the notice, the Authorised Officer should

proceed to realise the amount by attachment and sale of the defaulters property in accordance with the procedure of attachment and proclamation and sale explained in the Annexures A, B respectively.

8. One of the Assistant Commissioner of Customs may be authorised as proper officer under the rules and special cell may be created in the Customs House/ Central Excise Headquarters for implementing the provisions of these rules.

9. The Commissioner may issue suitable Standing Order on the subject endorsing a copy to the Board and the Directorate General of Inspection, Customs & Central Excise, New Delhi. With the issuance of these instructions it is expected that speedy action would be initiated for the recovery of pending Government dues under the provisions of the Customs Act, 1962. This procedure should be reviewed after one year. The Commissioners are requested to bring the difficulties faced to the Board's notice within 6 months.

#### **ANNEXURE 'A'**

#### **ATTACHMENT**

1. There is in Law a distinction between moveable & immovable property. The mode and procedure of attachment of the two categories of properties differ in significant respect. Hence the standard format for the two types of property which are being prescribed as distinct from each other. The standard format which should be used for ordering the attachment for the moveable and immovable property is given respectively in **Appendix III B**. A copy of the order of attachment is to be served on the defaulter in the same manner as is prescribed for the service of an order or decision in Section 153 of the Act.

2. It is also necessary that the order of Attachment should be proclaimed at some place on or adjacent to the property attached by customary mode. A copy of the attachment order is to be affixed on a conspicuous part of the property as well as on the notice board of the office of the authorized officer.

3. While issuing the order of attachment the provisions of Rules 9 and 10 of the Rules should be kept in view. It is necessary to bring the provisions of the aforesaid Rules to the defaulter's notice by a written communication served in the same manner as has been stipulated for the service of the principal notice of attachment in the foregoing paras. The standard format, which could be used for doing so, is given as **Appendix IV**.

4. In some odd cases it may happen that the property to be attached is in the custody of a court or public officer. In such cases the authorized officer is required to give a notice ( in Appendix VI) to such court or officer requesting that such property, and any interest or dividend becoming payable thereon may be held subject to the further orders of the authorized officer issuing the notice. In case there is any dispute relating to the question of title or priority between the authorized officer and any other person not being the defaulter who claims to be interested in such

property by virtue of any assignment, attachment or otherwise, the same would have to be determined by the court and not by the authorized officer.

5. If the defaulter does not pay the Government dues as mentioned in the Certificate (Appendix –I) within a period of 30 days together with the cost of detention of the property, the authorized officer should obtain the commissioner’s order for realizing the amount by sale of the defaulter’s property in public auction.

6. Commissioners are competent to fix the reserve price in respect of any property of the defaulter to be sold in public auction and further order that any bid shall be accepted only on the condition that it is not less than such reserve price. They may utilize the services of the Valuation Cell of the Income Tax Department, or authorized Govt. approved valuers. Similarly in regard to valuation of shares, authorized agencies like SEBI, Stock Exchange could be consulted.

7. The order of attachment of negotiable instrument shall be in the form Appendix VIIIA.

8. In the case of shares held by the defaulter in a company, the order in Appendix VIIB shall be issued both to the defaulter and the principal officer of the company prohibiting them from making any transfer of the shares. A copy of prohibitory order should also be affixed on the notice board of the authorized officer.

## **ANNEXURE – ‘B’**

### **PROCLAMATION AND SALE**

1. When the authorized officer acting under Rule 15 has obtained the Commissioner’s order to the effect that the immovable property belonging to the defaulter should be sold he has to give proclamation of such intended sale.
2. The proclamation should be in the language of the district in which the particular property is situated and one proclamation should be issued for each defaulter. It is not necessary to give notice to the defaulter before the sale proclamation is settled. Once a notice is issued, there is no necessity of issuing a fresh notice if subsequently a sale is to be adjourned.
3. The proclamation, which is the prelude to sale, should contain the following particulars i.e.
  - (i) The revenue assessed upon the property or part thereof;
  - (ii) The reserve price below which the property may not be sold; and
  - (iii) Any other thing which the authorized officer considers it material for the purchaser to know in order to judge the nature and value of the property.
4. Every proclamation of sale should be made in the following manner:
  - (A) By customary mode (announcement by loud speaker may also be resorted to) at some place on or near the property to be sold. Omission to beat drum as required by Rule 19 is ‘material irregularity’.
  - (B) A copy of the proclamation shall be affixed:
    - (i) Where several properties are put up for sale, copy of the proclamation should be affixed on each property separately.

- (ii) Upon a conspicuous part of the office of the authorized officer. This condition must be scrupulously followed in every case.
  
- 5. The sale of immovable property made in execution of a Certificate becomes absolute when the authorized officer makes an order confirming the same. It is mandatory upon the authorized officer to make the order confirming the sale when the following conditions are fulfilled.
  - (i) When no application is made for setting aside a sale under Rule 20;
  - (ii) (a) When such an application has been made and the same is disallowed by the authorized officer; and  
(b) the full sum of the purchase money has been paid.
  
- 6. The authorized officer can also make an order not confirming the sale but setting the same aside, if;
  - (a) an application under Rule 20 has been made and is allowed by him,
  - (b) an application under Rule 20 has been made and all the conditions mentioned in that Rule are satisfied.

Before setting aside the authorized officer is required to give notice to the person(s) affected thereby which expression includes the defaulter, the auction purchaser, a transferee from the auction purchaser after the sale but before the same is confirmed.
  
- 7. The order of confirmation of sale of immovable property under Rule 21 should be in the form of Appendix X. The notice to interested parties under Rule 21(ii) of the Rules, to show cause why sale should not be set aside, shall be in the form of Appendix IX.
- 8. When the sale of immovable property becomes absolute, the authorized officer should grant a certificate in which are certified the details of the property sold, the name of the person declared as purchaser and the date on which the sale had become absolute. The certificate as given in Annexure XI is to be granted to the purchaser. Where a purchaser is dead, the certificate may be granted to his legal representative.
- 9. It is to be noted that departmental officers having any duty to perform in connection with any sale under the Rules either directly or indirectly are prohibited from bidding for, acquiring or attempting to acquire any interest in the property sold through public auction. Needless to say that similar instruction also exist in respect of the sale of confiscated goods or goods sold through public auction in terms of Section 48 of the Act.
- 10. The rules specially prohibit conducting any sale through public auction on a Sunday or other general holidays recognized by the State Government or Government as local holiday for the area in which the sale is to take place. The provisions of this rule are at variance with the instructions as contained in the Disposal Manual for holding public auction in respect of confiscated goods or goods proposed for sale under Section 48 of the Act. Since there is a statutory bar on conducting public auction in respect of the property arrested and distrained under Section 142 (1) ( c) (ii), particular care should be taken to scrupulously abide by the provisions of Rule 26 as non-compliance may vitiate the sale altogether.
- 11. Once of movable or immovable property of the defaulter is sold in terms of sub-clause (ii) of clause © of Section 142 (1) of the Act and/or the provisions of the Rules, the sale

proceeds are to be utilized in the manner laid down under Rule 27 of the Rules. The expression 'Sale proceeds' can notes the conversion of the property into its equivalent value of money.

- 12. When the property belonging to the defaulter is sold and the sale proceeds realized, the sale proceeds will have to be distributed in the following order of priority:
  - (a) In the first place, the authorized officer shall be paid the cost incurred by him. An instance of the cost so incurred by the authorized officer is where under Rules 13, 17 and 19 (ii) of the Rules the authorized officer is to insert advertisement (s) in the local newspaper. Sums payable by the authorized officer for incurring such expenditure should be deemed to be the cost of sale and would have to be deducted from the total sale proceeds of the defaulter's property.
  - (b) The amount due under the Certificate issued under Rule 3 together with the cost of detention of the property shall then be utilized for specification of the amount mentioned in the Certificate. It may, however, be noted that in the case of sale of immovable property no disbursement should be made until the sale has been confirmed by the authorized officer under Rule 21 of the Rules.
  - (c) If any balance remains over after defraying the amount(s) mentioned at (a) and (b) above, then out of such balance any amount recoverable from the defaulter under the Act which may be due upon the date of realization of the sale proceeds shall be paid to the Asstt. Commissioner of Customs to whom such payment is due.
  - (d) The balance, if any, left over after making the payment(s) referred to at (a), (b) and (c) above shall be paid to the defaulter.

**APPENDIX I**

**FORM OF CERTIFICATE UNDER SECTION 142(1)(c ) OF THE CUSTOMS ACT 1962**

Form

Assistant Commissioner of Customs,

-----Custom House,

To

The Commissioner of Customs & Central Excise,

-----

Subject:- Realization of Government Dues recoverable form ----- under the provisions of Sec 142 (1)© (ii) of the Customs Act, 1962.

-----

Pursuant to Sec 142 (1)© (ii) of the Customs Act, 1962 (Act LII of 1962), I-----, Assistant Commissioner of Customs do hereby certify that a sum of Rs.----- has been demanded form and is payable by ----- by way of duty/penalty/drawback/interest under the said Act and has not been paid and cannot be recovered form the said -----in the manner provided in Sec 142 (1)(a)or (b)or (c)(I).

The said----- owns property/resides/carries on business, in your jurisdiction particulars of which are given hereunder:-

I am, therefore, to request you to kindly take early steps to realize the amount in accordance with the provisions of Section 412 (1)©(ii) of the Customs Act, 1962 and the Customs (Attachment of Property of Defaulters for recovery of Government Dues)Rules, 1995.

On realization, the aforesaid sum together with the interest and cost of distress may please be credited to the following Head of Account.

Yours faithfully,

Assistant Commissioner of Customs

Custom House-----

Dated the -----

**NOTICE OF DEMAND TO DEFAULTER**

Office of the Asstt.  
Commissioner of  
Customs and Central Excise  
-----  
Dated-----

To

-----

Please take notice that certificate No.----- dated ----- had been forwarded by the Assistant Commissioner of Customs -----to the Commissioner of Customs and Central Excise----- for the recovery of an amount of Rs. ----- details of which are given herein below:

.....

- a. The said commissioner has sent the s aid certificate to the undersigned who has been authorized by the said Commissioner under Section 412 (1)©(ii) of the Customs Act, 1962, read with Rule 4 of the Customs Attachment of Property of Defaulters for Recovery of Customs Dues) Rules 1995 specifying that an amount of Rs.----- is to be recovered from you.
- b. You are hereby required to pay the amount aforesaid within seven day from the date of service of this notice.
- c. A copy of the challan in Form TR 6 is enclosed for the purpose.
- d. You are hereby informed that in case of default, steps would be taken to realize the amount in accordance with the provisions of the Customs (attachment of Property of Defaulters for the recovery Government Dues) Rules, 1995.
- e. In addition to the amount aforesaid, you will also be liable for –
  - i. such interest as in payable in accordance with Section 28AA of the said Act for the period commencing immediately.
  - ii. All cost, charges and expenses incurred in respect of the service of this notice of warrants and other process and of all other proceedings taken for realizing the arrears.

(Seal)

Authorised Officer

Dated:  
LETTERS)

(NAME IN BLOCK

DESIGNATION.



(Score out whichever paragraph is not applicable)

N.B – Attention is invited to Rule 9 of the Customs (Attachment of Property of Defaulters for Recovery of Customs Duties Rules 1995 which is reproduced below:-

6. (i) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative interest shall not be competent to mortgage, charge, lease, or otherwise deal with any property belong to him except with permission of the Proper Officer, not shall any civil court issue an process against such property in execution of decree for the payment of money.

(iii) Where attachment has been made under the Rules, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, divide or other monies contrary to such attachment shall be void, as against all claims enforceable under the attachment.

**APPENDIX II A**

**NOTICE OF ATTACHMENT WHERE THE PROPERTY CONSISTS OF A SHARE OR INTEREST IN MOVABLE  
PROPERTY**

Office of the Assistant Commissioner  
Customs and Central

Excise,

-----

To

-----  
-----

Where you have not paid the amounting to Rs.----- payable by you in respect of Certificate No. ----- dated ----- forwarded by the Assistant Commissioner of

Customs,----- and the interest payable under section 28AA of the Customs Act, 1962, for the period commencing immediately after the said date;

2. It is hereby ordered that you [-----] be, and are hereby prohibited and restrained, until the further order of the undersigned, from transferring or changing in any way your share or interest in the under mentioned items of movable property, belonging to you and ----- and -----as co-owners.
3. Given under my hand and seal at ----- this ----- day ----- of

Authorised Officer (OFFICE SEAL)

DESIGNATION

**APPENDIX III A**

**PANCHANAMA**

**ATTACHMENT OF MOVABLE PROPERTY**

Panchanama drawn by the panchs, in the presence of Shri -----, Authorised Officer, of the office of the Assistant Commissioner of Customs during the course of the execution proceeds of the Warrant or Notice Form no.----- in the case of ----- of -----, who is a defaulter for non-payment of arrears of Government Dues in the File No.-----on the spot at House no.-----Street No.----- of -----at the time-----on -----(date)-----

S.No.	Name of panch & father's	Address	Age	Profession
	Name			

We, the above mentioned Panchas, on being called by the above said Shri -----, Assistant Commissioner of Customs & Central Excise, -----, duly authorized by the Commissioner of Customs and Central Excise under Rule 4 of the Customs (Attachment of Property

of Defaulters for recovery of Government Dues) Rules, 1995, gathered here at the place of -----  
(address in full)-----belonging to Shri -----, and learnt that Shri/Ms. ----- is a  
defaulter for non-payment of Government Dues and consequently the warrant of attachment of the  
movable property of the defaulter in the Form Appendix -----, to be executed on or  
before----- date, and in execution thereof Shri -----, the holder of the warrant,  
today entered the premises of Shri -----at -----(time), and after service of the  
warrant on Shri -----, demanded the payment of the Government Dues, and on its non-  
payment, attached movable properties as detailed in the inventory attached to this panchname  
between the hours -----(time) and ----- (time) in our presence.

We also hereby state that during the execution proceedings -----  
-----  
------(to be filled in case of occurrence of any incident)

Therefore, we solemnly declare that the facts of the Panchnama mentioned herein are true  
and correct to the best of our observation and knowledge.

Dated Time

- 1.
- 2.
- 3.
- 4.
- 5.

Drawn before me

OFFICE SEAL

Authorised Officer

NAME IN BLOCK LETTERS

DESIGNATION

**INVENTORY**

Inventory of movable properties attached at the premises of Sri -----H. No. ----- Street No.----  
-----of ----- under Rule 5 of the Customs (attachment of Property of Defaulters for  
Recovery of Government Dues) Rules, 1995 while executing Warrant of attachment of movable

issued by the Authorised Officer, Date----- towards realization of arrears of Government dues of Rs.----- due from----- and executed by Shri -----  
----- Authorised Officer ----- on -----(date) -----between the hours-----

Sl.No.	Description of the Article	Estimated value (in Rs.)	Place where kept for safe custody (name of the person,if necessary)

Witness:-

Sl.No.	Name & Address of Panch	Signature

Drawn by me today the -----(date)-----at -----A.M./P.M.

Signature of Defaulter:

Signature of Authorised Officer

**APPENDIX III B**

**PANCHANAMA**

**ATTACHMENT OF IMMOVABLE PROPERTY**

I/ We -----  
---S/o -----

---(2) -----residence of -----  
-----on being called by Shri ----- Assistant Commissioner of Customs and Central  
Excise ----- under Rule 4 of the Customs (Attachment of Property of  
Defaulters for Recovery of Government Dues)Rules, 1995 to witness the attachments / proclamation  
for the sale of the undermentioned property, for realization of Government Dues from -----  
--- in File No.----- solemnly state as under:

- (a) -----
- (b) -----

(mention the properties here)

- (1) That we identified the property referred to above.
- (2) That a copy of the order of attachment/proclamation for sale was affixed to the outer door/to a pole fixed in respect of each property separately in our presence.
- (3) That the order of attachment / proclamation for sale has been proclaimed, near each property cited above and in the locality by beat of drum.
- (4) That the contents of this Panchanama have been explained to us in vernacular and having understood we certify that what is stated above is correct and true.

BEFORE ME/US

- (1) (1)
- (2) (2)

**APPENDIX III C**

**ORDER OF ATTACHMENT OF IMMOVABLE PROPERTY**

Office of the Assistant  
Commissioner,  
  
Customs & Central Excise,

-----  
-----  
-----  
-----

To

-----

-----  
-----

Where you, -----(defaulter)----- have/has failed to pay the sum of Rs.----- payable by you/ him in respect of Certificate No. ----- dated----- forwarded by the Assistant Commissioner of Customs, ----- and the interest payable under section 28AA, 47(2), 75A and sec 124 of the Customs Act, 1962, for the period commencing immediately after the said date;

It is ordered that you, the said -----be, and are hereby prohibited and restrained, until the further order of the undersigned, from transferring or charging the undermentioned property in any way that all persons be, and that they are hereby prohibited from taking any benefit under such transfer or charge.

**SPECIFICATION OF PROPERTY**

Given under my hand and seal at ----- this ----- day of -----(date)-----  
-----

(OFFICE SEAL)

Authorised Officer

(NAME IN BLOCK LETTERS)

DESIGNATION

**APPENDIX IV**

**NOTICE OF ATTACHMENT**

[Under Rules 9 and 10 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995]

Office of the Assistant Commissioner,

Customs & Central Excise,

-----  
-----

To

-----  
-----  
-----

Whereas a notice has been served upon you requiring you to pay the sum of Rs.-----  
--, being the amount of Government Dues payable by you as per the terms of an order issued under  
Sec 28, 28AA, 47(2),61,61 (2), 75A and Sec 124 of the Customs Act, 1962, under sub-clause (ii) of  
clause © of Section 142(1) of the Customs (attachment) of Property of Defaulters for Recovery of  
Government Dues) Rules, 1995.

2. Please take note that

(a) In terms of Rule 9 of the aforesaid Rules.

(i) you, or your representative in interest shall not be competent to mortgage,  
charge, lease or otherwise deal with any property belonging to you except with  
the written permission of the undersigned.

(ii) Where an order of attachment has been served on you as per the terms of Rule  
5 of the above mentioned Rules, any private transfer or delivery of the property  
attached or of any debt, dividend or other moneys contrary to such attachment  
shall be void as against all claims enforceable under the attachment.

(c) Further in terms of Rule 10 of aforesaid Rules, where belonging to you and/or another as  
co-owners, you are hereby prohibiting him from transferring the share or interest or  
charging it in any way.

Given under my hand this-----day of -----(date)-----

OFFICE SEAL

Authorised Officer

NAME IN BLOCK LETTERS

DESIGNATION

**APPENDIX V**

**NOTICE OF ATTACHMENT A DECREE OF A CIVIL COURT**

Office of the Assistant Commissioner,  
Customs & Central Excise,

-----

Dated-----

To

The Judge of the Court of -----

Sir,

Where----- (defaulter)-----has failed to pay the arrears due from him in respect of Certificate No. -----dated----- forwarded by the Assistant Commissioner of Customs to the Authorised Officer (so authorized by the Commissioner of Customs under Rule 4 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995) amounting to Rs.----- and the interest payable under section 28AA, 41(2), 61(2), 75A and section 124 of the Customs Act, 1962, for the period commencing immediately after the said date.

And whereas the undersigned, in exercise of his powers under the Customs (Attachment of Property for Recovery of Government Dues) Rules, 1995, desires to proceed with attachment of a decree of -----Court, dated the -----day of ----- made in suit No. -----of ----- wherein ----- was the plaintiff (and -----) was the defendant and which decree is pending execution in your Court.

You are, therefore, requested to say the execution of the said decree unless and until –



- (i) the undersigned cancels this notice; or
- (ii) the Assistant Commission of Customs -----or the above mentioned defaulter applies to you to execute the decree.

Yours faithfully,

(OFFICE SEAL)

Authorised Officer

(NAME IN BLOCK LETTERS)

DESIGNATION

**APPENDIX VI**

**NOTICE OF ATTACHMENT OF MOVABLE PROPERTY IN THE CUSTODY OF A COURT OR A PUBLIC OFFICER**

Office of the Assistant Commissioner,  
Customs & Central Excise,

-----

To

-----

Sir,

Whereas -----(defaulter) ----- has not paid the arrears amounting to Rs.-----  
-----in respect of Certificate No.----- dated----- forwarded by the Assistant  
Commissioner of Customs,----- and the interest payable under section 28AA, 47(2),  
61(2), 75A and Sec 124 of the Customs Act, 1962, for the period commencing immediately after the  
said date and the said Authorised Officer (so authorized by the Commissioner of Customs under Rule  
4 of the Customs (attachment of Property of Defaulters for Recovery of Government Dues) Rules,  
1995) specifying that an amount of Rs.----- is to be recovered by the undersigned from the

defaulter; and the undersigned desired to attach sums of money or other property, which is included in the defaulter's property now in your custody;

I request that you will hold the said money or property and any interest or dividend becoming payable thereon subject to the further and other available details.

Yours faithfully,

(OFFICE SEAL)

Authorised Officer

(NAME IN BLOCK LETTERS)

DESIGNATION

Note:- \* Here state how the money or property is understood to be in the hands of the Court of the Public Officer Addressed, on what account and other available details.

**APPENDIX VII A**

**ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT**

To -----

(Attaching Officer)

Whereas the undersigned the passed on the ----- day of -----(month./year)-----  
----- an order for the attachment of the undermentioned property in the course of proceedings for  
the recovery of arrears due from -----(defaulter) in respect of Certificate No. ----- dated-----  
----- forwarded by the Assistant Commissioner of Customs -----to the  
Authorised Officer (so authorized by the Commissioner of Customs under Rule 4 of the Customs  
(Attachment of Property for Recovery of Government Dues) Rules, 1995, you are hereby directed to  
seize the said property and bring the same before me and hold the same subject o my orders.

**DETAILS OF PROPERTY**

Given under my hand and seal at-----this -----day of -----(date)-----

(OFFICE SEAL)

Authorised  
Officer

(NAME IN BLOCK LETTERS)

DESIGNATIO

**APPENDIX VII A**

**PROHIBITORY ORDER WHERE THE PROPERTY CONSISTS OF SHARES IN A CORPORATION**

Office of the Assistant Commissioner,  
Customs & Central Excise,

-----

To

(1)-----

(2)-----

(Principal Officer)

-----

(Name of Corporation)

Whereas -----(defaulter) has failed to pay the arrears due from him in respect of Certificate No.----- dated ----- forwarded by the Assistant Commissioner of Customs-----amounting to Rs.----- and the interest payable under section

28AA, 47(2), 61(2), 75A and Sec 124 of the Customs Act, 1962, for the period commencing immediately after the said date;

It is ordered that you, No. (1) (above-mentioned, be, and you are hereby prohibited and restrained, until the further order of the undersigned, from making any transfer of the shares in the aforesaid Corporation standing in your name or from receiving payment of any dividends thereon, 1(\*it may be noted, that the property consisting of shares is included in the defaulter's property).

And that you, No. (2) abovementioned, are hereby prohibited and restrained, until the further order of the undersigned, from permitting any such transfer or making any such payment.

Given under my hand and seal at -----this -----day of -----(date)-----

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**APPENDIX VII C**

**NOTICE OF ATTACHMENT OF PROPERTY CONSISTING OF AN INTEREST IN PARTNERSHIP PROPERTY**

Office of the Assistant Commissioner,  
Customs & Central Excise,  
-----

To  
-----

Sir,

Whereas -----(defaulter) ----- has not paid the arrears amounting to Rs.-----  
-----in respect of Certificate No.----- dated----- forwarded by the Assistant  
Commissioner of Customs,----- and the interest payable under section 26A of the  
Customs Act, 1962, for the period commencing immediately after the said date and the said Tax  
Recovery Officer has sent to the undersigned a certified copy of the said Certificate, specifying that  
an amount of Rs.-----is to be recovered by the undersigned from the defaulter; and whereas  
the said -----is a partner in the firm known as Messers-----

It is hereby ordered:

- (i) that the share of the said -----, in the partnership property and profits of the  
said firm be and is hereby charged with the payment of the amount aforesaid due  
under the said Certificate; and
- (ii) \*that -----

Give under my hand and seat at -----this----- day of----- (month/year)

(OFFICE SEAL)

Authorised Officer

(NAME IN BLOCK LETTERS)

DESIGNATION

Note:- \* Here incorporate any other order that may be considered necessary in the circumstances.

# Score out portion in Italics if not applicable.

**APPENDIX VIII**

**PROCLAMATION OF SALE**

Office of the Assistant Commissioner,  
Customs & Central Excise,  
-----

To

-----

Whereas the Assistant Commissioner of Customs,-----has forwarded Certificate No.----- dated-----for the recovery of the sum of Rs.-----from -----(defaulter)-----

Which sum is recoverable together with interest in accordance with section 28AA, 47(2),61(2),75A and Sec 124 of the Customs Act, 1962, for the period commencing immediately after the said date and the costs, charges and expenses of the proceedings for the recovery of thereof.

And whereas the undersigned has ordered the sale of the attached property mentioned in the annexed schedule in satisfaction of the said Certificate.

And whereas on the ----- day of -----(month/year)-----the date of fixed for the sale) there will be due there under a sum of Rs.-----including costs and interest;

Notice is hereby given that, in the absence of any order of postponement, the said property shall be sold by public auction at -----A.M./P.M. -----on the said -----day of -----(month/year)-----at-----place)

The sale will be of the property of the defaulter above-named a mentioned in the schedule below; and the liabilities and claims attaching to the said property to the said property, so far as they have been ascertained, are those specified in the schedule against each lot;

The property will be put up for sale in the lots specified in the schedule. If the amount to be realized by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder. The sale will also be stopped if, before any lot is knocked down, the arrears mentioned in the said Certificate, interest payable under section 28AA, 47(2),61(2),75A and Sec 124 of the Customs Act, 1962 and costs (including the costs of the sale) are tendered to the officer conducting the sale of proof is given to his satisfaction that the amount of such arrears, interest and costs has been paid to the undersigned.

At the sale, the public generally are invited to bid either personally or by duly authorized agent. No officer or other person, having any duty to perform in connection with this sale shall, however, either directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold.

The sale shall be subject to the conditions prescribed in the Customs (Attachment of Property of Defaulters for the Recovery of Customs Dues) Rules, 1995, and to the following further conditions:-

- 1) The particulars specified in the annexed schedule have been stated to the best of the information of the undersigned, but the undersigned shall not be answerable for any error, mis-statement or omission in this proclamation.
- 2) [\*\*(ii) The reserve price below which the property shall not be sold is Rs.-----  
-----]
- 3) (iii) The amounts by which the bidding are to be increased shall be determined by officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.
- 4) [(iv)] the highest bidder shall be declared to be the purchaser of any lot provided always that he is legally qualified to bid and provided further that the amount bid by him is not less than the reserve price. It shall be in the discretion of the undersigned to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it inadvisable to do so.  
1.(v)] For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of Customs (Attachment of Property of Defaulters for the Recovery of Customs dues) Rules, 1995.  
  
[(vi)] In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment, the property shall forthwith be again put up and resold.  
  
2[(vii)] In the case of immovable property, the person declared to be the purchaser shall pay immediately after such declaration, a deposit of twenty-five percent of the amount of his purchase money to the officer conducting the sale and, in default of such deposit, the property shall forthwith be put up again and resold. The full amount of the purchase money payable shall be paid by the purchaser to the undersigned on or before the 15<sup>th</sup> day from the date of the sale of the property, exclusive of such day, or if the 15<sup>th</sup> day be a Sunday or other holiday, then on the first office day after 15<sup>th</sup> day in default of payment with the period mentioned above, the property shall be resold, after the issue of a fresh proclamation of sale. The deposit, after defraying the expenses of the sale, may, if the undersigned thinks fit, be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

## SCHEDULE

No. of	Description property to be sold with the names of the other co-owners where the property belongs to the defaulter and any other persons as co- owners.	Revenue assessed upon the property or any part thereof.	Details of any encumbrances to which the property is liable.	Claims, if any, which have been put forwarded to the property and any other known particulars bearing on its nature and value.
1	2	3	4	5

Given under my hand and seal at-----this-----day of-----19-----

(OFFICE SEAL)

Authorised Officer

(NAME IN BLOCK LETTERS)

DESIGNATION

\*\* Applies only in the case of auction of immovable property where a reserve price is fixed]

**APPENDIX IX**

**ORDER OF CONFIRMATION OF SALE OF IMMOVABLE PROPERTY**



Office of the Assistant Commissioner,  
Customs & Central Excise,

-----  
-----

To

-----

Whereas the -----purchased for Rs.-----the immovable property specified below at a sale held by public auction on the -----day of------(date)-----in execution of Certificate No.-----dated-----forwarded by the Assistant Commissioner of Customs.------(attachment of Property of Defaulters for the Recovery of Government Dues)Rules 1995) for recovery of arrears from -----=. The full amount of the purchase money has been paid on -----

Accordingly the said sale is hereby confirmed.

Given under my hand and seal at-----this-----day of------(date)-----

(OFFICE SEAL)

Authorised Officer  
(NAME IN BLOCK LETTERS)  
DESIGNATION

**APPENDIX X**

**NOTICE TO INTERESTED PARTIES TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE**

Office of the Assistant Commissioner,

Customs & Central Excise,

-----  
-----

To

-----

Whereas the under mentioned property was sold on the -----day of-----in execution of Certificate No.-----dated-----forwarded by the Assistant Commissioner of Customs-----for recovery of arrears from -----(defaulter)

And whereas-----has applied to the undersigned to set aside the sale under rule 20 of the Customs (attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995.

Takes notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs before the undersigned on ----when the said application will be heard and determined.

**DESCRIPTION OF PROPERTY**

Given under my hand and seal at -----this-----day of----- (date)-----

(OFFICE SEAL)

Authorised Officer

(NAME IN BLOCK LETTERS)

DESIGNATION

**(iii) Circular No. 90/2000-Cus., dated 7-11-2000 F. No. 450/114/2000-CUS.IV**

*Subject :- Recovery of dues/inspection fees levied under the Destructive Insects and Pests Act, 1914 – regarding.*

It is to refer to section 3 of the Destructive Insects and Pests Act, 1914 as amended by the Destructive Insects and Pests (Amendment and Validation) Act, 1992, wherein it has been provided that the Central Government may, by notification under this section, also levy and collect such fees and its arrears at such rates and in such manner as may be specified therein for making an application for a permit to import, or for making inspection, fumigation, disinfection or supervision of, any article or class or articles or any insect or class of insects under this section. Section 4 of the said Act provides that a notification under section 3 shall operate as if it had been issued under section 19 of the Sea Customs Act, 1878, and the officers of Customs at every port shall have the same powers in respect of any article with regard to the importation of which is regulated, restricted or prohibited by the law relating to Sea Customs, and the law for the time being in force relating to Sea Customs or any such article shall apply accordingly. In other words, it may be stated that the notification under section 3 of the said Act operates as if it had been issued under section 19 of the Sea Customs Act, 1878. The Sea Customs Act, 1878 has been replaced by the Customs Act, 1962. However, section 160 of the Customs Act, 1962 relating to repeal and savings provides that any duty and penalty payable under a repealed enactment may be recovered in the manner provided under the said Customs Act.

2. A request has been received from the Department of Agriculture and Cooperation, Ministry of Agriculture asking the Department to collect dues/inspection fees levied under the Destructive Insects and Pests Act, 1914 in terms of the provisions of section 142 of the Customs Act, 1962. The proposal has been examined and has been accepted.

3. In view of above, you are requested to kindly take necessary action under section 142 of the Customs Act, 1962 to recover the dues/inspection fees levied under the Destructive Insects and Pests Act, 1914, whenever any request for recovery of the same is received from the Plant Quarantine Authorities.

4. These instructions may be brought to the notice of all concerned by way of issuance of suitable Public Notice/Standing Orders.

**(iv) Letter F. No. 450/10/2007-Cus. IV, dated 13-2-2007**

*Subject:- Dispense with practice for recovery of revenue deposit of Rs. 3000/- u/s. 42 of the Customs Act, 1962 - regarding.*

It is to refer to above subject and to state that CBEC had issued an instruction vide F. No. 28/12/70-Cus IV dated 22-5-1970 regarding security deposit in respect of foreign going & coastal vessels under section 42 of the Customs Act, 1962. Accordingly, the quantum of deposit of Rs. 3000/- and Rs. 1000/- is taken from foreign vessel and coastal vessel, respectively, for covering liabilities of individual vessels. When shipping Lines handle a number of vessels, a one time deposit of Rs. 15,000/- and Rs. 5,000/- is taken for the foreign going and coastal vessels respectively.

2. As per Section 42 of the Customs Act, 1962, the vessel is permitted to depart from a customs station by the proper officer after considering that the person in charge of the conveyance has complied with,-

- i. Production of specified documents and replied the question, if any, raised
- ii. Delivery of export manifest
- iii. Payment of all duties leviable on any stores consumed in the conveyance,
- iv. Payment of all charges and penalties due in respect of the conveyance
- v. No penalty is leviable on the person-in-charge under section 116 for the deficiency of goods
- vi. Exports goods contravening any of provision of the Customs Act have been unloaded

3. The issue was also discussed in Chief Commissioner's Conference at Mumbai. It was noted that Board's instructions vide letter F. No. 28/12/70-Cus. IV dated 22-5-1970, prescribing the deposit of Rs. 3,000/- and Rs. 1,000/- etc. are not of much relevance in the present context where the department has ample power to recover dues, if any, under Section 142 of Customs Act, 1962 read with the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995. The prescribed deposit is meager and the effort/manpower deployment and logistic involved in first collecting the deposit and refunding it subsequently far outweighs the benefits.

5. The issue was examined during the Chief Commissioners conference on 16-6-2006 at Mumbai and a discussion on this matter was taken. It was agreed that the recovery of dues i.e. duty, charges and penalties in respect of goods, conveyance and person in charge is ensured before giving an order for departure of the vessel by Customs officer in terms of section 42 of the Customs Act, 1962. The procedure for taking of a deposit initially and refunding it, each time the vessel enters and departs the port, involves avoidable administrative inconvenience and delay in re-payment of deposit. In view of the above and as a trade facilitation measure, Board has desired that such security amount may not be taken. However, the field formations should ensure that provisions of section 42 are complied before permitting the conveyance to depart from the customs station by the proper officer.

**(v) Instruction from F.No.401/243/2006. Cus.III dated 10.11.2007****Subject:- Customs- Coercive action for recovery of arrears**

1. The Comptroller and Auditor General of India (C&AG) has undertaken a draft review on “Adjudication and Appeal Cases (Customs)” for inclusion in the report of the C&AG for the year 2005-06 (Performance Audit). C&AG has recommended that the Board should consider fixing time limit for paying duty on confirmation of demand beyond which coercive action can be taken.

2. *The Board has accepted this recommendation of the C&AG. The Board has already issued a detailed circular regarding initiation of coercive action for the recovery of central excise duties under its Circular 788/21/2004-CX dated 25 May 2004 issued from F. No. 208/41/2003-CX.6. The instructions contained in this Circular would apply mutatis mutandis for the recovery of customs arrears as well.*

**vi) Circular No.788/21/2004-CX dated 25<sup>th</sup> May, 2004 F.No. 208/41/2003-CX-6****Subject:- Central Excise-Coercive action for the recovery of arrears when the appeal/stay application is pending in Tribunal -reg.**

I am directed to refer to Board’s Circular No. 396/29/1998-CX dated 2<sup>nd</sup> June, 1998 on the subject of taking recourse to coercive measures to recover duty demanded as a result of adjudication till such time as the stay applications have been disposed of by Commissioner (Appeals). Consequently, references have been received regarding the course of action to be taken when the stay application against the Order-in-Original passed by Commissioner is pending with the Tribunal.

2. The matter has been examined. The Board has taken the following decisions:
  - a) For cases where the appeals lie with the Commissioner (Appeals) and no stay application is filed along with the appeal, recovery proceedings may be initiated after 60 days from the date of communication of the order. In respect of Orders-In – Original of Commissioners where the first appeal lies with the Tribunal and no stay application is filed along with the appeal, the aforesaid time period would be 90 days.
  - b) Where conditional stay orders are issued specifying the time limit for fulfillment of the conditions but conditions are not fulfilled as per the directions of the Tribunal or Commissioner (Appeals), as the case may be, recovery proceedings should be initiated immediately after the lapse of the time period prescribed in the appellate stay order for fulfillment of the conditions.
  - c) In respect of stay applications pending against the Orders-In Original of the Commissioners before the CESTAT a view similar to Board ‘s Circular No.396/29/98-CX dated 2.6.1998 should be taken. The two provisos to Section

35C(2A) of the Central excise Act, 1944 read as follows:

“Provided that where an order of stay is made in any proceeding relating to an appeal filed under sub-section (1) of section 35B, the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order:

Provided further that if such appeal is not disposed of within the period specified in the first proviso, the stay order shall, on the expiry of that period, stand vacated.”.

In view of the above stated legal position, the field officers should refrain from taking coercive action till the period of six months of filing a stay petition before the CESTAT, or till the disposal of the stay petition, whichever is earlier.

The instructions in this clause relate to only stay application filed with first stage appeals not to those with further appeals i.e. only in respect of stay applications filed with appeals filed against the Orders-In Original of the Commissioners.

**(vii) Circular No. 12/2008-Cus., dated 24-7-2008 F.No. DGEP/FTP/13/2008-EOU & G&J**

**20. Sale and lease back of capital goods by EOU/EHTP/BTP/STP unit scheme**

Representations were received from Trade Associations to allow sale and lease back of assets of a unit with a Non-Banking Financial Company (NBFC) in the DTA. The sale and lease back transaction would involve sale of assets belonging to a unit to NBFC and then leasing the same back to the unit on operating lease basis. Further, before and after this transaction, the goods will remain under the custody of the unit under bond at all times and there will not be any physical movement of these assets from the unit's premises to that of NBFC either at the time of sale or at the time of lease back. This would improve the financial viability of a unit.

This proposal has been considered. An amendment to this effect and conditions to be followed for this scheme has been incorporated under para 6.4(b) of the FTP.

To implement the above provision, following conditions, safeguards and procedures are required to be observed by the unit undertaking sale and lease back of assets :

(i) The unit should obtain permission from the jurisdictional Dy./Asstt. Commissioner of Customs or Central Excise for entering into transaction of ‘Sale and Lease Back of Assets’ and submit full details of the goods to be sold and leased back and the details of NBFC;

(ii) the unit should be positive NFE at the time when it enters into sale and lease back transaction with NBFC;

(iii) the unit should undertake to pay duty on the goods in case of violation or contravention of any provision of the Notification No. 52/2003-Cus. or 22/2003-C.E. read with the Customs Act, 1962 or the Central Excise Act, 1944 or the Finance Act, 1994 covering Service Tax, as the case may be;

(iv) the unit and NBFC should undertake jointly that the lien on the goods shall remain with the **Customs/Central Excise Department, which will have the first charge in order to enable recovery of sum due to Government under provision of Section**

**142(b) of the Customs Act, 1962 read with the Customs (Attachment of Property of Defaulters for Recovery of Govt. Dues) Rules, 1995.**

### **Provisional Attachment of property**

A new section 28BA has been inserted in the Custom Act, 1962 vide Taxation Laws (Amendment) Act, 2006 with effect from 13.07.2006. This section provides for provisional attachment of property for the purpose of protecting the interests of revenue during the pendency of any proceedings under Section 28 or 28B of the Act. In this regard, CBEC has issued guidelines vide Circular no. 10/2008-Customs dated 30.06.2008 . The circular is reproduced as under:

#### **Circular No. 10/2008- Customs dated 30.06.2008 (F.No. 401/7/2004-Cus.III(Pt.))**

*Subject : Instructions regarding Section 28BA of the Customs Act, 1962.*

Section 28BA of the Customs Act, 1962 (hereinafter referred to as “the Act”) has been inserted by the Taxation Laws (Amendment) Act, 2006, with effect from 13-7-2006. This section provides for provisional attachment of property for the purpose of protecting the interests of revenue during the pendency of any proceedings under Section 28 or Section 28B of the Act.

2. In this connection the Law Ministry has advised that suitable guidelines should be issued to implement Section 28BA of the Act. The following guidelines are, therefore, issued to maintain uniformity in its implementation by field formations.

(i) The proceedings for provisional attachment can be initiated only after issue of Show Cause Notice (SCN) under Section 28 or 28B of the Act.

(ii) During the pendency of the proceedings under Section 28 or 28B of the Act, if the proper officer is of the opinion that, in order to protect the interests of revenue, it is necessary to attach the property of the noticee, he shall prepare a proposal in the format prescribed in the Annexure hereto, and forward the same to the jurisdictional Commissioner of Customs for his approval, except in cases where the proceedings under Section 28 or 28B of the Act are pending before such Commissioner of Customs, in which case he shall himself make the order of attachment, in accordance with the procedure set out in sub-para (iv) below.

(iii) It is important to note that there should be sufficient justification to hold a view that the provisional attachment of property is necessary to protect the interests of revenue. The remedy of attachment being, by its very nature, extraordinary, has to be resorted to with utmost circumspection and with maximum care and caution. The grounds on which the proper officer entertains the reasonable belief that the noticee would dispose of, or remove, the property and the source of his information, if any, should be clearly stated while seeking the previous approval of the Commissioner of Customs. Normally, the proposal to be made to the Commissioner of Customs should be forwarded within one month’s period of the issue of

SCN. It may also be noted that appropriate disciplinary action shall be initiated against the officers who may be found to exercise the powers of provisional attachment of property frivolously and without sound reasons. [Recommendation of the Standing Committee on Finance (Fourteenth Lok Sabha) in its 27th Report.]

(iv) The Commissioner of Customs, on receipt of proposal, or on his own, if he is satisfied that circumstances of the case justify provisional attachment, may serve a notice for provisional attachment on the person on whom notice is served under Section 28 or 28B of the Act, requiring such person to make submissions, in writing or in person or both, within thirty days of the receipt of the notice as to why should the property belonging to such person, and as may be specified in the notice, be not provisionally attached. The said notice should also specify the condition that the noticee should not sell, transfer, mortgage, charge, lease or otherwise alienate or encumber the property specified in the notice, till the decision of the said notice is communicated to him by serving of an order. In case of proposal for provisional attachment of immovable property, the notice should also be sent to the concerned registration authorities with a direction not to allow any sale, transfer, mortgage etc., of the said property.

(v) After due consideration of the materials before him, and after hearing the person, if such person so desires, the Commissioner of Customs may grant approval to the provisional attachment of the property and the proper officer before whom the proceedings under Section 28 or 28B of the Act are pending, may, by order in writing, attach the said property. The Commissioner shall grant such approval, or where proceedings under Section 28 or 28B of the Act are pending before him, order the attachment of the property within 15 days of holding the personal hearing. A copy of the order of provisional attachment should be served by the proper officer in the same manner as prescribed under Section 153 of the Customs Act, 1962.

(vi) The following types of cases may be considered for provisional attachment of property :-

(a) Import or export of goods, including an attempt thereof, involving evasion of duty or grant of ineligible export incentives including drawback;

(b) Claim for or grant of refund of Customs duty in a fraudulent manner, fraudulent availment of or attempt to fraudulently avail of drawback or other export incentives or any exemption from duty.

(vii) The provisional attachment of property shall be resorted to only in a case where the duty or export incentives including drawback, alleged to be involved in the above specified offences is more than Rs. 25 lakhs (Rs. Twenty five lakhs).

**(viii) Period of Attachment:**

(a) The order of provisional attachment of property shall be operational for a period of six months from the date on which the order is served on the noticee. However, the Chief Commissioner of Customs may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, but the total period of extension shall not, in any case, exceed two years.



(b) The order of provisional attachment shall cease to have effect if the noticee pays the entire duty amount along with interest.

(ix) Types of property which can be attached :

(a) Personal property of a sole proprietor or of partners of a firm, importer or exporter shall not be attached. Personal property means any movable or immovable property which is in the personal use of the sole proprietor or partner or importer or exporter. However, immovable property/ properties which is/ are used for any commercial purpose may be provisionally attached.

(b) Movable property should be attached only if the immovable property available for attachment is not sufficient to protect the interests of revenue.

It should also be ensured that such attachment does not hamper normal business of manufacturer importer/exporter or assessee. This would mean that raw materials and inputs required for production or finished goods, in case of manufacturer importer/exporter should not be attached by the department.

(x) **Attachment not to be excessive** : Provisional attachment by arrest or distraint of the property shall not be excessive, that is to say, the property provisionally attached shall be of value as nearly as may be equivalent to that of the amount demanded in the proceedings under Section 28 or Section 28B of the Act.

(xi) **Attachment between Sunrise and Sunset** : The provisional attachment of the property of the concerned person by arrest or distraint shall be made after sunrise and before sunset and not otherwise.

(xii) **Inventory** : After provisional attachment of the property, the Proper Officer shall prepare an inventory of the property attached and specify in it the place where it is lodged or kept and shall hand over a copy of the same to the defaulter or the person from whose charge the property is distrained.

**(xiii) Private alienation to be void in certain cases :**

(i) where a notice has been served on a person for provisional attachment, the person on whom such notice has been served or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the written permission of the Commissioner of Central Excise.

(ii) Where a provisional attachment has been made, any private transfer or delivery of the property attached or of any debt, dividend or other moneys contrary to such provisional attachment, shall be void as against all claims enforceable under the provisional attachment.

**(xiv) Share in property** : Where the property to be provisionally attached consists of the share or interest of the concerned person in property belonging to him and another as co-owners, the provisional attachment shall be made by a notice to the concerned person prohibiting him from transferring the share or interest or charging it in any way.

**(xv) Property exempt from attachment :**

(i) All such property as is by the Code of Civil Procedure, 1908 (5 of 1908), exempted from attachment and sale for execution of a decree of a Civil Court shall be exempt from provisional attachment.

(ii) The decision of the Commissioner of Customs as to what property is so entitled to exemption shall be final.

### Annexure

#### **Proforma for forwarding the proposal for provisional attachment of property to the Commissioner of Customs :**

1. Name and address of the importer/exporter/assessee/person :

2. Division and Commissionerate :

3. IEC No. and Central Excise Registration No. (if any) :

4. Constitution of assessee:

[Proprietorship/partnership/Private Ltd /Public Ltd/Other (specify)]

5. Details of show cause notice :

(i) SCN No. & date, Issuing authority

(ii) Brief facts of the case

(iii) Duty demanded in the SCN

6. Details of the offence cases in last five years for Customs, Central Excise and Service Tax :

7. Details of arrears of duties/taxes pending realisation for Customs, Central Excise and Service Tax :

8. Reasons for provisional attachment of property :

9. Full details of property proposed to be provisionally attached :

10. Value of property proposed to be provisionally attached :

11. Comments, if any :

( )

Signature & Name of AC/DC

Date :

## CHAPTER – TEN

### *EXPORT ORIENTED UNITS*

The EOU scheme was introduced by the Ministry of Commerce, Government of India by Resolution No. 8(15)78 EP, dated 31.10.1980 with a view to encourage exports and garner additional foreign exchange earnings. Under the scheme, import of raw materials, capital goods, consumables etc. are allowed free of Customs duties for manufacture of goods, including repair, re-making, reconditioning, re-engineering and rendering of services for export. The EOU scheme extends to Software Technology Parks (STPs) and Electronics Hardware Technology Parks (EHTPs) for development of software and electronics hardware,

respectively, and Bio-Technology Parks (BTPs). Trading units are not covered under these schemes.

### **10.01 Setting up of EOUs**

10.01.01 Application for setting up of EOU's that conform to the prescribed parameters is submitted to the Development Commissioners concerned for approval.

10.01.02 After receiving approval, the unit has to execute a legal undertaking with the Development Commissioner to fulfill obligations stipulated in the Letter of Permission (LOP) / Letter of Indent (LOI). The LOP/LOI specifies the items of manufacture, annual capacity, and such other matters.

10.01.03 In case of failure to fulfill the export obligation, within the stipulated time, the unit is liable to pay duties on duty free imported/indigenous capital goods, raw materials, etc. and also liable to penal action under the Foreign Trade Development and Regulation Act, 1992. It is provided that the demand of duty along with interest (@15%) should be in direct proportion to the default.

### **10.02 Administrative Control and Joint Monitoring**

10.02.01 The Development Commissioner is overall in charge of the EOUs. In so far as revenue administration is concerned, in Port cities, the administrative control over the EOUs/EHTP/STP/BTP units falling within the territorial jurisdiction of the Commissioner of Customs lies with the Commissioner of Customs. At other places, the administrative control over EOU/EHTP/STP/BTP Units lies with the jurisdictional Commissioner of Central Excise, the only exception being in respect of Bangalore Customs.

10.02.02 In all cases of short levy or evasion of either customs or central excise duties, or both, the Commissioner of Customs or Central Excise, as the case may be, who has administrative jurisdiction over the EOU/EHTP/STP/BTP Units, is the proper officer for investigation, issue of SCN and adjudication. This will not, however, affect the investigation conducted by DRI, DGCEI, which have all India jurisdiction.

10.02.03 The EOUs that satisfy the condition of Large Taxpayer are placed under the control of LTU. In respect of these LTU-EOU, specific functions requiring physical presence of the officers for the purposes as warehousing, sealing or any other work as assigned by LTU will be dealt with by the Commissioner of Customs or Central Excise who has concurrent jurisdiction over the Large Taxpayer – EOUs .

[Notification No.20/2006-CE (NT), dated 30.9.2006]

10.02.04 Concurrent joint monitoring by the Development Commissioners and concerned Customs/Central Excise Officers gives the field staff an opportunity to interact with the officials of Ministry of Commerce/representative of the units, monitor the export performance of the units at periodical intervals, and resolve problems/difficulties being faced by units. Such meetings are also to be utilised to bring cases of misuse/default to the notice of Development Commissioner for taking corrective action as deemed fit. These meetings are also to be utilized to obtain statements/returns/reports being regularly sent by the Units to the Ministry of Commerce and tallying with information/records available with the Customs department. Therefore, the joint monitoring arrangement is also construed as another means to monitor the discharge of export obligations/NFEP of EOUs and enable timely action against the defaulting units to safeguard the interest of revenue

**10.03 Bonding Procedure**

10.03.01 Except where otherwise provided, the operations of an EOU are to be in a Customs bonded area. As per Section 9 of the Customs Act, 1962, public warehouses and private warehouses are issued licenses at a place, which has been declared as a warehousing station. This power vests with the jurisdictional A.C./D.C. of the C. Excise & Customs. Thus, it is required under the Customs Act, 1962 that a place is just declared as a warehousing station under Section 9 of the Customs Act, before a public warehouse are appointed or a private warehouse is licensed. The powers to declare places to be warehousing stations under Section 9 of the Customs Act, 1962 in respect of EOUs have been delegated to the jurisdictional Commissioner of Customs.

[Notification No. 33/94-Cus (NT), dated 1.7.1994]

10.03.02 After the place is declared as a warehousing station, each individual unit has to make an application to the jurisdictional Assistant Commissioner of Customs/Central Excise for issue of licence for a private bonded warehouse. The application should be accompanied by the following documents:

- (i) Copy of Notification or Notification No. declaring the place as a warehousing station under Section 9 of the Customs Act, 1962.
- (ii) Copies of permission from Ministry of Industries, allowing the EOU (3 Copies).
- (iii) Purchase / Sale deed of premises (3 Copies).
- (iv) Abstract of land records issued by local revenue authorities (3 Copies).
- (v) Allotment letter /N.O.C. from local Gram panchayat.
- (vi) NOC from Pollution Control Board.
- (vii) Ground plan duly verified by the jurisdictional Superintendent.
- (viii) Process of manufacture with flow chart of stagewise manufacturing process along with imported and indigenous raw materials required.

- (ix) An undertaking from the applicant, to the effect that they will bear the cost of establishment charges and other charges of the staff posted.
- (x) List of imported machinery and Indigenous machinery for setting up the EOU with its total cost.
- (xi) List of Imported/Indigenous raw materials to be used in the manufacture.

10.03.03 As per Section 61(1a) of the Customs Act 1962, capital goods intended for use in the EOU can be kept in the warehouse for a period of 5 years. However, extension of warehousing period kept the units under pressure of keeping track of warehousing periods and was found to be a major irritant. Accordingly, extension of warehousing of all the capital goods installed or put into use is allowed simultaneously at the time of renewal of warehousing licenses irrespective of the fact that the capital goods are due for extension or not. The period of extension is for such a period so that the capital goods needed further extension only on the date of renewal of warehousing license. Also, this flexibility in warehousing procedure is limited only to capital goods and would not apply in case of raw materials.

[Circular No.7/2005-Cus, dated 14.2.2005]

#### **10.04 Single Bond**

10.04.01 A single all-purpose Bond (B-17) is required to be furnished by an EOU with either surety or security @5% of the Bond amount. The bond amount shall be 25% of the duty leviable on the sanctioned requirement of imported and indigenous raw material plus the duty foregone on the raw materials to be held in stock for three months. The amount will be projected, calculated and certified by the unit.

10.04.02 The Assistant Commissioner of Customs or Central Excise before whom the above bond is executed would issue a certificate stating that the bond has been executed by the unit in his charge. On the strength of this certificate the goods is allowed clearance under the exemption Notification from Port of import/Airport/ICD/another EOU/STP/EHTP/unit in EPZ or Bonded Warehouse to the unit. Also on the strength of this bond, the Bond Officer will permit goods for job work outside the unit. In case the re-warehousing certificate is not received within 90 days of the removal of the goods from a unit or from the date of clearance of imported goods from the port, the Assistant Commissioner in-charge of the port/Airport/ICD/EOU/STP/EHTP etc. or the manufacturing unit shall write to the Assistant Commissioner of Customs or Central Excise in-charge of the EOU to issue demand notice to EOU for recovery of duty.

#### **10.05 Customs and Excise Duty Exemptions**

10.05.01 Capital goods, inputs, raw materials etc. are exempt from the payments of Customs duty when imported for used by an EOU. Similarly, indigenous procurements of these items by an EOU are exempt from payment of Excise duties. The duty exemption is available subject to fulfillment of certain conditions, as follows: -

- (a) The manufacture of the goods by the EOU has to be undertaken in a Custom Bonded Warehouse (relaxation from this is available to EOUs in certain sectors such as aquaculture). For this purpose, it is essential that (i) place where the EOU is being set up is declared as a warehousing station, and (ii) the EOU applies for and is granted a private bonded warehousing licence under Section 59 of the Customs Act, 1962 by the jurisdictional Deputy/Asst. Commissioner.
- (b) The goods on import are transferred under bond to the manufacturers warehouse on execution of a unified all-purpose B-17 Bond.



(c) The unit also obtains licence under Section 65 of the Customs Act for manufacture in bond from the jurisdictional Assistant Commissioner.

(d) The unit has to export out of India 100% or such other percentage as may be fixed by the Board of Approvals for EOUs. These exports have to be effected within a block period of 5 years.

[Notifications No.52/2003-Cus., and No.22/2003-CE, both dated 31.3.2003]

10.05.02 The B-17 Bond executed by the EOU covers an undertaking by the unit to pay on demand an amount equal to the duty leviable on the goods imported duty free that are not proved to the satisfaction of the Asstt. Commissioner of Customs to have been used in the manufacture of articles for export. This liability is, however, not attracted for goods (including rejects) which are allowed to be sold with the due approval of competent authorities in domestic market on payment of appropriate Central Excise duty leviable for goods produced by EOU. Waiver of duty liability on imported materials for wastage's and scrap, and trimmings etc., is provided if cleared for domestic market, subject to payment of certain duties. Certain inter-unit transfers and clearances out of the factory for part processing outside the EOU are also permissible without attracting duty liability on imported materials used in their production/packaging.

#### **10.06 Procurement of Duty Free Goods**

10.06.01 For procurement of duty free goods from the domestic manufacturers, the certificate, given below, is used.

No.....

Date.....

**FORM C.T.3****Certificate for removal of excisable goods under bond**

This is to certify that:

(1) Mr. /Messrs.....(Name and address) is/are *bonafide* licensee holding licence No..... valid up to.....

(2) That he/they has/have executed a bond in Form B-16 (General Surety/General Security). No.....date..... for Rs. .... with the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise..... and as such may be permitted to remove .....(quantity) of .....(excisable goods) from the unit at.....to their undetaking.....at.....

(3) That the specimen signatures of his / their authorised agent namely Shri .....are furnished herebelow duly attested :

Specimen Signatures of the owner or his authorised agent.	Sd./- Attested	Central Excise Officer-in-charge of the 100% Export-oriented Undertaking/Electronic Hardware Technology Park (EHTP) unit/Software Technology Parks (STP) unit
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10.06.02 Supply of goods manufactured in DTA and covered under para 6.6.1 of the HBP to EOU/STP/EHTP/BTP are eligible for deemed export benefits. These goods are procured without payment of duty against CT-3 form and following ARE-3 procedure, which have to be verified and certified by the jurisdictional Customs/Central Excise officer. Even when duty paid/exempted/non-excisable goods are procured without the CT-3/ARE-3 route, the officer in-charge of the EOU has to verify receipt and make endorsement of proof of supplies.

10.06.03 As per procedure, the EOU has to intimate the Superintendent-in-charge of the unit within one working day of arrival of goods, who will then depute a bond officer to conduct physical verification of the goods within 1 working day of receipt of intimation. Based on this verification, endorsement on the invoice copy accompanying the goods is made by the Superintendent in-charge of the unit. However, for EOU's operating under self bonding procedure, necessary alternative is done on the basis of verification and warehousing is the unit itself except in the case of goods received without following ARE-3 where above indicated procedure is followed.

### **10.07 Time Bound Clearances**

10.07.01 Time limit within which applications and permissions relating to EOUs have to be disposed off by the proper officer are prescribed to ensure that the unit do not face any bottlenecks and are able to function in the most time and cost effective manner. The time bound disposal of certain applications under EOU/EHTP/STP/BTP scheme are indicated below:

<b>S.No.</b>	<b>Nature of work</b>	<b>Time for disposal of applications</b>
1	Issuance of Licence under Section 58 and Section 65 of Customs Act, 1962	Five days
2.	Execution and acceptance of B-17 bond	One day
3.	Additional B-17 Bond acceptance	Same day
4.	Extension/Renewal of License	Three days
5.	Issuance of procurement certificate	Same day
6.	Issuance of CT-3 Certificate	Same day

7.	Warehousing of raw-material/capital goods/consumables	One day
8.	Issuance of Re-warehousing certificate of raw-material/capital goods/consumables	One day
9.	Export (subject to 24 hrs advance intimation required to be given by the exporter in case of sealing of goods and examination at the place of dispatch)	Same day or such shorter period as may be mutually agreed
10.	Re-export (subject to 24 hrs advance intimation required to be given by the exporter in case of sealing of goods and examination at the place of dispatch)	One day or such shorter period as may be mutually agreed
11.	Permission for re-export of rejected raw material/capital goods/consumables	Two days
10.	Permission for job work/sub-contract	Five days
13.	Renewal/extension of job work/sub-contract in case of no change in the application	One day

10.07.02 A time bound procedure is prescribed in respect of declaration of warehousing station under Section 9 of the Customs Act, 1962. Accordingly, an EOU may apply to the jurisdictional Commissioner of Customs with a copy of LOP issued by the Development Commissioner giving details of the area, survey number and area map duly certified by the jurisdictional revenue officials. The Commissioner may call for a verification report from the Deputy Commissioner/Assistant Commissioner within three days of the receipt of the application. Within seven days, site verification is to be conducted by the jurisdictional Superintendent and a report to be submitted to the DC/AC. The Deputy Commissioner/Assistant Commissioner will send a report to the Commissioner within a period of three days keeping in mind the following guidelines-

- (i) The industrial development of the proposed area and the need for the warehousing of imported goods should be assessed.
- (ii) Only those place should be notified as warehousing stations where adequate facilities are available for appointing public bonded warehouse.
- (iii) Adequate Central Excise/Customs should be available in the vicinity of the proposed warehousing station and necessary arrangements for training etc of the staff should be made.

10.07.03 Upon being satisfied with the said report, the Commissioner would declare the warehousing station within a period of 10 days. In case, the Commissioner is not satisfied with regard to fulfillment of above said guidelines, the case would be reported to the Board through Chief Commissioner for decision.

[Para 3 of chapter 10 of CBEC's Customs Manual]

## **10.08 DTA Sale and Duty Liability**

10.08.01 The provisions relating to sale of goods in the DTA by an EOU upto a specified percentage of the FOB value of its exported goods and services is dealt with in paragraph 6.8 of the Foreign Trade Policy (FTP) read with the provisions of the Handbook of Procedures (HBP). In general, an EOU can sell 50% of FOB value of its exports in the DTA (10% in case of Gem and Jewellery units), subject to fulfillment of export obligation.

10.08.02 For calculating the FOB value of exports to arrive at the DTA sale entitlement only physical exports and not deemed exports are to be included. The DTA sales entitlement shall ordinarily accrue post export and shall be availed within 3 years of the accrual of the entitlement. However, the FTP does provide for advance DTA entitlement subject to specified conditions. For units manufacturing electronic hardware and software,

the DTA sale entitlement shall be calculated separately for hardware and software. Sale of by-products is also permitted within the overall entitlement of the unit. However, in case a unit is not entitled for DTA sales or in case of sale in excess of the overall DTA sale limit of 50%, by-products may be sold on payment of full duty. Valuation of excisable goods produced or manufactured by an EOU and cleared into a DTA will be in accordance with the Customs Valuation Rule that applies to imported goods. The rate of duty on these clearances would be the rate prevalent on the date of clearance of goods from the Unit.

10.08.03 The procedure of DTA sale by an EOU is delineated in Rule 17 of the Central Excise Rule, 2002. Accordingly, while status holder EOU's can make DTA sale based on intimation to the Development Commissioner and Customs authorities, the remaining units require permission from the Development Commissioner. In respect of advance DTA sales an EOU shall furnish a bond to the Customs/Central Excise authorities to cover the difference of duty paid on the advance DTA sales and full duties applicable on the goods. The DTA clearances are to be made under an invoice on payment of duty by debiting the account current or by utilizing CENVAT. Further, at par with domestic manufacturers, the EOUs are also allowed to pay duty on the goods removed into DTA on a monthly basis.

10.08.04 As per the proviso to Section 3(1) of the Central Excise Act, 1944, excisable goods produced or manufactured by EOUs units and brought to any other place in India, are leviable to duties of excise in an amount equal to the aggregate of the duties of Customs which would be leviable under Section 12 of the Customs Act, 1962 or any other law for the time being in force on like goods produced or manufactured outside India, if imported into India. In general, the goods manufactured or produced by EOUs units and cleared into DTA are charged to excise duty at a concessional rate that is equal to 50% of the duties of Customs plus the Excise duties.

[Notification No. 23/2003-CE, dated 31.3.2003]

10.08.05 An EOU is permitted to sell upto 50% of the goods that are 'similar'. However, DTA sale of a specific product upto 75% of the FOB value of export of the specific product within the over all total entitlement of 50% of total FOB value of exports which can be cleared at concessional rate of duties. Further, EOU are permitted to pay monthly duty on the goods cleared into DTA. Duty paid shall be verified and scrutinized by the proper officer with the help of the returns E.R-2 filed by the units which are furnished monthly within 10 days of the close of the month.

[Circulars No.818/15/2005-CX, dated 15.7.2005, No.7/2006-Cus, dated 13.1.2006 and  
No.12/2008-Cus, dated 24.7.2008]

10.08.06 In terms of Section 9A(2A) of the Customs Tariff Act, 1975, Anti-dumping duty is not levied on EOU's. The intention of non-levy is that the goods imported are eventually exported in the manufacture or production. However, an amount equal to anti-dumping duty foregone on the goods at the time of import shall be paid on the equivalent quantity of goods used for manufacture of any goods which are cleared into DTA or on such quantity of goods which are cleared as such into DTA.

10.08.07 DTA clearance of samples by EOU's is debited to the DTA sale entitlement and is not over and above the normal DTA sale entitlement. Alternatively, the unit may remove samples without payment of duty upon furnishing a suitable undertaking to Customs authorities for return of the goods. Samples may also be sent to other EOU's for display on returnable basis within a period of 30 days.

10.08.08 For sending samples abroad through the courier mode, the prescribed procedure involves sealing of samples in the presence of the jurisdictional customs officer

before presentation by authorized courier before the Customs authorities at the Port/Airport of export. Thereupon, after seal verification for intactness, export may be allowed without further examination.

10.08.09 EOU's are allowed to sell surplus power in DTA on payment of duty on consumables and raw material used for generation of power on the basis of norms approved by the Board of Approvals. Further, such sale of power would not be counted against the domestic sales entitlement of the units. It is also provided for transfer of surplus power to other EOU's without payment of duty but by clearly accounting for the quantity of consumables and raw materials used for generation of power so transferred in the calculation of NFE of both supplying as well as receiving unit .

#### **10.09 Import and Export Procedures**

10.09.01 Imports made by EOUs are eligible for fast track or green channel clearance by the Customs on the strength of procurement certificate issued to the EOU by the jurisdictional AC/DC. In general, the EOU cargo is not examined in the gateway port except in the case of loose cargo, and only the marks and numbers of respective seal and container have to be verified. After verification of seal number and container number with the Bill of Lading, the container is allowed clearance and examination is carried out by the jurisdictional Customs/Central Excise officers on its reaching the unit premises. Re-Warehousing certificate is to be submitted to the AC/DC in-charge of the port of import within 90 days of the removal of the goods from a unit or from the date of clearance of imported goods from the port.

10.09.02 Exports by EOU are governed by examination norms, as applicable for EPCG/DEEC schemes. Accordingly, for export consignments where the FOB value is more than 5 lakhs and being shipped to sensitive destinations like Dubai, Sharjah, Singapore, Hong



Kong and Colombo, the scale of examination is 50% while to non-sensitive destinations it is 10 %. Whereas for export consignments with FOB value less than Rs. 5 lakhs, going to sensitive and non-sensitive destinations, the stipulated scale of examination is 25% and 2%, respectively. However, export consignments sealed by Customs/Central Excise officers shall not be examined except (a) where the seals are found tampered with or, (b) there is specific intelligence in which case, permission of Deputy/Assistant Commissioner would be required. Facility of export through the courier mode in respect of all goods including free samples is also available, subject to the procedure prescribed in this regard by the Customs Authorities.

[Circular No.6/2002–Cus, dated 23.1.2002]

10.09.03 Para 6.17(c) of the FTP allow EOU's the facility to re-export goods or parts found to be defective/damaged or unfit for usage. Accordingly, an application for re-export of such goods shall be expeditiously given by the jurisdictional Assistant/Deputy Commissioner on the day of receipt of such application itself. The other conditions prescribed on this front include

- (a) re-export of defective parts/components and submission of proof of the same to the Customs/Central Excise authorities within 30 days of the removal of the parts/components from its premises.
- (b) Intimation to the jurisdictional Customs/Central Excise authorities on re-import of the replaced parts/components within 48 hours of its arrival along with Customs attested B/E and suppliers/manufacture invoice.
- (c) While seeking permission for re-export documents such as copy of B/E of import, copy of undertaking filed by EOU indicating usual time for repair and return of said goods, certificate from a qualified engineer describing the nature of repair/reconditioning and inability to rectify the same within the country, permission of Development Commissioner, No objection from RBI for export without GR/PP

formalities, correspondence with foreign supplier besides full description and value of the defective part have to be provided.

10.09.04 There is provision for an EOU to receive free replacement for defective goods, prior to re-export of the same. Further, in case the supplier of the defective/damaged components does not insist on return of the items, the same may be destroyed without payment of duty after obtaining permission from the Deputy/Assistant Commissioner of Customs/Central Excise or cleared into the DTA on payment of full customs duty.

#### **10.10 Procurement of Goods From DTA**

10.10.01 The EOUs can procure goods from DTA without payment of central excise duty against the CT-3 certificate issued by the Superintendent of Customs/Central Excise in charge of the EOU. Such goods are to be brought directly from manufacturer/warehouse into the Unit's premises under AR-3A and examined by the designated officer. After examination, the copy of AR-3A is sent to the jurisdictional Central Excise authorities for Re-warehousing certificate in token of receipt of the goods in the Unit. Re-warehousing certificate shall be issued only after physical verification of goods and that it is the responsibility of the bond officer to ensure that the duty free goods are received in the premises of EOU/EHTP/STP/BTP units and are duly accounted for. The requirement of physical verification before issue of Re-warehousing certificate by the proper officer is waived in respect of units having physical export turnover of Rs.15 crores and above in the preceding financial year and having a clean track report as determined by the jurisdictional Commissioner of Customs or Central Excise.

[Circulars No.7/2006-Cus, dated 13.1.2006, No.19/2007-Cus, dated 3.5.2007 and No.12/2008-Cus, dated 24.7.2008]

10.10.02 A unit can also procure spares and components upto 5% of FOB value of manufactured articles exported by the unit in preceding year for the purpose of supply of such spares/components to the same consignor or buyer to whom manufactured articles were exported.

10.10.03 EOU/STP/EHTP/BTP units are allowed duty free re-import of goods within 60 days of close of exhibition for which these goods were exported subject to establishing identity.

### **10.11 Clearance of By-Products, Rejects, Wastage, Scrap etc. and Non-Excisable Goods**

10.11.01 Para 6.8(d) of the FTP allows for DTA clearance of waste/scrap/remnants on payment of concessional rate of duty within over all limit of 50% of FOB value of exports without insisting on achievement of prescribed NFEP and on prior intimation to custom authority. Sale of scrap/wastage/remnants beyond this limit is allowed on payment of full duty. As far as DTA clearance of finished goods (including rejects, waste, scrap, remnants and by-products) that are either non--excisable or are leviabale to nil rate of duty of basic Customs duty and nil additional duty under Section 3 of the Customs Tariff Act, 1975 is concerned, the duty on inputs and consumable etc. procured/imported duty free under exemption notification which have gone into production of such goods cleared in DTA are recovered. Apart from these general concessions, there are some special concessions available for certain products such as ready made garments, gems and jewellery etc.

10.11.02 The EOU itself identifies products, which have a definite manufacturing defect, are not exportable and can be categorized as rejects. The clearance of rejects to the DTA shall be on payment of duty based on an invoice which would clearly bear the stamp

“rejects” and shall be within the DTA sale entitlement of the unit. Rejects may also be destroyed with the permission of the jurisdictional Deputy/ Assistant Commissioner in which case no duty is chargeable.

10.11.03 Para 6.8 (e) of the FTP provides for clearance of waste, scrap and remnants on payment of duty applicable to finished goods sold by the Unit into DTA and such sale shall not be subject to achievement of positive NFE. The norms relating to permissible amount of waste/scrap/remnants will be in accordance to the SION norms notified under the duty exemption scheme.

10.11.04 **Procedurally, on receiving permission from the Development Commissioner for DTA clearance of waste/scrap/remnants, the EOU shall make the clearance on the basis of a Central Excise invoice on payment of duty.**

10.11.05 Destruction of waste/scrap/remnants if done within the unit requires only intimation to jurisdictional Customs officers whereas destruction done outside would require prior permission of the custom authorities. If, after destruction, leftovers are cleared to DTA, then applicable duties have to be discharged.

10.11.06 Used packing materials not fit for repeat use are exempt from duty whether destroyed or cleared from the Unit. Whereas, used packing materials fit for repeat use have to be necessarily cleared on payment of duties. The value to be adopted in this regard is the value at the time of import or clearance from indigenous manufacturer, and the applicable rate of duty being rate prevalent on the date of payment of duty.

## **10.12 Job Work**

10.12.01 Under the EOU Scheme, the EOU/STP/EHTP/BTP Units are allowed to send out goods for job work to the units in the DTA subject to certain prescribed procedures. An EOU can clear raw materials, semi processed goods for job work/processing in the DTA. This permission is to be given after exercising sufficient caution so that the sub contracting facility is not misused thereby causing loss of revenue to the exchequer. Also, an important guideline to be kept in mind is that substantial activity of the manufacture is carried out within the bonded premises of EOU/EHTP/STP units and there is no attempt to parcel out a major part of the manufacturing operation outside the bonded premises.

[Circular No.65/2002-Cus, dated 17.10.2002]

10.12.02 As per the procedure, units sending out goods for job work in DTA shall be required to give an intimation to the jurisdictional officer and a sample of the goods being sent out for job work shall be drawn. On receipt of the goods after job work, the bond officer shall establish the identity of the goods with reference to the samples retained by him at the time of removal. He shall also retain a sample of the processed goods so returned for the purpose of record. After expiry of six months, both the samples shall be returned to the Unit after obtaining the acknowledgement from the Unit.

10.12.03 There is also a prescription to take bank guarantee to cover the duty payable on the goods being taken out for job work. This is however exempt for certain categories of exporter such as status holder units having unblemished track record. The bank guarantee to be provided differ in respect of raw materials and semi-processed goods and the goods sent for job work shall return within a time period of ninety days. However, in respect of moulds, jigs, tools and certain other items, the prescribed time limit to bring back the goods to the premises of EOU/EHTP/STP/BTP Units is six months.

10.12.04 Since, the facility of sending goods on job work to DTA has been misused at times it is also necessary that the officer in charge of the unit shall carry out checks to verify the premises of the job worker , processing capacity of the job worker, existence of facility for carrying out the declared process in the job workers premises etc. It is also prescribed that this verification should be carried out expeditiously within a period of one month from the date of granting permission for job work. Further, this verification may be carried out by visiting the premises of job worker or letter/fax/e-mail to the jurisdictional officer of the job work premises and getting a report in writing.

10.12.05 There is also provision for sub contracting part of the production process abroad and send intermediate products abroad. In general, sub-contracting is allowed based on an annual permission given by the Custom authorities. In case the job worker in the DTA is registered with Central Excise, export of finished goods directly from the job worker's premises is permissible. However, there is restriction on allowing exports directly from the job worker's premises in case it is through third parties.

10.12.06 Scrap/waste/remnants generated at the job worker's premises may be cleared to DTA on payment of duty from the said premises if registered with Central Excise. Alternatively, they may be returned to the EOU or destroyed in the presence of Central Excise/Customs officials. An EOU may also move moulds, jigs, tools etc. to the job worker's premises subject to their being brought back after completion of job work.

10.12.07 For expeditious processing of job work application, it has been prescribed that permission for job work shall be given within a maximum of 5 days and extension when sought within 1 day.

10.12.08 The facility of sub contracting of the production to the units under DTA is also available to Gem and Jewellery units operating under EOU scheme. Such units sending

goods for job work or production of goods into DTA would be allowed wastage as per specified units. However, no cut and precious diamonds, processed or semi-processed stones would be allowed to be taken out of the units for sub contracting.

### **10.13 Inter-unit Transfer**

10.13.01 In terms of para 6.13 of FTP, the EOU/STP/BTP/EHTP units can transfer manufactured goods/capital goods to other EOU/STP/EHTP/BTP or give the same on loan basis. This is allowed with prior intimation to concerned Development Commissioner and Customs authorities, following procedure of in bond movement of goods. Goods supplied by one unit of

EOU/EHTP/STP/BTP to another unit shall be treated as imported goods for second unit for payment of duty, on DTA sale by second unit.

10.13.02 Transfer of manufactured goods shall also be allowed from EOU/EHTP/STP/BTP unit to a SEZ Developer or unit following procedure prescribed in SEZ Rules, 2006. Goods would be removed from one EOU/EHTP/STP/BTP to another under the cover of ARE-3. However, the goods to be transferred shall be properly examined by the bond officer and sealed in his presence before dispatch to the other EOU/EHTP/STP/BTP unit. The jurisdictional Customs/Central Excise officer in-charge (bond officer) of the receiving unit shall examine the seal on receipt of the goods in the premises of receiving unit and if the seals are found intact, issue necessary re-warehousing certificate. In case of discrepancy in seals the goods may be examined to verify proper receipt before issue of such re-warehousing certificate. The procedure in respect of transfer of manufactured goods and capital goods by an EOU to SEZ is covered under Rule 30 of the SEZ Rules, 2006, as follows:

- (a) SEZ unit shall file Bill of Entry with complete description of the goods such as model, make, serial number, etc. with the Deputy/Assistant Commissioner of Customs for

assessment and submit assessed Bill of Entry to Customs Officer in charge of the EOU.

- (b) EOU shall file Ex-bond Shipping Bill indicating the goods to be cleared to SEZ unit.
- (c) The clearance shall be allowed without payment of duty.
- (d) On receipt, the SEZ unit shall obtain endorsement from the Customs Officers on the copy of Ex-bond Shipping Bill and send it to the Customs Officer in charge of the EOU within 45 days from the date of clearance otherwise the duty shall be demanded from the EOU.

10.13.03 The re-warehousing certificate in respect of transferred goods must be received by the Customs authorities in charge of the sender EOU within 90 days failing which duty liability is fixed on the sender EOU. In respect of transfer to SEZ, the time limit stipulated for the receipt of re-warehousing certificate is 45 days only.

10.13.04 Temporary removal of Laptop computers and video projection systems is allowed merely on intimation of authorization issued by the unit for its removal and maintenance of proper record of such authorization.

[Circular No.17/2003-Cus, dated 24.3.2003]

#### **10.14 Conversion of Units**

10.14.01 **Types of conversion of units under the EOU/EHTP/STP/BTP schemes include:**

- (a) A DTA unit converting to the EOU/EHTP/STP/BTP schemes
- (b) A DTA unit working under the EPCG/Advance Authorisation converting to the EOU/EHTP/STP/BTP schemes



- (c) An EHTP/STP unit converting to an EOU and vice versa
- (d) An EOU shifting to a SEZ

10.14.02 For conversion of an empty DTA unit into an EOU, an application to the Development Commissioner needs to be made, specifying whether full conversion or partial conversion is sought. Depending on factors such as the DTA unit having a pending export obligation under the EPCG or under the Advance Authorisation scheme, after verification of stocks of un-utilised materials by the Customs/Central Excise Authority, the Regional Licensing Authority shall determine export obligation.

10.14.03 Conversion of an existing DTA unit into an EOU may also be permitted. For this purpose the DTA unit may apply to the SIA in the same manner as applicable to new units. No concession in duties & taxes shall, however, be available for plant machinery and equipment already installed.

10.14.04 If an individual unit is operating, both as a domestic unit as well as an EOU, it shall have two distinct identities with separate accounts – to be able to distinguish between their import and export or supplies effected by the EOU and the DTA unit. Also, at time both EOU as well as the DTA unit function from the same or adjacent premises. At times some of the utilities may also be common to both the DTA and the EOU. In such situation the possibility of goods imported duty free under the various EOU schemes, being diverted for use by the DTA unit cannot be ignored. Further, the possibility of transfer of production from one unit to another for obtaining tariff concession available to either unit is also real. Particularly since a customs officer will not be physically present at all times, it is always possible to use the equipments imported for the EOU for production in DTA and further to show goods produced in the EOU as the manufacture of the DTA unit or *vice versa*. Thus, besides insisting upon complete physical segregation between DTA unit and EOU/EHTP/STP, etc. units whenever requests for partial conversion/debonding are received, the possibilities which have adverse implications on revenue have to be necessarily taken care of. And also

the facility of partial conversion, debonding resulting in operation of DTA and EOU/EHTP/STP, etc. units from common or adjacent premises is to be carefully monitored. Preventive checks at regular intervals should necessarily be carried out to ensure against the utilisation of EOU facilities for DTA manufacture. Further goods manufactured by EOU or DTA unit must be correctly reflected in the separate records of the respective unit.

[Circular No. 38/95-Cus, dated 17.5.1995]

### **10.15 Pre-Authenticated Procurement Certificate**

10.15.01 Under para 6.39 of Handbook of Procedure, there is a facility of importing goods without payment of duty on the basis of pre-authenticated procurement certificates (format given below) to units having a physical export turnover of Rs.15 crores and above in the preceding financial year and having a clean track record. The unit shall ensure that the consignment under clearance under such pre-authenticated procurement certificate is covered by the B-17 bond amount. The procedure of in-bond movement, examination, bonding and issue of re-warehousing certificate will be followed as usual. There is provision to withdraw the facility of pre-authenticated procurement certificate in case of any gross misuse/abuse of the EOU scheme.

**Certificate for procurement and movement of imported goods/**

**excisable goods without payment of duty.**

This is to certify that :-

(1) M / s..... (Name & Address)..... is/ are registered in this range of division ..... of Central Excise /..... Commissionerate.

(2) The said registrant has executed a bond prescribed for them for Rs. ....with appropriate surety.

(3) This registration authorities him/her/them to obtain/ clear (name of the product) falling under Chapter No .....heading No. ....of the Central Excise Tariff/Customs Tariff at nil rate of duty under Notification No. ....dated ..... 1998 from .....Port/ ICD/ EOU/ EHTP/ STP/ EPZ unit or Bonded warehouse for the manufacture of ...../use at..... .

(4) The said goods may be allowed clearance of at nil rate of Duty under intimation to undersigned.

Supt. Customs / Central Excise

To

**(Address of the Officer / Custom Officer)**

[Circular No.7/2006-Cus., dated 13.1.2006]

## **10.16 STP Units**

10.16.01 The Software Technology Park (STP) scheme was initially notified by the Ministry of Commerce and Industry in 1995. Essentially, the STP units are EOU's developing software for export using DATA communication link or in the form of physical export including export of professional services. Under the scheme, the units are either "stand alone" individual units or units located in a software technology park complex which may be set up by state or central government, public or private sector undertaking. Software Technology park of India (STPI), a non-profit society under the Ministry of Information Technology, has centres set up across the country to facilitate units by offering all statutory services and other infrastructure requirements such as high speed data connectivity etc. Under the STP Scheme the call centre service has been recognized as a growing area of export. The STP scheme is largely similar to the provisions under the EOU scheme in terms of procedural requirements, as follows:.

- (a) On approval by the Inter Ministerial Standing Committee (IMSC) in the Ministry of Communication & Information Technology, the Unit applies to the jurisdictional Deputy/Assistant Commissioner of customs or Central Excise for issue of a private bonded warehouse license under section 58 of the Customs Act 1962 and manufacture in bond permission and section 65 of the said act.
- (b) STP units do not pay establishment charges for the Customs staff except for overtime charges for bonding for duty free procured goods.
- (c) STP units maintain records as prescribed by the officers of the ISML in tune with the requirement of the manufacture and other operation in Warehouse Regulations, 1966. The monitoring & inspection of the software generated and its regulation is done by the Designated officers (equivalent to the Development Commissioner). The Units file a Export Declaration Form (SOFTTEX) in lieu of GR Form and the shipping bill required under Section 50 of the Customs Act, 1962. A copy of the Export Declaration Form in the nature of a weekly statement containing details of transmission in terms of time and length of transmission, destination of transmission, software export contract and software export is furnished to the Designated officer with a copy to the jurisdictional Deputy/Assistant Commissioner of Customs.
- (d) Import of software through data-communication/telecommunication link and its proper accountal and verification is allowed. Accordingly, the annually approved requirements (approved by Development Commissioner/Director STPI) are communicated to the jurisdictional Deputy/Assistant Commissioner of Customs or Central Excise. Subsequently a Certificate from the Director, STPI/Development Commissioner is provided to the jurisdictional Customs/Central Excise authorities for each import within 48 hours of each import. A Bill of Entry, the Certificate along with other relevant document such as invoice is also filed within 48 hours of import for obtaining notional 'out of charge'.
- (e) DTA sale of software can be made through data communication/telecommunication link subject to Director, STPI certifying valuation.

**10.17 EHTP Units**

10.17.01 The EHTP scheme, meant for manufacture and export of electronic hardware and software in an integrated manner is designed on the basis of the EOU scheme and the provisions of the Foreign Trade Policy contained in Chapter 6 relating to EOU's apply to the EHTP units as well. The EHTP units are accordingly bonded by customs, subject to supervision of Customs staff. EHTP units can procure/import goods free of duty.

**10.18 Granite EOUs**

10.18.01 Granite based EOUs can transfer/supply specified capital goods and inputs to the quarries, which are either on lease or owned by them. The granite so quarried would be brought back to the EOU for further manufacturing/processing and export thereof. While the granite so quarried cannot be exported as such or sold in the DTA, they may be supplied to other granite processing EOU without payment of duty. An option is available to EOU's in the granite sector for payment of excise duty on the DTA sale of goods manufactured by such units wholly from the indigenous raw materials and also by use of duty paid imported inputs upto 3% of the FOB value of exports in the proceeding financial year. This facility has been extended keeping in mind that these Units use minimal imported inputs and if required to pay applicable Customs duty on DTA sales, would make them economically unviable.

**10.19 Agriculture/Horticulture/Aquaculture EOUs**

10.19.01 The special provision available to EOU's in this sector is the facility of contract farming wherein specified duty free goods can be sent out of the unit for the purpose of contract farming. According to prescribed procedure, units that are in existence for less

than 2 years shall be required to furnish bank guarantee equivalent to the duty foregone on the goods proposed to be taken out for the purpose of contract farming

## **10.20 Gems and Jewellery EOUs**

10.20.01 Within the EOU scheme, the Gem and Jewellery sector has been identified as a high growth sector in terms of foreign exchange earnings and accordingly certain special facilities have been provided to this sector, as follows:

- (a) Goods, finished or semi-finished including studded jewellery can be taken out for sub-contracting and brought back to the unit within 90 days. This however, shall not be allowed in respect of cut and polished diamonds, precious, semi-precious stones (except precious, semi-precious and synthetic stones having zero duty).
- (b) The EOUs can receive plain gold/silver/platinum jewellery from DTA/EOU/SEZ units in exchange of equivalent quantity of gold/silver/platinum contained in the said jewellery.
- (c) DTA units undertaking job work or supplying jewellery against exchange of gold/silver/platinum shall however not be entitled to deemed export benefits.
- (d) Personal carriage of gold/silver/platinum jewellery, cut and polished diamonds, precious, semi-precious stones, beads and articles as samples upto US\$1,00,000 for export promotion and temporary display or sale abroad by the EOU is also permitted with the approval of the Development Commissioner subject to condition that the EOU shall bring back goods or repatriate sale proceeds within 45 days from the date of dispatch through normal banking channels. Further, the unit shall declare personal carriage of the samples to Customs while leaving the country and obtain necessary endorsement.
- (e) Import/export through personal carriage of Gem and Jewellery items may be undertaken as per procedures prescribed by the Customs. For this para 6.27 of Handbook of Procedure specify the documents to be submitted by the EOUs as a

proof of export. Export of jewellery including branded jewellery for display and sale in the permitted shop set up abroad, or in the showroom of the distributors or agents is also allowed provided that items not sold abroad within 180 days shall be re-imported within next 45 days.

- (f) In respect of Gem and jewellery EOU, from the date of release of gold/silver/platinum on loan basis or outright purchase from the nominated agencies, there is a stipulation that they have to export gem & jewellery within 90 days.

### **10.21 Debonding**

10.21.01 Normally, EOUs request for debonding either after expiry of its Letter of Permission (LOP) or if it finds it uneconomical to continue to operate under the EOU scheme. The procedure for debonding is that the Unit has to approach the Development Commissioner for "in principle" debonding permission, then pay all pending Customs/Central Excise dues, obtain a No Objection Certificate from the Customs/Central Excise officers and then go back to the Development Commissioner for final debonding. A time bound procedure is prescribed to facilitate debonding from EOU Scheme. Accordingly, the EOU/EHTP/STP/BTP Unit proposing to debond have to intimate the Development Commissioner and jurisdictional Customs/Central Excise authority in writing. The Unit would itself assess the duty liability and submit details of such assessment to the jurisdictional Customs/Central Excise authority. The Deputy/Assistant Commissioner of Customs/Central Excise would be required to confirm the duty liability on priority within 15 working days of receipt of details of assessment from the Unit. Further, he shall issue "No Due Certificate" to the unit after payment of duties and other dues. In case of any discrepancy, he shall convey it to the Unit within the said 15 days. On receipt of the above mentioned "No Due Certificate", the Unit shall apply to the Development Commissioner for debonding. Before issuing a No-dues Certificate for exit from the EOU scheme, it has to be

ensured that the unit has achieved positive NFE taking in to consideration the rate of depreciation allowable on the goods.

[Circular No. 12/2008-Cus, dated 24.7.2008]

10.21.02 In the situation where debonding request are received from EOUs and Show Cause Notices or demands are pending against them the debonding may be allowed on furnishing of undertaking on stamp paper along with Bank Guarantee of 10% of the amount involved. Further, where the Unit has furnished surety or security along with the B-17 bond its requires to adjust the 10% of duty out of the said Bank Guarantee may be considered after first ensuring the Bank Guarantee is valid.

10.21.03 Debonding or exit from EOU scheme to the EPCG scheme or Advance Authorization scheme is allowed subject to the EOU achieving positive NFE in terms of paragraph 6.18(d) and 6.18(g) of the Foreign Trade Policy, respectively.

[Circulars No.8/2004-Cus, dated 28.1.2004 and No.55/2004-Cus, dated 14.10.2004]

## **10.22 Depreciation of Capital Goods**

10.22.01 **Notifications covering EOU/EHTP/STP/BTP units allow clearance of capital goods into DTA on payment of duties (Customs/Excise depending on whether the goods are imported goods or locally procured goods) either on the depreciated value thereon or on the transaction value, whichever is higher. The duty to be calculated is fixed at the rate in force on the date of payment of such duties. The rate of depreciation would be at the rate of 20% p.a. or part thereof, of the invoice value in respect of IT products and 10% p.a. or part thereof, in case of other capital goods. There is no upper cap and depreciation upto 100% can be allowed. For calculating depreciation, the period shall be from the date of commencement of commercial**



**production of the EOU or where such goods are received after such commencement from the date of such goods having come to use for commercial production till the date of payment of duty.**

### **10.23 Demand of duty from the defaulting units**

10.23.01 In case of failure to fulfill the export obligation, within the stipulated time, the unit is liable to pay duties on duty free imported/indigenous capital goods, raw materials, etc. and also liable to penal action under the Foreign Trade Development and Regulation Act, 1992. It is provided that the demand of duty along with interest (@15%) should be in direct proportion to the default.

10.23.02 The duty and interest will also be demanded from the units who have failed to –

- (a) Install or use or re-export the capital goods within a period of one year from the date of importation or procurement or within the extended period as may be allowed by the Assistant Commissioner;
- (b) Use or re-export/return the imported/indigenous goods, procured duty free (other than capital goods) within a period of one year or within the extended period, permitted by the Assistant Commissioner.
- (c) To export the manufactured/produced/package goods within one year or within such extended period by the AC, from the date of importation or procurement of imported or indigenous goods.

10.23.03 **In respect of recovery of duty in event of non-fulfillment of export obligation by EOU after the block of 5 years, final decision would be taken by Development Commissioner with respect of fulfillment of export obligation as far as possible within six months, and positively within one year. When no final decision is received from the Development Commissioner/Director STP within a period of six months after the expiry of five years block year, the matter may be taken up immediately by the jurisdictional Customs/Central Excise**

**authority so that a decision regarding status of achievement of NFE is not delayed beyond one year and action is initiated for recovery of duty from the defaulting unit without delay.**

[Circular No.12/2008-Cus, dated 24.7.2008]

#### **10.24 Checking of Records**

10.24.01 The presently sanctioned Cost Recovery Officers/bond officers shall examine the records of the Unit and transactions undertaken by the unit at least once in a month. Further the audit of the records of the Unit may also be undertaken by Customs. The amended "Manufacturing & Other Operation in Warehouse Regulations 1966" provide in regulation 11 that the Chief Commissioner may order special audit of the unit by a Cost Accountant (CA) nominated by him in this regard. Cost audit will be employed as a tool to check the correctness of raw material, quantity used, finished goods produced or other such situations. The Chief Commissioner will form a panel of CA's and fix the rate of charges to be received by the said Cost accountant.

10.24.02 A system of accounting of inputs/raw materials based on the SION has been introduced for checking of records. For items having no SION, consumption of inputs is to be allowed subject to generation of waste, scrap and remnants upto 2% of input quantity. Similarly, scrap/waste/remnants arising out of production process or in connection therewith is to be sold in DTA as per the SION notified under the Duty Exemption Scheme.

10.24.03 Rule 17 of the Central Excise Rules, 2002 provides for calling for verification of documents and return by the scrutinizing officer. Board also has outlined the procedure and manner of scrutinizing of the ER-1, ER-2 and ER-3 returns. According to the prescribed procedure, besides the details of clearance into DTA/export, a detailed account of duty free imported/indigenous inputs is also to be furnished.

[Circular No.818/15/2005-CX, dated 15.7.2005]

### **10.25 Levy of Interest on Customs Duty under Section 61 of the Customs Act, 1962.**

10.25.01 The normal warehousing period in respect of capital goods warehoused by EOUs has been fixed for five years, which is further extendable. Accordingly, exemption on specified items (e.g. capital good, components, spares of capital goods and equipment, permissible office equipment for STP/EHTP, captive power plants, tools, etc.) is given from interest accrued on the Customs duties payable on warehoused goods at the time of clearance from Customs bonded warehouses.

10.25.02 Special treatment is available to EOU's in matters relating to waiver of interest on Customs duty on warehoused goods. Accordingly, among the categories of goods which are eligible for consideration of waiver of interest are goods imported by EOU's. Further, the waiver of interest would be taken up for consideration of completion of the export obligation period. Here again the demand for interest is not enforced and the activity of the EOU is allowed to continue and only after completion of export obligation period/at the time of de-bonding is the issue of interest examined. It is also provided that cases relating to interest accrued on scrap generated during the manufacturing activity of EOU's are to be referred to the Board.

[Circular No.10/2006-Cus., dated 14.2.2006]

### **10.26 Supervision and Cost Recovery Charges**

10.26.01 **All EOU's must work under Customs bond and therefore are subject to supervision of the Custom Officers. This supervision could mean posting of officers at the unit on cost recovery basis or on need basis by payment of overtime fees. In respect of the arrangement of supervision by payment or overtime basis, the EOU staff intimate the jurisdictional bond officer on receipt of goods for purposes of issue of warehousing certificate besides at the time of clearance of finished goods/reject into the DTA.**

10.26.02 An EOU is to maintain certain prescribed records which include:

- (a) Daily receipts and issue of indigenous and imported raw materials and other goods
- (b) Daily work register
- (c) Finished goods register
- (d) Stock register for capital goods, components etc.
- (e) Rejects register
- (f) Export register

10.26.03 The Inspector/PO (Bond Officer) shall monitor goods movement and records maintenance on daily basis. The Superintendent of Customs/Central Excise in charge of the Unit shall inspect the bonded premises once in a month and verify stocks while the jurisdictional Deputy/Assistant Commissioner is expected to visit the bonded premises once in 3-6 months and inspect the maintenance of records. Further, periodic audit of EOU's is done by Central Excise officers (regardless of the fact that an EOU may be under the administrative control of the Commissioner of Customs).

10.26.04 **The role of Preventive Officer and Superintendent incharge of EOU is largely similar to the role of the bond officer and bond superintendent, which have been dealt with in detail in the Chapter relating to Warehousing. However, the following functions and duties of the Preventive Officer may be kept as broad guidelines:**

- (a) Regular maintenance and up keep of all prescribed records relating to imports/exports, domestic procurement of goods and consumption of raw materials.
- (b) Monitoring of inter unit transfer of goods including the proper receipt back into unit and accounting thereof

- (c) Verification of usage of raw material, percentage of waste generated, clearance of finished goods from time to time to ensure that no diversion of raw materials or finished goods is taking place into DTA without payment of duty.
- (d) Monitoring regularly the warehouse bonds executed by the unit, payment of cost recovery charges etc.
- (e) Issue re-warehousing certificate only after physical verification of goods except in cases where physical verification is not mandatory
- (f) Monitor closely the receipt of warehousing Certificates and prompt issue of demand of duty in case of non-receipt, conducting scientific study of the input/output norms and production pattern of the unit and recommending special audit if required.
- (g) The Superintendent in-charge of the unit is expected to supervise the proper maintenance of records and inspection of the unit as the entire check on the EOU is on record basis.

10.26.05 **Cost recovery charges are recovered from an EOU in lieu of expenses incurred by the Government for the posting of Customs/Central Excise staff at its premises to supervise the operation of manufacture in bond. The charges are determined at an amount equivalent to the actual salary and emoluments of the staff deployed i.e., the average pay and allowances including DA, HRA, CCA etc. The EOU pays in advance the cost recovery charges determined for the entire year. However, the EOUs have the option of using the services of custom/Central Excise officers on overtime fee basis, which would apply to all work even during normal office hours.**

### **10.27 Misuse of the EOU Scheme:**

10.27.01 **The EOU scheme provides for a lot of duty concession to the unit and thereby provides scope for misuse of the scheme to wrongfully avail the duty concessions available. Besides the violation of non fulfillment of export obligation/NFE, which are dealt with in earlier headings, there are instances noticed of blatant violation of the EOU scheme. Broadly, the problem areas in the EOU scheme which have been noticed since the inception of the scheme are as follows:**

- (a) Diversion of raw materials
- (b) Clandestine sale of final products

- (c) Selling away of the machinery
- (d) Wrongful application of duty rate in the DTA sales
- (e) Excessive procurement of raw materials than required and coupled with tampering of the re-warehousing Certificate, leading to diversion of duty free materials.
- (f) Availing excess DTA sales at concessional duty by inflating the figures of FOB value of exports
- (g) Short payment of duty on DTA sale by under invoicing and/or misclassification.

10.27.02 Considering susceptibility of EOU scheme to misuse, it is important that the officers concerned understand the product manufactured by the EOU, its market premium, chances of diversion and identify areas prone to mis-use. Proper maintenance of records and its regular inspection by the jurisdictional officers along with alertness would check misuse of the scheme.

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Note: The following Notifications and Circulars are important.

1. Customs Notifications (Tariff)

Notification No.89/82-Cus, dated 25.3.1982

Notification No.153/93-Cus, dated 13.8.1993

Notification No.5/94-Cus, dated 18.11.1994

Notification No.62/2004-Cus, dated 10.5.2004

Notification No.20/2006-Cus, dated 1.3.2006

2. Customs Notifications (Non-Tariff)

Notification No.28/2002-Cus. (N.T.), dated 13.5.2002

Notification No.76/2003-Cus. (N.T.), dated 10.9.2003

Notification No.132/2004-Cus. (N.T.), dated 25.11.2004

3. Central Excise Notifications (Tariff)

Notification No.24/98-C.E., dated 5.8.1998

Notification No.24/2003-C.E., dated 31.3.2003

4. Central Excise Notifications (Non-Tariff)

Notification No.36/2001-C.E. (N.T.), dated 26.6.2001

Notification No.38/2001-C.E. (N.T.), dated 26.6.2001

Notification No.42/2001-C.E. (N.T.), dated 26.6.2001

Notification No.66/2003-C.E. (N.T.), dated 10.9.2003

Notification No.5/2006-C.E. (N.T.), dated 14.3.2006

Notification No.31/2007-C.E. (N.T.), dated 2.8.2007

5. Circulars

Circular No. 1/2002-Cus, dated 8.1.2002

Circular No. 614/5/ 2002-CX, dated 31.1.2002

Circular No. 631/ 22/2002-CX, dated 28.3.2002

Circular No. 47/ 2002-Cus, dated 29.7.2002

Circular No. 662/ 53/2002-CX, dated 17.9.2002

Circular No. 66/ 2002-Cus, dated 8.10.2002

F.No. 305/119/ 2000-FTT, dated 17.10.2002

F.No. 305/95/2000-FTT, dated 25.11.2002

Circular No. 91/ 2002-Cus, dated 20.10.2002

Circular No. 3/2003-Cus, dated 14.1.2003

Circular No. 693/9/ 2003-CX, dated 13.2.2003

Circular No. 13/2003-Cus, dated 3.3.2003

Circular No. 22/ 2003-Cus, dated 31.3.2003

Circular No. 26/ 2003-Cus, dated 1.4.2003

Circular No. 30/ 2003-Cus, dated 4.4.2003

Circular No. 31/ 2003-Cus, dated 7.4.2003

Circular No. 38/ 2003-Cus, dated 6.5.2003

Circular No. 41/ 2003-Cus, dated 14.5.2003

Circular No. 53/ 2003-Cus, dated 23.6.2003

Circular No. 109/ 2003-Cus, dated 19.10.2003

Circular No. 1/2004-Cus, dated 5.1.2004

Circular No. 6/2004-Cus, dated 27.1.2004

Circular No. 16/ 2004-Cus, dated 16.2.2004

Circular No. 36/ 2004-Cus, dated 24.5.2004

Circular No. 799/32/2004-CX, dated 23.9.2004



Circular No. 12/ 2005-Cus, dated 4.3.2005

Circular No. 51/ 2005-Cus, dated 9.10.2005

Circular No. 3/ 2006-Cus, dated 10.1.2006

Circular No. 828/5/2006-CX, dated 20.4.2006

Circular No. 17/ 2006-Cus, dated 1.6.2006

Circular No. 18/ 2006-Cus, dated 5.6.2006

F.No. 381/145/ 2005, dated 6.6.2006

Circular No. 2/2007-Cus, dated 9.1.2007

Circular No. 15/ 2007-Cus, dated 20.3.2007

Circular No. 16/ 2007-Cus, dated 18.4.2007

Circular No. 851/9/2007-CX, dated 3.5.2007

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## **CHAPTER – NINE(REVISED)**

### **EXPORT PROMOTION SCHEMES AND SPECIAL ECONOMIC ZONES**

Under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 the Central Government is empowered to formulate the Foreign Trade Policy. Similarly, in pursuance of provisions of paragraph 2.4 of the Foreign Trade Policy, the Director General of Foreign Trade notifies the Handbook of

Procedures which lays down the import and export procedure and ITC (HS) Classification of Export and Import items, which indicates the item-wise restrictions, if any, on import and export. The current Foreign Trade Policy 2004 - 2009 focuses on the need to allow the exporters to market their products globally and operate in a hassle free environment and its chief objectives are (i) to double country's percentage share of global merchandise trade within the Policy period; and (ii) to act as an effective instrument of economic growth by giving a thrust to employment generation.

Accordingly, to encourage qualitative and quantitative improvements in export of indigenous goods the Government has outlined many export incentives, apart from the provisions of 'Duty Drawback' under the Customs Act, 1962. These Export Promotion measures/Schemes are enumerated in Chapters 3, 4, 5 and 6 of the said Foreign Trade Policy and include SFI Scheme, VKGUY Scheme, Focus Market Scheme, Focus Product Scheme, HTPEP Scheme, Advance Authorization Scheme, DEPB Scheme, DFIA Scheme, Gem & Jewellery Scheme and EPCG Scheme. In addition, the export promotion measures include incentives for EOUs, SEZs, STP/EHTP/BTP, and recognition of Deemed Exports and privileges of status holder exporters.

### **11.01 Duty Drawback Scheme**

11.01.01 “Drawback” in relation to any goods manufactured in India and exported, means the rebate of duty or tax, as the case may be, chargeable on any imported materials or excisable materials used or taxable services used as input services used in the manufacture of such goods. The Drawback scheme is prescribed vide Section 75 of the Customs Act, 1962, Section 37 of the Central Excises Act, 1944 and Sections 93A and Section 94 of the Finance Act, 1994 read with the Customs and Central Excise Duties and Service Tax Drawback Rules,

1995. Under this scheme, drawback is allowed not only of the duties incurred on the direct inputs or raw materials and components utilized in the manufacture of export goods, but also of the earlier inputs that go into the manufacture of the said raw materials and components. Drawback also takes into consideration the wastages involved in the manufacture and the duty incidences on the packing materials used in the export of the goods. Drawback rates are fixed on the basis of either the average of duty incidences on the materials or of actual duties paid by manufactures. These rates are announced either for a class of goods commonly known as All Industry Rates or for manufacture of specific goods by a particular manufacturer termed as “Brand” rates. In terms of Section 74 of the Customs Act 1962 duty Drawback is also available whereby part of the Customs duty paid at the time of import is remitted on re-export of the goods subject to its identification and prescribed procedure being followed.

**11.01.02 Checklist for Sanction of Drawback under Section 74:**

- (a) Identity of the goods being exported is established with respect to import documents.
- (b) Imported goods are entered for export within two years from date of payment of duty on the importation thereof. However, the said period of two years in any particular case may, on sufficient cause being shown, be extended by the Chief Commissioner up to three years. Board is empowered to consider further extension in the said period beyond three years.
- (c) No Drawback is admissible if goods used after importation are entered for export beyond 18 months from date of payment of duty on their importation.
- (d) When goods specified below are used after importation, Drawback of import duty paid thereon shall not be allowed on their export.
  - (i) Wearing Apparel

- (ii) Tea-chests
- (iii) Exposed cinematograph films passed by the Board of Film censors in India
- (iv) Unexposed photographic films, paper and plates, and X-ray films

[Notifications No.19-Cus, dated 6.2.1965 and

No.33/94 -Cus, dated 1.7.1994]

11.01.03 **Checklist for Sanction of Drawback under Section 75:** While examining the goods for export under Drawback or processing claims of Drawback, it should be noted that Drawback is not admissible if,

- (a) Market price of goods exported is less than the amount of Drawback due.
- (b) Drawback due is less than fifty rupees.
- (c) Drawback due is less than 1% of FOB value (except where the amount of Drawback is more than Rs 500/-).
- (d) Goods exported are manufactured partly or wholly in bond under Section 65 of the Customs Act, 1962, by an EOU and inputs obtained without duty.
- (e) Sale proceeds are not realized within time limit.

11.01.04 In EDI processing of Drawback Shipping Bills, feeding of timely and correct stuffing report by Preventive Officer is important and crucial since delayed or incorrect stuffing reports or data entry errors such as incorrect container numbers result in EGM error that ultimately delays processing of Drawback claims even when physical export has already been effected. Preventive Officers posted at CFSs/ICDs should take extra care in timely feeding of correct stuffing report.

[For statutory provisions and procedures please refer to Sections 74, 75, 75 A and 76 of the Customs Act 1962 and the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995 and Circulars No.7/2000-Cus, dated 24.5.2000 (Drawback claim on forged documents) and No. 5/2003-Cus, dated 21.1.2003 (Drawback claim on misdeclared goods) may also be referred.]

## **11.02 Served from India Scheme (SFIS)**

11.02.01 Para 3.6.4 of the Foreign Trade Policy deals with the provisions of the Served From India Scheme whose objective is to accelerate growth in export of services so as to create a powerful and unique 'Served from India' brand. Under this scheme all service providers (individual service providers who are able to earn total foreign exchange of Rs.5 lakhs or more in the preceding financial year and other service providers who earn total foreign exchange of at least Rs.10 lakhs in the preceding or current financial year) of services listed in Appendix 10 of the Handbook of Procedures will be eligible for Duty Free Credit Entitlement benefit @ of 10% of total foreign exchange earned. Hotel Industry, health care and educational institutions are included in the list of eligible beneficiaries. In the case of stand-alone restaurants and golf resorts having catering facility, the entitlement will also be 10% and in the case of hotels (including heritage hotels) and tourism sector 5%. Hotels and stand-alone restaurants holding such certificate can import duty free (by debit to the certificate credit) food items and alcoholic beverages as well. Holders of the scrip can also obtain goods relevant to their industry from the domestic market without excise duty by using the scrip. The scrip should be produced before the jurisdictional central excise officer who will debit the excise duty therein. Thereafter, both the excise officer and the scrip holder have to

inform the customs authority at the port of registration. Actual user condition will apply to the certificate and the goods imported there under. However, imports made under this scheme can be transferable within the group companies and managed hotels. This will allow bulk sourcing and better utilization of entitlement. The scheme is not applicable to services not originating from India even if foreign exchange is earned by the Indian exporter / entity.

11.02.02 Check list for ensuring correct availment of SFIS includes the following:

- (a) Goods can be imported under the scheme only through specified ports.
- (b) Served From India Scheme Certificate and goods imported against it can not be transferred or sold

[Notifications No. 92/2004-Cus, dated 10.11.2004 and  
No. 34/2006-CE, dated 14.6.2006]

### **11.03 Vishesh Krishi and Gram Udyog Yojana Scheme (VKGUYS)**

11.03.01 Para 3.8 of the Foreign Trade Policy deals with the provisions of the VJGUY scheme under which export of village industry products and poultry and dairy products and their value-added products, listed in Appendix 37A of the Handbook of Procedures is facilitated by granting them duty credit @ 5 per cent of FOB value of the eligible export and against such credit certificates freely importable inputs and capital goods can be imported duty free subject to certain conditions. EOUs / EHTPs / BTPs who do not avail direct tax benefits are also eligible for this scheme as well as Focus Market and Focus Product schemes but

export obligation counted (over and above the average) under EPCG scheme shall be excluded for benefit of other such schemes.

11.03.02 Check list for ensuring correct availment of VKGUY includes the following:

- (a) Following exports are not taken into account for duty credit scrip entitlement.
  - (i) Export of imported goods covered under Para 2.35 of FTP;
  - (ii) Exports through transshipment, meaning thereby that exports originating in third country but transhipped through India;
  - (iii) Deemed Exports;
  - (iv) Exports made by SEZ units; and
  - (v) Items restricted or prohibited for export under Schedule-2 of Export Policy in ITC (HS).
- (b) The duty credit certificate has been issued to an exporter of products specified in paragraph 3.8.1 of the Foreign Trade Policy
- (c) Goods can be imported under the scheme only through specified ports.
- (d) Only freely importable goods can be cleared against the duty credit certificate

[Notification No.41/2005-Cus, dated 1.4.2005]

#### **11.04 Focus Market Scheme (FMS)**

11.04.01 Para 3.9 of the Foreign Trade Policy deals with the provisions of the Focus Market Scheme (FMS) whose objective is to offset high freight cost and other externalities to select international markets with a view to enhance our

export competitive. This scheme is intended to incentivize exports of all products to notified countries figuring in Appendix 37C of the Handbook of Procedures by duty credit scrip equivalent to 2.5% of the FOB value of eligible exports (including those from non-EDI ports) for each licensing year commencing from 1.4.2006.

11.04.02 Check list for ensuring correct availment of FMS includes the following:

- (a) Following exports are not taken into account for computation of entitlement:
- (i) Export of imported goods covered under Para 2.35 of FTP;
  - (ii) Exports through transshipment, meaning thereby that exports originating in third country but transshipped through India;
  - (iii) Export turnover of SEZ units or supplies made to such units or SEZ products exported through DTA units;
  - (iv) Deemed Exports;
  - (v) Service Exports;
  - (vi) Diamonds and other precious, semi-precious stones;
  - (vii) Gold, silver, platinum and other precious metals in any form, including plain and studded Jewellery;
  - (viii) Ores and Concentrates, of all types and in all forms;
  - (ix) Cereals, of all types;
  - (x) Sugar, of all types and in all forms;
  - (xi) Crude /Petroleum Oil & Crude/Petroleum based Products covered under ITC (HS) codes 2709 to 2715, of all types and in all forms;
  - (xii) Items, which are restricted or prohibited for export under Schedule-2 of Export Policy in ITC (HS);
  - (xiii) Cement, all types and in all forms; and
  - (xiv) Primary Steel Products as listed in Public Notice No.130 (RE2007) / 2004-09, dated 27.03.2008.



- (b) Goods can be imported under the scheme only through specified ports.
  
- (c) Exports of EOUs / SEZ units etc. and of items like sugar and crude petroleum oil will not be counted for export performance.

[Notification No.90/2006-Cus., dated 1.11.2006]

### **11.05 Focus Product Scheme (FPS)**

11.05.01 Para 3.10 of the Foreign Trade Policy deals with the provisions of the Focus Product Scheme (FPS) whose objective is to offset infrastructure inefficiencies and other associated costs involved in marketing of those products which have high employment intensity in rural and semi-urban areas. This scheme is intended to incentivize exports of notified products figuring in Appendix 37D of Handbook of Procedures to all countries (including SEZ units) by duty credit equivalent to 1.25% of FOB value of eligible exports (including those from non-EDI ports) for each licensing year commencing from 1.4.2006.

11.05.02 Check list for ensuring correct availment of FPS includes the following:

- (a) Following exports are not taken into account for computation of entitlement:
  - (i) Export of imported goods covered under Para 2.35 of FIT;
  - (ii) Exports through transshipment, meaning thereby that exports originating in third country but transhipped through India;

- (iii) Export turnover of SEZ units or SEZ products exported through DTA units; and
  - (iv) Deemed Exports.
- (b) Goods can be imported under the scheme only through specified ports.
- (c) The scrip and the items imported against FPS are freely transferable. However, exporters have the option to avail benefit in respect of the same exported products under only one of the three schemes viz. FMS, FPS and VKGUY. All freely importable goods including inputs and capital goods can be imported duty free. Drawback / CENVAT credit of additional Customs duty, if debited in the scrip, is available.
- (d) Exports of EOUs / SEZ units etc. will not be counted for export performance.

[Notification No. 91/2006-Cus., dated 1.11.2006]

### **11.06 High Tech Products Export Promotion Scheme (HTPEPS)**

11.06.01 Para 3.11 of the Foreign Trade Policy deals with the provisions of the HTPEP scheme whose objective is to incentivise export of High Tech Products listed in Appendix 37E of the Handbook of Procedures. Exports of such notified products in free foreign exchange to all countries shall be entitled for Duty Credit Scrip as per para 3.11.2 of the Foreign Trade Policy.

[Circulars No.59/2004-Cus, dated 21.10.2004, No.16/2006-Cus, dated 11.5.2006 and No.3/2008-Cus, dated 24.1.2008 may also be referred.]

### **11.07 Advance Authorization Scheme**

11.07.01 Chapter 4 of the Foreign Trade Policy, 2004–2009 deals with provisions of the Duty Exemption / Remission Schemes that enable duty free import of inputs required for export production. The Duty Exemption Schemes consist of (a) Advance Authorization and (b) Duty Free Import Authorization (DFIA). On the other hand, a Duty Remission Scheme enables post export replenishment / remission of duty on inputs used in export product and consist of (a) Duty Entitlement Passbook Scheme (DEPB) and (b) Duty Drawback (DBK) Scheme.

11.07.02 Paras 4.1.3 to 4.1.14 of the Foreign Trade Policy, 2004–2009 and Paras 4.4 to 4.30 of the Handbook of Procedures deal with the Advance Authorization scheme. In terms of para 4.1.3 of the said Foreign Trade Policy units primarily engaged in production for domestic market can get required inputs free of duty under Advance Authorization to service an export order. Advance Authorization can be issued to a manufacture exporter or merchant exporter tied to a supporting manufacturer for physical exports; supply of goods under deemed exports; for annual requirement; Intermediate supplies; supply of stores on board the foreign going vessel/air craft subject to condition that there is specific SION in respect of items supplied. Mandatory spares (to be supplied along with export product) can also be imported duty free up to 10% of CIF value of the Advance Authorization.

11.07.03 Advance Authorization is issued to allow duty free import of inputs with normal allowance for wastage. In addition, fuel, oil, energy, catalysts etc. required can also be allowed. Restricted items can be imported, but prohibited items are not allowed import.

11.07.04 Goods imported under Advance Authorization are exempt from Basic Customs Duty, Additional duties of Customs, Anti Dumping Duty, Safeguard Duty, Special Additional Duty and Education Cess. The duties are exempted even if supplies are to EOU/SEZ/STP/EHTP/BTP i.e. deemed exports. However, supply of marine freight containers by 100% EOU and supply to projects funded by UN agencies will continue to attract ADD and SGD. Inputs for deemed export supply under international competitive bidding have been exempted from Safeguard duty and Anti-dumping duty. Execution of bond is not necessary where certificate of discharge of export obligation has already been produced to the satisfaction of the Assistant Commissioner of Customs. In other normal cases of non-defaulters, the bond should be for a minimum period of three years and should cover the complete duty leviable on the goods on merits but for the exemption (i.e. basic duty, safeguard duty, anti-dumping duty, education cess and additional duty leviable on the goods on merits minus additional duty actually paid).

11.07.05 Advance Authorization indicates description and quantity of items to be imported, aggregates CIF value of imports, description and quantity of items to be exported, FOB value of exports. If quantity cannot be indicated, value shall be indicated.

11.07.06 Section 143A(1) of Customs Act, 1962 provides that goods can be imported under Advance Authorization without payment of Customs duty. Bond

with Surety / Security will have to be executed. If the goods are not exported or not utilized for the purpose for which it was imported duty can be demanded with interest.

11.07.07 Importer will have to execute a bond with Customs authorities at the port of registration of their Advance Authorization to fulfill the export obligation and other conditions for a minimum period of 4 years and should also cover the complete duty leviable on the goods on merits but for the exemption. A Bank Guarantee or Cash Security of Surety will back the bond. If a person stands Surety, bank or chartered accountant shall certify that he is solvent. In case of PSU, Star export-houses, manufacture exporters registered with Central Excise having export / duty payment of 1 crore, other exporters who have export turnover of Rs. 5 Crore, no surety or Bank Guarantee is required. They can execute a Letter of Undertaking. Execution of Bond is not necessary where certificate of discharge of export obligation has already been produced to the satisfaction of Asst. Commissioner of Customs.

11.07.08 The Advance Authorization is for Actual user only. It is not transferable. The material imported under Advance Authorization is also not transferable even after completion of export obligation. However, goods manufactured out of such imported material can be disposed of in the local market, after Export Obligation is fulfilled.

11.07.09 Export should be completed within 36 months from date of issuance of authorization. In case of projects, Export Obligation shall be fulfilled within duration of execution of project. In case of Advance Authorization for drugs issued against specific order, Export Obligation shall be fulfilled within 6 months from date of import of first consignment. However, Advance authorization can be revalidated for 6 months for the first time and further extension of 6 months as last chance on payment prescribed fee.

11.07.10 Goods can be procured from indigenous manufacturers against Advance Release Order (ARO) to be issued by RA (Regional Authority, DGFT). Alternatively, Exporter can obtain goods from indigenous sources on basis of back-to-back Inland letter of credit from bank. The value of Advance Authorization would be reduced to that extent.

**11.07.11 Authorization may be registered at one port while import may be from other port. In such case, Telegraphic Release Advice (TRA) can transfer credit from one port to another.**

11.07.12 After export obligation is fulfilled, the licensing authority will redeem the case. After redemption, details will be forwarded to Customs at port of registration. The BG/LUT will then be discharged.

11.07.13 Demands will be raised by Customs on the importers/ exporters for failure to fulfill the export obligation along with interest.

[Notifications No. 91/2004-Cus, No.93/2004-Cus and No. 94/2004-Cus, all dated 10.11.2004 and Circular No. 58/2004-Cus, dated 21.10.2004]

## **11.08 Duty Free Import Authorization Scheme (DFIA)**

11.08.01 Paras 4.4 of FTP and Para's 4.54 to 4.72 of the Handbook of Procedures deal with the DFIA Scheme. In terms of Para 4.4 of the said foreign Trade Policy, the DFIA Scheme allows duty free import of specified inputs for export production only as per standard input output norms (SION). DFIA is

issued to a manufacture exporter to allow duty free import of inputs, fuel, oil, energy sources, catalyst required for export products. Restricted items can be imported, however, prohibited items of imports are not allowed to import.

11.08.02 Goods imported are exempt from Basic Customs Duty, Additional duties of Customs, Anti Dumping Duty, Safeguard Duty, Special Additional Duty and Education Cess. DFIA indicates description and quantity of items to be imported, aggregates CIF value of imports, description and quantity of items to be exported, FOB value of exports. If quantity cannot be indicated, value shall be indicated.

11.08.03 DFIA can be issued on Pre export or Post export basis. Once the export obligation is fulfilled, the material imported under DFIA will become transferable. Alternatively, after export obligation is fulfilled, Regional Authority (DGFT) can make the scrip transferable. After endorsement of transferability, duty free imports (except fuel) can be transferred. However, where SION is subject to 'actual user' norm, transferability is not allowed.

11.08.04 After endorsing the transferability of DFIA license by Regional Authority, the DFIA license is produced to Customs for verification of exports made. A minimum of 20% value addition will be required for issuance of such authorization except for items in gem and Jewellery sector and items for which specific value addition is prescribed.

11.08.05 Once export obligation is fulfilled and required documents have been furnished, the Regional Licensing Authority will endorse the Authorization as

transferable subject to conditions of the scheme. Once transferability is endorsed imports are subjected to payment of Additional Customs Duty. However, if CENVAT is not availed (Rule 18 of Central Excise Rules) or Rebate is not availed (Rule 19 Central Excise Rules), exemption from Additional Customs Duty is available even after endorsement of transferability on DFIA.

11.08.06 If the DFIA is issued on Pre export basis then the DFIA will become actual user one and the importer will have to execute a bond with the Customs at the port of registration of their DFIA to fulfill the export obligation and other conditions for a minimum period of 4 years and should cover the complete duty leviable on the goods on merits but for the exemption. A Bank Guarantee or Cash Security of Surety will back the bond. If a person stands Surety, bank or chartered accountant shall certify that he is solvent. In case of PSU, Star export-houses, manufacture exporters registered with Central Excise having export / duty payment of 1 crore, other exporters who have export turnover of Rs. 5 Crore, no surety or Bank Guarantee is required. They can execute a Letter of Undertaking. Execution of Bond is not necessary where certificate of discharge of export obligation has already been produced to the satisfaction of Asst. Commissioner of Customs.

11.08.07 In respect of sensitive items mentioned in Para 4.55.3 of of the Handbook of Procedures, exporter will have to furnish declaration with regard to technical characteristics, quality and specification. At the time of clearance of imported goods, Customs should verify the same and one to one correlation (nexus) has to be established.



11.08.08 Export Obligation should be fulfilled within 36 months from the date of authorization, except in case of Spices, Drugs etc. After Export Obligation is fulfilled, the authorization will be made transferable, except in case of restricted items.

11.08.09 CENVAT Credit will be available in respect of inputs, either imported or procured. Drawback will be available only in respect of duty paid material used in goods exported as per drawback rate fixed by the Ministry of Finance. Duty free procurement from domestic market is permissible against ARO/invalidation letter / back-to-back inland letter of credit.

**11.08.10 When authorization is registered at one port and import is from another port Telegraphic Release Advice (TRA) can transfer credit from one port to another.**

11.08.11 In respect of supplies made against 'deemed export', the supplier is entitled to DFIA for intermediates supplies. Benefit of DFIA is applicable to exports made in Rupees Payment Area (RPA) countries also, subject to achievement of value addition.

11.08.12 Clubbing of advance authorization to facilitate closure of import and export accounts has been allowed by DGFT so long as imported inputs are same irrespective of the fact that the export products are different.

[Notification No. 40/2006-Cus, dated 1.5.2006,

Circular No. 16/2006-Cus, dated 11.5.2006 and

DGFT Circular No. 13 (RE-2007)/2004-09, dated 1.10.2007]

[Circulars No.6/2000-Cus, dated 4.2.2000 (import of iron and steel items below floor prices and diversion to local market) and No.59/2002-Cus, dated 12.11.2002 (diversion of goods purchased on high sea sale basis and cleared under advance license scheme) and No.46/2007-Cus, dated 20.12.2007 may also be referred]

### **11.09 Duty Entitlement Passbook Scheme (DEPB)**

11.09.01 Para 4.3 of the Foreign Trade Policy 2004 – 2009 deals with provisions of the DEPB Scheme. Under the scheme, exporters are granted duty credits, on the basis of pre-notified entitlement rates, which will allow them to import inputs duty free. The exporter can export any product under the DEPB Scheme provided the same is covered by the Standard Input Output Norms (SION). Edible oils will get 50% exemption and other goods full exemption. DEPB benefit is allowable to exports even if inputs used in export goods were imported on payment of duty through DEPB. Education Cess can also be debited from the DEPB scrip.

11.09.02 Supplies from DTA to SEZ are entitled for DEPB benefits. Such supplies should be covered by a Bill of Export and they will be subjected to Customs examination as a normal export consignment. SEZ unit will get the DEPB benefit on the basis of a disclaimer certificate given by the DTA unit. If no exemption from CVD is claimed it will be deemed that no exemption from Basic duty is also claimed for purpose of calculation of CVD. In respect of the licenses issued under the Foreign Trade Policy, 2004-09, the importer shall be entitled to avail the drawback or Cenvat Credit of the CVD. Goods in the Negative List of Foreign Trade Policy cannot be exported. Passbook credit can also be used for paying duty on (i) SIL imports and (ii) imports under other schemes like EPCG Scheme or Project Imports. In case the imported goods are eligible for another

partial exemption from payment of duty, such exemption would also be applicable to goods imported against a DEPB scrip. In the case of composite items, the lowest rate applicable to their constituent would be allowable. The transferee of DEPB will get exemption only against the specific amount of credit transferred to him other than provisional credit.

11.09.03 A special blue coloured Shipping Bill or the one with a blue strip on the top is required to be filed, showing therein the SION Sl.No. Triplicate copy of the Shipping Bill bearing Customs examination report and "Let Export" order would be given to the exporter for producing before the licensing authority for claiming credit in the Pass Book. Customs verification of DEPBs issued on the basis of EDI Shipping Bills transmitted electronically by Customs has been done away with but exporters should mention the number of such DEPB intended to be used in the Bill of Entry.

11.09.04 Verification of Present Market Value (PMV) of the export product (it will not be the exporter's responsibility to declare PMV under DEPB and Drawback schemes) is assigned to SIIB Branch of the Custom House and ought to be completed in 30 days, extendable up to 90 days in normal cases by the Commissioner and in fraud cases for such period as deemed necessary. Show Cause Notice may be issued promptly after the 90 days period and within 5 years in fraud cases. Payment of DEPB is limited to PMV in case f.o.b. value is more than the PMV, irrespective of the rate of DEPB applicable. Ministry has confined this verification to the following cases with the express written approval of the Commissioner.

- (a) Suspect cases especially where there is blatant export of sub-standard goods.
- (b) Select cases in respect of consignments going to sensitive destinations in

which the declared value is likely to result into substantial unintended DEPB benefits. Where blatant overvaluation is proved, DEPB credit entitlement shall be worked out only on the PMV.

11.09.05 Same procedure of PMV verification may be followed in cases of grossly overvalued goods sought to be exported under claim for drawback. Relevant time to raise dispute as to quantity or value of export is at time of export when goods are tendered for Customs examination and not afterwards.

11.09.06 In the case of goods imported under DEPB Scheme found unfit for consumption, Commissioner may allow their re-export and grant a DEPB Entitlement Certificate equal to 98% of DEPB credit debited at the time of their import.

11.09.07 If export proceeds are not realized within six months or such extended period as may be allowed by RBI, or are short realized, the Pass Book Holder shall pay in cash an amount equivalent to the amount of credit obtained against such exports or against the value not realized. However, a post export DEPB is transferable without waiting for realization of export proceeds in respect of shipments against irrevocable letter of credit.

[Notification No.89/2005-Cus, dated 4.10.2005]

[Circulars No. 63/2000-Cus, dated 17.7.2000, No.4/2002-Cus, dated 16.1.2002, No.56/2002-Cus, dated 11.11.2002, No.77/2002-Cus, dated 27.11.2002, No.25/2003-Cus, dated 1.4.2003 and No.30/2005-Cus dated 12.7.2005 may be referred. Further, Circulars No.19/2001-Cus, dated

23.3.2001 (export of sub-standard drugs under claim of DEPB/Drawback), No.26/2001-Cus, dated 24.4.2001, No.26/2002-Cus, dated 16.5.2002, and No.54/2002-Cus, dated 27.8.2002 (DEPB benefits for export of goods manufactured with raw materials/component imported duty free under jobbing notification No.32/97), No.36/2003-Cus, dated 25.4.2003 (export of colored water in guise of industrial grade printing ink on forged documents for availing DEPB credit), No.45/2003-Cus, dated 4.6.2003 (wrong availment of DEPB credit by misdeclaring nature of raw materials/inputs used in export product), No.62/2003-Cus, dated 21.7.2003 (DEPB benefits claimed for export of goods manufactured with raw materials/component imported duty free) and No.19/2004-Cus, dated 26.2.2004 (overvaluation of export goods - watches and recycling of the same goods to avail illegal DEPB credit) deal with prevention of misuse of the scheme.]

#### **11.10. Diamond, Gem and Jewellery Export Promotion Scheme**

11.10.01 Chapter 4A of the Foreign Trade Policy, 2004-2009 deals with this scheme, which allows exporters of gems and jewellery to import / procure duty free inputs and consumables for manufacturing. Exporters may obtain Replenishment (REP) Authorizations from Regional Authority (RA) in accordance with procedure specified in this regard.

11.10.02 Exporters of gold / silver / platinum jewellery and articles thereof may import their essential inputs such as gold, silver, platinum, mountings, findings, rough gems, precious and semi-precious stones, synthetic stones and unprocessed pearls etc. in accordance with the procedure specified in this behalf. Exporters may also obtain gold / silver / platinum from nominated agencies -MMTC Ltd., Handicraft and Handloom Export Corporation (HHEC), State Trading Corporation (STC), the Project and Equipment Corporation of India Ltd. (PEC), Premier Trading

House under Paragraph 3.5.2 of FTP and any other agency authorized by RBI. Exporter may obtain gold/silver/platinum as an input for export products from nominated agencies in advance or as replenishment after exports in accordance with specified procedure. A bank authorised by RBI is allowed export of gold scrap for refining and import standard gold bars as per RBI guidelines.

11.10.03                      Following export items are eligible under the scheme:

- (a) Gold jewellery, including partly processed jewellery and articles including medallions and coins (excluding legal tender coins), whether plain or studded, containing gold of 8 carats and above;
- (b) Silver jewellery including partly processed jewellery, silverware, silver strips and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% silver by weight;
- (c) Platinum jewellery including partly processed jewellery and articles including medallions and coins (excluding legal tender coins and any engineering goods) containing more than 50% platinum by weight.

11.10.04                      The Exporters have to follow the value addition and wastage norm in respect of export of gems and Jewellery in order to become eligible for benefits under this scheme. .

11.10.05      An Advance Authorisation is granted to exporters of gems and jewellery for duty free import of following items and such authorisations shall carry an export obligation. Advance Authorisation holder may also obtain gold / silver / platinum from nominated agencies in lieu of direct import.

- (a) Gold of fineness not less than 0.995, and mountings, sockets, frames and findings of 8 carats and above;
- (b) Silver of fineness not less than 0.995, and mountings, sockets, frames and findings containing more than 50% silver by weight;
- (c) Platinum of fineness not less than 0.900, and mountings, sockets, frames and findings containing more than 50% platinum by weight

11.10.06 **Gem Replenishment (Gem & Jewellery REP) Authorisation** is issued for exports against supply by foreign buyer and export against supply by nominated agencies. In case of plain or studded gold / silver / platinum jewellery and articles, value of such Authorisations is determined with reference to realisation in excess of prescribed minimum value addition. Such Gem REP Authorisations are freely transferable.

11.10.07 **Export Promotion Tours / Export of Branded Jewellery:** Nominated agencies and their associates, with approval of Department of Commerce, and others, with approval of Gem & Jewellery Export Promotion Council (GJEPC), may export gold / silver / platinum jewellery and articles thereof for exhibitions abroad. Personal carriage of gold / silver / platinum jewellery, precious, semiprecious stones, beads and articles and export of branded jewellery is also permitted, subject to conditions prescribed. Personal carriage of gems and jewellery export parcels by foreign bound passengers and import parcels by an Indian importer/foreign national is permitted. In case of exports through Foreign Post Office (including via Speed Post), value of jewellery parcels should not exceed US\$ 75000 and 20 kg by weight

11.10.08 Private / Public Bonded Warehouses may be set up in SEZ/ DTA for import and re-export of cut & Polished diamonds, cut & polished coloured gemstones, uncut & unset precious & semi-precious stones, subject to achievement of minimum value addition of 5%.

11.10.09 Gems and Jewellery exporters are allowed to export cut and polished precious and semi precious stones for the treatment and re-import as per customs rules and regulations. In case of re-export, the exporter becomes entitled for duty drawback as per rules. Gems & Jewellery exporters are allowed to re-import rejected precious metal jewellery as per specified procedures. Duty free import of plain/studded metal jewellery rejected and returned by the buyer is allowed upto 2% of the FOB value of exports in the preceding licensing year as per Chartered Accountant's certificate and subject to reversal of benefits like duty exemption/refund/replenishment availed of while exporting these jewellery.

*[Circulars including No.8/2000-Cus, dated 15.2.2000, No.40/2000-Cus, dated 12.5.2000, No.91/2000-Cus, dated 20.11.2000, No. 20/2001-Cus, dated 30.3.2001, No. 37/2002-Cus, dated 28.6.2002, No. 01/2003-Cus, dated 2.1.2003, No. 54/2004-Cus. dated 13.10.2004, No. 17/2006-Cus, dated 1.6.2006, and No. 12/2008-Cus, dated 24.7.2008 may also be referred.]*

## **11.11 Export Promotion Capital Goods (EPCG) Scheme**

11.11.01 Chapter 5 of the Foreign Trade Policy, 2004 – 2009 deals with provisions of the EPCG scheme whose object is enhancement, modernization and technical upgradation of industrial capacity in all sectors. Import of capital goods (including second-hand) without any threshold limit is allowed at 3% concessional rate plus education cesses, subject to export obligation. Import of spares is also



allowed. The validity period for the import of capital goods is three years. However, in case of import of spares, the validity period of license shall be deemed to be the period permitted for fulfillment of export obligation in full. Importers have the option either to pay or not to pay Additional Customs Duty (CVD). If the importer avails the option to pay CVD in cash, the incidence of CVD would not be taken for computation of net duty saved provided the CENVAT credit of CVD has not been taken.

11.11.02     **Export obligation:** The scheme applies to identified service sectors, large retail sectors and Agri Export Zones, with reduced export obligation and enhanced time availability for the agricultural sector. Block wise fulfillment of export obligation was earlier done away with but re-introduced by P.N.No.54 dated 1.10.2007. There is an across the board stipulation of FOB export obligation (in terms of FOB value of exports only) of eight items (six times for SSI sector and agricultural sector) the quantum of duty saved by the importer which has to be fulfilled in a period of 8+2 years can be considered for a further extension up to 2 years with the condition that 50% of duty payable in proportion to the unfulfilled export obligation is paid by the license holder to the Customs authorities. Those fulfilling 75% or more of export obligation in half or less than half the stipulated period is freed from balance of export obligation. Case wise waiver of export obligation in case of force majeure/unforeseen circumstances has also been provided. All EPCG licenses issued under the same notification can now be clubbed. Export obligation shall be fulfilled by export of goods capable of being manufactured or produced by use of the capital goods imported under the scheme. Capital goods to be imported must be new and technologically superior to earlier capital goods. Consumables are not allowed to existing plants.

11.11.03     EPCG licenses of Rs.100 crores of duty saved amount or more have 12 year export obligation period and so also for units in agri-export zones. For

companies under the revival plan of the BIFR, export obligation may be fulfilled in terms of the FTP. Imports for technological upgradation will have export obligation of six times the duty saved or such higher sum as fixed by the licensing Authority to be fulfilled within a period of 8 years from the date of issue of the license. Supplies under deemed exports will be eligible for EO fulfillment along with deemed export benefit. Export obligation can also be discharged by export of other goods manufactured by the same firm or company. In group companies any company in the group can discharge export obligation. In respect of service providers in the Port Handling sector in major seaports, the export obligation may be fulfilled by earning service charges in Indian rupees. Waiver of export obligation can be granted by a committee in case of non-fulfillment due to unforeseen reasons or circumstances beyond control. Monitoring of fulfillment of export obligation is assigned to DGFT and Customs will redeem the bond / bank guarantee on the basis of DGFT's EO Discharge Certificate.

[Notification No.64/2008-Cus., dated 11.5.2008]

11.11.04 **Installation, Re-export, etc.:** For installation of the imported machinery a certificate from a Deputy/Assistant Commissioner of Central Excise is required to be produced within 6 months of import. If the importers are not registered with central excise authorities certificate from Chartered Engineer will suffice. Reallocation of imported capital goods in the factory of supporting manufacturers and service providers is permitted provided their name and address is endorsed on the license. In the case of Agri Export Zones, installation of the equipment would be allowed anywhere in the AEZ but the importers have to maintain accurate records of movement of capital goods within the AEZ. In bona fide cases, re-export of defective imported goods within 3 years is permitted. A person holding an EPCG license may also source capital goods from a domestic unit instead of importing them, at the same rate of duty. In return the domestic

unit would become eligible for import of components required for manufacture of capital goods.

11.11.05 EPCG holder can also replenish the components after supply of capital goods to the EPCG license holder. Where drawback is claimed, exports do now count for discharge of export obligation under 'EPCG Scheme'. Free import of equipment and other goods used in projects abroad for more than one year has been permitted.

[Notification No.64/2008-Cus, dated 11.5.2008]

[Circulars No.39/2000-Cus, dated 11.5.2000, No. 85/2000-Cus, dated 27.10.2000, No. 11/2003-Cus, dated 25.2.2003, No. 25/2003-cus, dated 1.4.2003, No. 46/2004-Cus, dated 26.7.2004, No. 30/2005-Cus, dated 12.7.2005 and No.14/2008-Cus, dated 26.11.2008 may also be referred.]

## **11.12 Deemed Exports**

11.12.01 "Deemed Exports" refers to those transactions in which the goods supplied do not leave the country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Chapter 8 of the Foreign Trade Policy 2004 – 2009 enumerates the conditions, categories of supplies regarded as deemed exports, benefits for deemed exports and benefits to the supplier.

11.12.02 Following categories of supply of goods by main / sub-contractors are regarded as "Deemed Exports" under FTP, provided goods are manufactured in India:

- (a) Supply of goods against Advance Authorisation / Advance Authorisation for annual requirement / DFIA;
- (b) Supply of goods to EOUs or STPs or EHTPs or BTPs;
- (c) Supply of capital goods to holders of Authorizations under EPCG Scheme;
- (d) Supply of goods to projects financed by multilateral or bilateral agencies / Funds as notified by Department of Economic Affairs (DEA), MoF under International Competitive Bidding (ICB) in accordance with procedures of those agencies / Funds, where legal agreements provide for tender evaluation without including Customs duty; Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral agencies / Funds as notified by DEA, MoF under ICB, in accordance with procedures of those agencies / Funds, which bids may have been invited and evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad;
- (e) Supply of capital goods, including in unassembled /disassembled condition, as well as plants, machinery, accessories, tools, dies and such goods which are used for installation purposes till stage of commercial production, and spares to extent of 10% of FOR value to fertilizer plants;
- (f) Supply of goods to any project or purpose in respect of which the MoF by a notification permits import of such goods at zero customs duty;
- (g) Supply of goods to power projects and refineries not covered in (f) above;

- (h) Supply of marine freight containers by EOU (Domestic freight containers-manufacturers) provided said containers are exported out of India within 6 months or such further period as permitted by customs;
- (i) Supply to projects funded by UN agencies; and
- (j) Supply of goods to nuclear power projects through Competitive bidding as opposed to ICB.

Benefits of deemed exports is available under paragraphs (d), (e), (f) and (g) above only if the supply is made under procedure of ICB.

11.12.03 Any one or all deemed exports benefits as follows are available in respect of manufacture and supply of goods qualifying as deemed exports:-

- (a) Advance Authorisation / Advance Authorisation for annual requirement/ DFIA.
- (b) Deemed Export Drawback.
- (c) Exemption from terminal excise duty where supplies are made against ICB. In other cases, refund of terminal excise duty is given.

### **11.13 Export and Trading Houses**

11.13.01 Para 3.5 of the Foreign Trade Policy, 2004 – 2009 deals with categories and privileges of the Export and Trading houses. The objective is to recognize established exporters as status holder with a view to building marketing infrastructure and expertise for export promotion.

11.13.02 Merchant as well as Manufacturer Exporters, Service Providers, EOUs and SEZ units, Agri Export Zones (AEZs), EHTP units, STP units and Bio-Technology Parks (BTPs) are eligible for being considered as Status holders depending on their total FOB (FOR - for deemed exports) export performance during current plus previous three years (taken together) upon exceeding limit given below. For Export House (EH) Status, export performance is necessary in at least two out of four years (i.e., current plus previous three years).

Status Category	Export Performance FOB/FOR Value (Rupees in Crores)
Export House (EH)	20
Star Export House (SEH)	100
Trading House (TH)	500
Star Trading House (STH)	2500
Premier Trading House (PTH)	7500

11.13.03 Privileges of status holders are enumerated in Para 3.5.2.1 of the policy.

#### **11.14 Special Economic Zones**

11.14.01 SEZs are established with the objectives of generation of additional economic activity, promotion of export of goods and services, promotion of

investment, creation of employment and infrastructure development. SEZs may be set up for manufacture of goods or rendering services or both and may be multi-product, sector specific, or Free Trade and Warehousing Zone. SEZs are deemed outside the Indian Customs territory and goods/services entering it (from DTA) are treated as exports. All activities of SEZs and its units are governed by the provisions of the SEZ Act, 2005 and the SEZ Rules, 2006.

11.14.02 **Board of Approval** (BOA) is chaired by an officer not below the rank of Additional Secretary, Department of Commerce and includes Member, (Customs), CBEC as its member. It approves proposals for establishing SEZs or providing infrastructure facilities and conversion of one class of SEZ into another. Its functions include approving authorized operations of Developers, foreign collaborations/FDI and industrial license, and proposals involving recycling of plastic scrap/waste, reprocessing of garments, used clothing, secondary textile materials and recyclable textile materials into clippings/rags/industrial wipers/shoddy wool /yarn /blankets/ shawls, and recycling used goods. It also decides whether a particular activity constitutes manufacture and fixes input-output norms for contract farming.

11.14.03 An **Approval Committee** is notified for each SEZ within 6 months of its establishment to provide 'single window' clearances to Developers and SEZ units. The Approval Committee is chaired by the Development Commissioner and includes the Commissioner of Customs or his nominee not below rank of Joint Commissioner as its member. The functions of the Approval Committee include:

- (a) Consider applications for setting up units for manufacture/services /warehousing/trading/reconditioning/repair/reengineering.
- (b) Cancel LOA upon its contravention.

- (c) Approve import/procurement of goods and services by Developers/SEZ units.
- (d) Monitor performance of Developers/SEZ units including utilization of imported/procured goods and services.
- (e) Approve broad banding, diversification, enhancement of production capacity, and change in items of manufacture or service and change of entrepreneur.
- (f) Fix wastage norms (if not fixed under DEEC scheme).
- (g) Approve norms of raw materials/consumables for power generation.
- (h) Permit Developer/co-developer or contractor to remove imported/procured goods to a SEZ/EOU/EHTP/STP/BTP unit or the DTA for sub-contracting.
- (i) Grant permissions, clearances etc. to Developers/SEZ units.

11.14.04 **Development Commissioner** has administrative control over the SEZ and chairs the Approval Committee. His functions include submitting proposals for SEZ units to the Approval Committee and issue of LOA, demarcating SEZ into processing, non-processing, and trading/warehousing areas, monitoring performance of the Developers and SEZ units and regulating entry into SEZ and valuing software exports.

11.14.05 **Customs Administration:** Customs officers are posted on deputation in the Development Commissioner's office. In many new SEZs posts of Customs officers have been encadred with the CBEC and postings are done by the jurisdictional Customs/Central Excise cadre controlling authority. The Joint/Deputy/Assistant Commissioner of Customs is recognized as a 'Specified Officer' and other Customs Officers as 'Authorized Officers'. In absence of the former the Development Commissioner may, in consultation with the Commissioner of Customs/Central Excise, authorize any other Gazetted Customs



Officer to discharge his functions. Jurisdictional Commissioner of Customs or Central Excise is a member of the Approval Committee and to participate effectively the officer should be completely familiar with the legal provisions and take a proactive approach in the interest of revenue and adherence to the legal provisions. The following guidelines are in force for the Customs officers:

- (a) Department should not go unrepresented in the Approval Committee meetings.
- (b) Before approval credentials of entrepreneurs must be verified taking into account past violations of Customs Act, Central Excise Act, etc.
- (c) That the particular process undertaken by the unit constitutes manufacture and the service falls within the ambit of exportable services must be confirmed.
- (d) Import/procurement of material from the DTA should be allowed only for approved authorized operations including operations in the pre-approved list (default list). Activities like housing, etc. should be allowed in phases of 20% of the approval granted and should be commensurate with the needs of the SEZ.
- (e) No duty free material should be allowed for operation and maintenance of social infrastructure (hospitals, hotels, etc.) and for excess infrastructure.
- (f) No duty free material or tax benefit should be allowed for activities outside the SEZ - water, sewerage, drainage pipelines, power or telecommunication lines etc.
- (g) No tax benefit should be allowed for steps to establish contiguity of SEZ.
- (h) SEZ units should be allowed to begin operations only after walls, fence, entry/exit points, and office of Development Commissioner and Customs is ready; general guideline for fencing viz., 2.4m high wall/chain linked fencing and 0.6m barbed wire fencing for safeguarding entry/exit point must be ensured (if this is not done, Development Commissioner shall decide

required fencing).

- (i) Service Tax is payable when SEZ units provide services in the DTA and for this the units shall be registered by jurisdictional Service Tax/Central Excise Commissionerate. Service Tax is exempt for services rendered to SEZ Developer/SEZ unit (Notification No. 9/2009-ST, dated 3-3-2009 refers).
- (j) Decision of the Approval Committee must be by consensus otherwise the disputed issue will get referred to the BOA.
- (k) Vide Notification No. 110/2003-Cus. (N.T.), dated 8-12-2003 the Additional/Joint/Deputy/Assistant Commissioners of Customs, Appraisers, Superintendents, Examiners and Preventive Officers at a SEZ are appointed as Customs Officers to exercise their powers in respect of goods destined to the SEZ or originating therefrom. Their jurisdiction covers radius of 8 km. around the SEZ. CBEC has determined the following staffing norms for SEZs:

<b>Designation of Customs Officer</b>	<b>Number in Multi-Product SEZ</b>	<b>Number in Sector-Specific SEZ</b>
Deputy Commissioner	1	1
Appraiser/Superintendent	4	2 (1 AO and 1 Supdt.)
Preventive Officer	<u>8</u>	<u>3</u>
Total:	13	6

- (l) An officer/agency may be notified to enforce the provisions of the SEZ Act, but till this is done Customs official are empowered to act.

- (m) Ports located in the non-processing area shall be duly demarcated jointly by the Development Commissioner and the Commissioner of Customs with separate entry/exit points duly secured for movement of export and import of DTA cargo and its complete segregation from SEZ cargo. The unloading and accountal of the SEZ cargo shall be handled by the authorized officer of the SEZ (in terms of the SEZ Act and Rules) whereas DTA cargo shall be handled by the jurisdictional Customs officers. All provisions of the Customs Act, 1962 and its rules and regulations shall apply to such demarcated ports.

11.14.06 **Establishment of SEZs:** SEZs are approved by the BOA and notified by Central Government after which the Development Commissioner will demarcate its areas for processing, trading and warehousing, and non-processing and Developer may undertake approved operations. Some important conditions relating to the SEZs/Developers are, as follows:

- (a) The Approval Committee will permit duty free import/procurement of goods and services for the Developer. Duty free goods/services are not allowed for personal consumption or use of officials/staff/workers/owners of SEZ units or Developers.
- (b) Developer shall not remove goods to DTA except without permission of the Specified Officer and on payment of duty.
- (c) Duties will be paid on imported/procured goods not utilized within period of 1 year or extended period, if any, or not accounted for.
- (d) Capital goods and spares including surplus or obsolete construction equipment may be exported or transferred by to another Developer or SEZ unit with approval of the Specified Officer.
- (e) Since the SEZ is deemed to be a port/airport/ICD/LCS suitable area shall be identified for loading/unloading of export/ import goods.

- (f) A port within a SEZ that is also used for loading/unloading of DTA cargo must be demarcated to segregate this cargo with SEZ cargo.
- (g) Quarterly and Half-Yearly Reports of import/procurement/utilization of goods shall be given to Development Commissioner and the Specified Officer within 30 days of the period specified.
- (h) The Developer shall maintain accounts of import, domestic procurement, consumption, utilization, foreign exchange etc. and keep the records for 7 years.

11.14.07 **Setting up SEZ unit:** Proposal to set up SEZ units are made to the Development Commissioner who submits it to the Approval Committee for approval within 15 days (proposals for foreign collaboration/FDI or industrial license require BOA approval). The application covers annual permission for sub-contracting, IEC number, Sales Tax registration, etc. After approval, the Development Commissioner shall issue LOA specifying item(s) of manufacture/service activity, annual capacity, annual export, limitation, if any, regarding DTA sale, etc. The LOA is valid for 1 year (extendable for 2 years plus 1 year) and for 5 years once the unit commences its activity (renewable for 5 years at a time). It is for an earmarked premise and construed as a license for all purposes, including procurement of raw materials and consumables directly or through designated canalizing agency. Some important conditions relating to SEZ units are, as follows:

- (a) **Each SEZ unit shall have separate establishment, distinct, identifiable and partitioned from another SEZ unit.**
- (b) **SEZ unit shall be approved for ‘authorized operations’ i.e. manufacture, production, processing, assembling, trading, repair, re-making, reconditioning, re-engineering, packaging of goods etc. or for rendering service, or export of such goods or services.**
- (c) **SEZ unit shall execute a Bond cum Legal Undertaking with the Development Commissioner and the Specified Officer.**

- (d) SEZ unit shall maintain accounts indicating in value terms the import, domestic procurement, consumption, utilization of goods, inflow and outflow of foreign exchange etc. (accounts for trading and manufacturing activities shall be maintained separately). The accounts shall be kept for a period of 7 years and produced for inspection to the Specified Officer.
- (e) After commencing operation SEZ unit shall submit to the Development Commissioner and the Specified Officer an Annual Performance Report within 90 days of close of the financial year.
- (f) SEZ unit will be allowed duty free import/procurement of its required capital goods, components, raw materials, consumable, spares, material handling equipment etc. Items prohibited for imports are not allowed.
- (g) Services may be procured without payment of Service Tax.
- (h) Goods imported/procured by a SEZ unit shall be utilized or exported or disposed within the validity of the LOA.
- (i) Supplies to SEZ units from the DTA will be treated as exports with benefits of Advance Authorization, Passbook Scheme (DEPB) and DFIA.
- (j) Polyester yarn SEZ units are not allowed to do third party exports or sub-contract the work (except work relating to the fabric such as dyeing) other than through units in the same SEZ.
- (k) SEZs units for reconditioning, repair and reengineering are not allowed DTA sale including of scrap, remnants or waste.
- (l) SEZ units shall be allowed for providing manufacturing or services to overseas entities subject to the capital goods, raw materials etc. being supplied by the overseas entity free of cost or on loan or lease basis and the finished goods being exported or transferred to bonded

warehouses of this entity and the unit receiving consideration in convertible foreign exchange directly from this entity.

- (m) If LOA is cancelled, SEZ unit is no longer entitled to any benefits or concessions and within 30 days the Specified Officer will determine the amount of exemptions, concessions and benefits availed and unit remit this amount as Customs duty within 3 months (extendable by 3 months) and clear the goods in the DTA (no amount will be remitted if goods are transferred against duty free licenses or exported).
- (n) Upon exit from the scheme SEZ unit shall pay Customs duties on finished goods, raw materials, capital goods, etc. and vacate its premises.

11.14.08 **Power plant** in SEZs set up by Developer/co-developer in non-processing area is entitled to fiscal benefits only for initial setting up. Power can be supplied to facilities in non-processing area of the same or other SEZs, to SEZ units, or to the DTA. However, power plant set up by SEZ unit (including a power unit) in the processing area is entitled to fiscal benefits for initial setting up, maintenance and operation with the duty free imports being counted towards the NFE obligation. Power can be supplied to SEZ units in same/other SEZs, facilities in the processing/non-processing area of same/other SEZs and to the DTA. Further, a stand alone power plant can be set up in a SEZ that has no other unit and will be entitled to fiscal benefit for initial setting up, maintenance and generation. The benefits availed will be counted towards NFE. Power can be supplied to facilities in the non-processing area of the same/other SEZs, to SEZ units and to the DTA.

11.14.09 **Bond cum Legal Undertaking by Developer and SEZ units:** The Developer and co-developer, if any, and SEZ units are required to execute a Bond cum Legal Undertaking, which is jointly accepted by the Development

Commissioner and the Specified Officer (the latter shall keep a certified copy). Some conditions of the Bond cum Legal Undertaking are, as follows:

(I) Developer:

- (a) Value of the Bond cum Legal Undertaking shall be equal to effective duty leviable on the projected requirement of imported/indigenous goods.
- (b) Maintain accounts of the goods imported/procured, consumed, temporarily removed, etc. and their utilization within 1 year (or extended period) and produce these to the Specified Officer for inspection.
- (c) Refund the benefits availed on the goods/ services not utilized or accounted for.
- (d) Within 45 days furnish to the Specified Officer concerned evidence of receipt of goods from port/airport/ICD/LCS/warehouse.
- (e) Ensure against pilferage of goods in transit and pay the duty if it takes place.
- (f) Submit to the Specified Officer prescribed Quarterly and Half Yearly returns within 30 days of close of the specified period(s).

(II) SEZ units:

- (a) Value of the Bond cum Legal Undertaking shall be equal to effective duty leviable on the projected requirement of imported and indigenous capital goods and raw materials, spares, consumables intermediates, components, parts and packing material to be held in stock for 3 months (duty for gems and jewellery units shall be as notified - at present, Notification No. 62/2004-Cus., dated 12-5-2004). The Bond cum Legal Undertaking shall

not be debited or credited, but shall be monitored to ensure against shortfall.

- (b) Intimate date of commencement of its operations within one month thereof to the Development Commissioner.
- (c) After starting operation send Annual Performance Report to the Specified Officer, within 90 days of close of financial year.
- (d) Maintain accounts of the goods imported/procured, consumed, utilized, temporarily removed from the unit etc. and produce these to the Specified Officer or any authorized officer of Customs for inspection.
- (e) Pay duties or refund the amount of benefits of exemption, drawback, cess and concessions availed on the goods and services when these are not utilized or accounted for as prescribed.
- (f) Not dispose in the DTA goods and services imported/procured or manufactured except in accordance with the SEZ Act and its rules. Similar restriction applies to temporary removal of goods to the DTA for sub-contracting, repair etc.
- (g) Pay duties on goods and services sold in the DTA.
- (h) Within 45 days furnish to the Specified Officer concerned evidence of receipt of goods from port/airport/ICD/LCS/warehouse.
- (i) Ensure against pilferage of the goods in transit to and fro the SEZ and pay the duty on pilfered goods, if any.
- (j) Intimate change in Board of Directors/Partners/web site, telephone etc. to the Development Commissioner and Deputy/Assistant Commissioner of Customs.

In particular, the Bond cum Legal Undertaking covers the following activities:

- (i) Movement of duty free goods between port/airport/ICD/LCS/warehouse or place of international exhibition in India and SEZ.



- (ii) Import/procurement of goods for manufacture of goods or services and their deposit in the SEZ unit for 5 years or period co-terminus with the validity of the LOA without payment of duty.
- (iii) Removal of the duty free imported/procured goods or goods manufactured or produced for export or transfer to other EOU/EHTP/STP/BTP/SEZ units without payment of duty.
- (iv) Temporary removal of the duty free imported/procured goods or goods manufactured for specified purposes such as repair, testing, calibration, display, processing, sub-contracting etc. without payment of duty
- (v) Re-import of exported goods.
- (vi) Provisional assessment of the imported/procured goods or goods manufactured in case final assessment is not possible.

11.14.10 **Monitoring and performance review:** The SEZ Developers and units are monitored through prescribed accounts and returns for which purpose the following responsibilities are placed on them. Further, SEZ units that have completed one year of production are subject to an annual performance review by the Approval Committee.

**(I) Developer:**

- (a) Shall report the progress of the project on 6 monthly basis.
- (b) Shall maintain accounts of the goods imported/procured including consumption and utilization that indicate, in value terms, import, domestic procurement, consumption, utilization of goods, out flow of all foreign exchange etc.
- (c) Shall furnish Quarterly Reports of import/procurement and utilization of goods to the Specified Officer within 30 days of the period.
- (d) Shall furnish Half-Yearly certificate from Chartered Engineer regarding

utilization of the goods within 30 days of the period.

**(II) SEZ unit:**

- (a) Shall maintain account financial year-wise - separately for trading and manufacturing activity - and submit annual report to the Development Commissioner (within 90 days of close of period). The account shall include in value terms details of goods imported/procured, consumed/utilized, manufactured/produced (including by-products, waste, scrap or remnants), disposed by way of export, DTA sales or transfer to other EOU/EHTP/STP/BTP/ SEZ units and goods in stock.
- (b) Shall account for the entire quantity of each category of goods on 'First-in-First-out' basis (one-to-one correlation is required only for goods imported for recycling, reconditioning, repair and reengineering and goods in stock).

11.14.11 Net Foreign Exchange Earnings: SEZ units shall achieve positive Net Foreign Exchange Earnings (NFE), which is calculated cumulatively for a period of 5 years from the commencement of commercial production, as per the formula:  
Positive NFE = A - B > 0

A: Free on Board (FOB) value of exports including exports to Nepal and Bhutan against freely convertible currency, supplies against Advance Licences/Duty Exemption/ Remission/Diamond Imprest/EPCG scheme, supplies to EOUs, other SEZs etc.

B: Total of CIF value of imported inputs (raw materials, intermediates, components, consumables, etc.) and capital goods and value of payments made in foreign exchange (commission, royalty, fees, dividends, interest on

external borrowings during the first 5 years etc.). CIF value of goods purchased on high sea sale basis even if payment is made in Indian Rupees, goods received from an EOU/EHTP/STP/BTP/SEZ/bonded warehouses, etc. shall also be included.

**11.14.12 Important conditions of import/procurement of goods and services:** Approved goods or services required by a Developer or SEZ unit for authorized activities are exempt from taxes (Customs duties, Service Tax, Cess under specified Acts, etc.). Goods already imported/shipped arrived before issue of LOA are eligible for duty free clearance provided duty is not paid and goods not cleared from Customs or cleared and Bonded. By and large Developers and SEZ units are eligible for same fiscal benefits and follow same procedures. The points of difference mainly relate to time limits for utilization of goods and filing returns, area within a SEZ in which the goods can be used, requirement of meeting export obligation, DTA sale, sub-contracting, etc. Some standard conditions for obtaining the fiscal concessions are:

**(I) For Developers:**

- (a) Goods and services shall be used for authorized purposes viz. development, operation and maintenance of the SEZ or providing public utility service therein. (Notified operations - roads, drainage, etc. – are authorized by the BOA).
- (b) Schedule for starting and completing construction would be adhered to.
- (c) The goods shall be utilized, exported or disposed in accordance with the legal provisions within 1 year or extended period as allowed by the Specified Officer. If not, the duties would be paid thereon.
- (d) The duty free imported/procured goods would be stored in a premise in the processing area that is declared to the Specified Officer and kept for inspection by the Customs Officers before use.
- (e) Proper accounts of the import or procurement, consumption and utilization

of the goods will be maintained and a quarterly and half-yearly report submitted.

- (f) The removal of the goods from the SEZ would be on payment of duty with the permission of the Specified Officer.
- (g) The goods shall be allowed for authorized operations in non-processing area.
- (h) Goods requiring frequent entry/exit may be allowed on the basis of a general permission by the Specified Officer.

**(II) For SEZ units:**

- (a) Goods and services are required for “authorized operations” that include manufacture or production or processing of goods and services (including assembling, trading, repair, re-making, reconditioning, re-engineering, packaging) or any activity in connection therewith and export of such goods or service etc. It also includes operation, maintenance and expansion of the unit.
- (b) Exemption and concessions on goods and services required for setting up and maintenance of factory building is allowed to SEZ unit and its contractor. All documents shall be filed jointly in names of SEZ unit and contractor, but responsibility for proper utilization will be with SEZ unit.
- (c) Software units may use computers for commercial training within the SEZ.
- (d) Goods and services may be used for making capital goods for use in the unit as well as for creating a central facility for units in the SEZ (such facility for software development can be accessed by the DTA units for export of software).
- (e) Goods and services shall be utilized or exported or disposed on payment of duty within 5 years or extended period, as may be allowed. If this is not done or goods are not accounted for the SEZ unit shall refund the duty and

benefits availed.

- (f) Finished goods including by-products, services and power may be cleared to the DTA on payment of applicable duty or cleared without payment of duty to export warehousing in the DTA or to bonded warehouse for further manufacture etc.
- (g) Port restrictions for import of metal scrap and waste shall apply.
- (h) Assessment of imported gold/silver would be at effective rate of duty. In case of clandestine removal, evasion of duty by collusion or any willful mis-statement or suppression of facts, such fine and penalty would be imposed so as to make the total amount payable equivalent to the duty at the tariff rate.
- (i) When capital goods are leased from a domestic or foreign leasing company SEZ unit and the leasing company shall jointly file the import documents. Value of leased imported capital goods is accounted for to calculate NFE.
- (j) Unless specified Safeguard/Anti-dumping duty will not apply to goods imported.
- (k) Import permission required under any other law shall be given by BOA.
- (l) SEZ unit shall maintain proper account in convenient format, financial year-wise of all foreign exchange inflows and outflows, domestic procurement, DTA sale etc. and submit the same for inspection to the Specified Officer. The SEZ unit shall also submit an annual report.
- (m) Duty free procured goods (except gold, silver, platinum, diamond, precious and semi-precious stones) may be cleared to the DTA on payment of duties. The value of the goods and rate of duty shall be as follows:
  - (i) Capital goods - Depreciated value and rate of duty in force on date of removal.
  - (ii) Other goods – Assessed value and rate of duty in force on date of filing the Bill of Entry (no duty is leviable on packing materials unsuitable for use).

- (n) Procured goods or services or manufactured goods may be transferred without payment of duty to another EOU/EHTP/STP/BTP/SEZ unit.
- (o) Procured capital goods and goods manufactured may be temporarily removed to the DTA without payment of duty for test, repair, calibration, reengineering or reconditioning. If the goods are destroyed/consumed during testing etc. a certificate from the laboratory/institution will be furnished.
- (p) Duty free goods or goods partially processed or packaged may be removed to the DTA for job work without payment of duty and return thereafter or export from the job workers premises, if registered with Central Excise. The goods or partially processed goods or packaged goods may also be got processed abroad.
- (q) If the duty free goods or goods manufactured, processed etc. and scrap, waste, remnants etc. are destroyed no duty is payable. Destruction of gold/silver/ platinum/precious or semi-precious stones is not allowed.
- (r) Defective or damaged or otherwise unfit for use duty free procured goods or parts thereof may be returned (or destroyed or cleared to the DTA on payment of duty) and replacement thereof or the same goods after repairs, may be obtained.
- (s) Goods including motor vehicle shall not be admitted into the SEZ without payment of duty. However, duty paid vehicles can move in and out. Also, the Specified Officer may, for reasons recorded in writing like frequent entry/exit of goods, permit goods not required for authorized operations to be admitted into and exit the SEZ without payment of duty.
- (t) The Development Commissioner is the final authority on whether an item is required by a SEZ unit or not.

11.14.13 **Procedure of import of goods/services:** The procedure of import of goods and services by SEZ units and Developers for their authorized operations is simplified and routine examination of goods is not done. Also, SEZ units can undertake their activities on the basis of 'self certification' or 'self-declaration' and maintenance of records. The following procedures will apply:

**(I) Import from ports, airports, LCS and ICDs**

- (a) Imported goods consigned for delivery at the place of import viz. port/airport/LCS/ICD/FPO shall be transhipped by the carrier or its agent to the SEZ on a Bill of Entry assessed by the SEZ Customs Officer.
- (b) Customs authorities at the place of import shall grant direct delivery of the goods without insisting on prior filing of documentation, assessment and examination (examination on basis of specific information or intelligence requires prior written permission of the Deputy/Assistant Commissioner of Customs.
- (c) SEZ unit shall file a Bill of Entry for home consumption in quintuplicate with the Customs Officer. The Bill of Entry shall contain the description, model, make, specifications, nature of goods (capital goods, raw materials, spares, consumables, etc.) etc. and purpose of import viz. trading, manufacturing etc. The Bill of Entry shall bear a stamped endorsement 'SEZ cargo'. When the goods including capital goods are supplied free of cost or on loan or lease basis the Bill of Entry shall be filed jointly in the name of the SEZ unit and the supplier.
- (d) The Bill of Entry shall be accompanied by Bill of Lading/Airway Bill, invoice, packing list and purchase order or contract etc.
- (e) The Authorized Officer shall register the Bill of Entry, assign it a running serial number, and assess it (approval of the Deputy/Assistant

Commissioner of Customs is not necessary). If the Bill of Entry is not assessed on the date of its filing the Authorized Officer may endorse it to this effect after registering it for being used to transfer the goods from the place of import to the SEZ.

- (f) The assessed/registered Bill of Entry shall be submitted to the Customs Officer at the place of import and treated as permission to transfer goods to the SEZ.
- (g) Full Container Load (FCL) cargo shall be transferred direct to the SEZ after verification of the seal, without Customs escort. Other cargo shall be transferred either under Customs escort or transshipment procedure at the option of SEZ importer. No separate document/bond is necessary and transshipment shall be allowed on the fifth copy of the Bill of Entry.
- (h) High value goods imported through airports may be transferred to the custodian for transfer to the designated Customs area in the SEZ for being handed over to SEZ unit/Developer. The goods may also be transferred under Customs escort at option of SEZ unit/Developer.
- (i) On arrival, at the gate of the SEZ the seal shall be verified verification in case of FCL container/truck and marks and numbers of packages verified in other cases before being allowed admission. In the case of Less than Container Load (LCL) cargo if verification cannot be undertaken at gate, it may be done at the SEZ unit/premises of the custodian.
- (j) Assessment of import goods shall be on the basis of self-declaration by the importing unit and there shall be no routine examination. In case of prior intelligence or information the goods may be examined by the Authorized Officer with the permission of the Deputy/Assistant Commissioner of Customs.
- (k) Examination of the goods shall be done at the SEZ gate or at the area within the SEZ notified by the Deputy/Assistant Commissioner of Customs (examination at the SEZ unit requires request by the unit and permission of



the Deputy/Assistant Commissioner of Customs).

- (l) In case the goods are stored outside the processing area the Development Commissioner or Specified Officer may impose safeguards for securing the duty free goods. Movement of goods between the processing and non-processing areas in a SEZ and between two processing areas shall be under serially numbered authenticated challans, which shall contain the full description of the goods.
- (m) Endorsement of verification of marks and numbers/seals and the receipt of the goods by the SEZ unit marks the completion of Customs import procedure.
- (n) SEZ unit shall submit the fifth copy of Bill of Entry bearing endorsement of the Authorized Officer that the goods have been received to the Customs Officer in place of import within 45 days from the clearance of goods therefrom or else the Development Commissioner or Specified Officer shall to raise a demand of duty from the SEZ unit.
- (o) Normal import procedure applies when SEZ unit imports goods earlier exported (example, goods are found defective or damaged or payment is not forthcoming). No duty is charged if import takes place within warranty/maintenance contract period or 1 year of export (whichever is later) and identity of goods is established.
- (p) High value items imported by gems and jewellery units consigned to an ICD in a SEZ shall be transferred by the carrier to the container line or custodian for delivery on the basis of the assessed Bill of Entry and deemed to be out of charge once they are handed over to SEZ (there shall be no examination). SEZ unit may file the Bill of Entry anytime before or after arrival of the goods at the SEZ.
- (q) Goods imported by the Developer shall be kept in a demarcated area in the SEZ for inspection by the Customs Officers before being brought into use.
- (r) Import of rough diamonds shall be permitted only if accompanied by a

Kimberley Process (KP) Certificate issued by the Development Commissioner.

**(II) Import through courier services**

The Authorized Officer shall assess the goods as per Courier Import and Export (Clearance) Regulations, 1998 and courier will transfer them under Customs escort to the custodian for delivery to SEZ unit. These may also be transshipped to the SEZ on the fifth copy of the Bill of Entry. Duty paid on goods shall be refunded to SEZ unit by the Specified Officer as per Section 74 of the Customs Act, 1962.

**(III) Import through post**

- (a) The Bill of Entry shall be marked "Postal Imports".
- (b) For noting the Bill of Entry, the Post Office registration number in its intimation letter shall be taken as IGM and item number; copy of intimation letter shall be pasted behind original Bill of Entry.
- (c) Where the SEZ is away from the FPO, the goods shall be moved under Customs escort. These may also be sealed and handed over to the custodian of the SEZ or SEZ unit or its authorized representative.

**(IV) Import by personal carriage of goods**

- (a) The passenger shall declare the goods to the Customs at the airport in the Declaration Form alongwith a duly acknowledged copy of intimation submitted to the Customs Officers at the SEZ.
- (b) The goods duly packed indicating name and address of SEZ unit and invoice and packing list shall be detained at airport warehouse and detention receipt indicating details such as weight, purity and number of bars, name of unit, passport number of passenger, etc. issued.
- (c) SEZ unit shall file the Bill of Entry in quintuplicate alongwith a copy of invoice, packing list, declaration with the Customs Officer who shall assess the document treating the detention receipt number as the IGM and item number.
- (d) After assessment, the original Bill of Entry shall be retained by the Authorized Officer and remaining copies given to SEZ unit for presenting at the airport.
- (e) The goods shall be allowed clearance from the warehouse on the basis of the original detention receipt, authorization from the SEZ unit and making entries in the Warehouse register, Detention receipt register and obtaining signatures from the authorized representative of the SEZ unit.
- (f) After release, the goods shall be moved to the SEZ under customs escort and allowed admission into SEZ unit after verification of marks and numbers of packages at the gate of the SEZ by the Authorized Officer. These may also be sealed and handed over to the custodian of the SEZ or SEZ unit.
- (g) Import of rough diamonds will be as per import procedure of production of Kimberley Process (KP) Certificate. Rough diamonds will be declared to the Customs at port of departure and arrival and invoice, payment receipt etc. produced at the airport on arrival of the passenger.

**(V) Import through data communication or telecommunication links**

- (a) SEZ unit shall file a consolidated Bill of Entry for a month within 3 working days of the closure of the month alongwith invoice and other documents before the Authorized Officer who shall give a notional 'out of charge'.
- (b) Import documents shall be routed through bank or advance payment for the imports routed through the Foreign Currency Account.
- (c) Value of imported software shall be verified by the Development Commissioner.
- (d) SEZ unit shall comply with the conditions of the RBI.

**(VI) Import from bonded warehouses/international exhibitions and EOU/EHTP/STP/BTP units**

- (a) SEZ unit shall file Bill of Entry with complete description of the goods such as model, make, serial number, etc. with the Specified Officer for assessment and submit assessed Bill of Entry to Customs Officer in charge of the warehouse.
- (b) Warehouse owner shall file Ex-bond Shipping Bill with the Customs Officer in charge of the warehouse indicating the goods to be cleared to SEZ unit.
- (c) The clearance from warehouse shall be allowed without payment of duty under cover of Ex-bond Shipping Bill and assessed Bill of Entry.
- (d) On receipt, the SEZ unit shall obtain endorsement from the Authorize Officer on the copy of Ex-bond Shipping Bill and send it to the Authorized

Officer in charge of warehouse within 45 days from the date of clearance from warehouse.

- (e) SEZ unit shall obtain notional “out of charge” of goods from the Authorized Officer on the same day if these are brought during working hours, or immediately next working day in case goods reach beyond working hours.
- (f) If the re-warehousing certificate is not received within 45 days, the Customs Officer in charge of the warehouse shall demand duty from the supplier of goods.

**(VII) Import through other SEZ units**

- (a) SEZ unit shall file a Bill of Entry for home consumption in quintuplicate along with invoice, packing list with the Authorized Officer for assessment.
- (b) The goods shall be transferred to the SEZ unit under a Transshipment Permit stamped on the Bill of Entry itself (no bond is needed).
- (c) The supplying SEZ unit shall submit the re-warehousing certificate to its Deputy/Assistant Commissioner of Customs within 45 days of the clearance of the goods or else this officer shall write to the Specified Officer of the recipient SEZ to demand duty from the receiving unit.
- (d) When supplying and receiving SEZ units are in same SEZ, movement of goods shall be subject to maintenance of accounts (no Bill of Entry is needed).

**11.14.14 Procedure of indigenous procurement of goods:**

**(I) Under Bond / Payment of Duty under Claim of Rebate / under Duty Exemption**

- (a) The DTA unit shall prepare an ARE-I in quintuplicate bearing running serial numbers from the first day of the financial year and produce it to its jurisdictional Superintendent of Central Excise. The ARE-I shall contain complete description of goods such as model, make, serial number and technical specifications.

[Note : “ARE-I” is prescribed under Notifications No. 40/2001-C.E.(N.T.) and No. 42/2001-C.E.(N.T.), both dated 26-6-2001.]

- (b) The jurisdictional Superintendent of Central Excise shall allow the goods to be removed under cover of ARE-I directly to SEZ.
- (c) On arrival of the goods, the Authorized Officer shall confirm description, quantity, marks, model and other relevant particulars given in the ARE-I, invoice and packing list and endorse the receipt of the goods on ARE-I.
- (d) The endorsed copy of ARE-I shall be forwarded to the jurisdictional Superintendent of Central Excise of the DTA unit within a period of 45 days from the date of removal of goods from the factory (or warehouse). This shall be treated as proof of export of the goods. If no proof is received he shall demand duty from the DTA unit.
- (e) The above procedure shall apply when SEZ unit procures its required goods from a trader or merchant exporter or from a supplier not under Central Excise control except that the goods shall move under the cover of an invoice.

**(II) Under claim of Export Entitlements**

- (a) The DTA supplier shall file a Bill of Export giving therein complete description, model, make, specifications, nature of goods such as capital goods, raw materials, spares, consumables, with stamped endorsement as “SEZ cargo” alongwith invoice, packing list and purchase order for noting and assessment of the Bill of Export in the SEZ. (SEZ unit or Developer has the option to file the Bill of Export on behalf of the DTA unit).
- (b) The Bill of Export shall be assessed by the Authorized Officer before the arrival of the goods. In the event the goods arrive before the assessment they shall be kept separately in a designated area and released after assessment.
- (c) The assessment of the Bill of Export shall be done as is done for a Shipping Bill and all instructions issued under respective export promotion schemes shall apply. Valuation of the goods shall be done in terms of Section 14 of the Customs Act, 1962. Further, on the basis of the LOA and the list of goods approved for the authorized operations of the SEZ unit/Developer the Authorized Officer shall examine the goods, if required.
- (d) The assessed Bill of Export shall be submitted to the Superintendent of Central Excise Officer having jurisdiction over the DTA unit and the same shall be treated as permission for transfer of goods to the SEZ.
- (e) The DTA unit shall prepare an ARE-I in quintuplicate bearing running serial numbers and containing complete description of goods such as model, make, serial number and technical specifications and produce it to its jurisdictional Superintendent of Central Excise who shall allow the removal of the goods under it and the assessed Bill of Export.

- (f) The relaxation that assessment of goods procured shall be on the basis of self-declaration by SEZ unit without routine examination does not apply to goods procured under claim of export entitlement.
- (g) The goods shall be brought to the SEZ directly and allowed admission by the Authorized Officer on basis of assessed Bill of Export and ARE-I after examination as per norms and instructions of the CBEC that apply to the export goods in general. The examination shall be done at the SEZ gate or area within the SEZ notified for this purpose by the Specified Officer. No examination shall be carried out at the SEZ unit unless requested by unit and permitted by the Specified Officer.
- (h) An endorsement that the goods are admitted in full into the SEZ shall be made on the Bill of Export and ARE-I, which shall be treated as proof of export and sent to the Central Excise Superintendent in charge of the DTA unit within 45 days or else he shall raise a demand of duty against the DTA unit.
- (i) The Bill of Export is itself the claim for availing export benefits.
- (j) Drawback will be claimed by the SEZ unit/Developer from the Specified Officer (when the SEZ unit gives a disclaimer the benefit may be claimed by the DTA supplier).

[Note: Under Rule 2(c) of the Customs and Central Excise Duties Drawback Rules, 1995 the goods supplied to the SEZ are eligible for All Industry Rates of Duty Drawback or Brand Rate of Duty Drawback. CBEC has clarified that the Drawback shall be disbursed under authority of the Specified Officer at the SEZ. The sanction shall be done on the basis of the triplicate copy of Bill of Export and amount paid by cheque or direct credit into the Developer/unit's bank account, within 3 days (5 days in non-EDI cases). For this purpose the jurisdictional Commissioner of Customs shall in



consultation with PAO issue authorization and Drawback cheque books (when there is no EDI facility) to the Specified Officer. Claims for fixing Brand Rate shall be filed with Commissioner of Customs/Central Excise having jurisdiction over the manufacturing unit and copies of the Brand Rate letters endorsed to the Development Commissioner and Specified Officer. When disclaimer is given by the SEZ Developer/unit, the DTA unit may get Drawback sanctioned from its jurisdictional Commissioner of Customs/Central Excise subject to certificate from the Specified Officer that Drawback is not claimed by the SEZ Developer/unit. Drawback/DEPB credit or treatment of these supplies as fulfillment of export obligation by the DTA supplier is allowed even when payment for the goods is made by SEZ unit in Indian Rupees.]

- (k) Essentially, movement of goods from the place of manufacture to the SEZ shall, at the option of the DTA supplier either be in terms of Rule 18 or Rule 19 of the Central Excise Rules, 2002. The former allows export under rebate of duty paid whereas the latter allows export without payment of duty. In either situation the supplier has the option to get the goods examined and sealed by the Central Excise officer' before dispatch or follow the procedure of 'self- sealing and self examination'. In both cases the goods move under cover of an ARE-1 document, but when export entitlements are availed a Bill of Export is additionally required. In the event of non-receipt of proof of export (i.e. admittance into the SEZ) the liability of payment of duty, fine, penalty and interest rests on the DTA supplier.

### **(III) Supply of duty paid goods**

- (a) Duty paid goods procured from the DTA on which no concession or export incentives are claimed shall be allowed admission into the SEZ on the basis

of invoice and connected transport documents, if any. The fact that no benefit/concession has been availed should be endorsed on the said documents.

- (b) Since supplies by a DTA unit to SEZ unit or Developer are treated as export and are eligible for exports benefits, CBEC has alerted Commissioners to ensure SEZs do not become a dumping ground for over-invoiced goods to claim higher export benefits. Before allowing such goods, nexus of the goods with the approved activity of the unit or necessity of such goods in case of Developer is to be examined and the bona fide requirement in terms of quantity ascertained. Also all Circulars/instructions issued from time to time by the CBEC in respect of export (including under export promotion schemes if their benefit is being availed) shall apply to goods being supplied from the DTA to the SEZ.
- (c) When the goods procured from the DTA are sent back as it is or without substantial processing, such goods shall be treated as re-imported goods and normal procedures would apply such as filing of a Bill of Entry. However, when the Customs import duty is 'Nil' and while procurement of the goods no export benefits were availed, then the goods may be removed on an invoice only.
- (d) When the goods or services are procured after availing duty exemption, drawback, cess and concessions and these are either not utilized for the authorized operations or are not accounted for, the benefits availed will be required to be returned back by SEZ unit.
- (e) When DEPB or Duty Drawback or any export entitlement is availed on the goods procured from the DTA and these are removed as such or after subjecting them to a process not amounting to manufacture, to an EOU/EHTP/ STP/SEZ unit, then the duty equal to export benefit shall be paid.

- (f) In the case of destruction of goods procured from the DTA (even if on account of natural calamity), SEZ unit shall pay back the export benefits availed unless the goods destroyed were procured on payment of foreign exchange (destruction of precious and semi-precious stones and precious metals is not allowed).
- (g) Special procedure for procurement of cut and polished diamonds and precious and semi precious stones from the DTA is as follows:
  - (i) Parcel of goods shall be brought to the SEZ in sealed condition by the supplier or CHA alongwith invoice (Original, Duplicate and Triplicate).
  - (ii) The invoices shall be produced to the Authorized Officer at the entry gate of the SEZ for registration and endorsing the registration number on original and duplicate copies before the parcel is allowed entry into SEZ unit and the goods entered in its records.
  - (iii) Duplicate invoice bearing the endorsement of receipt shall be forwarded to the DTA supplier.
- (h) Since supplies from the DTA to SEZs are treated as exports Export duty is leviable thereon.

11.14.15 **Service Tax issues:** Service Tax is payable when SEZ units provide taxable services in the DTA. For this purpose SEZ units shall be required to be registered with concerned Service Tax/Central Excise Commissionerate. However, taxable service provided to developers and SEZ units whether within or outside the SEZ for their authorized activities are exempt from Service Tax vide Notification No. 9/2009-ST, dated 3.3.20011. In respect of such services that are consumed outside the SEZ the exemption is provided by grant of refund of Service Tax paid thereon.

11.14.16 **Sub-contracting:** SEZ units (other than in trading/warehousing) may sub-contract part of the production or production process to the DTA/other SEZ/EOU/EHTP/STP/BTP units with annual prior permission of the Specified Officer. No permission is necessary if sub-contracting is done through units in same SEZ. Further, the SEZ units may sub-contract part of production process abroad with Development Commissioner's approval. They may also undertake job work for export on behalf of the DTA units. Finally, a Developer or a co-developer or on their behalf a contractor may sub-contract a process in the DTA or through a SEZ/EOU/EHTP/STP/BTP unit with prior permission of the Approval Committee. The sub-contracting facility is available subject to certain guidelines, as follows:

- (a) The Deputy/Assistant Commissioner of Customs will give sub-contracting permission on annual basis (preferably at the time of the project approval). No permission is required if the sub-contracting is through another unit in same SEZ in which case the two units shall maintain proper accounts.
- (b) SEZ unit shall furnish information, such as, the name and address of the sub-contractor(s), Central Excise Registration Number of the job-worker, if any, processing capacity of the job-worker, details of the processes to be carried out by the job-worker, etc. A consent letter from the job-worker indicating willingness to allow inspection of the premises is preferable.
- (c) It should be possible to establish identity of finished goods received after sub-contracting with raw materials/partially processed goods sent out (to ensure against substitution/diversion of duty free goods).
- (d) Raw materials, components and consumables excluding fuel may be sent out by SEZ unit to the sub-contractor without payment of duty under cover of pre-authenticated machine serially numbered challans that shall have complete description of the goods. Original, duplicate and triplicate copies of the challan shall accompany the goods to job worker and the goods should be returned under cover of the original and duplicate copy of the

challan. The triplicate copy shall be for the job workers own record. On receipt of the goods, duplicate copy of the challan shall be sent by SEZ unit to the jurisdictional Central Excise Officer of the sub-contractor and original copy retained for record along with the quadruplicate copy.

- (e) The quantity of goods sent for job work must be entered in the SEZ unit's register indicating also the challan number.
- (f) The Customs Officer shall note the identification marks of the goods being sent out for verification when received back after job work. In case of sensitive items, based upon risk profile a sample of the goods being sent out may be drawn (no sample shall be drawn in the case of gems and jewellery units).
- (g) SEZ unit sending out imported or domestically procured raw materials, components and consumables without first subjecting them to any process shall furnish 100% bank guarantee to the Deputy/Assistant Commissioner of Customs to cover duty forgone on these items (units with a turnover of over Rs.1 Crore or which has been in the SEZ for at least 2 years with unblemished track record are exempt).
- (h) The Specified Officer or Authorized Officer may undertake random checks at sub-contractor's premises.
- (i) Goods sent for sub-contracting shall be returned within 120 days (Deputy/Assistant Commissioner of Customs may extend the time) or else action may be taken to recover duty, such as, encashment of the bank guarantee.
- (j) Export of finished goods direct from the EOU/EHTP/STP/BTP/SEZ or Central Excise registered sub-contractor is permitted. A sample of goods exported shall be sent to the Deputy/Assistant Commissioner of Customs to check the goods supplied by the unit are utilized. Also, goods shall be

exported under bond and Shipping Bill filed in name of the SEZ unit and sub-contractor shall be processed at port of export.

- (k) Scrap, waste or remnants generated during the processing shall be returned to the unit or cleared on payment of duty (no duty is payable if it is destroyed in the presence of its jurisdictional Central Excise authorities). Wastage norms shall be as per norms notified for the DEEC scheme or as fixed by the Approval Committee. Destruction shall not be allowed in respect of gold, silver, platinum, diamond, precious and semi-precious stones.
- (l) SEZ unit may remove moulds, jigs, tools, fixtures, tackles, instruments, hangers, patterns and drawings to the sub contractor subject to a quarterly verification report from the Central Excise Officer of the sub contractor.
- (m) When SEZ unit gets its production process sub-contracted abroad the processed goods shall either be brought back or sold abroad. This is subject to the condition that the sub-contracting charges are declared in the Export Declaration form, invoices and other documents and the sale proceeds repatriated.
- (n) The SEZ unit will intimate the Customs Officer the return of goods after job work and enter these in a register.
- (o) The value of the sub-contracted production in a financial year shall not exceed the value of the SEZ unit's own production in the preceding financial year.
- (p) No sub-contracting of Polyester yarn is allowed in DTA or EOU or units in another SEZ. However, SEZ units may send out fabric of polyester or textured yarn for sub-contracting but they will not be allowed to do third party exports.

- (q) For **Gems and jewellery** SEZ units sub-contracting in DTA is restricted to gold/silver/platinum jewellery. Further, finished or semi-finished goods including studded jewellery, containing quantity and purity equal to the gold/silver/ platinum sent to the DTA shall be brought back within 120 days. Also, no cut and polished diamond, precious or semi-precious stones (other than rough diamonds, precious and semi-precious stones subject to zero duty) may be sent for sub-contracting. When precious metal in bullion form bearing marking of fineness, purity, make and serial number are taken out there is no need for appraisal. Finally, SEZ unit may receive plain gold/silver/platinum jewellery from DTA or from an EOU/SEZ unit in exchange of equivalent quantity of gold/silver/platinum removed from the unit. Benefit of wastage or manufacturing loss as may be notified is allowed.
- (r) **Agriculture/horticulture** SEZ units may, on the basis of annual permission from the Deputy/Assistant Commissioner, supply specified inputs/equipment to farms in the DTA for contract farming. This is subject to input-output norms being prescribed by the BOA, execution of contract between the unit and the DTA farmer, and furnishing of bank guarantee equal to duty on the items being taken out in case the unit has not been in existence for over 2 years. The specified inputs/equipment include seeds, fertilizers, green house equipment etc.
- (s) SEZ units may undertake sub-contracting for export on behalf of DTA units with annual permission of the Deputy/Assistant Commissioner of Customs subject to semi-finished goods/raw materials/consumables being supplied by the DTA unit, export of finished goods taking place direct from SEZ unit and Shipping Bill being filed jointly in SEZ. Further, when duty paid material is provided the DTA unit will be entitled to refund of duty as Brand Rate of Duty Drawback.

11.14.17 **DTA Clearances:** SEZ units may remove goods to the DTA on payment of duties of Customs including Anti-dumping duty, countervailing duty and Safeguard duties. The rate of duty and tariff valuation, if any, on the said goods shall be as is applicable on the date of their removal and where such date is not ascertainable on the date of payment of duty.

**(I) Sale of finished goods and scrap/remnant/waste in DTA**

- (a) Sale will be on payment of Customs duties as in the case of imported goods and relevant duty exemption notification apply [example, Notification No. 45/2005-Cus., dated 16-5-2005 that exempts all goods (with few exceptions) produced or manufactured in a SEZ and brought to the DTA from the Additional Duty of Customs levied under Section 3(5) of the Customs Tariff Act, 1975.]

[Note : In contrast to the position in respect of EOUs there is no provision to deny the duty exemption on inputs to SEZ units when the final goods sold in the DTA are exempt from duty.]

- (b) A Bill of Entry must be filed by DTA buyer (or by the SEZ unit).
- (c) The value of the goods cleared to the DTA and their assessment to duty shall be as per the provisions of the Customs Act, 1962 and the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. If goods are supplied by a contract manufacturing unit on directions of an overseas entity the value shall be the transaction value on the commercial invoice of the overseas entity.
- (d) DTA sale will be of goods approved for manufacture and export in the LOA.
- (e) SEZ units are free to sell goods in the DTA without quantitative or value limit.
- (f) Goods sold in DTA are not exempt from licensing or quality control



certificate under any Act/Rule/Regulation [in terms of condition no. 8 of Chapter IA of ITC(HS) Customs authorities shall draw sample for testing of food/ other perishable items sold in DTA. Further, scrap/waste/remnants arising during manufacturing activity are exempt from provisions of ITC (HS)].

- (g) DTA sale facility is not available for items prohibited for import.
- (h) DTA sale facility is not available to SEZ units engaged in activities of reconditioning, repair and reengineering.
- (i) Scrap, dust or sweeping of gold or silver or platinum may be cleared into the DTA on payment of applicable Customs duties on the gold/silver/platinum content in the said scrap, dust or sweepings as per Notification No. 62/2004-Cus., dated 12.5.2004. Samples of the sweepings/dust shall be taken at the time of clearance and sent to a Mint for assaying and assessment finalized on receipt of the Mints' report.
- (j) Rendering of services in the DTA would be subject to payment of Service Tax.
- (k) Goods cleared to the DTA may be brought back to SEZ unit for repair within a period of 6 months or within the warranty period, whichever is later (period of 6 months can be extended by the Specified Officer). After repair the goods can be sent back on payment of duty on the value of repair.

**(II) DTA clearances of imported/procured goods**

- (a) When goods imported/procured are sold as such without being subject to manufacturing process they shall be treated as imported goods for the purpose of applying the provisions of the said Foreign Trade Policy.
- (b) Duty is not payable in respect of the following goods:

- (i) Goods procured from DTA on which no export entitlement is availed.
  - (ii) Duty paid imported goods cleared without processing.
  - (iii) Used packing material excluding metal containers.
  - (iv) Computers and computer peripherals including printer, plotter, scanner, monitor, key-board and storage units when donated to recognized non-commercial educational institutions, registered charitable hospitals, public libraries, public funded research and development establishments, organizations of the Government of India or State Government or Union Territory. This is subject to the said goods having been in possession and use of the unit for at least 2 years.
- (c) When benefit of DEPB or Drawback or export entitlement is availed and the goods are removed as such or after subjecting them to a process not amounting to manufacture, then the duty equal to export benefit availed shall be paid.
- (d) Capital goods and used computers and peripherals may be cleared to the DTA on payment of duty on depreciated value (below). Depreciation is allowed in straight line method and 100% depreciation is permissible. The depreciation shall be allowed for the period from the date of commencement of commercial production of the SEZ unit, or where such capital goods have been received in the unit after such commencement of commercial production, from the date such goods have come into use for commercial production, to the date of presentation of Bill of Entry for home consumption.

<i>Period</i>	<b>Computers and Peripherals</b>	<b>Capital Goods</b>
For every quarter in 1st year	10%	4%
For every quarter in 2nd year	8%	3%
For every quarter in 3rd year	5%	3%
For every quarter in 4th and 5th year	1%	2.5%
For every quarter thereafter	-	2%

- (e) When goods are destroyed no duty is payable but the SEZ unit shall be required to pay back the export benefits, if any, taken by the DTA unit unless the goods destroyed have been procured against payment of foreign exchange. In this regard it is to be noted that when scrap is generated through such destruction it would be assessed to duty on merits if cleared to the DTA.

**(III) DTA sale of power**

- (a) When power is supplied from processing to non-processing area, or to DTA, Customs duty is leviable, as notified. Such power plant shall have a separate meter to quantify the supply.
- (b) Transfer of surplus power in the DTA will be on payment of the duty leviable on consumables/raw materials used for power generation on the basis of consumption norms approved by the Approval Committee.

- (c) Proposal for sale of surplus power will be made to the Development Commissioner who shall examine it in consultation with the State Government.
- (d) Sale of surplus power in the DTA shall require permission of the Specified Officer and State Government.
- (e) Transfer or sale of surplus power to EOU/EHTP/STP/BTP/SEZ units or Developers will be without duty subject to supplying and receiving units maintaining account of consumables and raw materials used in power generation.

11.14.18 ***Transfer of goods and services*** is permitted from SEZs to DTA and between SEZs and units operating under the EOU schemes.

**(I) Transfer of goods and services from SEZ to EOU/EHTP/STP/BTP/SEZ unit or Developer**

- (a) The receiving unit/Developer should be entitled to import/procure the goods.
- (b) The supplying and receiving unit or Developer shall maintain accounts of goods.
- (c) The goods transferred/loaned shall not be counted for NFE of the supplying unit.
- (d) The transferred goods (other than domestic raw materials) shall be accounted as imports of receiving unit and its value deducted from imports of transferring unit.

**(II) Transfer of goods to an EOU/EHTP/STP/BTP unit and Bonded Warehouse**

- (a) The transfer shall be allowed for the purpose of manufacture and export or for export or use by the recipient unit.
- (b) SEZ unit shall transfer the goods on the strength of a Procurement Certificate issued by the Customs/Central Excise Officer in charge of the EOU/EHTP/STP/BTP unit.
- (c) Receiving EOU/EHTP/STP/BTP unit shall file a warehousing Bill of Entry in quintuplicate with the Authorized (SEZ unit can also file the Bill of Entry, if authorized). The Bill of Entry shall be accompanied by the Procurement Certificate, Invoice, Packing list, copy of LOA and copy of warehousing license
- (d) On receipt of the goods, the EOU/EHTP/STP/BTP unit shall obtain a re-warehousing certificate from jurisdictional Customs/Central Excise Officer and submit it to the Authorized Officer within 45 days or else Customs Officer shall ask the jurisdictional Customs/Central Excise Officer to raise a demand of duty against the EOU/EHTP/STP/BTP unit.
- (e) If goods transferred were initially procured from the DTA and benefit of DEPB availed the transfer will on payment of Customs duty equal to the benefits availed. This condition applies when the goods are transferred as such or after being subject to a process that does not amount to manufacture.

**(III) Inter-unit transfer of goods between two SEZ units**

- (a) Recipient SEZ unit shall file Bill of Entry for home consumption in quintuplicate with the Authorized Officer.
- (b) The Bill of Entry shall contain the full description of the goods, model, make, serial number, etc. It shall also mention the nature of the goods (raw material, capital goods, spare etc.). It shall be accompanied by the invoice and packing list.
- (c) The Authorized Officer shall assess the Bill of Entry and allow the goods to be transferred on a Transshipment Permit, which shall be stamped on Bill of Entry.
- (d) The receiving unit shall obtain re-warehousing certificate from its Authorized Officer and submit the same to the Authorized Officer in charge of the supplying SEZ unit within 45 days of the removal of the goods or else the Authorized Officer of the supplying unit shall ask the Specified Officer of the receiving unit to raise a demand of duty against it.
- (e) When the transfer is in the same Zone no Bill of Entry need be filed and no prior permission is required subject to the two units accounting for the goods. When transferred goods are not accounted for or re-warehousing certificate is not produced, the duty will be demanded from the recipient unit.

**11.14.19**      ***Temporary removal of following goods without duty is allowed, as per procedure given below:***

- (i) Capital goods and parts thereof may be taken out for repairs.
- (ii) Goods may be taken out for job work, test, repair, replacement, refining, calibration, reengineering, reconditioning and R&D.

- (iii) Manufactured goods may be taken out for display/export promotion/exhibition.
  - (iv) Laptop/notebook/video projection systems removed for use by authorized employee of a unit/Developer.
- 
- (a) Goods shall move under the cover of a serially numbered challan. The SEZ unit shall pre-authenticated the challan and intimate serial numbers in advance to the Authorized Officer.
  - (b) When goods move outside the SEZ unit the challans shall be countersigned by the Authorized Officer. The challans shall bear the identification marks such as model, make, serial number etc. of the goods being taken out.
  - (c) Normal period for the goods to remain outside the SEZ unit is 120 days (Deputy/Assistant Commissioner of Customs can extend this period) or else SEZ unit will be required to pay the duty thereon.
  - (d) When laptop computers and VPS are taken out for use by authorized employees, SEZ unit shall account for the items, issue a certificate authorizing the employee by name (with name of the employee, serial no., model, manufacturers name, etc.) and endorsed it to the Specified Officer and obtain acknowledgement, and maintain record of certificates of authorization. The C.B.E.C. has instructed that the qualification or competence of the employee to use the said goods not be questioned.
  - (e) SEZ unit may transfer the goods abroad for repair, replacement, testing (including quality testing), calibration, and R&D work subject to intimation to the Specified Officer maintaining records. When goods are transferred for quality testing or R&D, SEZ unit will give undertaking to the Authorized Officer regarding their return (goods consumed or destroyed in the process should be certified to this effect).

11.14.20 **Export** is defined to mean taking goods or providing services out of India from a SEZ by any mode or supplying goods or providing services from the DTA to the SEZ or supplying goods or providing services from one SEZ unit or Developer to another in the same or another SEZ. Some conditions for export are, as follows:

- (a) Prohibited goods cannot be exported.
- (b) SEZ units, other than trading or service or Free Trade and Warehousing units may export to Russian Federation in Indian Rupees against repayment of State Credit/Escrow Rupee Account of the buyer, subject to RBI clearance, if any.
- (c) State Trading Enterprises restrictions shall not apply to SEZ manufacturing units.
- (d) Goods or services exported shall be exempt from duties and cess.
- (e) Export of Special Chemicals, Organisms, Materials, Equipment and Technologies is allowed subject to fulfillment of conditions as per the ITC (HS).
- (f) Export of high grade Iron ore (64% and above), except of Goa and Redi origin is subject to annual quota allocation by BOA.
- (g) Requirement of minimum export price, export in consumer packs etc. shall apply in case indigenous raw materials are exported without further processing/manufacturing by the unit.
- (h) Export of textile items will be subject to bilateral agreements.

**(I) General export procedure**



- (a) The Shipping Bill with invoice, packing list, etc. shall be filed in quadruplicate with the Specified Officer.
- (b) The Shipping Bill will be registered, assigned a running serial number and assessed (not countersigned by the Deputy/Assistant Commissioner of Customs).
- (c) 'Let Export Order' shall be given on the basis of SEZ unit's self certification without routine examination. If desired by SEZ unit goods will be examined/sealed as per norms for Free Shipping Bills. Export value of services will be self-certified by SEZ unit.
- (d) The goods shall be moved to the port, airport etc. of export, but when goods cannot be moved in one consignment the unit may furnish a Bond for the duty involved to furnish proof of export within 90 days.
- (e) At port/airport etc. goods will not be examined in routine (10% of gems/jewellery consignment will be examined). Examination if seals are tampered or on specific intelligence requires written approval of Deputy/Assistant Commissioner of Customs.

## **(II) Export for participation in exhibitions abroad**

- (a) SEZ unit will give advance intimation to the Development Commissioner regarding the exhibition.
- (b) SEZ unit shall file a Shipping Bill alongwith relevant documents with the Customs Officer. The intimation in original or its certified copy shall be attached.

- (c) Self certified photograph of gems and jewellery items shall be given (value shall not exceed \$2 million) - when export is by personal baggage, the value of goods and gems and jewellery shall not exceed Rs.5 lakhs and \$2 million, respectively.
- (d) The export shall be allowed as per procedure followed in respect of Free Shipping Bills after examination of 10% of the consignment.
- (e) SEZ unit shall submit proof of inward remittance in respect of goods sold during exhibition abroad.
- (f) Unsold goods shall be re-imported within 45 days of close of exhibition/display.
- (g) SEZ unit shall file Bill of Entry for unsold goods, which shall be allowed free of duty subject to establishing identity (10% of consignment will be examined)

**(III) Export through show rooms/shops in International airports in India / abroad**

Commissioner of Customs having jurisdiction over the airport will prescribe a procedure for this facility. Further, items unsold after 45 days shall be exported or returned to SEZ unit. When goods are displayed for sale in permitted shops abroad or in show rooms of the distributors/agents, items remaining unsold after 180 days will be reimported within 45 days thereafter. Normal export/import procedure will be followed.

**(IV) Export through courier**

SEZ units may export through courier authorized by the Commissioner of Customs in charge of the airport concerned. The procedure prescribed in terms of the Courier Export and Import (Clearance) Regulations, 1998 shall be followed.

**(V) Export by personal carriage of goods abroad**

- (a) SEZ unit shall submit the Shipping Bill, invoice, GR form to the Authorized Officer who shall assess the Shipping Bill as is done for Free Shipping Bills.
- (b) The goods shall be transferred to the airport under the cover of the Shipping Bill by the authorized agency approved by the Specified Officer or under Customs escort.
- (c) At the airport, the goods shall be deposited at the warehouse against a “Detention Receipt” and handed over to the authorized passenger at time of departure on submission of original Detention Receipt.
- (d) SEZ unit shall submit to the Specified Officer the proof of export issued by the Customs Officer at the airport of export within 15 days from removal of goods.
- (e) Where a custodian is available at the airport the goods shall be delivered to the authorized passenger by the custodian at the airport.
- (f) Foreign bound passenger can carry spare parts for repair of exported goods along with invoice with value and a permission letter from the Customs Officer.
- (g) Personal carriage of goods not exceeding Rs.5 Lakhs is allowed for holding/participating in exhibitions abroad with approval of the Development Commissioner. SEZ unit shall declare the goods to the Customs Officer at the airport and obtain necessary endorsement. Unsold

items shall be re-imported or sale proceeds repatriated within 45 days of the close of exhibition. Proof of export shall be copy of Shipping Bill, of Currency Declaration Form filed by foreign buyer with Customs at time of arrival, and Foreign Exchange Realization/Encashment Certificate.

- (h) When personal carriage for export is on Document against Acceptance or Cash on Delivery basis, SEZ unit will submit the copy of Shipping Bill and Bank Certificate of Export and Realization as proof of export within 30 days of delivery.

**(VI) Export by gems and jewellery units**

- (a) The Shipping Bill and invoice shall contain the description of the items and weight and quantity; purity of gold/silver/platinum; type of gem stones used for studding (diamond, ruby, sapphire, cubic zircon etc.) and studding weight in carats; and FOB price rate of the jewellery item and quantity in pieces and the total value.
- (b) If plain and studded jewellery at show rooms/retail outlets at departure lounge of International Airports is unsold after 45 days these will be exported or returned to SEZ unit (Commissioner of Customs, Airport will prescribe a procedure).
- (c) Gems and jewellery may be displayed/sold in shops abroad or show rooms of distributors/agents and items unsold reimported within 365 days.
- (d) In case of personal carriage of gems and jewellery for holding/participating in exhibitions abroad, the value shall not exceed US \$2 million, which shall be declared to the airport Customs Officer and endorsement obtained. Unsold items shall be re-imported within 45 days and sale proceeds repatriated within 45 days of close of exhibition. Proof of export shall be

the Shipping Bill, Currency Declaration Form filed by the foreign buyer with the Customs at the time of his arrival, and Foreign Exchange Realization/Encashment Certificate from a Bank.

- (e) Jewellery may be exported on basis of notional rate certificate of a Nominated Agency, which should not be more than 3 days older than date of shipment.
- (f) Gold/silver/platinum may be got from Nominated Agencies on loan basis for export of jewellery within 90 days from the date of release. 10% of the export consignment will be examined by the Jewellery Appraisers at the port/airport of export. Export of rough diamonds shall be on basis of a Kimberley Process (KP) Certificate issued by the Development Commissioner.

#### **(VII) Export by software units**

Export of software or processed or analyzed data or call centre services may be done through data link, internet, e-mail or any other electronic mode on basis of the SOFTEX Form, certified by the Development Commissioner as per Foreign Exchange Management (Export of Goods and Services) Regulation, 2000. For export by way of “on site” consultancy services unit will furnish details regarding contract or purchase order, foreign exchange remitted and persons deputed, to the Authorized Officer. Consultancy fee in convertible foreign exchange shall be counted for the purpose of calculating positive NFE.

#### **(VIII) Export through third parties**

- (a) The manufacture of the goods or development of services will be done in SEZ unit and the facility extends only to the marketing of the goods by the third party.
- (b) The goods will be transferred direct from SEZ unit to the port of shipment.
- (c) Export document shall contain name of both SEZ unit and third party.
- (d) Fulfillment of positive NFE shall be reckoned on the basis of the price at which the goods or services are supplied by SEZ unit to the status holder/merchant exporter or the other EOU/EHTP/ STP/BTP/SEZ unit.
- (e) The level of NFE as well as any other obligation relating to its imports and exports shall be discharged by SEZ unit and such export shall count towards fulfillment of obligation of SEZ unit only.
- (f) Merchant exporter or status holder shall export under Free Shipping Bill and submit a disclaimer that no Drawback, DEPB credit or fulfillment of export obligation under any scheme shall be claimed.

11.14.21 ***Exit from the SEZ scheme is allowed*** subject to the approval of the Development Commissioner and upon exit the goods shall be dealt with as follows:

- (a) Disposed in the DTA on payment of duty:
  - (i) Capital goods – on payment of amount equal to Customs duty on such goods on their depreciated value and at rates in force on date of removal.
  - (ii) Other goods – on payment of Customs duty on their value and at rates in force on date of presentation of the Bill of Entry.
  - (iii) Used packing material unsuitable for use - without payment of duty.
- (b) Exported without payment of duty.

- (c) Transferred to EOU/EHTP/STP/BTP/SEZ units without payment of duty.
- (d) Destroyed (except precious metals, gems etc.) without payment of duty.
- (e) Gold, precious metals, gems etc. shall be given to a nominated agency.

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- Notes:** (i) In terms of the Special Economic Zone Rules, 2006 “Authorized Officer” means an Inspector or Preventive Officer or Appraiser or Superintendent of Customs posted in the SEZ and authorized by the Specified Officer to discharge any of his functions under these rules. Likewise, “Specified Officer” means Joint or Deputy or Assistant Commissioner of Customs posted in the SEZ.
- (ii) For a comprehensive understanding of the law and procedures reference may be made to the Special Economic Zones Act, 2005, the Special Economic Zones Rules, 2006, Central Excise Rules, 2002, Customs Act, 1962, and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. CBEC Circulars No. 6/2005-Cus., dated 3.2.2005, No. 53/2005-Cus., dated 21.12.2005, No. 29/2006-

Cus. Dated 27.12.2006, No. 43/2007-Cus., dated 5.12.2007, F.No. 336/34/2008-TRU, dated 15.11.2008, and No. 105/08/2008, dated 16.11.2008 are also relevant.

## **CHAPTER-XII**

### **RIGHT TO INFORMATION ACT (RTI)**

#### **12.1. RIGHT TO INFORMATION ACT, 2005**

The Right to Information Act has come into force on the 12th October, 2005. Some provisions of the Act have come into force with immediate effect viz. obligations of public authorities [S.4(1)], designation of Public Information Officers and Assistant Public Information Officers[S.5(1) and 5(2)], constitution of Central Information Commission (S.12 and 13), constitution of State Information Commission (S.15 and 16), non-applicability of the Act to Intelligence and Security Organizations (S.24) and power to make rules to carry out the provisions of the Act (S.27 and 28).



The Act extends to the whole of India except the State of Jammu and Kashmir. [S.(12)].

According to the Act, Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force but does not include "file notings" [S.2(f)].

Similarly, right to information, according to the Act, includes the right to

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- i. inspect works, documents, records.
- ii. take notes, extracts or certified copies of documents or records.
- iii. take certified samples of material.
- iv. obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts.[S.2(j)]

### **The obligations of public authority**

It shall publish within one hundred and twenty days of the enactment:-

- i. the particulars of its organization, functions and duties;
- ii. the powers and duties of its officers and employees;
- iii. the procedure followed in its decision making process, including channels of supervision and accountability;
- iv. the norms set by it for the discharge of its functions;
- v. the rules, regulations, instructions, manuals and records used by its employees for discharging its functions;

- vi. a statement of the categories of the documents held by it or under its control;
- vii. the particulars of any arrangement that exists for consultation with, or representation by the members of the public, in relation to the formulation of policy or implementation thereof;
- viii. a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted by it. Additionally, information as to whether the meetings of these are open to the public, or r the minutes' of such meetings are accessible to the public;
- ix. a directory of its officers and employees;
- x. the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- xi. the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- xii. the manner of execution of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
- xiii. particulars of recipients of concessions, permits or authorizations granted by it;
- xiv. details of the information available to, or held by it, reduced in an electronic form;
- xv. the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- xvi. the names, designations and other particulars of the Public Information Officers.[S.4(1)(b)]

### **Public Authority**

It means any authority or body or institution of self-government established or constituted: [S.2(h)]

- by or under the Constitution;
- by any other law made by Parliament;
- by any other law made by State Legislature;
- by notification issued or order made by the appropriate Government. and includes any-
  - a. body owned, controlled or substantially financed
  - b. non-Government organization substantially financed directly or indirectly by the appropriate Government.

### **Public Information Officers (PIOs)**

PIOs are officers designated by the public authorities in all administrative units or offices under it to provide information to the citizens requesting for information under the Act. Any officer, whose assistance has been sought by the PIO for the proper discharge of his or her duties, shall render all assistance and for the purpose of contraventions of the provisions of this Act, such other officer shall be treated as a PIO.

### **The duties of a PIO**

- PIO shall deal with requests from persons seeking information and where the request cannot be made in writing, to render reasonable assistance to the person to reduce the same in writing.
- If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately.
- PIO may seek the assistance of any other officer for the proper discharge of his/her duties.

- PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in S.8 or S.9.
- Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.
- If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request.
- Where a request has been rejected, the PIO shall communicate to the requester - (i) the reasons for such rejection, (ii) the period within which an appeal against such rejection may be preferred, and (iii) the particulars of the Appellate Authority.
- PIO shall provide information in the form in which it is sought unless it would disproportionately divert the resources of the Public Authority or would be detrimental to the safety or preservation of the record in question.
- If allowing partial access, the PIO shall give a notice to the applicant, informing:
  - that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
  - the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;
  - the name and designation of the person giving the decision;
  - the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

- his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided.
- If information sought has been supplied by third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within 5 days from the receipt of the request and take its representation into consideration.
- Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice.

### **Information Exempt from Disclosure**

The following information is exempt from disclosure [S.8]

- i. information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence
- v. information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- viii. information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- ix. information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- x. information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- xi. information received in confidence from foreign Government;

- xii. information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- xiii. information which would impede the process of investigation or apprehension or prosecution of offenders;
- xiv. cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- xv. information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual;
- xvi. Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

### **Partial Disclosure of Information**

Only that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information, may be provided. [S.10]

### **Exempted Organizations under the Right to Information Act**

Central Intelligence and Security agencies specified in the Second Schedule like IB, R&AW, Directorate General of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep Police. Agencies specified by the State Governments through a Notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to

allegations of corruption and human rights violations. Further, information relating to allegations of human rights valuations could be given but only with the approval of the Central or State Information Commission, as the case may be. [S.24]

### **Procedure for Request of Information**

#### **The Application Procedure for requesting information**

- i. Apply in writing or through electronic means in English or Hindi or in the official language of the area, to the PIO, specifying the particulars of the information sought for.
- ii. Reason for seeking information are not required to be given;
- iii. Pay fees as may be prescribed (if not belonging to the below poverty line category).

#### **The time limit to get the information**

1. 30 days from the date of application
2. 48 hours for information concerning the life and liberty of a person
3. 5 days shall be added to the above response time, in case the application for information is given to Assistant Public Information Officer.
4. If the interests of a third party are involved then time limit will be 40 days (maximum period + time given to the party to make representation).
5. Failure to provide information within the specified period is a deemed refusal.

#### **The Fee**

1. Application fees to be prescribed which must be reasonable.
2. If further fees are required, then the same must be intimated in writing with calculation details of how the figure was arrived at;

3. Applicant can seek review of the decision on fees charged by the PIO by applying to the appropriate Appellate Authority;
4. No fees will be charged from people living below the poverty line
5. Applicant must be provided information free of cost if the PIO fails to comply with the prescribed time limit.

### **The ground for rejection**

1. If it is covered by exemption from disclosure. (S.8)
2. If it infringes copyright of any person other than the State. (S.9)

## **INFORMATION COMMISSIONS**

### **Constitution of Central Information Commission**

1. Central Information Commission to be constituted by the Central Government through a Gazette Notification.
2. Commission includes 1 Chief Information Commissioner (CIC) and not more than 10 Information Commissioners (IC) who will be appointed by the President of India.
3. Oath of Office will be administered by the President of India according to the form set out in the First Schedule.
4. Commission shall have its Headquarters in Delhi. Other offices may be established in other parts of the country with the approval of the Central Government.
5. Commission will exercise its powers without being subjected to directions by any other authority. (S.12)

### **The eligibility criteria and the process of appointment of CIC/IC**

1. Candidates for CIC/IC must be persons of eminence in public life with wide knowledge and experience in law, science and technology, social



service, management, journalism, mass media or administration and governance.

2. CIC/IC shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory. He shall not hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession. (S.12)
3. Appointment Committee includes Prime Minister (Chair), Leader of the Opposition in the Lok Sabha and one Union Cabinet Minister to be nominated by the Prime Minister.

#### **The term of office and other service conditions of CIC**

1. CIC shall be appointed for a term of 5 years from date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier.
2. CIC is not eligible for reappointment.
3. Salary will be the same as that of the Chief Election Commissioner. This will not be varied to the disadvantage of the CIC during service. (S.13)

#### **The term of office and other service conditions of IC**

1. IC shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier and shall not be eligible for reappointment as IC.
2. Salary will be the same as that of the Election Commissioner. This will not be varied to the disadvantage of the IC during service.
3. IC is eligible for appointment as CIC but will not hold office for more than a total of five years including his/her term as IC. (S.13)

#### **The constitution of State Information Commission**

1. The State Information Commission will be constituted by the State Government through a Gazette notification. It will have one State Chief Information Commissioner (SCIC) and not more than 10 State Information Commissioners (SIC) to be appointed by the Governor.

2. Oath of office will be administered by the Governor according to the form set out in the First Schedule.
3. The headquarters of the State Information Commission shall be at such place as the State Government may specify. Other offices may be established in other parts of the State with the approval of the State Government.
4. The Commission will exercise its powers without being subjected to any other authority.

### **The eligibility criterion and the process of appointment of State Chief Information Commissioner/State Information Commissioners**

The Appointments Committee will be headed by the Chief Minister. Other members include the Leader of the Opposition in the Legislative Assembly and one Cabinet Minister nominated by the Chief Minister.

The qualifications for appointment as SCIC/SIC shall be the same as that for Central Commissioners.

The salary of the State Chief Information Commissioner will be the same as that of an Election Commissioner. The salary of the State Information Commissioner will be the same as that of the Chief Secretary of the State Government. (S.15)

### **The powers and functions of Information Commissions**

1. The Central Information Commission/State Information Commission has a duty to receive complaints from any person -
  - a) who has not been able to submit an information request because a PIO has not been appointed ;
  - b) who has been refused information that was requested;

- c) who has received no response to his/her information request within the specified time limits ;
  - d) who thinks the fees charged are unreasonable ;
  - e) who thinks information given is incomplete or false or misleading ;and
  - f) any other matter relating to obtaining information under this law.
2. Power to order inquiry if there are reasonable grounds.
3. CIC/SCIC will have powers of Civil Court such as -
- a) summoning and enforcing attendance of persons, compelling them to give oral or written evidence on oath and to produce documents or things;
  - b) requiring the discovery and inspection of documents;
  - c) receiving evidence on affidavit ;
  - d) requisitioning public records or copies from any court or office
  - e) issuing summons for examination of witnesses or documents
  - f) any other matter which may be prescribed.
4. All records covered by this law (including those covered by exemptions) must be given to CIC/SCIC during inquiry for examination.
5. Power to secure compliance of its decisions from the Public Authority includes-

- a) providing access to information in a particular form;
- b) directing the public authority to appoint a PIO/APIO where none exists;
- c) publishing information or categories of information;
- d) making necessary changes to the practices relating to management, maintenance and destruction of records ;
- e) enhancing training provision for officials on RTI;
- f) seeking an annual report from the public authority on compliance with this law;
- g) require it to compensate for any loss or other detriment suffered by the applicant ;
- h) impose penalties under this law; or
- i) reject the application. (S.18 and S.19)

### **The reporting procedure**

1. Central Information Commission will send an annual report to the Central Government on the implementation of the provisions of this law at the end of the year. The State Information Commission will send a report to the State Government.
2. Each Ministry has a duty to compile reports from its Public Authorities and send them to the Central Information Commission or State Information Commission, as the case may be.
3. Each report will contain details of number of requests received by each Public Authority, number of rejections and appeals, particulars of any disciplinary action taken, amount of fees and charges collected etc.

4. Central Government will table the Central Information Commission report before Parliament after the end of each year. The concerned State Government will table the report of the State Information Commission before the Vidhan Sabha (and the Vidhan Parishad wherever applicable). (S.25)

### **The role of Central/State Governments**

1. Develop educational programmes for the public especially disadvantaged communities on RTI.
2. Encourage Public Authorities to participate in the development and organization of such programmes.
3. Promote timely dissemination of accurate information to the public.
4. Train officers and develop training materials.
5. Compile and disseminate a User Guide for the public in the respective official language.
6. Publish names, designation postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc. (S.26)

### **The Rule making power**

Central Government, State Governments and the Competent Authority as defined in S.2(e) are vested with powers to make rules to carry out the provisions of the Right to Information Act, 2005. (S.27 & S.28)

### **The power to deal with the difficulties while implementing**

If any difficulty arises in giving effect to the provisions in the Act, the Central Government may, by Order published in the Official Gazette, make provisions necessary/expedient for removing the difficulty. (S.30)

### **Guidelines for the Public Authorities**

Public authorities are the repository of information when the citizens have a right to have under the Right to Information Act, 2005. As defined in the Act, a “public authority” is any authority or body or situation of self government established or constituted by or under the institution; or by any other law made by the Parliament or a State Legislature; or by notification issued or order made by the Central Government or a State Government Bodies owned, controlled or substantially financed by the Central Government or a State Government and non-Government organizations substantially financed by the Central Government or a State Government also fall within the definition of public authority. The financing of the body or the NGO by the government may be direct or indirect.

2. The Act casts important obligations on public authorities so as to initiate the citizens of the country to access the information held under their control. The obligations of a public authority are basically the obligations of the head of the authority, who should ensure that these are met in right earnest. Reference made to public authority in this document is, in fact, a reference to the head of the public authority.

### **What is information**

3. Information is not an abstract concept under the RTI Act. It is conceived as being contained in any material including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form. It also includes information relating to any private body which can be accessed by the public authority under any law for the time being in force.

4. A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copies of documents or records; and taking certified samples of material held by the public authority or held under the control of the public authority.
5. The Act gives the citizens a right to information at par with the Members of Parliament and the Members of State Legislature. According to the Act, the information which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.
6. A citizen has a right to obtain an information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs provided such information is already stored in a computer or in any other device from which the information may be transferred to diskettes etc.
7. The information to the applicant should ordinarily be provided in the form in which it is sought. However, if the supply of information sought in a particular form would disproportionately divert the resources of the public authority or may cause harm to the safety or preservation of the records, supply of information in that form may be denied.
8. The Act gives the right to information only to the citizens of India. It does not make provision for giving information to Corporations, Associations, Companies etc. which are legal entities/persons, but not citizens. However; if an application is made by an employee or office-bearer of any Corporation, Association, Company, NGO etc. Indicating his name and such employee/office bearer is a citizen of India, information may be supplied to him/her. In such cases, it would be presumed that citizen has sought information at the address of the Corporation etc.

9. Only such information is required to be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority. It is not required under the Act to create information; or to interpret information; or to solve the problems raised by the applications; or to furnish replies to hypothetical questions.

### **Information Exempted From Disclosure**

10. Sub-section (1) of section 8 and section 9 of the Act enumerate the types of information which is exempt from disclosure. Sub-section (2) of section 8, however, provides that information exempted under sub-section (1) or exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure outweighs the harm to the protected interest. Further, sub-section (3) of section 8 provides that information exempt from disclosure under sub-section (1) except as provided in clauses (a), (c) and (i) thereof, would cease to be exempted after 20 years from the date of cocurrence of the related event etc.
11. It may be noted that section 8(3) of the Act does not require the public authorities to retain records for indefinite period. The records should be retained as per the record retention schedule applicable to the concerned public authority. Information generated in a file may survive in the form of an Om or a letter or in any other form even after destruction of the file/record. The Act requires furnishing of information so available after the lapse of 20 years even if such information was exempt disclosure under sub-section(1) of Section 8. It means that the information which, in normal course, is exempt from disclosure under sub-section(1) of Section 8 of the Act, would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates. However, the following types of information would continue to



be exempt and there would be no obligation, even after lapse of 20 years, to give any citizen-

- i. information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;
- ii. information the disclosure of which would cause a breach of privilege of Parliament or State Legislature; or
- iii. cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section(1) of Section 8 of the Act.

### **Timely Supply of Information**

12. The Act requires that except in some special circumstances, decision on an application for information should be given within 30 days of the receipt of the request. Where the information sought for concerns the life or liberty of a person, the same should be provided within forty-eight hours of the receipt of the request. If the decision on the request for information is not given within the prescribed period, it is deemed that the request has been refused. It is pertinent to note that if a public authority fails to comply with the specified time limit, the information to the concerned applicant would have to be provided free of charge.

### **Right to Information Vis-a-Vis other Acts**

13. The RTI Act has over-riding effect vis-à-vis other laws inasmuch as the provisions of the RTI Act would have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act.

### **Maintenance and Computerisation of Records**

14. Proper management of records is of utmost importance for effective implementation of the provisions of the Act. A public authority should therefore, maintain all its records properly. It should ensure that the records are duly catalogued and indexed in such a manner and form that it may facilitate the right to information.
15. The Public authorities should computerize all its records which are appropriate to be computerized. Records so computerized should be connected through a network on different systems so that so that access to such records is facilitated.

### **Suo Motu Disclosure**

16. Each public authority should provide as much information suo motu to the public through various means of communications so that the public have minimum resort to the use of the Act to obtain information. Internet being one of the most effective means of communications, the information may be posted on the website Section 4(1)(b) of the Act, in particular, requires every public authority to publish following sixteen categories of information:
- i. the particulars of its organization, function and duties;
  - ii. the powers and duties of its officers and employees;
  - iii. the procedure followed in the decision making process, including channels of supervision and accountability;
  - iv. the norms set by it for the discharge of its functions;
  - v. the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions.
  - vi. a statement of the categories of documents that are held by it or under its control;
  - vii. the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
  - viii. a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

- ix. directory of its officers and employees;
- x. the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- xi. the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- xii. the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- xiii. particulars of recipients of concessions, permits or authorizations granted by it;
- xiv. details in respect of the information, available to or held by it, reduced in an electronic form;
- xv. the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- xvi. the names, designations and other particulars of the Public Information Officers;

18. Besides the categories of information enumerated above, the Government may prescribe other categories of information to be published by any public authority. It need be stressed that publication of the information as referred to above is not optional. It is a statutory requirement which every public authority is bound to meet.

19. Another important point to note is that it is not sufficient to publish the above information once. The public authority is obliged to update such information every year. It is advisable that, as far as possible, the information should be updated as and when any development takes place. Particularly, in case of publication on the internet, the information should be kept updated all the time.

#### **Dissemination of Information**

20. The public authority should widely disseminate the information. Dissemination should be done in such form and manner which is easily accessible to the public. It may be done through notice boards, newspapers, public announcements, media broadcast, the internet or any other means. The public authority should take into consideration the

cost effectiveness, local language and most effective method of communication in the local area while disseminating the information.

#### **Publication of Facts about Policies and Decisions**

21. Public authorities formulate policies and take various decisions from time to time. As provided in the Act, while formulating important policies or announcing the decisions affecting the public, the public authority should publish all relevant facts about such policies and decisions for the information of public at large.

#### **Providing Reasons for Decisions**

22. The public authorities take various administrative and quasi-judicial decisions which affect the interests of certain persons. It is mandatory for the concerned public authority to provide reasons for such decisions to the affected persons. It may be done by using appropriate mode of communication.

#### **Designation of CPIOs etc.**

23. Every public authority is required to designate Public Information Officers in all the administrative units of offices under it. The public authorities should also designate the First Appellate Authorities and publish the details thereof alongwith the details of the Public Information Officers. Every public authority is also required to designate Assistant Public Information Officers at each sub-divisional level. The Government has decided that Central Assistant Public Information Officers' (CAPIOs) appointed by the Department of Posts would act at CAPIOs for all the public authorities under the Govt. of India.

#### **Acceptance of Fee**

24. According to the Right to Information(Regulation of Fee and Cost) Rules, 2005 as amended by the Right to Information (Regulation of Fee and cost) Rules, 2005 as amended by the right to Information(Regulation of Fee and cost) rules, 2006, an applicant can make payment of fee in cash or by demand draft or banker's cheque of Indian Postal Order payable the Accounts Officer of the public authority. The public authority should ensure that payment by any of the above modes is not denies or the applicant is not compelled to draw IPO etc. in the name of any officer other than the Accounts Officer. If any public authority does not have any Accounts Officer, an officer may be designated as such for the purpose of receiving fee under the RTI Act or rules made there under.

#### **Transfer of Application**

25. The Act provides that if an application is made to a public authority requesting for an information, which is held by another public authority, or the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or relevant part of it to that other public authority within five days from the receipt of the application. The public authority should sensitize its officers about this provision of the Act lest the public authority is held responsible for delay.

#### **Compliance with the Orders of the CIC**

26. While deciding an appeal, the Central Information Commission, may require the concerned public authority to take such steps as may be necessary to secure compliance with the provisions of the Act. In this regard, the Commission may pas an order ot provide information to an applicant in a particular form; appoint a Public Information Officer; publish certain information or categories of information; make necessary changes to its practices in relation to the maintenance, management and destruction of

records; enhance the provision of training for its officials; provide an annual report as prepared in compliance with clause(b) of subsection (1) of section4 of the Act.

27. The Commission has power to pass orders requiring a public authority to compensate the complainant for any loss or other detriment suffered by him. It also has power to impose penalty on the Public Information Officer as provided in the Act. It may be noted that penalty is imposed on the Public Information Officer which is to be paid by him. However, the compensation, ordered by the Commission to be paid to an applicant would have to be paid by the public authority.
28. The decisions of the Commission are binding. The public authority should ensure that the orders passed by the Commission are implemented. If any public authority is of the view that an order of the Commission is not in consonance with the provisions of the Act, it may approach the High Court by way of a Writ Petition.

**Annual Report of the CIC**

29. The Central Information Commission, after the end of each year, is required to prepare a report on the implementation of the provisions of the Act during that year. Each Ministry or Department is required, in relation to the public authorities within jurisdiction, to collect and provide information to the Central Information Commission, inter-alia, contains following information in respect of the year to which the report relates-
  - a) the number of requests made to each public authority;
  - b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of the Act under which these decisions were made and the number of times such provisions were invoked;
  - c) particulars of any disciplinary action against any officer in respect of the administration of the Act;
  - d) the amount of charges collected by each public authority under the Act; and

- e) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of the Act.
- 30 Every public authority should send necessary material to its administrative Ministry/Department soon after the end of the year so that the Ministry/Department may send the information to the Commission and the Commission may incorporate the same in its report.
- 31 If it appears to the Central Information Commission that a practice of a public authority in relation to the exercise of its functions under the Act does not conform with the provisions or spirit of the Act, it may give a recommendation to the authority specifying the steps ought to be taken for promoting such conformity. The concerned public authority should take necessary action to bring its practice in conformity with the Act.

**Development of Programmes etc.**

- 32 It is expected of each public authority that it would develop and organize education programmes to advance the understanding of the public, in particular of disadvantaged communities, as to how to exercise the rights contemplated under the Act; and ensure timely and effective dissemination of accurate information about their activities. Training of the Public Information officers and other officers of a public authority is very important for meeting these expectations and effective implementation of the provisions of the Act. The public authorities should, therefore, arrange for training of their officers designated as Public Information Officer/First Appellate Authority and other officers who are directly or indirectly involved in the implementation of the provisions of the Act.

**(Vide GOI Ministry of Personnel & Training OM. No. 1/4/2008-IR dated 25.04.2008)**

Sr. No.	Brief on issue involved	Reference of Relevant Orders and decision
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1.	i.  ii.	It is not incumbent on the PIO or the Public Authority to interpret the rules for the Appellants ---  It is not open for the Appellants to see respondent's advice on specific matters about interpretation of laws and notifications etc.	I. F.No.CIC/AT/A/2008/01319  Decision dtd. 19-2-2009  Shri Ratan Mishra .... Appellant  CBEC, New Delhi – Respondent  II. F.No.CIC/AT/A/2006/200185. Appeal by Prakash Kumar Gupta before Information Commissioner  Internal Pages – 1 to 5
2.		If the rule itself provides for exemption from disclosure, the same would be construed to be covered under Section 8 (d) of RTI Act.	III. Decision–Appl.No.09/IC(A) 2006  F.No.CIC/MA/A/2006/00012, dated 10-3-2006.  Shri Ramesh Shetty – Appellant  Ch.Commr. of Cus. (DZ), New Delhi
3.		RTI Act entitles each Citizen to seek and receive information from Public Authorities, it does not allow him and liberty to seek explanations, reasons or to force any decision on these Public Authorities	IV. Decision in Appeal No.CIC/AT/A/2007/00660 / 00662 Shri Amin Merchant – Appellant  Shri Ravindra Swaroop –CPIO – TRU  Shri Gautam Ray Jt.Secy (TRU), New Delhi
4.		Information on COFEPOSA proposal is exempt from disclosure	V. Decision Ref.No.298/IC/2006. File No.CIC/MA/A/2006/00598/21-9-06. in Appeal by Shri Ritesh Parmar against the Order of Commissioner of Customs (P)
5.		The admissibility of Application under RTI Act only when the Applicant is an affected person.	VI. Decision Ref. No.217/IC(A)/2006 F.No.CIC/MA/A/2006/00538/30-8-06 Shri B. Bandyopadhyay- Applicant Comm'te of Central Excise –Resp.
6.	A	In the event of pendency of Crim. Inv. and framing charges and also on account of trial court being seized of the matter, in such circumstance non-disclosure of information is justified being covered under the exemption category of Section 8(1) (e) & (h) of the Act.	VII. Decision Ref.No.157/IC(A)/2006 F.No.CIC/MA/A/2006/00230/1-8-2006  Shri Arun Jaitly, M.P. (former Min) ..  Appellant  C.B.I., CGO Complex, New Delhi,

			Respondent.
	B	Any attempt to compile the voluminous information, so as to comply with the request of the Appellant, may disproportionately divert the Public resources, which is not permissible under Section 7(9) of the Act	- do -
7.		Non-supply of documents involving personal details and information on 3 <sup>rd</sup> Party's interest is justifiable and supported by the doctrine of severability as envisaged under Section 10 of the R.T.I.Act. Such denials are also appropriate in terms of Section 8(1)(d) and Section 11 of the RTI Act.	VIII. Decision in Application vide Ref.No.CIC/WB/C/2006/00101 Shri J.S. Kohli .. Complainant Commissioner of Entertainment Tax .. Respondent

**CENTRAL INFORMATION COMMISSION**

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**F.No. CIC/AT/A/2006/00185**

**Dated, the 18th September, 2006.**

**Appellant: Shri Rakesh Kumar Gupta, 38 SFS Flats DDA, Mukherjee Nagar,  
Delhi-110 009.**

**Respondents: Shri R.V. Easwar, Vice-President, PIO, Income Tax Appellate Tribunal (ITAT), 10th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.**

**Shri Vimal Gandhi, President, Appellate Authority, Income Tax Appellate Tribunal (ITAT), 10th and 11th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110 003.**

Shri Rakesh Kumar Gupta has come up in an appeal before the Commission against the order dated 31.1.2006 of the Appellate Authority, Shri Vimal Gandhi,

President, Income Tax Appellate Tribunal (ITAT) and the orders dated 14.12.2005 of the

PIO, Shri R.P. Ishwar in response to the appellant's two RTI requests both dated

20.10.2005 made to the PIO.

The parties were called for hearing on 18.9.2006. The appellant was present in person and the respondents were represented by Shri Vikram Dutt, Asst. Registrar and

Shri P.D. Kanunjna, ACIT, ITAT.

**First RTI request dated 20.10.2005**

The appellant had asked for 12 information from the PIO which are listed below:

- “ 1. What is inspection fee by a party to the case of decided case?  
 2. What is inspection fee by a party to the case of pending case?  
 3. What is inspection fee by other than the party to the case of decided case?  
 4. What are the circumstances, when party other the litigant can inspect the records of other persons?  
 5. What is inspection fee by other than the party to the case of pending case?  
 6. As per rule 4 A sub-rule (XI), it is the duty and power of the Registrar (ITAT) to allow inspection of records of the Tribunal.  
 a. Is above statement correct?  
 b. In what circumstances Bench Member / President of ITAT interfere in the inspection process.  
 7. Is Registrar Office received the inspection request (Letter No.Win/INVESTIGATION OF INCOME /EHIRC /ITAT/ REGISTRAR /7 Date:01 July 2005 written by) from Mr Rakesh Kumar Gupta IN 2 APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO. 567/DEL/05-BENCH G ?  
 8. Has Registrar Office allowed the inspection? If not why ?  
 9. Why Bench Staff did not allow inspection in spite of permission by Registrar Office?  
 10. Why Bench Member interferes (inspection work) in the working of Registrar office working?  
 11. Is registrar office received the reason from G Bench for withholding the inspection to Mr Rakesh K Gupta? What is the reason?  
 12. Is you had communicated the reason of your decision to Mr Rakesh K Gupta? If yes kindly provide the copy.  
 If not, why?”

Information requested at item 1 to 5 above, is in respect of the fees and the entitlement for inspection of records in pending and decided appeals before the Income Tax Appellate Tribunal. It has been pointed out by the PIO that Rules 50(1) and 50(3) of the Appellate Tribunal Rules, 1963 laid down the fee, procedures and entitlement of parties for access to documents/information.

It is not incumbent on the PIO or the public authority to interpret the rules for the appellant. The appellant should feel free to apply for the entitled documents under Rule 50 of the Appellate Tribunal Rules.

As regards item 6 above, the appellant has sought two information, (a) whether the Registrar, ITAT has the power under Rule 4A (XI) to allow inspection of records by authorized parties, and (b) in what circumstances the Bench or the President of the ITAT can interfere in the inspection process.

It is strange that in the presence of a clear-cut and straight-forward Rule, the appellant still wants the public authority to interpret it for him. There is no such responsibility cast on the public authority. The rule itself contains the information requested by the appellant.

As regards item 6(b) above, it needs to be stated that the ITAT is a quasi-judicial body, and the directions of the Bench or the President of the ITAT are in the nature of quasi-judicial orders. It is inappropriate for the PIO to anticipate as to what the ITAT would do in a given circumstance. In fact, the information as sought here by the appellant doesn't even qualify to be 'information' as defined under section 2(f) of the RTI Act. The PIO has given a reply as best as he could. But the plain fact is that this request of the appellant doesn't merit response.

His request for information at item 10 above is also a hypothetical one and merits no response as it is not 'information' as per the Act.

Through items 7, 8 and 9 the appellant has queried the PIO about a certain inspection-request in which the Bench staff allegedly prevented the inspection in spite of the Registrar allowing it. The PIO has stated in reply that no request for any such inspection is available in the ITAT office. As such, he was not in a position to answer queries 7, 8 and 9.

Items 11 and 12 of the RTI request of the appellant again deal with the actions of

ITAT Bench in what the appellant describes as “withholding the inspection to Rakesh K. Gupta?” He also asks, “What is the reason?”

The reply given by the PIO makes it clear that there were orders of the ITAT Bench in this matter, which were implemented by the Registrar Office.

Since this was a decision of a quasi-judicial Tribunal, it could be challenged only in a superior forum. The order of the ITAT Bench itself contains the information and the reasons for that order. Mr. Gupta may obtain copies of this order by following the procedure laid down for the same.

There is no obligation on the PIO to supply this information.

It is noticed that the purpose of Shri Gupta filing this appeal before the Commission is essentially to obtain an interpretation of Appellate Tribunal Rules 50(1) and 50(3) as well as other Rules in order to access information of a third party. The ITAT, through its order had apparently barred that information from disclosure and Shri Gupta was attempting the RTI-route in order to circumvent the Tribunal's orders.

In any case, Shri Gupta is free to file his RTI request for specific document or information he wishes to have. And if he so does, the PIO will consider that request under the provisions of the RTI Act and examine its validity.

The appeal is rejected.

### **Second RTI request dated 20.10.2005**

The appellant has filed a second RTI request, again largely, focused on the powers and the actions of the ITA Tribunal. The detailed request for information sought by him is as follows:

“ 1. Is there any reasonable time limit to deliver the decision after the last date of hearing? If yes, what are they?

2. IN APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO.567/DEL/05-BENCH G

- a. What is the last date of hearing?
- b. Is Honourable Bench delivered the decision? [sic]
- c. If yes, when it was delivered?
- d. If not, what are reasons for the delay?
- e. If there is such long delay, is it effect the quality of decision made by the Honourable Bench?
- f. If yes, what are the reasons effecting quality of decisions?

3. IN APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO.567/DEL/05-BENCH G. Mr. Rakesh Kumar Gupta vide Letter No.Win/INVESTIGATION OF INCOME / EHIRC/ITAT/member / 5 Dated 3 May 2005 inform Honourable Bench about Escorts (Tax Evader) Consul had lied to Honourable Members over their specific query

- a. Is Honourable Bench received the above letter? If yes when? [sic]
- b. If not why?
- c. Is Honourable Bench taking into consideration above facts while delivering the decision in the case?
- d. If not why?

4 As per rule 4 A sub-rule (XI), it is the duty and power of the Registrar (ITAT) to allow inspection of records of the Tribunal.

- a. Is above statement correct ?
- b. In what circumstances Bench Member / President of the ITAT interfere in the inspection process.

5 What are the circumstances, Honourable Bench interfere (which is the duty of Registrar office) in the inspection request of Mr Rakesh Kumar Gupta IN APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO. 567/DEL/05 – BENCH G?

6 Is Honourable Bench delivered the decision in the inspection request? If

yes, What is the decision? Whether it is communicated to applicant? If not, why?"

The PIO has painstakingly responded to the queries and apprised the appellant of the legal position, wherever it was necessary.

The appellant's query at item 1 is about the "reasonable" time-limit for delivery of decisions by the ITAT which the PIO has put down as 60 days from the date of last hearing of the appeal. The replies to item 2 (a) and 2(b) are factual and should be taken as valid. As regards items 2(c), 2(d), 2(e) and 2(f), the PIO is quite right in holding that it was not open to the appellant to assume that there was delay and put words in the mouth of the PIO for an answer. Besides, the ITAT, being a quasi-judicial body, it decides the cases in its own discretion. Reply to item 3(a) is factual and correct. Item 3(b), 3(c) and 3(d) are again about the powers of the Bench of the ITAT. Besides being hypothetical, the information sought doesn't even qualify to be 'information' under the RTI Act.

Item 4 again deals with, as in the preceding RTI request, with the powers of the ITAT. While item 4(a) being factual has been replied to, item 4(b) relates to the discretionary power of a quasi-judicial body, the PIO is not expected to give his version of how the ITAT would exercise that power. There is no obligation to transmit any such information. As regards item 5, this is again about the power of a quasi-judicial Bench. It is a hypothetical question about the circumstances in which such a body will exercise its powers.

There is no need to respond to this query.

As regards item 6, the reply given by the PIO is factually correct and hence complete.

Before parting with this appeal, it must be pointed out that this is the first time a party has come up to the Commission asking for interpretation of a given law / rules as well as the interpretation of the powers of a quasi-judicial body. As I stated in the first appeal, the proper Forum to test the order of a Tribunal is



as laid down under the appropriate Act or as provided in the Constitution. It would be wholly inappropriate to invoke the provisions of the RTI Act for the interpretation of laws and rules. It should be made clear that the laws and rules are themselves 'information' and being in public domain are accessible to all citizens of the country.

The request of the appellant, therefore, needs to be turned-down as the RTI Act cannot be invoked for such purposes.

The appeal is rejected.

Sd/-

( A.N. TIWARI )

INFORMATION COMMISSIONER

Authenticated by –

Sd/-

( L.C. SINGHI )

ADDL. REGISTRAR

Central Information Commission

Decision No.217/IC(A)/2006

F. No.CIC/MA/A/2006/00538

Dated, the 30th August, 2006

Name of the Appellant : Sh. B. Bandyopadhyay, Nandibari, Manushpur,

Bandel, Hooghly (W.B.)

Name of the Public Authority: Commissionerate of Central Excise, 15/1,  
Strand Road, Kolkata – 700 001.

**DECISION**

1. The appellant had sought certain information about an on-going investigation related to M/s Hindustan Motors Ltd, West Bengal. He has, in fact, raised queries and sought the opinion of the CPIO on such questions as to when the investigation would be completed.

2. The CPIO refused to divulge the information on the ground that the appellant was in no way an affected person and that the investigations are in progress. Hence, he has claimed exemption u/s 8(1)(h) of the Act from disclosure of the information sought. The appellate authority has upheld the decision of the CPIO.

3. In view of the above, the decision of the CPIO is justified.

The appeal is accordingly disposed of.

Sd/-

(Prof. M.M. Ansari)

Information Commissioner

Authenticated true copy:

(P.K. Gera)

Registrar

Central Information Commission

Decision No.157/IC(A)/2006

F. No.CIC/MA/A/2006/00230

Dated, the 1st August 2006

Name of the Appellant : Shri Arun Jaitley, M.P.(Rajya Sabha), A-44

Kailash Colony, New Delhi – 110 048.

Name of the Public Authority: Central Bureau of Investigation, CGO Complex, Lodhi Road, New Delhi – 110 003.

## **DECISION**

### **Facts of the Case:**

1. The appellant has filed an appeal against the order No.DP0612006/1237/3/1(A)/90-ACU.IV/SIG dated April 12, 2006, passed by the appellate authority of the CBI. The appellate authority has refused to provide the information sought for on the ground that the matter is sub-judice and that disclosure of information would impede the process of investigation and prosecution of offenders.
2. In his appeal to the Commission, the appellant has contended that the information sought for would not impede or interfere with the criminal case pending before the Court.
3. The details of information sought are as under:
  - (i) All documents, manuscripts and files pertaining to the freezing of Bank Account Nos.5A5151516M and 5A5151516L maintained at London (UK) by Mr. Ottavio Quattrocchi (wanted by the Interpol vide Notice control No.A-44/2-1997) and his wife Mrs. Maria Quattrocchi, vide order dated 25.7.2003 passed by the Queen's High Court at London.
  - ii) All documents, manuscripts and files pertaining to the de-freezing of the said Bank Accounts of Mr. Quattrocchi and his wife, vide order dated 11.1.2006 passed by the said Court.
  - iii) All correspondence, in electronic form or otherwise (including their enclosures, annexures and attachments) exchanged till date between the Crown Prosecution Service of the United Kingdom and the CBI pertaining to the aforesaid freezing and de-freezing of the aforesaid Bank Accounts. All Advices and opinions on which the said request was made to the Crown Prosecution Service for de-freezing the accounts.
  - iv) All information pertaining to the visit of Mr B. Dutta, Additional Solicitor General of India and other persons accompanying him, to London in December, 2005 in connection with the de-freezing of the said Bank Accounts.

v) All information as regards the course of action followed by the CBI pursuant to the Judgement dated 31.5.2005 delivered by Mr. Justice R.S. Sodhi of the Delhi High Court in Criminal Revision No.272 of 2004 titled 'Prakash P. Hinduja vs. State through CBI' including opinion dated 7.10 rendered by Mr. K.P. Pathak, Additional Solicitor General of India on the said issue and the records pertaining to the seeking of the said opinion.

vi) All advices, opinions and notings of officials based on which a decision was taken not to challenge the judgment of Justice J.D. Kapoor dated 4.2.2004 in Kartongen Kemi Och Forva Itning AB and ors. Vs. State through CBI. And the judgment of Justice R.S. Sodhi dated 31.5.2005 in Delhi High Court titled Srichand P. Hinduja vs. State through CBI."

4. The CPIO responded within the stipulated period of 30 days. The information sought was, however, declined on the following ground:

"As the criminal case NO.RC.1(A)/90-ACU.IV/SIG against Mr. Ottavio Quattrocchi is pending in the Hon'ble Court of Chief Metropolitan Magistrate, Delhi and further, that some ongoing investigation is currently afoot, the documents and information asked for, can neither be provided nor allowed to be inspected at present."

5. The appellant filed his first appeal in which he pointed out that the CPIO was 'under an obligation to provide the information sought or reject the request under the specific grounds as specified in Section 8 or 9 of the Act'.

6. Moreover, the appellant, at this stage, clearly specified the required information and mentioned that:

"the applicant seeks information pertaining to the freezing of the Bank Accounts of Mr. Ottavio Quattrocchi by order of the Queen's High Court at London; information pertaining to the visit of Mr. B. Dutta, Additional Solicitor General of India and other persons accompanying him, to London in December, 2005 in connection with the de-freezing of the said Bank Accounts; information regarding correspondence exchanged between the Crown Prosecution Service of the United Kingdom and the CBI, the aforesaid information is not the subject matter of the ongoing investigation pending. The matter relating to de-freezing of Accounts is a closed matter. In any case the sharing of this investigation does not impede

investigation.”

7. The appellate authority examined the matter and passed the following order:

- i) A charge sheet was filed against Mr. Ottavio Quattrochi on 22/10/1999 and the matter is sub judice in the Hon'ble Court of CMM, Delhi.
- ii) That the Central Information Commission in its rulings in appeals No.01/IC(A)/2006 dated 16th February, 2006, No.03/IC(A)/CIC/2006 dated 24th February 2006 and No.11/IC(A)/2006 dated 14th March , 2006 held that the provisions of section 8(1)(h) of the Act had been correctly applied by the appellate authority in cases which are subjudice in competent court of law.
- iii) That the investigations are of the nature of a continuing offence wherein the facts ascertained in respect of the two accounts in BSI AG Bank London have bearing on further investigations afoot.
- iv) That the provisions of section 8(1)(h) of the Right to Information Act 2005 envisages information that would impede the process of investigation or apprehension or prosecution of offenders and is not limited to “process of investigation”.
- v) That under the provisions of section 129 of the Indian Evidence Act 1872, confidential communications with legal advisors are privileged communications that no one shall be compelled to disclose.

That upon consideration of the above I find that the Public Information Officer has correctly applied the provisions under section 8 (1)(h) of the Act.

The appeal is therefore dismissed.”

8. In this backdrop, the major issues that arise for further examination are:

- i) Whether the information sought can be declined merely on the ground that the matter is sub judice in the Court.
- ii) Whether the information sought, as above, could be treated in entirety as the subject matter of investigation by the CBI
- iii) Whether the disclosure of partial information, especially the part which has no bearing on further investigations, could be allowed.
- iv) Whether the exemption claimed on the ground of ‘privileged

Communications' with respect to certain documents received from external agencies and the Governments, as mentioned by the appellant and the appellate authority, is justified.

9. The case was heard on 31.7.2006. The appellant could not be present in the hearing nor there was any communication from him to this effect to the Commission, explaining the reasons for his absence. However, at least two persons, who claimed to be the appellant's representatives, without having proper authorization from the appellant, desired to attend the hearing.

10. The representatives of CBI strongly objected to their presence since they did not carry with them any authorization from the appellant for appearing in the hearing. It was also mentioned that a vital issue was to be discussed and this could not be done in the presence of unknown persons. On the assurance that the representatives of the appellant would send post-facto authorization within a day and on their own personal undertakings, they were allowed, with the concurrence of the CPIO of CBI, to participate in the hearing.

11. The appellant's representatives contended that the information relating to the freezing and de-freezing of the Bank accounts of Mr. Ottavio Quattrocchi is a matter which is complete and over and, therefore, all the relevant documents should be disclosed. To say that the matter is sub-judice, is not a sufficient ground for withholding the documents. They also felt that disclosure of information would not impede the process of investigation of the case by the CBI.

12. In response to the above, the CPIO of CBI made a detailed presentation to apprise the Commission about the entire gamut of issues that are involved and provided a comprehensive background of the case. She mentioned that:

. The present case was registered as a Regular Case on 22 January 1990 under various sections of Indian Penal Code and Prevention of Corruption Act 1947 against Mr. Martin Ardbo, the then President of AB Bofors, W.N. Chadha and G.P. Hinduja of London and others, on allegations of a criminal conspiracy during 1982-87, for various offences of cheating, forgery, bribery etc., cheating to the extent of SEK (Swedish Kroner) 319.40 million (approximately Rs.64 crores) in the matter of contract regarding supply of 410 FH-77 guns. The FIR was registered based on the Source Information and the report of Joint Parliamentary Committee, Report of Comptroller and Auditor General of India and others.

. After conducting investigation in the case, the CBI filed its first charge sheet on 22nd October, 1999, in the court of Special Judge, Delhi, against Mr. S.K. Bhatnagar, W.N. Chadha, Ottavio Quattrocchi, Martin Ardbo and M/s AB Bofors for trial of offences under various sections of IPC and PC Act 1947. In the charge sheet it was clearly mentioned that further investigation into the offences is being carried out under Section 173(8) of Cr.P.C.

. CBI conducted further investigation and a Supplementary Charge sheet was filed in the court of Special Judge, Delhi on 9th October, 2000 against accused S.P. Hinduja, G.P. Hinduja and P.P. Hinduja under provisions of IPC and PC Act for commission of offence. It was once again mentioned in the second charge sheet that further investigation into the offences is being carried on under Section 173 (8) of Cr.P.C. Both the charge sheets were clubbed by the Hon'ble Court. Further investigation under Section 173 (8) of Cr.P.C. continues.

. Since all accused persons except Martin Ardbo and Ottavio Quattrocchi had appeared before the Trial Court, the Special Judge, Delhi had ordered for separation of trial of these two persons from the rest of the accused persons. S.K. Bhatnagar, W.N. Chadha and Martin Ardbo have since died during 2001 and 2004 and the case against them stands abated.

. The Special Judge framed charges against accused S.P. Hinduja, G.P. Hinduja, PP Hinduja and M/s Kartongen Kemi Och Forvaltning AB (formerly M/s AB Bofors) under various sections of IPC and PC Act, 1947. Thereafter, in the Criminal Revision Application filed by the accused, in Delhi High Court, Justice J.D. Kapoor of Delhi High Court, vide his order dated 4th February, 2004 struck down the charges under P.C. Act and also the charges under bribery and corruption against Public Servants. The subsequent order of framing charges by the CMM, Delhi was challenged by Hinduja Brothers in Delhi High Court. Justice R.S. Sodhi vide his order dated 20th May 2004 set aside the above order of the CMM. In another fresh Criminal Revision Petitions filed in the High Court by the Hinduja Brothers and M/s AB Bofors, Justice R.S. Sodhi vide his judgement dated 31st May, 2005 dismissed the proceedings against accused Hinduja Brothers and M/s AB Bofors.

- Consequent upon the aforesaid judgement, the case against Ottavio Quattrocchi remained alive and is pending trial in the court of CMM, Delhi. The said accused has not yet appeared before the court till date and as such **charges are yet to be framed**. A Red Corner Notice issued by Interpol Secretariat General (IPSG) against Quattrocchi as well as a Non-Bailable Warrant issued by the Special Judge Delhi, are still in force. CBI has since been making all possible efforts to secure the presence of Quattrocchi in order to face the trial.
- The information required by the Appellant is in relation to a criminal case registered in CBI bearing RC.1 (A)/90-ACU-IV/SIG(Bofors Case). Although vide judgments of Delhi High Court, dated 4.2.2004 of Justice J. D. Kapoor and dated 31.5.2005 of Justice R.S. Sodhi, the case has been quashed against some of the accused, the case is still sub-judice against accused Ottavio Quattrocchi and, the same is pending in the Court of Chief Metropolitan Magistrate, Delhi.
- The CBI is still continuing further investigation under Section 173(8) of CrPC and the freezing and defreezing of the accounts of Mr. Quattrochi is not a closed matter as contented by the appellant. On the contrary it is submitted that after the defreezing order, CBI is still investigating the source of funds from Switzerland to London. In this context, a letter Rogatory has been issued by the court of CMM, Delhi on 25.4.2006 to the competent authority in Switzerland and the said LR is under execution. It was also mentioned by the appellate authority that the facts ascertained in respect of the two accounts in BSI AG Bank London have bearing on further investigation afoot.
- Various notings in the files, manuscript etc. and opinion of different officers are equally relevant and its disclosure is likely to impede the on going investigation.
- The matter connected with the RC.1(A)/90-ACU-IV/SIG relating to freezing, defreezing of the Mr. Quattrocchi's accounts as well as related subject matters are also pending in various courts as given below:

**Sl.No. Court Petition No. Prayer in Brief**

1. Supreme Court Writ Petition (Ctrl.)

No.6 of 2006 filed by



Ajay Kr. Agrawal on

16.1.2006.

Against de-freezing of

Quattrocchi's account

2. Supreme Court Crl. Appeal Nos.

1369-1375 of 2005

filed by Ajay Kr.

Agrawal on

19.9.2005 and

SLP Crl No.5523-

5529 of 2005 filed by

Sh. Raj Kumar

Pandey on

2.10.2005.

Against the judgement

dated 31.5.2005 of

Hon'ble Justice R.S.

Sodhi, High Court of

Delhi.

3. High court of

Delhi

Writ Petition ©

No.1891 of 2006 filed

by Rashtriya Mukti

Morch aon

17.2.2006.

In the matter of legal

opinion leading to the

defreezing of bank

accounts of Quattrocchi.

4. High Court of

Delhi

Criminal Misc.

Application No.3324

For quashing the proceedings against 10 of 2003 filed by Sh. Madhavsinh Solanki in August 2003.

him in the complaint case before Special Judge, New Delhi.

5. Special Judge, New Delhi

Complaint case against Shri

Madhavsinh Solanki filed on 7.4.2003 by CBI.

Under section 193 IPC.

6. CMM, Delhi (Trial Court)

Court Case

No.2/2002

Trial of case against Mr.

Ottavio Quattrocchi.

· CBI has also filed a Counter Affidavit on 23.1.2006 in the Hon'ble Supreme Court of India in a Writ Petition No.6/2006 filed by Sh. Ajay Aggarwal versus Union of India in the matter of defreezing of accounts held by Quattrocchi in U.K. Bank. In the affidavit filed CBI has mentioned that 'it maintains the position that the case namely CC No.2/2002 is subjudice and the CBI is obliged and proposes to take suitable action in the case in accordance with law. The said writ petition is fixed for hearing in the Supreme Court on 21st August 2006. The CBI shall also seek further avenues to examine whether Quattrocchi can be extradited so long as Quattrocchi continues to be an accused in the case". (For the apprehension of the accused, INTERPOL has issued Red Corner Notice

which is still in force).

- In the present case LR is under execution and trial is pending in the CMM Court. Efforts are continuing to apprehend accused Ottavio Quattrochi. The process of investigation is continued and disclosure of information at this stage will impede the investigation and Prosecution of offender. The present case is squarely within the ambit of the aforesaid judgments.
- Section 8(1)(h) of the Right to Information Act provides for exemption from disclosure of information. The provision of the Act clearly states that notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, information which would impede the process of investigation or apprehension or prosecution of offenders.
- During the course of investigation and execution of LRs, number of documents have been received from various Law enforcing agencies/Governments, which have been categorized as “strictly confidential”. Therefore such information which has been received in confidence from Foreign Government/Law Enforcing agencies which fall within the purview of Section 8(1)(f) of the RTI Act, cannot be disclosed.
- Further investigation in the case is continuing within the provision of section 173(8) Cr.P.C. The trial against accused Ottavio Quattrocchi is pending in the Court of CMM, Delhi and various other petitions arising out of the aforesaid case are pending in High Court and Supreme Court, which are subject matter of decision in future. Thus, request of appellant for information at this stage would impede the process of investigation and prosecution of offender.
- When the court is duly seized of the matter and prosecution has started the case, the exemption from disclosure of information under section 8(1)(h) of the Act has been correctly applied by the Appellate Authority.

13. During the course of hearing, the Commission was also informed that the Bank accounts in question were freezed for a limited period by the order of the Court in London to enable the CBI to determine the sources of funds in the said accounts and to ascertain whether the money attributable to the receipt as commission from suspected sources was credited in those accounts. The action of freezing the accounts was taken on the basis of suspicion of having received the commission, which could not be verified and proved by the CBI till now.

13. The CPIO also mentioned that since the accounts were freezed for limited period and that the CBI could not prove the receipt of commission as suspected, Shri. B. Dutta, Additional Solicitor General of India was deputed to appraise the CPS about the progress made by the CBI with regard to its investigations about the receipt of commission by the accused. Subsequently, the said accounts were defreezed on the advise of the Queen's High Court to the concerned Bank. The CPIO also mentioned that Shri B. Dutta has not made any written submission to the CPS in this regard nor did he advise them on the matter in any other form. The representative of the appellant, however, objected to these observations and said that Shri B. Dutta had advised them for de-freezing the accounts, which got revealed when a fax message was received from CPS indicating the advise to CPS given by Shri B. Dutta, to which a confirmation was sought from the CBI.

**Commission's Decision:**

14. In a parliamentary system of our democratic governance, a Member of Parliament enjoys considerable freedom to seek relevant information on the floor of the Parliament, which an ordinary citizen may envy. The fact that the appellant, a Member of Parliament (RS) and a former Minister has sought access to the public records surely adds to the credence of the successful implementation of RTI Act. The exercise of right to seek information and participation by the distinguished members of society, like MPs and ex-Ministers, as information seekers, are indeed a happy augury for strengthening the information regime that has now been set up for ensuring free flow of information, which even the common man may use to his advantage.

15. In the instant case, the information sought is huge and that are available in a large number of files, which are housed in two large rooms and kept in several cupboards under the custody of the CBI. Any attempt to compile the voluminous information, so as to comply with the request of the appellant, may disproportionately divert the public resources, which is not permissible u/s 7(9) of the Act.

16. As regards the documents relating to the freezing and de-freezing of the Bank accounts of Mr. Ottavio Quattrocchi by the order of the Queen's High Court, the CBI has admitted that: (i) the matter is pending for adjudication in various trial courts, namely, the Supreme Court of India, High Court of Delhi and

CMM Court; (ii) the investigations on the matter is inconclusive and is in progress; (iii) the charges are yet to be framed as the accused has not appeared before the Court; and (iv) A Red Corner Notice issued by Interpol against the accused and a Non-Bailable Warrant issued by the Special Judge Delhi, are still in force. Besides these facts, the CBI is conducting further investigations under section 173(8) of the Cr.P.C. and, therefore, the issue of freezing and de-freezing of the accounts of Mr. Quattrocchi is not a closed matter, as contended by the appellant. In view of this, the exemptions claimed u/s 8(1)(h) by the CBI is justified.

17. As the various Trial Courts are duly seized of the matter and concerns for containing corruption are indeed genuine, there is every hope and possibility that the public interest in general and the national interest in particular would surely be taken care of by the Hon'ble Courts in the process of carriage of justice.

18. The information regarding correspondence exchanged between the Crown Prosecution Service of the United Kingdom, Interpol and the CBI, advices received from the expert counsels on various issues relating to the case and other on-going investigations are covered under the exemption category of section 8(1)(e) &(h) of the Act. The CBI has also claimed that the communications with other external agencies which are cooperating on the matter are 'privileged communications', hence, exempt from disclosure u/s 8(1)(f) of the Act.

19. The CBI has been investigating the case for nearly sixteen years without much success. Though the CBI has claimed exemptions from disclosure of information on valid grounds, as mentioned above, these exemptions would not be available after the expiry of twenty years of such public actions under the provisions of the Act. The CBI is, therefore, directed to expedite the investigations in the matter lest its credibility should get unduly tarnished.

20. In view of the foregoing, the decision of the appellate authority of CBI is upheld.

The appeal is accordingly disposed of.

Sd/-

(Prof. M.M. Ansari)

Information Commissioner

Authenticated true copy:

**Central Information Commission****CIC/WB/C/2006/00101**

(Right to Information Act – Section 18 (b), (c), (e) & (f))

Name of the Complainant: Maj. J.S. Kohli (Retd.), No. -29, B-10 Market,  
Vasant Kunj, New Delhi-110070

Name of the Public Authority Commissioner of Entertainment Tax, LBlock,  
Vikas Bhawan, I.P. Estate, New Delhi-  
110002

**FACTS:**

The Complainant Maj JS Kohli has submitted a letter on 4th May, 05 within Annexure A followed by a reminder dated 25th June, 2005. These two letters were not under the Right to Information Act and, as such, are irrelevant in so far as the appeal petition is concerned.

Complainant Maj JS Kohli applied under the Right to Information Act on 8.12.05 to the CPIO, Office of Commissioner of Income Tax requesting for allowing him to inspect/ go through/ take certified copies wherever required in respect of following documents/ files:

- a) All documents/ files related to his complaint dated 4th May, 05 & 25th June, 05 with respect to entertainment tax.
- b) Monthwise amount of entertainment tax in respect of number of subscribers, from all cable operators including MSO's located in Vasant Kunj including Masoodpur, Kishanganj, Mahipalpur, area between Vasant Kunj & Arjungarh including Chattarpur Area, for the period between Aug, 02 to Nov. 05.
- c) Copies of form 10 that may have been received in respect of all payments at serial 1(b) above.

A detailed list of the information sought by the applicant which comprise of part (a) above is at Annexure 'T' page 58-63 of the appeal petition. The appellant has contended that most of the information required by him has not been provided by the CPIO.

Complainant Maj JS Kohli has submitted together with his complaint before us a copy of his letter of 4th May, '05 within Annexure A together with a reminder dated 25th June, 2005. These two letters cannot be placed under the Right to Information Act, 2005 and, as such, are irrelevant inasmuch as the Complaint petition is concerned.

Apparently, the original application was under DRT Act and not under the Central Act. The Appellate Authority vide letter dated 10.2.06 at Annexure 'F' gave an option to the appellant as to whether he would like his petition for information to be considered under the Central Act. The appellant replied back that his application was under the Central Act and be it so treated. The Appellate Authority thereafter has passed a speaking order which is at Annexure – I page 21-25. In this order the Appellate Authority denied the information on the following grounds:

- a) Most of the information relates to third parties. The third parties have objected to the furnishing of the information to the appellant.
- b) The information sought by the appellant would harm the competitive position of the third parties operating in the area and, as such, the information is denied u/s 8(1)(d) of the Right to Information Act, 2005.
- c) The information that meets the criteria of public interest regarding collection of tax etc. has already been provided to the appellant.
- d) The details regarding tax revenue could be given on payment of requisite fees.

It appears that the appellant has moved a second petition with the appellate authority on 6.3.06 under the Right to Information Act, 2005 seeking additional information from the Department. (Annexure 'L' page 30-31). The Appellate Authority in its order dated 8th May, 2006 (Annexure 'O') disposed of the appeal on the following grounds:

- a) Statutory assessment proceedings are quasi-judicial in nature and tax related information in regard to other assesses cannot be given u/s 8(1)(d) of the Right to Information Act since these are held in trust by

the Department.

b) Copies of form 10 cannot be given as these contain information about subscribers which are confidential in nature.

c) The appellant can seek details of his returns and details of action taken thereon. But he has asked for specific information of other individual operators or details about assessment proceedings of others.

The only issue that need to be determined in this case is as to whether the Appellate authority has rightly applied the provisions of Section 8(1)(d) read with section 11 of the Right to Information Act while denying the information to the appellant.

### **DECISION NOTICE**

After carefully examining, the issues involved the particulars of information requested and the nature of the information requested, it appears that the information that has been denied to the appellant relates to other cable operators operating in different areas. The particulars requested by the appellant relate to their assessment and other personal information. The Appellate Authority has already furnished the information which did not affect any third party interest or the commercial confidence of third parties. He has made a judicious use of the doctrine of severability as enshrined under section 10 of the Right to Information Act. Whatever information has been denied to the appellant has been rightly denied by judicious application of section 8(1)(d) and section 11 of the Right to Information Act.

The appeal has, therefore, no merit and the same is dismissed.

(Wajahat Habibullah)

Chief Information Commissioner

23/8/2006

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission.

(L.C. Singhi)

Addl. Registrar

23/8/2006