

BRIEF INTRODUCTORY NOTE:

Sea transportation has always been the main mode of transport in the international trade of merchandise goods but over the years it also started playing the significant role in coastal trade. For the compliance of legal requirements under the Customs Act or other Acts, presently different sets of regulations, circulars, instructions such as Import manifest (vessels) Regulations, 1971, Export Manifest (Vessels) Regulations, 1976, Transportation of Goods (through foreign territory) Regulations, 1965, Import goods (Condition of Transshipment) Regulation, 1995 etc. regulate different kinds of declaration, bonds, bank guarantees and other legal requirements. Although these regulations/instructions have been amended from time to time, a need has been felt to come up with an integrated regulation which would enable simplification and automation and bring it in line with international practices.

2. The purpose of these draft regulations is to provide a comprehensive framework covering all the aspects of movement of cargo including coastal cargo in line with the best international practices. It would provide a simplified and system based platform for all the stakeholders to comply with domestic legal requirements. Further, it would provide a system of ensuring safe and secure transit of the import and export goods within the country by way of IT backed tracking mechanism. Furthermore, it would also provide a procedure for multimodal transshipment completely operational on IT system.

3. For a long period, there is a growing demand for allowing coastal trade movement from east coast to west coast transiting through foreign territory or foreign port or from eastern part of country to north east India. The proposed regulations would also provide a simplified procedure for such movements.

In the light of above, the **Draft 'Manifest (Vessels) and condition of transshipment, transportation of goods through foreign territory' Regulations, 2016** are placed in public domain so as to invite valuable inputs and comments. The feedback/inputs/comments may be mailed to dircus@nic.in or piyush.bhardwaj@gov.in till 09.12.2016.

**DRAFT MANIFEST (VESSELS) AND CONDITIONS OF TRANSSHIPMENT,
TRANSPORTATION OF GOODS THROUGH FOREIGN TERRITORY
REGULATIONS, 2016**

In exercise of the powers conferred by section 157, read with section 30, section 41, section 42, section 54, section 56, sub-section (3) of section 98 of the Customs Act, 1962 (52 of 1962), and in supersession of the Transportation of Goods (Through Foreign Territory) Regulations, 1965, Import Manifest (Vessels) regulations, 1971, Export Manifest (Vessels) Regulations, 1976 and Imported Goods (Conditions of Transshipment) Regulations, 1995, the Central Board of Excise and Customs hereby makes the following regulations, namely :-

1. Short title and commencement. – These regulations may be called the Manifest (Vessels) and conditions of transshipment, transportation of goods through foreign territory regulations, 2016.

2. Definition. –In these regulations, unless the context otherwise requires,

- a) "Act" means the Customs Act, 1962 (52 of 1962);
- b) Arrival manifest or the Departure manifest would be deemed to be manifest or the bill of transshipment referred to in the Section 30 or section 41 or section 54 of the Act respectively.
- c) “coastal goods” means the goods as defined in the Customs Act;
- d) “coastal goods transited through foreign territory” means coastal goods loaded on the vessel at any Indian port and destined for another Indian port by the same vessel through a route partly through a foreign territory in between;
- e) “coasting Vessels” means a vessel for the time being engaged in the carriage of goods between Indian ports without touching any foreign port in between;
- f) “custodian” means a person approved by the Principal Commissioner or the Commissioner, as the case may be, for the purposes of section 45 of the Act;
- g) “declarant” in the appropriate circumstances means-
 - (i) the person in charge of the vessel in which the goods are imported or transhiped, or his agent, or
 - (ii) a person designated under section 30 of the Act by the Central Government.
 - (iii) Custodian or container liner or rail operator
- h) “designated foreign territory or port” for the purposes of these regulations means crossing over into territorial waters of Sri Lanka or Bangladesh whether or not calling at any port in the said two countries.
- i) “form” means a Form appended to these regulations;
- j) “port of entry” in the case of imported goods means the sea port where the said goods are unloaded for domestic transshipment by road or rail.

3. Application: These regulations shall apply to imported goods, export goods, coastal goods transported directly from one port in India to another or transited through a route which lies partly over the territory of a foreign country.

4. Filing of Arrival Manifest

The declarant mentioned at sub-clause (i) or (ii) of sub-regulation (g) of Regulation 2 shall deliver to proper officer electronically-

- (1) before the arrival of the vessel at the port but not later than departure from last port of call, a General declaration in Form II and an Arrival Manifest cargo declaration in Form IIIA or IIIB as applicable;
- (2) Upon arrival of the vessel-
 - a. an application for entry inwards in Form I
 - b. vessel's stores list in Form IV;
 - c. list of private property in the possession of the Master, officers and crew, in Form V
 - d. any other goods which, under the Customs Act or any other Act for the time being in force is required to be declared to the Customs authorities on the arrival of vessel.

Provided that where it is not possible to furnish the Arrival manifest through electronic means, then the manifest shall be submitted manually in duplicate.

Provided that if Coasting vessel does not carry Export-Import cargo, application for entry inwards is not required to be filed.

5. Manner of filing 'Cargo declaration'. –

- (1) The cargo declaration of Arrival Manifest shall be delivered in the following parts as applicable, namely:--

Part A: Vessel arriving at an Indian port from a Foreign port:-

The declaration by a Vessel arriving at any Indian gateway port from a Foreign port shall be delivered in respect of each of the following categories of cargo in Form IIIA, namely:--

Goods to be landed

- (i) Goods (including unaccompanied baggage) to be landed meant for home clearance;
- (ii) Goods (including unaccompanied baggage) to be landed meant for clearance at another Indian port (Domestic transshipment)
- (iii) Goods to be landed but destined for a foreign port (Foreign transshipment)

Explanation 1: Goods meant for home clearance means the goods to be cleared for home consumption or for warehousing at the port of unloading.

Explanation 2: Goods meant for clearance at another Indian port means the goods to be cleared for home clearance at the

port other than port of unloading or at any Inland Container Depot.

(Goods continue to be On-board):

- (i) Domestic transit goods
- (ii) Foreign transit goods

***Explanation 1:* Domestic transit goods mean the goods destined for Indian port including ICD/SEZ and to remain on-board at the port where Manifest is to be filed.**

***Explanation 2:* Foreign transit cargo means the goods destined for foreign port and to remain on-board at the port where Manifest is to be filed.**

Part B: Vessel arriving at an Indian Port from an Indian Port directly or via a 'foreign territory or foreign port'.

The cargo declaration on this part shall be delivered in respect of each of the following categories of cargo, namely in Form IIIB:-

Goods to be landed

- A. Imported goods
 - (i) Goods (including unaccompanied baggage) to be landed meant for home clearance;
 - (ii) Goods (including unaccompanied baggage) to be landed meant for clearance at another Indian port (domestic transshipment)
 - (iii) Goods to be landed but destined for a foreign port (Foreign transshipment)
- B. Export goods
- C. Coastal goods (including such goods transiting through foreign territory)

(Goods continue to be On-board)

- (i) Imported Goods:
 - a. Domestic transit cargo
 - b. Foreign transit cargo
- (ii) Export goods.
- (iii) Coastal goods (including such goods transiting through foreign territory)

- (2) The details of the cargo (including unaccompanied baggage) to be landed as declared in the respective forms shall be set out in the order of the ports of loading.
- (3) Delivery of vessel's stores list and list of private property — The vessel's stores list and the list of private property in the possession of the Master, officer and crew at the time of departure from the last port of call shall be delivered upon arrival of the vessel.

6. Filing of Departure Manifest:-

- (1) A declarant at sub-clause (i) or (ii) of sub-regulation (g) of Regulation 2 shall before the departure of the vessel from the port deliver to the proper officer electronically a departure manifest consisting of –
 - a. a cargo declaration in Form VIA & VI B as applicable;
 - b. a vessel's stores list in Form IV,
 - c. a list of private property in the possession of the Master, officers and crew, in Form V,
 - d. any other goods which, under the Customs Act or any other Act for the time being in force is required to be declared to the Customs authorities on the arrival of vessel.
- (2) In case where the departure manifest cannot be delivered electronically, then the person in charge of the vessel shall deliver to the proper officer copies of the departure manifest in duplicate.

7. Manner of filing 'Cargo Declaration':-

- (1) The cargo declaration of departure manifest shall be delivered in following parts, namely:--

Part A: Vessel departing from an Indian port for a foreign port:

The cargo declaration on this part shall be delivered in respect of each of the following categories of cargo, in the **Form VIA**.

Goods loaded at the port

- (i) Imported goods destined for a foreign port
- (ii) Export Goods

Goods loaded at the previous ports and remained on-board

- (i) Imported goods destined for a foreign port

- (ii) Export goods

Part B: Vessel departing from an Indian Port for an Indian Port directly or via a designated 'foreign territory or foreign port'.

- (2) The manifest in respect of these goods shall be filed in the **Form VIB** as the case may be.

Goods loaded at the port

- (i) Imported goods
 - a. Domestic transshipment goods
 - b. Foreign transshipment goods
- (ii) Export goods
- (iii) Coastal Goods (including such goods transiting through foreign territory)

Explanation I: Domestic transshipment goods means the imported goods destined for Indian port loaded on the vessel for the purpose of transshipment.

Explanation II: Foreign transshipment goods means the imported goods destined for foreign port loaded on the vessel for the purpose of transshipment.

Goods loaded at previous ports and remained on-board

- (i) Imported goods
 - a. Domestic transit goods
 - b. Foreign transit goods
- (ii) Export goods
- (iii) Coastal Goods (including such goods transiting through foreign territory)

- 8. (1) Notwithstanding anything contained in regulations 5 & 7 respectively, the cargo declaration in respect of —

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

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

(2) Further, where a vessel does not carry any of the cargoes referred to in sub-regulation (1), a nil declaration shall be delivered.

9. Transshipment of Import/Export Goods between Port and ICD/CFS/SEZ:

The declarant mentioned at sub-clause (iii) of sub-regulation (g) of Regulation 2 shall file a Departure manifest/Arrival Manifest as the case may be in the form VII.

10. Registration: (1) Any person who delivers the Arrival Manifest/ Departure Manifest shall apply for registration under these regulations in the Form VIII to the Jurisdictional Commissioner.

Provided for the purposes of these regulations, a single registration obtained at any Customs station would be a sufficient compliance for carrying out the obligations under these regulations at other customs stations.

Provided further that a declarant already registered under Import Manifest (Vessels) Regulations, 1971 on or before the date of coming into force of these regulations, shall be deemed to be registered under these regulations.

Provided further that a custodian already registered under Handling of Cargo in Customs Area Regulations, 2009 for purposes of custody of imported goods or export goods shall be deemed to have obtained registration under these regulations subject to the condition that he submits the Bond and the Bank Guarantee in the event of he intending to provide the services of transshipment, as the case may be, in accordance with the procedure prescribed in these regulations.

(2) Where the Principal Commissioner or Commissioner of Customs, as the case may be, is satisfied with the information provided by the applicant in Form VIII mentioned in sub-regulation (1), he may register such applicant for transacting business under these regulations for a period of two years from the date of issue of such registration.

(3) The Principal Commissioner or Commissioner of Customs shall review the registration granted under sub-regulation (2) before the expiry of the initial period of registration of two years and may extend such registration to a further period of five years at a time and in the case of an authorised economic operator for a period of ten years:

11. Conditions governing transshipment and transit through a foreign territory–

(1) Transshipment of cargo under these regulations shall be subject to the following conditions –

- (i) the goods are mentioned in the arrival manifest/ departure manifest for transshipment to any customs station or SEZ as the case may be;

(ii) the declarant executes a bond in such form as is prescribed under these regulations, with or without Bank guarantee as prescribed in the sub regulation (2) for the completion of the transshipment of the imported goods or export goods, as the case may be, to the Customs station of destination.

(2) The general bond referred to in sub-regulation (1) above shall be equal to the amount of duty involved on the imported goods and ten per cent of value of export goods likely to be transshipped during a period of ten days on notional value basis as prescribed in sub-regulation (3). In addition to the Bond, a bank guarantee equivalent to ten per cent of such bond value shall also be submitted.

Provided that the condition of furnishing of bank guarantee or cash deposit shall not be applicable to ports designated under the Major Ports Act, 1962 (38 of 1963) or to the Central Government or State Governments or their undertakings or to the Declarant authorised under Authorised Economic Operator Programme;

Provided further that where the transshipment is through a vessel, no bank Guarantee shall be furnished.

(3) The notional duty or the bond value for purposes of sub-regulation (2) in the case of transshipment of imported goods or export goods laden container shall be taken notionally as Rs. 500,000/- for a 40 feet container and Rs. 300,000/- for a 20 feet container respectively.

(4) Where the transshipment from the port to ICD or vice versa is through a rail route, the responsibility of furnishing the Bond with the bank guarantee shall be on the rail operator or the custodian or the Container liner. However, where the transshipment from the port to ICD or vice versa is fully or partly through a road route, the responsibility of furnishing the Bond with bank guarantee shall be on the custodian or the Container liner alone. In the case of movement of goods from port to CFS or vice versa, the responsibility of furnishing the Bond with bank guarantee shall be on the Custodian.

(5) In the case of Less than container load (LCL) cargo on the import side, where the consolidation is done at the port, the responsibility of furnishing the bond and the bank guarantee in respect of movement of the cargo to ICD shall be on the destination custodian. However, in the case of LCL cargo on the export side, where the consolidation is to be done at the port, the responsibility of furnishing the bond and the bank guarantee in respect of movement of the cargo to Port shall be on the custodian of the originating ICD.

(6) In the case of the coastal goods manifested for transit through a foreign territory, the declarant mentioned at sub-clause (i) or (ii) of sub-regulation (g) of Regulation 2 shall be required to execute a bond of a value equal to the value of the said goods accompanied by a bank guarantee equal to the ten percent of the said value of the goods.

12: Responsibilities of the declarant - (1) The declarant shall -

- (a) keep a record of imported goods, goods brought for export or transshipment or coastal goods, as the case may be, and produce the same to the proper officer as and when required;
- (b) keep a record of each activity or action taken in relation to the movement or handling of imported or export goods or coastal goods and goods brought for transshipment;
- (c) display or make available in any other manner, information of process or movement or handling of imported or export goods or coastal goods and goods brought for transshipment;
- (d) be responsible for the safety and security of imported and export goods or coastal goods under its custody;
- (e) be liable to pay duty on goods pilfered, lost during the transit or transshipment thereof in the customs area or enroute;
- (f) be responsible for the secure transit or transshipment of the goods from the said customs area to any other customs area at the same or any other customs station in accordance with the permission granted by the [Deputy Commissioner of Assistant Commissioner of Customs];
- (g) be responsible for re-export of hazardous goods where such goods are ordered to be exported back to the exporting country;
- (h) abide by all the provisions of the Act and the rules, regulations, notifications and orders issued there under;
- (i) the person in charge of the vessel or his agent shall issue e-delivery orders to the importer, custodian and proper officer of the Customs;
- (j) publish and display at prominent places including website or webpage of the declarant the schedule of charges for the various services provided by him in relation to the imported goods or export goods or coastal goods in the customs area.

(2) The declarant registered under these regulations shall not sublet or or sub-contract or outsource functions permitted or required to be carried out by him in terms of these regulations to any other person.

13. Suspension or revocation of registration for appointment of a Declarant. - (1)

The Principal Commissioner of Customs or Commissioner of Customs may, subject to the provisions of these regulations, suspend or revoke the registration granted to the declarant subject to the observance of procedure prescribed under regulation 12 and also order for forfeiture of security, if any, for failure to comply with any of the provisions of the Act and the rules, regulations, notifications and orders made thereunder;

(2) Notwithstanding anything contained in sub-regulation (1), the Principal Commissioner of Customs or Commissioner of Customs may, in appropriate cases where immediate action is necessary, suspend the registration granted to a declarant where an enquiry against such declarant is pending or contemplated.

14. Procedure for suspension or revocation of registration and imposition of penalty. - (1)

The Principal Commissioner or Commissioner of Customs shall issue a notice in writing to the declarant stating the grounds on which it is proposed to suspend or revoke the registration and requiring the said declarant to submit within such time as may be specified in the notice not being less than thirty days, to the Assistant Commissioner or Deputy Commissioner of Customs nominated by him, a written statement of defence and also to specify in the said statement whether the declarant desires to be heard in person by the said Assistant Commissioner or Deputy Commissioner of Customs.

(2) On receipt of the written statement from the declarant, or where no such statement has been received within the time-limit specified in the notice referred to in sub-regulation (1), the Assistant Commissioner or Deputy Commissioner of Customs may inquire into such of the grounds as are not admitted by the declarant.

(3) The Assistant Commissioner or Deputy Commissioner of Customs shall, in the course of inquiry, consider such documentary evidence and take such oral evidence as may be relevant or material to the inquiry in regard to the grounds forming the basis of the proceedings and he may also put any question to any person tendering evidence, for or against the Declarant, for the purpose of ascertaining the correct position.

(4) The declarant shall be entitled to cross-examine the persons examined in support of the grounds forming the basis of the proceedings and where the Assistant Commissioner of Customs or Deputy Commissioner of Customs declines to examine any person on the grounds that his evidence is not relevant or material, he shall record his reasons in writing for so doing.

- (5) At the conclusion of the aforesaid inquiry, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall prepare a report of the inquiry recording his findings.
- (6) The Commissioner of Customs shall furnish to the declarant a copy of the report of the Assistant Commissioner or Deputy Commissioner of Customs and shall require the declarant to submit within the specified period not being less than thirty days any representation that he may wish to make against the findings of the Assistant Commissioner of Customs or Deputy Commissioner of Customs.
- (7) The Principal Commissioner or Commissioner of Customs shall, after considering the report of the inquiry, and the representation thereon, if any, made by the declarant, pass such orders as he deems fit.
- (8) If any declarant contravenes any of the provisions of these regulations, or abets such contravention or who fails to comply with any provision of the regulation with which it was his duty to comply, then, he shall be liable to a penalty which may extend to rupees Two Lacs
- (9) Any declarant aggrieved by any decision or order passed under this regulation, may appeal under section 129A of the Act to the Customs Central Excise and Service Tax Appellate Tribunal established under sub-section (1) of section 129 of the Act.