

Warehousing

The facility of warehousing of imported goods in Customs Bonded Warehouses, without payment of Customs duty otherwise leviable on import, is permitted under the Customs Act, 1962. Apart from specific provisions in the said Act (specially under Chapter IX), certain Regulations have been also framed and provisions of Warehoused Goods (Removal) Regulations, 1963 and Manufacture and Other Operations in Warehoused Regulations, 1966 could be referred to in this regard. Basically, goods after landing are permitted to be removed to a warehouse without payment of duty and duty is collected at the time of clearance from the warehouse. The law lays down the time period upto which the goods may remain in a warehouse, without incurring any interest liability and with interest liability.

Warehousing Stations:

2. The warehouses are to be appointed/licensed at particular places only which have been so declared by Central Board of Excise and Customs. The Board has delegated its power for declaring places to be Warehousing Stations to the Chief Commissioners of Customs. In respect of 100% EOUs, the powers to declare places to be Warehousing Stations have been delegated to the Commissioners of Customs.

3. After the declaration of any place as a Warehousing Station, the Assistant/Deputy Commissioner of Customs, may appoint a Public Bonded Warehouse where imported dutiable goods may be deposited. Under section 58, the Assistant/Deputy Commissioner of Customs can licence Private Bonded Warehouses where goods imported by or on behalf of the licensee, or other imported goods where facility for Public Warehouse is not available, may be deposited. The following guidelines are generally followed for ensuring uniformity in the practice in the declaration of Warehousing Stations:-

- i) the industrial development of the proposed area and the need for warehousing of imported goods should be assessed;
- ii) only those places be notified as warehousing Stations where adequate facilities are available for appointing Public Bonded Warehouses;
However, this condition can be relaxed in case of 100% EOUs, subject to use by 100% EOUs only.
- iii) adequate Customs/Central Excise staff should be available in the vicinity of the proposed Warehousing Stations and necessary arrangements for training etc. of the staff should be made.

Cases not fulfilling the aforesaid criteria are to be decided in the Board.

Appointing of Public Bonded Warehouse:

4. In respect of Public Bonded Warehouses, other than the Central Warehousing Corporation and the State Warehousing Corporations, private operators can also be appointed as custodians. For this purpose, all such applications for custodianship are to be carefully scrutinised and due consideration given to factors such as the feasibility and financial viability of the warehouse operator, his credibility, his financial status, his past record to comply with Customs & Excise laws, expertise in warehousing field, etc. The applicant should accept to pay cost-recovery charges on payments of Merchant Overtime/Supervision Charges for obtaining services of Customs officers.

Licensing of Private Bonded Warehouses:

5. In case of Private Bonded Warehouses, the applications for such licences have been classified into two categories viz., storage of sensitive goods such as liquor, cigarettes, foodstuffs, consumables, etc. and other non-sensitive goods. Under Board's Circular No.99/95 dated 20.9.1995, the following guidelines in case of storage of sensitive goods have been provided:-

- i) Applicants should produce a Solvency Certificate from a Scheduled Bank of repute for a value not less than Rs. 50 lakhs;
- ii) Such warehouses may not be located in residential areas;
- iii) The premises should be secure, possess fire-fighting provisions and easily accessible to the Customs Officers;
- iv) Goods deposited should be fully insured for a value at least equal to the customs duty;
- v) The proprietor/partner/director must not be involved in any Customs or Excise offence. In case of any involvement in such offences, the licence may be terminated after following the prescribed procedure;
- vi) In the case of individual consignments to be warehoused, a double duty-bond as prescribed under section 59 should be given by the licensee. In case of sensitive goods, a cash deposit/ bank guarantee equal to 25% of the duty liability (effective duty foregone) will be taken for each consignment. At the same time, a revolving bond with a single bank guarantee for a higher amount can be accepted if so requested for a number of consignments.

In the case of non-sensitive goods, applicants for Private Bonded Warehouses have to abide by all provisions as pertaining to sensitive goods discussed above, except that the requirement of furnishing a Solvency Certificate has been waived. The applicant, however, should be solvent for Rs. 10 lakhs and should possess a good record. A double duty bond with surety would suffice for storage of non-sensitive bonded goods. In case the Customs are not satisfied about the transactions of a particular bonder, the applicant may be asked to furnish a bank guarantee [Details of the guidelines are available under Board's Circular No.99/95 dated 20.9.1995].

6. A licence granted by the Customs under section 58 may be cancelled or suspended under certain conditions after observing the procedure prescribed under section 58 of the Customs Act.

Bonding of Import Goods:

7. Where bonding facility is desired on importation, the importer or his representative is required to present to the Customs a Bill of Entry for warehousing (also known as Into-Bond Bill of Entry) in the prescribed form along with relevant documents required. The duties liable are assessed but not required to be paid. A suitable bond has to be executed with the Bond Section before Customs allow bonding. Once the warehousing bond has been executed by the importer, the Customs may order the deposit of the goods in the warehouse. The goods are normally escorted to Bonded Warehouse if the warehouse is at the same port/airport station where goods landed. Otherwise these are allowed to be moved under a transit bond - without escort.

The whole of the bonded goods are to be fully accounted for - by way of home consumption/export etc. Once all the goods brought under any bond have been accounted for to the satisfaction of the Customs officer, after payment of all duties etc., the Customs officer cancels and returns the bond executed as discharged in full.

Storage Period of Warehoused Goods:

8. Any goods deposited in a warehouse may be stored upto a period of one year in the Bonded Warehouse. In the case of capital goods intended for use in any 100% EOU, such goods can however be stored up to a period of 5 years. The warehousing period can be extended by the Commissioner of Customs for a period of 6 months and by the Chief Commissioner of Customs

for such further period as is deemed fit by him. The importers should file their applications for extensions well before the expiry of the initial/extended period of warehousing.

Before granting extensions, officers have to examine the condition of the goods to see that they are not likely to deteriorate during the extended period. A somewhat liberal approach in extending warehousing period in the following categories of cases is considered, if the interests of revenue are not likely to be jeopardised:-

- i) Goods supplied as ship stores/aircraft stores.
- ii) Goods supplied to diplomats.
- iii) Goods used in the units operating under manufacture-in-bond scheme.
- iv) Goods imported by 100% EOUs.
- v) Goods warehoused and sold through duty free shops.
- vi) Machinery, equipment and raw material imported for building and fitment to ships.

Extensions in warehousing period are not meant to be granted routinely but only in such cases where the goods have to be kept in the warehouse under circumstances beyond the control of the importer. Lack of finance to pay the duty is not considered as valid and good ground of seeking extensions which are otherwise given for short period.

In case the warehoused goods are likely to deteriorate, the Commissioner of Customs may reduce the one year's period of warehousing to such shorter period as he may deem fit.

Rate of Interest on Customs Duty in case of Bonded Goods:

9. In cases where the capital goods for 100% EOUs remain in a warehouse beyond a period of 5 years, interest at the rate of 24% per annum (as applicable currently under notification No.10/2001-Cus.(N.T) dated 1.3.2001) shall be charged on the customs duty payable at the time of clearance of the goods for the period from the expiry of the said warehousing period till the date of payment of duty on the warehoused goods. In the case of all other goods, w.e.f 1.6.2001, interest at the rate of 24% per annum is payable after the expiry of thirty days in the warehouse under notification No.23/2001-Cus.(N.T.) dated 22.5.2001.

Waiver of Interest:

10. Under section 61(2) of the Customs Act, if necessary in the public interest, the Board may by order and under circumstances of an exceptional nature to be specified in that order, waive the whole or a part of any interest payable in respect of warehoused goods. In this regard, the power to grant waiver of interest upto an amount of Rs. 15 lakhs has been delegated to the Chief Commissioners of Customs, and guidelines framed by the Board, specifying cases where the interest waiver would be considered. The types of such cases are: -

- i) Goods supplied as ship stores/aircraft stores;
- ii) Goods supplied to diplomats;
- iii) Goods used in the units operating under manufacture-in-bond scheme;
- iv) Goods imported by 100% EOUs;
- v) Goods warehoused and sold through duty free shops;
- vi) Machinery, equipment and raw materials imported for building and fitment to ships;
- vii) Petroleum products;
- viii) Plant and Machinery imported for projects;
- ix) Machinery, equipment and raw-materials imported for manufacture and installation of power generation units;
- x) Goods imported under OGL and warehoused for subsequent clearance against valid advance licences/Import-Export Pass book scheme or any similar scheme;
- xi) Goods imported in bulk by canalising agencies/public sector trading or service agencies and warehoused for subsequent release for export production; and
- xii) Goods warehoused and subsequently re-exported under section 69 of the Customs act, 1962 subject to the conditions that –
 - a) The re-export realises the full foreign exchange spent in import in hard currency (in case the import is paid for in that currency); and
 - b) The import in the first instance was not unauthorised or in contravention of the Import-Export Policy.

In all the above categories of cases, which are export related, Customs officers are required to raise the demand for interest due, but the demands are not to be enforced immediately. The activity of the importers, including clearance of goods etc., is allowed to continue and only at the stage after the goods have been cleared or at the time of de-bonding of 100% EOUs, the request for waiver of interest is to be decided. 100% EOUs which have not

fulfilled their export obligations and have been allowed to debond their warehoused goods prematurely are not granted waiver of interest except under very exceptional circumstances. Cases of waiver of interest not covered under the aforesaid guidelines have to be referred to the Board for decision.

Vide notification No. 67/95- Cus. (N.T.) dtd. 1.11.1995, interest accrued on customs duties payable on certain specified bonded goods like capital goods, components/spares, office equipments, captive power plants, tools etc. have been exempt at the time of clearance in the following cases:-

- i) goods imported by 100% EOUs under notification No. 13/81-Cus.
- ii) goods imported by 100% EOUs in EHTPs under various notifications and
- iii) goods imported by 100% EOUs in STPs under certain notifications.

Operations on Warehoused Goods:

11. All warehoused goods are subject to the control of the Customs officers. The owner of the warehoused goods may inspect, sort, show for sale, take samples etc. from the bonded goods with the permission of the proper officer. The owner of the bonded goods shall also pay warehouse-keeper rent and warehouse charges at the rates fixed under law.

Manufacture-in-Bond Operations:

12. With the permission of the Assistant/Deputy Commissioner of Customs, the owner of any bonded goods may carry on any manufacturing process or other operations in the bonded warehouse in relation to such goods. As a policy, it has been decided to extend in-bond manufacture facility under section 65 of the Customs Act mainly to EOUs or to units which are primarily engaged in exports. Manufacture-in-bond operations are to be carried out under Customs supervision on cost-recovery basis. Customs may grant a licence under section 65 after scrutinising the application and satisfying itself that the applicant is financially secure, has good credibility and has not been involved in Customs or Excise duty-evasion in the preceding five years. The premises should be adequately secure and the provisions of Manufacture and Other Operations in Warehouse Regulations, 1966 which provide the detailed procedure for application and operation etc. must be observed.

Movement under Bond:

13. With the permission of the Customs Officer, the owner of bonded goods may remove the said goods from one warehouse to another either under the supervision of the Customs officer or by executing a bond equal to the amount of import duty leviable on such goods if the goods are to be removed to a warehouse in another town. Details of the procedure to be followed and terms of the bond to be executed are provided under Warehoused Goods (Removal) Regulations, 1963. Under Circular No.99/95-Cus. dated 20.9.1995, customs duty is to be secured by a transit bond backed by a bank guarantee/cash security for 50% of the duty involved in case the goods are of sensitive nature. In respect of non-sensitive goods, transit bonds would be covered by a Bank Guarantee or a cash security for 25% of the duty involved. Commissioners of Customs may demand greater guarantee/security if felt necessary in certain cases.

In the case of 100% EOUs/EHTP/STP and EPZ units, the requirement of bank guarantee for transfer of imported goods has been waived vide Board's Circular No.41/97-Cus. dated 19.9.1997, subject to the conditions prescribed in the said Circular.

Clearance of imported goods:

14. The importer of any warehoused goods can clear the goods for home consumption by filing an ex-bond Bill of Entry and after payment of duties etc. in terms of section 68 of the Customs Act.

Rate of Duty/ Value for Assessment:

15. The rate of duty applicable is as per provisions of Section 15 of the Customs Act i.e. on the date on which the goods are actually removed from the warehouse. However, when the warehousing period or the extended warehousing period has expired, the duty payable is with respect to the date when the warehousing/extended warehousing period expired and not the actual date of removal. Insofar as value for assessment of duty for warehoused goods is concerned, it is not required to be redetermined and it is the original value as determined at the time of filing of into Bond Bill of Entry and assessments before warehousing.

Transfer of Bonded Goods:

16. Section 59 (3) of the Customs Act, 1962 provides for the transfer of bonded goods to another person. The sale of the warehoused goods to holders of duty exemption or duty concession license for the goods is permitted under the law (Board's instructions issued from F. No. 473/43/94 dtd. 22.9.1994 refers in this regard).

Export of bonded goods:

17. Warehoused goods may also be exported out of India without payment of duty after the filing of a Shipping Bill/Bill of Export and the payment of relevant export duties etc. However, in view of the apprehension that warehoused goods when exported from India to certain neighbouring countries are likely to be smuggled back to India, the Government has directed vide Notification No.45-Cus. dated 1.2.1963 (as amended) that warehoused goods shall not be exported without payment of import duty to any place in Bhutan or Nepal. Similar restrictions are placed in the case of warehoused goods to be exported by land to any place in Myanmar, Sikang, Tibet or Sinkiang.

A ban has also been placed on export from bond of vessels of less than 1000 tons (subject to conditions prescribed under notification No.46-Cus. dated 1.2.1963). The following items viz., alcoholic liquors, cigarettes, cigars and pipe tobacco are also not permitted to be taken on board any foreign-going vessel of less than 200 tons without payment of import duty leviable (notification No.47-Cus. dated 1.2.1963).

Recovery of Duty on Bonded Goods:

18. Customs Officers may demand from the owner of bonded goods the full amount of duty chargeable on such goods, along with all penalties, rent, interest and other charges payable in the following cases:-

- i) where any warehoused goods are removed in contravention of the Customs Act, 1962;
- ii) where such goods have not been removed from a warehouse at the expiry of the period permitted under section 61;
- iii) where any warehoused goods have been taken under section 64 as samples without payment of duty; and

iv) where any bonded goods have not been cleared for home consumption or exportation or are not duly accounted for to the satisfaction of the Customs.

In case the owner fails to pay the amount as demanded above, Customs may detain and sell, after notice to the owner, such sufficient portion of the bonded goods as may be selected.
