

- (f) in any case where any export goods have been loaded without payment of export duty or in contravention of any provision of this Act or any other law for the time being in force relating to export of goods :—
- (fi) such goods have been unloaded; or
- (fii) where the Asstt. or Deputy Commissioner of customs is satisfied that it is not practicable to unload such goods, the person-in-charge of the conveyance has given an undertaking, secured by such guarantee or deposit of such amount as the proper officer may direct, for bringing back the goods to India.

□ **Exemption to certain classes of conveyances [Sec. 43]**

(1) If a vehicle who does not carry any goods other than the luggage of its occupants, the provisions of section 30 (delivery of delivery manifest or the import manifest or report), section 41 (delivery of export manifest or report) and section 42 (leaving the conveyance without written order) shall not apply to such vehicle.

(2) The Central Government may notify that the following classes of conveyances shall be exempt from all or any of the provisions of this chapter :—

- (a) Conveyances belong to the Government or any foreign Government;
- (b) Vessels or aircrafts which temporarily enter India by reason of any emergency.

CLEARANCES OF IMPORTED AND EXPORTED GOODS

According to section 44, the provisions relating to clearances of imported goods (contained in sections 45 to 49) and export goods (contained in sections 50 and 51) shall not apply to (a) baggages, and (b) goods imported or to be exported by post.

□ **Clearance of Imported Goods [Section 45 to 49]**

Followings are the provisions applicable to the clearance of imported goods :—

(I) Restrictions on custody and removal of imported goods [Sec. 45]—

(1) All imported goods, unloaded in a customs area shall remain in the custody of such person who is approved by the Principal Commissioner of customs or commissioner of customs and shall remain in his custody until the goods are cleared for home consumption or are warehoused or are transhipped as per law.

(2) The person, having lawful custody of any imported goods in a custom area :—

- (a) shall keep a record of such goods and send a copy thereof to the proper officer;
- (b) shall not permit such goods to be removed from the customs area or otherwise dealt with without the written permission of the proper officer or in such manner as may be prescribed.

(3) If any imported goods are pilfered after unloading thereof in a custom area while in the lawful custody of the person approved by the Chief Commissioner or the Commissioner of customs, that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of arrival manifest or an import manifest or import report, as the case may be, to the proper officer.

(II) Entry of goods on importation [Sec. 46]—

(1) For clearing goods from custom area, the importer of any goods shall present, to the proper officer, a bill of entry for home consumption or warehousing in the prescribed form. But if the goods are intended for transit or transhipment, then such bill of entry shall not be so presented.

But if the importer makes a declaration before the proper officer that he is unable to furnish all the particulars of the goods required for want of full information, the proper officer may permit him (a) to examine the goods in the presence of an custom officer, or (b) to deposit the goods in a public warehouse.

(2) A bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor. The bill of entry contains various columns in which all particulars of the goods such as description of goods, value, quantity, marks or numbers, country of origin etc., are given. They are of three types :—

- (i) Bill of entry for home consumption (white colour)
- (ii) Bill of entry for warehousing (yellow colour)
- (iii) Bill of entry for clearance 'Ex-Bond'. (Green colour)

Each bill of entry is to be filed in quadruplicate. Original copy is retained by customs officer after payment of duty. Duplicate, triplicate and quadruplicate copies are handed over to the importer after payment of duty. Duplicate copy is given to the person who is custodian of goods. Triplicate copy is for the use of importer as the proof of payment of duty and quadruplicate copy is given to the banker.

(3) The importer shall present the bill of entry before the end of the next day following the day (excluding holiday) on which the aircraft or vessel or vehicle carrying the goods arrives at the customs station at which such goods are to be cleared for home consumption or warehousing.

But the bill of entry may be presented at any time not exceeding 30 days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India.

But, if the bill of entry is not presented within 30 days as above and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay the prescribed charges for late presentation of bill of entry.

(4) The importer while presenting the bill of entry shall make a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, the prescribed and documents relating to the imported goods.

(5) The importer, who presents a bill of entry shall ensure the followings :—

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition relating to the goods under this Act or under any other law for the time being in force.

(6) If the proper officer is satisfied that the interest of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

(III) Clearance of goods for home consumption [Sec. 47]—

(1) If the proper officer is satisfied with the following facts :—

- (a) That the goods entered for home consumption are not prohibited goods,
- (b) The importer has paid the import duty, if any, assessed thereon, and
- (c) The importer has paid any charges payable under the Act in respect of such goods.

the proper officer may make order permitting clearance of goods for home consumption.

Such order may be made electronically through the customs automated system.
Further, the Central Government, by notification, permit certain class of importers to make deferred payment of the customs duty and other prescribed charges.

(2) The importer shall pay the import duty :—

- (a) on the date of presentation of the bill of entry in the case of self assessment; or
- (b) within one day (excluding holiday) from the date on which the bill of entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
- (c) in the case of deferred payment, from such due date as may be prescribed by rules.

If he fails to pay the duty within the specified time, he shall pay interest on the unpaid or outstanding duty.

He shall pay interest at the rate not below 10% and not exceeding 36% per annum, as is for the time being notified by the Central Government, till the date of payment of said duty.

But if the Board is satisfied that it is necessary in the public interest to do so, it may waive the whole or part of any interest.

(IV) **Sale of imported goods not cleared** (Sec. 48)—As per the provisions of section 48 of the Act, when the imported goods lying at custom station are not cleared by the importer, such goods may, after notice to the importer and with the permission of the proper officer, be sold by the person under whose custody the goods are lying at the custom station. Such sale may be effected in any of the following cases :—

- (1) When any goods brought into India from a place outside India are not cleared for home consumption, or warehoused or transhipped within 30 days from the date of unloading thereof at a custom station or within such further time as the proper officer has allowed, or
- (2) When the title of any imported goods is relinquished.
- (3) But animals, perishable goods and hazardous goods may be sold at any time with the permission of the proper officer.
- (4) Arms and amunitions may be sold at such time and place and in such manner as the Central Government may direct.

(V) **Storage of imported goods in warehouse pending clearance or removal** [Sec. 49]—If in the case of any imported goods, whether dutiable or not, entered for home consumption has not been cleared and the Asstt. or Deputy Commissioner of customs is satisfied, on the application of the importer of that goods.

- (a) that the goods cannot be cleared within a reasonable time; or
- (b) that the goods cannot be removed for deposit in a warehouse within a reasonable time, then,

the goods may pending clearance or removal, as the case may be, be permitted to be stored in a public warehouse or a period not exceeding thirty (30) days.

But, the Principal Commissioner or Commissioner of Customs has right to extend the period of storage for a further period not exceeding thirty (30) days at a time.

☐ **Clearance of exported goods** [Section 50 to 51]

The Act provides following provisions in respect of clearance of exported goods :—

(I) **Entry of Goods for exportation (Sec. 50)**—The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer a "Shipping Bill", in case of goods to be exported in a vessel or aircraft, or "Bill of Export", in the case of goods to be exported by land in the prescribed form. Provisions given below are to be taken into consideration :—

- (i) Bills are presented electronically on the customs automated system in triplicate or if it is for export promotion a quadruplicate copy is also filled.
- (ii) Original copy is retained by the Customs Officer after payment of duty. Duplicate copy is for the vehicle used for exporting goods. Triplicate copy is retained by the exporter as proof of payment of duty.
- (iii) If it is not feasible to make entry by presenting electronically on the customs automated system, the Principal Commissioner or Commissioner of Customs may allow an entry to be presented in any other manner.
- (iv) 'Shipping Bill' or 'Bill of Export' could be filled in the Customs House or a Cargo Complex 14 days before the arrival of the loading vessel or aircraft.
- (v) These bills are of four categories :—
 - (a) Bills for free goods
 - (b) Bills for dutiable goods
 - (c) Bills for shipping under 'drawback' claim
 - (d) Bills for shipment from bond i.e. 'Ex-bond'.
- (vi) The export shall, while presenting a shipping bill or bill of export, make declaration as to the truth of its contents.
- (vii) The exporter, who presents a shipping bill or bill of export, shall ensure the followings :—
 - (a) the accuracy and completeness of the information given therein;
 - (b) the authenticity and validity of any document supporting it; and
 - (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(II) **Clearance of goods for exportation (Sec. 51)**—

- (1) If the proper officer is satisfied that :—
 - (i) any goods entered for export are not *prohibited goods*,
 - (ii) the exporter *has paid duty*, if any, assessed thereon, and
 - (iii) the exporter has paid *any charges* payable under this Act in respect of such goods.

Then, the proper officer may make an order permitting clearance and loading of the goods for exportation.

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

The Central Government may notify, that certain class of exporters, may make deferred payment of said duty or any charges in such manner as per rules.

- (2) If the exporter fails to pay the export duty, either in full or in part by the prescribed date, he shall pay interest on the outstanding amount at the rate, not below 5% and not exceeding 36%, per annum, as may be notified by the Central Government.