WAREHOUSING

LEARNING OUTCOMES

After reading this chapter, you will be able to:

- explain the concept of warehousing, types of warehouses and their licensing regulations, cancellation of license, warehousing bond and cancellation and return of the same, removal of goods for warehousing, warehousing period and warehousing interest.

- describe the provisions relating to owner’s right to deal with warehoused goods, manufacture and other operations in relation to goods in a warehouse, power to exempt imported materials used in the manufacture of goods in warehouse, removal of goods from warehouse to another warehouse for home consumption/export, goods improperly removed from the warehouse, allowance in case of volatile goods, custody and removal of warehoused goods.

- Analyse the aforesaid provisions and gain the ability to apply the same in addressing application oriented issues.

- Compute the interest payable, if any, on the amount of duty payable at the time of clearance of the warehoused goods.
Since there have been large number of amendments in this chapter owing to rationalisation of the warehousing provisions under Customs Law, amendments have not been highlighted in bold italics.

1. INTRODUCTION

The concept of warehousing is a trade practice involving trade off between (a) the economics of importation and (b) the quantitative requirement of the importer at any given point of time. Warehousing is resorted to in case where the importer does not want to clear the goods immediately:

✓ due to lack of storage facilities or
✓ in case of arrival of shipment much earlier than planned or
✓ in case of working capital issues.

When goods are warehoused, no customs duty is payable on such goods at such point of time. Sections 57 to 73 deal with warehousing provisions. This facility is available to traders as well as to direct importers.

Mr. A needs 50 tonnes of rice at any given point of time. He has to import the same from Mr. B. However, in case the supplier – Mr. B does not agree to sell that much quantity or the freight is not economical, Mr. A - the importer, in these circumstances, is forced to place an order for 200 tonnes. As soon as the goods are imported, duty has to be assessed on them. Therefore, instead of clearing the whole consignment, Mr. A is allowed to clear the consignment in convenient lots after paying appropriate duty on that particular portion that is cleared. During the intervening period, the goods are held in custody in a place called warehouse.

The consideration the importer is required to pay for this facility was that:

(i) he should bind himself to pay to the government a sum equal to thrice the amount of total duty determined, with such surety or security as may be required and

(ii) he should agree to pay duty on the goods cleared from such warehouse at the rate of duty and valuation prevalent on the date on which a bill of entry in respect of such goods is presented.
This facility is also necessary in another situation. Ship stores like liquors, cigarettes, preserved food were imported into India and supplied to vessels according to their requirements. The entire consignment imported is intended to be so shipped out of the country. The same was the case of fuel for the ship like furnace oil, diesel oil etc. Obviously there was no point in collecting import duty on the whole of the consignment and granting drawback piecemeal as and when such goods were exported. It was not also safe for the revenue point of view to allow such goods to lie in the port uncleared until they are exported/shipped as shipstores.

An importer who intends to gets his goods warehoused files an **Into-bond Bill of Entry** [Bill of entry for Warehousing], which is assessed to customs duty at the port of import. The importer is required to execute a bond to cover the risk to customs duty, interest, penalty etc. Once the bond is executed by the importer, the assessing officer at the port of import permits the goods to be deposited without payment of duty in a warehouse.

### 2. **PARALLEL PROVISIONS FOR HOME CONSUMPTION**

In these circumstances, in addition to the concept of “clearance for home consumption” the concepts of “clearance for deposits in a warehouse” and “clearance for home consumption from the warehouse” came into being. As a result of the above, parallel provisions had also been made corresponding to clearance for home consumption. The instances of the same are:

- **Section 46(1)** stipulates that the importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or a bill of entry for warehousing in the prescribed form.

- **Section 15(1)** stipulates that the rate of duty and tariff valuation, if any, applicable to the imported goods shall be the rate and valuation in force-
  
  (a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section.

  (b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry in respect of such goods is presented for their removal from the warehouse.
3. SPECIAL PROVISIONS FOR WAREHOUSING

A separate chapter was therefore incorporated in the Customs Act, 1962, containing specific provisions relating to warehousing of imported goods. Chapter IX of the Customs Act, 1962 contains the following provisions:

<table>
<thead>
<tr>
<th>Section No.</th>
<th>Provision contained</th>
</tr>
</thead>
<tbody>
<tr>
<td>57</td>
<td>Licensing of public warehouses</td>
</tr>
<tr>
<td>58</td>
<td>Licensing of private warehouses</td>
</tr>
<tr>
<td>58A</td>
<td>Licensing of special warehouses</td>
</tr>
<tr>
<td>58B</td>
<td>Cancellation of license</td>
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<td>59</td>
<td>Warehousing bond</td>
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<td>60</td>
<td>Permission for removal of goods for deposit in warehouse</td>
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<td>61</td>
<td>Period for which goods may remain warehoused</td>
</tr>
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<td>64</td>
<td>Owner’s right to deal with warehoused goods</td>
</tr>
<tr>
<td>65</td>
<td>Manufacture and other operations in relation to goods in a warehouse</td>
</tr>
<tr>
<td>66</td>
<td>Power to exempt imported materials used in the manufacture of goods in warehouse</td>
</tr>
<tr>
<td>67</td>
<td>Removal of goods from one warehouse to another</td>
</tr>
<tr>
<td>68</td>
<td>Clearance of warehoused goods for home consumption</td>
</tr>
<tr>
<td>69</td>
<td>Clearance of warehoused goods for [export]</td>
</tr>
<tr>
<td>70</td>
<td>Allowance in case of volatile goods</td>
</tr>
<tr>
<td>71</td>
<td>Goods not to be taken out of warehouse except as provided by this Act</td>
</tr>
<tr>
<td>72</td>
<td>Goods improperly removed from warehouse, etc.</td>
</tr>
<tr>
<td>73</td>
<td>Cancellation and return of warehousing bond</td>
</tr>
<tr>
<td>73A</td>
<td>Custody and removal of warehoused goods</td>
</tr>
</tbody>
</table>

We shall examine each of the provisions separately in the subsequent paragraphs.
### 4. IMPORTANT DEFINITIONS

(i) **Warehouse**: means a public warehouse licensed under section 57 or a private warehouse licensed under section 58 or a special warehouse licensed under section 58A [Section 2(43)].

(ii) **Warehoused goods**: means goods deposited in a warehouse [Section 2(44)].

### 5. TYPES OF WAREHOUSES

**STATUTORY PROVISIONS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Licensing of public warehouses:</th>
<th>Licensing of private warehouses:</th>
<th>Licensing of special warehouses:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 57</strong></td>
<td>The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a public warehouse wherein dutiable goods may be deposited.</td>
<td>The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.</td>
<td></td>
</tr>
<tr>
<td><strong>Section 58A</strong></td>
<td>(1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.</td>
<td></td>
<td>(2) The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).</td>
</tr>
</tbody>
</table>
There are three types of warehouses under the Customs Act, 1962, namely – Public Warehouses, Private Warehouses and Special Warehouses.

- **Public Warehouses**
  - Section 57
  - A site or building licensed by Principal CCus./CCus.
  - Wherein dutiable goods may be deposited
  - They are under record based controls & not under customs lock

- **Private Warehouses**
  - Section 58
  - A site or building licensed by Principal CCus./CCus.
  - Wherein dutiable goods imported by licensee are deposited
  - It remains under physical record of PO [under customs lock]

- **Special Warehouses**
  - Section 58A
  - A site or building licensed by Principal CCus./CCus.
  - Wherein dutiable goods notified by CBEC may be deposited

A customs bonded warehouse can be established at any place, if approved by the licensing officer. Warehouses - Private and Public Warehouses - are not under physical control (under lock of customs), but are under record based controls, except for Special Warehouses which would remain under customs lock. In a Private Warehouse, dutiable goods imported only by licensee are deposited.

Special Warehouses remain under physical control of proper officer (under customs lock). The Principal Commissioner/ Commissioner of Customs may, subject to such conditions as may be prescribed, license a special warehouse wherein only the dutiable goods notified by CBEC may be deposited.

Such warehouses will be caused to be locked by the proper officer and no person will enter the warehouse or remove any goods therefrom without the permission of the proper officer.

The Board is empowered to notify the class of goods which will be deposited in the special warehouse. Consequently, CBEC, vide *Notification No. 66/2016 Cus (NT) dated 14.05.2016* has notified the following class of goods which shall be deposited in a special warehouse:
(i) gold, silver, other precious metals and semi-precious metals and articles thereof;

(ii) goods warehoused for the purpose of:

- supply to DFS (Duty Free Shops)* in a customs area;
- supply as stores to vessels/aircrafts under Chapter XI of the Customs Act, 1962;
- supply to foreign privileged persons** in terms of the Foreign Privileged Persons (Regulation of Customs Privileges) Rules, 1957.

**Privileged person means a person entitled to import/purchase locally from bond goods free of duty for his personal use/for the use of any member of his family/for official use in his Mission, Consular Post or Office or in Deputy High Commission/Assistant High Commission.

*A DFS in the airport need not be licensed as a warehouse: CBEC has clarified that a DFS does not meet the ingredients of section 58A. Further, section 64 providing owner’s rights to deal with warehoused goods does not permit retail sales from a warehouse. From this, it flows that a DFS itself cannot be treated as a warehouse.

In fact, it is a point of sale for the goods which are to be ex-bonded and removed from a warehouse for being brought to a DFS in the customs area for sale to eligible persons, namely, international passengers arriving or departing from India [Circular No. 20/2016 Cus dated 20.05.2016].

**Licensing Regulations:** Sections 57, 58 and 58A, inter alia, provide that licensing of the warehouses shall be subject to such conditions as may be prescribed. In order to prescribe a uniform process of licensing including the application format, qualifying conditions, record keeping requirements, license forms etc., CBEC has issued Public/Private/Special Warehouse Licensing Regulations, 2016 respectively. The significant provisions of such warehousing regulations are briefed as under:

**Application for warehouses:** License may be granted to an eligible applicant [citizen of India/entity incorporated in India; who submits undertaking to comply with prescribed terms & conditions and furnishes solvency certificate of ₹ 2 crore from a Scheduled Bank]. Application for special warehouse can be made only for the notified goods. However, licence cannot be issued to an insolvent/unsound mind person, convicted/penalised person.
Grant of license: Where after the inspection of premises, Principal Commissioner/Commissioner of Customs, is satisfied that prescribed conditions/procedures have been fulfilled and required documents have been furnished, he may grant the license.

Validity, transferability & surrender of license: The license is not required to be renewed annually. Further, it is not transferable & valid till its cancellation/surrender. License would be cancelled on written request of the licensee.

6. CANCELLATION OF LICENSE [SECTION 58B]

**STATUTORY PROVISIONS**

<table>
<thead>
<tr>
<th>Sub-section (1)</th>
<th>Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A. Provided that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-section (2)</td>
<td>The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under sub-section (1).</td>
</tr>
<tr>
<td>Sub-section (3)</td>
<td>Where the operation of a warehouse is suspended under sub-section (2), no goods shall be deposited in such warehouse during the period of suspension: Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.</td>
</tr>
<tr>
<td>Sub-section (4)</td>
<td>Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, within seven days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may</td>
</tr>
</tbody>
</table>
allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export:

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.

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License granted for all three types of warehouses namely- Public, Private and Special Warehouses, can be cancelled.

However, considering that such powers are to be exercised with a great deal of circumspection, the same vest with the Principal Commissioner / Commissioner in place of the Deputy/ Assistant Commissioner.

Principal Commissioner/ Commissioner may cancel the warehousing licence granted under section 57/58/58A if the licensee contravenes any of the provisions of the customs law or breaches any of the conditions of the licence.

However, the licensee will be given a reasonable opportunity of being heard before such cancellation.

The Principal Commissioner/ Commissioner may suspend operation of the warehouse during the pendency of an enquiry and no goods will be deposited in such warehouse during the period of suspension.

However, the goods already deposited in the warehouse will continue to be governed by the warehousing provisions as contained in Chapter IX.

Such suspension of operations will be in addition to any other action that may be taken against the licensee and the goods under the Customs Act, 1962 or any other law for the time being in force.

Once the licence is cancelled, the warehoused goods will be removed from such warehouse within 7 days from the date on which order of such cancellation is served on the licensee.

This period can be extended by the proper officer. The warehoused goods can be removed to another warehouse or be cleared for home consumption or export.

The provisions of Chapter IX will continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.
## 7. **WAREHOUSING BOND [SECTION 59]**

### STATUTORY PROVISIONS

| **Sub-section (1)** | The importer of any goods in respect of which a bill of entry for warehousing has been presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself—
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>(a)</td>
<td>to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;</td>
</tr>
<tr>
<td>(b)</td>
<td>to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and</td>
</tr>
<tr>
<td>(c)</td>
<td>to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.</td>
</tr>
<tr>
<td><strong>Sub-section (2)</strong></td>
<td>For the purposes of sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.</td>
</tr>
<tr>
<td><strong>Sub-section (3)</strong></td>
<td>The importer shall, in addition to the execution of a bond under sub-section (1) or sub-section (2), furnish such security as may be prescribed.</td>
</tr>
<tr>
<td><strong>Sub-section (4)</strong></td>
<td>Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.</td>
</tr>
<tr>
<td><strong>Sub-section (5)</strong></td>
<td>Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified in sub-section (1) or sub-section (2) and furnish security as specified under sub-section (3).</td>
</tr>
</tbody>
</table>

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

The bond can be executed in respect of a particular consignment [Consignment Bond] or it can be a General Bond to cover the duty on goods to be imported by the person during a specified period.

In addition to the bond, importer will also be required to furnish security as may be prescribed.

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

When the importer executes a bond in a sum equal to thrice the amount of the duty assessed on such goods, he thereby bind himself—

(a) to comply with all the provisions of the Customs law in respect of such goods;

(b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under section 61(2); and

(c) to pay all penalties and fines incurred for the contravention of the provisions of the customs law, in respect of such goods.

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

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

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

In practice, a running account is maintained with debit when imported goods are warehoused and credits when warehoused goods are cleared ex-bond on payment of duty. There is a concept that as long as the goods are available to
customs duty leviable thereon, the duty can be recovered from sale of goods. In fact 72(2) provides for such a coercive method for the realization of duty.

The bond will continue to be in force notwithstanding the transfer of the goods to another warehouse.

If the warehoused goods are transferred to another person (either wholly or partially), the transferee will have to execute the bond and furnish prescribed security.

### 8. PERMISSION FOR REMOVAL OF GOODS FOR DEPOSIT IN WAREHOUSE [SECTION 60]

#### STATUTORY PROVISIONS

<table>
<thead>
<tr>
<th>Sub-section (1)</th>
<th>When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-section (2)</td>
<td>Where an order is made under sub-section (1), the goods shall be deposited in a warehouse in such manner as may be prescribed.</td>
</tr>
</tbody>
</table>
ANALYSIS

When the provisions of section 59 have been complied with in respect of any goods, the proper officer may make an order permitting the deposit of the goods in a warehouse.

After such order is made, the transit of the goods from the customs station to the warehouse will be made in the following prescribed manner:

✓ When the goods are removed from the customs station of import for warehousing, the proper officer affixes a one-time lock (OTL) on the container or means of transport (closed trucks).

✓ The serial number of OTL along with date & time of its affixation needs to be endorsed upon Into-Bond Bill of Entry and transport document.

✓ All customs stations are required to maintain records incorporating the number of the OTL, bill of entry, truck number, container number (if applicable), date & time of affixing the OTL and the name, designation & telephone number of the officer affixing the OTL.

However, the Principal Commissioner of Customs / Commissioner of Customs may permit movement of goods without affixation of such OTLs, where the nature of goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo transported through Pipe Lines & Over Dimensional Cargo).

9. PERIOD FOR WHICH GOODS MAY REMAIN IN A WAREHOUSE [SECTION 61]

STATUTORY PROVISIONS

| Sub-section (1) | Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed, —  
(a) in the case of capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein |
manufacture or other operations have been permitted under section 65, till their clearance from the warehouse; 

(b) in the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse; and

(c) in the case of any other goods, till the expiry of one year from the date on which the proper officer has made an order under sub-section (1) of section 60.

Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time:

Provided further that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

**Sub-section (2)**

Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse beyond a period of ninety days from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods:

Provided that if the Board considers it necessary so to do, in the public interest, it may,-

(a) by order, and under the circumstances of an exceptional nature, to be specified in such order, waive the whole or any part of the interest payable under this section in respect of any warehoused goods;
(b) by notification in the Official Gazette, specify the class of goods in respect of which no interest shall be charged under this section;
(c) by notification in the Official Gazette, specify the class of goods in respect of which the interest shall be chargeable from the date on which the proper officer has made an order under sub-section (1) of section 60.

**Explanation**

For the purposes of this section, -
(i) “electronic hardware technology park unit” means a unit established under the Electronic Hardware Technology Park Scheme notified by the Government of India;
(ii) “hundred per cent. export oriented undertaking” has the same meaning as in clause (ii) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944; and
(iii) “software technology park unit” means a unit established under the Software Technology Park Scheme notified by the Government of India

**ANALYSIS**

**A. Warehousing Period**

The period for which imported goods may be kept in a warehouse without payment of duty is called warehousing period. Such period may be extended to a limited extent, with interest on the duty thus deferred.

(i) **EOUs, EHTPs, STPs, or warehouses where manufacture/ other operations are permitted under section 65**

It had been observed that EOUs, EHTPs and STPs have to constantly keep track of multiple warehousing bonds and extension thereof. In order to address this issue, the warehousing period for capital goods is till their ex-bonding and for goods other than capital goods, it is till their ex-bonding/consumption. Similar warehousing period has been kept for warehouses where manufacture/ other operations are permitted under section 65.

(ii) **Other cases**

In other cases, warehousing period is till the expiry of 1 year from the date of order under section 60(1).
(iii) Extension of period

The Principal Commissioner/ Commissioner may extend the warehousing period by not more than 1 year at a time. The extension may be reduced based on the shelf life of the goods.

Time period for which different class of goods may be warehoused is tabulated as under:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Class of goods</th>
<th>Time for which the goods may remain warehoused</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Goods for use in any 100% EOU/EHTP/STP/warehouse where manufacture or other operations are permitted under section 65</td>
<td>Till the clearance of such goods from warehouse</td>
</tr>
<tr>
<td></td>
<td>(i) Capital goods</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(ii) Other goods</td>
<td>Till the consumption or clearance of such goods</td>
</tr>
<tr>
<td>2.</td>
<td>Goods other than 1. above</td>
<td>Till the expiry of 1 year from the date of order under section 60(1) (permitting removal of goods from a customs station for deposit in warehouse)</td>
</tr>
</tbody>
</table>

B. Interest on warehoused goods

(i) EOUs, EHTPs, STPs, or warehouses where manufacture/other operations are permitted under section 65

Since in such cases, the warehousing period for capital goods is till their ex-bonding and for goods other than capital goods, it is till their ex-bonding/consumption, as a corollary, no interest is chargeable for the period that the goods remain warehoused.

(ii) Other cases

In other cases, interest is charged on the duty deferred on warehoused goods beyond a period of 90 days.

The period of warehousing to be reckoned from the date of orders under section
60. Hence, the period of 90 days, will be computed from the date on which the proper officer gives out of charge orders on an into-bond bill of entry at the Customs station, which is clearly ascertainable.

Rate of interest is the rate fixed by the Central Government under section 47. Rate of interest fixed by notification under section 47 is 15% p.a.

(iii) **Waiver of interest**

The Board may waive the interest (whole or partial) in individual cases by ad-hoc orders and by notification in respect of any class of goods.

Further, the Board may also notify the class of goods in respect of which the interest will be chargeable from the date of order under section 60(1).

Provisions relating to interest payable on goods which remain warehoused beyond the prescribed period are tabulated below:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Class of goods</th>
<th>Provisions relating to interest payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Capital goods and other goods for use in any 100% EOU/ EHTP/ STP/ warehouse where manufacture or other operations are permitted under section 65</td>
<td>No interest is payable as goods can remain in the warehouse till their clearance or consumption</td>
</tr>
<tr>
<td>2.</td>
<td>Goods other than 1. above</td>
<td>Interest will be payable if goods remain in the warehouse beyond 90 days from the date on which the order under section 60(1) is made.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate of interest</th>
<th>Amount on which interest is payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate fixed under section 47 which is 15% p.a.</td>
<td>Duty payable at the time of clearance of the goods</td>
</tr>
</tbody>
</table>
### CUSTOMS & FTP

<table>
<thead>
<tr>
<th>Period for which interest is payable</th>
<th>From the expiry of the 90 days till the date of payment of duty on the warehoused goods.</th>
</tr>
</thead>
</table>

However, if no customs duty is payable at the time of clearance of goods from warehouse, no interest is payable. Interest is mere ‘accessory’ to principal *[Pratibha Processors v. UOI 1996 (88) E.L.T. 12 (S.C.)*].

In case of *[Swil Ltd v. UOI 2005 (185) E.L.T. 251 (Guj.)*], it was held that when the goods are re-exported after the prescribed time limit (90 days) for warehousing, there is no liability to pay duty. Therefore, no interest is leviable for warehousing beyond the prescribed time.

### ILLUSTRATION

‘X’, an importer, (other than 100% EOU, STP unit, EHTP unit) imported some goods and deposited them in the warehouse on 12.04.20XX. These goods were re-exported without payment of duty on 15.08.20XX. With reference to the Customs Act, 1962, discuss whether any interest under section 61(2) of the Customs Act, 1962 is payable by ‘X’?

### ANSWER

As per section 61(2) of the Customs Act, 1962, if goods (belonging to importer other than 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

In *[Pratibha Processors v. UOI 1996 (88) ELT 12 (SC)*], the Apex Court has held that when goods at the time of removal from warehouse are wholly exempted from payment of duty, the liability to pay interest cannot be saddled on a non-existing duty. Liability to pay interest under section 61(2) of the Customs Act is solely dependant upon the exigibility or actual liability to pay duty. In case the liability to pay duty is nil, then, the interest will also be nil.

Therefore, since in this case the goods have been re-exported without payment of duty, no interest is payable by ‘X’.

### ILLUSTRATION

The assessee, (other than 100% EOU, STP unit, EHTP unit) imported capital goods and deposited them in the warehouse. The said goods were not removed from the
WAREHOUSING

warehouse within the period permitted under section 61(1)(c) i.e., one year. Subsequently, the assessee filed an application for relinquishment of title of such warehoused goods.

The Department contended that since the assessee did not file an application for extension of warehousing period before the expiration of period fixed under section 61(1)(c), after expiration of the said period, the goods could no longer be termed as warehoused goods. Therefore, the assessee lost its title to the same and consequently, it lost its right to relinquish its title thereto.

It was further claimed that the relinquishment of title to the said goods ought to have been made by the assessee before the expiration of the warehousing period and not thereafter, and therefore, the goods were deemed to have been improperly removed from the warehouse. Consequently, the assessee became liable to pay duty together with interest, fine and penalties payable in respect of such goods, as provided under section 72(1)(b) of the Customs Act, 1962.

ANSWER

The facts of the given case are similar to the facts of the case of Commissioner Customs v i2 Technologies Software (P) Ltd. 2007 (217) ELT 176 (Kar.).

In the instant case, the High Court rejected the Department’s contention that on the expiration of the warehousing period or on the expiration of extended warehousing period, the owner of the goods loses his title in respect of such goods and consequently, also loses his right to relinquish his title to such warehoused goods.

The High Court elaborated that on a plain reading of the provisions of section 23(2), 47, 68 and the proviso to section 68 of the Customs Act, 1962, it is clear that the owner of warehoused goods has the right to relinquish his title to goods at any time before an order for clearance of goods for home consumption has been made in respect thereto. There is no prohibition on relinquishing the title to such goods after the expiration of the warehousing period or after the expiration of the extended period. The High Court pointed out that the provisions of section 23(2) and proviso to section 68 make it clear that upon relinquishment of his title to any imported goods, including the warehoused goods, the owner of such goods shall not be liable to pay duty thereon and when the owner is not liable to pay duty, the question of paying any interest on the duty and penalty would not arise.

Therefore, in the instant case, the Department’s contention is not correct.
ILLUSTRATION

Comment on the validity of the following statements:

(a) Goods, other than capital goods, intended for use in any hundred per cent export-oriented undertaking, can be warehoused till the expiry of five years.

(b) Interest free period of ninety (90) days under section 61(2) in respect of warehoused goods (not intended for being used in 100% EOU) commences from the date on which an into-bond bill of entry in respect of such goods is presented.

ANSWER

(a) Invalid. With effect from 14.05.2016, goods, other than capital goods, intended to be used in a 100% EOU/ STP unit/ EHTP unit can be warehoused till the consumption or clearance of such goods from the warehouse. Further, capital goods intended to be used in a 100% EOU can also be warehoused till the clearance of such goods from the warehouse.

(b) Invalid. As per section 61(2) of the Customs Act, 1962, if goods (not intended for being used in 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order under section 60(1) is made, interest is payable @ 15% on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

In other words, the relevant date for determining the commencement of the period of 90 days is the date of order made under section 60(1) permitting removal of goods from the customs station for deposit in a warehouse, and not the date on which into-bond bill of entry in respect of such goods is presented.

10. OWNER’S RIGHT TO DEAL WITH WAREHOUSED GOODS [SECTION 64]

STATUTORY PROVISIONS

The owner of any warehoused goods may, after warehousing the same, —
(a) inspect the goods;
WAREHOUSING

(b) deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
(c) sort the goods; or
(d) show the goods for sale.

ANALYSIS

When the imported goods are warehoused, the temporary possession and the custody of the goods are passed on to the warehouse keeper. However, the remaining titular rights of the goods vest with the owner. Thus, the owner has every access to the goods. In the course of his dealings with the goods, he may be required to

(i) see and inspect the goods;
(ii) ensure that the goods do not deteriorate or get damaged during storage in the warehouse;
(iii) sort the goods; or
(iv) show the goods for sale.

The only restriction on all these operations is that such operation should not cause any damage/deterioration to the goods. If such warehoused goods are so damaged/deteriorated, that the value of the goods depreciates, the duty leviable on the goods will come down and there will be loss of Government revenue.

11. MANUFACTURE AND OTHER OPERATIONS IN RELATION TO GOODS IN A WAREHOUSE [SECTIONS 65 & 66]

STATUTORY PROVISIONS

<table>
<thead>
<tr>
<th>Section 65</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sub-section (1)</strong></td>
</tr>
</tbody>
</table>
carry on any manufacturing process or other operations in the warehouse in relation to such goods.

**Sub-section (2)**

Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply:

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported. Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form;

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

**Section 66**

If any imported materials are used in accordance with the provisions of section 65 for the manufacture of any goods and the rate of duty leviable on the imported materials exceeds the rate of duty leviable on such goods, the Central Government, if satisfied that in the interests of the establishment or development of any domestic industry it is necessary so to do, may, by notification in the Official Gazette, exempt the imported materials from the whole or part of the excess rate of duty.

**ANALYSIS – SECTION 65**

As mentioned earlier, warehousing was considered in the initial stage as a device for:

- temporary storage of imported goods which were intended to be ultimately exported out of India;
- piecemeal clearance of imported goods, for home consumption to suit importer’s requirements.
As an improvement of the above facilities, certain operations were permitted to be carried out in the bonded warehouse itself before export of the goods. Gradually, this concept was extended to deliberate importation of raw materials, manufacture of goods in the bonded warehouse and final export of the finished goods out of India. In this scheme of things there was no:

- effective import of goods and clearance of goods for home consumption, involving payment of import duty of customs; and
- effective export from the town, involving drawback of import duty etc.

There was no problem or difficulty in ensuring the identity of the goods. There was also full security over the import duty otherwise payable on the imported goods through the medium of the warehousing double entry bond.

The substantial ingredients of section 65(1) are:

- The owner of any warehoused goods may carry on any manufacturing process or other operations in relation to warehoused goods;
- This may be done with the specific sanction of the Principal Commissioner/Commissioner of Customs;

**Rules prescribing the conditions aforesaid:** A comprehensive regulations called the Manufacture and Other Operations in Warehouse Regulations, 1966, was promulgated by the Board under its Notification No. 155/66-Cus dated 30-7-1966. These regulations superseded several rules made earlier covering individual situations.

The owner has to make an application giving full details regarding the process to be carried out, imported and other goods used, plan and description of warehouse and volume of manufacture anticipated. On getting permission the necessary bond has to be executed undertaking to observe the regulations and maintain accounts. Manufacture will not be under supervision of the customs officer. However the officers of customs department can visit the warehouse and control and supervise manufacturing process or imported and other goods. Detailed accounts are to be maintained of raw materials, stock, wip and production. Input-output norms maybe prescribed wherever considered necessary.

Subsection (2) of section 65 deals with any waste of refuse arising during the manufacturing operations or other processes done in the warehouse. The question that is considered in this provision is whether any import duty should
be levied on the waste or refuse. The answer is dependent upon whether finished product manufactured out of the manufacturing process or other operations is exported out of India or cleared for home consumption.

Let us consider a few examples to understand the above provisions.

Let us take the case of cutlery manufactured out of imported high-speed cutting steel strips. Locally procured plastic is used for providing handles to the cutlery i.e. knife, fork, etc. In a batch process 200 kg imported steel strips and 100 kg plastic is issued for the manufacture of the cutlery items. 400 gross knives are manufactured and they are cleared for home consumption. The steel strip content in the above knives is 178 kg. The weight of the plastic handles is 85 kg. The waste is in the form of shaving etc. The total weight of the waste is 

\[(200+100)-(178+85)=37kg\]

The steel content of the waste is 22 kg. So import duty of customs at the rate applicable to steel strips should be collected on the waste.

The other alternative is where the finished goods are exported out of the country. Take the same example. In this case the manufacturer has two options. He can destroy the waste. Then he will not be required to pay duty on the steel strip content in the waste. If he does not choose to destroy the waste, then he has to pay duty on the steel strip content in the waste. Remission of duty on the imported material content in the waste or refuse is allowed only when the final product concerned is exported out of India and the waste is destroyed.

Let us now take an example where the final products are both exported and cleared for home consumption. The question of appropriating the waste will have to be decided first. The imported raw material is rubber. The end product is motor vehicle tyre. The additional materials used are (1) beading wire, (2) tyre chord warp sheet (3) chemicals and (4) mineral oil.

<table>
<thead>
<tr>
<th>Description</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total quantity of rubber issued</td>
<td>1500kg</td>
</tr>
<tr>
<td>Weight of beadwire used</td>
<td>10kg</td>
</tr>
<tr>
<td>Weight of tyre chord warp sheet used</td>
<td>180kg</td>
</tr>
<tr>
<td>Weight of chemical used</td>
<td>4kg</td>
</tr>
<tr>
<td>Weight of mineral oil used</td>
<td>16kg</td>
</tr>
<tr>
<td>Total weight of raw materials issued</td>
<td>1710kg</td>
</tr>
<tr>
<td>Total no. of tyres manufactured</td>
<td>100pcs</td>
</tr>
</tbody>
</table>
WAREHOUSING

Weight per tyre  16.5kg
Thus total weight 100 tyres  1650kg
Wastage  60kg
Total no. of tyres cleared for home consumption  25pcs
Total no. of tyres exported  75pcs.

Wastage relatable to tyres exported 60kg × \( \frac{75}{100} \) = 45

Imported rubber content in the waste relatable to the exported tyres

\[ = 45 \times \frac{1500}{1710} = 39.5 \text{ kg(appx)} \]

Import duty leviable on the import rubber content in the waste can be remitted if 45 kgs of the waste are destroyed.

Weight of waste relatable to tyres cleared for home consumption = 15 kg
Imported rubber content in the waste = 13.2 kg
Import duty is compulsorily leviable on this quantity of import rubber.

ANALYSIS – SECTION 66

The policy of the Government in permitting manufacture in bond had been to encourage growth of Indian industry. Thus instead of attaching the difference in duty, that is lost in the process of manufacture in bond, the Government is prepared to forego it totally or partially. Section 66 of the Customs Act deals with this power.

The main conditions of section 66 are:

- imported materials are used in the manufacture of any goods in accordance with the provisions of section 65
- the import duty leviable on the imported materials exceeds the rate of duty leviable on the finished products
- the Central Government is satisfied that in the interest of establishment or development of a domestic industry, it is necessary to give protection to the finished products. Then, the Central Government may by an official notification in the Gazette, exempt the imported material, from the whole or part of excess duty.
ILLUSTRATION

“If manufacturing operations are carried out on warehoused goods and finished products are cleared for home consumption, then appropriate duty of customs should be levied on the quantity of the warehoused goods contained in the waste or refuse arising out of such manufacturing process.”

Examine the validity of the said statement in the context of section 65 of the Customs Act, 1962 dealing with manufacture and other operations in relation to warehoused goods.

ANSWER

The said statement is valid.

The said statement is valid.

Section 65(2)(b) of the Customs Act, 1962 lays down that if the finished products arising as a result of operations carried out in the warehouse are cleared for home consumption, import duty would be charged on the quantity of the warehoused goods contained in the waste or refuse arising from such operations.

12. REMOVAL OF GOODS FROM THE WAREHOUSE [SECTIONS 67, 68 & 69]

STATUTORY PROVISIONS

<table>
<thead>
<tr>
<th>Section 67</th>
</tr>
</thead>
<tbody>
<tr>
<td>The owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 68</th>
</tr>
</thead>
</table>
| Any warehoused goods may be cleared from the warehouse for home consumption, if -  
  (a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;  
  (b) the import duty, interest, fine and penalties payable in respect of such goods have been paid; and |
(c) an order for clearance of such goods for home consumption has been made by the proper officer.

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

Provided further that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

**Section 69**

**Sub-section (1)**

Any warehoused goods may be exported to a place outside India without payment of import duty if -

(a) a shipping bill or a bill of export in the prescribed form or a label or declaration accompanying the goods as referred to in section 82 has been presented in respect of such goods.

(b) the export duty, fine and penalties payable in respect of such goods have been paid; and

(c) an order for clearance of such goods for export has been made by the proper officer.

**Sub-section (2)**

Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that warehoused goods of any specified description are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that such goods shall not be exported to any place outside India without payment of duty or may be allowed to be so exported subject to such restrictions and conditions as may be specified in the notification.

**ANALYSIS**

**The warehoused goods can be removed for**

- transfer from one warehouse to another; or
- clearance for home consumption; or
clearance for export.

Each of the three is a different situation and separate procedures have to be followed. The interests to be safeguarded are different. As such separate provisions have been made for the above three situations under section 67, 68 and 69 respectively.

Section 67 provides that the owner of any warehoused goods may, with the permission of the proper officer, remove them from one warehouse to another subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted.

The entire emphasis here is on ensuring the proper receipt of the warehoused goods at the destination warehouse, so that there is no risk to revenue.

The essential ingredients of section 68 are:

✓ An ex-bond bill of entry should be presented to the proper officer.
✓ After assessment of the ex-bond bill of entry the duty determined should be paid.
✓ Along with the import duty, the penalty, if any, imposed or levied on the warehoused goods should also be paid.
✓ Once the proper officer is satisfied that all the amounts payable by the owner of the goods including duty, interest, any penalty or fine payable on the warehoused goods, have been paid, he may permit removal of the goods from the warehouse and pass a suitable order for clearance.

The third method of disposal of the warehoused goods is by export [Section 69]. This is normally adopted in the case of ship stores, which are meant to be exported only; goods meant for re-export and goods supplied to duty free shops and the like.

Main ingredients of section 69

1. Warehoused goods may be exported out of India.
2. No Import duty will be levied on the goods thus exported if the procedure prescribed is followed.
3. A shipping bill/bill of export/label or declaration in the prescribed form should be presented in respect of the warehoused goods sought to be cleared for export.
(4) The appropriate export duty including cess leviable on such goods on export should be assessed and paid.

(5) The dues on the goods, namely penalties and fine should be paid. Only payment of import duty otherwise leviable on such warehoused goods is waived.

(6) The proper officer of customs should satisfy himself that all regulations, restrictions and prohibitions in force in respect of export of such goods, is complied with or fulfilled. After satisfying himself about this aspect as well as payment of all duties payable he will permit removal of the goods from the bonded warehouse for export.

(7) In case Government of India is of the opinion that goods of any specified description are likely to be smuggled back into India, it may

- demand payment of import duty payable otherwise, on the warehoused goods;
- prescribe conditions to be fulfilled including execution of an Indemnity bond undertaking to produce proof of export or pay the import duty otherwise leviable
- The Government of India, by notification prescribes the circumstances under which such conditions can be imposed.

Warehouse Goods (Removal) Regulations, 2016 issued by CBEC prescribe the procedure for transfer of goods:

- from the customs station of import to a warehouse or
- from one warehouse to another warehouse or
- from the warehouse to a customs station for export.

The significant provisions contained in said regulations are discussed as under:

(i) Form for transfer of goods from a warehouse: Where the warehoused goods are to be removed from one warehouse to another warehouse or from a warehouse to a customs station for export, the owner is required to make a request in prescribed Form for transfer of goods.

(ii) Conditions for transport of goods: Where the goods are removed:

- from the customs station of import to a warehouse or
- from one warehouse to another warehouse or
6.30 CUSTOMS & FTP

✓ from the warehouse to a customs station for export

the transport of the goods shall be under one-time lock*, affixed by the
proper officer or licensee or bond officer [an officer of customs in charge
of a warehouse], as the case may be.

However, the Principal Commissioner/Commissioner of Customs may
dispense with the condition of one-time lock and allow transport of the
goods without affixing the one-time-lock, having regard to the nature of
goods or manner of transport.

(iii) Acknowledgement of receipt of goods at the destination, to be
produced by the owner of goods: The owner of the goods shall produce
to the proper officer at customs station of import or the bond officer,
within 1 month [or extended period allowed], an acknowledgement issued
by the licensee or the bond officer of the warehouse to which the goods
have been removed or the proper officer at the customs station of export,
as the case may be, stating that the goods have arrived at that place.

In case the owner fails to provide the acknowledgment, he shall pay the
full amount of duty chargeable on account of such goods together with
interest, fine and penalties payable under section 72(1).

*When the goods are removed from the customs station of import for
warehousing, the proper officer affixes a one-time lock (OTL) on the container
or means of transport (closed trucks). The serial number of OTL alongwith
date and time of its affixation needs to be endorsed upon Bill of Entry for
warehousing and transport document. All customs stations are required to
maintain records incorporating the number of the OTL, bill of entry, truck
number, container number (if applicable), date & time of affixing the OTL and
the name, designation & telephone number of the officer affixing the OTL.

A similar procedure has been provided under Warehoused Goods (Removal)
Regulations, 2016 [discussed above] for removal of goods from one warehouse
to another and from a warehouse to customs station for export. However, the
Principal Commissioner of Customs /Commissioner of Customs may permit
movement of goods without affixation of such OTLs, where the nature of
goods or their manner of transport so warrant (e.g. Liquid Bulk Cargo
transported through Pipe Lines & Over Dimensional Cargo).

[Circular No. 17/2016 Cus dated 14.05.2016]

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13. ALLOWANCE IN RESPECT OF VOLATILE GOODS [SECTION 70]

STATUTORY PROVISIONS

**Sub-section (1)**

When any warehoused goods to which this section applies, are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may remit the duty on such deficiency.

**Sub-section (2)**

This section applies to such warehoused goods the Central Government, having regard to the volatility of the goods and the manner of their storage, may be notification in the Official Gazette specify.

ANALYSIS

- Among the goods traditionally imported and warehoused are the following:
  - Petroleum products
  - Liquor and
  - Ethylene dichloride and liquid helium.

- Petroleum products like aviation turbine fuel, superior kerosene; high speed diesel oil, light diesel oil, motor spirit, vapourising stored in tanks, subjected to atmospheric pressure had a tendency to evaporate during long period of storage. Similarly, liquor like brandy and whisky were imported under over proof conditions, in wooden casks stored in bonded warehouses, were volatile in nature and there was considerable evaporation loss during storage.

- Even articles like wine, beer, suffered evaporation losses during storage. Among the lower order mineral products raw naptha, furnace oil and batching oil also were prone to evaporation.

- As such there was invariably difference between the bonded quantity and the quantity at the time of removal from the warehouse. This loss was due to...
natural causes and neither the importer nor the warehouse keeper can be found fault with.

On the same grounds, neither the importer nor the warehouse keeper could be called upon to bear the duty burden of this loss. This position has been recognised and placed on a legal footing under section 70 of the Customs Act.

**Essential ingredients of section 70(1):**

(i) The goods should be warehoused goods;

(ii) The provisions of this section should apply to such goods by virtue of a notification under sub-section (2);

(iii) The goods should be found deficient in quantity at the time of removal;

(iv) The deficiency should be on account of natural loss;

(v) The import duty leviable on such deficiency may be remitted;

(vi) The Assistant Commissioner and the Deputy Commissioner are empowered to grant the remission.

**Essential ingredients of section 70(2):**

(a) The power to specify vests with the Central Government.

(b) Volatility and manner of storage will be the relevant factors.

(c) An official notification will have to be issued for this purpose.

(d) The remission under section 70(1) applies only to such specified warehoused goods.

**Goods notified under section 70(2):** Under *Notification No. 3/2016-Cus. (N.T.) dated 11.01.2016*, the following goods have been specified as goods to which the provisions of section 70 apply when they are deposited in a warehouse, namely:

(1) aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naphtha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks;

(2) liquid helium gas kept in containers; and

(3) wine, spirit and beer, kept in casks

(4) crude stored in caverns
Remission under section 23 and section 70 – A Distinction: Section 23 is a general provision applicable to cases where goods are lost before clearance for home consumption is made. Whereas, section 70 provides for remission of duty in respect of loss during warehousing of only the goods notified by the Central Government under that section. Therefore, granting remission for loss during transit between two warehouses does not render section 70 redundant. This view was taken by the Tribunal in the case of Indian Oil Corporation v. Commissioner of Customs 1985 (21) ELT 881 (Tri.- LB).

14. IMPROPER REMOVAL OF GOODS FROM WAREHOUSE [SECTIONS 71 & 72]

<table>
<thead>
<tr>
<th>STATUTORY PROVISIONS</th>
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<tbody>
<tr>
<td><strong>Section 71</strong></td>
</tr>
<tr>
<td>No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or export, or for removal to another warehouse, or as otherwise provided by this Act.</td>
</tr>
<tr>
<td><strong>Section 72</strong></td>
</tr>
<tr>
<td><strong>Sub-section (1)</strong></td>
</tr>
<tr>
<td>In any of the following cases, that is to say, -</td>
</tr>
<tr>
<td>(a) where any warehoused goods are removed from a warehouse in contravention of section 71;</td>
</tr>
<tr>
<td>(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;</td>
</tr>
<tr>
<td>(d) where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer, the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with interest, fine and penalties payable in respect of such goods.</td>
</tr>
</tbody>
</table>
If any owner fails to pay any amount demanded under sub-section (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may deem fit.

**ANALYSIS**

As we have seen above, three methods of disposal have been prescribed for warehoused goods under section 67, 68 and 69. These are removals authorised by law and are termed as proper removals. As a corollary it follows that warehoused goods cannot be removed otherwise. Section 71 and section 72 provide for such a prohibition and the penal action.

Section 71 prohibits the removal of the warehoused goods out of a warehouse except on clearance for home consumption, or export, or for removal to another warehouse, or as otherwise provided by this Act.

Section 72 enumerates the cases where the proper officer may demand, the full amount of duty chargeable on account of warehoused goods together with interest, fine and penalties payable in respect of such goods. The owner of the warehoused goods is required to forthwith pay the same.

Cases enumerated in section 72 are as follows:

- where any warehoused goods are removed from a warehouse in contravention of section 71
- where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse
- where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer

In case the owner fails to pay duty chargeable on account of warehoused goods together with interest, fine and penalties payable in respect of goods warehoused by it, the proper officer may cause such goods to be detained and sold, such sufficient portion of his goods, if any, in the warehouse, as the said officer may deem fit.
deem fit. However, the proper officer has to first give a notice to the owner (any transfer of the goods notwithstanding) for the same.

Section 72(1) provides for penal action for violation of section 71. As a natural corollary, provision has been made under sub-section (2) of section 72, to collect such penal amounts coercively, if the owner of the warehoused goods does not pay up the amounts voluntarily. In such a situation the proper officer cause, such portion of the warehoused goods belonging to the defaulter, to be detainted and sold to realise the amounts due. According to principles of nature justice, a notice will have to be given before such a coercive action is taken.

*Mafatlal Fine Spinning and Manufacturing Company Ltd. v. UOI 1987 (27) ELT 19 (Bom.):* What will be the position in case the owner relinquishes the title to his goods under section 23(2) of the Customs Act, 1962. In the above case, it was decided that if he relinquishes his title before the order is passed by the Assistant Commissioner under provisions of section 72, no duty need to be paid. If, however, the relinquishment is made after the order is passed, he has to pay the duty.

**Effect of goods not being removed from warehouse:** Under clause (b) of section 72, goods which are not removed from the warehouse after the expiry of the period permitted for warehousing or extended, are deemed to be improperly removed. The rate of duty applicable will be the rate in force on the date of deemed removal, i.e. the date on which the permitted period or its permitted extension comes to an end. When the demand notice is issued is not relevant for determining the rate of duty.

Section 15 (1) (b) applies only to the cases where a bill of entry is presented for removal from warehouse under section 68, and the payment of duty, interest, penalty, etc. Section 15 (1) (b) has no application where the goods are removed from warehouse beyond the permitted period of warehousing. [*Kesoram Rayon vs CC 1996 (86) ELT 464 (SC).*]

**ILLUSTRATION**

*Enumerate the circumstances under which goods are considered to have been removed improperly from a warehouse under the Customs Act.***

**ANSWER**

Section 72 of the Customs Act provides that in any of the following circumstances the goods shall be considered to have been removed improperly from a warehouse —

(a) where any warehoused goods are removed from a warehouse in contravention of section 71 of the Customs Act;
(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;

(c) where any goods in respect of which a bond has been executed under section 59 and which have not been cleared for home consumption or export are not duly accounted for to the satisfaction of the proper officer.

15. CANCELLATION AND RETURN OF THE WAREHOUSING BOND [SECTION 73]

When the whole of the goods covered by any bond executed under section 59 have been cleared for home consumption or exported or transferred or are otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the proper officer shall cancel the bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or is entitled to receive it.

ANALYSIS

This provision implies that the proper officer can cancel a bond executed under section 59 as discharged in full when the whole of the goods covered by the bond have been cleared for home consumption/ exported/ transferred/ are otherwise duly accounted for and when all amounts due on account of such goods have been paid.

16. WAREHOUSE KEEPER TO BE THE CUSTODIAN OF WAREHOUSED GOODS [SECTION 73A]

All warehoused goods shall remain in the custody of the person who has been granted a licence under section 57 or section 58 or section 58A until they are cleared for home consumption or are
WAREHOUSING

<table>
<thead>
<tr>
<th>Sub-section (2)</th>
<th>The responsibilities of the person referred to in sub-section (1) who has custody of the warehoused goods shall be such as may be prescribed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-section (3)</td>
<td>Where any warehoused goods are removed in contravention of section 71, the licensee shall be liable to pay duty, interest, fine and penalties without prejudice to any other action that may be taken against him under this Act or any other law for the time being in force.</td>
</tr>
</tbody>
</table>

**ANALYSIS**

Since Private and Public Warehouses are not under physical controls of customs officer, but under the system of record based controls, the responsibilities of warehouse keepers assume greater significance.

Section 73A makes the warehouse keeper as a custodian of the warehoused goods and prescribes the provisions for custody and removal of warehoused goods.

All warehoused goods will remain in the custody of the person who has been granted a licence under section 57/58/58A until they are cleared for home consumption/ transferred to another warehouse/ exported/ removed as otherwise provided under this Act.

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

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

The responsibilities of the warehouse keeper (licensee) who has custody of the warehoused goods will be such as may be prescribed.

In pursuance of the same, Warehouse (Custody & Handling of Goods) Regulations, 2016 and Special Warehouse (Custody & Handling of Goods) Regulations, 2016 have been notified vide **Notification No.s 68 & 69/2016 Cus (NT) both dated 14.05.2016**; to vest the licensee with responsibilities including appointment of warehouse keeper, providing sufficient facilities,
equipment and personnel and maintaining & preserving records as also to prescribe the procedure to be followed by the licensee or bond officer on arrival of goods in, and removal of goods from, warehouse.

The regulations provide for computerization of records in respect of warehoused goods. Computerisation of records is a key component based upon which liberalization in respect of warehousing procedures has been carried out.

The comparative table depicting the various responsibilities of a licensee of a Warehouse (Private/Public) and of a licensee of a Special Warehouse is as under:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Warehouse – Private/Public</th>
<th>Special Warehouse</th>
</tr>
</thead>
</table>
| Appointment of warehouse keeper      | • A licensee shall appoint a warehouse keeper having experience in warehousing operations & customs procedures, for discharge of functions on his behalf.  
• The warehouse keeper shall obtain digital signature from prescribed authorities for filing of electronic documents as required under the Act. |                                                                                  |
<p>| Facilities, equipment and personnel  | A licensee shall provide:                                                                  |                                                                                  |
|                                      | (a) sufficient facilities, equipment and personnel:                                          |                                                                                  |
|                                      |   • to ensure controlled access to warehouse and secured storage of the goods in it and   |                                                                                  |
|                                      |   • for examination of goods by customs officers;                                           |                                                                                  |
|                                      | (b) a computerised system for accounting of goods.                                          |                                                                                  |
| Control of Bond Officer              | • No physical control of Bond Officer; there is only record based control.                  | • The Bond Officer shall cause the Special Warehouse to be locked.               |
|                                      | • Only in case of removal of goods for export, presence of bond officer is required.        | • Any removal or deposit of goods from/to the warehouse shall only be in the presence of the Bond Officer. |</p>
<table>
<thead>
<tr>
<th><strong>Receipt of goods into warehouse from customs station of import or another warehouse</strong></th>
<th>The licensee is vested with greater responsibilities in case of receipt of goods in a private/public warehouse. For details, refer Note 1 below.</th>
</tr>
</thead>
</table>
| **Transfer of goods to another warehouse** | • Licensee shall transfer warehoused goods to another warehouse only when the owner of the goods produce the form for transfer of goods bearing the orders of the bond officer permitting such transfer.  
• After the goods are removed and |
| | • Licensee shall transfer warehoused goods to another warehouse only with the permission of the Bond Officer on the form for transfer of goods.  
• Once bond officer permits removal of goods from warehouse, licensee shall, in the presence of Bond Officer,:  
• cause the goods to be loaded onto the means of transport, and |
| **Licensee shall receive/permit unloading of any goods at the warehouse only in the presence of the Bond Officer.** | • Once bond officer permits deposit of goods in warehouse, licensee shall:  
  - record goods received in the warehouse and  
  - cause an acknowledgement of receipt of goods to be delivered to proper officer at customs station of import/proper officer of the warehouse of despatch, as the case may be. |
### Removal of warehoused goods for home consumption

- A licensee will permit goods to be removed for home consumption only when the bond officer permits the removal of the goods.
- The bond officer shall permit such removal only when owner of goods

- Licensee shall permit goods to be removed for home consumption only in the presence of the Bond Officer.
- Upon the owner of the warehoused goods producing an order for clearance for home consumption, the licensee shall, in the presence of the bond officer:

<table>
<thead>
<tr>
<th>Loaded on means of transport, licensee would:</th>
<th>affix a one-time-lock to the means of transport.</th>
</tr>
</thead>
<tbody>
<tr>
<td>❖ affix a one-time-lock to the means of transport,</td>
<td>❖ endorse the number of one-time lock on prescribed form for transfer of goods and on transportation documents,</td>
</tr>
<tr>
<td>❖ endorse the number of one-time lock on prescribed form for transfer of goods and on transportation documents,</td>
<td>❖ cause one copy of each of these documents to be delivered to bond officer and</td>
</tr>
<tr>
<td>❖ cause one copy of each of these documents to be delivered to bond officer and</td>
<td>❖ record the removal of goods.</td>
</tr>
<tr>
<td>❖ record the removal of goods.</td>
<td>❖ affix a one-time-lock to the means of transport.</td>
</tr>
</tbody>
</table>

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| **Removal of warehoused goods for export** | • A licensee will permit goods to be removed for export only by a let export order.  
• Once the Bond Officer permits the removal of goods from warehouse, the licensee shall, in the presence of the bond officer, cause the goods to be loaded onto the means of transport and affix a one-time-lock to the means of transport. |
| **Records and returns** | Licensee is required to maintain updated and accurate specified records and preserve them for 5 years. Further, digital copies of the same also need to be preserved. For details, refer Note 2 below. |
| **Penalty** | In case of contravention of or failure to adhere to the regulations, the licensee shall be subject to a penalty in accordance with the provisions of this Act. |
| **Power to exempt** | CBEC may exempt a class of goods from any of the provisions of these regulations considering the nature of the goods & their manner of transport or storage. |

**Notes:**

1. On receipt of goods from a customs station of import or from another warehouse, a licensee shall check the one-time lock on the
container/means of transport as affixed by the proper officer at the customs station or licensee of the warehouse of dispatch.

It will allow unloading only if the lock is found intact and quantity received reconciles with the bill of entry for warehousing and invoice (in case of receipt from customs station) and with the form for transfer of goods bearing orders of bond officer (in case of receipt from another warehouse). Otherwise, he should refuse the unloading and report discrepancy in quantity to bond officer with 24 hours.

Further, he must endorse the bill of entry for warehousing or the form for transfer, as the case may be, with quantity received. He should acknowledge the receipt of goods by endorsing acknowledgement of receipt of goods to bond officer and proper officer at customs station of import/warehouse keeper of the warehouse of despatch, as the case may be.

2. **(A) Maintenance of records:** A licensee shall maintain records of receipt, handling, storing, and removal of any goods into/from the warehouse; each activity/operation in relation to the warehoused goods; and drawal of samples from the warehoused goods under the Customs Act or any other law for the time being in force.

He shall keep copies of the bills of entry, transport documents, Forms for transfer of goods from a warehouse, shipping bills or bills of export or any other documents evidencing the receipt/removal of goods into/from the warehouse and copies of the bonds executed.

**(B) Preservation of records:** The aforesaid records and accounts are required to be preserved for a minimum period of 5 years from the date of removal of goods from the warehouse, and shall be made available at the warehouse at all times and accessible to the Bond Officer or any other authorised officer for verification. Further, digital copies of the same also need to be preserved at any place other than warehouse to prevent loss of records due to natural calamities, fire, theft, skillful pilferage, or computer malfunction.

**(C) Monthly return:** A licensee shall file with the Bond Officer a monthly return in prescribed form, of the receipt, storage, operations and removal of the goods in the warehouse, within 10 days after the close of the month to which such return relates. However, such return shall be furnished on/before the 10th day of the month immediately preceding the month in which the warehousing period would expire.
17. TEST YOUR KNOWLEDGE

1. Vipul imported certain goods in May, 20XX. An ‘into Bond’ bill of entry was presented on 14th May, 20XX and goods were cleared from the port for warehousing. Assessable value on that date was US $ 1,00,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May, 20XX. Vipul deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 21st September, 20XX.

A notice was issued under section 72 of the Customs Act, 1962, demanding duty and interest. Vipul cleared the goods on 14th October, 20XX. Compute the amount of duty and interest payable by Vipul while removing the goods on the basis of the following information:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>14-05-20XX</th>
<th>21-09-20XX</th>
<th>14-10-20XX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate of exchange per US $ (as notified by</td>
<td>₹ 65.20</td>
<td>₹ 65.40</td>
<td>₹ 65.50</td>
</tr>
<tr>
<td>Central Board of Excise &amp; Customs)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic customs duty</td>
<td>15%</td>
<td>10%</td>
<td>12%</td>
</tr>
</tbody>
</table>

Integrated Tax leviable under section 3(7) of the Customs Tariff Act is exempt.

2. BL Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per the rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed.

On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. However, the rate of duty increased when the goods were actually removed from the warehouse.

The Department demanded the differential duty. The company challenged the demand. Whether it will succeed? Discuss briefly taking support of decided case(s), if any.

3. M/s. Decent Laminates imported resin impregnated paper and plywood for the purpose of manufacture of furniture. The said goods were warehoused from the date of their import. M/s. Decent Laminates sought an extension of the
warehousing period, which was granted. However, even after the expiry of extended period, it did not remove the goods from the warehouse. Subsequently, it applied for remission of duty under section 23 of the Customs Act, 1962 on the ground that the imported goods had become unfit for use on account of non-availability of orders for clearance and had lost their shelf life also.

Explain, with the help of a decided case law, if any, whether the application for remission of duty filed by M/s. Decent Laminates is valid in law.

4. Discuss the procedure for deposit of the imported goods in a private bonded warehouse and their subsequent removal.

5. Explain the power of the Central Government to exempt imported material used in the manufacture of goods in a warehouse with reference to the provisions of the Customs Act, 1962.

18. ANSWERS/ HINTS

1. Computation of import duty payable by Vipul

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (US $)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessable value</td>
<td>1,00,000</td>
</tr>
<tr>
<td>Value in Indian currency (US $ 1,00,000 x ₹ 65.20) [Note 1]</td>
<td>65,20,000</td>
</tr>
<tr>
<td>Customs duty @ 10% [Note 2]</td>
<td>6,52,000</td>
</tr>
<tr>
<td>Add: Education cess @ 2%</td>
<td>13,040</td>
</tr>
<tr>
<td>Add: Secondary and higher education cess @ 1%</td>
<td>6,520</td>
</tr>
<tr>
<td>Total customs duty payable</td>
<td>6,71,560</td>
</tr>
</tbody>
</table>

Notes:

1. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange prevalent on the date on which the into bond bill of entry is presented for warehousing under section 46 of the Customs Act, 1962.

2. Goods which are not removed within the permissible period are deemed
WAREHOUSING

6.45

to be improperly removed in terms of section 72 of the Customs Act, 1962 on the day they should have been removed [Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)]. The applicable rate of duty in such a case is the rate of duty prevalent on the last date on which the goods should have been removed.

As per section 61(2) of the Customs Act, 1962, if goods (not meant for being used in an 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order under section 60(1) is made, interest is payable at such rate as may be fixed by the Central Government under section 47 [i.e. 15% p.a.], on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Therefore, interest payable will be computed as under:

| Period of ninety days commencing from the date of order made under 60(1) of the Customs Act, 1962 expires on | 19.08.20XX |
| No. of days for which interest shall be payable [12 days of August + 30 days of September + 14 days of October] | 56 days |
| Interest payable = \( \text{₹} \left[ 6,71,560 \times \frac{15}{100} \times \frac{56}{365} \right] \) (rounded off) | ₹ 15,455 |

2. Yes, the company will succeed. The facts of the given situation are similar to the case of CCus vs. Biecco Lawrie Ltd. 2008 (223) ELT 3 (SC) wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods allowed to be retained for storage in the warehouse as permitted under section 49 of the Customs Act are not treated as warehoused goods and importer would not be required to pay anything more.

Section 49 of the Customs Act, 1962 inter alia also provides that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse on the application of the importer and if the same cannot be cleared within a reasonable time, shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.
3. No, the application for remission of duty filed by M/s Decent Laminates is not valid in law.

The facts of the given case are similar to the case of *CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.)* wherein the High Court held that the circumstances made out under section 23 were not applicable in the instant case as the destruction/loss of the goods had not occurred before the clearance for home consumption.

Remission can be granted under section 23 only when the imported goods have been lost or destroyed at any time before clearance for home consumption.

The High Court clarified that the expression “at any time before clearance for home consumption” as provided in section 23 means the time period as per the initial order during which the goods are warehoused or before the expiry of the extended date for clearance and not after the lapse of such periods.

The said expression cannot extend to a period after the lapse of the extended period merely because the goods were not cleared within the stipulated time. Instead, it would be a case of goods improperly removed from the warehouse.