

White Paper- Warehousing in Customs



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This paper contains a brief on Warehousing in Customs

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Warehousing in Customs

Customs bonded warehouses are features of all developed countries, to enable importers to store imported goods without immediate payment of customs duties and thereby not block up working capital. In India, an importer who wishes to warehouse the goods files an “into-bond” bill of entry, which is assessed to customs duty at the port of import. The importer has to execute a bond to cover the risk to customs duty; the assessing officer at the port of import, upon the bond being executed, allows the goods to be deposited without payment of duty in a warehouse.

Thus far there were only two kinds of warehouses under the Customs Act: public warehouses appointed under section 57, where any importer could store his imported goods; and private warehouses licensed under section 58, where (with certain exceptions) only the person who held the warehouse licence could store his imported goods. Both kinds of warehouses were under customs control: goods could be deposited or removed only with customs permission, and access too was controlled by customs. Customs warehouse of either kind could be set up only in locations that were declared as ‘warehousing station’ under section 9 of the Act.

The law relating to customs warehousing in India has been considerably liberalised with effect from 14 May 2016. The important changes are -

- The concept of warehousing station has been removed. This means that a customs bonded warehouse can be established in any place, if approved by the licensing officer.
- The Commissioner has been named as the officer who will issue all kinds of warehouse licence, instead of the Assistant / Deputy Commissioner.
- The requirement of supervision of the customs officer for accessing the warehouse has been removed for most goods. The responsibility is shifted to the warehouse keeper and importer.
- Only some sensitive goods as notified will be under physical customs supervision, in a different category of warehouse.
- The amount of the warehousing bond has been increased, and cash security has been made a statutory requirement.
- The warehousing period will not apply to EOUs: they can keep goods imported without payment of duty or interest on duty, till these are issued for use in manufacture.
- Extensions of warehousing period can be given one year at a time by the Commissioner / Principal Commissioner of Customs.
- Movement of goods to warehouse, inter-warehouse, and from warehouse for export will be under customs one-time lock.
- The customs department will not concern itself with rent and other dues to the warehouse keeper.

The changes are elaborated below, with legal referencing.

Warehouses no longer restricted to ‘Warehousing Station’

Earlier Situation: Warehouse could be established only in ‘warehousing station’

The earlier provision in clause (43) of the definitions clause in section 2 of the Customs Act 1962 defined ‘warehousing station’ as “a place declared as a warehousing station under section 9”. Section 9, in turn, stipulated that public or private warehouses could only be established in a warehousing station notified as such by the CBEC. This power had been delegated to the Principal Collectors (as Chief Commissioners were then called) in 1988, and in respect of EOUs it was delegated to Commissioners in 1994. Despite the delegation, much delay ensued from the provisions in section 9

read with section 2(43): a service provider may be ready with all the infrastructure, but warehouse licence would not be issued by the customs for want of notification as a warehousing station. Also, as this was not a power that was frequently used, the delegation to the Chief Commissioner / Commissioner was not commonly known, and some applications ended up in the CBEC, which may take its own time to send it back to the appropriate officer.

Clause (43) deleted: Warehouse can be established anywhere

The Finance Act 2016 deleted clause (43) from section 2 of the Customs Act, thereby doing away with the concept of a warehousing station. This means that customs warehouses can be established at any place if the licensing officer finds other factors suitable. The power to issue warehouse licence has, however, been moved to a higher level of officer. (See below.)

[Warehousing licence will be issued by Commissioner](#)

Earlier: AC / DC appointed public warehouse / issued private warehouse licence

Before amendment by the Finance Act 2016, the Assistant Commissioner of Customs / Deputy Commissioner of Customs was the proper officer to appoint a public warehouse under section 57 of the Customs Act or to issue licence for a private warehouse under section 58 of the said Act.

After amendment: Commissioner to issue warehousing licence for all warehouses

Sections 57 and 58 of the Customs Act have been amended to provide as follows:

“Section 57: The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a public warehouse wherein dutiable goods may be deposited.

Section 58: The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.”

See also the extract of section 58A below, under “Different category of warehouse under customs supervision”, in which special warehouse also requires licensing by the Commissioner or Principal Commissioner of Customs. Thus, application for licence will have to be made henceforth for all categories of warehouse licence, and it will be issued by the Commissioner of Customs or the Principal Commissioner of Customs. Terms and conditions for licence have been notified under notifications 70, 71 & 72/2016-Customs (NT) dated 14 May 2016 for public warehouse, private warehouse and special warehouse respectively. Under these notifications the following regulations have been issued: Public Warehouse Licensing Regulations 2016, Private Warehouse Licensing Regulations 2016, and Special Warehouse Licensing Regulations 2016.

[Customs Supervision removed for most Goods](#)

Earlier Situation: Customs supervision in warehouse

Section 62 of the Customs Act as it stood before amendment by the Finance Act 2016 provided that all goods deposited in a warehouse were subject to control by the customs officer, who would have access to any part of the warehouse and who may lock up any part of it; further, that no person may enter the warehouse without the permission of the customs officer.

Section 62 deleted: No Customs Supervision

Section 62 of the Customs Act has been deleted by the Finance Act 2016. This has the effect of removing the supervision of the customs officer. The licensee of a public warehouse under section 57 or of a private warehouse under section 58 have the custody and control of the warehouse and its contents. Their responsibilities are notified under notification 68/2016-Customs (NT) dated 14 May 2016 in the form of the Warehouse (Custody and Handling of Goods) Regulations 2016.

These responsibilities include notifying the customs officer immediately if the one-time customs lock of the container / vehicle is not found to be intact and refusing to unload such a consignment; notifying the customs officer within twenty-four hours of any discrepancy in quantity, and maintaining proper records of the warehoused goods. The licensee is also required to obtain digital signature for electronic filing of records and returns.

Different category of warehouse under customs supervision

Earlier Situation

Under the law as it stood earlier, there were two kinds of customs warehouse: public warehouse under section 57 and private warehouse under section 58. The supervision of the customs officer was required in both, in terms of section 62.

New category of warehouse under section 58A for specified goods

The Finance Act 2016 has inserted a new section 58A in the Customs Act, which reads as follows:

“(1) The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, license 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.

“(2) The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licenced under sub-section (1).”

Thus, in terms of the new section 58A of the Customs Act, goods that are notified for the purpose by the CBEC have to be warehoused only in the special warehouse and will be under the control of the customs officer.

The CBEC has issued notification 66/2016-Customs (NT) dated 14 May 2016,

Where under it has notified the following goods under section 58A:

- Gold, silver, other precious metals and semi-precious metals and articles thereof;
- Goods warehoused for the purpose of -
 - a) Supply to duty free shops in a customs area;
 - b) Supply as stores to vessels or aircrafts under Chapter XI of the Customs Act, 1962;
 - c) Supply to foreign privileged persons in terms of the Foreign Privileged Persons
- (Regulation of Customs Privileges) Rules, 1957.

The CBEC has also issued notification 69/2016-Customs (NT) dated 14 May 2016 under which it has issued the Special Warehouse (Custody and Handling of Goods) Regulations 2016, which specify the duties and responsibilities of the holder of a license of special warehouse under section 58A. This includes obtaining a digital signature and providing a computerised system to the customs bond officer for accounting of the goods.

Increase in amount of warehousing bond

Warehousing bond is executed by importer

An importer who wishes to warehouse the goods without payment of customs duties has to execute a bond under section 59 of the Customs Act to cover the risk to government revenue as assessed on the goods. This may be in respect of the particular consignment; or, under sub-section (2) of the same section, it could be a general bond to cover the duty on goods to be imported by the person during a specified period. Upon execution of the bond, the assessing officer of customs permits the goods to be taken to a warehouse without payment of duty, under section 60.

Earlier, “double duty” bond amount

The bond amount under section 59 of the Customs Act was previously twice the duty involved on the warehoused goods, and has commonly been called the “double duty bond”.

Bond amount increased

Now section 59 has been amended to increase the bond amount to three times the duty involved. Section 59 now also stipulates that a security amount is to be given. The format of the bond itself has been prescribed under customs circular 18/2016 dated 14 May 2016.

Removal from customs station to warehouse explicitly allowed

Section 60, as it stood earlier, permitted deposit of the goods in a warehouse after execution of warehousing bond. Now it has been amended to permit, explicitly, removal of goods from a customs station for deposit in a warehouse.

[Warehousing period of one year, Extensions of one year each with interest](#)

Earlier Position

Under section 61 of the Customs Act, the warehousing period for goods imported for use other than in a hundred per cent EOU / EHTP / STP was one year, after which the Commissioner of Customs could give an extension of six months, and the Chief Commissioner of Customs could give extensions of six months at a time, for an indefinite period. Interest was payable from the date of expiry of the original warehousing period.

After Amendment: extensions of one year by Commissioner, with interest

In section 61 as it now stands, the warehousing period remains one year; but the Commissioner (or Principal Commissioner) of Customs can extend this for one year at a time, for an indefinite period. Interest remains payable from the date of expiry of the original warehousing period. The calculation of warehousing period of one year is done from the date of order of the proper officer of customs under section 60 permitting removal of the goods from the customs station of import for taking to a warehouse.

Goods that are likely to deteriorate are subject to a shorter warehousing period as may be stipulated by the Commissioner or Principal Commissioner of Customs.

[EOUs: No interest, no limit to warehousing period](#)

The period for which imported goods may be kept duty-free in a warehouse is called the warehousing period. This is stipulated under section 61 of the Customs Act. The section also allows extensions to the stipulated warehousing period to a limited extent, with interest on the duty thus deferred. The recent amendments have made changes in this regard for EOUs, as follows.

Earlier Position:

Till the amendments, section 61 provided that capital goods intended for use in a hundred per cent export-oriented undertaking could be stored for five years and other goods intended for such use could be stored for three years. Extension of this warehousing period could be given by the Chief Commissioner of Customs for such period as he saw fit, but interest would be payable thereafter from the date of extension till the date of clearance of the goods.

After Amendment, no limitation on warehousing period for EOUs

In the new section 61, under clause (a) and (b), the goods may remain in the warehouse

- In the case of capital goods intended for use in a hundred per cent EOU or electronic hardware technology park unit or software technology park unit, till their clearance from the warehouse;
- In the case of other goods intended for use in such units or in any warehouse wherein manufacture or other operations have been permitted under section 65, till their consumption or clearance from the warehouse.

Even in the case of clearance from the EOU / other warehouse in the above cases, no interest is payable on the duty thus deferred.

Customs not to collect or enforce rent and other dues to the Warehouse Keeper

Earlier Position: customs law empowered the warehouse keeper to sell goods to collect rent and other charges

Erstwhile section 63 of the Customs Act required the owner of warehoused goods to pay rent and other warehouse charges to the warehouse keeper as fixed under law. If such charges were not fixed under any other law, the Commissioner of Customs was required to fix them. Upon non-payment of such amounts, the warehouse-keeper was, with the permission of the customs authorities, empowered to sell the goods to recover the amounts.

After Amendment, customs law does not intervene in the matter of rent & other charges

Section 63 of the Customs Act has been deleted by the Finance Act 2016. The TRU letter dated 29 February 2016 that explains the Budget changes observes as follows regarding this deletion: "Section 63 relating to payment of rent and warehouse charges is being omitted in view of the privatization of services, and free market determination of rates, including those by facilities in the public sector." References to rent and other warehouse charges have been omitted from sections 68 and 69 also.

No Customs escort, movement of goods under customs one-time lock

Earlier Position

Under the erstwhile Warehoused Goods (Removal) Regulations 1963, warehoused goods could be moved locally to another warehouse under the physical supervision of a customs officer; if they were to be moved to a warehouse in another town, a bond with surety or security was required to be executed to cover the duty on the goods.

Under New Regulations: Customs lock, No Separate Bond

The 1963 regulations have been replaced by the Warehoused Goods (Removal) Regulations 2016, under which no bond is required. Customs circular 18/2016 dated 14 May 2016 clarifies that the triple duty bond taken at the time of import will cover movement of goods. For safeguarding the goods, one-time customs lock (bottle seal) will be affixed by the proper officer of customs or the licensee or the bond officer for removal of goods from the customs station of import to the warehouse; or for transfer of goods from one warehouse to another; or for transfer of the goods from the warehouse to the customs station of export. Customs circular 17/2016 dated 14 May 2016 instructs Commissionerates to make immediate arrangements for procurement of serially numbered one-time locks. If the goods do not reach their destination within one month (or extended period as the officer may allow), the licensee has to pay the dues involved.

Cancellation of Warehouse Licence

Earlier: private warehouse licence could be cancelled

Prior to the amendments made by the Finance Act 2016, the Assistant Commissioner of Customs was empowered to cancel a private warehouse licence as per the provisions of section 58(2).

After amendment, licence for all warehouses can be cancelled

Section 58B has been inserted in the Customs Act, effective from 14 May 2016, to provide that the Commissioner / Principal Commissioner of Customs may cancel a warehousing licence issued under section 57, 58 or 58A.

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