

Chapter 15

Detention and Release/Storage of Imported/Export Goods

1. Introduction:

- 1.1 Normally, the goods liable for confiscation under the Customs Act, 1962 are seized by the Customs. However, in some cases where seizure is not practicable, it may become necessary to detain the goods for investigation. The provisions for detention of goods are contained in Section 110 of the Customs Act, 1962. The goods are detained for various reasons and at the instance of various agencies of the Department, such as the Directorate of Revenue intelligence, the Directorate of Central Excise Intelligence, Narcotics Control Bureau and Directorate of Enforcement and even other agencies, like the Central Bureau of Investigation. Once order for detention of goods is served to the owner of the goods, he cannot remove, part with, or otherwise deal with the goods except with the prior permission of the proper officer of the Customs. During investigation and subsequent adjudication proceedings, if the contravention of provisions of the Customs Act, 1962 and other allied laws is established, action is taken against the importers/offending goods as provided in the law. In other cases, the charges are dropped at initial stages or at the appeal stage.
- 1.2 In respect of goods detained at the port/airport/ICD/CFS/LCS etc, the custodians of goods demand their dues for storing the goods (i.e. the warehousing charges) from the importers/exporters. Likewise the shipping lines demand container detention charges for the period the goods are kept in their custody. When the goods are detained for a long period, the warehousing/demurrage charges and container detention charges become high. In cases where the charges against the importers or exporters are dropped, the Customs usually issues detention certificates for the period when goods were under detention. The custodians normally remit the detention/demurrage charges wholly or partially on the basis of detention certificates issued and recommendation made by the Customs. However, it is not obligatory, as held in some recent Court judgments that custodians must waive the rentals payable to them.
- 1.3 The Apex Court examined the matter of quantum of demurrage and payment of demurrage in the cases of International Airport Authority of India vs. Grand Slam International [1995 (77) ELT 753 SC] and Trustees of Port of Madras vs. Nagavedu Lungi & Co., [1995 (80) ELT 241 SC] and held that detention charges and warehousing charges are payable to the custodians and shall be paid by the exporter or the importer even where the Customs detention has been finally held as improper/illegal.

2. Guidelines for expeditious Customs clearance/provisional release:

- 2.1 To avoid delays in the release and minimize hardship to the trade if goods remain detained pending investigation into any dispute in relation to assessment etc. the stress is on expeditious assessment/investigations. Further, unless the goods are prohibited or involved in serious fraud even if there is a dispute in assessment etc., provisional release option be given to the importers.
- 2.2 The following guidelines are to be followed by importers and Customs Officers to keep a check on unnecessary detention of goods and ensure speedy Customs clearance:

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- (a) Import/export goods are not to be detained unless prohibited as per the FTP and/ or under other allied laws. Goods are not to be detained on simple valuation or classification disputes.
- (b) If it becomes necessary to detain the goods for investigation of any serious suspected fraud etc., the importer/exporter must be intimated in writing that he may shift the goods to a bonded warehouse under Section 49 of the Customs Act, 1962, with a clear indication that if he does not avail of this facility and the goods incur demurrage, etc., he would have to bear the demurrage and other charges levied by the custodian/ other agencies.
- (c) But for certain exceptional categories, in any dispute case pending investigation wherever importer or exporter is willing, he should be allowed provisional clearance of the goods by furnishing a bond for full value of the goods supported by adequate bank guarantee as may be determined by the proper officer. The value of bank guarantee shall not exceed twice the amount of duty. The provisional clearance should be allowed as a rule and not as an exception. Provisional release may not be resorted to in the cases mentioned below but here too option for storage in warehouses under Section 49 of the Customs Act, 1962 should be provided to the importers (goods can be allowed entry into the country only after the laid down quality standards etc. are satisfied):
 - (i) Goods prohibited for import/export;
 - (ii) Imports not complying with the specifications/conditions/requirements of various Orders/Acts (e.g. Livestock Importation Act, 1898, Prevention of Food Adulteration Act, 1954, etc.); and
 - (iii) Where gross fraudulent practices are noticed and release of the goods may seriously jeopardize further investigations as also interests of the revenue.
- (d) In the case of containerized cargo, wherever the parties are not in a position to execute bond and bank guarantee for taking provisional release or the Department is of the view that clearance cannot be allowed, the goods may be de-stuffed after giving notice to all concerned and stored in port's godowns and warehouses to avoid container detention charges.

2.3 In order to ensure expeditious clearance of export cargo it is provided that:

- (a) In case the export goods are found to be mis-declared in terms of quantity, value and description and are seized for being liable to confiscation under the Customs Act, 1962, the same may be ordered to be released provisionally on execution of a Bond of an amount equivalent to the value of goods along with furnishing an appropriate security in order to cover the redemption fine and penalty.
- (b) In case the export goods are either suspected to be prohibited or found to be prohibited in terms of the Customs Act, 1962 or ITC (HS), the same should be seized and appropriate action for confiscation and penalty initiated.
- (c) In case the export goods are suspected of mis-declaration or where declaration is to be confirmed and further enquiry / confirmatory test or expert opinion is required (as

in case of chemicals or textiles materials), the goods should be allowed exportation provisionally. The exporters in these cases are required to execute a Bond of an amount equal to the value of goods and furnish appropriate security in order to cover the redemption fine and penalty in case goods are found to be liable to confiscation. In case exports are made under any Export Promotion / Reward Schemes, the finalization of export incentives should be done only after receipt of the test report / finalisation of enquiry and final decision in the matter. The Bond executed for provisional release shall contain a clause to this effect,

- (d) Export goods detained for purpose of tests etc. must be dealt with on priority and the export allowed expeditiously unless the prohibited nature of goods is confirmed. Continued detention of any export goods in excess of 3 days must be brought to the notice of the Commissioner of Customs, who will safeguard the interest of the genuine exporters as well as the revenue

2.4 Wherever in adjudication proceedings, the parties have been allowed to clear the goods on payment of redemption fine and penalty and parties, instead of clearing the goods on payment of fine and penalty, prefer an appeal, they will have to pay demurrage/ detention charges, etc. even if they succeed in appeal, as the liability has arisen due to their filing appeal and not clearing the goods for which option was available.

2.5 The Departmental officers will be held accountable for cases where detention of goods have been ordered on insufficient and weak grounds resulting in unconditional release of detained goods in adjudication stage itself, where importers have to suffer avoidable demurrage charges/loss by pilferage etc.

[Refer Instruction F.No. 450/82/95-Cus. IV, dated 7-7-1997 and Circulars No.42/2001-Cus, dated 31-7-2001 and No.1/2011-Cus, dated 4-1-2011]

2.6 Board has reiterated that special care will have to be taken by field formation to avoid any unwarranted delays in clearance that may lead to possible demurrage liability on Customs. Where for justifiable reasons in certain types of exceptional situations, release of consignments is not considered advisable even on provisional basis, options must be given by sending intimation in writing to the importers / exporters or their agents to keep the goods in warehouses in terms of Section 49 of the Customs Act. It should be made clear that if the facility is not availed and the goods incur any demurrage, the importers/ exporters will be wholly responsible for its payment.

[Refer Instruction F.No.450/160/2011-Cus.IV, dated 13-2-2012]

2.7 There can be no justification to hold up export consignments for long periods unless the export goods are prohibited under Customs Act, 1962 or ITC (HS) Policy. Essentially, genuine exports must be facilitated and there should be no delays or hold ups of export goods. Therefore, the Board has reiterated that it shall be the responsibility of Commissioner of Customs concerned to ensure strict compliance of extant instructions in this regard and deviation or lapse shall be proceeded against.

[Refer Circular No. 30/2013- Cus., dated 5-8-2013]
