

Insights into In-bond Warehousing & Manufacturing Facility

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Introduction:

The concept of warehouse manufacturing available under Customs Act, 1962 is an age-old duty deferment and export benefit scheme useful for both domestic suppliers and exporters. It is less popular among exporters when compared to EOU¹, EPCG² and Advance Authorization schemes under the FTP³. All these schemes allow exporters to import capital goods and inputs to procure domestically without payment of customs duties and IT⁴. Such duty saved amounts shall stand waived when the specified export obligations are fulfilled. On the contrary when such obligations are not fulfilled within the stipulated time, the duty saved amounts proportionate to unfulfilled export obligation shall be recovered along with interest which is payable from the date of actual import of goods under the above schemes. The option of warehouse manufacturing is also worthy for exporters to consider as it does not impose any condition of export obligation and there will be a remission of duty payable on imported goods if the final goods are exported. If the final goods are cleared for domestic consumption, then the duty payable on original imported goods that was not paid at the time of their import can be paid without interest at the time of such removal. In addition to the condition of export obligation, there are no stipulations about minimum investment, minimum area and is of less administrative burden.

Further, it is important to note that this option is not only meant for exporters. It can also be used by those who supply their final goods in domestic market. Effectively, the option of warehouse manufacturing is a duty deferment scheme which help domestic suppliers and exporters in saving working capital cost for the time lag involved in the importation and subsequent sale or exportation as the case may be. The Government has recently launched a revamped and streamlined this warehousing facility with a vision to attract more investments into India and to strengthen 'Make in India' vision. In this article, an attempt is made to discuss in detail the concept of warehousing provided under Customs Law.

Types of Warehousing under Customs Law:

In terms of section 2(11) of Customs Act, 1962, a warehouse is also considered as customs area where both imported goods and export goods are kept before clearance from customs authorities. Upon importation of goods, the importer can either file bill of entry for home consumption or for warehousing of goods in a warehouse. Under Customs law, there are three types of warehouses viz. Public warehouse, Private Warehouse and Special warehouse.

a. Public Warehouse:

Public warehouse is a warehouse licensed under the provisions of section 57 of the Customs Act. As indicated by the name, it is intended to warehouse the dutiable goods of public at large upon importation by charging fee which includes fee towards storage and transaction handling. The person applying for this license is required to provide

¹ Export Oriented Undertaking

² Export Promotion Capital Goods

³ Foreign Trade Policy

⁴ Integrated Goods and Services Tax

solvency certificate and undertake to abide by all regulations. The license will be given upon satisfaction of required conditions and is valid till it is cancelled or revoked. The license granted shall not be transferrable.

b. Private Warehouse:

A private warehouse means a site or building which is licensed as warehouse under section 58 of the Customs Act, wherein the dutiable goods of the licensee alone are permitted to be stored. The license is not transferable. The license is valid till cancelled or surrendered. Regulations make provisions for cancellation and surrender of license.

c. Special Warehouse:

A special warehouse is a warehouse licensed under section 58A of the Customs Act, which is meant for storage of specified goods. This type of warehousing is introduced with effect from 14.05.2016. The following goods are notified to be kept 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 duty free shops in customs area, supply as stores to vessels, aircrafts and supply to foreign privileged persons.

In case of public warehouse and private warehouse, the customs authorities will not exercise physical control. The control shall be exercised through records verification by way of audit. Whereas in case of special warehousing, physical control shall be exercised by Customs Authorities. Further, manufacturing, and other operations are permitted only in private warehouse while such activities are not permitted in a public warehouse. With this brief idea on types of warehousing, we will now discuss about private warehouse, manufacturing in private warehouse and other related aspects.

Private Warehouse without Manufacturing Facility:

Private warehouses can also be broadly classifiable into two categories viz. without or with manufacturing facility. Private warehouses can be set-up by obtaining license from Principal Commissioner or Commissioner of Customs under section 58. In case a person wants to establish private warehouse with manufacturing facility, special permission is required from Principal Commissioner or Commissioner of Customs under section 65.

Private warehousing without manufacturing facility is useful to traders whose business involves import of goods for trading. In these cases, the trader can import the goods and get the goods stored in private warehouse without payment of customs duty i.e., both BCD⁵ and IT. As and when the trader identifies customers, he can remove the goods from the private warehouse by paying BCD and IT. No interest is payable by the trader for delayed payment of BCD and IT by keeping the imported goods in private warehouse. This will help the trader in saving working capital as he can avoid paying BCD and IT at the time of import and can pay the same only after identifying customer at the time of removal from private warehouse.

⁵ Basic Customs Duty

Sometimes manufacturers import raw material in bulk quantity for the purpose of manufacturing. The entire quantity imported material may not be used immediately. In such cases, instead of clearing the imported raw material for home consumption by paying applicable BCD and IT, the same can be stored in a private warehouse without paying duties and taxes. The raw material imported can be removed from private warehouse in various installments as and when such material is needed for manufacturing facility. This implies that though raw material was imported in bulk quantity, by depositing in private warehouse, BCD and IT can be paid in installments to the extent of quantity removed for manufacturing. As mentioned above, there is no requirement to pay any interest for the delayed payment of BCD and IT by depositing the goods in private warehouse. Thus, private warehousing will save working capital.

Private Warehouse with Manufacturing facility:

As mentioned above, in terms of section 65, by obtaining prior permission of Principal Commissioner or Commissioner, the owner of warehoused goods can undertake manufacturing and other operations on such goods. Manufacturing facility is available even if the goods manufactured are completely removed for sale in India without exporting. The salient features of this facility are provided as under. These are based on various regulations, FAQs and circulars released.

1. **Eligibility for Manufacturing Facility in Warehouse:**

All persons being citizens of India or an entity incorporated in India are entitled to make application to obtain license under the scheme. A person who has already been granted license under section 58 can also make application to obtain permission for undertaking manufacturing and other operations under the scheme. Similarly, a person who is yet to obtain a warehouse license under section 58 can make a combined application for warehousing license and also for undertaking manufacturing and other operations in such warehouse.

2. **A Domestic Supplier is also entitled for Manufacturing Facility:**

A manufacturer of goods importing raw material for manufacturing and supply within India without any exports is also entitled for warehouse license with permission for manufacturing facility. This facility is not upon the condition that it will be given for exporters and there is no restriction that the extent of sale in domestic market should not extend beyond a specified quantity or value.

3. **An existing manufacturing facility is also eligible:**

An existing DTA unit is also eligible for making an application for manufacture and other operations in a bonded warehouse. Thus, an old factory unit located in DTA is also eligible for warehousing along with manufacturing facility.

4. **Nature of Premises Permissible for obtaining License:**

The regulations do not mandate that a fully enclosed structure is a prerequisite for grant of license. What is important is that the site or building is suitable for secure storage of goods and discharge of compliances, such as proper boundary walls, gate(s) with access control and personnel to safeguard the premises. Moreover, depending on the nature of goods used, the operations and the industry, some units may operate without fully closed structures. The Principal Commissioner/Commissioners of Customs will take into consideration the nature of

premises, the facilities, equipment and personnel put in place for secure storage of goods, while considering grant of license.

5. **Bond:**

The person obtaining license to undertake manufacturing and other operations shall be required to execute a bond of value **thrice** the amount of duty involved. The format in which bond is to be executed and the manner in which the bond register has to be maintained has been provided in Annexure-C to Circular No. 34/2019-Cus dated 01st October 2019.

6. **Validity of License Granted:**

The license granted for private warehouse and the permission extended for manufacturing facility are valid unless it is cancelled or surrendered. Thus, there is no requirement to renew the license on a period basis.

7. **Import of Inputs:**

As mentioned above, the facility of private warehousing with manufacturing facility is a duty deferment scheme. Thus, both BCD and IT on imports stand deferred. In case of import of goods other than capital goods, BCD and IT payable shall stand deferred till they are cleared from warehouse as such or in the form of finished goods after manufacturing for home consumption. No interest is payable on the amount of BCD and IT payable for the reason of deferment.

No depreciation is available on the imported inputs which implies that BCD and IT are payable on the value at which they are originally imported. Bill of entry for home consumption is required to be filed in order to pay the duty on imported inputs and remove the manufactured finished goods. In case the finished goods are exported, the duty (both BCD and IT) on the imported inputs shall stand remitted i.e., there is no requirement to pay BCD and IT payable for the imported inputs if the finished goods are eventually cleared for export.

8. **Import of Capital Goods:**

The licensed unit can import capital goods and warehouse them without payment of BCD and IT. Duty deferment is available till the time the imported goods are cleared for home consumption. The capital goods can be cleared for home consumption upon payment of applicable BCD and IT without interest. The duty deferment is without any time limitation. No depreciation is available if imported capital goods (on which duty has been deferred) are cleared for home consumption after use which implies that BCD and IT is payable on the value at which the capital goods are originally imported. No duty is payable on those imported capital goods used in the warehouse if they are eventually exported.

9. **Clearance of Manufactured Goods to DTA:**

The goods manufactured in the private warehouse shall be subject to GST⁶ if the clearance to DTA⁷ amounts to supply as per the provisions of section 7 of the CT⁸ Act, 2017. In such an event, the manufactured goods cleared

⁶ Goods and Services Tax

⁷ Domestic Tariff Area

⁸ Central Goods and Services Tax

shall be subject to CT/ST⁹ or IT, depending upon the nature of supply being inter-state or intra-state. Thus, the goods shall be assessed to tax on the value of manufactured goods as determined in terms of section 15 of the CT Act, 2017 and accordingly the goods shall be removed to DTA under the cover of a valid tax invoice. Thus, duty payable on finished goods manufactured in a private warehouse is limited to tax payable as if the goods the manufactured and supplied within India.

10. Interest Obligation:

As mentioned above, the facility of private warehousing is a duty deferment scheme wherein the applicable BCD and IT are payable only when the imported inputs and capital goods are removed from the warehouse. There is no interest obligation on the importer for the reason that the duties are paid at the time of ex-bonding the resultant goods. This implies that BCD and IT are payable without any interest at the time the imported goods are cleared from warehouse.

11. No Physical Control and requirement to appoint a warehouse keeper:

Private warehouses are not subject to physical control on a day-to-day basis by officers of Customs. Further, approval of the bond officer is not required for clearance of the goods from the warehouse. These units will be subject to risk-based audits based on a risk-criteria. There is no prescribed frequency for such audit. As the warehouse is not subject to any physical control by officer of Customs, the warehouse owner is required to appoint a warehouse keeper for a warehouse to be licensed under section 58 of the Customs Act. The warehouse keeper is expected to discharge duties and responsibilities, maintain accounts and also sign the documents, on behalf of the licensee. The warehouse keeper is expected to supervise and satisfy himself about the veracity of the declaration/accounts that he is signing. The inspection of goods by customs at the stage of ex-bonding would be done, only if there is indication of risks and not as a matter of routine practice.

12. Documentation:

Following are the customs documents involved for movement of imported goods on which duty has been deferred to/ from a unit undertaking manufacture and other operations in a bonded warehouse:

- (i) **Customs Station to Section 65 unit:** It is clarified that no separate form is prescribed for movement from Customs station to Section 65 unit as the goods are already accompanied by the Bill of entry for warehousing.
- (ii) **From another warehouse (non-Section 65¹⁰) to a Section 65¹¹ Unit:** The goods can be removed from a warehouse which is not a section 65 unit to a warehouse which is a section 65 unit can be undertaken by following the procedure prescribed under Warehoused Goods (Removal) Regulations, 2016. The removal of goods can be undertaken through a prescribed form. The owner of the goods shall be required to remove the goods under one-time lock and is required to provide the bond officer or proper officer due acknowledgment given by the licensee or bond officer of the warehouse to which the goods are removed.
- (iii) **From Section 65 Unit to another warehouse (the other warehouse can be a Section 65 unit or a non-Section 65 warehouse):** The goods shall be removed under one-time lock and in the form prescribed under

⁹ State Goods and Services Tax

¹⁰ A warehouse without license to carry out manufacture and other operations

¹¹ A warehouse with license to carry out manufacture and other operations

Manufacture and Other Operations in Warehouse (No.2) Regulations, 2019. The said form should be duly acknowledged by the warehouse keeper or proper officer of warehouse receiving the goods.

13. Record Maintenance:

A licensed private warehouse with permission for manufacturing is required to maintain record of receipt of goods received by way of import or procurement from DTA, goods issued for manufacturing, resultant finished goods obtained from processing, goods sent to job work, goods returned from job work, finished goods cleared for export, finished goods cleared for home consumption, import goods cleared as such for home consumption or for export, waste or refuse arising out of manufacture. The records shall be maintained in the form notified under Annexure B of Circular No. 34/2019-Cus dated 01st October 2019. Further, it is clarified that the Generally Accepted Accounting Principles will be followed for inventory control in a Section 65 unit. Thus, FIFO method can be followed.

14. Re-Entry of Manufactured Goods:

Once the goods are cleared from the warehouse, they will no longer be treated as warehoused goods. Thus, if the resultant goods cleared from the warehouse are returned by the customer for repair, they will be entered as DTA receipts (this is provided in the accounting form). After repair, when the same is cleared from the warehouse, the same will be entered in the prescribed accounting form. If the goods were exported and subsequently rejected or sent back for repair by the customer, then the goods upon re-import have to be entered as Imports receipts in the accounting form. The relevant customs notification for re-imports has to be followed while filing the Bill of Entry for re-import of the goods.

15. Surrender of License:

Since the unit operating under Section 65 is also licensed as a Private Bonded warehouse under Section 58 of the Customs Act, the procedure for surrender of licence will be as per the regulation 8 of the Private Warehouse Licensing Regulations, 2016. A licensee may, therefore, surrender the licence granted to him by making a request in writing to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be. On receipt of such request, the licence will be cancelled subject to payment of all dues and clearance of remaining goods in such warehouse.

16. Job Work:

Capital goods can be removed for job work for the purpose of repairs only with permission of bond officer. Inputs can be removed for job work upon the condition that the imported inputs shall first be deposited in the warehouse (section 65 unit), measures to be taken to establish identity between goods sent to job work and the goods returned. The procedure and timeline for return of goods by job worker shall be as per GST provisions. Goods are permitted to be directly exported from Job worker's premises or can be removed to customers location in DTA. The detailed procedures have been clarified under Circular No. 48/2020-Cus dated 27.10.2020.

CONCLUSION:

Considering the above discussion on various aspects of private warehousing facility available under Customs, it is not an exaggeration to say that this is a boon to those exporters who may not have the required scale of operations and doubtful about the fulfillment of conditions to obtain other export benefits. By following the warehousing procedure, working capital can be saved without paying duties/taxes upfront and protect themselves from undergoing cumbersome refund process

that they have to usually undergo to get refund of the duties/taxes involved in their exports. On the other hand, this facility can equally be beneficial to domestic suppliers as well as it offers the facility of duty deferment without any requirement to pay interest. To conclude, the private warehousing facility available under customs is much more attractive after the recent revamping and procedural simplifications. It is worth for business houses to consider this option in order to minimize the tax implications on their business and become more competitive in market.

References:

1. *Section 58 of Customs Act, 1962*
2. *Section 65 of Customs Act, 1962*
3. *Private Warehouse Licensing Regulations, 2016*
4. *Warehouse (Custody and Handling of Goods) Regulations, 2016*
5. *Warehoused Goods (Removal) Regulations, 2016*
6. *Manufacture and Other Operations in Warehouse (No.2) Regulations, 2019.*
7. *Circular No. 34/2019 dated 01st October 2020*
8. *Circular No. 48/2020-Cus dated 27th October 2020*
9. *FAQs released by CBIC vide F. No. 484/03/2015-LC (Pt)*

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