CHAPTER 6

WAREFHOUSING



LEARNING OUTCOMES

After studying this chapter, you would be able to:

- explain the concept of warehousing, types of warehouses, cancellation of license, warehousing bond, 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, removal of goods from warehouse to another warehouse or for home consumption or for export, goods improperly removed from the warehouse, allowance in case of volatile goods, responsibilities of warehouse keeper.
- compute the interest payable, if any, on the amount of duty payable at the time of clearance of the warehoused goods.

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CHAPTER OVERVIEW

- Types of warehouses
- Cancellation of license
- Warehousing bond
- Period for which goods may remain in a warehouse
- Owner's right to deal with warhoused goods
- Manufacture and other operations in relation to goods in a warehouse
- Removal of goods from the warehouse
- Allowance in respect of volatile goods
- Improper removal of goods from warehouse
- Cancellation and return of warehousing bond
- Custody and removal of warehoused goods

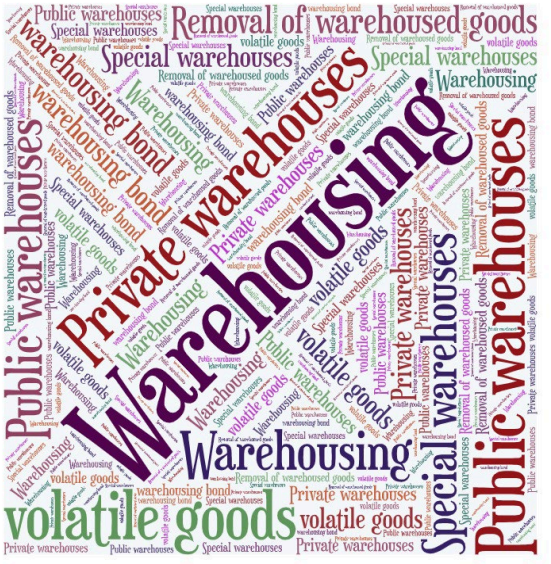
1. INTRODUCTION



There are instances when the importer does not want to clear the imported goods lying at the customs station, immediately. This may be due to many factors, namely, falling market price, declining saleability, lower requirement in the factory of production, lack of storage facilities in importer's premises, arrival of shipment much earlier than planned, working capital issues, etc. Goods imported for sale in Duty Free Shops (hereinafter referred to as DFS) at International Airports are also warehoused before being sold to international travellers.

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Thus, the Customs Act, 1962 contains specific provisions that facilitate the warehousing of imported goods. The imported goods after landing may be allowed to be removed to a warehouse without payment of customs duty. Duty is paid at the time of clearance from the warehouse. Provisions lay down the time period up to which the goods may remain in a warehouse, without incurring any interest liability and thereafter, with interest liability.



Sections 57 to 73A of the Customs Act, 1962 deal with warehousing provisions. This facility is available to traders as well as to direct importers.

(1) 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 wishes to clear the consignment in convenient lots after paying appropriate duty only on that particular portion that is cleared. During the intervening period, the goods can be held in custody in a place called warehouse.

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

Thrice the amount of duty

(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.

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This facility is also useful in another situation. Ship stores like liquors, cigarettes, preserved food are 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 is the case of fuel for the ship like furnace oil, diesel oil etc. Evidently, there is no point in collecting import duty on the whole of the consignment and granting drawback piecemeal as and when such goods are exported. It is 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 ship stores. Warehousing is the most convenient option available in such case.

An importer who intends to get 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 also 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. When the importer wishes to clear the goods from warehouse, **ex-bond bill of entry** needs to be filed and applicable duty be paid by importer. Thereafter, the proper officer will pass the order for clearance of goods from warehouse.

Into-Bond Bill of Entry

It is important to note that when warehoused goods are cleared from warehouse for home consumption, rate of duty and tariff valuation applicable to such imported goods shall be the rate and valuation in force on the date on which a bill of entry in respect of such goods is presented for their removal from the warehouse.

2. SPECIAL PROVISIONS FOR WAREHOUSING

A separate chapter is 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: -

Section No.	Provision contained
57	Licensing of public warehouses
58	Licensing of private warehouses
58A	Licensing of special warehouses

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58B	Cancellation of license
59	Warehousing bond
60	Permission for removal of goods for deposit in warehouse
61	Period for which goods may remain warehoused
64	Owner's right to deal with warehoused goods
65	Manufacture and other operations in relation to goods in a warehouse
66	Power to exempt imported materials used in the manufacture of goods in warehouse
67	Removal of goods from one warehouse to another
68	Clearance of warehoused goods for home consumption
69	Clearance of warehoused goods for [export]
70	Allowance in case of volatile goods
71	Goods not to be taken out of warehouse except as provided by this Act
72	Goods improperly removed from warehouse, etc.
73	Cancellation and return of warehousing bond
73A	Custody and removal of warehoused goods

We shall examine each of the provisions in detail in the subsequent paragraphs.

3. TYPES OF WAREHOUSES [SECTION 57, 58 AND 58A]

Meaning of warehouse

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)].

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Meaning of warehoused goods

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

A customs bonded warehouse can be established at any place in India, if approved by the licensing officer. There are **three types of warehouses,** namely – Public Warehouses, Private Warehouses and Special Warehouses.

Private and Public Warehouses are **not under physical control** of the customs authorities (i.e. not under lock of customs). Control is record based. However, Special Warehouses remain under customs lock. In a **Private Warehouse**, dutiable goods imported **only by licensee** are deposited. In a **Public Warehouse**, goods can be kept by any importer.

Special Warehouses remain under physical control of proper officer (under customs lock). 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 (PO). Only the dutiable goods notified by CBIC may be deposited in Special Warehouse. Some of the notified goods[1] are gold, silver, other precious metals and articles thereof, goods warehoused for the purpose of supply to DFS in a customs area, supply as stores to vessels/aircrafts and supply to foreign privileged persons[2].

Special Warehouses

Notified goods

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[3].

4. CANCELLATION OF LICENSE [SECTION 58B]

License granted for all types of warehouses namely- Public, Private and Special Warehouses, can be cancelled. Principal Commissioner/ Commissioner may cancel the warehousing licence granted under section 57/58/58A if the licensee

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[1]These goods have been notified vide Notification No. 66/2016 Cus (NT) dated 14.05.2016 as amended. Examples of goods which can be kept in Special Warehouse have been given hereunder only for the knowledge of the students. These are not relevant for examination purposes.

[2] 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

[3] Public/Private/Special Warehouse Licensing Regulations, 2016

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contravenes any of the provisions of the customs law or breaches any of the conditions of the licence. Before, cancellation, the licensee shall be given a reasonable opportunity of being heard.

During the pendency of an enquiry under this section, operations of the warehouse may be suspended. During suspension period, no goods shall be deposited in such warehouse.

Where the licence is cancelled, the goods warehoused shall:

(i) be removed from such warehouse to another warehouse or

(ii) be cleared for home consumption/export.

The goods shall be removed within 7 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 allow.



Till the time the goods are deposited in the warehouse (whether in case of suspension or removal), they will continue to be governed by the warehousing provisions under Customs law.

5. WAREHOUSING BOND [SECTION 59]

An importer desirous of warehousing the goods without paying customs duties needs to execute an indemnity bond to cover the risk to Government revenue. Importer is required to execute the bond for the goods in respect of which an into-bond bill of entry has been presented and assessed to duty.

An importer executing bond binds himself––

- to comply with all the provisions of the Customs law in respect of such goods;
- to pay, on or before the date specified in the demand notice, all duties and interest[4]; and
- to pay all penalties and fines incurred for the contravention of the provisions of the customs law, in respect of such goods.

[4] *Interest referred here is interest payable under section 61(2)*

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Consignment Bond

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 may also be required to furnish prescribed security.

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.

General Bond

The Assistant/Deputy Commissioner of Customs may permit an importer to execute a general bond of 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 which is debited when imported goods are warehoused and credited when warehoused goods are cleared ex-bond on payment of duty.

Above bonds will continue to be valid even if the goods are transferred 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.

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

Once the importer has furnished the stipulated bond and security (i.e. he has complied with the provisions of section 59 in respect of any goods), the proper officer may make an order permitting the deposit of the goods in a warehouse. Such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

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

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) Warehouses where manufacture/ other operations are permitted under section 65

The warehousing period for warehouses where manufacture/ other operations are permitted under section 65 in case of capital goods is till their ex-bonding and for goods other than capital goods, it is till their ex-bonding/consumption.



(ii) Other cases

In other cases, warehousing period is till the expiry of 1 year from the date of order permitting removal of goods from a customs station for deposit in a warehouse under section 60.



(iii) EOUs, EHTPs, STPs[5]

(iv) Extension of period

The Principal Commissioner/Commissioner may, on sufficient cause being shown, extend the warehousing period by not more than one year at a time.

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[5] *In case of EOUs, EHTPs and STPs, the warehousing period for capital goods prescribed under section 61 is till their ex-bonding and for goods other than capital goods, it is till their ex-bonding/consumption.*
However, with effect from 13.07.2016, EOUs/STPIs/EHTPs etc. were relieved from complying with the warehousing provisions. As a consequence, these units stand delicensed as warehouses under the Customs Act, 1962. Section 65 of the Customs Act, 1962 is also not applicable to these units. The concept of 'debonding' of goods stands dispensed with; in other words, the requirement of these units to operate under customs bond is dispensed with. However, such clearances will still require approval and payment of applicable customs duties. [Notification 52/2003 Customs dated 31.03.2003 as amended by Notification 44/2016 Customs dated 29.07.2016 read with Circular No.35/2016 Cus. dated 29.07.2016]

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Where the goods are likely to deteriorate, the warehousing period may be reduced to such shorter period as may be considered appropriate.

B. Interest on warehoused goods

(i) Warehouses where manufacture/ other operations are permitted under section 65

As seen above, 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 order permitting deposit of goods in a warehouse 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 a notification issued 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 order or 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 permitting deposit of goods in a warehouse under section 60.

(iv) No interest on warehoused goods if customs duty is not payable

In *Pratibha Processors v. UOI 1996 (88) E.L.T. 12 (S.C.),* it is held that interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of delay in paying the tax on due date. Essentially, it is compensatory and different from penalty.

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It is implicit from the language of section 61(2) that the interest shall be payable on the amount of duty *"payable or due"* on the warehoused goods for the period from the expiry of period specified or granted till the date of clearance of the goods from the warehouse. In this case, on the date of clearance of the goods, *no duty was payable*. The goods were not exigible to duty at that time.

The calculation of interest is always on the principal amount. The principal amount herein is the amount of duty payable on clearance of goods. When such principal amount is nil because of the exemption, *a fortiori*, interest payable is also nil. Thus, the interest is necessarily linked to the duty payable and if no duty is payable, there will be no liability of interest.

ILLUSTRATION

'X', an importer, imported some goods and deposited them in the warehouse on 12th April. These goods were re-exported without payment of duty on 15th August. With reference to the Customs Act, 1962, discuss whether any interest under section 61 of the Customs Act, 1962 is payable by 'X'?

ANSWER

As per section 61(2) of the Customs Act, 1962, if goods 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) 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'.

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✪ ***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[6].***

✪ ***In case of Kesoram Rayon v. CC 1996 (86) ELT 464 (SC), it was held that 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 in terms of section 72[7]. The rate of duty applicable in such case 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) has no application in such cases where the goods are removed from warehouse beyond the permitted period of warehousing; it is applicable only to the cases where a bill of entry is presented for removal from warehouse under section 68, i.e. only when goods are cleared from the warehouse within the permitted period or its permitted extension.***

8. OWNER'S RIGHT TO DEAL WITH WAREHOUSED GOODS [SECTION 64]

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. The owner's rights are limited to the statutory activities specified in section 64.

In the course of his dealings with the goods, he may:

(a) inspect the goods;

(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.

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[6] *Pratibha Processors v. UOI 1996 (88) E.L.T. 12 (S.C.)*

[7] *Students may refer the provisions of section 72 which have been discussed subsequently in this chapter.*

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

Section 65 enables conduct of manufacture and other operations in a Customs bonded warehouse[8]. The owner of any warehoused goods may carry on any manufacturing process or other operations in relation to warehoused goods in a custom bonded warehouse. He needs the permission of the Principal Commissioner of Customs or Commissioner of Customs.

Central Government may, if satisfied that it is necessary in the public interest so to do, by notification in the Official Gazette, specify the manufacturing processes and other operations in relation to a class of goods that shall not be permitted in a warehouse. Accordingly, goods imported for solar power generation projects which supply electricity, subject to the conditions specified therein, are so notified[9].

After manufacture, the produced goods may either be exported out of India or cleared for home consumption. The duties are fully remitted if the goods resulting from such operations are exported. Import duty, interest, fine and penalties, if any, are payable only if the resulting goods or imported goods are cleared in the domestic market (ex-bonding). Further, the clearance of such goods for domestic consumption squarely qualifies as supply under GST law and would be leviable to tax under section 9 of the CGST Act or section 5 of the IGST Act depending upon whether the supply from warehouse is an intra-State supply or inter-State supply[10].

At present, manufacture and other operations in a bonded warehouse are allowed only in a Private Bonded Warehouse and not in in Public Bonded Warehouse[11].

Further, manufacture and other operations are also allowed in a Special Bonded Warehouse in respect of the goods notified to be warehoused in Special Warehouse[12].

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[8] ***The provisions of section 65 are subject to the provisions of section 65A. The said amendment is proposed by the Finance Act, 2023 and is yet to be notified.***

[9] *Notification No. 86/2024 Cus (N.T.) dated 16.12.2024*

[10] *Provisions relating to leviability of GST on supply of goods and/or services has been discussed in Chapter 2 – Charge of GST in Module 1 of the Study Material.*

[11] *Manufacture and Other Operations in Warehouse (No. 2) Regulations, 2019*

[12] *Manufacture and Other Operations in Special Warehouse Regulations, 2020*

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Permission for in-bond manufacturing facility can be given by the Principal Commissioner/ Commissioner of Customs.

During the manufacturing operations or other processes done in the warehouse, waste or refuse may also arise. The question that arises is whether any import duty should be levied on the waste or refuse so generated. The answer is dependent upon whether finished product manufactured is exported out of India or cleared for home consumption.

In this respect, 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.

However, 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.

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



(2) 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) = 37 kg]. 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

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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.

(3) 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 cord warp sheet (3) chemicals and (4) mineral oil.

Total quantity of rubber issued	1500 kg
Weight of beadwire used	10 kg
Weight of tyre chord warp sheet used	180 kg
Weight of chemical used	4 kg
Weight of mineral oil used	16 kg
Total weight of raw materials issued	1710 kg
Total no. of tyres manufactured	100 pcs
Weight per tyre	16.5 kg
Thus total weight 100 tyres	1650 kg
Wastage	60 kg
Total no. of tyres cleared for home consumption	25 pcs
Total no. of tyres exported	75 pcs.

Wastage relatable to tyres exported 60kg = 45 kg

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.

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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.

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

The warehoused goods can be removed from the warehouse for any of the following three reasons:

- transfer from one warehouse to another [Section 67]; or
- clearance for home consumption [Section 68]; or
- clearance for export [Section 69].

Transfer of warehoused goods from one warehouse to another

Section 67 permits removal of warehoused goods by the owner from one warehouse to another subject to such conditions as may be prescribed.

Clearance of warehoused goods for home consumption

Any warehoused goods may be cleared for home consumption, in accordance with the provisions of section 68. The essential ingredients of section 68 are:

- An ex-bond bill of entry [Bill of entry for home consumption] should be presented to the proper officer.
- After assessment of the ex-bond bill of entry, the **duty** determined in the same should be paid.
- Along with the import duty, **the interest, 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 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 order for clearance for home consumption may

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also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

Relinquishment of title of the warehoused goods: 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.

However, 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.

Clearance of warehoused goods for export

Warehoused goods can be exported without payment of duty in accordance with the provisions of section 69, for instance, ship stores, which are meant to be exported only; goods meant for re-export and goods supplied to duty free shops and the like. The essential ingredients of section 69 are:

(1) Warehoused goods may be exported to a place outside India.

(2) No import duty will be levied on the goods so exported subject to fulfilment of conditions prescribed herein.

(3) A shipping bill/bill of export/label or declaration accompanying the goods should be presented in respect of the warehoused goods sought to be cleared for export.

(4) The export duty, fine and penalties payable, if any, on such goods on export should be assessed and paid. Only payment of import duty otherwise leviable on such warehoused goods is waived.

(5) 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, fine and penalties payable, he will make an an order for clearance of warehoused goods for export from the bonded warehouse. Order for clearance of warehoused goods for export may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

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(6) 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 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[13].

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

In some cases, warehoused goods are subject to normal loss owing to volatility of such goods and manner of their storage.

For instance, petroleum products like aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naptha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks, subjected to atmospheric pressure have a tendency to evaporate during long period of storage. Similarly, wine, spirit and beer, are imported under over proof conditions, in wooden casks stored in bonded warehouses; they are volatile in nature and there is considerable evaporation loss during storage.

Natural Causes

Resultantly, there is generally a difference between the bonded quantity and the quantity at the time of removal from the warehouse. This loss is due to natural causes and neither the importer nor the warehouse keeper is at fault. Thus, neither the importer nor the warehouse keeper can be asked to bear the duty burden of this loss. This position has been recognised and duty on the deficiency has been remitted under section 70.

[13] *For instance, export of warehoused goods to Burma, Nepal and Bhutan, export of warehoused goods in vessels of less than 1000 tons, taking of stores on board vessels of less than 200 tons, etc. have been banned under said provision. These examples are only for knowledge of the students and are not relevant for examination purposes.*

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When any warehoused goods notified under this section[14], are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant/ Deputy Commissioner of Customs may remit the duty on such deficiency. Goods are notified under thus section having regard to volatility of the goods and manner of their storage.



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

As we have seen above, warehoused goods can be removed from warehouse only in situations stipulated under sections 67, 68 and 69. As a corollary, it follows that warehoused goods cannot be removed otherwise. Sections 71 and 72 provide for such a prohibition and the penal action thereon.

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 the Customs 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

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[14] *Aviation fuel, motor spirit, mineral turpentine, acetone, methanol, raw naptha, vaporizing oil, kerosene, high speed diesel oil, batching oil, diesel oil, furnace oil and ethylene dichloride, kept in tanks; liquid helium gas kept in containers; wine, spirit and beer, kept in casks and crude stored in caverns, have been specified as goods to which the provisions of section 70 apply vide Notification No. 3/2016 Cus. NT dated 11.01.2016. These examples are only for knowledge of the students and are not relevant for examination purposes.*

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- ✓ 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. However, the proper officer has to first give a notice to the owner (any transfer of the goods notwithstanding) for the same.

13. 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.

14. CUSTODY AND REMOVAL OF WAREHOUSED GOODS [SECTION 73A]

The licensee shall appoint a warehouse keeper for discharge of functions on his behalf.

In case private/public warehouses, there is only record based control; physical control of Bond Officer is not there (his presence is required only in case of removal of goods for export). Consequently, the responsibilities of warehouse keepers assume greater significance. Special warehouses remain locked and any removal/deposit of goods from/to the warehouse is only in the presence of the Bond Officer.

A warehouse keeper 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. He shall keep copies of documents evidencing the receipt/removal of goods into/from

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the warehouse and copies of the bonds executed.

The said 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. Further, digital copies of the same also need to be preserved at any place other than warehouse[15].

Section 73A makes the warehouse keeper as a custodian of the warehoused goods and prescribes the provisions for custody and removal of warehoused goods. It stipulates that all warehoused goods will remain in the custody of the person who has been granted a license under section 57/ 58/ 58A until they are cleared for home consumption/ transferred to another warehouse/ exported/ removed as otherwise provided under Customs Act.

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

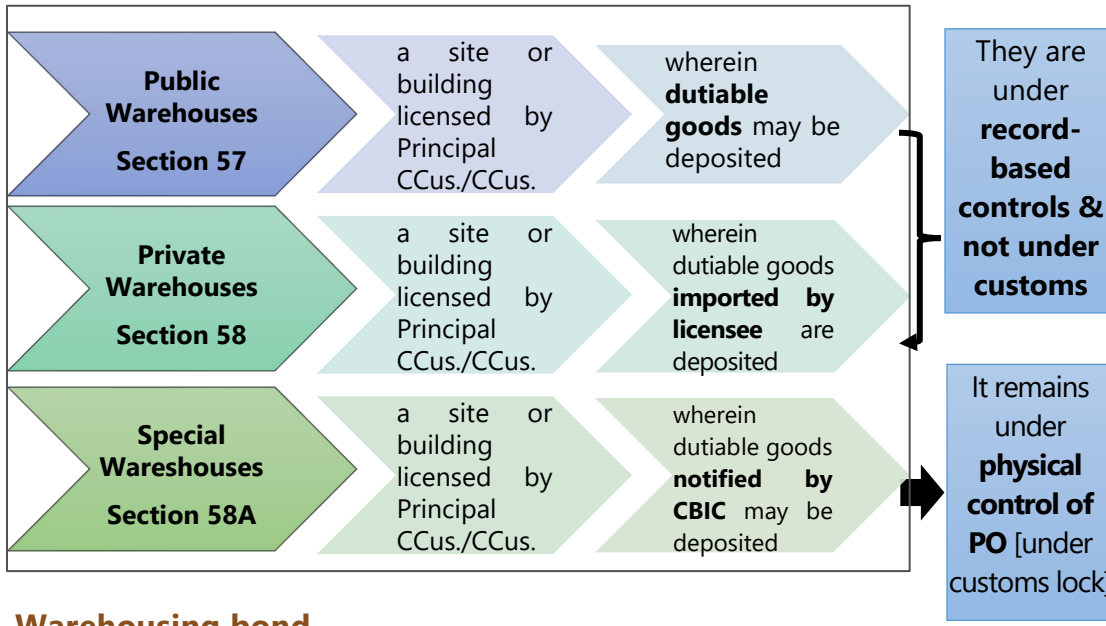
This would be in addition to any other action that may be taken against him under this Act or any other law for the time being in force.

[15] *Provisions discussed in this para have been laid down by Warehouse (Custody & Handling of Goods) Regulations, 2016 and Special Warehouse (Custody & Handling of Goods) Regulations, 2016. These regulations have been notified 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.*

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LET US RECAPITULATE

Types of warehouses



Warehousing bond

Warehousing Bond + Prescribed security

Importer has to furnish Warehousing Bond + Security for warehousing goods / or for transferring goods from one warehouse to another warehouse, without paying customs duties

Consignment Bond

Thrice the amount of duty assessed

General Bond

Assistant Commissioner /Deputy Commissioner may permit importer to execute General Bond in respect of goods warehoused within a specified period

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Period for which goods may remain in a warehouse

S. No.	Class of goods		Time for which the goods may remain warehoused
1.	Goods for use in any warehouse where manufacture or other operations are permitted under section 65		
	(i)	Capital goods	Till the clearance of such goods from warehouse
	(ii)	Other goods	Till the consumption or clearance of such goods from warehouse
2.	Goods other than 1 above		Till the expiry of 1 year from the date of order permitting deposit of goods in warehouse

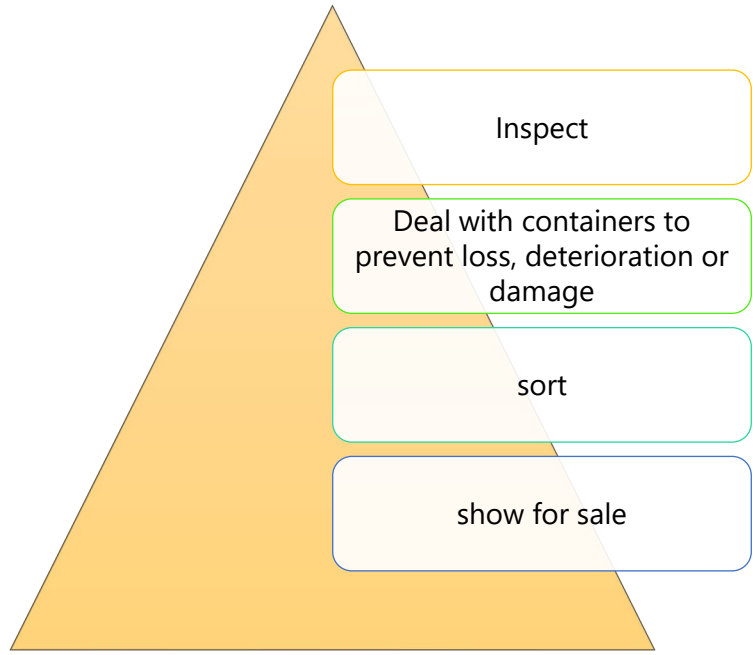
Interest on warehoused goods

S. No.	Class of goods	Provisions relating to interest payable	
1.	Capital goods and other goods for use in any warehouse where manufacture or other operations are permitted under section 65	No interest is payable	
2.	Goods other than 1. above	Interest will be payable if goods remain in the warehouse beyond 90 days from the date on which the order permitting deposit of goods in a warehouse under section 60 is made.	
		Rate of interest	15% p.a.

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		Amount on which interest is payable	Duty payable at the time of clearance of the goods
		Period for which interest is payable	From the expiry of the 90 days till the date of payment of duty on the warehoused goods.

Owner's right to deal with warehoused goods



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Treatment of waste in the manufacturing/other operations in relation to warehoused goods

If whole/part of goods resulting from such operations are **exported,**	•Import duty to be remitted •Waste is to be either destroyed or duty to be paid.
If whole/part of goods resulting from such operations are **cleared from the warehouse for home consumption**	•Import duty is charged

Removal of goods from the warehouse

- Transfer from one warehouse to another
- Clearance for home consumption
- Clearance for export

Allowance in respect of volatile goods

Volatile goods	Natural loss	AC/DC may remit the duty

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TEST YOUR KNOWLEDGE

1. *Interest free period of ninety (90) days under section 61(2) in respect of warehoused goods commences from the date on which an into-bond bill of entry in respect of such goods is presented. Comment on the validity of the statement.*

2. *"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.

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

4. *Vipul imported certain goods in May. An 'into bond' bill of entry was presented on 14th May 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. 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.*

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

Particulars	14th May	21st September	14th October
Rate of exchange per US $ (as notified by Central Board of Indirect taxes & Customs)	₹ 65.20	₹ 65.40	₹ 65.50
Basic customs duty	15%	10%	12%

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Integrated Tax leviable under section 3(7) of the Customs Tariff Act is exempt. Ignore agriculture and infrastructure development cess.

5. *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.



ANSWERS

1. Invalid. As per section 61, if goods remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in a warehouse 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 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.

2. **The said statement is valid.**

Section 65 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.

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3. Section 72 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.

4. Computation of import duty payable by Vipul

Particulars	Amount (US $)
Assessable value	1,00,000
	Amount (₹)
Value in Indian currency (US $ 1,00,000 x ₹ 65.20) [Note 1]	65,20,000
Customs duty @ 10% [Note 2]	6,52,000
Add: Social welfare surcharge @ 10% on ₹ 6,52,000	65,200
Total customs duty payable	7,17,200

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 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.

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As per section 61 of the Customs Act, 1962, if goods remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit of goods in warehouse under section 60 is made, interest is payable @ 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 90 days commencing from the date of order made under 60 expires on	19th August
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 = ₹ $7,17,200 \times \frac{15}{100} \times \frac{56}{365}$ **(rounded off)**	₹ **16,505**

5. 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.

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AMENDMENT MADE VIDE THE FINANCE ACT, 2023

The new section 65A inserted in the Customs Act, 1962 vide the Finance Act, 2023 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till 30.04.2026. Therefore, applicability or otherwise of such amendment for May 2027 and/or November 2027 examinations shall be informed by the ICAI by way of an announcement.

In the table given below, the provisions of section 65A of the Customs Act, 1962 are elaborated as under:

Once the announcement for applicability of such amendment for examination(s) is made by the ICAI, students should read the new provisions given hereunder.

Section No.	Existing provisions	Provisions as amended by the Finance Act, 2023	Remarks
65A		**Goods brought for operations in warehouse to have ordinarily paid certain taxes.** ***(1) Notwithstanding anything to the contrary contained in this Act or the Customs Tariff Act, 1975, the following provisions shall, with effect from such date as may be notified by the Central Government, apply to goods in relation to which any manufacturing process or other operations in terms of section 65 may be carried out, namely:—*** ***(A) the dutiable goods, which are deposited in the warehouse shall be goods on which the integrated tax under sub-section (7) and the goods and services tax compensation cess under sub-section (9), of section 3 of the***	New section 65A to be inserted so as to provide all customs bonded warehouses undertaking manufacturing and other operations therein including units registered under the Manufacture and Other Operations in Warehouse Regulations (MOOWRs Scheme) will not be eligible to avail the exemption from IGST and GST Compensation Cess on its import into India. They will only

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		Customs Tariff Act, 1975 have been paid, and only for the purpose of the duty payable, other than the said tax and cess paid, such dutiable goods shall be warehoused goods; ***(B) the dutiable goods shall be permitted to be removed for the purpose of deposit in the warehouse, where—*** ***(i) in respect of the goods, an entry thereof has been made by presenting electronically on the customs automated system, a bill of entry for home consumption under section 46 and the goods have been assessed to duty under section 17 or section 18, as the case may be, in accordance with clause (a) of sub-section (1) of section 15;*** ***(ii) the integrated tax under sub-section (7) and the goods and services tax compensation cess under sub-section (9), of section 3 of the Customs Tariff Act, 1975 have been paid in accordance with section 47;*** ***(iii) on removal of the goods from another warehouse in terms of section 67, a bill of entry for home consumption under clause (a) of section 68 has been presented and the integrated tax under sub-section (7), and the goods***	be eligible to avail the benefit of exemption from payment of other types of customs duty and cesses (such as BCD, anti-dumping duty, etc). Of this, GST and Compensation payment, these units will, however, be eligible to avail input tax credit (ITC), if otherwise available, under the GST law. A 'bill of entry for home consumption' needs to be filed for moving the goods to a warehouse operating under section 65 of Customs Act instead of 'Bill of entry for warehousing'. Integrated Goods & Service Tax (IGST) and compensation cess needs to be paid on such goods kept in the warehouse operating under Section 65 of Customs Act. For the purpose of payment

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		and services tax compensation cess under sub-section (9), of section 3 of the Customs Tariff Act, 1975 have been paid before the goods are so removed from that other warehouse; ***(iv) the provisions of section 59, subject to the following modifications therein, have been complied with, namely:—*** ***(a) for the words "bill of entry for warehousing", the words "bill of entry for home consumption" shall be substituted; and*** ***(b) for the words "amount of the duty assessed", the words "amount of duty assessed, but not paid" shall be substituted;*** ***(C) the duty payable in respect of warehoused goods referred to in clause (A), to the extent not paid, is paid before the goods are removed from the warehouse in such manner as may be prescribed.*** ***(2) The provisions of sub-section (1) shall not apply for the purpose of manufacturing process or other operations in terms of section 65 to dutiable goods which have***	of duty other than the aforesaid i.e., Basic Customs duty etc., the goods shall be treated as warehoused goods. The Government may notify the category of goods, importers or exporters and industry sector on which the provisions of Section 65A shall not be applicable.

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		been deposited in the warehouse or permitted to be removed for deposit in the warehouse prior to the date notified under that sub-section. ***(3) The Central Government may, if it considers necessary or expedient, and having regard to such criteria, including but not limited to, the nature or class or categories of goods, or class of importers or exporters, or industry sector, exempt, by notification, such goods in relation to which any manufacturing process or other operations in terms of section 65 may be carried out, as may be specified in the notification, from the application of this section.***	

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